

# Casual Conversion Guide



*catholic education commission of victoria ltd*

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## 1. Introduction

On 27 March 2021, amendments to the *Fair Work Act 2009* (Cth) (the Act) came into operation. The amendments relate to the employment of casual employees and introduce into the Act a number of new obligations that employers are required to comply with when employing a casual employee. The amendments apply to both existing and new casual employees.

This guide has been developed to support schools in understanding and implementing the changes to the Act, and provides information about the following:

- the definition of a casual employee
- the requirement to provide a Casual Employment Information Statement (CEIS)
- casual conversion obligations outlined in the National Employment Standards (NES) in the Act
- transitional arrangements for existing casual employees (i.e. casual employees employed prior to the amendments coming into effect).

Schools should note that the types of employees the amendments to the Act are likely to affect include sports coaches, sports assistants and instrumental music tutors. These amendments do not apply to emergency teachers who are employed in accordance with the [Victorian Catholic Education Multi-Enterprise Agreement 2018](#) (VCEMEA). This is due to the fact that the VCEMEA contains strict provisions about the period an emergency teacher can be employed for and, therefore, emergency teachers employed in accordance with the provisions of the VCEMEA are not captured by the amendments.

## 2. Casual employees under the VCEMEA

Schools should note that the changes to the Act discussed in this guide **do not** apply to casual employees who have been employed in accordance with the provisions of the VCEMEA. This is due to the fact that the changes to the Act only apply to casual employees who meet certain criteria relating to work patterns and length of employment. As the provisions in the VCEMEA specify strict time limits regarding the length of employment of a casual employee, the amendments to the Act do not apply to casual employees employed in accordance with the provisions of the VCEMEA.

## 3. Who do the amendments to the Act apply to?

The amendments to the Act apply to casual employees in schools who are covered by a modern award (e.g. *Educational Services (Schools) General Staff Award 2020*) or a contract of employment/letter of appointment that has been agreed to by a school and a casual employee (i.e. the employee is not covered by the VCEMEA or a modern award).

Some typical examples of the types of casual employees the amendments apply to are sports coaches, sports assistants and instrumental music tutors.

### **Schools that are small business employers**

There are certain requirements for small business employers that are different to those set out in this guide. A small business employer under the Act is defined as having fewer than 15 employees. Schools that are small business employers should contact their relevant diocesan Employee Relations representative to discuss further.

## 4. Employing a new casual employee on and from 27 March 2021

### 4.1 What is the definition of a 'casual employee'?

If a school wishes to employ a person as a casual employee, the school must ensure that, at the time the particular role is offered, it is on the basis that there is 'no firm advance commitment to continuing and indefinite work according to an agreed pattern of work'. If a person accepts the offer on that basis and therefore becomes an employee, the person will be considered 'casual' for the purposes of the Act.

If these criteria are not satisfied, it may mean that the person is a permanent employee, consequently resulting in an entitlement to paid leave.

### 4.2 What does 'no firm advance commitment' mean?

In considering whether, at the time an offer of employment is made, there is 'no firm advance commitment to continuing and indefinite work according to an agreed pattern of work', the Act states that an employer must only have regard to whether:

- the employer can elect to offer work and the employee can reject work
- the employee will work as required according to the employer needs
- the employment is described as casual
- the employee is entitled to a casual loading pursuant to the offer or a fair work instrument (for example, a modern award).

This means that no other considerations may be taken into account when determining whether the role being offered meets the definition of casual.

#### EXAMPLE

A school employs a casual dance coach for three months with sporadic hours to assist in a school production. In this example, it is evident that there is no commitment to continuing and indefinite work, as the dance coach is to be employed to provide coaching for the production only and there is no guarantee of further work after the production.

### 4.3 What is the Casual Employment Information Statement and when must it be provided?

The CEIS is a document which outlines some of the rights and obligations of a casual employee. When employing a new casual employee, schools are required to provide the employee with a copy of the CEIS before or as soon as practicable after the employment commences. All relevant Catholic Education Commission of Victoria Ltd (CECV) letters of appointment have been updated to include a copy of the CEIS and are available on the [CECV website](#). The CEIS can also be located by visiting [www.fairwork.gov.au](http://www.fairwork.gov.au) and entering 'CEIS' in the search engine.

#### ACTION REQUIRED

Ensure that from 27 March 2021 all new casual employees are provided with a copy of the CEIS.

