

WELCOME

Welcome to our September 2021 edition of the StewartBrown newsletter. We hope to keep you informed of the important tax developments and issues affecting businesses in Australia today and throughout the year ahead.

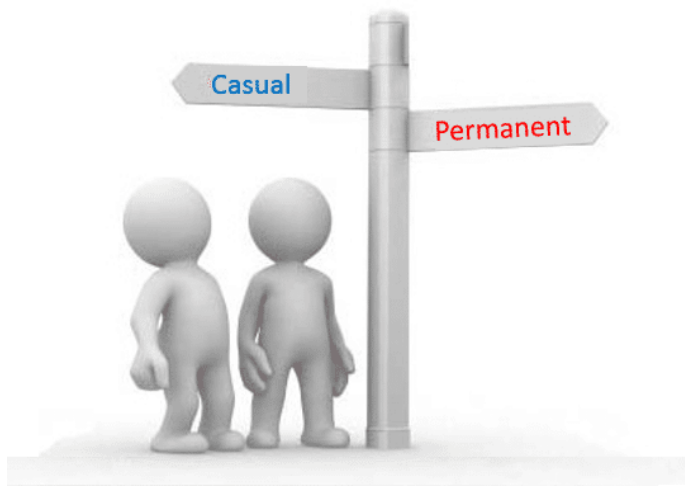
CASUAL EMPLOYMENT LAW CHANGES EFFECTIVE 27 SEPTEMBER 2021

According to the Fair Work Ombudsman (“FWO”), Australian businesses with long-term casual staff could soon face fines in excess of \$66,000 if they fail to offer those staff members permanent positions from 27 September 2021. From that date, employers will need to begin contacting casual staff, employed for at least 12 months, with a written offer to convert them to permanent employment.

The requirement comes after reforms to the Fair Work Act were passed in March, 2021 giving casual employees the right to convert to permanent employment after 12 months of employment, if they have had a regular pattern of hours on an ongoing basis over the past six months.

Small business employers, defined as those with fewer than 15 employees at any given time, are not required to offer their casual employees an opportunity to convert to permanent employment.

Employers will also not be required to make an offer if there are “reasonable grounds” not to do so. According to the FWO, such grounds include the position being made redundant, or where the employer would have to make a significant adjustment to the employee’s work hours for them to be employed full-time or part-time.



The law will require businesses to write to an employee within 21 days after the employee’s 12-month anniversary (with commencement dates prior to 27 March 2021) to inform them of the casual conversion offer, or reasons why they are not making the offer.

To accept an offer, employees need to respond in writing within 21 days after getting the offer. If they don’t respond, employers can assume that they’ve declined the offer. Casual employees can also make a request to convert to permanent employment as long as they have been employed for at least 12 months, have worked a regular pattern of hours over the last 6 months, and can continue to work these hours in a full-time or part-time capacity.

The new casual conversion entitlement is also now part of the National Employment Standards, meaning companies that fail to make an offer could face penalties in excess of \$66,000, while individuals could face \$13,000 in penalties.

Casual employees who are unfairly denied an opportunity to convert to permanent employment will also be able to refer their dispute to the Fair Work Commission or seek help from the Federal Circuit Court.

COVID BUSINESS ASSISTANCE-ONGOING ELIGIBILITY TESTING

New guidelines recently released by Service NSW now require that businesses in receipt of JobSaver or the Micro-Business Grant will be required to reconfirm their eligibility each fortnight for them to continue receiving the payments.

This “re-test” must confirm that the business has continued to experience a decline in turnover of at least 30 per cent and has maintained its employee headcount as stated in its initial application.

Service NSW will continue to pay September payments without the need for businesses to reconfirm their eligibility, with payments only ceasing if reconfirmation is not provided from October onwards (fortnight commencing 27 September 2021).

Businesses that are still closed or severely impacted by restrictions can simply indicate they remain eligible without a calculation of decline in turnover.

The new guidelines also note that businesses may be able to drop out and then re-qualify for the support payments from fortnight to fortnight.

Businesses will receive fortnightly reminders to re-test and confirm their eligibility from Service NSW via email. For further information refer to the Service NSW website (<https://www.service.nsw.gov.au/campaign/covid-19-help-businesses# covid-19-assistance-finder>) and/or contact your StewartBrown Manager or Partner for any assistance required.

SUPER CHOICE RULE CHANGES FROM 1 NOVEMBER 2021

Employers will have an extra step to take when they have new employees commencing work from 1 November 2021 and those employees don't choose a super fund. Employers may need to request those employees 'stapled super fund' details from the ATO. A stapled super fund is an existing super account of an employee that follows them as they change jobs. This change aims to stop new employees paying extra account fees for unintended super accounts set up when they start a new job.

Employers may need to request stapled super fund details when:

- new employees start on or after 1 November 2021
- they need to make super guarantee payments for that employee, and
- the employee is eligible to choose a super fund but doesn't.



An employer can request stapled super fund details for their employees if they have full access to ATO Online services for their business. Employers are encouraged to review and update this access to protect the privacy and safety of their employees' personal information.

An employer must meet their choice of super fund requirements and any stapled super fund obligations by the quarterly due date (28th day after the end of a quarter) or face penalties.

What employers need to do from 1 November 2021:

Step 1: Offer your eligible employees a choice of super fund. You need to give your eligible new employees a Super standard choice form and pay their super into the account they tell you on the form. There is no change to this step of

your super obligations from past requirements.

Step 2: Request stapled super fund details from the ATO if your employee doesn't choose a super fund. These details will be available on ATO online services (see 'Employee Super Accounts'). If the ATO provides stapled super fund details for your employee (and the employee has not made a choice of fund election) you must pay your employee's super using the stapled super fund details provided.

Step 3: Pay super by the 28th day after the end of each quarter into the employee's choice fund, or if no choice fund, their stapled fund or if no stapled fund, the employer's default fund.



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