



Australian Government
Department of Employment
and Workplace Relations

Standing up for casual workers (OBPR22-02412)

Impact Analysis Equivalent



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Assessment that the Senate Select Committee on Job Security Inquiry and the Review of the *Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Act 2021* (Cth) are equivalent to an impact assessment process

Introduction

The Department of Employment and Workplace Relations' (the department) view is two independent processes – the Senate Select Committee on Job Security, and the review of the *Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Act 2021* (Cth) - can be certified as equivalent to an impact assessment process.

Overview of the Senate Select Committee on Job Security Inquiry (the Job Security Inquiry)

The Senate Select Committee on Job Security was appointed by resolution of the Senate on 10 December 2020. Submissions closed on 2 December 2021. The [Job Insecurity Report](#), presented on 11 February 2022, concluded the committee's inquiry into job security and its examination and gathering of evidence relating to the terms of reference. The tabling of the final report on 30 March 2022 concluded the work of the committee. Further information can be found on the [committee's webpage](#).

The Job Security Inquiry received [230 written submissions](#) from unions, academics, state governments, local councils, community legal centres, employer groups and individual citizens. The Job Security Inquiry also held 27 public hearings from April 2021 to March 2022.

62 submissions specifically raised issues with casual employment, and many cited the need for a change to the definition of casual employee that was introduced in the *Fair Work (Supporting Australia's Jobs and Economic Recovery) Amendment Act 2021* (Cth). A list of submissions is at [Attachment A](#).

The Job Security Inquiry made 103 recommendations over 4 interim reports, with **11 recommendations related to casuals and casual conversion**. A copy of these recommendations is at [Attachment B](#).

The most relevant recommendation to the Government's proposed reforms to the definition of casual employee was **Recommendation 6** from the [Fourth interim report: the job insecurity report \(11 February 2022\)](#):

Rec 6 **The committee recommends that the Australian Government urgently assesses the performance of the *Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Act 2021 (Cth)*. As the data collected through this inquiry suggests, the amendment has not had a positive impact on job security, and it should be repealed and replaced with a new statutory definition of casual employment that reflects the true nature of the employment relationship—rather than a definition which relies upon the employer's description of the relationship in an employment contract—and a new casual conversion provision.**

Overview of the statutory review of the *Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Act 2021 (Cth)* (the Review)

The *Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Act 2021 (Cth)* included a statutory requirement to review the operation of the legislative amendments 12 months after its commencement, which must:

- a) consider whether the operation of the amendments made are appropriate and effective
- b) identify any unintended consequences
- c) consider whether any legislative change is necessary to improve the operation of the amendments.

This was undertaken by an independent reviewer (KPMG). The Review had a public consultation process through both consultation sessions and a written submission process. The Review considered four elements:

1. The statutory definition of casual employee
2. The process for an employee to move in their job from being casual to permanent (often referred to as 'casual conversion')
3. The statutory offset mechanism, for situations where an employer has been paying a casual loading but should have been paying permanent employee entitlements
4. The Casual Employment Information Statement.

The Review found the elements of the current framework are, conceptually, appropriate but also clearly identified areas for improvement.

In addition to considering submissions to the Senate Standing Committee on Education and Employment on the Fair Work Amendment (Supporting Australia’s Jobs and Economic Recovery) Bill 2020, and the Job Security Inquiry; the Review sought views from a range of stakeholders including employers, employees, State governments, Commonwealth entities, peak bodies, employer and employee representatives (including trade unions), interest groups, community legal centres, and academics.

The most relevant finding regarding the statutory definition was:

Finding 1 Consideration should be given to whether the definition should focus solely on the terms of the initial offer and acceptance, and ‘not on the basis of any subsequent conduct of either party’ (per section 15A(4) of the *Fair Work Act 2009* (Cth)).

A full list of all eight findings is at [Attachment C](#). The report of the Review was tabled in Parliament on 1 December 2022. The Government response to the Review was published on 15 December 2022. The Government response to the Review noted the report findings and evidence would be considered in implementing the Government’s election commitment. Both the Review and the Government response are available on the department’s website, at <https://www.dewr.gov.au/workplace-relations-australia/consultations/statutory-review-casual-employment-legislation>.

How each of the seven Impact Analysis elements were addressed by the two inquiry processes is outlined below.

1. What is the problem you are trying to solve and what data is available?

The Job Security Inquiry took extensive evidence on the problem of job insecurity, supported by data including personal testimonies, surveys and research commissioned by employee and employer representatives, workplace/company level data and academic research and analysis. Evidence received regarding the common characteristics of casual workers and individual submitter testimonies support the proposition that casual workers are more insecure.

Additionally, data and analysis on casual employment was expressly commissioned from the Australian Bureau of Statistics (ABS) and BETA, the behavioural economics team of the Australian Government, to inform the Review.

These two specific data projects have provided important insights into how the existing legislative settings have operated and informed design of the proposed new legislative settings.

- The first data project was undertaken by BETA and involved:
 - online surveys with approximately 1,200 current and recent casual employees and 800 employers of casual staff; and
 - qualitative interviews with 12 current and recent casual employees and 8 employers of casual staff.
- The second data project was undertaken by the ABS to analyse conversion rates from casual to permanent employment over recent years.

The reports of both these projects are publicly available on the department's website, at <https://www.dewr.gov.au/workplace-relations-australia/consultations/statutory-review-casual-employment-legislation>.

While some employees may choose to be casual because of the perceived benefit of the casual wage loading, or because it helps them to balance their work/life responsibilities, evidence heard by the Job Security Inquiry shows that casual employees can be exposed to the significant negative impacts of job insecurity, including:

- poorer physical and mental health (including susceptibility to bullying and drug use)¹
- less ability to afford medical care, and less likely to take time off work to seek medical treatment, and are more likely to suffer from chronic illnesses²
- difficulty affording adequate housing, accessing credit for home loans or securing a rental, and increased risk of homelessness and long-term (even intergenerational) poverty³
- the negative consequences of not being able to access paid sick leave were demonstrated during the early stages of the COVID-19 pandemic, with many casual employees performing essential services but being unable to afford to take time off work to recover from illness or to care for sick family members.

The Review also identified problems with the current framework. It found, for example, that 'a key issue is the effect of s15A(4) to exclude consideration of the parties subsequent conduct from the assessment of casual employment'.⁴

It also found that the current review and appeal mechanisms may present barriers to discourage employees to pursue courses of action for secure employment (finding 5). The Review considered

¹ Senate Select Committee on Job Security, *The job insecurity report*, February 2022, pp 43-44 (Quoting submission from Professor Michael Quinlan and Dr Elsa Underhill)

² Senate Select Committee on Job Security, *The job insecurity report*, February 2022, p 49 (Quoting submission from the Australian Medical Association).

³ Senate Select Committee on Job Security, *The job insecurity report*, February 2022, p 54 (Quoting submission from the Western Australian Council of Social Services).

⁴ KPMG, *Review of the Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Act 2021 (Cth)*, October 2022, p 71.

that 'as a matter of principle, it is appropriate for an employee to have the ability to seek review of outcomes pursuant to the *Fair Work Act 2009* (Cth) using 'a low-cost, or no-cost, review process'.⁵

2. What are the objectives, why is government intervention needed to achieve them, and how will success be measured?

The objective is to provide employees who have a firm advance commitment to continuing and indefinite work with a clearer path to permanent work, should they wish to pursue this.

The definition of casual employee and the process for changing to permanent (casual conversion) are currently set out in the *Fair Work Act 2009* (Cth). Government intervention through amending this legislation is needed to address current barriers to conversion. This includes where employees are stuck as casuals even if they are working regular hours similar to permanent workers, without job security and want to, but are unable to, convert to a permanent position.

Government intervention through legislation is also necessary to overcome the narrow interpretation of the concept of 'firm advance commitment' that was decided by the High Court in *WorkPac v Rossato* [2021] HCA 23.

Effects of long-term casual employment

For some workers, receiving a casual loading in lieu of paid leave entitlements and having flexibility around their schedule or shifts means casual employment can work for them in the immediate term. However, the Job Security Inquiry received evidence from a range of stakeholders on the detrimental aspects of casual work compared to permanent work, including:

- going to work sick
- not taking leave due to fears about endangering future employment
- the inability to 'properly balance' work, personal and caring responsibilities
- last minute changes to working hours
- 'sudden loss of what had been regular work', with no notice
- the 'lack of a career path'
- reduced access to training and lower workplace participation
- 'poorer health and safety outcomes'
- an 'inability' to secure a home loan or other finance.⁶

⁵ KPMG, *Review of the Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Act 2021* (Cth), October 2022, p 75.

⁶ Senate Select Committee on Job Security, *The job insecurity report*, February 2022, pp 82-83 (Quoting submission from the National Foundation for Australian Women).

