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# FACT SHEET

## Casual Conversion

On 27 March 2021, the Federal Government's *Fair Work Amendment (Supporting Australian's Job and Economic Recovery) Act 2021* (the 'Act') made amendments to the *Fair Work Act 2009* ('the FW Act').

One of the significant amendments was the introduction of a new National Employment Standard ('NES'). As a result, there are now 11 NES, not 10.

The new NES is titled *Offers and requests for casual conversion* and it is located at Division 4A of the FW Act.

*Refer: QHA's National Employment Standards Fact Sheet*

In summary, this amendment to the FW Act:

- places an obligation on employers to offer an eligible casual employee permanent employment; and
- extends the ability for a casual employee to request conversion to permanent employment.

This Fact Sheet details the above new NES.

Included in this Fact Sheet is an employer checklist as well as template letters to assist employers to comply with the new conversion requirements.

## OFFERS AND REQUESTS FOR CASUAL CONVERSION

The new NES at Division 4A of the FW Act has two elements to it. They are:

### 1. EMPLOYER OFFER TO CONVERT

An employer is required to assess and offer a casual employee conversion to permanent full or part-time employment if:

- (a) beginning the day the casual employee's employment started, the employee has been employed by the employer for a period of 12 months; and
- (b) during at least the last 6 months of that period, the employee has worked a regular pattern of hours on an ongoing basis; and
- (c) without significant adjustment, the employee could continue to work as a full-time employee or a part-time employee.

For the purposes of this Fact Sheet, the above will be referred to as the "eligibility criteria".

An employer does not have to make the offer of conversion if a) an employee is not eligible as per above, or b) there are reasonable grounds not to - refer to the explanation of this later in the Fact Sheet.

## SMALL BUSINESS EMPLOYERS EXEMPTION

The requirement for an employer to assess and offer casual conversion does not apply to small business employers.

A small business employer is an employer with less than 15 employees as defined in Section 23 of the FW Act and means:

### **23 Meaning of small business employer**

- (1) A national system employer is a **small business employer** at a particular time if the employer employs fewer than 15 employees at that time.
- (2) For the purpose of calculating the number of employees employed by the employer at a particular time:
  - (a) subject to paragraph (b), all employees employed by the employer at that time are to be counted; and
  - (b) a casual employee is not to be counted unless, the employee is a regular casual employee of the employer he or she has been employed by the employer on a regular and systematic basis.
- (3) For the purpose of calculating the number of employees employed by the employer at a particular time, associated entities are taken to be one entity.
- (4) To avoid doubt, in determining whether a national system employer is a **small business employer** at a particular time in relation to the dismissal of an employee, or termination of an employee's employment, the employees that are to be counted include (subject to paragraph (2)(b)):
  - (a) the employee who is being dismissed or whose employment is being terminated; and
  - (b) any other employee of the employer who is also being dismissed or whose employment is also being terminated.

Please note that for the purposes of assessing employee numbers, it is taken as a headcount of all employees, regardless of hours worked.

## TRANSITIONAL PERIOD FOR NON-SMALL BUSINESS EMPLOYERS: EXISTING CASUALS

Where the offer to convert applies to an employer, a transitional period applies in relation to casual employees who were employed as at 27 March 2021.

What this means is that employers have until 27 September 2021 to:

1. identify if any of those existing casual employees have reached 12 months of service; and
2. if they have, assess whether they, as the employer, are required to make an offer to convert to those existing casual employees, having regard to eligibility criteria.

Within 21 days of making the assessment referred to in dot point 2 above, the employer must:

- a) make a written offer to convert the casual employee's employment to permanent employment; or
- b) write to the employee explaining why the employer will not be making an offer to convert. This written notice must be provided to the employee no later than 27 September 2021.

The above does not apply to employees that commenced employment either on or after 27 March 2021; employers have until 21 days after the 12-month anniversary of an employee to make an assessment.

*This means that all casual employees employed as at 27 March 2021 must receive one of the following by 27 September 2021:*

- a written offer of conversion to permanent employment;
- written notification that the employee is not eligible;

- *written notification that the employer will not be offering conversion to permanent employment on reasonable grounds; or*
- *written notification (within 21 days of making the assessment) that the employee is not eligible because of the employees' length of service.*

#### Existing employees without 12 months service

Please note that where an employer advises an employee who was employed as at 27 March 2021 that they are not eligible as at 27 September 2021 because they do not have 12 months of service, the employer will still be required to make assessment when that employee reaches 12 months of service.