## 5. Existing casual employees

### 5.1 Casual Employment Information Statement

Schools must provide all existing casual employees with a copy of the CEIS as soon as practicable after 27 September 2021. Schools should not provide existing casual employees with a copy of the CEIS before this date.

#### **ACTION REQUIRED**

Ensure that all existing casual employees (i.e. those employed before 27 March 2021) are provided with a copy of the CEIS as soon as practicable after 27 September 2021 (unless an offer of casual conversion is made and accepted – see section 7). To avoid doubt, the CECV recommends this be done by no later than 15 October 2021.

## 6. Casual conversion – new casual employees

### 6.1 What is casual conversion?

Casual conversion refers to a casual employee's entitlement to have their employment converted from casual to permanent (full-time or part-time). The Act now contains express provisions regarding this entitlement and the process which must be followed when a conversion occurs.

### 6.2 What are schools' obligations in relation to casual conversion for new casual employees?

Where a casual employee:

- has been an employee for 12 months
- has worked a regular pattern of hours on an ongoing basis during the last six months
- could continue to work full-time or part-time without significant adjustment

a school must make an offer to the employee to convert their employment to either full-time or part-time (based on their hours of work).

### 6.3 What must a casual conversion offer entail and when must it be offered?

A casual conversion offer must be in writing and must specify the employee's entitlement to convert to full-time hours (if worked full-time hours in the preceding six months) or part-time hours (if worked part-time hours in the preceding six months).

An offer to convert must be made to the employee within 21 days after the employee has been employed for 12 months.

#### **ACTION REQUIRED**

Schools should ensure that they maintain a central record or database of commencement dates for casual employees. This should be checked on a regular basis to ensure compliance with the Act. Schools should also ensure that they are able to readily access work patterns for casual employees.

#### **TEMPLATE LETTER**

Template casual conversion offer letters can be accessed via the [CECV website](#).

## 6.4 Are there any exceptions to offering casual conversion?

There are two circumstances in which a school is not obligated to offer casual conversion. These occur where:

- a casual employee has not worked a regular pattern of hours for the preceding six months
- there are 'reasonable grounds' not to offer.

## 6.5 What does 'regular pattern of hours' mean?

The term 'regular pattern of hours' is not defined in the Act. However, the term is one which should be construed liberally and its application will depend on the circumstances of each individual case. Relevant factors will likely be whether an employee worked:

- regularly during the six-month period (e.g. work every one, two or three weeks will probably be regular, even if it is on different days, whereas two engagements during the six-month period will not)
- a regular pattern of hours that could reasonably be worked on a part-time or full-time basis (i.e. where there is a reasonably predictable and consistent pattern).

In addition, an employee may still be considered to have worked a regular pattern of hours despite absences due to school holiday periods or illness.

## 6.6 What does 'reasonable grounds' mean?

According to the Act, a school is not obligated to make an offer for casual conversion if reasonable grounds exist and those grounds are based on facts known, or reasonably foreseeable, at the time of deciding not to make the offer.

Reasonable grounds include:

- the role will not exist in the 12 months following the decision not to make an offer
- the hours of work that the employee would be required to perform will significantly reduce in that period
- there will be a significant change to either the days on which the employee's hours of work are required to be performed or the hours of work that are required to be performed which cannot be accommodated within the days or times the employee is available to work.

### **ACTION REQUIRED**

Schools should contact their relevant diocesan Employee Relations representative to discuss circumstances which may give rise to a casual conversion offer not being made on any of the grounds outlined above.

### **EXAMPLE**

A school employs numerous casual instrumental music tutors to provide instrumental lessons to students. The school makes a decision that it wishes to outsource instrumental music lessons for students around the time that casual conversion offers are required to be made. In this example, the school is not required to make an offer for casual conversion because the roles will not exist in the 12 months following the decision.

## 6.7 If an offer is not going to be made, what are schools required to do?

If a school is not going to make an offer for casual conversion based on any of the grounds outlined above, then the school is required to write to the employee outlining the reasons why. The letter must be provided within 21 days after the employee has been employed for 12 months.

### TEMPLATE LETTER

Template no casual conversion offer letters can be accessed via the [CECV website](#).

## 6.8 What are the employee's obligations if a casual conversion offer is made?

If an employee is offered to convert their employment, they must respond to the offer in writing either accepting or declining the offer. If no response is received, the employee is taken to have declined the offer. A casual employee is not obligated to accept an offer for casual conversion and is entitled to decline the offer should they so wish.

