

Fair Work Commission further extends Schedule I of the VRSR Award

The VACC recently made application to the Fair Work Commission (FWC) for a further extension to Schedule I of the **Vehicle Repair, Services and Retail Award 2020 (VRSR Award)** after achieving a consent position with industry parties. This followed the VACC's recent [survey request](#), which demonstrated a residual need for a continuation of the COVID-19 related flexibilities provided in Schedule I for a number of eligible employers in the lead up, and during, the Christmas / New Year holiday period.

Following an interim [Decision](#) issued on 1 December 2020, the FWC issued a [Determination](#) on 2 December 2020 to extend the operation of Schedule I until **31 January 2021**.

Members are reminded that Schedule I only applies to:

- businesses who are not eligible for JobKeeper; and
- non-eligible employees (e.g. employees employed after 1 July 2020) employed by a business qualified to receive the JobKeeper payment; and
- businesses covered by the VRSR Award.

Where applicable, Schedule I allows for the following changes to the VRSR Award:

- for employers who first implemented before 30 June 2020, a temporary reduction of hours of work for full-time and part-time employees;
- an ability for an employer to request an employee to take paid annual leave, provided the employer provides a minimum 72 hours' notice and the employee retains a balance of at least 2 weeks annual leave; and
- an ability to agree with an employee to take up to twice as much annual leave at a proportionately reduced rate of pay for all or part of any agreed or directed period away from work, including any close-down (Note: a similar flexibility is provided in Schedule X).

Schedule I operates in addition to **Schedule X** of the VRSR Award, which provides an entitlement to unpaid 'pandemic leave' and the flexibility to take twice as much annual leave at half pay until **29 March 2021**.

If you have any questions or would like to have a more detailed discussion, please get in touch with the Workplace Relations team at ir@vacc.com.au or 03 9829 1123.

High Court grants special leave to appeal contentious casual 'double-dip' decision

The High Court of Australia has granted special leave to Workpac and the Australian Government to appeal the contentious decision of the Full Court of the Federal Court in [WorkPac Pty Ltd v Rossato \[2020\] FCAFC 84](#).

Members may recall that the Federal Court's decision served to call into question the previously clear understanding of casual employment and decades of custom and practice, finding that the long serving casual employee in question was in fact permanent and therefore entitled to paid leave entitlements - despite being engaged and paid as a casual under the applicable enterprise agreement and receiving a casual loading in lieu of paid leave entitlements. As a result, it has been estimated that the Federal Court decision has put the employment status of more than a million casual employees in doubt and placed employers at risk to more than \$14 billion of potential 'double-dip' backpay claim.

Whilst VACC therefore welcomes the High Court decision to hear the appeal, employers and employees need to see common sense restored well before the expected outcome of the High Court in mid-2021. It is understood that this issue will be addressed in the federal Government's 'Omnibus IR Bill', which is expected to be introduced to parliament before the end of this year. We therefore call on federal parliament to take the opportunity to restore clarity to casual employment and decades of well-established law and practice that was overturned by the Federal Court decision as soon as is practicable.

It remains vital for business confidence as we recover from the impact of COVID-19 measures, that employers have certainty when making employment decisions that they will not be required to pay twice for the same entitlement. Any such loss of business confidence will ultimately result in less employment opportunities and higher unemployment.

Members seeking further information regarding casual employment arrangements are encouraged to contact the Workplace Relations team at ir@vacc.com.au or 03 9829 1123.

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