

Comparison of the casual conversion NES and the award casual conversion clauses

This document compares the NES casual conversion provisions, the model award casual conversion clause and the award-specific clauses in the *Manufacturing and Associated Industries and Occupations Award 2020* and the *Hospitality Industry (General) Award 2020*. Dispute resolution provisions are not included in this comparison.

	NES Conversion	FWC Model Clause	Manufacturing Award	Hospitality Award
Eligibility – Size of employer	<p>Small business employers (employers with fewer than 15 employees) are not required to offer casual conversion to employees.</p> <p>Employees in small businesses can request conversion under the residual right to request.</p>	N/A	N/A	N/A
Notification/ information	<ul style="list-style-type: none"> An employer must give each casual employee the Casual Employment Information Statement (CEIS) before, or as soon as practicable after, the employee starts employment as a casual (but not more than once in any 12 months). If the employer is a small business employer, the employer must also give the CEIS to their transitioning casual employees (ie loosely, all casual employees who started their employment with the employer before 27 March 2021) as soon as practicable after 27 March 2021. If the employer is not a small business employer, the employer must give the CEIS to their transitioning casual employees as soon as practicable after the end of the 6 month transition period (that ends on 27 September 2021). 	<p>An employer must provide a casual employee (whether a regular casual employee or not) with a copy of the provisions of the casual conversion clause within the first 12 months of the employee's first engagement to perform work.</p> <p>A casual employee's right to request to convert is not affected if the employer fails to comply with this notice requirement.</p>	<p>An employer must give a casual employee who is not an irregular casual employee notice in writing of the provisions of the casual conversion clause within 4 weeks of the employee having attained a period of 6 months eligible employment (see 'eligibility for casual conversion' below).</p> <p>The employee retains their right to elect to convert if the employer fails to comply with this notice requirement.</p> <p>An eligible casual employee on receiving this notice (or after the expiry of the time for the employer to give such notice) may give 4 weeks' notice in writing to the employer that they seek to elect to convert to full-time or part-time employment.</p>	N/A
Offer of casual conversion	After 12 months of employment, an employer (other than a small business employer) must offer an eligible casual employee the opportunity to convert to	N/A	N/A	N/A

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	<p>full-time or part-time employment unless the employer has certain reasonable grounds not to make an offer.</p> <p>There is also a 6 month transition period during which an employer (other than a small business employer) must in respect of each of its transitioning casual employees:</p> <ul style="list-style-type: none"> • assess the casual employees against the conversion criteria (modified to apply in that context) • offer casual conversion to all eligible casual employees (unless the employer has reasonable grounds not to), and • provide written notice to any employee who is not offered conversion that includes the reasons for not making an offer. 			
Eligibility for casual conversion	<p>Employer offer: Unless the employer has certain reasonable grounds not to make an offer, an employer (other than a small business employer) must offer a casual employee the opportunity to convert to full-time or part-time employment if the employee:</p> <ul style="list-style-type: none"> • has been employed for a period of 12 months, and • during at least the last 6 months of that 12 months, has worked a regular pattern of hours on an ongoing basis which, without significant adjustment, the employee could continue to work as a full-time or part-time employee (as the case may be). <p>The employer must offer conversion to:</p> <ul style="list-style-type: none"> • full-time employment where the employee has worked the equivalent of full-time hours during the 6 months 	<p>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.</p> <p>A regular casual employee is a casual employee who has in the preceding period of 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.</p>	<p>A casual employee, other than an irregular casual employee, who has been engaged by a particular employer for a sequence of periods of employment during a period of 6 months, has the right to elect to have their contract of employment converted to full-time or part-time employment if the employment is to continue beyond the conversion process.</p> <p>An irregular casual employee is one who has been engaged to perform work on an occasional or non-systematic or irregular basis.</p> <p>Note: The 6 month eligibility criterion can be changed to 12 months by agreement between the employer and the employee concerned, or in respect of employees engaged in the workplace or section/s of the workplace at a particular time, by agreement between the employer and a majority of the employees.</p>	<p>A regular casual employee who has been engaged by a particular employer for at least 12 months may elect to have their contract of employment converted to full-time or part-time employment.</p> <p>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.</p> <p>Note: An employer is not required to convert the employment of a regular casual employee if the employee has not worked for 12 months or more in a particular establishment or classification stream.</p>