### **EMPLOYER'S OBLIGATION TO OFFER CASUAL CONVERSION**

Where a casual employee meets the eligibility criteria, the employer will have an obligation to offer that casual employee conversion from casual employment to permanent employment unless there are reasonable grounds to not do so.

Employers should be clear when making an offer what effect acceptance of that offer will have on the employee's hourly rate of pay. An employee that accepts an offer of conversion is no longer entitled to the casual loading.

Where a casual employee does not meet the eligibility criteria, the employer will have an obligation to advise the employee in writing within 21 days of the employee having attained 12 months of casual service why the employee is not eligible for conversion. The assessment and offer only has to be made after the initial 12 months period, the employer is not required to make an assessment every 12-month period.

The assessment and offer must be made within 21 days of the employee having attained 12 months of casual service except where the transitional period applies to employees employed as at 27 March 2021.

This process **MUST** be conducted in writing, whether it is offering conversion, advising on eligibility, or not offering conversion on the basis of reasonable grounds. An employer has to inform the employee in writing.

The obligation to offer conversion is a term of the NES and applies regardless of what an industrial instrument, such as a modern award or registered Enterprise Agreement, provides.

### **TYPE OF CONVERSION: FULL-TIME OR PART-TIME?**

Where a casual employee is eligible for an offer to convert, the offer is either to convert to full-time employment or to convert to part-time employment.

In determining which is appropriate, an employer needs to look at the hours of work the casual employee has been working in the last six months of employment.

The offer then needs to reflect:

- full-time employment: if the hours have been the same as full-time hours i.e. 38 ordinary hours per week; or
- part-time employment: if the hours worked have been as per a pattern or regular hours for less than 38 hours per week.

Where an offer of part-time employment is made, it is important to comply with any part-time employment obligations under the relevant industrial instrument, for example, the *Hospitality Industry (General) Award 2020* ("HIGA").

*Refer: QHA's Part-time employment under the HIGA Fact Sheet*

## REASONABLE GROUNDS TO NOT OFFER CASUAL CONVERSION

An employer does not have to make an offer of casual conversion if there are reasonable grounds, provided that the reasonable grounds are based on facts that are known, or reasonably foreseeable, at the time of deciding not to make the offer.

In accordance with the FW Act, reasonable grounds for an employer include but are not limited to:

- (a) the employee's position will cease to exist in the period of 12 months after the time of deciding not to make the offer;
- (b) the hours of work which the employee is required to perform will be significantly reduced in that period;
- (c) there will be a significant change in either or both of the following in that period:
  - (i) the days on which the employee's hours of work are required to be performed;
  - (ii) 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;
- (d) making the offer would not comply with a recruitment or selection process required by or under a law of the Commonwealth or a State or a Territory.

### Notice to not offer conversion

An employer that is not making an offer of casual conversion to an eligible employee must give written notice within 21 days of the 12 month anniversary of the casual employee's employment.

The notice must state that the employer is not making an offer because there are reasonable grounds not to, and set out the reasons for not making the offer.

## WHAT IS A REGULAR PATTERN OF WORK?

The FW Act does not define what a regular pattern of work is for determining a casual employee's eligibility. An employer therefore will need to have regard to the specific circumstances for that employee.

The Explanatory Memorandum to the *Fair Work Amendment (Supporting Australian's Job and Economic Recovery) Bill 2020*, which later became the 2021 Act, provides some guidance as set out below:

*"27. The term 'regular pattern of hours' is adopted from the FWC's model casual conversion term. Whether an employee meets this requirement will depend on the particular circumstances and involves consideration of the pattern of hours worked during the relevant 6 month period.*

*"For example, if an employee has worked shifts of 8 hours each on every Monday and Tuesday for the most recent 9 months of their employment, it will be clear they have worked a regular pattern of hours for the requisite 6 months. Depending on the circumstances of any particular case, the employee may still have worked a regular pattern of hours even with some fluctuation or variation in specific times and days worked, including (for example) if the employee took time away from work when ill or on holiday.*

*"28. Additionally, the assessment of whether the employee worked a 'regular pattern of hours' is qualified by the contextual requirement that the pattern of hours must be able to be continued as a full-time or part-time employee without significant adjustment."*

(emphasis in blue text added)

Therefore, a regular pattern of hours can include some variation in the hours, times and days in a week. A regular pattern does not have to be the same days, hours, starting and finishing times over the 6 month period.

## **IF AN EMPLOYEE REFUSES THE OFFER**

An employee must give to their employer a written response to an offer of casual conversion within 21 days after the date the offer is given.

