Bulletin

Workplace Relations

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Reference No. Albanese government Closure of casual employment 'loophole'/dh-07-23 **Date:** 25/07/2023

Albanese Government commits to close non-existent casual employment 'loophole'

In a prelude to the next contentious tranche of industrial relations changes expected to be introduced to parliament within the next month, Employment and Workplace Relations Minister Tony Burke has released more detail around the proposed casual employment changes – claiming that the Albanese Government will *"close the loophole that leaves people stuck as casuals when they actually work permanent regular hours"*.

Whilst no evidence was provided to support the existence of this claimed 'loophole', it is worth noting that casual employees working on a regular and systematic basis for 6 months already have casual conversion rights under the National Employment Standards (NES) of the *Fair Work Act 2009* (FW Act). The reality is that the vast majority choose to remain as casuals as they value the additional financial benefit provided by the minimum 25% (31.75% in retail fuel sector) casual loading and the greater flexibility and control over their working arrangements through their right to accept or reject work – over the so-called 'permanency' of full-time and part-time employment.

Given previous dishonest rhetoric borrowed from the trade union movement that sought to misrepresent all casual employees as 'vulnerable' and 'exploited', Minister Burke's acknowledgment that *"many casuals won't want a permanent job"* and that *"no casual will be forced to become a permanent employee"* is welcomed. However, given there appears to be no actual problem requiring a solution when it comes to casual employment, the question arises as to what the intent is behind the proposed changes.

Questions remain to be answered

Given the existing (and rarely used) right of an eligible casual employee to convert to full-time or part-time employment may only be refused by their employer on reasonable business grounds, VACC is concerned by the Minister's announcement that a 'new pathway' for casual conversion will be established. Is the intention to provide a right for a casual to convert in instances where it is unreasonable for the employer to accommodate?

Equally, given that the current fair, objective and common-sense definition of casual employment in the FW Act was effectively endorsed by the High Court of Australia in *WorkPac v Rossato* in August 2021, VACC is concerned by the Minister's announcement that a new casual definition will be legislated. Is the intention to legislate the flawed, subjective interpretation of casual employment rejected by the High Court?

VACC remains concerned that the intended effect of the proposed changes is to disincentivise and restrict the ability to utilise casual employment in practice. Such an outcome is not in the best interests of either employers or employees, or the broader economy. Nor is it in the longer-term interests of the trade union movement who are ultimately responsible for this policy, motivated by a misplaced belief that eliminating casual employment will address the continued decline in union membership.

VACC will continue to keep members advised of developments. In the interim, members seeking further information and assistance are encouraged to contact VACC's Workplace Relations team on 03 9829 1123 or **ir@vacc.com.au.**

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