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	<ul style="list-style-type: none"> part-time employment that is consistent with the regular pattern of hours worked during the 6 month period, where the employee has worked less than the equivalent of full-time hours during the 6 months. <p>Residual right to request: A casual employee (including of a small business employer) can request casual conversion if all of the following apply:</p> <ul style="list-style-type: none"> the employee has been employed by the employer for a period of at least 12 months in the 6 month period ending on the day the request is given, the employee has worked a regular pattern of hours on an ongoing basis which, without significant adjustment, the employee could continue to work as a full-time or part-time employee (as the case may be) the employee has not, during that 6 month period: <ul style="list-style-type: none"> refused an offer of casual conversion from the employer been given a notice by the employer that it is not offering casual conversion on reasonable grounds been given a notice by the employer refusing a previous request for casual conversion, and if their employer is not a small business employer, the employee's request is not made within 21 days after the end of the employee's first 12 months of employment. 			
Grounds for refusal	<p>An employer is not required to offer casual conversion to an employee or may refuse a request for casual conversion if:</p> <ul style="list-style-type: none"> there are reasonable grounds not to do so, and 	<p>A request for casual conversion by a regular casual employee may only be refused on reasonable grounds after there has been consultation with the employee.</p> <p>Reasonable grounds include:</p>	<p>Within 4 weeks of receiving a notice from an eligible casual employee that the employee seeks to elect to convert to full-time or part-time employment, the employer must consent to or refuse the election but must not unreasonably so refuse.</p>	<ul style="list-style-type: none"> 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:

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	<ul style="list-style-type: none"> the reasonable grounds are based on facts known or reasonably foreseeable at the time the employer decides not to make the offer or refuses the request. <p>Reasonable grounds include (but are not limited to):</p> <ul style="list-style-type: none"> the employee's position will cease to exist in the 12 month period after the decision not to make the offer or the request is given the hours of work which the employee is required to perform will be significantly reduced in that 12 month period there will be a significant change in either or both of the following in that 12 month period: <ul style="list-style-type: none"> the days on which the employee's hours of work are required to be performed the times at which the employee's hours of work are required to be performed, which cannot be accommodated within the days or times the employee is available to work during that period making the offer or granting the request would not comply with a recruitment or selection process required by or under a law of the Commonwealth or a State or a Territory it would require a significant adjustment to the employee's hours of work for the employee to be employed as a full-time or part-time employee (a reasonable ground for refusing a request). <p>In addition, an employer must not refuse an employee's request for casual</p>	<ul style="list-style-type: none"> 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 ie the employee is not truly a regular casual employee as defined it is known or reasonably foreseeable that the regular casual employee's position will cease to exist within the next 12 months 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 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 <p>For any ground of refusal to be reasonable, it must be based on facts which are known or reasonably foreseeable.</p>	<p>The reasons for refusal must be fully stated to and discussed with the employee concerned and a genuine attempt made to reach agreement.</p>	<ul style="list-style-type: none"> 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. <ul style="list-style-type: none"> An employer is not required to convert the employment of a regular casual employee if the employee has not worked for 12 months or more in a particular establishment or classification stream.