This response must state whether the employee accepts or declines the offer.

If an employer does not receive a written response within 21 days after the date the offer is given, the employee is taken to have declined the offer.

## **IF AN EMPLOYEE ACCEPTS THE OFFER**

If the employee accepts the offer, the employer must give written notice to the employee, within 21 days after the day the acceptance is given to the employer. That notice must specify the following:

- (a) whether the employee is converting to full-time employment or part-time employment;
- (b) the employee's hours of work after the conversion takes effect;
- (c) the day the employee's conversion to full-time employment or part-time employment takes effect. This must be the first day of the employee's first full pay period that starts after the day the notice is given - unless the employee and employer agree to another day.

Prior to giving notice with the above details, the employer *must discuss those details* with the employee.

In addition to the notice required, an employer should issue an employee who accepts conversion with a new employment contract that reflects the change of employment type.

### Notice regarding the 25% casual loading

Where an employee accepts conversion to permanent employment, that employee should no longer receive the 25% casual loading. This should be made clear to the employee in writing so that they understand their hourly rate of pay drops as a result of the casual loading not being paid.

## **2. EMPLOYEE REQUEST TO CONVERT**

The amendments to the FW Act also provide a casual employee a residual right to request casual conversion to permanent employment in the NES.

This section of the FW Act does apply to small business employers; small business employers are not exempt from this amendment to the FW Act.

### **NOTE:**

An employee of an employer that is not a small business cannot request to convert in accordance with the NES until after 27 September 2021.

An employee of a small business employer can make a request in accordance with the NES before 27 September 2021.

## **Right to Request Conversion under the NES**

A casual employee may request conversion to permanent employment if the employee meets the following eligibility criteria:

- (a) beginning the day employment started, the employee has been employed by the employer for a period of 12 months; and
- (b) during at least the last 6 months of that period, the employee has worked a regular pattern of hours on an ongoing basis; and
- (c) without significant adjustment, the employee could continue to work as a full-time employee or a part-time employee.

### **AND**

- (i) the employee has not refused an offer made to the employee to convert in the previous 6 months;
- (ii) the employer has not, within the previous 6 months, made an offer to convert on reasonable grounds;
- (iii) the employer has not within the previous 6 months responded to the employee refusing a previous request; and
- (iv) the request is not made during the 21 days period after the employee's 12 month anniversary.

NOTE: an employee is not prevented from requesting to convert to full-time or part-time employment in circumstances that are outside the provisions of the NES. In such cases the formal requirements of the NES will not apply.

An employee's request to convert per the NES must:

- (a) be in writing and be given to the employer; and
- (b) set out the request for the employee to convert to full-time or part-time employment, whichever is consistent with the employee's regular pattern of hours worked.

The employer must give the employee a written response to the request within 21 days after the request is given to the employer, stating whether the employer grants or refuses the request.

If the employer refuses the request on reasonable grounds, the written response to the employee must include details of the reasons for the refusal.

### **Refusals of request to convert**

The employer must not refuse a request unless there has been consultation with the employee and there are reasonable grounds to refuse the request. The proviso to this is that the reasonable grounds are based on facts that are known, or reasonably foreseeable, at the time of deciding to refuse the request.

In accordance with the FW Act, reasonable grounds include but are not limited to:

- (a) a significant adjustment to the employee's hours of work would be required in order for the employee to be employed as a full time employee or part time employee;
- (b) the employee's position will cease to exist in the period of 12 months after giving the request;
- (c) the hours of work which the employee is required to perform will be significantly reduced in the period of 12 months after the request;
- (d) there will be a significant change in either or both of the following in the period of 12 months after giving the request:
  - (i) the days on which the employee's hours of work are required to be performed;
  - (ii) 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;

- (e) 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.

### **Granting a request**

If an employer grants an employee's request to convert, the employer must, within 21 days after the day the request is given to the employer, give written notice to the employee of the following:

- (a) whether the employee is converting to full-time employment or part-time employment;
- (b) the employee's hours of work after the conversion takes effect;
- (c) the day the employee's conversion to full-time employment or part-time employment takes effect. This must be the first day of the employee's first full pay period that starts after the day the notice is given - unless the employee and employer agree to another day.

Prior to giving notice with the above details, the employer must discuss those details with the employee.

In addition to the notice required, employers should issue an employee that converts to permanent employment with a new employment contract that reflects the change of employment type.

#### Notice regarding the 25% casual loading

Where an employer accepts conversion to permanent employment, that employee should no longer receive the 25% casual loading. This should be made clear to the employee in writing so that they understand their hourly rate of pay drops as a result of the casual loading not being paid.