## 6.9 What happens after an employee accepts an offer?

If the employee accepts the offer, the school must write to the employee within 21 days of the acceptance advising them of the following:

- whether the employee is converting to full-time or part-time employment
- the employee's hours of work
- the date the conversion takes effect (the conversion must start at the beginning of the employer's next full pay period after the employer notice is given, unless the parties agree to another start date).

Prior to providing the written notice, the school must meet with the employee to discuss the matters outlined above. Schools should also provide the employee with a new contract of employment.

### TEMPLATE LETTER

Template confirmation of casual conversion offer letters can be accessed via the [CECV website](#).

## 7. Casual conversion – existing casual employees

### 7.1 Are schools required to offer casual conversion to existing casual employees?

Casual employees who were employed prior to 27 March 2021 must also be offered casual conversion provided the considerations discussed at 6.2 are satisfied. Schools must make an assessment of whether they are required to make an offer by 27 September 2021.

### ACTION REQUIRED

As soon as possible, schools should start considering whether any existing casual employees are entitled to be offered casual conversion.

## 7.2 How should schools assess the six-month work pattern period?

As described above, in order for a casual employee to be entitled to casual conversion, they must have been employed for 12 months and worked a regular pattern of hours on an ongoing basis for the last six of those 12 months. In determining this threshold, employment prior to 27 March 2021 is considered part of the 12 months and the 12-month period (including the last six months) ends on the day that the employer makes an assessment within the transition period (that is, by 27 September 2021).

### EXAMPLE

St Mary's College employed a casual swimming coach on 1 October 2019 and the employee has worked continuously since that time. On 27 March 2021, when the amendments to the Act came into effect, the employee had been employed for more than 12 months. St Mary's College must, as soon as practicable after 27 March 2021, undertake an assessment as to whether the employee is entitled to casual conversion. The college decides to undertake the assessment on 29 March 2021, therefore it must look back to 29 September 2020 to determine if there has been a regular pattern of hours and, if there has, must make an offer to the employee to have their position converted to either full-time or part-time (depending on the hours worked).

### EXAMPLE

St Joseph's College employed a casual piano teacher on 28 January 2021 and the employee has worked continuously since that time. On 27 March 2021, when the amendments to the Act came into effect, the employee had not been employed for more than 12 months. As such, St Joseph's College does not have to offer the employee casual conversion.

### EXAMPLE

St Peter's Primary School employed a casual singing teacher on 1 May 2020. On 27 March 2021, when the amendments to the Act came into effect, the employee had not been employed for more than 12 months. However, on 1 May 2021, the employee had their 12-month work anniversary. As such, St Peter's Primary School must, as soon as practicable after 1 May 2021, undertake an assessment as to whether the employee is entitled to casual conversion. The school decides to undertake the assessment on 5 May 2021, therefore it must look back to 5 November 2020 to determine if there has been a regular pattern of hours. St Peter's Primary School concludes that the employee did not work a regular pattern of hours because their student numbers fluctuated variously throughout the terms.

## 7.3 How do schools offer casual conversion to existing casual employees?

The steps outlined in section 6 also apply when making an offer of conversion to an existing casual employee.

## 7.4 Do existing casual employees need to be notified in writing of a school's decision not to offer conversion because an employee has not worked at the school over the course of 12 months?

Yes, notice must still be given in writing of a decision not to offer conversion in these circumstances.



## 8. Casual conversion – employee request

In addition to schools being obligated to offer casual conversion, a casual employee has a residual right to request that their employment be converted. For this to occur, a casual employee must meet the following criteria.

The employee must have worked for at least 12 months with the school, with the last six months involving a regular pattern of hours where none of the following applied:

- the employee refused a previous employer offer
- the employer declined to make an offer
- the employer refused a previous request
- the request was not made within 21 days after 12 months of employment.

The request must be in writing and must outline whether the employee requests to convert to either full-time or part-time employment.

### 8.1 If a school receives a request from an employee, what is it required to do?

If a school receives a request from an employee for casual conversion, it must respond to the request in writing within 21 days outlining whether the employer grants or refuses the request. If the school grants the request, it must ensure that it complies with clause 6.9. If a school refuses the request, it must consult with the employee and comply with clauses 6.4–6.7.

