A Bill for an Act to amend the *Fair Work Act 2009* to provide a right to request conversion from casual to full-time or part-time employment, and for related purposes
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A Bill for an Act to amend the *Fair Work Act 2009* to provide a right to request conversion from casual to full-time or part-time employment, and for related purposes

The Parliament of Australia enacts:

1 **Short title**

   This Act is the *Fair Work Amendment (Right to Request Casual Conversion) Act 2019*.

2 **Commencement**

   (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with
column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information

<table>
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<tr>
<td>Provisions</td>
<td>Commencement</td>
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<td>1. The whole of this Act</td>
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Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

(2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.
Schedule 1—Amendments

Part 1—Main amendments

Fair Work Act 2009

1 Section 12
   Insert:
   
   *casual conversion term* means a term of a modern award or enterprise agreement that has the effect of allowing for requests to be made to convert from casual employment to full-time or part-time employment.

2 After Division 4 of Part 2-2
   Insert:

Division 4A—Requests for casual conversion

66A Application of Division
   
   (1) This Division applies in relation to an employee of an employer other than an employee covered by subsection (2) or (3).

   (2) An employee of an employer is covered by this subsection if:
       (a) a modern award applies to the employee; and
       (b) the award includes a casual conversion term.

   (3) An employee of an employer is covered by this subsection if:
       (a) an enterprise agreement applies to the employee; and
       (b) the enterprise agreement includes a casual conversion term that complies with the requirements set out in subsection 205A(2).

Note: Section 205A requires enterprise agreements to contain a casual conversion term that meets the requirements set out in subsection 205A(2). Enterprise agreements are taken to include such a term in certain circumstances (see subsection 205A(3)).

   (4) For the purposes of this Division, a reference to full-time employment, or part-time employment, does not include
employment for a specified period of time, for a specified task or for the duration of a specified season.

66B Employee may make a request

(1) An employee engaged by a particular employer and covered by subsection (3) may request:
   (a) if the employee has worked the equivalent of full-time hours in the period of 12 months before giving the request to the employer—that the employee’s employment be converted to full-time employment; or
   (b) if the employee has worked less than the equivalent of full-time hours in the period of 12 months before giving the request to the employer—that the employee’s employment be converted to part-time employment consistent with the regular pattern of hours worked during that period.

Note: If a request is granted, the conversion to full-time employment or part-time employment has effect for all purposes (see subsection 66E(4)).

(2) The request must:
   (a) be in writing; and
   (b) be given to the employer.

(3) An employee is covered by this subsection if:
   (a) the employee is designated as a casual employee by the employer for the purposes of:
       (i) any fair work instrument that applies to the employee; or
       (ii) the employee’s contract of employment; and
   (b) the employee has, in the period of 12 months before giving the request to the employer, 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).

(4) For the purposes of paragraph (1)(a) or (b), in determining whether an award/agreement free employee has worked the equivalent of full-time hours, regard may be had to the hours of work of any other full-time employees of the employer employed in the same
position as (or in a position that is comparable to) the position of the employee.

66C Employer must give a response

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.

66D Refusals of requests

(1) The employer must not refuse the request unless:
(a) the employer has consulted the employee; and
(b) there are reasonable grounds to refuse the request; and
(c) the reasonable grounds are based on facts that are known, or reasonably foreseeable, at the time of refusing the request.

(2) Without limiting paragraph (1)(b), reasonable grounds for refusing the request include the following:
(a) it would require a significant adjustment to the employee’s hours of work in order for the employee to be engaged 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 giving 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.

Note: Certain State and Territory laws do not apply to an employee or an employer (see Division 2 of Part 1-3).
(3) If the employer refuses the request, the written response under section 66C must include details of the reasons for the refusal.

66E Grants of requests

(1) If the employer grants the request, the employer must, within a reasonable period after 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.

(2) However, the employer must discuss with the employee the matters the employer intends to specify for the purposes of paragraphs (1)(a), (b) and (c) before giving the notice.

(3) The day specified for the purposes of paragraph (1)(c) 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.

(4) The employee is taken, on and after the day specified in the notice for the purposes of paragraph (1)(c), to be a full-time employee or part-time employee of the employer for the purposes of the following:
   (a) this Act and any other law of the Commonwealth;
   (b) a law of a State or Territory (other than a law of a State or Territory prescribed by the regulations);
   (c) any fair work instrument that applies to the employee;
   (d) the employee’s contract of employment.

(5) To avoid doubt, the notice may be included in the written response under section 66C.

66F Other rights and obligations

(1) Nothing in this Division prevents an employee who converts to full-time employment or part-time employment, as a result of a
request made in accordance with this Division, from reverting to casual employment.

(2) However, such an employee may revert to casual employment only with the written agreement of the employer.

(3) An employee must not be engaged and be re-engaged (or not be re-engaged), or have their hours of work reduced or varied, in order to avoid any right or obligation under this Division.

(4) Nothing in this Division:
   (a) requires an employee to convert to full-time employment or part-time employment; or
   (b) permits an employer to require an employee to convert to full-time employment or part-time employment; or
   (c) requires an employer to increase the hours of work of an employee who requests conversion to full-time employment or part-time employment under this Division.

66G Disputes about the operation of this Division

Application of this section

(1) This section applies to a dispute between an employer and employee about the operation of this Division.

