

Alert

EMPLOYMENT LAW



A Quick Guide to Your First Casual Conversion Assessment

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Background

On 9 December 2020, the now-former Industrial Relations Minister, Christian Porter, introduced the *Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill 2020* to Federal Parliament.

The Bill, which proposed reforms to the Fair Work laws, was dubbed the Omnibus Bill.

Key proposed reforms under the Omnibus Bill included proposed reforms to casual employment, the terms of modern awards, enterprise agreements and the criminalization of deliberate underpayments.

The Morrison Government was not able to achieve support for all of these reforms with only those measures which related to casual employment passing successfully through Federal Parliament.

On 27 March 2021, these reforms to the Fair Work laws - which included introducing a requirement that an employer (except a small business) assess whether their casuals are eligible to be offered permanent employment after 12 months of employment - commenced operating.

Transitional arrangements (for casuals employed before 27 March 2021)

All employers (except small businesses) were required to conduct their first assessment for existing casuals by the end of a 6 month

transitional period, which concluded on 27 September 2021.

Before the conclusion of this transitional period, employers needed, after making their first assessment, to have done either of the following for each of their existing casuals:

- Make an offer of permanent employment (part-time or full-time); or
- Provide a notice which contains the grounds for not making an offer of permanent employment.

The reforms include four criteria that an employer may use as grounds for refusing to make an offer to an existing eligible casual, which are as follows:

1. The employee's position will cease to exist in the period 12 months after the time of deciding not to make an offer;
2. The hours of work which the employee is required to perform will be significantly reduced in that period (the 12 month period after the time of deciding not to make an offer);
3. There will be significant change in either or both of the following in that period (the 12 month period after the time of deciding not to make an offer);
 - i. The days on which the employee's hours of work are required to be performed;

continued overleaf...

- ii. The time at which the employee's hours of work are required to be performed;
Which cannot be accommodated within the days or times the employee is available to work during that period;
4. Making the offer would not comply with a recruitment or selection process required by or under a law of the Commonwealth or a State or Territory.¹

Many employers are yet to carry out their first assessments for existing eligible casuals. If you need assistance and advice to comply with these new requirements, including the preparation of a notice which contains the grounds for refusing to make an offer, please contact one of our employment law experts.

Importantly, an employer may use other reasonable grounds as the foundation for an assessment not to make an offer of permanent employment as the reforms do not prescribe these four criteria as the only ones that may be used as grounds for refusing to make an offer to an existing eligible casual.

Compliance with these reforms to the Fair Work laws

We have been providing assistance and advice to our employer client base to comply with these new requirements during the transitional period.

Last Friday, the Fair Work Ombudsman published a reminder to employers (except small businesses) that they had to conduct their first assessment of whether their casual employees are eligible to be offered permanent employment at the conclusion of the transitional period on 27 September 2021.

A copy of the reminder issued by the Fair Work Ombudsman can be seen by [clicking here](#)².

¹ Section 66C of the Fair Work laws.

² <https://www.fairwork.gov.au/employee-entitlements/types-of-employees/casual-part-time-and-full-time/casual-employees/becoming-a-permanent-employee?print=1&PrintToPDF=True&dummy=2021929114#existing-casuals>



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