## **OTHER CONSIDERATIONS FOR CASUAL CONVERSION**

### **INTERACTION WITH THE AWARDS**

Many awards, including the HIGA already contain a casual conversion clause. The relevant HIGA clause provides an eligible casual employee's right to request conversion in clause 11.7.

For a small business employer, this clause will continue to apply concurrently with the new request provisions in the NES.

For a non-small business employer, clause 11.7 of the HIGA will continue to apply before 27 September 2021. After that date, the HIGA clause will apply concurrently with the new employee request to convert provisions in the NES. It will be important for small business employers to be clear as to which request to convert provision an employee makes a request under. This is because there are some differences between the request to convert provisions in the HIGA and the NES.

Employers should refer to both terms and ensure formal compliance with both provisions in relation to any request to convert made by an employee.

### **DISPUTES**

If an employee disputes a matter concerning casual conversion, such as:

- a refusal to grant a conversion request;
- eligibility for casual conversion;
- an employer's reasonable grounds for not offering conversion or refusing a request

an employee can raise a dispute.

### HIGA DISPUTE MECHANISM

The relevant HIGA clause for dispute resolution is clause 40 and an employee must utilise that dispute resolution process if the HIGA applies.

If an employee is covered by another instrument (Award or Registered Agreement) then the dispute clause in that instrument must be followed.

If an employment contract or other written agreement provides for a dispute process, that process must be followed if there is no dispute provision in an instrument.

If an employee is award free and/or the instrument or contract does not contain a dispute clause and there is no other written agreement, then an employee is to attempt to resolve the dispute at the workplace level. Failing that, either the employer or employee can refer the dispute to the Fair Work Commission.

### FEDERAL CIRCUIT COURT DISPUTE MECHANISM

The FW Act, as a result of the recent amendments, provides that a dispute regarding casual conversion can also be dealt with in the Federal Circuit Court.

### **CASUAL EMPLOYMENT INFORMATION STATEMENT**

As a result of the FW Act amendment, the Fair Work Ombudsman has developed, and published a *Casual Employment Information Statement* (the 'CEIS').

Employers must now provide casual employees with the CEIS in accordance with the below:

- Casual employees employed after 27 March 2021 – employers must provide the CEIS to all new casual employees as soon as practicable after employment commences.
- Casual employees employed as at 26 March 2021 –
  - Small business employers: employers must provide casual staff employed as at 26 March 2021 with a copy of the CEIS as soon as practicable.
  - Non small business employers: employers must provide casual staff employed as at 26 March 2021 with a copy of the CEIS as soon as possible after 27 September 2021, however, an employer can elect to provide the CEIS before this date.

### CEIS AND THE FAIR WORK INFORMATION STATEMENT

The existing requirement for employers to provide all employees with a copy of the *Fair Work Information Statement* is still applicable.

This means that casual employees will receive both statements from their employer.

A copy of the new Statement for casual employees can be downloaded from [HERE](#).



## QHA RESOURCES

### EMPLOYER CHECKLIST

The casual conversion employer checklist at Attachment A has been developed to assist QHA members to determine, on an individual level, and having regard to the particular circumstances of a casual employee, whether they have an obligation to offer to convert an employee's casual employment to permanent employment.

### TEMPLATE DOCUMENTS

The following templates have been included in this Fact Sheet for QHA member use. They are:

- Attachment B: Employer offer to convert from casual employment template
- Attachment C: Employer unable to offer to convert / employee not eligible template
- Attachment D: Employer refusal of employee's request to convert from casual to permanent template
- Attachment E: Employer granting employee's request to convert template
- Attachment F: Discussion regarding Casual Conversion File Note Template

#### **Further Assistance**

Financial QHA members are encouraged to contact the QHA's Employment Relations Department (refer the contact details at the bottom of this page) for a confidential discussion about the information in this Fact Sheet, or to discuss any queries relating to specific workplace matters.

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## ATTACHMENT A

### CASUAL CONVERSION EMPLOYER CHECKLIST

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#### NOTES:

- An employer's offer of casual conversion to a casual employee is a one-off requirement at the employee's first 12-month anniversary date.
- For casuals employed as at 27 March 2021 by a non-small business employer, that employer has until 27 September 2021 to provide one of the following to the employee:
  - A written offer of conversion to permanent employment;
  - Written notification that the employee is not eligible to convert;
  - Written notification that the employer will not be offering conversion to permanent employment on reasonable grounds; or
  - Written notification (within 21 days of making the conversion assessment) that the employee is not eligible because of the employee's length of service.

