



Restaurant  
& Catering

**FAIR WORK COMMISSION**  
**4 YEARLY REVIEW OF MODERN AWARDS**  
**– CASUAL AND PART-TIME EMPLOYMENT (AM2014/196 and AM2014/197)**

**RESTAURANT AND CATERING INDUSTRIAL**  
**2 AUGUST 2017**

1. Restaurant & Catering Industrial (RCI) makes these submissions pursuant to the decision handed down on 5 July 2017 by the Full Bench in respect of the casual and part-time common issues matter, in particular, order 1 of the decision.
2. We outline below our response to the Commission's proposed model casual conversion clause contained in Annexure A.
3. RCI make these submissions in relation to *The Restaurant Industry Award 2010*.

### **Right to request casual conversion**

4. RCI supports the submission and proposed changes to the model clause by the Australian Chamber of Commerce and Industry (ACCI).
5. Additionally, RCI wishes to highlight the specific challenges experienced by the restaurant, cafe and catering industry. The industry relies heavily on casual employment due to the flexibility afforded to employers, bearing in mind the seasonal nature due to fluctuating service demand. There are large variations in business turnover recorded depending on the time of the year. For example, the Australian Bureau of Statistics recorded in the month of December 2016, the café, restaurant and catering sector experienced an overall turnover of \$2.3 billion compared to June 2016 where total turnover was \$1.9 billion.<sup>1</sup>
6. RCI submits that inclusion of the word 'significant' in clause 11.6(g)(i) would amount to confusion, uncertainty and cause disputation between employers and employees as to its meaning. To include this term would require a high threshold of change in the casual employee's hours, to enable them to rely on this clause to reasonably refuse a conversion request. RCI believes that an additional ground for refusal should be added to 11.6 (g) "other reasonable grounds identified by the employer"<sup>2</sup>. This allows for greater scope for employers to refuse requests for conversion as every business has different staff needs. In particular, small businesses are constrained tightly by costs and may not be in a position to accommodate requests to conversion.

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<sup>1</sup> ABS (*Retail Trade, Australia, Dec 2016, Cat. No 8501.0*)

<sup>2</sup> Decision Summary at [10]

7. RCI does not agree that inclusion of the term '*whether a regular casual employee or not*' in clause 11.6(o) is necessary to achieve the objective of the Commission. Inclusion of this term is inconsistent with the intention and purpose of the decision to provide 'regular' casual employees with the right to convert to full-time or part-time employment. RCI submits that the term 'regular' be inserted, and the wording '*whether a regular casual employee or not*' be omitted. In relation to the calculation of the twelve-month qualifying period, RCI submits that it is reasonable this should commence after the date of commencement of this clause.
  
8. As an alternative, RCI proposes to adopt the current conversion clause in the *Hospitality Industry (General) Award 2010*, contained in Annexure B of this submission, for inclusion in the *Restaurant Industry Award 2010*. Should the Commission be agreeable with this proposal, in answer to order 2 of the decision, RCI would additionally request for subclause 11.6(o) relating to notification of conversion entitled, contained in the model clause (Annexure A) to be incorporated in the proposed clause for the Restaurant Award.
  
9. RCI submits that there are some similarities relating to the operations and fluctuating service demands between the restaurant industry and hotels and accommodation industry, which is the reason that both industries employ a large number of casual staff. As such, it may be appropriate to adopt the casual conversion clause (clause 13.4) in the *Hospitality Industry (General) Award 2010* in the *Restaurant Industry Award 2010*.

## **Restaurant and Catering Industrial**

## Annexure A

### Fair Work Commission Casual Conversion Model Clause

#### 11.6 Right to request casual conversion

- (a) A person engaged by a particular employer as a regular casual employee may request that their employment be converted to full-time or part-time employment.
- (b) A regular casual employee is a casual employee who has over a calendar period of at least 12 months worked a pattern of hours on an ongoing basis which, without significant adjustment, the employee could continue to perform as a full-time employee or part-time employee under the provisions of this award.
- (c) A regular casual employee who has worked an average of 38 or more hours a week in the period of 12 months' casual employment may request to have their employment converted to full-time employment.
- (d) A regular casual employee who has worked at the rate of an average of less than 38 hours a week in the period of 12 months casual employment may request to have their employment converted to part-time employment consistent with the pattern of hours previously worked.
- (e) Any request under this subclause must be in writing and provided to the employer.
- (f) Where a regular casual employee seeks to convert to full-time or part-time employment, the employer may agree to or refuse the request, but the request may only be refused on reasonable grounds and after there has been consultation with the employee.
- (g) Reasonable grounds for refusal include that:
  - (i) it would require a **significant** adjustment to the casual employee's hours of work in order for the employee to be engaged as a full-time or part-time employee in accordance with the provisions of this award – that is, the casual employee is not truly a regular casual as defined in paragraph (b);
  - (ii) it is known or reasonably foreseeable that the regular casual employee's position will cease to exist within the next 12 months;
  - (iii) it is known or reasonably foreseeable that the hours of work which the regular casual employee is required to perform will be significantly reduced in the next 12 months; or
  - (iv) it is known or reasonably foreseeable that there will be a significant change in the days and/or times at which the employee's hours of work are required to be performed in the next 12 months which cannot be accommodated within the days and/or hours during which the employee is available to work; **or**
  - (v) **other reasonable grounds determined by the employer.**

