

High Court overturns contentious *WorkPac v Rossato* casual employment decision

In a victory for common sense, on 4 August 2021 the High Court unanimously overturned the contentious 'double dip' decision of the Full Court of the Federal Court in *WorkPac v Rossato*.

Members will recall from a previous [Bulletin](#) that VACC was particularly concerned that the Federal Court's decision served to call into question the previously clear understanding of casual employment and decades of industrial custom and practice, finding that a long serving casual employee 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.

Whilst the issue has since been largely resolved through the casual employee amendments to the *Fair Work Act 2009* that took effect on 27 March 2021, the High Court [decision](#) is nevertheless an important one. Significantly, the High Court decision has reaffirmed that where a **written contract of employment** clearly provides that the nature of the relationship is casual – and the parties adhere to the terms of the contract – then the employee is a casual employee, regardless of whether the hours subsequently worked by the employee become regular and systematic. Put simply, the High Court decision gives both employers and employees confidence that a 'deal is a deal'.

The High Court decision also complements the new casual employee definition at section 15A of the *Fair Work Act* (FW Act), which provides that a person is a casual employee if the employer offers (and the person accepts) employment on the basis that there is **no firm advance commitment** to continuing and indefinite work according to an agreed pattern of work for the person. Specifically, the High Court found **that a firm advance commitment must be an enforceable commitment**, with the mere expectation of continuing employment on a regular and systematic basis being insufficient for the purposes of the FW Act to render such employment no longer casual. Members seeking further information on the casual employee amendments to the FW Act can access our previous summary [here](#).

VACC notes that the High Court decision provides a timely reminder for members to review their written employment contracts and arrangements, to ensure that those engaging casual employees are meeting all applicable requirements. This is particularly the case given that in relation to employers with 15 or more employees, the current 6-month transitional period that applies in relation to existing casual employees ends on 26 September 2021.

Members who currently employ, or who are looking to employ, casuals are encouraged to contact the Workplace Relations team at ir@vacc.com.au or 03 9829 1123 for further advice and assistance - whether in relation to written casual employment contracts, or more generally, how the casual employment amendments directly impact their business.

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