## 9. Recurrent offers

Once a school has offered casual conversion to an employee after 12 months of employment, the school is not obligated to offer conversion every 12 months. This means that if a casual employee declines an offer to convert their employment, the employer is not obligated to offer conversion at the next 12-month anniversary. Schools should keep a written record of both the offer of casual conversion and rejection, if applicable.

## 10. Disagreements about casual conversion

If a dispute arises between a school and an employee about whether the employee is entitled to convert, then the dispute resolution procedure outlined in the applicable modern award will apply. If the employee is not covered by a modern award, but their contract contains a procedure for dealing with casual conversion disputes, that process will apply. In the event that neither of the aforementioned apply, the dispute can be referred to the Fair Work Commission for resolution.

### **ACTION REQUIRED**

Schools should discuss all casual conversion matters with their relevant diocesan Employee Relations representative.

## 11. What can't a school do in relation to casual conversion?

If an employee does not wish to have their employment converted from casual to permanent, a school cannot force or require the employee to do so. Additionally, a school cannot terminate or reduce/vary a casual employee's hours of work to avoid their obligations in relation to casual conversion.

## 12. Illustrative examples

### EXAMPLE 1

St Mary's College employed a swimming coach, Mr Smith, on 5 April 2021 as a casual employee. At the time of employment, the college provided him with a contract and the CEIS. The college employed Mr Smith to support the permanent swimming coaches, and did not believe there would be indefinite and continuing work for him according to an agreed pattern of work. The basis for this decision was that Mr Smith was employed to fill in when other swimming coaches were absent or when there were upcoming competitions which demanded increased training sessions.

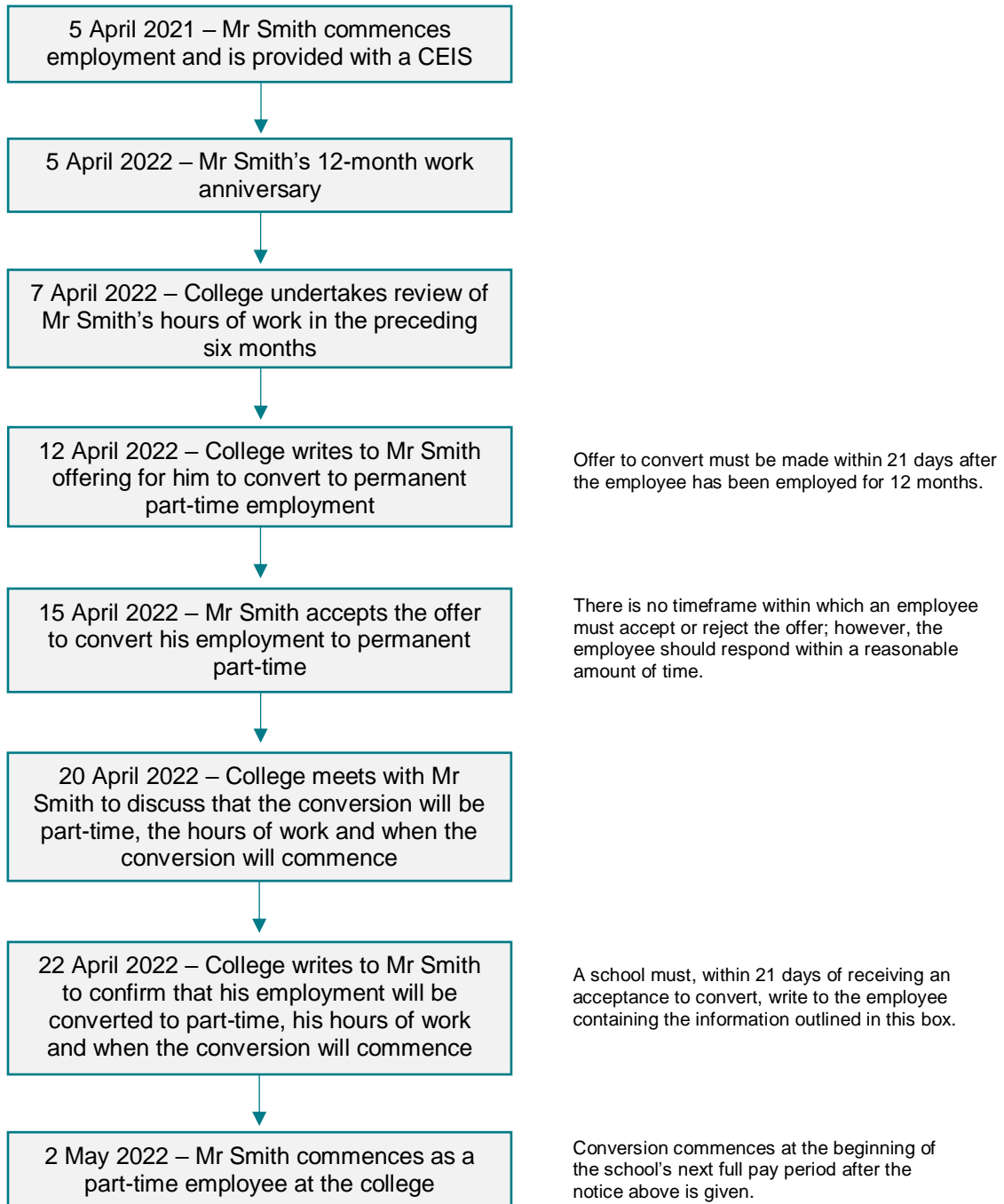
On 5 April 2022, Mr Smith was still being offered casual work by the college and, as such, it was required to make an assessment as to whether he had worked a regular pattern of hours over the preceding six months which, if satisfied, would entitle him to be offered casual conversion to permanent employment.

