



# **Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Act 2021**

**No. 25, 2021**

**An Act to amend the *Fair Work Act 2009*, and for  
related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation  
(<https://www.legislation.gov.au/>)



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## Contents

1	Short title.....	1
2	Commencement.....	2
3	Schedules.....	3
4	Review of operation of amendments .....	3
<b>Schedule 1—Casual employees</b>		<b>5</b>
Part 1—Main amendments		5
<i>Fair Work Act 2009</i>		5
Part 2—Other amendments		19
<i>Fair Work Act 2009</i>		19
Part 3—Small claims procedure		22
<i>Fair Work Act 2009</i>		22
<b>Schedule 7—Application, saving and transitional provisions</b>		<b>24</b>
<i>Fair Work Act 2009</i>		24





# Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Act 2021

No. 25, 2021

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## An Act to amend the *Fair Work Act 2009*, and for related purposes

[Assented to 26 March 2021]

The Parliament of Australia enacts:

### 1 Short title

This Act is the *Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Act 2021*.

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No. 25, 2021

*Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Act 2021*

1

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## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 4 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	26 March 2021
2. Schedule 1, Parts 1 and 2	The day after this Act receives the Royal Assent.	27 March 2021
2A. Schedule 1, Part 3, items 23 and 24	The day after this Act receives the Royal Assent.	27 March 2021
2B. Schedule 1, Part 3, item 25	The later of: (a) immediately after the commencement of the provisions covered by table item 2A; and (b) the commencement of the <i>Federal Circuit and Family Court of Australia Act 2021</i> .  However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.	1 September 2021 (paragraph (b) applies)
18. Schedule 7, item 1	The day after this Act receives the Royal Assent.	27 March 2021
Note:	This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.	

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- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

### **3 Schedules**

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

### **4 Review of operation of amendments**

- (1) The Minister must cause a review to be conducted of the operation of the amendments made by this Act.
- (2) Without limiting the matters that may be considered when conducting the review, the review must:
- (a) consider whether the operation of the amendments made by this Act is appropriate and effective in the context of Australia's changing employment and economic conditions; and
  - (b) identify any unintended consequences of the amendments made by this Act; and
  - (c) consider whether amendments to the *Fair Work Act 2009* and the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*, or any other legislation, are necessary to:
    - (i) improve the operation of the amendments made by this Act under paragraph (a); or
    - (ii) rectify any unintended consequences identified under paragraph (b).
- (3) The review must start as soon as practicable after the end of 12 months after this section commences.
- (4) The persons who conduct the review must give the Minister a written report of the review within 6 months of the commencement of the review.

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- (5) The Minister must cause a copy of the report of the review to be tabled in each House of the Parliament within 15 sitting days of that House after the Minister receives the report.



## **Schedule 1—Casual employees**

### **Part 1—Main amendments**

#### *Fair Work Act 2009*

##### **1 Section 12**

Insert:

*casual employee*: see section 15A.

##### **2 At the end of Division 3 of Part 1-2**

Add:

##### **15A Meaning of *casual employee***

- (1) A person is a *casual employee* of an employer if:
  - (a) an offer of employment made by the employer to the person is made 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
  - (b) the person accepts the offer on that basis; and
  - (c) the person is an employee as a result of that acceptance.
- (2) For the purposes of subsection (1), in determining whether, at the time the offer is made, the employer makes no firm advance commitment to continuing and indefinite work according to an agreed pattern of work for the person, regard must be had only to the following considerations:
  - (a) whether the employer can elect to offer work and whether the person can elect to accept or reject work;
  - (b) whether the person will work as required according to the needs of the employer;
  - (c) whether the employment is described as casual employment;
  - (d) 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.

## Schedule 1 Casual employees

### Part 1 Main amendments

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Note: Under Division 4A of Part 2-2, a casual employee who has worked for an employer for at least 12 months and has, during at least the last 6 months of that time, worked a regular pattern of hours on an ongoing basis may be entitled to be offered, or request, conversion to full-time employment or part-time employment.