<b>CHECKLIST ITEM / ACTION FOR EMPLOYER OFFER TO CONVERT</b>	<b>TICK AS APPLICABLE</b>
<b>Casual Employment Information Statement</b> <ul style="list-style-type: none"><li>• Employers with less than 15 employees: provide casuals employed before 27 March 2021 with a copy of the <i>Casual Employment Information Statement</i> as soon as possible.</li><li>• Employers with more than 15 employees: provide casual staff employed before 27 March 2021 with a copy of the <i>Casual Employment Information Statement</i> as soon as possible after 27 September 2021. Employers can provide it before 27 September 2021.</li></ul>	
<b>Is the employer a small business?</b> <i>(refer to QHA's Casual Conversion Fact sheet)</i> <ul style="list-style-type: none"><li>• If yes, the requirement to offer conversion in the NES does not apply.</li><li>• If no, the requirement to offer conversion in the NES does apply and this is subject to transitional arrangements for existing employees</li></ul>	<b>Y / N</b>
<b>Was the casual employee employed as at 27 March 2021?</b> <p>If yes, transitional arrangements apply. By 27 September 2021, the employer must complete an assessment of the casual employee – purposes of a casual conversion offer.</p> <p>If no, and the employee was employed after 27 March 2021, the employer does not have to assess whether an offer to convert has to be made until that employee reaches 12 months of employment.</p>	<b>Y / N</b>

<p><b>CASUAL CONVERSION ASSESSMENT - by 27 September 2021 - casual employees employed as at 27 March 2021</b></p> <p><u>Part A</u></p> <ul style="list-style-type: none"> <li>• Has the employee been employed for at least 12 months? <span style="float: right;">Y / N</span></li> <li>• Has the employee worked a regular pattern of hours of work on an ongoing basis for at least the last 6 months? <span style="float: right;">Y / N</span></li> <li>• Could the employee’s regular pattern of hours continue without the business making significant changes? <span style="float: right;">Y / N</span></li> </ul> <p><u>Part B</u></p> <p>Are there reasonable grounds to not offer conversion, such as, in the next 12 months:</p> <ul style="list-style-type: none"> <li>- The position won’t exist? <span style="float: right;">Y / N</span></li> <li>- Hours of work will significantly reduce? <span style="float: right;">Y / N</span></li> <li>- Days or times of work will significantly change, and that can’t be accommodated within the employee’s available days or times for work? <span style="float: right;">Y / N</span></li> <li>- The offer would not comply with a recruitment or selection process required by or under a Commonwealth, State or Territory law? <span style="float: right;">Y / N</span></li> <li>- The business would have to make a significant adjustment to the employee’s work hours for them to be employed full-time or part-time? <span style="float: right;">Y / N</span></li> </ul> <p>If an employee is eligible under Part A, and there are no reasonable grounds as per Part B for not making an offer, an offer to convert to permanent employment must be made.</p>	
<p><b>Employer is offering conversion – casual employee employed at 27 March 2021, and has 12 months service at or before 27 September 2021</b></p> <p>If the employee is eligible and reasonable grounds to not offer conversion do not exist, by 27 September 2021:</p> <ul style="list-style-type: none"> <li>• Discuss with employee and complete: <i>Discussion regarding Casual Conversion File Note Template</i></li> <li>• Issue Letter using <i>Employer offer to convert from casual employment template</i></li> <li>• If accepted by the casual employee, issue a new permanent employment contract.</li> </ul>	
<p><b>Employer <u>not</u> offering conversion – casual employee employed at 27 March 2021, and has 12 months service at or before 27 September 2021</b></p> <p>If the employee is not eligible, or reasonable grounds to not offer conversion exist:</p> <ul style="list-style-type: none"> <li>• Discuss with employee and complete: <i>Discussion regarding Casual Conversion File Note Template</i></li> <li>• Issue Letter using <i>Employer unable to offer to convert / employee not eligible template</i></li> </ul> <p>No further action required.</p>	

