

Casual Terms Award Review Win as End of Transitional Period Nears

Background

Members will recall that on 27 March 2021 the *Fair Work Act 2009* (Cth) (the FW Act) was amended to introduce a **new definition of 'casual employee'** in s.15A of the FW Act and **new casual conversion arrangements** in the National Employment Standards (NES).

The amendments also included **6-month transitional arrangements ending on 27 September 2021**, which in addition to giving employers (other than small business employers) time to ensure they are complying with the new casual conversion requirements – also required the **Fair Work Commission to review the relevant casual terms of modern Awards** (e.g. *Vehicle Repair, Services and Retail Award 2020* (VRSR Award) and *Clerks – Private Sector Award 2020* (Clerks Award)) for consistency with the new statutory requirements – and where necessary, vary the modern Awards to ensure they are consistent and operate effectively with the amended FW Act.

13 September 2021 Full Bench Decision win for members

On 13 September 2021, a FWC Full Bench handed down a [Decision](#) relating to the casual conversion provision at clause 11.6 of the VRSR Award as part of its casual terms award review.

Consistent with the written [submissions](#) of the VACC (and as reiterated at the Hearing), the Decision rejected the arguments of the union that clause 11.6 of the VRSR Award be amended and retained to operate concurrently with the NES – instead determining that the existing provision will be deleted and replaced with a note referencing the NES.

This is an **important win for members**. Had the union been successful, employers covered by the VRSR Award would have been subject to different casual conversion requirements to those applying to employers in other industries. In addition to creating unnecessary confusion, this would have exposed members to an increased administrative burden and the risk of penalty for unintended technical breaches of the VRSR Award.

It followed the earlier [Decision](#) on 2 September 2021, relating to the *Clerks – Private Sector Award 2020* (Clerks Award), where the deletion of the casual conversion provision at clause 11.6 was not contested by the unions.

The variations to both the VRSR Award and Clerks Award, including the deletion of the current casual conversion provisions and other minor amendments, will commence operation and take effect on 27 September 2021.

What do members need to do now?

Members are also [reminded](#) that before the end of the 6-month transitional period on **27 September 2021**, businesses with **15 or more** employees **must**:

1. have **assessed** whether existing casual employees who commenced prior to 27 March 2021 are eligible for casual conversion under the NES
2. have **written** to existing casual employees who commenced prior to 27 March 2021 – to either:

- **offer conversion to eligible casual employees**, unless there are reasonable grounds not to do so; or
 - **provide reasons why the conversion offer has not been made** – i.e. the reasonable grounds of refusal, or, that the employee is not entitled to convert under the new rules.
3. provided **all existing casual employees** with a copy of the **Casual Employee Information Sheet (CEIS)** published by the Fair Work Ombudsman, as soon as is reasonably practicable at the end of the transitional period on 27 September 2021. A copy of the CEIS is available [here](#).

Members seeking further advice and assistance on casual employment (including casual employment contracts, casual conversion eligibility under the NES and casual conversion template letters) are encouraged to contact the Workplace Relations team at ir@vacc.com.au or 03 9829 1123.

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