

In December, the Morrison Government introduced the [Fair Work Amendment \(Supporting Australia's Jobs and Economic Recovery\) Bill 2021](#) (the Bill) into parliament. The Bill was designed to amend a large array of areas under the *Fair Work Act 2009* (Cth) (the Act) and ancillary legislation. Yesterday, a significantly stripped back version of the Bill which essentially only deals with one issue – casual employment – was passed by parliament.

For details of the amendments that were initially proposed, please refer to [our previous article](#).

What is staying?

The following amendments were made:

- **Definition of Casual Employees:** The Bill introduces a statutory, objective definition of casual employment, which is based upon whether, at the time of offering employment to the employee, the employer makes a firm advance commitment to continuing and indefinite work. The Bill sets out various factors which are to be considered in assessing whether there is an absence of a firm advance commitment, including whether the employee will only work as required by the employer and whether the employer can elect to offer work and the employee can elect to accept or reject work.
- **Casual Conversion:** The Bill also introduces a statutory obligation for employer to offer regular casuals the right to convert to permanent employment, with residual rights for the employee to request conversion in certain circumstances where the employer has failed to offer conversion to the employee.

However, the senate did make some changes to these provisions in the Bill, namely to exempt small businesses from the requirement to offer casual employees the right to request permanent employment every 12 months. However, casual employees of small businesses will still be able to request conversion if they choose to do so.

- **New Casual Fair Work Information Statement:** The Bill provides that employers must provide casual employees with a new Casual Employment Information Statement as soon as possible after the employee becomes employed. Failing to provide a Fair Work Information Statement can lead to [prosecution](#) (up to \$66,000 per offence) so employers should ensure they update their systems and procedures to be ready for this.
- **Casual Loading:** The Bill introduces a provision in which if an employee is paid a casual loading but is later found to be a permanent employee, a court may be able to offset the casual loading against the value of permanent entitlements owed to the employee (e.g. paid leave, notice of termination, redundancy pay).

What was removed?

Essentially, all other proposed changes which were previously included in the Bill have been removed. These include:

- Mandatory sunset of all old agreements;



- Streamlining of the Enterprise Agreement approval process;
- Increasing and expanding the pecuniary penalties scale;
- Increasing the jurisdiction of the small claims procedure by increasing the limit to \$50,000;
- Criminalising dishonest and systematic underpayment patterns;
- Clarifying the definition of a transfer of business; and
- Amendments to certain nominated modern awards.

What was added?

A few ancillary terms have been added to the Bill during the senate process, namely:

- A mechanism for review of the amendments to be taken 12 months after the commencement of the amendments;
- Expanding the jurisdiction of the small claims procedure to deal with disputes relating to casual conversion; and
- Transitional provisions relating to casual employees of small business employers.

Operative Date

Most of the above provisions are expressed to come into effect the day after receiving royal assent. This is not a set date but customarily occurs shortly after the legislation is passed.

Need more information

If you would like further information about these changes to the Act and how they impact your business, please contact the team at Fair Work Lawyers.



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