The Job Insecurity Inquiry further highlighted a 2015 *Household, Income and Labour Dynamics in Australia* (HILDA) Survey on casual employees' feelings about their job security, which found that casual workers were:

- 'less satisfied' with their level of job security
- 'less satisfied' with their 'hours worked'
- 'less satisfied' with their level of access to training and skill development
- almost twice as likely to be looking for another job as permanent employees.⁷

The Job Insecurity Inquiry also cited testimonials from individuals on the negative impact of insecure work on their working lives:

Kristie—a full-time casual teacher for 6 years

'Teachers, with degree qualifications, are working day to day casual or on temporary contracts for literal YEARS on end, not knowing what we are doing from one day to the next. Hopefully we get a contract, and then we spend time fighting others for our jobs each year, or with the everlasting threat of the permanent position we're covering going to someone else because of the weird, nepotistic way our system works. As casual teachers, we only have two pay grades, and while the casual rate is good, we are restricted to the school terms as to days we are able to work, and then we need to be engaged for every single available day to reach anything like a decent yearly salary'.⁸

Mr Darcy Moran, a casual who has worked in the hospitality sector for 15 years.

'The precarious nature of the work makes it extremely hazardous for employees to challenge inept, corrupt or abusive managers. When you're a casual employee, you don't need to go through a dismissal process; you just stop being rostered, which means you don't have reasonable recourse and you don't feel that you can invoke regulation or support'.⁹

Current casual employment framework embeds job insecurity

Prior to 2021, the meaning of the term 'casual employee' had developed over time through common law decisions, developing a range of factors to determine the substance and totality of the employee/employer relationship.

The *Fair Work (Supporting Australia's Jobs and Economic Recovery) Amendment Act 2021* (Cth) introduced a statutory definition of casual employee, providing that the casual employee status is

⁷ Senate Select Committee on Job Security, *The job insecurity report*, February 2022, p 79.

⁸ Senate Select Committee on Job Security, *The job insecurity report*, February 2022, p 80.

⁹ Senate Select Committee on Job Security, *The job insecurity report*, February 2022, p 84.

determined at the point of the employee's engagement by the employer, and that post-contractual behaviour is not a factor in determining an employee's status.

Under strict application of this definition, an employee can be engaged as a casual employee initially but then go on to work for that same employer in a manner akin to permanent work, while remaining classified as a casual employee, with limited recourse to change their status. For example, the Review took evidence that the statutory definition:

- 'license[s] constructive impermanency and the downward pressure on wages' (the National Foundation for Australian Women)¹⁰
- 'Casual employees continue to work full-time hours with their rosters set far in advance and without the option of being able to refuse shifts' (Electrical Trades Union of Australia)¹¹
- [contributed to the] 'prevalence of insecure work by enabling or encouraging some employers to engage employees as casuals' in circumstances where this relationship may not reflect the true nature of the employment relationship (Victorian Government).¹²

Limited conversion has occurred under the current framework

Under the *Fair Work (Supporting Australia's Jobs and Economic Recovery) Amendment Act 2021* (Cth), some regular casual employees with 12 months' service are eligible for conversion to part-time or full-time employment, subject to the employer having 'reasonable grounds' not to convert the employee.¹³ Noting the current framework has only been in place since March 2021, there is limited detailed evidence of its impact.

However, ABS data analysis of Labour Force Survey data, undertaken as part of the Review, showed that there was no discernible evidence that there was a shift in casual conversion rates, casual transition rates and incidence of casual employees in the period leading to, and after, the March 2021 reform:

A statistical test (the Chow test) was applied to the time-series of the metrics and the outputs of these tests indicated that there was insufficient evidence that there had been a statistically significant shift in the casual conversion rates, the casual transition rate, and the

¹⁰ KPMG, *Review of the Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Act 2021* (Cth), October 2022, p 43.

¹¹ Electrical Trades Union of Australia, *Submission to the Attorney-General Department's Review of Changes to Casual Employment Laws*, D22 1651683 ETU Submission.PDF (dewr.gov.au), p 2.

¹² KPMG, *Review of the Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Act 2021* (Cth), October 2022, p 70.

¹³ For more information on the current conversion framework, see the Fair Work Ombudsman, [Casual Employment Information Statement](#).

*proportion of casual employees in the workforce in recent years, including the period after March 2021.*¹⁴

This is supported by evidence provided to the Job Security Inquiry which showed that conversion has been limited under the current framework. The Review also found of the data available, the current casual conversion arrangements do not appear to have significantly impacted the number of casual conversions.

A survey of long-term casual employees undertaken by BETA¹⁵ as part of the Review found that of those employees who were eligible for conversion since March 2021, 7 per cent have converted after being offered a permanent role by their employer, and 18 per cent have converted after they made a request to their employer.¹⁶

BETA's survey also looked at the overall preference of long-term casual employees for casual vs permanent roles which found 26 per cent would prefer to convert to a permanent position. Further, of the 63 per cent of long-term casuals who would prefer their current role to remain casual, a third (33 per cent) of these people would be open to shifting to a different permanent role or becoming permanent at some point in the future.¹⁷

Importantly the Review found further consideration should be given to methods of better facilitating access to dispute resolution for employees to mitigate against barriers which may discourage employees from seeking conversion (finding 5).

These statistical and case study findings are a strong indication that further action and policy intervention is required.

Measurement

Success will not be measured by a particular conversion rate. Rather, the objective is that eligible employees can move from casual to permanent employment if they choose to do so.

3. What policy options are you considering?

In the Secure Australian Jobs Plan, which formed part of the Government's 2022 election commitments, the Government committed to legislate an objective test of when an employee can

¹⁴ Australian Bureau of Statistics (ABS), *Analysis of changes in casual conversion in Australia*, July 2022.

¹⁵ The survey, undertaken by BETA, the Behavioural Economics Team of the Australian Government, was not designed to deliver findings representative of the overall casual workforce.

¹⁶ BETA, *Casual Employment: Research findings to inform independent review of SAJER Act*, 2022, p 31

¹⁷ A further 11 per cent of long-term casuals indicated no preference for a casual vs permanent role. BETA, *Casual Employment: Research findings to inform independent review of SAJER Act*, 2022, p 11.

be classified as casual, including taking into account post-contractual conduct. This will provide employees with a clearer and stronger pathway to permanent work.

This option is consistent with recommendation 6 of the Job Security Inquiry, as reflecting the true nature of the employment relationship, including consideration of post-contractual conduct. It is also consistent with finding 1 of the Review, which said it should be reconsidered whether the definition should focus solely on the terms of initial offer and acceptance (to the exclusion of any post-contractual conduct).

The preferred approach would keep the existing conceptual framework (a statutory definition and statutory processes to allow employees to change from casual to permanent) while implementing the findings of the Review in order to improve its effectiveness, as discussed in the response to question 6 below.

This model will provide eligible employees with two pathways to change their status: through seeking a change of status with reference to the amended definition of casual employee (the new employee choice definition pathway), or through the existing casual conversion mechanism which will be retained. Provided an employee is appropriately classified on engagement, status will only change prospectively, meaning backpay liability will not accrue. The Fair Work Commission will have strengthened powers to resolve disputes. These changes are consistent with the findings of the two impact analysis equivalent processes.

The alternative is the status quo, which would not deliver on the election commitment or solve the identified problems. As noted in the Australian Government Guide to Policy Impact Analysis, when the proposed policy approach is an election commitment: 'The Government has already committed itself to one policy approach in a public and accountable way and no alternative options need to be considered'.¹⁸

4. What is the likely net benefit of each option?

As above, the recommended option is an election commitment, so is the only option considered.

For employers

Under the *Fair Work Act 2009* (Cth), employers have an ongoing responsibility to classify employees correctly at all times. The proposed reforms do not alter this requirement, but they do clarify the

¹⁸ Office of Impact Analysis, *Australian Government Guide to Policy Impact Analysis*, February 2023, pp 20-21.

legal classification of casual employee and continue to provide certainty about when an employee can be casual.

The Regulatory Impact Statement¹⁹ for the *Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Act 2021* (Cth) details the costs for businesses to implement the current status quo, which includes assessing the casual employee's status, and determining eligibility for casual conversion upon reaching 12 months of service.

The proposed reforms would not create any new requirement for employers to initiate any process to change an employee's status to permanent. It would only create requirements for employers to respond to those employees who utilise the new employee choice definition pathway and formally notify their employer that they believe they do not meet the definition of casual and wish to be permanent. Employers may already be having conversations with their casual employees about becoming permanent – the research undertaken by BETA indicated that casuals who become permanent often do so in the first 12 months, outside of current obligations.²⁰ In this regard the kinds of conversations and actions employers will need to engage in are not new – they are a normal part of being an employer.