<p><b>Employer <u>not</u> offering conversion – casual employee employed at 27 March 2021, but does not have 12 months service at or before 27 September 2021</b></p> <ul style="list-style-type: none"> <li>Issue Letter using <i>Employer unable to offer to convert / employee not eligible template</i></li> </ul> <p>Within 21 days of 12-month anniversary, complete further assessment to determine if an offer to convert is to be made.</p>	
<p><b>CASUAL CONVERSION ASSESSMENT – after 27 September 2021:</b></p> <ul style="list-style-type: none"> <li><b>casual employees employed after 27 March 2021 and</b></li> <li><b>casual employees employed before 27 March 2021 that later reach their 12-month anniversary (after 27/9/21)</b></li> </ul> <p>Within 21 days of 12-month anniversary, complete further assessment to determine if an offer to convert is to be made.</p> <p><u>Part A</u></p> <ul style="list-style-type: none"> <li>Has the employee been employed for at least 12 months? <b>Y / N</b></li> <li>Has the employee worked a regular pattern of hours of work on an ongoing basis for at least the last 6 months? <b>Y / N</b></li> <li>Could the employee’s regular pattern of hours continue without the business making significant changes? <b>Y / N</b></li> </ul> <p><u>Part B</u></p> <p>Are there Reasonable business grounds to not offer conversion, such as, in the next 12 months:</p> <ul style="list-style-type: none"> <li>- The position won’t exist? <b>Y / N</b></li> <li>- Hours of work will significantly reduce? <b>Y / N</b></li> <li>- Days or times of work will significantly change, and that can’t be accommodated within the employee’s available days or times for work? <b>Y / N</b></li> <li>- The offer would not comply with a recruitment or selection process required by or under a Commonwealth, State or Territory law? <b>Y / N</b></li> <li>- The business would have to make a significant adjustment to the employee’s work hours for them to be employed full-time or part-time? <b>Y / N</b></li> </ul> <p>If an employee is eligible under Part A, and there are no reasonable grounds as per Part B for not making an offer, an offer to convert to permanent employment must be made.</p>	
<p><b>Employer offering conversion:</b></p> <p>If the employee is eligible and reasonable grounds to not offer conversion do not exist, within 21 days of 12-month anniversary:</p> <ul style="list-style-type: none"> <li>Discuss with employee and complete: <i>Discussion regarding Casual Conversion File Note Template</i></li> <li>Issue Letter using <i>Employer offer to convert from casual employment template</i>; and</li> <li>If accepted then issue a new permanent employment contract.</li> </ul>	

<p><b>Employer <u>not</u> offering conversion:</b></p> <p>If the employee is not eligible or reasonable grounds to not offer conversion exist, within 21 days of 12-month anniversary:</p> <ul style="list-style-type: none"> <li>• Discuss with employee and complete: <i>Discussion regarding Casual Conversion File Note Template</i></li> <li>• Issue Letter using <i>Employer unable to offer to convert / employee not eligible template</i></li> </ul> <p>No further action required.</p>	
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<b>CHECKLIST ITEM / ACTION FOR <u>EMPLOYEE REQUEST TO CONVERT</u></b>	<b>TICK AS APPLICABLE</b>
<p><b>Employee right to request conversion per the NES</b></p> <p>Is the employer a small business employer?</p> <p>If yes, an employee of a small business employer can make a request in accordance with the NES before 27 September 2021 (as well as at any time after this date).</p> <p>If no, employee cannot request to convert in accordance with the NES until after 27 September 2021.</p>	<b>Y / N</b>
<p><b>Employee request to convert before 27 September 2021 – non small business employer</b></p> <ul style="list-style-type: none"> <li>• Discuss with employee and complete: <i>Discussion regarding Casual Conversion File Note Template</i></li> <li>• Issue Letter using <i>Employer refusal of employee’s request to convert from casual to permanent template.</i></li> </ul>	
<p><b>Employee request to convert – small business employer, or the request is made after 27 September 2021</b></p> <p>Within 21 days of the casual employee’s request, assess whether the employee is eligible to make a request based on the following eligibility criteria:</p> <p>(a) beginning the day employment started, the employee has been employed by the employer for a period of 12 months; and</p> <p>(b) during at least the last 6 months of that period, the employee has worked a regular pattern of hours on an ongoing basis; and</p> <p>(c) without significant adjustment, the employee could continue to work as a full-time employee or a part-time employee.</p> <p><b>and</b></p> <p>(i) the employee has not refused an offer made to the employee to convert in the previous 6 months;</p> <p>(ii) the employer has not within the previous 6 months, not made an offer to convert on reasonable grounds;</p> <p>(iii) the employer has not within the previous 6 months responded to the</p>	

