SOURCE

GUIDE TO THE NEW RULES FOR CASUAL EMPLOYEES

Guide to the new rules for casual employees

Federal Parliament has amended the Fair Work Act 2009 (Cth) in order to address the difficulties that have been created around casual employees by recent court decisions like WorkPac v Rossato. The new provisions will commence shortly, after the bill receives Royal Assent.

In this guide we set out the new rules that apply to casual employees and what actions employers need to take in response to the new rules.

SOURCE

Published 25 March 2021

Contents

Part 1: Summary of key changes and recommended actions for employers

Summary of key changes

Recommended actions

Casual employees will stay casual unless converted

- If someone is employed as casual employee they will remain a casual employee, unless they are converted to permanent employment under the new casual conversion provisions.
- To be a **"casual employee"** the person needs to have been offered and accepted employment on the basis that the employer makes no firm advance commitment to continuing and indefinite work according to an agreed pattern of work.
- Whether someone is a casual employee must be assessed at the time the offer of casual employment was made and accepted – how they end up working is irrelevant.
- The new provisions apply to past, existing and future casual employees. However, they still need to meet the definition of casual employee when they become employed.

- Revise casual employment contracts to ensure they contain terms that meet the new definition of casual employee.
- Consider whether to have existing casual employees to sign a new contract with terms that meet the new definition of casual employee (consult with your employment lawyer about this).
- Review hiring processes and documents to ensure they are consistent with the new definition of casual employee.

Summary of key changes

New casual conversion provisions

- Employers must consider whether to offer casual employees part-time or full-time employment after they have been employed for 12 months.
- Within 21 days of a casual employee reaching 12 months' service, an employer must either:
  - make a written offer of conversion to the casual employee; or
  - advise the employee in writing that the employer is not making an offer of conversion and tell them why.
  - An employer can decide not to offer conversion if:
  - during at least the last 6 months the employee has not worked a regular pattern of hours on an ongoing basis which, without significant adjustment, the employee could continue to work as a full-time or part-time employee; or – there are reasonable grounds for not making an offer of conversion.
- The employer gets the first chance to offer, not offer or refuse conversion to the employee. If the employer does not do so within 21 days of the employee reaching 12 months of service, the employee has a residual right to request conversion.
- Disputes about casual conversion can be referred to the Fair Work Commission for resolution, but can only be arbitrated by agreement. However, employees can apply to a court for a binding order.

Recommended actions

- Put a process in place to ensure that consideration is given to whether to offer conversion to each casual employee after they reach 12 months of service and notify casual employees accordingly.

Summary of key changes

Recommended actions

Conversion requirements for existing casual employees

- In the next 6 months employers must assess each existing casual employee and determine whether to make an offer of conversion.
- An offer of conversion only needs to be made if:
  - the employee has been employed by the employer for a period of 12 months ending on the day the assessment is made;
  - during at least the last 6 months the employee has worked a regular pattern of hours which, without significant adjustment, the employee could continue to work as a full-time or part-time employee; and
  - the employer does not have reasonable grounds not to make an offer.
  - The timing of this assessment in the next 6 months is left to the employer.
  - If the employer decides to make an offer of conversion it must do so within 21 days of making the assessment.
- If the employer decides not to make an offer of conversion to a casual employee who has been employed for 12 months at the date the assessment is made, the employer must give the employee written notice that the employer is not making an offer of conversion. The notice must be given within 21 days of making the assessment but no later than the end of the transition period.

- Conduct an assessment of each casual employee currently employed.
- If the employee has less than 12 months' service on the date of the assessment, make a record of when the assessment was made and that the employee did not have 12 months' service. No further action is required.
- If the employee has at least 12 months' service on the date of the assessment, determine whether to make an offer of conversion. An offer will only need to be made if:
  - during at least the last 6 months the employee has worked a regular pattern of hours which, without significant adjustment, the employee could continue to work as a full-time or part-time employee; and
  - there are not reasonable grounds not to make an offer.
- For each employee with at least 12 months' service on the date of assessment, either make an offer of conversion or notify the employee that the employer has decided not to make an offer of employment.