Under the proposed reforms, most employees can only access the employee choice definition pathway after 6 months of service. For employees of small businesses, the requirement is 12 months of service before they can access the definition pathway²¹. There is no obligation on employers to monitor a casual employee's status against the new definition. If an employee does not exercise their right to access the employee choice definition pathway, consistent with current arrangements, the only time employers will need to consider the definition is to ensure employees are correctly classified on engagement.

It is intended that the Fair Work Ombudsman, as part of its functions as the national workplace relations regulator, will undertake an information and education campaign that targets the needs of small business to assist them in implementing the proposed changes.

As with the status quo, there will be a legislated dispute resolution process for employers and employees to resolve issues around the determination of an employee's status. This includes existing mechanisms through the Fair Work Commission, as well as the access to the small claims jurisdiction (introduced by the *Fair Work Amendment (Supporting Australia's Jobs and Economic*

¹⁹ The Regulatory Impact Statement is contained within the revised explanatory memorandum to the [Fair Work Amendment \(Supporting Australia's Jobs and Economic Recovery\) Bill 2021](#).

²⁰ BETA, *Casual Employment: Research findings to inform independent review of SAJER Act*, 2022, pp 31-33

²¹ Existing casual employees will also need to meet this qualifying period. That is, they must wait 6 months, or 12 months for employees of small business, after commencement of the laws before they can access the new employee choice definition pathway.

Recovery) Act 2021 (Cth)) to ensure that employers and employees have a low-cost, accessible and efficient process to resolve disputes about casual employment. Consistent with finding 5 of the Review the Fair Work Commission will have the power to arbitrate disputes, facilitating better access to outcomes.

This will benefit employers and employees by providing quick outcomes on an employee's status and prospects for conversion, rather than having to resort to long and expensive court processes.

For employees

The Review underscored the importance of change in employment status being dependent on the choice of the employee. For example, as mentioned above, BETA found that 63 per cent of long-term casual employees would prefer to remain in their current casual role at this point in time²². The proposed approach will ensure employees are not stuck as casuals when they are working arrangements similar to permanent employees but do not receive the job security benefits of permanent employment. Employees in these situations will have a clear pathway to permanent work if this is their choice.

Casual employees can face significant negative impacts as a result of insecure work. While casual employees are entitled to receive a casual loading – usually 25 per cent – or receive a specific casuals rate of pay, they do not receive the entitlements that permanent employees do, such as paid personal/ carer's leave. This means they do not have an ongoing source of income in the event of illness or injury. An employee who re-classifies as a permanent employee will not be entitled to a casual loading, but will gain access to a number of entitlements under the National Employment Standards that are only available to part-time and full time employees, including personal/carer's leave, annual leave and redundancy pay.

Beyond those immediate workplace entitlements, increasing an individual employee's job security is linked to improved financial stability as well as physical and mental health. Research conducted by BETA found that where employees wished to convert to a permanent role, the two main drivers were the stability and security of hours and income, and the benefits of having leave entitlements.²³ BETA also found that casual employees experiencing very high levels of financial stress are more likely to want to convert to a permanent role.²⁴

Further, initiatives to increase awareness and knowledge of the provisions through the development of an updated Casual Employment Information Statement by the Fair Work Ombudsman will assist

²² BETA, *Casual Employment: Research findings to inform independent review of SAJER Act*, 2022, p 11.

²³ BETA, *Casual Employment: Research findings to inform independent review of SAJER Act*, 2022, p 13.

²⁴ BETA, *Casual Employment: Research findings to inform independent review of SAJER Act*, 2022, p 11.

employees and employers to understand their rights and obligations (as identified in findings 7 and 8 of the Statutory Review) including consideration of the trade off between casual loading and the benefits of permanent employment.

5. Who did you consult and how did you incorporate their feedback?

Consultation through the Job Security Inquiry

The Senate Select Committee Inquiry into Job Security (the Inquiry) was a public process that took place over the course of 16 months (from December 2020 to March 2022).

The Inquiry received 230 written submissions from unions, academics, state governments, local councils, community legal centres, employer groups and individual citizens. The Inquiry also held 27 public hearings from April 2021 to March 2022 where many stakeholders represented their views and spoke to their written submissions.

62 submissions specifically raised issues with casual employment, and many cited the need for a change to the definition of casual employee that was introduced in the *Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Act 2021* (Cth) (see [Attachment A](#) for the full list of submissions relevant to casual employment).

The department has carefully reviewed the Job Security Inquiry Report, and many of the Government's workplace relations policies reflect and align with the findings and recommendations from the Inquiry. These include Recommendation 6 from the Job Insecurity Report (copied above) to amend the definition of casual employment, as well as Recommendation 10 from the First Interim Report which recognises that casual employees and their employers must have a low-cost, accessible and efficient process to resolve disputes about casual employment, including access to arbitration.

Consultation through the Review

As noted previously, the current legislative settings, which took effect through the *Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Act 2021* (Cth), included a requirement for a statutory review. This Review was tabled in Parliament on 1 December 2022. The

Government response to the Review noted the report findings and evidence would be considered in implementing the Government's election commitment.²⁵

The consultation comprised five separate virtual consultation sessions with employment law academics, peak industry bodies, employee representatives, state and territory government representatives and Commonwealth entities. An in-person session was also held in Sydney. Stakeholders were able to make written submissions to the Review - 13 submissions were made by representatives of employers, employees and state governments. A further 8 submissions were made responding to an online questionnaire by employer groups, unions, and non-government organisations. Organisations who participated in these consultations are detailed in [Attachment D](#).

In addition to the consultation through the Job Security Inquiry and the Review, the Government has continually consulted with a broad range of stakeholders including union and employee representatives, employers and employer representatives, state and territory governments, community representatives and academics as part of the broader consultation process being undertaken to support the introduction of legislative reforms into the Australian Parliament in Spring 2023. As part of initial consultations, the department published information on the department's website covering key issues and considerations for discussions with stakeholders.²⁶ Written submissions were invited and in-confidence discussions were undertaken to help inform departmental advice to Government.

In Australia's national workplace relations system, there are also formal consultation requirements. For example, the *National Workplace Relations Consultative Council Act 2002 (Cth)* establishes the National Workplace Relations Consultative Council. The purpose of the National Workplace Relations Consultative Council is to provide, in the public interest, a regular and organised means by which Government representatives, and representatives of employers and of employees (and, when the Minister considers it appropriate, representatives of other persons, bodies and organisations) may consult together on workplace relations matters of national concern.

The Committee on Industrial Legislation (COIL), a subcommittee of the National Workplace Relations Consultative Council, meets when required to provide technical input on draft workplace relations legislation. COIL met on 16 and 17 August 2023 to consider an exposure draft of the legislation to enact the reforms.

²⁵ Australian Government, *Australian Government Response to the Review of the Fair Work Amendment (Supporting Australia's Job and Economic Recovery) Act 2021 (Cth)*, December 2022.

²⁶ Department of Employment and Workplace Relations, *Stand up for casual workers: Legislate an objective test to determine when an employee can be classified as casual*.

6. What is the best option from those you have considered and how will it be implemented?

As above, the Senate Select Committee Inquiry thoroughly reviewed the status quo and sought views on alternate options for improving job security for casual employees.

The Government's reform proposal seeks to implement the policy change as per Recommendation 6 of the Fourth Interim Report.

The Government's reform proposal is also consistent with the analysis and findings of the Review to:

- incorporate post-contractual conduct into the definition (finding 1)
- increase deterrence for sham casual arrangements by legislating specific sham casual provisions and associated penalties for deliberate misclassification (finding 2)
- strengthen anti-avoidance measures to ensure employers actively consider conversion (finding 3)
- better facilitate access to dispute resolution for employees through the introduction of arbitration (finding 5), and
- increase knowledge and awareness of the framework by enhancing the utility of the Casual Employment Information Statement through providing it at commencement and again at 12 months employment (finding 7 and finding 8).

The reform will be implemented through legislative changes to the *Fair Work Act 2009* (Cth).

The Review identified implementation considerations which the department has considered. For example, the Review indicated that a tension exists between a definition of casual that allows for consideration of subsequent (post-contractual) conduct and providing the requisite level of certainty for both employers and employees.²⁷ This tension is being addressed in the proposed legislation by providing that employees engaged as casual employees remain so until they proactively and through their own choice go through a status change or conversion process. This will mean that employers have certainty as an employee's status will be fixed until a change process occurs and they will not be exposed to risk of backpay for permanent entitlements.

There will be changes to the existing Casual Employee Information Statement published by the Fair Work Ombudsman, for employers to give to casual employees to explain the definition of casual employee and procedures for dispute resolution. New provisions are proposed to commence on 1 July 2024, to allow sufficient time for employees and employers to understand their rights and

²⁷ KPMG, *Review of the Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Act 2021* (Cth), October 2022, p 73.

obligations, and to allow the Fair Work Ombudsman to prepare and test for usability of the revised Casual Employment Information Statement.