- (3) To avoid doubt, 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.
- (4) To avoid doubt, the question of whether a person is a casual employee of an employer 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.
- (5) A person who commences employment as a result of acceptance of an offer of employment in accordance with subsection (1) remains a *casual employee* of the employer until:
  - (a) the employee's employment is converted to full-time or part-time employment under Division 4A of Part 2-2; or
  - (b) the employee accepts an alternative offer of employment (other than as a casual employee) by the employer and commences work on that basis.

### 3 After Division 4 of Part 2-2

Insert:

#### **Division 4A—Offers and requests for casual conversion**

##### **Subdivision A—Application of Division**

##### **66A Division applies to casual employees etc.**

- (1) This Division applies in relation to an employee who is a casual employee.
- (2) A reference in this Division to full-time employment or part-time employment is taken not to include employment for a specified period of time, for a specified task or for the duration of a specified season.

## **Subdivision B—Employer offers for casual conversion**

### **66AA Subdivision does not apply to small business employers**

This Subdivision does not apply in relation to an employer that is a small business employer.

### **66B Employer offers**

(1) Subject to section 66C, an employer must make an offer to a casual employee under this section if:

- (a) the employee has been employed by the employer for a period of 12 months beginning the day the employment started; and
- (b) during at least the last 6 months of that period, the employee has 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).

Note: An employee who meets the requirements of paragraphs (a) and (b) would also be a regular casual employee because the employee has been employed by the employer on a regular and systematic basis.

(2) The offer must:

- (a) be in writing; and
- (b) be an offer for the employee to convert:
  - (i) for an employee that has worked the equivalent of full-time hours during the period referred to in paragraph (1)(b)—to full-time employment; or
  - (ii) for an employee that has worked less than the equivalent of full-time hours during the period referred to in paragraph (1)(b)—to part-time employment that is consistent with the regular pattern of hours worked during that period; and
- (c) be given to the employee within the period of 21 days after the end of the 12 month period referred to in paragraph (1)(a).

Note: If an offer is accepted, the conversion to full-time employment or part-time employment has effect for all purposes (see section 66K).

- (3) For the purposes of paragraph (2)(b), in determining whether an award/agreement free employee has worked the equivalent of full-time hours, regard may be had to the hours of work of any other full-time employees of the employer employed in the same position as (or in a position that is comparable to) the position of the employee.

### **66C When employer offers not required**

- (1) Despite section 66B, an employer is not required to make an offer under that section to a casual employee if:
- (a) there are reasonable grounds not to make the offer; and
  - (b) the reasonable grounds are based on facts that are known, or reasonably foreseeable, at the time of deciding not to make the offer.
- (2) Without limiting paragraph (1)(a), reasonable grounds for deciding not to make an offer include the following:
- (a) the employee's position will cease to exist in the period of 12 months after the time of deciding not to make the offer;
  - (b) the hours of work which the employee is required to perform will be significantly reduced in that period;
  - (c) there will be a significant change in either or both of the following in that period:
    - (i) the days on which the employee's hours of work are required to be performed;
    - (ii) 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;
  - (d) 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.
- (3) An employer must give written notice to a casual employee in accordance with subsection (4) if:
- (a) the employer decides under subsection (1) not to make an offer to the employee; or

- (b) the employee has been employed by the employer for the 12 month period referred to in paragraph 66B(1)(a) but does not meet the requirement referred to in paragraph 66B(1)(b).

Note: If an employer fails to give notice to a casual employee, the employee has a residual right to request conversion to full-time or part-time employment in certain circumstances: see Subdivision C.

- (4) The notice must:
  - (a) advise the employee that the employer is not making an offer under section 66B; and
  - (b) include details of the reasons for not making the offer (including any grounds on which the employer has decided to not make the offer); and
  - (c) be given to the employee within 21 days after the end of the 12 month period referred to in paragraph 66B(1)(a).

#### **66D Employee must give a response**

- (1) The employee must give the employer a written response to the offer within 21 days after the offer is given to the employee, stating whether the employee accepts or declines the offer.
- (2) If the employee fails to give the employer a written response in accordance with subsection (1), the employee is taken to have declined the offer.