Summary of key changes

Recommended actions

Using casual loading to reduce claims for permanent entitlements

- Employers can offset casual loading that has been paid to casual employees against any claims they make for for permanent employee entitlements.
- There needs to be an ***"identifiable amount"*** of casual loading paid to compensate the employee for not having one or more permanent employee entitlements during the period.
- If a person brings a claim for permanent employee entitlements, the court must reduce any amount payable by the employer by the amount of casual loading paid to the employee.
- However, the court can also reduce the amount payable by a proportion of the casual loading amount referable to a particular entitlement, particularly if the clause specifies the loading amount attributable to each entitlement.
- The new offset rules apply to entitlements that accrue, and loading amounts paid, before and after commencement of the new provisions. They also apply where the employee has already ceased employment when they make the claim. However, the loading amount still has to be identifiable.
- Employers cannot offset long service leave entitlements of casual employees.

- Review employment documentation for casual employees to determine whether the casual loading amount is identifiable.
- Check whether employment documentation specifies that the identified casual loading amount is paid to compensate the person for not having one or more of the following entitlements: paid annual leave, personal/carer's leave, compassionate leave, public holiday payments, payments in lieu of notice or redundancy pay.
- Consider whether to specify which portion of the identified casual loading amount is being paid in compensation for particular permanent employee entitlements.

Summary of key changes

Recommended actions

Casual Employee Information Statement

- The Fair Work Ombudsman will develop a new Casual Employee Information Statement (CEIS).
- The CEIS must be given to all new casual employees.
- The CEIS must be given to all existing casual employees as soon as practicable after the end of the 6 month transition period (except for small business employers, who must give it to casual employees as soon as practicable after the CEIS becomes available).

- Include the new CEIS (when available) in onboarding material for casual employees or attach it to their casual contracts.
- Give a copy of the CEIS to each existing casual employee as soon as practicable after the end of the 6 month transition period (or immediately for small business employers).

Part 2: Guide to the new rules for casual employees

A person employed as a casual employee will remain casual unless converted.

The new provisions provide that an employee who is engaged as a casual employee will remain a casual employee.

The only exceptions to this are where the employee is converted to part-time or full-time employment under the new casual conversion provisions (see below) or the employer offers them permanent employment and they commence work on that basis.

These provisions are designed to prevent long term casuals from claiming that they have become a permanent employee over time and are therefore eligible for permanent employee entitlements like annual leave and redundancy pay. The question of whether someone is a casual employee now has to be assessed at the time the offer of casual employment was made and accepted, not on the basis of any subsequent conduct by either party. So, if someone is engaged as a casual employee and then works like a permanent employee over time it will not change the fact that they are a casual employee.

The new provisions provide that, while someone is engaged as a casual employee, they will not accrue annual leave or personal/carer's leave. Also, periods of service as a casual employee will not count for the purpose of calculating minimum notice entitlements or redundancy entitlements under the National Employment Standards.

The new rules apply to past, existing and future casual employees.

When is someone engaged as a casual employee?

For the new rules to apply the person needs to come within the definition of "casual employee". A person is a "casual employee" of an employer if:

- the offer of employment is made on the basis that ***the employer makes no firm advance commitment to continuing and indefinite work according to an agreed pattern of wor***k for the person;
- the person accepts the offer on that basis; and
- the person is an employee as a result of that acceptance.

For the purpose of 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 only be had to the following:

- whether the employee can elect to offer work and whether the person can elect to accept or reject work;
- whether the person will work as required according to the needs of the employer;
- whether the employment is described as casual employment;
- whether the person will be entitled to a casual loading or a specific rate of pay for casual employees under the terms of the offer or a fair work instrument.

A regular patter of hours does not of itself indicate a firm advance commitment to continuing and indefinite work according to an agreed pattern of work.

While the new provisions apply to past and existing casual employees, they will only apply if the definition of "casual employee" was met at the time the person was offered and accepted employment. This will require a review of their contact of employment and the circumstances in which they became employed. If the definition of "casual employee" was not met at that time, the new provisions will not prevent the person from claiming that they later became a permanent employee.

What should employers do now?

We recommend that employers revise their casual employment contracts to ensure they contain terms that meet the new definition of casual employee. To the extent that it's possible, casual contracts should include terms to the effect that:

- the person will be engaged as a casual employee;
- the employer makes no advance commitment to continuing or indefinite work;
- there will be no agreed pattern of work;
- the employer can elect whether or not to offer work;
- the employee can elect whether to accept or reject work;
- the person will be employed according to the needs of the employer;
- that the employee will be entitled to a casual loading or specific rate of pay for casual employees under the terms of the offer or an award or enterprise agreement, and what the amount of the casual loading or specific rate of pay will be.