- (h) Where the employer refuses a regular casual employee's request to convert, the employer must provide the casual employee with the employer's reasons for refusal in writing within 21 days of the request being made. If the employee does not accept the employer's refusal, this will constitute a dispute that will be dealt with under the dispute resolution procedure in clause 29. Under that procedure, the employee or the employer may refer the matter to the Fair Work Commission if the dispute cannot be resolved at the workplace level.
- (i) Where it is agreed that a casual employee will have their employment converted to full-time or part-time employment as provided for in this clause, the employer and employee must discuss and record in writing:
  - (i) the form of employment to which the employee will convert – that is, full-time or part-time employment; and
  - (ii) if it is agreed that the employee will become a part-time employee, the matters referred to in clause 10.4.
- (j) The date from which the conversion will take effect is the commencement of the next pay cycle following such agreement being reached unless otherwise agreed.
- (k) Once a casual employee has converted to full-time or part-time employment, the employee may only revert to casual employment with the written agreement of the employer.
- (l) A casual employee must not be engaged and/or re-engaged (which includes a refusal to re-engage), or have his or her hours reduced or varied, in order to avoid any right or obligation under this clause.
- (m) Nothing in this clause obliges a regular casual employee to convert to full-time or part-time employment, nor permits an employer to require a regular casual employee to so convert.
- (n) Nothing in this clause requires an employer to increase the hours of a regular casual employee seeking conversion to full-time or part-time employment.
- (o) An employer must provide a casual employee, ~~whether a regular casual employee or not~~, with a copy of the provisions of this subclause within the first 12 months of the employee's first engagement to perform work, after the date of commencement of this clause.
- (p) A casual employee's right to convert is not affected if the employer fails to comply with the notice requirements in paragraph (o).

## Annexure B

### Hospitality Industry (General) Award 2010

#### 13.4 Conversion to full-time or part-time employment

(a) This clause only applies to a regular casual employee.

(b) A regular casual employee means a casual employee who is employed by an employer on a regular and systematic basis for several periods of employment or on a regular and systematic basis for an ongoing period of employment during a period of at least 12 months.

(c) A regular casual employee who has been engaged by a particular employer for at least 12 months may elect (subject to the provisions of this clause) to have their contract of employment converted to full-time or part-time employment.

(d) An employee who has worked at the rate of an average of 38 or more hours a week in the period of 12 months casual employment may elect to have their employment converted to full-time employment.

(e) An employee who has worked at the rate of an average of less than 38 hours a week in the period of 12 months casual employment may elect to have their employment converted to part-time employment.

(f) Where a casual employee seeks to convert to full-time or part-time employment, the employer may consent to or refuse the election, but only on reasonable grounds. In considering a request, the employer may have regard to any of the following factors:

- the size and needs of the workplace or enterprise;
- the nature of the work the employee has been doing;
- the qualifications, skills, and training of the employee;
- the trading patterns of the workplace or enterprise (including cyclical and seasonal trading demand factors);
- the employee's personal circumstances, including any family responsibilities;  
and
- any other relevant matter.

(g) Where it is agreed that a casual employee will have their employment converted to full-time or part-time employment as provided for in this clause, the employer and employee must discuss and agree upon:

- the form of employment to which the employee will convert—that is, full-time or part-time employment; and

- if it is agreed that the employee will become a part-time employee, the matters referred to in clause 12—Part-time employment.

**(h)** The date from which the conversion will take effect is the commencement of the next pay cycle following such agreement being reached unless otherwise agreed.

**(i)** Once a casual employee has converted to full-time or part-time employment, the employee may only revert to casual employment with the written agreement of the employer.

**(j)** An employee must not be engaged and/or re-engaged (which includes a refusal to re-engage) to avoid any obligation under this award.

**(k)** Nothing in this clause obliges a casual employee to convert to full-time or part-time employment, nor permits an employer to require a casual employee to so convert.

**(l)** Nothing in this clause requires the employer to convert the employment of a regular casual employee to full-time or part-time employment if the employee has not worked for 12 months or more in a particular establishment or in a particular classification stream.

**(m)** Nothing in this clause requires an employer to increase the hours of a regular casual employee seeking conversion to full-time or part-time employment.