

Division 4A—Casual employment

Subdivision A—Application of Division

66A Division applies to casual employees etc.

- (1) This Division applies in relation to an employee who is a casual employee.
- (2) A reference in this Division to full-time employment or part-time employment is taken not to include employment for a specified period of time, for a specified task or for the duration of a specified season.

66AAA Object of this Division

The object of this Division is to establish a framework for dealing with changes to casual employment status that:

- (a) is quick, flexible and informal; and
- (b) addresses the needs of employers and employees; and
- (c) provides for the resolution of disputes to support employee choice about employment status.

Subdivision B—Employee choice about casual employment

66AAB Employee notification

A casual employee may give an employer a written notification under this section if:

- (a) having regard to subsections 15A(1) to (4) and the employee's current employment relationship with the employer, the employee believes that the employee no longer meets the requirements of those subsections; and
- (b) the employee does not have a dispute with the employer relating to the operation of Division 4A of Part 2-2 being

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dealt with under section 66M (including by way of arbitration under section 66MA) or under section 739; and

- (c) if the employer:
 - (i) is a small business employer at the time the notification is given—the employee has been employed by the employer for a period of at least 12 months beginning the day the employment started; or
 - (ii) is not a small business employer at the time the notification is given—the employee has been employed by the employer for a period of at least 6 months beginning the day the employment started; and
- (d) in the period of 6 months before the day the notification is given, the employee has not:
 - (i) received a response from the employer under section 66AAC not accepting a previous notification made under this section; or
 - (v) had a dispute with the employer relating to the operation of Division 4A of Part 2-2 resolved under section 66M (including by way of arbitration under section 66MA) or under section 739.

Note: This section does not prevent an employee changing to full-time employment or part-time employment other than under this Division (see paragraphs 15A(5)(c) and (d)).

66AAC Employer response

Timing of response

- (1) An employer must give an employee a written response to a notification given under section 66AAB within 21 days after the notification is given to the employer.

Information that must be included in response

- (2) The response must be in writing and include the following:
 - (a) a statement that the employer:
 - (i) accepts the notification; or

- (ii) does not accept the notification on one or more grounds referred to in subsection (4); and
- (b) if the employer accepts the notification—the following information:
 - (i) whether the employee is changing to full-time employment or part-time employment;
 - (ii) the employee’s hours of work after the change takes effect;
 - (iii) the day the employee’s change to full-time employment or part-time employment takes effect;
- (c) if the employer does not accept the notification—reasons for the employer’s decision.

Consulting with employee

- (3) Before giving a response under subsection (1), the employer must consult with the employee about the notification and must, if the employer is accepting the notification, discuss the matters the employer intends to specify for the purposes of subparagraphs (2)(b)(i) to (iii).

Grounds for employer to not accept notification

- (4) For the purposes of subparagraph (2)(a)(ii), the employer may not accept the notification on any of the following grounds:
 - (a) having regard to subsections 15A(1) to (4) and the employee’s current employment relationship with the employer, the employee still meets the requirements of those subsections;
 - (b) there are fair and reasonable operational grounds for not accepting the notification;
 - (c) accepting the notification would result in the employer not complying with a recruitment or selection process required by or under a law of the Commonwealth or a State or a Territory.

Note 2: In relation to paragraph (4)(c), see (for example) the APS Employment Principle at paragraph 10A(1)(c) of the *Public Service*

Chapter 2 Terms and conditions of employment

Part 2-2 The National Employment Standards

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Act 1999 (which deals with decisions based on merit) and any directions made under subsection 11A(2) of that Act in relation to that principle.

- (5) For the purposes of paragraph (4)(b), fair and reasonable operational grounds for not accepting the notification include the following:
- (a) substantial changes would be required to the way in which work in the employer's enterprise is organised;
 - (b) there would be significant impacts on the operation of the employer's enterprise;
 - (c) substantial changes to the employee's terms and conditions would be reasonably necessary to ensure the employer does not contravene a term of a fair work instrument that would apply to the employee as a full-time employee or part-time employee (as the case may be).

Note: For the purposes of paragraphs (5)(a) and (c), substantial changes include changes that significantly affect the way an employee would need to work.

66AAD Effect of employer acceptance of employee notification

- (1) If an employer responds under section 66AAC that the employer accepts an employee's notification given under section 66AAB, the employee is taken to be a full-time employee or part-time employee (as the case may be) beginning on the day specified in the response.
- (2) The day specified in the response for the purposes of subsection (1) must be the first day of the employee's first full pay period that starts after the day the employer response is given, unless the employer and employee agree to another day.

Subdivision D—Other provisions

66K Effect of change

To avoid doubt, an employee is taken, on and after the day specified in a notice for the purposes of

subparagraph 66AAC(2)(b)(iii), to be a full-time employee or part-time employee of the employer for the purposes of the following:

- (a) this Act and any other law of the Commonwealth;
- (b) a law of a State or Territory;
- (c) any fair work instrument that applies to the employee;
- (d) the employee's contract of employment.