The Fair Work Ombudsman will also undertake communications and education activities to increase awareness of the change and provide support to employers and employees, particularly small business.

7. How will you evaluate your chosen option against the success metrics?

As noted in the response to question 2, the objective is not to reach a particular rate of casual conversion. Rather it is to increase fairness and remove barriers to becoming permanent where an employee's working arrangement is akin to that of a permanent employee and they want to be classified as such.

Qualitative and quantitative data considered by the Job Security Inquiry and the Review will continue to be useful metrics for understanding how the new framework is being understood and implemented at the workplace level. For example, section 5.3 of the Review (pp 32-38) covered case law since the commencement of the *Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Act 2021* (Cth). While the number of cases to be considered by the courts and the Fair Work Commission is expected to remain relatively low, the precedents from published decisions will create valuable clarity for employers and employees in understanding how the law should be applied. From an evaluation perspective, the outcomes of published decisions will assist in understanding whether the legislative settings are leading to outcomes consistent with the policy intent.

Section 5.3 of the Review also included administrative data on the outcomes of disputes under the Fair Work Commission existing dispute resolution processes for casual conversion.²⁸ The Fair Work Commission will continue to collect administrative data on dispute resolution under the proposed new framework. This will assist in evaluating timeliness and outcomes of disputes about changing from casual to permanent employment.

In addition to the analysis above, which identifies how data sources that are contained in the Job Security Inquiry and the Review will be relevant to the evaluation of the chosen option, the

²⁸ KPMG, *Review of the Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Act 2021* (Cth), October 2022, pp 34-35.

department has undertaken additional impact analysis that identifies other data sources and how an evaluation could be undertaken.

New data to support monitoring and evaluation

Currently available Australian Bureau of Statistics (ABS) data (Characteristics of Employment) allows for analysis of a range of characteristics of employees who are without paid leave entitlements²⁹ and other benefits related to permanent employment. For example, the Characteristics of Employment survey collects data on

- whether the employee expects to remain in their job for the next 12 months.
- whether the employee is guaranteed to work a minimum number of hours each week
- whether the employee earnings/income vary from one pay period to the next
- whether the employee usually worked the same number of hours each week.

Monitoring changes in this data, including changes within particular groups that can be identified in the data (for example, by gender or industry) will support the evaluation process.

Additionally, new ABS data on casuals will begin to become available through the Characteristics of Employment survey from December 2025. This follows a decision in the Mid-Year Economic and Fiscal Outlook 2020-21 to provide the ABS \$2.8 million over four years from 2020-21 to expand and improve labour market surveys to cover key gaps in industrial relations statistics – including the experiences of casual employees. This will be a critical data source which will allow the department to analyse the trends in not only the use of casual employment, but also the experiences of casual employees over time as the new casual employment framework becomes more established. The ABS has advised that the following high-level topics will be tested in a new the casual experience module in 2023/24, prior to being incorporated into the Characteristics of Employment survey:

- Broader population group – all respondents over 15 years of age with Labour Force Status of ‘employed’
- Leave - whether have paid sick and holiday leave & whether self-identify as casual
- Length of time working for employer (years)
- Employment expectation - whether expect to be working for employer in 12 months-time
- Hours:
 - whether have a regular pattern of hours each week
 - preference for more hours
 - say over hours/shift pattern
 - ability to reject work without consequence

²⁹ ABS *Characteristics of Employment*, August 2022, unpublished Tablebuilder.

- Preference for casual work and aspects like or don't like about casual work
- Conversion:
 - whether conversation has occurred
 - whether would convert to permanent employment in next 12 months if available
 - whether previously were casual and converted back and reason.

The provision of new ABS data will be supported by activities within the department to gain insights on the practical implementation of the new legislative settings. For example, the department will monitor data and outcomes from relevant Fair Work Commission matters. The department will ensure that relevant functions are appropriately resourced to undertake necessary monitoring and evaluation work and inform legal and policy advice to Government to ensure the new provisions are working as intended.

The department will also continue to engage in stakeholder consultation with employer groups and unions to gauge the impact of the reforms. In particular, the regular meetings of the National Workplace Relations Consultative Council allow the Commonwealth Government, unions, and employers to consult on workplace relations and work health and safety matters of national concern. Meetings are chaired by the Commonwealth Minister for Employment and Workplace Relations.

Standing up for casual workers - regulatory costings

The annual regulatory burden to business, community organisations or individuals as quantified by the Department of Employment and Workplace Relations (the department) using the Australian Government's Regulatory Burden Measurement framework is provided below.³⁰

Table 1: Summary table of annual costings

Change in costs	Business	Community organisations	Individuals	Total change in costs
Total, by sector	\$1,103,410	Nil	\$289,961	\$1,393,372

Table 2: Summary table of annual costings, by business type

Change in costs	Non-small business	Small business	Total cost to business
Total, by sector	\$729,571	\$373,840	\$1,103,410

Employee notification under casual definition

The aim of the policy is to provide a stronger pathway to permanent work for casual employees. This will particularly support people engaged as casual employees where it becomes apparent to them that the real nature of their employment is not casual.

Overview of definition

The new proposed definition of casual employee includes an objective test (the general rule) which is **based on whether the employment relationship is characterised by an absence of a firm advance commitment to continuing and indefinite work**. This absence is necessary to be a casual employee.

To assess whether a person is a casual employee within the meaning of the definition against this general rule, there are characteristics and considerations that include but are not limited to:

- the ability and actual practice of offering and accepting work
- whether continuing work is reasonably likely
- whether part time or full-time employees are undertaking similar roles
- whether the employee has a regular pattern of work.

³⁰ Note that components will not always sum to totals due to rounding.

Available data sources

The best available data set to estimate the number of casual employees who may not meet the objective test and thereby calculate an associated regulatory impact is the ABS Characteristics of Employment Survey. This data set contains key characteristics that can be associated to casual employment, including:

- whether the employee expects to remain in their job for the next 12 months
- whether the employee is guaranteed to work a minimum number of hours each week
- whether the employee earnings/income vary from one pay period to the next
- whether the employee usually worked the same number of hours each week.

There is not explicit alignment between the statutory provisions and this data set. This is because the considerations that apply for purposes of the general rule are broader than these data points. The assessment whether someone is a casual employee is a holistic assessment of all relevant factors in the practical reality of the employment relationship, including understandings or expectations that occur after entering into the initial contract of employment. The application of the definition to an employee will be assessed on a case-by-case basis.

Therefore, assumptions are needed to provide an estimate of the number of casual employees who may be eligible to access the employee choice definition pathway to permanency, to provide a robust estimate of the outer limits of regulatory impact.

Assumptions

Regular casual employees

- The department has estimated that around 851,100 regular casual employees³¹ (32.1 per cent of all 2.7 million casual employees) are most likely to be eligible to change status under the employee choice definition pathway.³²
- Based on the information collected in the ABS Characteristics of Employment publication (August 2022) this number is calculated based on casual employees who are guaranteed to work a minimum number of hours each week and meet at least one of two criteria:
 - earnings/income do not vary from one pay period to the next

³¹ ABS, *Characteristics of Employment, August 2022*, unpublished Tablebuilder.

³² Data on casual employment is available from a number of ABS publications, namely Characteristics of Employment and Quarterly Detailed Labour Force. Data from the Labour Force publication is more timely as it is released on a quarterly basis the month after the data was collected, but is limited in its ability to breakdown the headline figure. Characteristics of Employment is an annual publication but has considerably more information, including the demographic and work characteristics that have been used in much of the costing of these policies.

- usually worked the same number of hours each week
- These employees are most likely to have firm advance commitment to continuing and indefinite work, that is supported by the considerations of regularity, uniformity, predictability and consistency in the work being undertaken.
- This is supported by analysis of demographic features of these employees which shows for example, compared to other casual employees they are:
 - more likely to expect to remain in their current job for the next 12 months (85.3 per cent compared to 82.1 per cent of other casual employees);
 - more likely to work full time hours (44.6 per cent compared to 26.7 per cent of other casual employees);
 - less likely to be studying full time (18.3 per cent compared to 33.0 per cent of other casual employees); and
 - less likely to be young (27.3 per cent aged 15-24 years compared to 44.4 per cent of other casual employees).

Employees with these demographic features are more likely to be continuing to work in a manner akin to a permanent employee as, for example, their number of hours are less likely to vary and they are less likely to reject shifts because of other commitments such as study.

Additional eligible employees

ABS data shows that there are an additional 1,480,500 casual employees who are not regular casual employees (as defined above), but who expect to remain in their current job for the next 12 months.³³ There are likely to be employees in this cohort who may also be eligible to change status under the new employee choice definition pathway, but a clear identification of this cohort is challenging as there is not an explicit alignment between the statutory provisions and available data.

