



Issue	Changes made	Effect
1 Definition of casual employment	<p>The Bill introduces a definition of casual employee. A person will be a casual employee if:</p> <ul style="list-style-type: none">• an offer of employment is made to the person on the basis that the employer makes no firm advance commitment to continuing and indefinite work according to an agreed pattern of work for the person; and• the person accepts the offer on that basis; and• the person is an employee as a result of that acceptance. <p>The definition expressly provides that the only considerations in determining whether no firm advance commitment to continuing and indefinite work according to an agreed pattern of work for the person is made are:</p> <ul style="list-style-type: none">• whether the employer can elect to offer work and whether the person can elect to accept or reject work;• whether the person will work as required according to the needs of the employer;• whether the employment is described as casual employment; and• whether the person will be entitled to a casual loading or a specific rate of pay for casual employees under the terms of the offer or a fair work instrument. <p>The definition also makes clear that:</p> <ul style="list-style-type: none">• a regular pattern of hours does not of itself indicate a firm advance commitment to continuing and indefinite work according to an agreed pattern of work;• the question of whether a person is a casual employee is to be assessed on the basis of the offer of employment and the acceptance of that offer, not on the basis of any subsequent conduct of either party; and• a person who commences employment as a casual employee remains a casual employee until their employment is converted to full-time or part-time employment or they accept an alternative offer of employment (other than as a casual).	<p>The amendments will create certainty in relation to who is a casual employee.</p> <p>There is no current definition of casual employee in the <i>Fair Work Act 2009</i> (Cth). Modern awards, enterprise agreements and employers usually define casual employment as “<i>employment where the employee is paid and engaged as a casual employee.</i>” However the Full Federal Court decision in <i>WorkPac Pty Ltd v Rossato</i> (2020) 72 AILR ¶103-177; [2020] FCAFC 84 (Rossato) (and earlier decisions) developed the meaning of the term casual employee at common law with a focus on the substance of the relationship between the parties and their later conduct during the course of the employment.</p> <p>The new definition puts the focus back on the offer of employment and what is agreed between an employer and employee, not the later conduct of the parties. The status of an employee’s engagement cannot vary from time to time, based on a court’s assessment of the conduct of the parties, independently of their intention, or even their knowledge. The status can only change as a result of conversion (referred to below), or the acceptance of an alternative offer of employment.</p> <p>Employers will need to review their current arrangements with casuals to determine the nature and extent of any risk that claims for permanent entitlements for the past might be made. Employers will also need to consider devising a new system for the engagement of casuals in the future to ensure they can leverage the certainty and risk minimisation provided in the Bill. Careful drafting of offers of employment will be critical.</p>



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2 Casual conversion	<p>The Bill introduces <u>a requirement</u> for employers (other than small business employers) to make an offer to a casual employee to convert to full-time employment or part-time employment if:</p> <ul style="list-style-type: none">• they have been employed for a period of 12 months; and• during at least the last 6 months of that period, they have worked a regular pattern of hours on an ongoing basis which, without significant adjustment, the employee could continue to work as a full-time employee or a part-time employee (as the case may be). <p>However an employer will not be required to make an offer if there are reasonable grounds not to make the offer and the reasonable grounds are based on facts that are known, or reasonably foreseeable, at the time of deciding not to make the offer.</p> <p>Reasonable grounds include:</p> <ul style="list-style-type: none">• the employee's position will cease to exist in the period of 12 months after the time of deciding not to make the offer;• the hours of work which the employee is required to perform will be significantly reduced in that period;• there will be a significant change in either or both of the following in that period:<ul style="list-style-type: none">– the days on which the employee's hours of work are required to be performed;– the times at which the employee's hours of work are required to be performed;which cannot be accommodated within the days or times the employee is available to work during that period;• making the offer would not comply with a recruitment or selection process required by or under a law of the Commonwealth or a State or a Territory. <p>The Bill includes notice requirements for the making, acceptance and refusal of such offers.</p>	<p>The amendments will provide a more certain mechanism for casual employees and employers to change the nature of the relationship (where such a conversion clause does not already exist in a modern award or enterprise agreement).</p> <p>Employers will need to consider implementing processes and procedures to ensure compliance with the conversion obligations. In doing so, attention should be paid to any existing enterprise agreement or award obligations to ensure employers have access to the protections against double-dipping.</p>



