

Earlier this year, the federal government passed long-awaited changes to the Australian casual employment regime. The Fair Work Act 2009 (Cth) (FW Act) was amended to introduce casual conversion obligations, along with a definition of “casual employee”, and the requirement to provide all casual employees with the Casual Employment Information Statement (CEIS).

So, what next for employers? The changes came into effect on 27 March 2021, with some subject to a six-month transitional period (Transition Period). We are now nearing the end of this Transition Period, during which employers have been required to take steps to prepare for the provisions coming into full effect on 27 September 2021.

These changes impact small business employers, being those employers with a headcount of less than 15 employees, differently. For example, small business employers do not have a positive obligation to offer casual conversion and they were required to have provided existing casual employees with a copy of the CEIS as soon as possible after 27 March 2021.

During this Transition Period, all employers with a casual workforce (other than small business employers) should take the steps outlined below. Please get in touch with us if you would like to discuss your obligations as a small business employer.

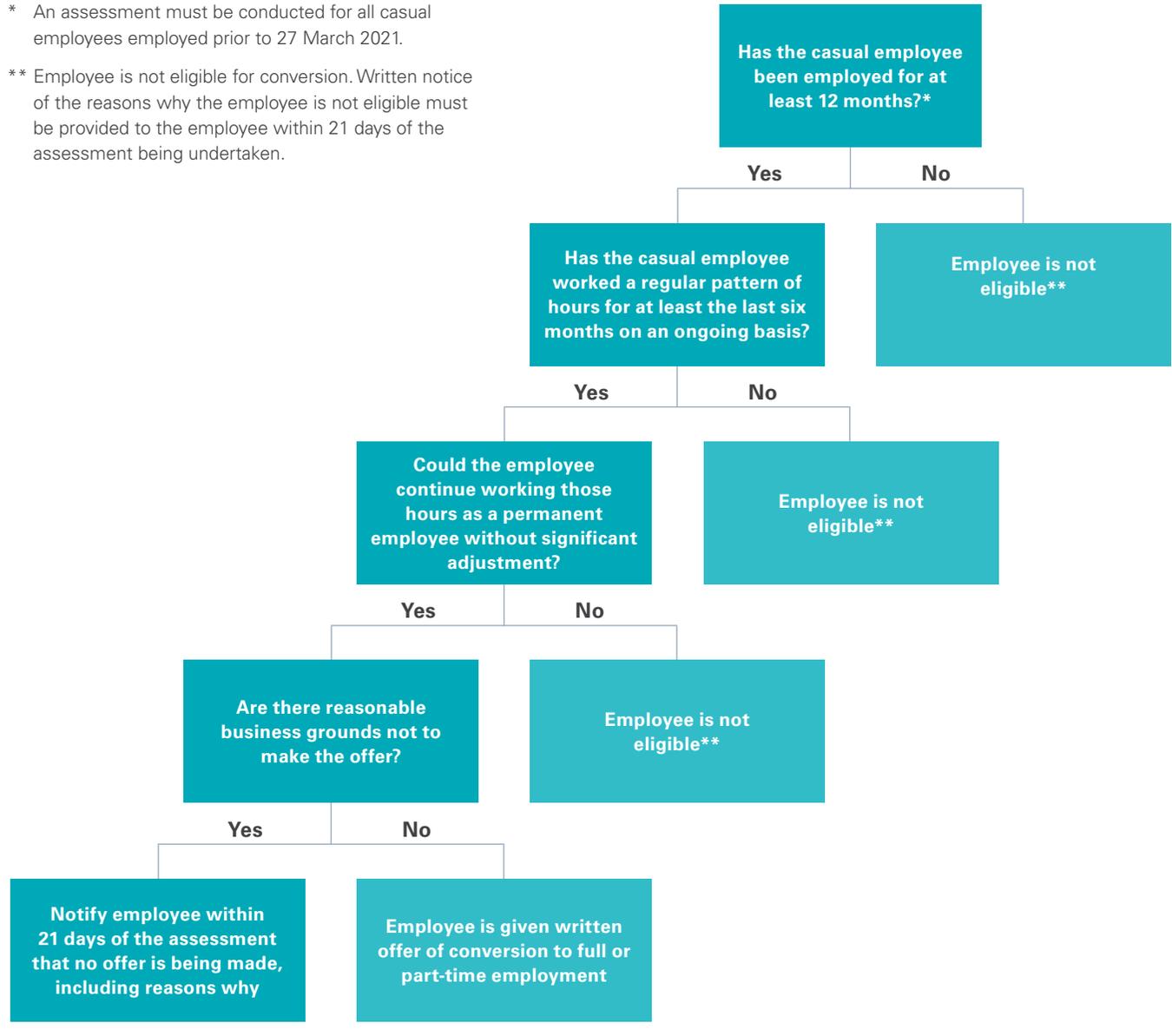
Provisions	Timeframe	Action to be taken	Example
<p>Assessment of ability to offer casual conversion for employees employed before 27 March 2021</p> <p>(See Division 4A of the FW Act)</p>	By 27 September 2021	<p>Members must carefully assess all current casual employees employed prior to 27 March 2021 to determine which, if any, casuals are eligible for an offer of conversion.</p> <p>Members must provide written notice to all casual employees of the outcome of this assessment (regardless of whether they are eligible for a conversion or not). This written notice must be provided within 21 days of the assessment taking place, and by no later than 27 September 2021.</p> <p>An existing casual employee will be eligible for conversion to permanent employment if they:</p> <ol style="list-style-type: none"> 1. Have been employed for a period of 12 months 2. Have worked a regular pattern of work on an ongoing basis (for at least the last six months) 3. Could continue working their regular hours as a permanent employee without significant adjustment <p>Remember: employers may refuse to offer casual conversion if there are reasonable business grounds to do so. In that case, the employee must be informed in writing of the refusal and the reasons why.</p> <p>For further information, please see the attached decision tree chart, which outlines steps that must be taken by employers when assessing all casuals employed prior to 27 March 2021.</p>	<p>An employer employs a casual employee who commenced work in 2018 and works a regular pattern of work:</p> <p>By 27 September 2021, the employer must do both of the following:</p> <ol style="list-style-type: none"> 1. Assess the employee 2. Provide written notice to the employee of either: <ol style="list-style-type: none"> a. The offer of conversion b. A letter explaining that an offer of conversion cannot be made and the reasons why <p>The employer must ensure that either the offer or the notification that no conversion can be offered is provided within 21 days of the assessment taking place (and by no later than 27 September 2021).</p> <p>An employer employs a casual employee who has been employed since 1 January 2021:</p> <p>The employee is not eligible for conversion given they have not been employed for a period of 12 months. However, given the employee was employed prior to 27 March 2021, the employer must provide the employee with written notice of the assessment and the reasons why the employee is not eligible.</p> <p>The employer must ensure that this notification is provided within 21 days of the assessment taking place (and by no later than 27 September 2021).</p>