Analysis of ABS data shows that of the 1,480,500 casual employees who expect to remain in their current job for the next 12 months:

- 23.6 per cent usually worked the same hours each week and their pay did not vary from one pay period to the next;³⁴
- 27.1 per cent had been with their employer for 3 years or more;³⁵ and

³³ These casual employees expect to remain with their employer for the next 12 months and either meet the combined conditions of 'guaranteed minimum hours' + 'did not usually work same hours' + 'income varies from one pay period to the next' or are 'not guaranteed minimum hours'.

³⁴ This is a similar cohort to the 851,100 regular casual employees but they did not report having guaranteed minimum hours.

³⁵ ABS, *Characteristics of Employment, August 2022*, unpublished Tablebuilder.

- 28.1 per cent are working full time.

This cohort also report relatively high rates of studying (38.9 per cent) and are typically younger (46.2 per cent aged under 30 years).

On this basis, the department has assumed that **25 per cent** of the 1,480,500 casual employees (or 370,125) may also be eligible to change status under the new employee choice definition pathway.

Total eligible employees

The total number of eligible employees prior to adjustment for minimum periods of service is therefore assumed to be 851,100 + 370,125 = 1,221,225.

Minimum periods of service are relevant because even if an employee is not a casual under the 'general rule' they must still have completed minimum period of service before they can notify their employer under the employee choice definition pathway - 6 months in a non-small business and 12 months in a small business. Applying an adjustment for these minimum periods of service, of the 1,221,225 eligible casual employees:

- 924,425 (75.7 per cent) have worked regularly for 6 months or more, with 634,156 (68.6 per cent of this group) assumed to be working in a non-small business and in scope of this policy;³⁶
- 694,050 (56.8 per cent) worked regularly for 12 months or more, with 217,932 (31.4 per cent of this group) assumed to be working in a small business and in scope of this policy.³⁷

That brings the total number of eligible employees to 634,156 + 217,932 = 852,087.

Other assumptions

- Employer labour costs are \$79.63 per hour³⁸ and casual employee labour costs are \$29.20 per hour.³⁹
- The share of casual workers employed by small business (less than 20 employees) is 31.4 per cent.⁴⁰

It is assumed that the incidence of employees being classified as casual but working in a manner akin to a permanent employee will fall over time – and hence the number of casual employees seeking to

³⁶ ABS, *Characteristics of Employment, August 2022*, unpublished Tablebuilder; ABS, *Employee Earnings and Hours, May 2021*.

³⁷ ABS, *Characteristics of Employment, August 2022*, unpublished Tablebuilder; ABS, *Employee Earnings and Hours, May 2021*.

³⁸ [Regulatory Burden Measurement Framework \(pmc.gov.au\)](http://pmc.gov.au)

³⁹ ABS, *Characteristics of Employment, August 2022*. Based on the median hourly wage of a casual employee in their main job at August 2022. The median has been used as it is less affected by outliers and skewed data.

⁴⁰ ABS, *Employee Earnings and Hours, May 2021* (latest available data). Note: the ABS definition of a small business is less than 20 employees. This differs from the definition in the Fair Work Act 2009 which classifies a small business as employing less than 15 employees. Casual employees are not included in the count unless engaged on a regular and systematic basis. Further disaggregation of ABS data to align with the Fair Work Act definition is not readily available and as such the proportion of casual employees in a small business therefore is likely an overestimate as it captures those that work in businesses with 15-19 employees.

convert under the definition will also fall over time – as understanding and application of the new definition increases. The process followed by an employer in responding to a casual employee notification for conversion through the employee choice definition pathway is assumed to mirror that for the casual conversion steps in the *Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Act 2021* (Cth) (SAJER) provisions.

The costs to employers of casual employees will include time to:

- acknowledge and consider the notification from a casual employee for conversion AND
- notify the employee of the decision and discuss it with the employer if the employer disagrees with the notification OR
- notify the employee of the decision if the employer agrees, plus time for discussion with the employee, drawing up of a new contract and updating payroll and other systems.

There will also be a cost to employees, including time to:

- notify the employer that they do not meet the definition of casual AND
- discuss with the employer if the employer disagrees OR
- discuss with the employer if the employer agrees, plus time to read and sign a new contract.

The assumption in the SAJER Regulatory Impact Statement (RIS)⁴¹ was that the casual conversion process would take 10 minutes for employers. It also assumed that efficiencies would be gained over time by repetition, through the availability of appropriate software from employer organisations and through support available from the Fair Work Ombudsman.

In this costing, it is assumed that it would take an employer 15 minutes to address a notification from an employee for conversion under the definition. This is slightly higher than the existing conversion pathway to reflect that the definition based pathway is a holistic assessment but also recognises a statutory conversion process has been in place since 2021 and would likely provide efficiencies for employers when considering notifications under the employee choice definition pathway.

The steps for an employee to determine whether to notify they no longer meet the statutory definition and therefore change to permanent employment and to discuss with the employer are similarly aligned with the employee's steps outlined in the SAJER RIS for casual conversion.

In this costing, it is assumed that the process will take 20 minutes for an employee: employees will have less experience than employers about casual employment and the definition of casual

⁴¹ Regulatory Impact Statement contained within the revised explanatory memorandum, [ParlInfo - Fair Work Amendment \(Supporting Australia's Jobs and Economic Recovery\) Bill 2021 \(aph.gov.au\)](#)

employment, and what they mean. But employers will be more familiar with the conversion process, which should ease the process for employees during discussions with their employer.

As outlined in the response to question 5, there has been extensive consultation on the policy problem and potential solution to supporting casual employees with a clearer pathway to permanent, secure work. With respect to consultation and testing of the specific data, methodology and assumptions used in this regulatory costing, the department can advise that:

- The core data underpinning the calculations is the ABS Characteristics of Employment. This publication has the widest range of data for casual employees produced by the ABS. As our national statistical agency, the data produced is independent and publicly used by both employer and union groups.
- The use of ABS Characteristics of Employment is consistent with data used by key stakeholders in analysis of casual work in Australia. For example, the Australian Industry Group's research report '*Casual work in the contemporary labour market*'⁴² uses this source to identify characteristics and demographics related to casual work and identified that casual employment is most common amongst younger workers and is widely used by those studying.

The methodology and assumptions applied to the calculations – identification of cohorts of casual employees within the Characteristics of Employment dataset, conversion rates over the 10 year costing period, and times to undertake steps within the status change process – are consistent with the methodology that was used for the Regulatory Impact Statement⁴³ for the legislative reforms which introduced the initial statutory casual conversion process. That Regulatory Impact Statement was assessed as good practice by the Office of Best Practice Regulation (the predecessor to the Office of Impact Analysis).⁴⁴

- As is standard practice this Regulatory Impact Statement was included as part of the explanatory memorandum to the Bill that was tabled in the Australian Parliament, and therefore was fully accessible to all stakeholders.
- As part of parliamentary consideration of the Bill, the Senate Education and Employment Legislation Committee held a public inquiry into the Bill and received 134 submissions from stakeholders, including employer groups and unions. These submissions did not raise

⁴² Australian Industry Group '*Casual work in the contemporary labour market*' [Casual work in the contemporary labour market | Ai Group](#), July 2023

⁴³ Regulatory Impact Statement contained within the revised explanatory memorandum, [ParlInfo - Fair Work Amendment \(Supporting Australia's Jobs and Economic Recovery\) Bill 2021 \(aph.gov.au\)](#)

⁴⁴ Attorney-General's Department, [Casual employment reform](#), 11 December 2020

concerns with the data sources, methodology or assumptions outlined in the Regulatory Impact Statement.

Costing of employee notification

There are different conditions applying to small businesses – employees must have had a period of 12 months service before they are eligible to notify, whereas employees in other businesses are eligible to notify after 6 months service. The costings below are therefore differentiated between small businesses and other businesses.

Business excluding small business

Year 1 costs

Table 3 gives the **estimated cost for year 1** – for employers and employees – arising from casual employees wanting to convert under the new definition: **\$1,879,690**

In the first year, 10 per cent of eligible casual employees convert to a permanent role using the new employee choice definition pathway. This will apply to the 924,425 eligible casual employees who have been with their employer for at least 6 months but excludes the 290,269 estimated small business eligible casual employees.

Table 3: Estimated cost – year 1 – eligible casual employees wanting to convert under the new definition – excluding small business

	Labour cost/hour⁴⁵	Time to make assessment (minutes)⁴⁶	10 per cent of eligible casual employees employed for more than 6 months	Total cost
Employer	\$79.63	15	63,416	\$1,262,445
Employee	\$29.20	20	63,416	\$617,245
Total	-	-	-	\$1,879,690

Years 2 to 10 costs

Table 4 gives the **estimated annual cost for years 2 to 5** – for employers and employees – arising from casual employees wanting to convert under the new definition: **\$830,984 per year**.

Table 5 gives the **estimated annual cost for years 6 to 10** – for employers and employees – arising from casual employees wanting to convert under the new definition: **\$415,492 per year**.