When reviewing Mr Smith's hours of work on 7 April 2022, the college concluded that, while he did not work exactly the same days or hours every week and in some weeks did not work at all, Mr Smith was engaged regularly (i.e. at least once a fortnight and, in some blocks, weekly) to fill in for other coaches when they were absent and to provide additional support for the multiple swimming competitions throughout the year. He was also asked to undertake a project to update the college's swimming programs to comply with national standards as well as safety policies. This required him to work weekly on Thursdays from 9 am–11 am. The college also concluded that Mr Smith could continue to work as a part-time employee without significant adjustment to the hours/days that he had been working.

As a result of this conclusion, the college wrote to Mr Smith on 12 April 2022 offering to convert his employment to permanent part-time, which Mr Smith accepted on 15 April 2022.

### Points to remember

- When making an assessment of 'regular pattern of hours', schools need to look at the hours worked as a whole, rather than isolating days/hours week by week.
- An employee may have worked a regular pattern of hours even if there is some fluctuation or variation to the hours worked, including a break over school holidays or while unwell.
- The term 'regular' in this context can be interpreted as meaning hours of work that are frequent though they may be unpredictable.
- Schools need to look at the consistency of which the person has been engaged to work, not necessarily the hours/days worked week by week.



## EXAMPLE 2

St Peter's Primary School employed a boarding house assistant, Mrs Jones, on 1 November 2020 as a casual employee under the *Educational Services (Schools) General Staff Award 2020* and paid her a casual loading of 25% as per the Award. As Mrs Jones was employed prior to the amendments to the Act, the school was not required to ensure that the new definition of a casual employee was satisfied. The school was also not required to provide a copy of the CEIS at the time of employment as it did not yet exist. Mrs Jones was employed to provide ad hoc support services in the boarding house at the school and there was no guarantee of work every week.

As described above, schools have an obligation prior to 27 September 2021 to assess whether existing casual employees are entitled to casual conversion. As at this time, Mrs Jones had not met the 12-month requirement to be entitled to casual conversion, so the school is not obligated to make an offer. St Peter's Primary School must provide notice in writing to Mrs Jones if its decision is not to offer conversion. The school must also ensure that it provides Mrs Jones with a CEIS as soon as possible after 27 September 2021.

On 30 September 2021, the school provided Mrs Jones with a copy of the CEIS.