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	<p>A casual employee may also make a request to convert if:</p> <ul style="list-style-type: none">• they have been employed for a period of at least 12 months;• in the period of 6 months ending the day the request is given, they have worked a regular pattern of hours on an ongoing basis which, without significant adjustment, the employee could continue to work as a full-time employee or a part-time employee (as the case may be); and• during that 6 month period:<ul style="list-style-type: none">– the employee has not refused an offer made to them;– the employer has not given the employee a notice of a decision not to make offers on reasonable grounds or a response refusing a previous request made. <p>An employer must not refuse the request unless:</p> <ul style="list-style-type: none">• the employer has consulted the employee;• there are reasonable grounds to refuse the request; and• the reasonable grounds are based on facts that are known, or reasonably foreseeable, at the time of refusing the request. <p>The examples of reasonable grounds are the same as those for refusing to make an offer, and also include that it would require a significant adjustment to the employee's hours of work in order for the employee to be employed as a full-time employee or part-time employee.</p> <p>Again, the Bill includes notice requirements for the making, acceptance and refusal of such requests.</p>	
3 'Double dipping'	<p>The Bill introduces 'double dipping' provisions which allow a court to offset casual loading amounts paid to an employee against certain entitlements that the casual loading was paid in compensation for, during a period when that employee was not a casual employee.</p> <p>They apply where:</p>	<p>In the event the statutory definition of casual employee is not satisfied for any particular period, casual employees may still make claims to access permanent employment entitlements.</p> <p>If claims are determined in the employees' favour, however, and they are awarded access to permanent employment entitlements, there is a <u>mandatory</u> deduction from any court order of any identifiable casual</p>



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	<ul style="list-style-type: none">• a person is employed by an employer in circumstances where the employment is described as casual employment; and• the employer pays the person an identifiable amount paid to compensate the person for not having one or more relevant entitlements during a period; and• during the employment period, the person was not a casual employee; and• the person (or another person for the benefit of the person) makes a claim to be paid an amount for one or more of the relevant entitlements with respect to the employment period. <p>When making any orders in relation to the claim, a court must reduce (but not below nil) any amount payable by the employer to the person for the relevant entitlements (the claim amount) by an amount equal to the loading amount.</p> <p>There are provisions to reduce the claim for a proportionate amount subject to the terms of the loading amount.</p>	<p>loading already paid. The wording here is quite unequivocal, and addresses the findings in <i>Rossato</i>.</p> <p>These changes will help employers quantify the risk in relation to claims for permanent entitlements for the past that might be made.</p>
4 Small claims procedure	<p>The Bill allows for proceedings to be dealt with as small claims proceedings to the Court in connection with a dispute relating to:</p> <ul style="list-style-type: none">• whether a casual employee meets the requirements to be offered casual conversion and whether a casual employee may make a conversion request of conversion; and• whether an employer has reasonable grounds not to make an offer of casual conversion or to refuse a request of conversion.	<p>The provisions will allow the Court to deal with small-claims style disputes about casual conversion.</p> <p>The Bill indicates that the orders that a Court may make include orders requiring employers to “consider” whether they must make an offer or grant a request, or prevent an employer from relying on particular grounds not to make an offer or refuse such a request.</p>
5 Casual conversion disputes	<p>The Bill introduces a dispute resolution procedure in relation to the casual conversion provisions that applies, unless a fair work instrument, employment contract or other written agreement includes a procedure for dealing with the dispute.</p> <p>The parties must attempt to resolve the dispute at the workplace level first. If they do not resolve the dispute, it may be referred to the Fair Work Commission.</p>	<p>The provisions will allow the Fair Work Commission to deal with small-claims style disputes about casual conversion, although it will be prevented from arbitrating such a dispute unless the parties agree.</p>



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6 Casual Employment Information Statement	<p>The Bill introduces a requirement for employers to give new casual employees a Casual Employment Information Statement before or as soon as practicable after the employee starts employment.</p> <p>The Statement is to be prepared by the Fair Work Ombudsman and must contain information about casual employment and offers and requests for casual conversion, including the following:</p> <ul style="list-style-type: none">• the meaning of casual employee;• an employer offer for casual conversion must generally be made to certain casual employees within 21 days after the employee has completed 12 months of employment;• an employer can decide not to make an offer for casual conversion if there are reasonable grounds to do so, but the employer must notify the employee of these grounds;• certain casual employees will also have a residual right to request casual conversion;• casual conversion entitlements of casual employees employed by small business employers; and• the FWC may deal with disputes about the operation of that Division.	Employers will need to update their on-boarding processes to ensure compliance with this requirement for new casual employees.