While provisions of this nature should be included in contracts of employment for all new casual employees, there is a question about whether existing casual employees should also be asked to sign contracts that contain these provisions. Under the new provisions, whether someone is a casual employee is to be assessed at the time they are offered casual employment, so it may not make a difference if they later sign a contract that has these provisions. However, by their nature, casual employees are employed from engagement to engagement. So it may be possible to argue that the new definition of casual employee applies each time a casual employee is offered an engagement. This issue is yet to be determined by the courts. In the meantime, we recommend speaking to your employment lawyer about how to approach this issue.

Also, while contract terms are important, employers should not solely rely on them to ensure the new definition of casual employee is being met. The courts will also look at the surrounding circumstances to determine whether someone was engaged as a casual employee. Therefore, we recommend that employers review their hiring processes and documentation to ensure they are consistent with the new definition of casual employee.

The new casual conversion provisions

Employers now must actively consider whether to offer a casual employee part-time or full-time employment after they have been employed for 12 months. Within 21 days of an employee reaching 12 months of service, an employer must either:

- make an offer of conversion to the casual employee; or
- advise the employee in writing that the employer is not making an offer of conversion and tell them why.

When an offer of casual conversion is not required

An employer is only required to make an offer of conversion to a casual employee if:

- the employee has been employed by the employer for a period of 12 months beginning the day the employment started; and
- during at least the last 6 months of that period, the employee has worked a regular pattern of hours on an ongoing basis which, without significant adjustment, the employee could continue to work as a full-time or part-time employee.

However, an employer is not required to make an offer of conversion to a casual employee if:

- there are reasonable grounds not to make the offer; and
- the reasonable grounds are based on facts that are known, or reasonably foreseeable, at the time of deciding not to make the offer.

Reasonable grounds for deciding not to make an offer include the following:

- the employee's position will cease to exist in the period of 12 months after the time of deciding not to make the offer;
- the hours of work which the employee is required to perform will be significantly reduced in that period;
- there will be a significant change in either or both of the following in that period:
  - the days on which the employee's hours of work are required to be performed;
  - the times 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;

- 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 a Territory.

If an employer decides not to make an offer of conversion to a casual employee, the employer must give written notice to the employee which:

- advises the employee that the employer is not making an offer of conversion;
- includes details of the reasons for not making the offer (including any grounds on which the employer has decided not to make the offer);

The notice must be given within 21 days of the employee reaching 12 months of service.

Making an offer of conversion

If an employer decides to make an offer of conversion, the offer must:

- be in writing;
- for an employee that has worked the equivalent of full time hours during the last 6 months—be an offer to convert to full time employment;
- for an employee that has worked less than the equivalent of full time hours during the last 6 months—be an offer to convert to part time employment that is consistent with the regular pattern of hours worked during that period; and
- be given to the employee within 21 days of them reaching 12 months of service.

For the purpose of determining whether an employee not covered by an award or enterprise agreement has worked the equivalent of full-time hours, regard may be had to the hours of work of any other full-time employee of the employer employed in the same position or a comparable position.

The employee must give the employer a written response to an offer of conversion within 21 days of the offer being given, stating whether they accept or decline the offer. If the employee fails to give a written response within 21 days they are taken to have declined the offer.

If the employee accepts the offer, within 21 days of acceptance the employer must give written notice to the employee of the following:

- whether the employee is converting to full-time employment or part-time employment;
- the employee's hours of work after the conversion takes effect;
- the day the employee's conversion to full-time employment or part-time employment takes effect (which must be the first day of the employee's first full pay period that starts after the day the notice is given, unless the employee and employer agree to another day).

Before giving the notice, the employer must discuss each of these matters with the employee.

Residual employee requests for conversion

The employer gets the first chance to offer, not offer or refuse conversion to the employee. If the employer does not do so within 21 days of the employer reaching 12 months of service, the employee can make a residual conversion request.

