

# AHEIA Casual Conversion Forum

National videoconference

25 June 2021



# PART A - TECHNICAL ISSUES

- Eligibility for conversion
- Reasonable grounds for not converting
- Employer offers
- Employee conversion requests

# Eligibility for conversion

FW Act, Division 4A of Part 2-2

- Eligibility - s.66B
  - employed for a period of 12 months
  - during at least the last 6 months has worked:
    - a regular pattern of hours
    - ... on an ongoing basis
    - ... which without significant adjustment, the employee could continue to work ...

# Period of 12 months

- It is likely that an underlying contract(s) will suffice, even if no work has been undertaken
- Gaps of more than 3 months
- Other gaps

# Pattern of hours

- What is a “pattern”?
- The pattern needs to be “regular”
- The regular pattern needs to be “ongoing” over at least the last 6 months

# Relevant case law

- Unfair dismissal case law on what is meant by “regular and systematic employment” is likely to be considered relevant, with a “clear pattern or roster of hours” being regarded as strong evidence of regular and systematic employment
- In this respect, the term “regular” has been held to imply a repetitive pattern and does not mean frequent, often, uniform or constant

# Significant adjustment

- What constitutes “significant”?
- Spreading duties over a full year when they are currently only undertaken in teaching terms
- Conversion to a continuing appointment involves being regulated by EA academic workload provisions (which will usually require allocation of duties not currently required or needed from the casual employee)

# Reasonable grounds for not converting - FW Act

FW Act, Division 4A of Part 2-2

- Reasonable grounds - s.66C
    - to be based on facts known or reasonably foreseeable
    - s.66C(2) non-exhaustive list; examples given:
      - position will cease within 12 months
      - pending significant reduction in hours of work
      - pending significant change for working days/times ...
- “which cannot be reasonably accommodated on days/times the employee is available”



# Other reasonable grounds

FW Act, Division 4A of Part 2-2

- Explanatory memo item 38
  - other reasonable grounds:
    - - all circumstances to be taken into account
    - - ...including the needs of the employer's business and the nature of the employee's role

# Reasonable grounds - General Staff Modern Award & Corrs advice

- AHEIA Industrial News Member Update of 19 May 2021
  - list of 10 reasonable grounds (4 from FW Act, 2 from Corrs advice of 5 May 2021, 4 from HE General Staff Modern Award)
  - other reasonable grounds may also exist

# PART B - MANAGING THE PROCESS

- The 6 month transition period
- Timing of assessments
- Decision-making
- Advices to staff

# The 6 month transition period

- AHEIA Industrial News Member Update of 13 April 2021
  - period ends on 27 September 2021
  - all employers are required to make assessments during this transition period and advise staff of the outcome
  - EA dispute settling clauses extend to the NES
  - Casual Employment Information Statement

# Timing of assessments & decision-making

- Assessments during 6 month transition period
- Assessments following 6 month transition period
- Staff requests for conversion

# Other processes

- Requests to convert under EA provisions
- Varying EA provisions to align with the FW Act
- Converting from casual employment to a continuing appointment by agreement
- Moving from casual employment to a fixed-term appointment by agreement

# Decisions & advices to staff

- During 6 month transition period
  - advice that an assessment will be made
  - advice of the decision as to whether a conversion will be offered
  - AHEIA draft template advice, specifying why a conversion is not being offered
  - terms of offer of conversion
- Following the 6 month transition period

# Discussion

- What other issues have emerged as you have started to think through eligibility and process matters?
- What resources do you need to make it easier for you to manage the process?
- What are casual conversion provisions in your next EA going to look like?





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