<p>employee refusing a previous request; and  (iv) the request is not made during the 21 day period after the employee's 12 month anniversary.</p> <p>Respond in writing to the employee granting or refusing the request on grounds of eligibility or reasonable grounds.</p>	
<p><b>Employer refusal of request</b></p> <p>If the employee is not eligible to request to convert, or reasonable grounds to refuse request exist, within 21 days of the request:</p> <ul style="list-style-type: none"> <li>• Discuss with employee and complete: <i>Discussion regarding Casual Conversion File Note Template</i></li> <li>• Issue Letter using <i>Employer refusal of employee's request to convert from casual to permanent template.</i></li> </ul>	
<p><b>Employer agreement to the request</b></p> <p>If the employee is eligible, and reasonable grounds to refuse the request do not exist, within 21 days of the request:</p> <ul style="list-style-type: none"> <li>• Discuss with employee and complete: <i>Discussion regarding Casual Conversion File Note Template</i></li> <li>• Issue Letter using <i>Employer granting employee's request to convert template;</i> and</li> <li>• Issue a new permanent employment contract.</li> </ul>	

## **ATTACHMENT B**

### **EMPLOYER OFFER TO CONVERT FROM CASUAL EMPLOYMENT TEMPLATE**

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<insert date>

<insert name>  
<insert position>

Dear <insert name>,

**RE: Employer offer of casual conversion**

As a result of changes to workplace laws from 27 March 2021, employers are required to assess a casual employee's eligibility for conversion from casual to permanent employment.

An assessment has been completed having regard to your current employment arrangement. You have been employed for more than twelve months, and in the last six months you have worked a regular pattern of hours. As a result <insert name of employing entity> is able to offer you conversion from your current casual employment to permanent employment.

Should you choose to accept our offer to convert to permanent employment, your terms and conditions of employment will be amended as follows:

Position Title:	<Insert>
Position Award Classification:	<Insert>
Base rate of pay:	<Insert>
Employment type that you will be converting to:	<Insert whether the conversion is to full-time (38 hours) or part-time (less than 38 hours)>
Hours of work after conversion:	<Insert averaging arrangement for how the hours will be worked, and, if part-time employment, the guaranteed hours per week/roster cycle for PT employee's>
Date that conversion to permanent employment will take effect:	<Insert date. Conversion must take effect on the first day of the next full pay period after the employee has accepted the offer of conversion, unless employer and employee agree to another day>

Please note that should you choose to accept the offer of conversion you will no longer be entitled to be paid the casual loading of 25%. This is because you will no longer be a casual employee.

The base rate of pay stated in the table above reflects the base rate of pay i.e. minus the 25% casual loading. As a permanent employee, you would accrue paid annual leave and personal leave entitlements which are outlined within the National Employment Standards in the *Fair Work Act 2009*.

Please review this offer to convert to permanent employment, and respond within 21 days of receipt of this letter.

Should you accept our offer to convert, a new employment contract will be provided to you. This employment contract will confirm the revised employment relationship.

In the event that you do not respond within 21 days, it will be taken that this offer to convert has been declined.

We look forward to receiving your response.

Regards,

<Insert Name>  
<Insert Position Title>

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I \_\_\_\_\_, acknowledge the above offer of casual conversion and confirm the following:

Response Options	Please tick
I accept the offer of casual conversion as outlined in this letter. Please prepare a revised contract of employment to confirm the conversion.	
I do not accept the offer, and wish to remain employed as a casual employee.	

Employee Signature \_\_\_\_\_

Date: \_\_\_\_\_



## **ATTACHMENT C**

### **EMPLOYER UNABLE TO OFFER TO COVERT / EMPLOYEE NOT ELIGIBLE TEMPLATE**

<insert date>

<insert name>  
<insert position>

Dear <insert name>,

**RE: Employer unable to offer conversion from casual to permanent employment**

As a result of changes to workplace laws from 27 March 2021, employers are required to assess a casual employee's eligibility for conversion from casual to permanent employment.

An assessment has been completed having regard to your current employment arrangements. This letter is to advise you that <insert name of employing entity> is unable to offer you conversion to permanent employment for the below reason/s:

**USE THIS IF THE EMPLOYEE IS NOT ELIGIBLE:**

<Delete the options that do not apply>

- You are not eligible as you haven't been employed for 12 months.
- You are not eligible as you have not worked a regular pattern of hours on an ongoing basis for at least the last 6 months.
- You are not eligible as you have not worked a regular pattern of hours which could continue without the business making significant changes.

**OR**

**USE THIS IF THE EMPLOYEE IS ELIGIBLE, BUT REASONS EXIST TO REFUSE:**

There are reasonable business grounds for <insert name of employing entity> not to make an offer for the following reasons:

<Delete the options that don't apply>

- the position won't exist in the next 12 months
- your hours of work will significantly reduce in the next 12 months
- in the next 12 months days or times of work will significantly change, and that can't be accommodated within your available days or times for work
- the offer would not comply with a recruitment or selection process required by or under a Commonwealth, State or Territory law
- the business would have to make a significant adjustment to your work hours for you to be employed full-time or part-time.