For conversion under the new definition, the department estimates that the proportion of eligible casuals seeking conversion remains at 10 per cent over years 2-5, before dropping to 5 per cent for years 6-10, aligning with the assumption that the incidence of employees being classified as casual but working in a manner akin to a permanent employee will reduce as understanding and application of the new definition increases.

⁴⁵ Employer labour cost: [Regulatory Burden Measurement Framework \(pmc.gov.au\)](https://pmc.gov.au)

Casual employee labour cost: ABS, *Characteristics of Employment, August 2022*. Based on the median hourly wage of a casual employee in their main job at August 2022. The median has been used as it is less affected by outliers and skewed data.

⁴⁶ Based on SAJER estimates.

Table 4: Estimated annual cost – years 2 to 5, eligible casual employees seeking to convert under the new definition – excluding small business

	Labour cost/hour ⁴⁷	Time to make assessment (minutes) ⁴⁸	10 per cent of eligible casual employees employed between 6 and 12 months	Total cost
Employer	\$79.63	15	28,035	\$558,109
Employee	\$29.20	20	28,035	\$272,875
Total	-	-	-	\$830,984

Table 5: Estimated annual cost – years 6 to 10, eligible casual employees seeking to convert under the new definition – excluding small business

	Labour cost/hour ⁴⁹	Time to make assessment (minutes) ⁵⁰	5 per cent of eligible casual employees employed between 6 and 12 months	Total cost
Employer	\$79.63	15	14,018	\$279,054
Employee	\$29.20	20	14,018	\$136,438
Total	-	-	-	\$415,492

10 years costs: average annual – excluding small business

The average annual cost is shown in Table 6.

Table 6: Estimated annual cost, eligible casual employees seeking to convert under the new definition – excluding small business

	Employer cost	Employee cost	Total cost
Regulatory cost	\$489,015	\$239,093	\$728,109

Small business

Year 1 costs

Since the provisions for small business do not come into effect until after an employee has completed at least 12 months service, there will be no regulatory cost in year 1.

⁴⁷ Employer labour cost: [Regulatory Burden Measurement Framework \(pmc.gov.au\)](https://www.pmc.gov.au)

Casual employee labour cost: ABS, *Characteristics of Employment, August 2022*. Based on the median hourly wage of a casual employee in their main job at August 2022. The median has been used as it is less affected by outliers and skewed data.

⁴⁸ Based on SAJER estimates.

⁴⁹ Employer labour cost: [Regulatory Burden Measurement Framework \(pmc.gov.au\)](https://www.pmc.gov.au)

Casual employee labour cost: ABS, *Characteristics of Employment, August 2022*. Based on the median hourly wage of a casual employee in their main job at August 2022. The median has been used as it is less affected by outliers and skewed data.

⁵⁰ Based on SAJER estimates.

Year 2 costs

Table 7 gives the **estimated cost for year 2** for small business – for employers and employees – arising from casual employees wanting to convert under the new definition: **\$645,968**

In the first year, 10 per cent of eligible casual employees in small businesses convert to a permanent role using the new employee choice definition pathway. This will apply to the 217,932 eligible casual employees who have been with their small business employer for at least 12 months.

Table 7: Estimated cost – year 2 – eligible casual employees wanting to convert under the new definition – small business

	Labour cost/hour ⁵¹	Time to make assessment (minutes) ⁵²	10 per cent of small business eligible casual employees employed for 12 months or more	Total cost
Employer	\$79.63	15	21,793	\$433,848
Employee	\$29.20	20	21,793	\$212,120
Total	-	-	-	\$645,968

Years 3 to 10 costs

Table 8 gives the **estimated annual cost for years 3 to 5** – for employers and employees – arising from casual employees wanting to convert under the new definition: **\$164,203 per year**.

Table 9 gives the **estimated annual cost for years 6 to 10** – for employers and employees – arising from casual employees wanting to convert under the new definition: **\$82,101 per year**.

For conversion under the new definition, the department estimates that the proportion of eligible casuals seeking conversion remains at 10 per cent over years 3-5, before dropping to 5 per cent for years 6-10, aligning with the assumption that the incidence of employees being classified as casual but working in a manner akin to a permanent employee will reduce as understanding and application of the new definition increases.

⁵¹ Employer labour cost: [Regulatory Burden Measurement Framework \(pmc.gov.au\)](https://pmc.gov.au)

Casual employee labour cost: ABS, *Characteristics of Employment, August 2022*. Based on the median hourly wage of a casual employee in their main job at August 2022. The median has been used as it is less affected by outliers and skewed data.

⁵² Based on SAJER estimates.

Table 8: Estimated annual cost – years 3 to 5, eligible casual employees seeking to convert under the new definition – small business

	Labour cost/hour ⁵³	Time to make assessment (minutes) ⁵⁴	10 per cent of small business eligible casual employees employed for 12 months	Total cost
Employer	\$79.63	15	5,540	\$110,282
Employee	\$29.20	20	5,540	\$53,920
Total	-	-	-	\$164,203

Table 9: Estimated annual cost – years 6 to 10, eligible casual employees seeking to convert under the new definition – small business

	Labour cost/hour ⁵⁵	Time to make assessment (minutes) ⁵⁶	5 per cent of small business eligible casual employees employed for 12 months	Total cost
Employer	\$79.63	15	2,770	\$55,141
Employee	\$29.20	20	2,770	\$26,960
Total	-	-	-	\$82,101

10 years costs: average annual – small business

The average annual cost over 10 years is shown in Table 10.

Table 10: Estimated annual cost, eligible casual employees seeking to convert under the new definition – small business

	Employer cost	Employee cost	Total cost
Regulatory cost	\$104,040	\$50,868	\$154,908

⁵³ Employer labour cost: [Regulatory Burden Measurement Framework \(pmc.gov.au\)](https://pmc.gov.au)

Casual employee labour cost: ABS, *Characteristics of Employment, August 2022*. Based on the median hourly wage of a casual employee in their main job at August 2022. The median has been used as it is less affected by outliers and skewed data.

⁵⁴ Based on SAJER estimates.

⁵⁵ Employer labour cost: [Regulatory Burden Measurement Framework \(pmc.gov.au\)](https://pmc.gov.au)

Casual employee labour cost: ABS, *Characteristics of Employment, August 2022*. Based on the median hourly wage of a casual employee in their main job at August 2022. The median has been used as it is less affected by outliers and skewed data.

⁵⁶ Based on SAJER estimates.

All businesses

10 years costs – all businesses

The average annual cost for all businesses over 10 years is shown in Table 11.

Table 11: Estimated annual cost, eligible casual employees seeking to convert under the new definition – all businesses

	Employer cost	Employee cost	Total cost
Regulatory cost	\$593,055	\$289,961	\$883,017

Over 10 years, the total cost would be \$8,830,167⁵⁷

- **Non-small business**
 - Total employer cost = year 1 employer cost + 4 x year 2 employer cost + 5 x year 6 employer cost = \$1,262,445 + 4 x \$558,109 + 5 x \$279,054 = \$4,890,153
 - Total employee cost = year 1 employee cost + 4 x year 2 employee cost + 5 x year 6 employee cost = \$617,245 + 4 x \$272,875 + 5 x \$136,438 = \$2,390,932
 - Total cost = total employer cost + total employee cost = \$4,890,153 + \$2,390,932 = \$7,281,085
- **Small business**
 - Total employer cost = year 1 employer cost + year 2 employer cost + 3 x year 3 employer cost + 5 x year 6 employer cost = \$0 + \$433,848 + 3 x \$110,282 + 5 x \$55,141 = \$1,040,401
 - Total employee cost = year 1 employee cost + year 2 employee cost + 3 x year 3 employee cost + 5 x year 6 employee cost = \$0 + \$212,120 + 3 x \$53,920 + 5 x \$26,960 = \$508,681
 - Total cost = total employer cost + total employee cost = \$1,040,401 + \$508,681 = \$1,549,082
- **All businesses**
 - Total non-small business cost + total small business cost = \$7,281,085 + \$1,549,082 = \$8,830,167

Potential regulatory cost saving

Assuming that a proportion of eligible casual employees convert to permanent employment under the new definition means there will be fewer casual employees eligible for conversion after 12 months as per the existing conversion process. The cost of processing those casual employees who have been converted before 12 months will be removed for businesses.

⁵⁷ Note this figure has not been adjusted to account for inflation over the 10-year period.

The department has not calculated the potential regulatory cost savings attributable to this, noting this would require recalculation of costs under SAJER to adjust to changes in population. Both the *Standing up for casual workers* costing and the SAJER costing do not include adjustments for population growth over time.

Provision of revised Casual Employment Information Statement (CEIS) to all casual employees

The transitional provisions will require employers to send the revised Casual Employment Information Statement (CEIS) to all casual employees within 3 months of the laws commencing.

