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Fair Work Commission
80 William Street
EAST SYDNEY NSW 2010

4 yearly review of Modern Awards - Casual employment and Part-time employment - Port Authorities Award 2010 (AM2014/196 and AM2014/197)

We act for Ports Australia in the 4 yearly review of Modern Awards.

We refer to the decision of the Fair Work Commission on 5 July 2017 in [2017] FWCFB 3541 (**Decision**) which provides for, inter alia, submissions regarding the insertion of a casual employment conversion clause into all Modern Awards. We set out below submissions on drafting on behalf of Ports Australia.

We respectfully submit the model casual conversion clause as proposed by the Fair Work Commission at paragraph [381] of the Decision should be adopted, subject to the minor amendments as shown in Annexure 1 to this submission, that we say are necessary to meet the circumstances of the Port Authorities Award. The proposed amendments are made in relation to the Port Authorities Award 2016 (Exposure Draft 14 July 2017) (**Ports Award Exposure Draft**).

We believe the amendment to sub-clause (d) is necessary to ensure that where a conversion from casual employment to part-time employment results in a different number of hours of work per week, an agreement is reached between the employer and the employee as to those hours. In our submission, this amendment to the model casual conversion clause is necessary to ensure consistency with existing clause 6.3(c) of the Ports Award Exposure Draft, which requires employers to agree with part-time employees the number of hours worked per day, the days of the week the employee will work, and the starting and finish times each day.

Yours faithfully
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Annexure 1: Proposed casual conversion clause for insertion into the Port Authorities Award 2016 (Exposure Draft 14 July 2017)

11.66.5 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 or as otherwise agreed between the employer and employee.
- (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.
- (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 [2921](#). 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 [10.46.3\(c\)](#).
- (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.

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