

# BULLETIN

## Industrial Relations Department



Reference No: **IMPORTANT DEVELOPMENT RE CASUAL EMPLOYEES**

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### **Important development re casual employees seeking payment for annual leave**

On 11 December 2018, the Federal Government announced it was intending to create a regulation which would prevent employees who were employed as casuals from double dipping and claiming National Employment Standards (NES) leave entitlements.

This development is the government's response to the Full Federal Court ruling in *WorkPac Pty Ltd v Skene* that the former WorkPac casual employee, Paul Skene was in fact an employee entitled to annual leave payments due in part to his regular pattern of hours and expectation of continuing work.

The regulation will provide that, where an employer has paid an identifiable casual loading to an employee engaged as a casual and states that it covers annual leave, sick leave and public holidays, it may potentially be offset against any subsequent claim for NES leave entitlements. The regulation must be approved by the Governor-General, Sir Peter Cosgrove, however even if the regulation is approved it can be overruled when Federal Parliament resumes sittings in February 2019.

This initiative is a timely development to try to clarify the uncertainty surrounding claims by casual employees seeking annual leave. The Federal Court decision had potentially placed all businesses with casual employees at risk of significant claims for annual leave, although businesses were lawfully complying with award obligations.

### **Government to legislate for casual conversion clause to be included in the NES**

The Government has also announced it was intending to introduce legislation to amend the NES to provide regular casual employees the right to request a move to full-time or part-time employment, after twelve months of regular and continuous employment. Award employees are already covered by casual conversion rights under modern awards, however the legislation will also be extended to non-award employees.

The Labor Party, if elected to government may introduce similar legislation to amend the NES and the right to request conversion can occur after six months. The ACTU is seeking legislation to force casual employees to convert to permanent employment after a period of regular employment.

It is important for members to note that there are conflicting views on casual conversion and it is also unclear how the casual conversion clause announced by the federal government will operate as the proposed legislation has not been finalised. Any legislation introduced by the Federal Government, if passed by parliament, could be changed if the Labor Party was elected to government at the forthcoming federal election.

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