

**General Retail Industry Award (GRA)****Conversion from casual to permanent employment status.****A. Summary of the Casual Conversion Clause in the GRA**

In 2017 the Fair Work Commission (FWC) determined that an employee employed on a regular and systematic basis as a casual employee would, in certain circumstances, have the right to request conversion to permanent status.

In 2018 the FWC provided a new model clause to be inserted into the General Retail Industry Award (GRA) effective from 1<sup>st</sup> October 2018. (See details of the full award clause in in B below)

**Summary of the new clause in the GRA:**

1. If an employee is employed as a regular casual then he / she may request to convert to full time or part time status in writing
2. Who is a regular casual employee?
  - An employee who has had ongoing work for at least 12 months in a regular pattern and could continue in that role as a full or part timer.
  - An employee who has worked an average of 38 hours over 12 months.
  - An employee who has worked an average of less than 38 hours over 12 months and could convert that average to permanent part time employment
3. An employee request for conversion may be refused after consultation on reasonable grounds.
4. Reasonable grounds for refusal include:
  - The casual is not a regular casual
  - It is reasonably known that the employee's employment will cease within next 12 months
  - It is reasonably known that the hours of work will significantly reduce in the next 12 months
  - It is reasonably known that there will be a significant change in the days and/or times at which the employee's hours of work required to be performed cannot be accommodated in the next 12 months.
5. If casual conversion is refused the employer must give written reasons within 21 days of the request. If the employee does not accept the refusal then the dispute may proceed to the FWC.
6. If conversion is agreed
  - The form of the employment must be recorded in writing.
  - The date of the conversion must be from the next pay cycle
  - If there is a reversal to casual status that must be recorded in writing
7. A casual is not obliged to convert to permanent status.
8. An employer may increase the hours of an employee seeking conversion.
9. An employer must provide a casual employee with a copy of these provisions within the first 12 months of the employee's employment with the employer.

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**B. Details of the clause that will be inserted into the GRA**

The provision to be inserted into the GRA will read as follows:

**11.6 Right to request casual conversion**

- (a) A person engaged as a particular employer as a regular casual 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.

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(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.

(p) A casual employee's right to convert is not affected if the employer fails to comply with the notice requirements in paragraph (o)."

## **MGA September 2018**