

Amendments needed for Casuals (Schedule 1)

Schedule One (Casuals)

1. Definition of casual and conversion rights

Casuals Definition

Insert a clear definition that takes account of all the circumstances and captures the true meaning of casual employment.

15A Meaning of casual employee

(1) A person is a casual employee of an employer if the employer makes no firm advance commitment to continuing and indefinite work according to an agreed pattern of work for the person.

(2) For the purposes of subsection (1), in determining whether 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 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 only as required;

(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 payable only to casual employees under the terms of a fair work instrument.

(e) the pattern of hours that is worked, or scheduled by the employer to be worked, by the person.

Casual Conversion

Retain the capacity of employers to not be required to make an offer of conversion where there are genuine reasonable grounds not to do so, based on what is known about the operational requirements of the business.

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.

And

Delete subsection (2) of s 66C of the Bill.

Dispute Settlement

Allow the parties to deal with disputes about casual employment and conversion in an informal way at the workplace level and include a default dispute settlement process that allows for access to the FWC to make a decision if the parties are unable to resolve the matter.

(1) *This section applies to a dispute between an employer and employee about either or both of the following:*

(i) whether or not an employee is a casual employee as defined in section 15A:

(ii) the operation of this Division.

(2) *However, this section does not apply in relation to the dispute if a fair work instrument that applies to the employee includes a term that provides a procedure for dealing with the dispute and that term provides either party with access to the arbitration of any dispute about the operation of this Division by the FWC.*

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) where the matter is not resolved under paragraph (a), the FWC shall resolve the matter by arbitration.

Consultation

Require that consultation occur before a decision is made not to offer conversion.

66C When employer offers not required

.....

(2A) The employer must not refuse to make an offer under paragraph (1) or issue a notice under paragraph (3) unless the employer has consulted with the employee and any representative of the employee.

2. Other Matters – Set Off and Fair Work Commission

Amendments

Set-off

This ensures that workers with current cases before the courts are not disadvantaged by the changes to the set-off provisions.

Schedule 7, item 1, page 95 (after line 19), after subclause 46(7), insert:

(7A) However, despite subclause (7), section 545A of the amended Act does not apply in relation to entitlements that accrue, or loading amounts paid, before commencement if an application has been made before commencement to a court for the court to determine a claim in respect of the entitlements or amounts.

[casual employees—retrospective application]