<Expand on the reasonable grounds selected and reasons why, for example, if hours of work will reduce, why, such as seasonal reasons.>

Please note your terms and conditions of employment will remain as a casual employee.

Regards,

<Insert Name>  
<Insert Position Title>

## **ATTACHMENT D**

### **EMPLOYER REFUSAL OF EMPLOYEE'S REQUEST TO CONVERT TEMPLATE**

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<insert date>

<insert name>  
<insert position>

Dear <insert name>,

**RE: Employer refusal of request to convert from casual to permanent employment**

I confirm that on <insert date of employee's request> you requested conversion from casual to permanent employment in accordance with the National Employment Standards ('NES').

#### **USE THIS IF THE EMPLOYEE IS NOT ELIGIBLE**

Further to our consultation with you on <insert date of meeting with employee>, we have assessed your request however you are not eligible to make a request in accordance with the NES because:

<Delete the options that don't apply>

- you haven't been employed for 12 months.
- you have not worked a regular pattern of hours on an ongoing basis for at least the last 6 months.
- you have not worked a regular pattern of hours which could continue without the business making significant changes.
- you have refused an offer to convert in the previous 6 months.
- in the previous 6 months, we assessed whether we could offer you casual conversion and have not made an offer to you convert to permanent because we had reasonable grounds not to.
- in the previous 6 months we responded to a previous request refusing conversion to permanent employment.

<Delete if a small business employer as this is not applicable>

- your request has been made during the 21-day period after your 12 month anniversary.

**OR**

#### **USE THIS IF THE EMPLOYEE IS ELIGIBLE, BUT REASONS EXIST TO REFUSE**

Further to our consultation with you on <insert date of meeting with employee>, we have assessed your request based on your current employment arrangement, and confirm <insert name of employing entity> is refusing your request on reasonable business grounds for the following reasons:

<Delete the options that don't apply>

- the position won't exist in the next 12 months:
- your hours of work will significantly reduce in the next 12 months
- in the next 12 months days or times of work will significantly change, and that can't be accommodated within your available days or times for work
- offer would not comply with a recruitment or selection process required by or under a Commonwealth, State or Territory law
- the business would have to make a significant adjustment to your work hours for you to be employed full-time or part-time.

<Expand on the reasonable grounds selected and reasons why, for example, if hours of work will reduce, why, such as seasonal reasons.>

Please note your terms and conditions of employment will remain as a casual employee.

Regards,  
<Insert Name>  
<Insert Position Title>

## **ATTACHMENT E**

### **EMPLOYER GRANTING EMPLOYEE'S REQUEST TO CONVERT TEMPLATE**

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<insert date>

<insert name>  
<insert position>

Dear <insert name>,

**RE: Employer granting of request to convert from casual to permanent employment**

I confirm that on <insert date of employee's request> you requested conversion from casual to permanent employment in accordance with the National Employment Standards ('NES').

Further to our consultation with you on <insert date of meeting with employee>, we have assessed your request and <insert name of employing entity> confirms it is able to grant your request.

As discussed with you your terms and conditions of employment after you convert to permanent employment will be as follows:

Position Title:	<Insert>
Position Award Classification:	<Insert>
Base rate of pay:	<Insert>
Employment type that you will be converting to:	<Insert whether the conversion is to full-time (38 hours) or part-time (less than 38 hours)>
Hours of work after conversion:	<Insert averaging arrangement for how the hours will be worked, and, if part-time employment, the guaranteed hours per week/roster cycle for PT employee's>
Date that conversion to permanent employment will take effect:	<Insert date. Conversion must take effect on the first day of the next full pay period after the employee has accepted the offer of conversion, unless employer and employee agree to another day>

Please note that as a result of your request to convert, and your conversion to permanent employment you will no longer be entitled to be paid the casual loading of 25%. This is because you will no longer be a casual employee.

The base rate of pay stated in the table above reflects the base rate of pay i.e. minus the 25% casual loading. As a permanent employee, you would accrue paid annual leave and personal leave entitlements which are outlined within the National Employment Standards in the *Fair Work Act 2009*.

Please also find attached a new employment contract confirming your permanent employment. Please sign and return to <insert contact details>.

Regards,

<Insert Name>  
<Insert Position Title>

