

Change to Casual Employment Arrangements by Amy McKee

Recent amendments to the Federal Fair Work Act 2009 have changed the workplace entitlements and obligations for casual employees. The changes came into effect on 27 March 2021. There are 3 broad changes to the Fair Work Act:

- A new definition of casual employment;
- A pathway for casual employees to become full-time or part-time (permanent); and
- A "casual employment information statement".

Definition of casual employment

Now a person is a casual employee if they accept a job offer knowing that there is no firm advance commitment to continuing and indefinite work according to an agreed pattern of work.

Once employed as a casual, an employee will continue to be a casual employee until they:

- become a permanent employee through what is termed "casual conversion";
- are offered and accept full-time or part-time employment; or
- stop being employed by the employer.

For existing employees, an employee will be deemed a casual employee if they met the new definition of casual employee when they were originally employed in.

Casual conversion

1. Obligations to offer casual conversion

The National Employment Standards now include an entitlement for a casual employee to become a full-time or part-time (permanent) employee in certain circumstances. This is known as casual conversion. Different rules apply to small business employers (employers with less than 15 employees).

Except for small business employers, employers are required to offer casual employees who have worked in their employ for 12 months the option to convert to full-time or part-time (permanent) if the employee:

- has worked a regular pattern of hours on an ongoing basis for at least the last 6 months; and

- could continue those hours as a full-time or part-time (permanent) without significant change to their hours of work,

unless the employer has reasonable grounds not to make an offer.

The offer must be made within 21 days of the employee's 12 month anniversary. The amount of hours that the employee has worked over the previous 6 months will determine if the offer is for full-time or part-time (permanent) basis.

2. Right to request casual conversion

Eligible casual employers (except if they are employed by a small business employer) can also ask to convert to permanent employment from 21 days after their 12 month anniversary.

An eligible casual employee who works for a small business employer can make a request at any time on or after their 12 month anniversary.

To be an eligible the casual employee must:

- have been employed by the employer for at least 12 months;
- have worked a regular pattern of hours on an ongoing basis for at least the last 6 months; and

be able to continue those hours as a full-time or part-time (permanent) without significant change to their hours of work, and none of the following must apply in the previous 6 months:

- the employee must not have refused an offer to convert to permanent employment;
- the employer has advised in writing that an offer of casual conversion will not be made as there are reasonable ground;
- the employer has refused another request for casual conversion based on reasonable grounds;
- that an offer of casual conversion will not be made as there are reasonable ground.

An employer is required to respond to that request in writing within 21 days. If the employer refuses the request, they must tell the employee why in their written response. Employers can't refuse a request unless they have consulted the employee and have reasonable grounds to refuse the request.

3. Reasonable grounds for refusal

Reasonable grounds for not making an offer include if in the next 12 months the employee's position won't exist; the hours will significantly reduce; or the days and times of work will significantly change and can't be accommodated within the employees days or times for work. If an offer is not being made the employer must still write to the employee within 21 days of the employee's 12 month anniversary explaining that no offer will be made along with the reasons why.

Existing casual employees

Except for small business employers, employers must assess whether any of their existing casual employees who, employed prior to 27 March 2021, are eligible to convert to permanent employment. Within 21 days of the assessment occurring the employer needs to make a written offer to convert employment or an explanation as to why that offer will not be made. The assessments and any explanation made must occur by 27 September 2021.

Employees must respond to any offer within 21 days of receiving the offer. If no response is given an employee is deemed to refuse the offer. Small business employers are not required to make an offer to convert their casual employees to permanent employment.

Casual employment information statement (CEIS)

The CEIS has information about:

- the definition of a casual employee;
- when an employer is and is not required to offer casual conversion;
- when a casual employee can request casual conversion;
- casual conversion entitlements; and
- the role of the Fair Work Commission to deal with disputes about casual conversion.

The CEIS can be downloaded from the Fair Work website. There has been 2 versions of the form published to date. Employers need to ensure they are using the most current form.

A CEIS must be provided to each new casual employee before or as soon as possible after the employee starts their new job. Small business employers are required to give their existing casual employees a copy of the CEIS as soon as possible after 27 March 2021. Other employers are required to give their existing casual employees a copy of the CEIS by 27 September 2021.

What does this mean for you?

Management rights operators will need to consider on what basis they employed their staff

and how they will make offers for employment in the future. If an operator wishes to engage an employee on a casual basis then it must be made abundantly clear from the outset and that offer must be accepted by the employee.

If an operator has any casual employees then the manager must ensure that a CEIS is provided to all new and current casual employees.

If an operator has less than 15 staff, the operator is not required to offer casual conversion to its eligible casual employees, however, if an

employee has been employed for 12 months the employee may ask for conversion. In that case the operator must consider and respond within 21 days.

If an operator has 15 staff or more, the operator must offer casual conversion to its eligible staff or give a written explanation as to why such an offer is not being made. The operator must ensure that assessments and offers have occurred by September 2021.

Managing Building Defects by Ben Seccombe, litigation partner, Mahoneys

Resident managers in new or near new complexes will be aware of the difficulties that can arise when dealing with building defects – particularly when they are extensive and you have an uncooperative developer/builder. A recent Deakin University report revealed that a significant number of apartment buildings have some form of structural defect.

In an attempt to address this increasing issue, new body corporate regulations - introduced in Queensland on 1 March 2021 - now place greater obligations on builders, developers and bodies corporate to make sure building defects are identified and rectified in a timely manner.

To identify exactly what amounts to a building defect, there are a number of commonly used definitions, but a building defect is generally accepted to be "work that is faulty or below a reasonable standard of quality".

Body corporate's legal position

A body corporate needs to consider various competing factors in managing building defects, including:

- irrespective of the cause of the building defect, or a right of recovery against a third

party, the body corporate must maintain common property in good condition;

- the body corporate stands in the shoes of the developer with respect to any contractual action taken against the builder;
- the developer's obligations are limited to handing over certain relevant documents to the body corporate;
- the body corporate's best course of action will usually be a combination of:
 - making demands and negotiating with the builder;
 - making a complaint to the QBCC; or
 - taking action against the builder pursuant to the building contract; and
- there are strict deadlines that need to be observed in taking any action for building defects.

Recent regulation changes

The new regulation modules made some key amendments to assist bodies corporate in managing building defects including:

- An expansion of the developer's obligations to hand over certain relevant documents to the body corporate, at the first annual general meeting.
- An obligation on the body corporate to consider (not approve) a motion, at the

second annual general meeting, to engage an expert to inspect the scheme and report on any identified building defects.

These changes will have the effect of better protecting bodies corporate on the basis that they ought earlier be in a position where they are armed with all the information necessary to take action to protect themselves from the costs and frustration of building defects.

Mahoneys building defect guide

Our building defect guide has been prepared to provide important detail on the legal position of a body corporate in relation to building defects. In addition to setting out clearly the role of the resident manager / caretaker the guide also covers:

- what is a building defect;
- the body corporate's rights
- the body corporate's obligations;
- where the developer fits in;
- taking action against the builder;
- the role of the QBCC;
- the role of the body corporate manager; and
- time-frames for taking action.

If you would like more information on building defects or a copy of our guide, please contact us.



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For latest CPI figures go to

[Click here for Brisbane All Groups CPI figures](#)

For example, if your remuneration started at \$100,000 in September 2016, the correct calculation for the September 2020 increase based on Brisbane All Groups CPI would be $\$100,000 \times 116.2$ (i.e. the last index figure before the review date) / 109.75 (i.e. the last index figure before the commencement date) = \$105,925.25. Mahoneys has assisted many managers in having their remuneration increased to market level.



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