#### **66E Acceptances of offers**

- (1) If the employee accepts the offer, the employer must, within 21 days after the day the acceptance is given to the employer, give written notice to the employee of the following:
  - (a) whether the employee is converting to full-time employment or part-time employment;
  - (b) the employee's hours of work after the conversion takes effect;
  - (c) the day the employee's conversion to full-time employment or part-time employment takes effect.
- (2) However, the employer must discuss with the employee the matters the employer intends to specify for the purposes of paragraphs (1)(a), (b) and (c) before giving the notice.

- (3) The day specified for the purposes of paragraph (1)(c) must be the first day of the employee's first full pay period that starts after the day the notice is given, unless the employee and employer agree to another day.

### **Subdivision C—Residual right to request casual conversion**

#### **66F Employee requests**

- (1) A casual employee may make a request of an employer under this section if:
- (a) the employee has been employed by the employer for a period of at least 12 months beginning the day the employment started; and
  - (b) the employee has, in the period of 6 months ending the day the request is given, 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
  - (c) all of the following apply:
    - (i) the employee has not, at any time during the period referred to in paragraph (b), refused an offer made to the employee under section 66B;
    - (ii) the employer has not, at any time during that period, given the employee a notice in accordance with paragraph 66C(3)(a) (which deals with notice of employer decisions not to make offers on reasonable grounds);
    - (iii) the employer has not, at any time during that period, given a response to the employee under section 66G refusing a previous request made under this section;
    - (iv) if the employer is not a small business employer—the request is not made during the period of 21 days after the period referred to in paragraph 66B(1)(a).

Note: Nothing in this Subdivision prevents an employee from requesting to convert to full-time or part-time employment outside the provisions of this Division, or prevents an employer from granting such a request.

- (2) The request must:
- (a) be in writing; and
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- (b) be a request for the employee to convert:
  - (i) for an employee that has worked the equivalent of full-time hours during the period referred to in paragraph (1)(b)—to full-time employment; or
  - (ii) for an employee that has worked less than the equivalent of full-time hours during the period referred to in paragraph (1)(b)—to part-time employment that is consistent with the regular pattern of hours worked during that period; and
- (c) be given to the employer.

Note: If a request is accepted, the conversion to full-time employment or part-time employment has effect for all purposes (see section 66K).

- (3) For the purposes of paragraph (1)(b), in determining whether an award/agreement free employee has worked the equivalent of full-time hours, regard may be had to the hours of work of any other full-time employees of the employer employed in the same position as (or in a position that is comparable to) the position of the employee.

### **66G Employer must give a response**

The employer must give the employee a written response to the request within 21 days after the request is given to the employer, stating whether the employer grants or refuses the request.

### **66H Refusals of requests**

- (1) The employer must not refuse the request unless:
  - (a) the employer has consulted the employee; and
  - (b) there are reasonable grounds to refuse the request; and
  - (c) the reasonable grounds are based on facts that are known, or reasonably foreseeable, at the time of refusing the request.
- (2) Without limiting paragraph (1)(b), reasonable grounds for refusing the request include the following:
  - (a) 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;

- (b) the employee's position will cease to exist in the period of 12 months after giving the request;
  - (c) the hours of work which the employee is required to perform will be significantly reduced in the period of 12 months after giving the request;
  - (d) there will be a significant change in either or both of the following in the period of 12 months after giving the request:
    - (i) the days on which the employee's hours of work are required to be performed;
    - (ii) 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;
  - (e) granting the request would not comply with a recruitment or selection process required by or under a law of the Commonwealth or a State or a Territory.
- (3) If the employer refuses the request, the written response under section 66G must include details of the reasons for the refusal.

#### **66J Grants of requests**

- (1) If the employer grants the request, the employer must, within 21 days after the day the request is given to the employer, give written notice to the employee of the following:
  - (a) whether the employee is converting to full-time employment or part-time employment;
  - (b) the employee's hours of work after the conversion takes effect;
  - (c) the day the employee's conversion to full-time employment or part-time employment takes effect.
- (2) However, the employer must discuss with the employee the matters the employer intends to specify for the purposes of paragraphs (1)(a), (b) and (c) before giving the notice.
- (3) The day specified for the purposes of paragraph (1)(c) must be the first day of the employee's first full pay period that starts after the day the notice is given, unless the employee and employer agree to another day.