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	conversion unless the employer has consulted with the employee.			
How a request is made	A request must be in writing and be given to the employer.	A request must be in writing and provided to the employer.	An eligible employee may give 4 weeks' notice in writing to the employer that they elect to seek to convert their casual contract of employment.	No specified requirements
Timeframes for responses and giving reasons	<p>Employer offer: An employer (other than a small business employer) must make an offer to an eligible casual employee or give written notice to the employee if the employer decides not to make an offer, within 21 days after the end of the employee's 12 month period of employment.</p> <p>Where an offer is not made, the written notice must include details of the reasons for not making the offer.</p> <p>An employee must respond in writing to an offer of casual conversion within 21 day after the offer is given to them, stating whether they accept or reject the offer. If the employee fails to do so they will be taken to have declined the offer.</p> <p>Residual right to request: An employer must give an employee a written response to their request for casual conversion within 21 days after the request is given to the employer.</p> <p>If the employer refuses the request the response must include details of the reasons for the refusal.</p>	If refusing a request, the employer must provide the casual employee with the reasons for refusal in writing within 21 days of the request being made.	<p>A casual employee who does not within 4 weeks of receiving written notice elect to convert their contract of employment to full-time or part-time employment is deemed to have elected against any such conversion.</p> <p>(Other timeframes are described above.)</p>	N/A
Post-conversion status and entitlements	<ul style="list-style-type: none"> • Within 21 days after an offer or request for conversion is accepted, the employer must discuss with the employee, and then give them written notice of: <ul style="list-style-type: none"> ○ whether the employee is converting to full-time or part-time employment ○ the employee's hours of work after conversion takes effect, and 	<ul style="list-style-type: none"> • Where casual conversion is agreed, the employer and employee must discuss and record in writing: <ul style="list-style-type: none"> ○ the form of employment to which the employee will convert ie full-time or part-time employment; and ○ if the employee will become a part-time employee, the employee's regular pattern of work. • Conversion is to: 	<ul style="list-style-type: none"> • Where the employer consents to casual conversion, the employer and employee must discuss and agree on: <ul style="list-style-type: none"> ○ the form of employment to which the employee will convert i.e. full-time or part-time; and ○ if the employee will become a part-time employee, the matters referred to in the part-time clause. • Conversion is to: 	<ul style="list-style-type: none"> • Where the employer consents to casual conversion, the employer and employee must discuss and agree upon: <ul style="list-style-type: none"> ○ the form of employment to which the employee will convert ie full-time or part-time employment; and ○ if the employee will become a part-time employee, the matters referred to in the 'part-time employees' clause.

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	<ul style="list-style-type: none"> ○ the day the employee’s conversion takes effect. ● Unless the employer and employee agree otherwise, the employee’s conversion takes effect on the first day of the employee’s first full pay period that starts after the employer’s written notice is given. ● From the day the conversion takes effect, the employee is taken to be a full-time or part-time employee for the purposes of the Act and other Commonwealth laws, State and Territory laws, applicable fair work instruments and the employee’s contract of employment. ● Periods of casual employment prior to conversion do not count towards a full-time or part-time employee’s accrual of NES entitlements such as annual leave, post-conversion. 	<ul style="list-style-type: none"> ○ full-time employment where the regular casual employee has worked equivalent full-time hours over the preceding 12 months; or ○ part-time employment where the employee has worked less than equivalent full-time hours over the preceding 12 months, consistent with the pattern of hours previously worked. ● The conversion will take effect from the start of the next pay cycle following such agreement being reached unless otherwise agreed. ● 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. 	<ul style="list-style-type: none"> ○ full-time employment where the employee has worked on a full-time basis throughout the period of casual employment; or ○ part-time employment where the employee has worked on a part-time basis during the period of casual employment, on the basis of the same number of hours and times of work as previously worked unless otherwise agreed. ● Following such agreement the employee converts to full-time or part-time employment. ● Once a casual employee has converted to full-time or part-time employment, the employee may only revert to casual employment by written agreement with the employer. 	<ul style="list-style-type: none"> ● Conversion is to: <ul style="list-style-type: none"> ○ full-time employment where an employee has worked at the rate of an average of 38 or more hours a week in the period of 12 months casual employment; or ○ part-time employment where an employee has worked at the rate of an average of less than 38 hours a week in the period of 12 months casual employment. ● The conversion will take effect from the commencement of the next pay cycle following such agreement being reached unless otherwise agreed. ● 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.
Express anti-avoidance protections	<ul style="list-style-type: none"> ● The provisions do not require a casual employee to convert to full-time or part-time employment or permit an employer to require an employee to do so. ● An employer must not reduce or vary an employee’s hours of work or terminate an employee’s employment to avoid any right or obligation under Division 4A. ● The employer is not required to increase the hours of work of an employee who requests conversion under Division 4A. 	<p>A casual employee must not be engaged and re-engaged (which includes a refusal to re-engage), or have their hours reduced or varied, in order to avoid any right or obligation under this clause.</p> <p>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.</p> <p>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.</p>	<p>An employee must not be engaged and re-engaged to avoid any obligation under this award.</p>	<p>An employee must not be engaged and/or re-engaged (which includes a refusal to re-engage) to avoid any obligation under this award.</p> <p>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.</p> <p>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.</p>