66L Other rights and obligations

(1) An employer must not do any of the following in order to avoid any right or obligation under this Division:

- (a) reduce or vary an employee's hours of work;
- (b) change the employee's pattern of work;
- (c) terminate an employee's employment.

Note: The general protections provisions in Part 3-1 also prohibit the taking of adverse action by an employer against an employee (which includes a casual employee) because of a workplace right of the employee under this Division.

(2) Nothing in this Division:

- (a) requires an employee to change to full-time employment or part-time employment under this Division; or
- (b) permits an employer to require an employee to change to full-time employment or part-time employment under this Division; or
- (c) requires an employer to increase the hours of work of an employee who gives a notification to change to full-time employment or part-time employment under this Division.

(3) To avoid doubt, each of the following is a workplace right within the meaning of Part 3-1:

- (a) giving an employer a notification under section 66AAB;
- (b) receiving a response from an employer in accordance with section 66AAC;
- (c) being taken to be a full-time employee or part-time employee under section 66AAD;

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- (d) receiving an offer or notice in accordance with sections 66B and 66C;
- (e) accepting an offer and receiving a notice under section 66E;
- (f) participating in a dispute about the operation of this Division in accordance with sections 66M and 66MA.

Note: The general protections provisions in Part 3-1 prohibit adverse action, coercion, undue influence or pressure, and misrepresentations because of a workplace right of an employee.

66M Disputes about the operation of this Division

Application of this section to disputes about employee choice

- (1) This section applies to a dispute between an employer and an employee about the operation of Subdivision B of this Division.

Resolving disputes

- (4) In the first instance, the parties to the dispute must attempt to resolve the dispute at the workplace level, by discussions between the parties.

Note 1: Modern awards and enterprise agreements must include a term that provides a procedure for settling disputes in relation to the National Employment Standards (see paragraph 146(b) and subsection 186(6)).

Note 2: Subsection 55(4) permits inclusion of terms that are ancillary or incidental to, or that supplement, the National Employment Standards. However, a term of a modern award or an enterprise agreement has no effect to the extent it contravenes section 55 (see section 56).

FWC may deal with disputes

- (5) If discussions at the workplace level do not resolve the dispute, a party to the dispute may refer the dispute to the FWC.
- (6) If a dispute is referred under subsection (5):
 - (a) the FWC must first deal with the dispute by means other than arbitration, unless there are exceptional circumstances; and
 - (b) the FWC may deal with the dispute by arbitration in accordance with section 66MA.

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Note: For the purposes of paragraph (a), the FWC may deal with the dispute as it considers appropriate, including by mediation, conciliation, making a recommendation or expressing an opinion (see subsection 595(2)).

Representatives

- (10) The employer or employee may appoint a person, or an employer organisation or employee organisation, that is entitled to represent the industrial interests of the employer or employee to provide the employer or employee (as the case may be) with support or representation for the purposes of:
- (a) resolving the dispute; or
 - (b) the FWC dealing with the dispute.

Note: A person may be represented by a lawyer or paid agent in a matter before the FWC only with the permission of the FWC (see section 596).

Procedural rules

- (11) Without limiting section 609, the procedural rules may provide, in relation to a dispute between an employer and employee that has been referred to the FWC under subsection (5) of this section, for the joinder of the following as parties to the dispute:
- (a) any other employee that has a dispute to which this section applies with the same employer;
 - (b) any employee organisation that is entitled to represent the industrial interests of such an employee.

66MA Arbitration

FWC may make any orders it considers appropriate

- (1) For the purposes of paragraph 66M(6)(b), the FWC may deal with the dispute by arbitration, including by making any orders it considers appropriate, including (but not limited to) any order referred to in subsection (4) of this section.

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- (2) However, the FWC must not make an order under this section unless the FWC considers that it would be fair and reasonable to make the order.

Note: The FWC must also take into account the object of this Act and the object of this Division (see paragraph 578(a)).

- (3) The FWC must not make an order under subsection (1) that would be inconsistent with:
- (a) a provision of this Act; or
 - (b) a term of a fair work instrument (other than an order made under that subsection) that, immediately before the order is made, applies to the employer and employee.

Orders relating to employee choice

- (4) For the purposes of paragraph (1)(a), the orders are the following:
- (a) that the employee continue to be treated as a casual employee;
 - (b) that the employee be treated as a full-time employee or part-time employee (as the case may be) from the first day of the employee's first full pay period that starts after the day the order is made, or such later day that the FWC considers appropriate.
- (5) In considering whether to make, and the terms of, an order under subsection (1) (including an order referred to in subsection (4)) in relation to a dispute about the operation of Subdivision B of this Division (which deals with employee choice about casual employment), the FWC must:
- (a) have regard to whether substantial changes to the employee's terms and conditions would be reasonably necessary to ensure the employer does not contravene a term of a fair work instrument that would apply to the employee as a full-time employee or part-time employee; and
 - (b) disregard conduct of the employer and employee that occurred after the employee gave the notification under section 66AAB (which deals with employee choice notifications) to the employer.

Contravening an order under subsection (1)

- (8) A person must not contravene a term of an order made under subsection (1).

Note: This subsection is a civil remedy provision (see Part 4-1).