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Sent: Thursday, 24 June 2021 1:40 PM

To: Chambers - Ross J <Chambers.Ross.j@fwc.gov.au>; Chambers - Hatcher VP <Chambers.Hatcher.VP@fwc.gov.au>; Chambers - Catanzariti VP <Chambers.Catanzariti.VP@fwc.gov.au>; Chambers - Easton DP <Chambers.Easton.DP@fwc.gov.au>; Chambers - Bissett C <Chambers.Bissett.c@fwc.gov.au>

Subject: AM2021/54 Casual Terms Review

Dear Members of the Full Bench,

I refer to the above matter.

I seek leave to file the attached draft determination that I intend on referring to during oral submissions in this afternoon's hearing.

I confirm I have already circulated this document amongst parties that have an interest in the manufacturing award.

Yours sincerely,

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DRAFT DETERMINATION

Fair Work Act 2009

Clause 48 of Schedule 1

Casual terms award review 2021

(AM2021/54)

JUSTICE ROSS, PRESIDENT
VICE PRESIDENT HATCHER
VICE PRESIDENT CATANZARITI
DEPUTY PRESIDENT EASTON
COMMISSIONER BISSETT

MELBOURNE, XX YYY 2021

[1] Further to the decision and reasons for decision <<decision reference>> in AM2021/54, it is ordered determined pursuant to clause 48 of Schedule 1 of the Fair Work Act 2009, that the Manufacturing and Associated Industries and Occupations Award 2020 be varied as follows:

[2] Delete clause 11.5 and insert the following:

11.5 Right to request casual conversion

NOTE 1: Division 4A of the Act provides entitlements to certain casual employees in relation to offers and requests to convert to full time or part time permanent employment.

NOTE 2: Clause 11.5 is in addition to Division 4A.

- (a) A casual employee may make a request of an employer under this clause if:
- (i) the employee has been employed by the employer for a period of at least 6 months but no more than 12 months beginning the day the employment started; and
 - (ii) the employee has, in the period of 6 months ending the day the request is given, worked a regular pattern of hours on an ongoing basis which, without significant adjustment, the employee could continue to work as a full-time employee or a part-time employee (as the case may be).

(b) Any request made pursuant to clause 11.5(a) must:

- (i) be in writing; and
- (ii) be a request for the employee to convert:
 - for an employee that has worked the equivalent of full-time hours during the period referred to in clause 11.5(a)(ii), to full-time employment; or

- for an employee that has worked less than the equivalent of full-time hours during the period referred to in clause 11.5(a)(ii) to part-time employment that is consistent with the regular pattern of hours worked during that period; and
- (c) 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.
- (d) The employer must not refuse a request made pursuant to clause 11.5(a) unless:
- (i) the employer has consulted the employee; and
 - (ii) there are reasonable grounds to refuse the request; and
 - (iii) the reasonable grounds are based on facts that are known, or reasonably foreseeable, at the time of refusing the request.
- (e) For the purposes of clause 11.5(d) above, 'reasonable grounds' could include the following:
- (i) it would require a significant adjustment to the employee's hours of work in order for the employee to be employed as a full-time employee or part-time employee;
 - (ii) the employee's position will cease to exist in the period of 12 months after giving the request;
 - (iii) the hours of work which the employee is required to perform will be significantly reduced in the period of 12 months after giving the request;
 - (iv) there will be a significant change in either or both of the following in the period of 12 months after giving the request:
 - (v) the days on which the employee's hours of work are required to be performed;
 - (vi) the times at which the employee's hours of work are required to be performed;
 - (vii) which cannot be accommodated within the days or times the employee is available to work during that period;
 - (viii) 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.
- (f) If an employer refuses a request made pursuant to clause 11.5(a) then it must provide its reasons for the refusal in writing to the employee.

- (g) If the employer grants the request, 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:
 - (i) whether the employee is converting to full-time employment or part-time employment;
 - (ii) the employee's hours of work after the conversion takes effect;
 - (iii) the day the employee's conversion to full-time employment or part-time employment takes effect.
- (h) Before giving an employee such a notice, the employer must meet and discuss with the employee the matters the employer intends to specify for the purposes of subclause 11.5(f) above.
- (i) The day specified in the notice given pursuant to clause 11.5(f) 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.
- (j) An employer must not reduce or vary an employee's hours of work, or terminate an employee's employment, in order to avoid any right or obligation under this clause.
- (k) Any disputes about arising under this clause can be dealt with using the dispute resolution process in clause 42 of this award.
- (l) An employer must give a casual employee notice of the content of this clause to such a casual employee before or as soon as practicable after the employee starts employment as a casual employee with the employer.