The following assumptions are made:

- the CEIS is sent to all casual employees
- it takes the employer 1 minute to give the CEIS to an employee (which can be given to the employee in person, by mail, by email, by emailing a link to the FWO website page, by emailing a link to a copy of the CEIS available on the employer’s intranet, by fax, or by another method)⁵⁸
- as at May 2023 there are 2.6 million casual employees⁵⁹
- there is no cost to employees.

Table 12 shows the estimated one-off cost: **\$3,506,640**.

Table 12: Estimated annual cost – provision of revised CEIS to casual employees

	Labour cost/hour	Time per business to send CEIS to casual employee (minutes)	Casual employees	Total cost
Employer	\$79.63	1	2,642,200	\$3,506,640
Employee	-	-	-	-
Total				\$3,506,640

Provision of Casual Employment Information Statement (CEIS) after 12 months to all casual employees

All employers are already required to provide the CEIS to casual employees when they are hired. The proposed reforms will require that the CEIS is provided to casual employees again at 12 months of employment to increase knowledge and awareness of their rights and entitlements.

Employers who are not small businesses under the *Fair Work Act 2009* are required to offer casual conversion to their casual employees (or inform them of the reason they aren’t making an offer of casual conversion) within 21 days of the employee having been employed for 12 months. Although

⁵⁸ See [Casual Employment Information Statement - Fair Work Ombudsman](#).

⁵⁹ ABS, *Labour Force, Detailed, Quarterly, May 2023*. This is the most recent data on the number of casual employees, but there is no associated characteristics information which was used in the costing of the casual definition (most recent data for that is ABS, *Characteristics of Employment, August 2022*).

not currently required to provide the CEIS to casual employees, these businesses are required to send other documents to casual employees at this 12-month point. The assumption is that the CEIS can be attached to this other information at negligible cost to employers.

Small business employers are currently not required to provide any information to casual employees at 12 months (since they are not required to offer casual conversion).

The following assumptions are made:

- the CEIS is sent to small business casual employees who have been employed for 12 months
- it takes the employer 1 minute to give the CEIS to an employee (which can be given to the employee in person, by mail, by email, by emailing a link to the FWO website page, by emailing a link to a copy of the CEIS available on the employer’s intranet, by fax, or by another method)⁶⁰
- 383,200 casual employees were employed for 12 months⁶¹
- the share of casual workers employed by small business (less than 20 employees) is 31.4 per cent⁶²
- there is no cost to employees.

Table 13 shows the estimated annual cost: **\$159,691**.

Table 13: Estimated annual cost – provision of CEIS to casual employees by small businesses

	Labour cost/hour	Time per business to send CEIS to eligible casual employee (minutes)	Casual employees employed for 12 months by small business	Total cost
Employer	\$79.63	1	120,325	\$159,691
Employee	-	-	-	-
Total				\$159,691

Dispute Resolution

The Office of Impact Analysis’s Guidance Note on the Regulatory Burden Measurement Framework⁶³ advises that certain costs are excluded from the Regulatory Burden Measurement Framework and are not required to be considered when quantifying an estimate of burden. Relevantly, this includes ‘Non-compliance and enforcement costs’, including costs incurred in court and tribunal processes.

⁶⁰ See [Casual Employment Information Statement - Fair Work Ombudsman](#).

⁶¹ ABS, Characteristics of Employment, *August 2022*, unpublished Tablebuilder.

⁶² ABS, Employee Earnings and Hours, May 2021 (latest available data)

⁶³ [Regulatory Burden Measurement Framework \(pmc.gov.au\)](#)

In accordance with this advice, costs associated with the dispute resolution through the workplace tribunal, the Fair Work Commission, are not included in the costings. Specific outcomes may depend on the approach that independent parties – such as employers, unions and the Fair Work Commission – take in response to the provisions. This is consistent with the approach taken to the impact analysis for the SAJER reforms.

Employers and employees will only utilise the Fair Work Commission's dispute resolution processes in circumstances where a party is of the view that an action taken by another party is not consistent with their legislative obligations – for example if an employee has exercised their right to change to permanent because they believe they do not meet the statutory definition of a casual employee but the employer is of the view that the employee still meets the definition of a casual employee. The time and financial cost would vary from dispute to dispute but noting that the Fair Work Commission is a tribunal it would be lower cost and quicker than court processes.

While the volume of disputes may increase in comparison to current levels – noting there will be a new pathway for casual employees to become permanent – it is expected to remain low overall. Under the existing Fair Work Commission casual conversion dispute resolution processes, in the period from 27 March 2021 (when the provisions commenced) until 31 March 2023 there have been a total of 86 disputes lodged with the Fair Work Commission.

Given the inherent uncertainty in how independent parties will respond to this policy and the employee choice definition pathway is a new jurisdiction, the department has determined that estimations of the dispute costs would not be sufficiently robust to contain a meaningful estimate of the costs.

Submissions to the Job Security Inquiry

Submissions can be accessed at [Submissions – Parliament of Australia \(aph.gov.au\)](https://aph.gov.au/submissions)

Note: Some submissions reflect the endorsement of other peak organisations within the submission.

1 La Trobe Casuals Network

2 Professor Michael Quinlan & Dr Elsa Underhill

6 Australian Institute of Employment Rights

7 Law Society of New South Wales

11 National Foundation for Australian Women

13 Victorian Council of Social Service (VCOSS)

15 Queensland Nurses and Midwives' Union (QNMU)

16 Victorian Government

26 Migrant Workers Centre

27 Australian Nursing and Midwifery Federation

29 National Retail Association

30 Per Capita

32 National Youth Commission Australia

37 Mr George Stribling, Lauren Kavanagh, Shirisha Nampalli, Quyen Nguyen,

Joshua Paveley and Maddy Yates

41 Australia Institute, Centre for Future Work

45 The Salvation Army

46 Australasian Centre for Corporate Responsibility

47 National Tertiary Education Union (NTEU)

49 ACT Government

50 Youth Action NSW

55 Dr Veronica Sheen

56 Springvale Monash Legal Service

59 The University of Sydney Casuals Network

60 Minerals Council of Australia

61 Science & Technology Australia

63 The National and State Youth Peaks

64 Council of Australian Postgraduate Association (CAPA)

71 Australian Chamber of Commerce and Industry (ACCI)

78 Unions NSW

88 Emeritus Professor David Peetz FASSA

90 Retail and Fast Food Workers Union

91 Jesuit Social Services

92 Kingsford Legal Centre and Redfern Legal Centre

94 Anglicare Australia

95 Job Watch Inc.

96 Unions ACT

98 Australian Council of Trade Unions (ACTU)

99 Young Workers Centre, Unions ACT

100 Western Australian Government

101 Queensland Teachers' Union

102 Community and Public Sector Union (CPSU)

104 Queensland Government

113 Construction, Forestry, Maritime, Mining & Energy Union (CFMEU)

116 Rail, Tram and Bus Union

117 Queensland Council of Unions

118 Western Australian Council of Social Service Inc.

119 UnionsWA

122 Australian Manufacturing Workers' Union

125 The WorkPac Group

179 National Union of Students

184 Isaac Regional Council

186 Hunter Workers

199 Australian Workers' Union

201 Australian Education Union Federal Office

204 Finance Sector Union of Australia

206 Unions Tasmania

209 Working Women's Centre SA

211 United Services Union

219 Australian Community Industry Alliance

220 Hunter Jobs Alliance

Recommendations from the Job Security Inquiry related to casuals and casual conversion

First interim report: on-demand platform work in Australia (24 June 2021)

Rec 10 The committee recommends that the Australian Government empowers the Fair Work Commission (FWC) to provide pathways to permanency via arbitrations for casual conversion. Any disputes with regards to work status, contractual arrangements, or casual conversion should be able to be arbitrated via a low cost, accessible process, whether via the FWC or another body, to ensure workers are able to practically enforce their rights, and both workers and employers can have matters adjudicated- quickly.

Second interim report: insecurity in publicly-funded jobs (19 October 2021)

Rec 23 The committee recommends that the Australian Government Department of Education, Skills and Employment works closely with universities, workers, experts, the National Tertiary Education Union, and relevant sector bodies, to design a system of casual and fixed-term conversion that would be appropriate for the higher education sector.

This system should include sector-appropriate definitions of casual and fixed-term work, and limit the use of casual and fixed-term employment to genuinely non-ongoing work.

Rec 24 The committee recommends that the Australian Government requires all universities to provide a more detailed report of their staffing composition to the Department of Education, Skills and Employment, including:

- annualised data on permanent, fixed-term and casual staff in terms of both headcounts and full-time equivalents;
 - annualised data on the use of labour hire and other external contractors; and
 - annualised detailed data around gender, cultural diversity, age, earnings, length of service and retention rates for casual staff, and compared with permanent staff.
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Rec 25 The committee recommends that the Australian Government requires, as a condition of receiving public funding, universities to set publicly-available targets for increasing permanent employment, and reducing casualisation, and report their progress against these targets on an annual basis. The targets should be established in consultation with industry experts, workers and the National Tertiary Education Union (NTEU).