More specifically, a casual employee may request conversion to full-time or part-time employment if:

- they have been employed by the employer for a period of at least 12 months beginning the day the employment started;
- they have, in the period of 6 months ending the day the request is made, worked a regular pattern of hours on an ongoing basis which, without significant adjustment, they could continue to work as a full-time or part-time employee;
- each of the following apply in the last 6 months:
  - the employee has not refused an offer of conversion made by the employer;
  - the employer has not given the employer a notice that it has decided not to make an offer of conversion;
  - the employer has not previously given notice that it is refusing a conversion request by the employee;
- the request is not made during the period of 21 days after the employee has reached 12 months of service.

To request casual conversion, the employee must give the employer a request in writing on the following basis:

- for an employee that has worked the equivalent of full time hours during the last 6 months—be a request to convert to full time employment;
- for an employee that has worked less than the equivalent of full time hours during the last 6 months—be an offer to convert to part time employment that is consistent with the regular pattern of hours worked during that period; and

The employer must give the employee a written response to the request within 21 days, stating whether they grant or refuse the request.

The employer must not refuse the request unless:

- the employer has consulted the employee; and
- there are reasonable grounds to refuse the request (see above for what are reasonable grounds) that are based on facts that are known, or reasonably foreseeable, at the time of refusing the request.

If the employer refuses the request, the written response must include details of the reasons for the refusal.

If the employer grants the request, the same steps apply as when an employee accepts an offer of casual conversion (see above).

Non-avoidance provisions, etc

An employer must not reduce or vary an employee's hours of work, or terminate their employment, in order to avoid a right or obligation related to casual conversion.

Nothing in the new provisions requires a casual employee to convert, permits an employer to require a casual employee to convert, or requires an employer to increase the hours of an employee who requests casual conversion.

Small business employers

Small business employers (employers with fewer than 15 employees) are not required to make offers of conversion to casual employees. However, casual employees of small business employers can make requests for conversion.

Disputes about casual conversion

If there is a dispute about casual conversion, the employer and employee must follow any applicable dispute resolution procedures in an award, enterprise agreement or contract of employment.

If there is no such dispute resolution procedure, the following applies:

- in the first instance, the parties must attempt to resolve the dispute at the workplace level, by discussions between the parties;
- if those discussions do not resolve the dispute, a party to the dispute may refer the dispute to the Fair Work Commission (**FWC**);
- if a dispute is referred to the FWC, the FWC may deal with the dispute as it considers appropriate, including by mediation, conciliation, making a recommendation or expressing an opinion;
- however, the FWC may only arbitrate the dispute if the parties agree. That means the FWC cannot make binding orders on any parties unless they both agree to undergo arbitration.

However, it is also possible for employees to apply to a court for an order related to casual conversion, in which case binding orders can be made.

What should employers do now?

We recommend that employers put a process in place to ensure that they give consideration to whether to offer conversion to each casual employee after they reach 12 months of service and notify each casual employee accordingly.

Conversion requirements for existing casual employees

The new provisions require employers to consider whether any of their existing casual employees should be offered casual employment. This has to be done within the next 6 months (known as the ***transition period***).

During the transition period the employer must assess each casual employee and determine whether to make an offer of conversion. An offer of conversion will only need to be made if:

- the employee has been employed by the employer for a period of at least 12 months ending on the day the assessment is made;
- during at least the last 6 months the employee has worked a regular pattern of hours which, without significant adjustment, the employee could continue to work as a full-time or part-time employee; and
- the employer does not have reasonable grounds not to make an offer (see above for what constitutes reasonable grounds).

There is no requirement about when during the transition period the employer needs to make the assessment, so this is left to the employer.

If the employer decides to make an offer of conversion it must do so within 21 days of making the assessment and follow the process set out above for making offers of conversion.

If the employer decides not to make an offer of conversion to a casual employee who has been employed for 12 months at the date the assessment is made, the employer must give the employee written notice that the employer is not making an offer of conversion and the reasons for that. The notice must be given within 21 days of making the assessment but no later than the end of the transition period.

Casual employees cannot make requests for conversion during the transition period.

Small business employers (employers with fewer than 15 employees) do not have to go through this process.

What should employers do now?

