



SOUTH AUSTRALIAN WINE INDUSTRY
ASSOCIATION INCORPORATED



13 April 2021

CONFIDENTIAL NOTICE TO WINE GRAPE COUNCIL OF SOUTH AUSTRALIA MEMBERS CASUAL EMPLOYMENT CHANGES

A number of significant changes have been made to casual employment due to the *Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill 2020* (the Bill) being passed by the Federal Parliament. These changes came into effect on 27 March 2021 and apply to the *Fair Work Act 2009* (the Act), but there is a transition period that is in place in regards to some aspects of it.

It is important to note that all other proposed changes, which did not relate to casual employment, were removed from the Bill.

KEY CHANGES

- Introduction of a casual employment definition

The Act now defines a 'casual employee' as someone who accepts an offer of employment made on the basis of no firm advance commitment to continuing and indefinite work according to an agreed pattern of work.

In determining whether there is no such firm advance commitment, the Act permits a consideration of only the following:

- whether the employer can elect to offer work and whether the person can elect to accept or reject work;
- whether the employee will work only as required;
- whether the employment is described as casual employment; and
- whether the employee 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.

These criteria can be considered only at the time of the offer and acceptance and if an employee is a casual at the time the contract is made, the Act provides that the employee remains a casual employee until their employment is converted or accepts an alternative offer of non-casual employment.

- Right for casuals to convert to being permanent

By 27 September 2021 most employers will be required to offer casual employees the opportunity to convert 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 employee or a part-time employee (as the case may be).

Obligation to offer conversion does not apply to small business employers (fewer than 15 employees).

An employer is also not required to make an offer of casual conversion if there are reasonable grounds not to make the offer, such as the hours of work which the employee is required to perform

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will be significantly reduced in the next 12 months. The reasonable grounds must be set out in writing to the employee.

Employees also have the right to request a conversion if the employer does not offer it or the employee changes their mind after initially refusing to convert.

- Introduction of a Casual Employment Information Statement (CEIS)

The Act also now requires an employer to give a CEIS to casual employees when they are employed, which can be found [here](#).

Small business employers need to give their existing casual employees a copy of the CEIS as soon as possible after 27 March 2021, whereas other employers have to give their existing casual employees a copy of the CEIS as soon as possible after 27 September 2021.

This statement is in addition to the requirement to provide the Fair Work Information Statement.

- Casual loading set-off rights for employers

If a casual employee successfully claims that they are permanent the Act now requires a court to reduce the amount of the employee's claim by an amount equal to any casual loading paid to the employee.

The amount reduced must be determined by reference to any contract, Award or enterprise agreement terms. If there is no reference within such a document, the court will decide on an appropriate reduction.

INTERACTION WITH MODERN AWARDS AND ENTERPRISE AGREEMENTS (EAs)

Fair Work Commission (FWC) is required to review Modern Awards within six months to consider whether relevant Modern Award terms are consistent with the amended Act and whether there is any uncertainty or difficulty relating to the interaction between those Modern Award terms and the Act.

It should be noted that whilst a small business employer is not required to offer conversion under the Act, they are required to offer conversion under Modern Awards which provide for casual conversion. It is also important to consider that casual employees who previously have elected not to convert under a Modern Award, may still need to be offered conversion under the Act.

The parties to an EA (i.e. an employer, employee or representative) can apply to the FWC to resolve an uncertainty or difficulty relating to the interaction between the EA and the amended Act.

RECOMMENDED ACTIONS TO BE TAKEN

Employers are strongly recommended to have written employment documentation/contracts in place for casual employees which make clear:

- that there is no firm advance commitment to continuing and indefinite work (i.e. address the criteria that the Act); and
- the basis upon which any casual loading is paid to the employee.

It will also be important to ensure that there are processes in place to identify when an offer conversion is required to be provided.

Induction/on-boarding practices need to be updated to incorporate the provision of the CEIS to new casual employees and the existing casual employees need to be provided with the CEIS in accordance as details listed above.

NEED MORE INFORMATION?

Any WGCSA member requiring further clarification, details or advice, should contact Business and Workplace Adviser, Adrian Richards on 8222 9212 or adrian@winesa.asn.au.

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