The Department of Education, Skills and Employment should review the impact of this measure after three years, and—if it has not been effective in reducing the level of casualisation—the Australian Government should then work with universities and the NTEU to impose meaningful but achievable funding-linked targets.

Rec 27 The committee recommends that the Australian Government offers permanent employment opportunities to all long-term casual employees currently performing roles which relate to ongoing stable work.

Rec 28 The committee recommends that the Australian Government eliminates the utilisation of long-term casual employment across the Australian Public Service for roles which are not irregular or intermittent in nature, unless genuinely preferred by the employee.

Fourth interim report: the job insecurity report (11 February 2022)

Rec 6 The committee recommends that the Australian Government urgently assesses the performance of the *Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Act 2021* (Cth). As the data collected through this inquiry suggests, the amendment has not had a positive impact on job security, and it should be repealed and replaced with a new statutory definition of casual employment that reflects the true nature of the employment relationship—rather than a definition which relies upon the employer's description of the relationship in an employment contract—and a new casual conversion provision.

Rec 8 The committee recommends that the Australian Government provides encouragement and incentives for businesses to hire permanent staff instead of casuals through investigating the use of:

- education campaigns around the benefits of ongoing employment for businesses and employers;
- training and employment subsidies with secure, ongoing employment requirements attached to the funding;
- increasing reporting requirements for publicly-listed companies in relation to work status, pay and conditions; and
- introducing a procurement framework to prioritise firms that favour a permanent, directly engaged workforce.

Rec 9 The committee recommends that the Australian Government provides increased resources for the Fair Work Ombudsman, unions and employer associations to provide tripartite support and education to small businesses about their regulatory obligations—and their employees about

their industrial rights—in order to increase the proportion of permanent employment in the small business sector.

Rec 15 The committee recommends that the Senate give consideration to the referral of an inquiry to the Community Affairs References Committee, examining:

The extent and impact of on demand platform employment, increasing casualisation, use of labour hire/agency work, and contract labour in aged care, disability care, social services and health care more broadly, with specific regard to:

- impacts of on-demand platform employment models on care workers' experiences of work and sense of job satisfaction;
- pay and conditions for workers engaged through platforms, labour hire and agency roles, and casual staff, compared with permanent staff;
- training and career progression for on-demand platform workers and labour hire/agency workers;
- impacts of work status and worker experiences on retention and motivation to stay in the sector;
- the interactions of gender and migration/visa status with work status in the care sectors;
- any evidence regarding the impacts of different employment models on pay rates and conditions across the sectors more broadly; and
- any related matters.

If such an inquiry were referred, that the committee or any subcommittee have power to consider and make use of the evidence and records of the former Select Committee on Job Security appointed during the 46th Parliament.

Rec 20 The committee recommends that the Senate give consideration to the referral of an inquiry to the Education and Employment References Committee, examining:

The extent, growth and impact of insecure work in Australia, with specific regard to:

- definitions and measures of insecure and precarious work, and the need to develop national measures, and a national data set, to understand changes over time;
 - the growth in insecure work since the 1970s and the impacts of government policies on this growth;
 - the impacts of the pandemic on the growth of insecure and precarious jobs, including those in the on-demand platform sector;
 - job insecurity among vulnerable workers, including migrants and temporary residents;
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- the experiences of workers in insecure jobs, their pay and conditions, and the impacts on their health, wellbeing, social connection and prosperity;
 - perspectives of employers on the use of casual, fixed-term contract, labour hire and platform workforce arrangements;
 - impacts on the level of casual and insecure work of the reforms made in 2021 to the *Fair Work Act 2009* (Cth) through the *Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Act 2021* (Cth), particularly those concerning casual conversion;
 - the adequacy of existing legislative and regulatory regimes to address the challenges of insecure and precarious work; and
 - any related matters.

If such an inquiry were referred, that the committee or any subcommittee have power to consider and make use of the evidence and records of the former Select Committee on Job Security appointed during the 46th Parliament.

Recommendations of the Review of the Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Act 2021 (Cth)

Finding 1: consideration should be given to whether the definition should focus solely on the terms of initial offer and acceptance, and 'not on the basis of any subsequent conduct of either party' (as per section 15A(4) of the *Fair Work Act 2009* (Cth)).

Finding 2: Consideration should be given to including a suitable anti avoidance provision in section 15A of the *Fair Work Act 2009* (Cth), to exclude sham casual employment arrangements from meeting the statutory definition. Further regard should also be had to whether the *Fair Work Act 2009* (Cth) provides a sufficient deterrence for parties to enter into such arrangements, or whether additional deterrence is necessary.

Finding 3: Notwithstanding the operation of section 66L of the *Fair Work Act 2009* (Cth), strengthening of the compliance and enforcement mechanisms could guard against circumstances where an employer uses termination of employment and re-engagement as a method to avoid the requirement to offer casual employees' conversion.

Finding 4: On the data available, the casual conversion arrangements introduced by the FW (SAJER) Act (that consists of both employer offer and employee request avenues) do not appear to have significantly impacted the number of casual conversions.

While the implementation of the amendments may require further time to realise the legislative intent, the casual conversion mechanism could be refined with a focus on:

- measuring the utility of the employer offer avenue of conversion, particularly having regard to conversion rates and the associated regulatory impost or administrative burden on employers to comply with the requirements; and
- how casual employees of small businesses can receive access to conversion opportunities that are no less favourable than opportunities that are provided to casual employees of medium or large businesses.

Finding 5: The current review and appeal mechanisms may present barriers that discourage employees to pursue such courses of action. Further consideration should be given to methods of better facilitating access to dispute resolution for employees.

Finding 6: Consideration should be given to whether an anti-avoidance provision is inserted into section 545A of the *Fair Work Act 2009* (Cth), which would have the effect of precluding employers

who have knowingly or recklessly misclassified employees from relying on the statutory offset mechanism.

Finding 7: Consideration should be given to placing an obligation on employers to provide the Casual Employment Information Statement (CEIS) to casual employees at multiple points in the employment lifecycle (in addition to commencement of employment). Appropriate stages in the employment lifecycle could include the point in time that a casual employee becomes eligible to convert to permanent employment.

Finding 8: Further initiatives to increase awareness and knowledge of the content of the CEIS could assist to achieve the legislative intent of, and compliance with the amendments.

**Written submissions to the Review of the *Fair Work Amendment
(Supporting Australia's Jobs and Economic Recovery) Act 2021 (Cth)***

Submissions can be accessed at [Statutory Review of casual employment legislation - Department of Employment and Workplace Relations, Australian Government \(dewr.gov.au\)](https://www.dewr.gov.au/statutory-review/casual-employment-legislation)

Australian Council of Trade Unions

Australian Industry Group

Australian Retailers Association

Business Council of Australia

CFMEU Construction

Electrical Trades Union

Housing Industry Association

Master Grocers Australia and Timber Merchants Australia

Motor Trades Association of Queensland

National Foundation for Australian Women

National Road Transport Association

National Tertiary Education Union

Recruitment, Consulting and Staffing Association

South Australian Wine Industry Association Incorporated

Unnamed Community Legal Centre

Unnamed Not-for-profit Research Organisation

Victorian Automotive Chamber of Commerce

Victorian Government

Western Australian Government

Attendees at consultation sessions as part of the *Review of the Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Act 2021 (Cth)*

Stakeholder Employment law academics, 5 July 2022

Professor Andrew Stewart

Employer representatives, 6 July 2022

Business Council of Australia

Housing Industry Association

Australian Chamber of Commerce and Industry

Australian Higher Education Industrial Association

Recruitment, Consulting and Staffing Association

Australian Industry Group

Master Grocers Australia

Motor Trades Association Queensland

National Retail Association

National Farmers' Federation

Minerals Council of Australia

Employee representatives, 8 July 2022

Legal Aid NSW

Retail and Fast Food Workers Union

State and Territory representatives, 11 July 2022

Department of Premier and Cabinet (Victoria)

Office of Industrial Relations (Queensland)

Department of Justice (Tasmania)

Department of Mines, Industry, Regulation and Safety (Western Australia)

Commonwealth entities 14 July 2022

Australian Public Service Commission

Australian Small Business and Family Enterprise Ombudsman

Fair Work Commission

Fair Work Ombudsman

Federal Circuit and Family Court of Australia Federal Court of Australia

Sydney in person session, 15 July 2022

Motor Traders' Association of NSW

Council of Small Business Organisations Australia

Australian Retailers Association

Association of Professional Staffing Companies

Australia Electrical Trades Union

Business Council of Australia

Australian Industry Group