- (4) To avoid doubt, the notice may be included in the written response under section 66G.

## **Subdivision D—Other provisions**

### **66K Effect of conversion**

To avoid doubt, an employee is taken, on and after the day specified in a notice for the purposes of paragraph 66E(1)(c) or 66J(1)(c), to be a full-time employee or part-time employee of the employer for the purposes of the following:

- (a) this Act and any other law of the Commonwealth;
- (b) a law of a State or Territory;
- (c) any fair work instrument that applies to the employee;
- (d) the employee's contract of employment.

### **66L Other rights and obligations**

- (1) An employer must not reduce or vary an employee's hours of work, or terminate an employee's employment, in order to avoid any right or obligation under this Division.

Note: The general protections provisions in Part 3-1 also prohibit the taking of adverse action by an employer against an employee (which includes a casual employee) because of a workplace right of the employee under this Division.

- (2) Nothing in this Division:
- (a) requires an employee to convert to full-time employment or part-time employment; or
  - (b) permits an employer to require an employee to convert to full-time employment or part-time employment; or
  - (c) requires an employer to increase the hours of work of an employee who requests conversion to full-time employment or part-time employment under this Division.

## 66M Disputes about the operation of this Division

### *Application of this section*

- (1) This section applies to a dispute between an employer and employee about the operation of this Division.
- (2) However, this section does not apply in relation to the dispute if any of the following includes a term that provides a procedure for dealing with the dispute:
  - (a) a fair work instrument that applies to the employee;
  - (b) the employee's contract of employment;
  - (c) another written agreement between the employer and employee.

Note: Modern awards and enterprise agreements must include a term that provides a procedure for settling disputes in relation to the National Employment Standards (see paragraph 146(b) and subsection 186(6)).

### *Resolving disputes*

- (3) In the first instance, the parties to the dispute must attempt to resolve the dispute at the workplace level, by discussions between the parties.

### *FWC may deal with disputes*

- (4) If discussions at the workplace level do not resolve the dispute, a party to the dispute may refer the dispute to the FWC.
- (5) If a dispute is referred under subsection (4):
  - (a) the FWC must deal with the dispute; and
  - (b) if the parties notify the FWC that they agree to the FWC arbitrating the dispute—the FWC may deal with the dispute by arbitration.

Note: For the purposes of paragraph (a), the FWC may deal with the dispute as it considers appropriate, including by mediation, conciliation, making a recommendation or expressing an opinion (see subsection 595(2)).

*Representatives*

- (6) The employer or employee to the dispute may appoint a person or industrial association to provide the employer or employee (as the case may be) with support or representation for the purposes of resolving, or the FWC dealing with, the dispute.

Note: A person may be represented by a lawyer or paid agent in a matter before the FWC only with the permission of the FWC (see section 596).

**4 Division 12 of Part 2-2 (heading)**

Repeal the heading, substitute:

**Division 12—Fair Work Ombudsman to prepare and publish statements**

**5 At the end of Division 12**

Add:

**125A Fair Work Ombudsman to prepare and publish Casual Employment Information Statement**

- (1) The Fair Work Ombudsman must prepare a Casual Employment Information Statement. The Fair Work Ombudsman must publish the Statement in the Gazette.

Note: If the Fair Work Ombudsman changes the Statement, the Fair Work Ombudsman must publish the new version of the Statement in the Gazette.

- (2) The Statement must contain information about casual employment and offers and requests for casual conversion under Division 4A of Part 2-2, including the following:
- (a) the meaning of casual employee under section 15A;
  - (b) 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;
  - (c) 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;

## Schedule 1 Casual employees

### Part 1 Main amendments

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- (d) certain casual employees will also have a residual right to request casual conversion;
  - (da) casual conversion entitlements of casual employees employed by small business employers;
  - (e) the FWC may deal with disputes about the operation of that Division.
- (3) The Casual Employment Information Statement is not a legislative instrument.
  - (4) The regulations may prescribe other matters relating to the content or form of the Statement, or the manner in which employers may give the Statement to employees.