- Employers need to conduct an assessment of each casual employee who is currently employed by them.
- If the employee has less than 12 months of service as at the date of the assessment, the employer should make a record of when the assessment was made and that the employee did not have 12 months of service. No further action is required.
- If the employee has at least 12 months of service at the date of the assessment, the employer needs to determine whether to make an offer of conversion. An offer will only need to be made if:
  - during at least the last 6 months the employee has worked a regular pattern of hours which, without significant adjustment, the employee could continue to work as a full-time or part-time employee; and
  - there are not reasonable grounds not to make an offer (see above).
- For each employee with at least 12 months of service at the date of assessment, the employer must either make an offer of conversion or notify the employee that it has decided not to make an offer of employment, following the process set out above.

Using casual loading to reduce claims for permanent employee entitlements

The new provisions allow employers to use casual loading that has been paid to employees to reduce claims they make for permanent entitlements.

This will apply where:

- a person was described as a casual employee;
- the employer paid the person an ***identifiable amount*** (e.g. casual loading) to compensate them for not having one or more relevant entitlements during the period. This could include paid annual leave, personal/carer's leave, compassionate leave, public holiday payments, payments in lieu of notice or redundancy pay;
- it is determined that during that period the person was not a casual employee;
- the person makes a claim to be paid an amount for one or more of the relevant entitlements with respect to that period.

If a person brings a claim for permanent entitlements, the court must reduce any amount payable by the employer by the amount of casual loading paid to the employee during the relevant period.

However, the court may also reduce the amount payable by a proportion of the casual loading amount. This will be the case if:

- a term of the contract, award or enterprise agreement under which the loading is paid specifies the relevant entitlements that the loading amount is compensating for and specifies the loading amount attributable to each entitlement, in which case the court may have regard to that clause and the proportions specified when determining the appropriate proportion to reduce the amount payable by;
- a term of the contract, award or enterprise agreement under which the loading is paid specifies the relevant entitlements that the loading amount is compensating for but does not specify the proportion of the loading amount attributable to each entitlement, in which case the court may have regard to that clause and what would be an appropriate proportion of the loading amount attributable to each of the entitlements in all the circumstances to reduce the amount payable by.

If neither of these applies, a court may have regard to what would be an appropriate proportion of the loading amount attributable to each entitlement to reduce the amount payable by in all the circumstances.

Do the new provisions apply to claims for past entitlements?

These new offset rules apply to entitlements that accrue, and loading amounts paid, before and after commencement of the new provisions. They also apply where the employee has already ceased employment when they make the claim.

However, there will still need to be an identifiable amount of casual loading to be able to use the offset provisions.

The requirement to have an identifiable amount of casual loading

The requirement to have an "identifiable amount" of casual loading is a slightly watered down version of the requirement to have a loading amount that is "clearly identifiable", which was used in the government's previous attempt to solve this problem in Regulation 2.03A of the *Fair Work Amendment (Casual Loading Offset) Regulations 2018 (Cth)*. While it is a slightly less onerous requirement, we can expect similar considerations to apply.

A note to those regulations stated that examples of where an amount may be clearly identified include correspondence, pay slips, contracts and relevant industrial instruments.

It is therefore important to ensure that casual employees are paid an identified casual loading and that it is clearly specified in their employment documents. Without this, it will not be possible to use the new provisions to offset casual loading against claims for permanent employee entitlements.

There are various ways that employers identify the casual loading amount. The following are some examples and our comments on the efficacy of each one:

- *"Your hourly rate includes casual loading."* This is unlikely to be effective because it is not possible to determine the amount of the casual loading.
- *"Your hourly rate includes a 25% casual loading."* This is better but still unreliable because it does not specify what base amount the 25% casual loading is calculated on. Therefore, it may not be possible to identify the amount of the 25% casual loading. A better approach would be to say "25% of your hourly rate is a casual loading amount".
- *"You will be paid a base hourly rate of $30 per hour plus a casual loading of $7.50, being a total casual hourly rate of $37.50."* This the best approach because it is very clear how much casual loading is being paid.

An employer should also specify that the identified casual loading amount is paid to compensate the person for not having one or more of the following entitlements: paid annual leave, personal/carer's leave, compassionate leave, public holiday payments, payments in lieu of notice or redundancy pay.

An employer can also specify which portion of the identified casual loading amount is being paid in compensation for particular entitlements. We recommend talking to your employment lawyer about whether to do this in your business.