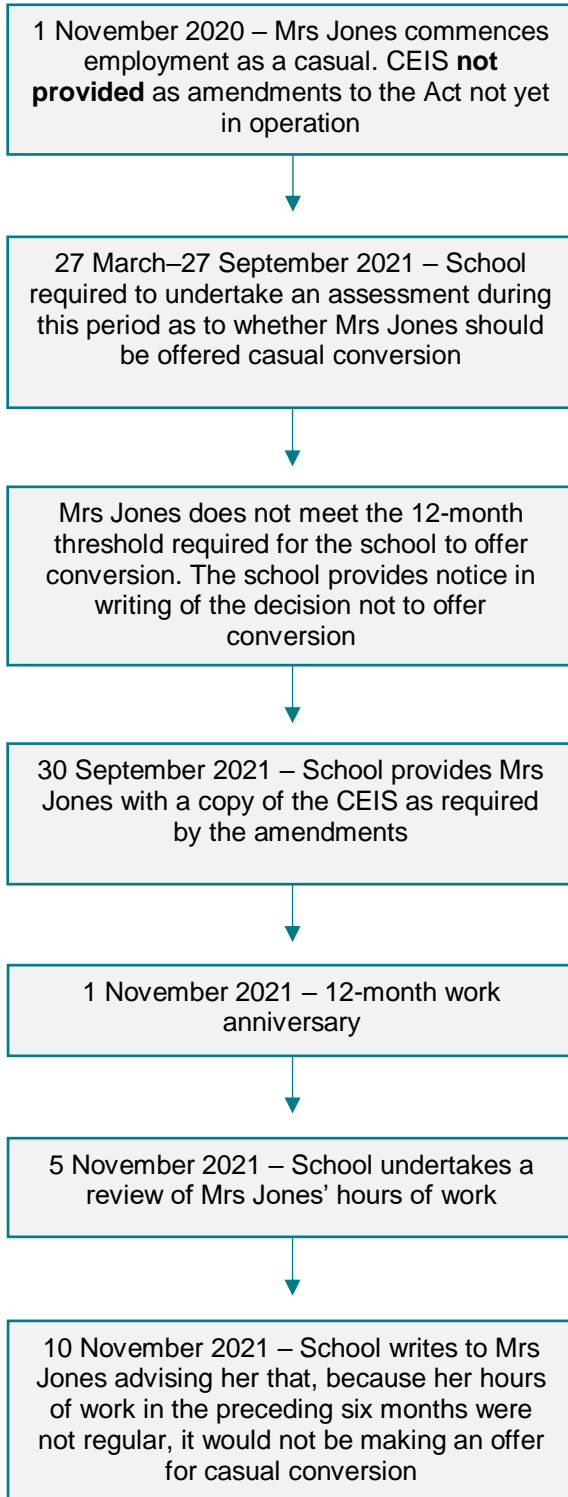
On 1 November 2021 (work anniversary), Mrs Jones was still being offered casual work by the school and, as such, it was required to make an assessment as to whether she had worked a regular pattern of hours over the preceding six months which, if satisfied, would entitle her to be offered casual conversion to permanent employment.

On 5 November 2021, the school undertook a review of Mrs Jones' hours of work. When reviewing her hours of work over the preceding six months (that is, 1 May–1 November 2021), the school concluded that Mrs Jones did not work a regular pattern of hours. This was because she only worked when a permanent boarding house assistant was absent. The school could see that, over the six-month period, this only occurred on average once monthly.

As such, the school wrote to Mrs Jones on 10 November 2021 advising that it would not be making an offer for casual conversion on the basis that she did not work a regular pattern of hours.

### Points to remember

- When making an assessment of 'regular pattern of hours', schools need to look at the hours worked as a whole, rather than isolating days/hours week by week.
- An employee may have worked a regular pattern of hours even if there is some fluctuation or variation to the hours worked, including a break over school holidays or while unwell.
- The term 'regular' in this context can be interpreted as meaning hours of work that are frequent though they may be unpredictable.
- Schools need to look at the consistency of which the person has been engaged to work, not necessarily the hours/days worked week by week.



If an offer for conversion is not going to be made, the school must write to the employee and advise this within 21 days after the employee has been employed for 12 months.

## 13. Further information

Any queries in relation to this guide should be directed to the relevant diocesan Employee Relations representative, as follows:

- Melbourne – Employee Relations Unit on 03 9267 0431 or [ceoir@macs.vic.edu.au](mailto:ceoir@macs.vic.edu.au)
- Ballarat – Mr Michael Trainor on 03 5337 7135 or [mtrainor@ceob.edu.au](mailto:mtrainor@ceob.edu.au)
- Sale – Ms Shard Goodwin, Ms Briony Schembri or Mr Sean Roberts on 03 5622 6600 or [employment@ceosale.catholic.edu.au](mailto:employment@ceosale.catholic.edu.au)
- Sandhurst – Ms Jo Taylor on 03 5443 2377 or [peopleandculture@ceosand.catholic.edu.au](mailto:peopleandculture@ceosand.catholic.edu.au).