

2019-2021

The Parliament of the  
Commonwealth of Australia

THE SENATE

## Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill 2021

*(Amendments to be moved by Senator Farrell, on behalf of the Opposition, in committee of the whole)*

- (1) Schedule 1, item 2, page 4 (line 9) to page 5 (line 18), omit section 15A, substitute:

### **15A Meaning of *casual employee***

- (1) A person is a *casual employee* of an employer if the employer makes no firm advance commitment to continuing and indefinite work according to an agreed pattern of work for the person.
- (2) For the purposes of subsection (1), in determining whether the employer makes no firm advance commitment to continuing and indefinite work according to an agreed pattern of work for the person, regard must be had to the following considerations:
- (a) whether the employer can elect to offer work and whether the person can elect to accept or reject work;
  - (b) whether the person will work only as required;
  - (c) whether the employment is described as casual employment;
  - (d) whether the person will be entitled to a casual loading or a specific rate of pay payable only to casual employees under the terms of a fair work instrument;
  - (e) the pattern of hours that is worked, or scheduled by the employer to be worked, by the person.

Note: Under Division 4A of Part 2-2, a casual employee who has worked for an employer for at least 12 months and has, during at least the last 6 months of that time, worked a regular pattern of hours on an ongoing basis may be entitled to be offered, or request, conversion to full-time employment or part-time employment.

- (3) To avoid doubt, regard may also be had to considerations other than those referred to in subsection (2).

***[casual employees—definition]***

- (2) Schedule 1, item 3, page 7 (lines 10 to 26), subsection 66C(2) **to be opposed.**

***[casual employees—conversion offers]***

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(3) Schedule 1, item 3, page 7 (before line 27), before subsection 66C(3), insert:

(2A) The employer must not:

- (a) decide not to make an offer under subsection (1); or
- (b) issue a notice under subsection (3);

unless the employer has consulted with the employee and any representative of the employee.

Note: An employee organisation may be a representative of the employee.

***[casual employees—consultation]***

(4) Schedule 1, item 3, page 12 (line 28) to page 13 (line 10), omit subsections 66M(1) and (2), substitute:

*Application of this section*

(1) This section applies to a dispute between an employer and employee about either or both of the following:

- (a) whether or not an employee is a *casual employee* as defined in section 15A;
- (b) the operation of this Division.

(2) However, this section does not apply in relation to the dispute if:

- (a) a fair work instrument that applies to the employee includes a term that provides a procedure for dealing with the dispute; and
- (b) that term provides either party with access to the arbitration of any dispute about the operation of this Division by the FWC.

Note: Modern awards and enterprise agreements must include a term that provides a procedure for settling disputes in relation to the National Employment Standards (see paragraph 146(b) and subsection 186(6)).

***[casual employees—disputes]***

(5) Schedule 1, item 3, page 13 (lines 18 to 26), omit subsection 66M(5), substitute:

(5) If a dispute is referred under subsection (4):

- (a) the FWC must deal with the dispute (other than by arbitration); and
- (b) where the dispute is unable to be resolved under paragraph (a), the FWC must deal with the dispute by arbitration.

Note: For the purposes of paragraph (a), the FWC may deal with the dispute as it considers appropriate, including by mediation, conciliation, making a recommendation or expressing an opinion (see subsection 595(2)).

***[casual employees—disputes]***

(6) Schedule 7, item 1, page 94 (after line 13), after subclause 45(1), insert:

(1A) Any determination made under subclause (1) must not affect the operation of any term of an enterprise agreement that is ancillary, incidental or supplementary to an entitlement of an employee under Schedule 1 to the amending Act.

Note: Subsection 55(4) allows for ancillary, incidental and supplementary terms to be included in enterprise agreements to the extent that the effect of those terms is not detrimental to an employee in any respect, when compared to the National Employment Standard.

***[casual employees—transitional]***

(7) Schedule 7, item 1, page 94 (line 18) to page 95 (line 10), subclauses 46(1) to (4) **to be opposed.**

***[casual employees—application of definition]***

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(8) Schedule 7, item 1, page 95 (after line 19), after subclause 46(7), insert:

(7A) However, despite subclause (7), section 545A of the amended Act does not apply in relation to entitlements that accrue, or loading amounts paid, before commencement if an application has been made before commencement to a court for the court to determine a claim in respect of the entitlements or amounts.

***[casual employees—retrospective application]***

(9) Schedule 7, item 1, page 95 (line 29), omit “before,”.

***[casual employees—retrospective application]***

(10) Schedule 7, item 1, page 95 (line 32), omit “before,”.

***[casual employees—retrospective application]***

(11) Schedule 7, item 1, page 98 (after line 12), after subclause 48(3), insert:

(3A) Any determination made under subclause (3) must not affect the operation of any term of a modern award that is ancillary, incidental or supplementary to an entitlement of an employee under Schedule 1 to the amending Act.

Note: Subsection 55(4) allows for ancillary, incidental and supplementary terms to be included in enterprise agreements to the extent that the effect of those terms is not detrimental to an employee in any respect, when compared to the National Employment Standard.

***[casual employees—transitional]***