Provisions	Timeframe	Action to be taken	Example
			<p>An employer employs a casual employee who commenced on 1 July 2020 but in the last six months has not worked a regular pattern of hours:</p> <p>If, following an assessment of the employee, the employer determines that the employee has not worked a regular pattern of hours in the previous six months, the employer must provide written notice of this, explaining why the employee is not eligible and include reasons for not making the offer.</p> <p>Again, the employer must ensure that this notification is provided within 21 days of the assessment taking place (and by no later than 27 September 2021).</p>
<p>Assessment of ability to offer casual conversion for employees employed on or after 27 March 2021</p> <p>(See Division 4A of the FW Act)</p>	From 27 September 2021 onwards	Members must offer eligible casual employees (as explained in points 1 to 3 above) conversion to permanent employment within 21 days of the employee's 12-month anniversary.	<p>Employee becomes eligible for conversion on 1 October 2021:</p> <p>The employer must offer the casual employee conversion (or otherwise provide, in writing, reasons why it is not able to offer conversion) within 21 days of the employee becoming eligible, i.e. on or before 21 October 2021.</p>
Providing current casual employees with a copy of the CEIS	As soon as practicable after 27 September 2021	Members are required to provide current casual employees with a copy of the CEIS.	<p>An employer has a casual employee who started on 1 June 2018:</p> <p>Provided the employer has more than 15 employees, it must provide the casual employee with a CEIS as soon as possible after 27 September 2021.</p>
Providing new casual employees with a copy of the CEIS	From 27 March 2021 onwards	Members are required to provide all new casual employees a copy of the CEIS.	<p>An employer has a casual employee who started on 18 August 2021:</p> <p>The employer must have provided the new casual employee with a copy of the CEIS before or as soon as practicable after they commenced.</p>
Record keeping	Prior to 27 September 2021	<p>Implementing the above changes may require a considerable overhaul of your human resource management systems. Members will need to ensure that they have a system in place that accurately records:</p> <ol style="list-style-type: none"> 1. When casual employees will become eligible for an offer of casual conversion 2. Any offers or refusals of casual conversion 3. Any requests for casual conversion 4. Employee responses to offers of conversion 5. Provision of the CEIS to all casual employees 	

Casual Conversion – Steps to Take Before 27 September 2021

* An assessment must be conducted for all casual employees employed prior to 27 March 2021.

** Employee is not eligible for conversion. Written notice of the reasons why the employee is not eligible must be provided to the employee within 21 days of the assessment being undertaken.



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