#### **125B Giving new employees the Casual Employment Information Statement**

- (1) An employer must give each casual employee the Casual Employment Information Statement before, or as soon as practicable after, the employee starts employment as a casual employee with the employer.
- (2) Subsection (1) does not require the employer to give the employee the Statement more than once in any 12 months.

Note: This is relevant if the employer employs the employee more than once in the 12 months.

#### **6 After section 545**

Insert:

#### **545A Orders relating to casual loading amounts**

- (1) This section applies if:
  - (a) a person is employed by an employer in circumstances where the employment is described as casual employment; and
  - (b) the employer pays the person an identifiable amount (the **loading amount**) paid to compensate the person for not having one or more relevant entitlements during a period (the **employment period**); and

- (c) during the employment period, the person was not a casual employee; and
- (d) 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.

Note: For the purposes of paragraph (d), another person making a claim for the benefit of the person could include an inspector or an employee organisation.

- (2) 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.

Note: If the claim is below a certain amount, the person may choose to use the small claims procedure: see section 548.

- (3) Despite subsection (2), the court may reduce the claim amount by an amount equal to a proportion (which may be nil) of the loading amount the court considers appropriate, having regard only to:
  - (a) if a term of the fair work instrument or contract of employment under which the loading amount is paid specifies the relevant entitlements the loading amount is compensating for and specifies the proportion of the loading amount attributable to each such entitlement—that term (including those proportions); or
  - (b) if a term of the fair work instrument or contract of employment under which the loading amount is paid specifies the relevant entitlements the loading amount is compensating for but does not specify the proportion of the loading amount attributable to each such entitlement—that term and what would be an appropriate proportion of the loading amount attributable to each of those entitlements in all the circumstances; or
  - (c) if paragraph (a) or (b) does not apply—the entitlements referred to in subsection (4) and what would be an appropriate proportion of the loading amount attributable to each of those entitlements in all the circumstances.

- (4) A reference in this section to a **relevant entitlement** is a reference to an entitlement under the National Employment Standards, a fair

**Schedule 1** Casual employees  
**Part 1** Main amendments

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work instrument or a contract of employment to any of the following:

- (a) paid annual leave;
  - (b) paid personal/carer's leave;
  - (c) paid compassionate leave;
  - (d) payment for absence on a public holiday;
  - (e) payment in lieu of notice of termination;
  - (f) redundancy pay.
- (5) To avoid doubt, an entitlement referred to in subsection (4) includes any such entitlement that has accrued but is untaken.

## **Part 2—Other amendments**

### ***Fair Work Act 2009***

#### **7 Section 12 (definition of *long term casual employee*)**

Repeal the definition.

#### **8 Section 12**

Insert:

***regular casual employee***: a national system employee of a national system employer is a ***regular casual employee*** at a particular time if, at that time:

- (a) the employee is a casual employee; and
- (b) the employee has been employed by the employer on a regular and systematic basis.

#### **9 Paragraph 23(2)(b)**

Omit the words after “at that time,”, substitute “the employee is a regular casual employee of the employer”.

#### **10 After paragraph 61(2)(b)**

Insert:

- (ba) offers and requests for casual conversion (Division 4A);

#### **11 Subparagraph 65(2)(b)(i)**

Repeal the subparagraph, substitute:

- (i) is, immediately before making the request, a regular casual employee of the employer who has been employed on that basis for a sequence of periods of employment during a period of at least 12 months; and

#### **12 After subsection 65(2)**

Insert:

- (2A) For the purposes of applying paragraph (2)(a) in relation to an employee who has had their employment converted under

Division 4A of Part 2-2, any period for which the employee was a regular casual employee of the employer is taken to be continuous service for the purposes of that paragraph.

**13 After subsection 67(1)**

Insert:

- (1A) For the purposes of applying subsection (1) in relation to an employee who has had their employment converted under Division 4A of Part 2-2, any period for which the employee was a regular casual employee of the employer is taken to be continuous service for the purposes of that subsection.