Long Service Leave

Employers should keep in mind that nothing in the new provisions changes the entitlements that casual employees have to long service leave. Casual employees are entitled to long service leave and there is different legislation in each state that regulates this. An employer will not be able to offset casual loading against a casual employee's entitlement to long service leave.

What should employers do now?

We recommend that employers:

- review their employment documentation for casual employees to determine whether the casual loading amount being paid is identifiable;
- check whether employment documentation specifies that the identified casual loading amount is paid to compensate the person for not having one or more of the following entitlements: paid annual leave, personal/carer's leave, compassionate leave, public holiday payments, payments in lieu of notice or redundancy pay;
- consider whether to specify which portion of the identified casual loading amount is being paid in compensation for each entitlement.

Casual Employment Information Statement

The Fair Work Ombudsman is required to prepare a new Casual Employee Information Statement (**CEIS**), which will contain information about the new provisions relating to casual employees.

Employers must give each casual employee a copy of the CEIS before, or as soon as practicable after, the employee starts employment as a casual employee. They do not need to do so more than once in any 12 months (e.g. if they employ the person more than once in 12 months).

Employers must give each existing casual employee a copy of the CEIS as soon as practicable after the end of the transition period (6 months after commencement of the new provisions).

Small business employers must give any casual employees a copy of the CEIS as soon as practicable after the CEIS becomes available.

What should employers do now?

When the Fair Work Ombudsman issues the CEIS we recommend that employers:

- include a copy of the CEIS in their onboarding material for casual employees or attach it to their casual contracts;
- give a copy of the CEIS to each existing casual employee as soon as practicable after the end of the 6 month transition period (or immediately for small business employers).

For help with casual employees

If you would like help with anything related to your casual workforce, please contact **Sean Melbourne, Head of Employment Law of Source**, on **0411 647 453** or **sean.melbourne@sourcelegal.com.au**.

Part 3:
Template letters for the new casual conversion provisions

For Word versions of the templates, please contact **Sean Melbourne, Head of Employment Law of Source**, on **0411 647 453** or **sean.melbourne@sourcelegal.com.au**

Template letter notifying casual employee that employer has decided not to make an offer of conversion

<date>

<employee name>
<employee address>
<employee address>

By email: <email address>

Dear <employee name>

Notice of decision not to make an offer of conversion

We are writing to you because, as of <date>, you had been working with us as a casual employee for 12 months.

We have therefore considered whether to offer you employment as a <part-time/full-time> employee.

If decision is made because employee hasn't worked regular pattern of hours:

We have reviewed your employment and come to the view that you have not worked a regular pattern of hours on an ongoing basis for at least the last 6 months that, without significant adjustment, you could continue to work as a full-time or part-time employee. We have come to this view because <insert reasons>.

If decision is made because there are reasonable grounds not to make an offer:

We have reviewed your employment and come to the view that there are reasonable grounds not to make you an offer to convert to full-time or part-time employment. The reasons for this are as follows:

- <e.g. Your position will cease to exist in the next 12 months because...>
- <e.g. The hours of work which you are required to perform will be significantly reduced in the next 12 months because...>
- <e.g. There will be a significant change in the days on which your hours of work are required to be performed in the next 12 months which cannot be accommodated within the days or times you are available to work during that period. This is because...>
- <e.g. There will be a significant change in the times at which your hours of work are required to be performed in the next 12 months which cannot be accommodated within the days or times the you are available to work during that period. This is because...>
- <e.g. 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 a Territory. This is because...>

Please do not hesitate to contact me if you would like to discuss anything set out in this letter.

Yours sincerely,

<name>
<employer name>

Template letter offering a casual employee conversion to full-time or part-time employment

<date>

<employee name>
<employee address>
<employee address>

By email: <email address>

Dear <employee name>

Offer of conversion to <full-time/part-time> employment

We are writing to you because, as of <date>, you had been working with us as a casual employee for 12 months.

We have therefore decided to offer you employment as a <part-time/full-time>[1] employee.

The terms of our offer are set out in the attached contract of employment. Please read the terms carefully and let us know if you would like to discuss any of them.

Please notify us in writing within 21 days of this letter whether you accept or decline this offer. If you do not give us a written response within 21 days you will be taken to have declined the offer.

