

5 February 2018

AMOD Team
Fair Work Commission
Terrace Tower
80 William Street
East Sydney NSW 2010

By email: amod@fwc.gov.au

Dear AMOD Team,

Re: 4 yearly review of modern awards- common issue – part time and casual issue- AM2014/196 and AM2014/197

During proceedings before the Full bench of the Commission on Friday 2 February 2018, the Local Government and Shires Association (the **Association**) indicated it would provide to the Commission alternate wording to the proposed model clause for casual conversion.

The Association provides the following proposed clause, with the alternate wording highlighted in subclause (g)(v):

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;*
 - (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) *Where the conversion of a regular casual employee to full time or part time employment would be contrary to or inconsistent with the State or Territory legislation that regulates the employment of employees 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.*
- (p) *A casual employee's right to convert is not affected if the employer fails to comply with the notice requirements in paragraph (o).*

Yours sincerely



Charles McElroy
Senior Industrial Officer