**14 Paragraph 67(2)(a)**

Repeal the paragraph, substitute:

- (a) the employee is, or will be, immediately before the date that applies under subsection (3), a regular casual employee of the employer who has been employed on that basis for a sequence of periods of employment during a period of at least 12 months; and

**15 Subsection 87(1)**

Omit “with his or her employer”, substitute “with an employer (other than periods of employment as a casual employee of the employer)”.

**16 Subsection 87(2)**

After “year of service”, insert “(other than periods of employment as a casual employee of the employer)”.

**17 Subsection 96(1)**

Omit “with his or her employer”, substitute “with an employer (other than periods of employment as a casual employee of the employer)”.

**18 Subsection 96(2)**

After “year of service”, insert “(other than periods of employment as a casual employee of the employer)”.

**19 At the end of section 117**

Add:

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- (4) A reference in this section to continuous service with the employer does not include periods of employment as a casual employee of the employer.

**20 At the end of section 119**

Add:

- (3) A reference in this section to continuous service with the employer does not include periods of employment as a casual employee of the employer.

**21 Paragraph 121(1)(a)**

After “with the employer”, insert “(other than periods of employment as a casual employee of the employer)”.

**22 Subparagraph 384(2)(a)(i)**

Omit “on a regular and systematic basis”, substitute “as a regular casual employee”.

## Part 3—Small claims procedure

### *Fair Work Act 2009*

#### 23 Section 12

Insert:

*small claims proceedings* means proceedings dealt with as small claims proceedings under section 548.

#### 24 After subsection 548(1A)

Insert:

- (1B) Proceedings are also to be dealt with as small claims proceedings under this section if:
- (a) a person applies for an order (other than a pecuniary penalty order) under Division 2 from a magistrates court or the Federal Circuit Court in connection with a dispute relating to one or more of the following matters:
    - (i) whether a casual employee meets the requirements of either or both of paragraphs 66B(1)(a) and (b);
    - (ii) whether an employer of a casual employee has reasonable grounds under section 66C not to make an offer to the employee to convert to full-time or part-time employment under section 66B;
    - (iii) whether a casual employee may make a request of an employer to convert to full-time or part-time employment under section 66F;
    - (iv) whether an employer of a casual employee has reasonable grounds under section 66H to refuse a request from the employee made under section 66F; and
  - (b) the person applying for the order indicates, in a manner prescribed by the regulations or by the rules of the court, that he or she wants the small claims procedure to apply to the proceedings.

Note: Orders that a court may make under Division 2 in relation to small claims proceedings may include the following:

- (a) requiring an employer of a casual employee to consider whether the employer must make an offer under section 66B to convert the casual employee to part-time or full-time employment on the basis that the employee meets the requirements of paragraphs 66B(1)(a) and (b);
- (b) requiring an employer of a casual employee to consider whether the employer must grant a request made under section 66F to convert the casual employee to part-time or full-time employment on the basis that the employee meets the requirements of subsection 66F(1);
- (c) preventing an employer from relying on a particular ground under section 66C to not make such an offer, or a particular ground under section 66H to refuse such a request.

**25 Subsection 548(1B)**

Omit “Federal Circuit Court”, substitute “Federal Circuit and Family Court of Australia (Division 2)”.

## **Schedule 7—Application, saving and transitional provisions**

### ***Fair Work Act 2009***

#### **1 In the appropriate position in Schedule 1**

Insert:

### **Part 10—Amendments made by the Fair Work Amendment (Supporting Australia’s Jobs and Economic Recovery) Act 2021**

#### **Division 1—Definitions**

##### **44 Definitions**

In this Part:

***amended Act*** means this Act as amended by the *Fair Work Amendment (Supporting Australia’s Jobs and Economic Recovery) Act 2021*.