If you decide to accept the offer, please also sign and return the attached employment contract.

Please do not hesitate to contact me if you would like to discuss anything set out in this letter.

Yours sincerely,

<name>
<employer name>

1 For an employee that has worked the equivalent of full time hours during the last 6 months—the offer should be to convert to full time employment. For an employee that has worked less than the equivalent of full time hours during the last 6 months—the offer should be to convert to part time employment that is consistent with the regular pattern of hours worked during that period.

Template letter to employee after they accept offer of conversion to full-time or part-time employment

<date>

<employee name>
<employee address>
<employee address>

By email: <email address>

Dear <employee name>

Conversion to <full-time/part-time> employment

Thank you for your <letter/email> dated <date> in which you informed us that you have decided to accept our offer of employment as a <part-time/full-time> employee.

As we discussed on <date>,[2] I confirm that you will be converting to <part-time/full-time> employment and your conversion will take effect on <date>.[3]

For full-time employees:

Your hours of work after the conversion takes effect will be <e.g. 38 hours per week plus a reasonable amount of additional hours as needed to perform your role>.

For part-time employees:

After the conversion takes effect you will work ## hours per week on the following days and times:

- <e.g. Mondays 10am to 3pm>
- <e.g. Thursdays 10am to 3pm>

Please do not hesitate to contact me if you would like to discuss anything set out in this letter.

Yours sincerely,

<name>
<employer name>

2 Before sending this letter to the employee the employer must discuss each point set out in the letter with the employee.

3 The date of conversion must be the first day of the employee's first full pay period that starts after the day the notice is given, unless the employee and employer agree to another day.

Template letter to employee refusing residual employee request for conversion to full-time or part-time employment

<date>

<employee name>
<employee address>
<employee address>

By email: <email address>

Dear <employee name>

Your request for conversion to <full-time/part-time> employment

Thank you for your <letter/email> dated <date> in which you informed us that you would like to convert to employment as a <part-time/full-time> employee.

We consulted with you about your request on <date>.

If decision is made because employee hasn't worked regular pattern of hours:

We have reviewed your employment and come to the view that you have not worked a regular pattern of hours on an ongoing basis for at least the last 6 months that, without significant adjustment, you could continue to work as a full-time or part-time employee. We have come to this view because <insert reasons>.

If decision is made because there are reasonable grounds not to make an offer:

We have reviewed your employment and come to the view that there are reasonable grounds not to make you an offer to convert to full-time or part-time employment. The reasons for this are as follows:

- <e.g. Your position will cease to exist in the next 12 months because...>
- <e.g. The hours of work which you are required to perform will be significantly reduced in the next 12 months because...>
- <e.g. There will be a significant change in the days on which your hours of work are required to be performed in the next 12 months which cannot be accommodated within the days or times you are available to work during that period. This is because...>
- <e.g. There will be a significant change in the times at which your hours of work are required to be performed in the next 12 months which cannot be accommodated within the days or times the you are available to work during that period. This is because...>
- <e.g. 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 a Territory. This is because...>

Please do not hesitate to contact me if you would like to discuss anything set out in this letter.

Yours sincerely,

<name>
<employer name>

Template letter offering a casual employee conversion to full-time or part-time employment

<date>

<employee name>
<employee address>
<employee address>

By email: <email address>

Dear <employee name>

Conversion to <full-time/part-time> employment

Thank you for your <letter/email> dated <date> in which you informed us that you would like to convert to employment as a <part-time/full-time> employee.

As we discussed on <date>,[4] I confirm that we have decided to accept your request and you will convert to <part-time/full-time> employment on <date>.[5]

For full-time employees:

Your hours of work after the conversion takes effect will be <e.g. 38 hours per week plus a reasonable amount of additional hours as needed to perform your role>.

For part-time employees:

After the conversion takes effect you will work ## hours per week on the following days and times:

- <e.g. Mondays 10am to 3pm>
- <e.g. Thursdays 10am to 3pm>

Please do not hesitate to contact me if you would like to discuss anything set out in this letter.

Yours sincerely,

<name>
<employer name>

4 Before sending this letter to the employee the employer must discuss each point set out in the letter with the employee.

5 The date of conversion must be the first day of the employee's first full pay period that starts after the day the notice is given, unless the employee and employer agree to another day.