***amending Act*** means the *Fair Work Amendment (Supporting Australia’s Jobs and Economic Recovery) Act 2021*.

***commencement*** means the commencement of this Part.

#### **Division 2—Amendments made by Schedule 1 to the amending Act**

##### **45 Resolving uncertainties and difficulties about interaction between enterprise agreements and the definition of casual employee and casual conversion rights**

- (1) On application by an employer, employee or employee organisation covered by an enterprise agreement that was made

before commencement, the FWC may make a determination varying the agreement:

- (a) to resolve an uncertainty or difficulty relating to the interaction between the agreement and any of the following:
    - (i) the definition of *casual employee* in section 15A of the amended Act (including to deal with uncertainty or difficulty arising from the circumstances in which employees are to be employed as casual employees under the agreement);
    - (ii) the provisions of Division 4A of Part 2-2 of the amended Act; or
  - (b) to make the agreement operate effectively with that section or those provisions.
- (2) A variation of an enterprise agreement under this clause operates from the day specified in the determination, which may be a day before the determination is made.

#### **46 Application of certain amendments**

- (1) Section 15A of the amended Act applies on and after commencement in relation to offers of employment that were given before, on or after commencement.
- (2) Subclause (1) does not apply in relation to a person who is an employee of an employer as a result of accepting an offer that was made before commencement if either of the following apply in relation to that person:
  - (a) a court made a binding decision before commencement that the person is not a casual employee of the employer;
  - (b) the person converted the employment before commencement to employment other than casual employment under a term of a fair work instrument or contract of employment.
- (3) In addition to subclause (1), section 15A of the amended Act (and the amendment made by item 1 of Schedule 1 to the amending Act) also applies before commencement in relation to offers of employment that were given before commencement, unless either of the following apply in relation to a person who is or was an employee of an employer as a result of accepting the offer:

- (a) a court made a binding decision before commencement that the person is not a casual employee of the employer;
    - (b) the person converted the employment before commencement to employment other than casual employment under a term of a fair work instrument or contract of employment.
  - (4) To avoid doubt, if, apart from subclause (3), an employee could have made a claim for accrued relevant entitlements (within the meaning of subsection 545A(4) of the amended Act), the effect of that subclause is that the employee has not accrued, and cannot make a claim for, those entitlements.
  - (5) Subject to clause 47, Division 4A of Part 2-2 of the amended Act applies in relation to periods of employment starting before, on or after commencement.
  - (6) Section 545A of the amended Act applies in relation to entitlements that accrue, and loading amounts paid, on or after commencement.
  - (7) In addition to subclause (6), section 545A of the amended Act also applies in relation to entitlements that accrue, and loading amounts paid, before commencement.
  - (8) To avoid doubt, section 545A of the amended Act applies:
    - (a) to periods of employment starting before, on or after commencement (regardless of whether the employment period ended before commencement); and
    - (b) regardless of whether a person is, or is not, an employee of the relevant employer at the time a claim to which that section relates is made.
  - (9) A reference to periods of employment as a casual employee in section 87, 96, 117, 119 or 121 of the amended Act applies to periods of employment starting before, on or after commencement.
  - (10) A reference to a regular casual employee in section 23, 65, 67 or 384 of the amended Act applies to periods of employment starting before, on or after commencement.
  - (11) To avoid doubt, nothing in subclause (1) is taken to change the time at which the person became an employee of the employer.
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#### **47 Transitioning casual employees**

- (1) This clause applies in relation to an employee and an employer (other than a small business employer) if any or all of the following apply:
- (a) the employee was, immediately before commencement (and disregarding subclause 46(3)), a casual employee of the employer;
  - (b) the employee was, immediately before commencement (and disregarding subclause 46(3)), designated as a casual employee by the employer for the purposes of:
    - (i) any fair work instrument that applies to the employee; or
    - (ii) the employee's contract of employment;
  - (c) the employee is a casual employee of the employer within the meaning of section 15A of the amended Act because of an offer of an employment made before commencement.

Note: The effect of this application provision is to provide a requirement for an employer (other than a small business employer) to assess whether to offer conversion under Division 4A of Part 2-2 of the amended Act (as modified under this clause) to any employee who was, or may have been, a casual employee immediately before commencement, and to any employee who at commencement is a casual employee within the meaning of section 15A of the amended Act.

- (2) Division 4A (other than Subdivision C) of Part 2-2 of the amended Act is taken to apply in relation to the employee and employer for the period (the **transition period**) of 6 months after commencement only as if:
- (a) the employer was required under section 66B of the amended Act to assess, at a time during the transition period, whether the employer was required to make an offer to the employee under that section; and
  - (b) paragraph 66B(1)(a) of the amended Act were a requirement for the employee to have been employed by the employer for a period of 12 months ending the day the assessment is made; and
  - (c) paragraph 66B(2)(c) of the amended Act were a requirement to give the offer to the employee within 21 days after making the assessment; and

- (d) subsection 66C(3) of the amended Act included a requirement to give a notice under that subsection if, when the assessment is made, the employee does not meet the requirement in paragraph (b) of this clause; and
  - (e) paragraph 66C(4)(c) of the amended Act were a requirement to give the notice within 21 days of making the assessment but no later than the end of the transition period.
- (3) Subdivision C of Part 2-2 of the amended Act does not apply in relation to the employee and employer for the transition period.
  - (4) Division 4A (including Subdivision C) of Part 2-2 of the amended Act applies in relation to the employee and employer to whom paragraph (1)(a) or (b) applies after the transition period as if the employee were a casual employee of the employer within the meaning of section 15A of the amended Act.
  - (5) An employer referred to in subclause (1) must give an employee referred to in that subclause a Casual Employment Information Statement as soon as practicable after the end of the transition period.

#### **47A Casual employees of small business employers**

- (1) This clause applies in relation to an employee and a small business employer if any or all of the following apply:
    - (a) the employee was, immediately before commencement (and disregarding subclause 46(3)), a casual employee of the employer;
    - (b) the employee was, immediately before commencement (and disregarding subclause 46(3)), designated as a casual employee by the employer for the purposes of:
      - (i) any fair work instrument that applies to the employee; or
      - (ii) the employee's contract of employment;
    - (c) the employee is a casual employee of the employer within the meaning of section 15A of the amended Act because of an offer of an employment made before commencement.
  - (2) Division 4A, other than Subdivision B, of Part 2-2 of the amended Act applies in relation to the employee and employer to whom
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paragraph (1)(a) or (b) applies on and after commencement as if the employee were a casual employee of the employer within the meaning of section 15A of the amended Act.

- (3) An employer referred to in subclause (1) must give an employee referred to in that subclause a Casual Employment Information Statement as soon as practicable after commencement.

#### **48 Variations to modern awards**

- (1) If:
  - (a) a modern award is made before commencement; and
  - (b) the modern award is in operation on commencement; and
  - (c) immediately before commencement, the modern award includes a term (the *relevant term*) that:
    - (i) defines or describes casual employment; or
    - (ii) deals with the circumstances in which employees are to be employed as casual employees; or
    - (iii) provides for the manner in which casual employees are to be employed; or
    - (iv) provides for the conversion of casual employment to another type of employment;

then the FWC must, within 6 months after commencement, review the relevant term in accordance with subclause (2).

- (2) The review must consider the following:
  - (a) whether the relevant term is consistent with this Act as amended by Schedule 1 to the amending Act;
  - (b) whether there is any uncertainty or difficulty relating to the interaction between the award and the Act as so amended.
- (3) If the review of a relevant term under subclause (1) finds that:
  - (a) the relevant term is not consistent with this Act as amended by Schedule 1 to the amending Act; or
  - (b) there is a difficulty or uncertainty relating to the interaction between the award and the Act as so amended;

then the FWC must make a determination varying the modern award to make the award consistent or operate effectively with the Act as so amended.

**Schedule 7** Application, saving and transitional provisions

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- (4) The determination must be made as soon as reasonably practicable after the review is conducted.
  - (5) A determination under subclause (2) comes into operation on (and takes effect from) the start of the day the determination is made.
  - (6) Section 168 applies to a determination made under subclause (2) as if it were a determination made under Part 2-3.
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*[Minister's second reading speech made in—  
House of Representatives on 9 December 2020  
Senate on 25 February 2021]*

(183/20)

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