(2) However, this section does not apply in relation to the dispute if any of the following include a term that provides a procedure for dealing with the dispute:
   (a) a fair work instrument that applies to the employee;
   (b) the employee’s contract of employment;
   (c) another written agreement between the employer and employee.

Note: Modern awards and enterprise agreements must include a term that provides a procedure for settling disputes in relation to the National Employment Standards (see paragraph 146(b) and subsection 186(6)).

Resolving disputes

(3) In the first instance, the parties to the dispute must attempt to resolve the dispute at the workplace level, by discussions between the parties.
Schedule 1  Amendments
Part 1  Main amendments

Note: This subsection is a civil remedy provision (see Part 4-1).

FWC may deal with disputes

(4) If discussions at the workplace level do not resolve the dispute, a party to the dispute may refer the dispute to the FWC.

(5) If a dispute is referred under subsection (4):
   (a) the FWC must deal with the dispute; and
   (b) if the parties notify the FWC that they agree to the FWC arbitrating the dispute—the FWC may deal with the dispute by arbitration.

Note: For the purposes of paragraph (a), the FWC may deal with the dispute as it considers appropriate, including by mediation, conciliation, making a recommendation or expressing an opinion (see subsection 595(2)).

Representatives

(6) The employer or employee to the dispute may appoint a person or industrial association to provide the employer or employee (as the case may be) with support or representation for the purposes of resolving, or the FWC dealing with, the dispute.

Note: A person may be represented by a lawyer or paid agent in a matter before the FWC only with the permission of the FWC (see section 596).

3  At the end of Division 5 of Part 2-4

Add:

205A  Enterprise agreements to include a casual conversion term etc.

   (1) An enterprise agreement must include a casual conversion term that complies with the requirements set out in subsection (2).

   (2) The term must:
       (a) if the enterprise agreement applies to employees covered by a modern award and the modern award, at the time the agreement is made, includes a casual conversion term—be either:
(i) the same, or substantially the same, in relation to those employees as the term included in the modern award at that time; or

(ii) more beneficial on an overall basis to those employees than the term included in the modern award at that time; and

(b) if the enterprise agreement applies to employees covered by a modern award and the modern award, at the time the agreement is made, does not include a casual conversion term, or the enterprise agreement applies to employees who are not covered by a modern award—be either:

(i) the same, or substantially the same, in relation to those employees as the entitlement set out in Division 4A of Part 2-2; or

(ii) more beneficial on an overall basis to those employees than the entitlement set out in Division 4A of Part 2-2.

(3) If:

(a) an enterprise agreement does not include a casual conversion term that complies with the requirements set out in subsection (2); and

(b) the enterprise agreement applies to employees covered by a modern award that includes a casual conversion term;

the enterprise agreement is taken to include the modern award term (as in force from time to time) in relation to those employees and the term is taken to comply with the requirements set out in subsection (2).

Note: To the extent that an enterprise agreement does not include a casual conversion term that meets the requirements set out in subsection (2) and applies to employees covered by a modern award that does not include a casual conversion term, or to employees not covered by a modern award, the entitlement set out in Division 4A of Part 2-2 applies in relation to those employees (see subsections 66A(1) and (3)).
Schedule 1 Amendments
Part 2 Other amendments

Part 2—Other amendments

Fair Work Act 2009

4 After paragraph 61(2)(b)
Insert:
(ba) requests for casual conversion (Division 4A);

5 Paragraph 65(2)(a)
Repeal the paragraph, substitute:
(a) for an employee other than a casual employee—the employee:
(i) has completed at least 12 months of continuous service with the employer immediately before making the request; or
(ii) meets the requirements referred to in subsection (2A); or

6 After subsection 65(2)
Insert:
(2A) The requirements are that:
(a) the employee has, as a result of a request made under Division 4A or under a casual conversion term, converted to full-time employment or part-time employment; and
(b) the employee has continuous service (regardless of the length of that continuous service) with the employer from the time the conversion took effect until immediately before making the request under subsection (1) of this section.

7 Subsection 67(1)
Repeal the subsection (not including the heading), substitute:
(1) An employee, other than a casual employee, is not entitled to leave under this Division (other than unpaid pre-adoption leave or unpaid no safe job leave) unless:
(a) the employee has, or will have, completed at least 12 months of continuous service with the employer immediately before the date that applies under subsection (3); or

(b) the employee has, as a result of a request made under Division 4A or under a casual conversion term, converted to full-time or part-time employment and has continuous service (regardless of the length of that continuous service) with the employer from the time the conversion took effect until immediately before the date that applies under subsection (3).

8 Subsection 87(1)
After “with his or her employer”, insert “(other than periods of employment as a casual employee of the employer)”.

9 Subsection 87(2)
After “year of service”, insert “(other than periods of employment as a casual employee of the employer)”.

10 Subsection 96(1)
After “with his or her employer”, insert “(other than periods of employment as a casual employee of the employer)”.

11 Subsection 96(2)
After “year of service”, insert “(other than periods of employment as a casual employee of the employer)”.

12 At the end of section 117
Add:

(4) A reference in this section to continuous service with the employer does not include periods of employment as a casual employee of the employer.

13 At the end of section 119
Add:

(3) A reference in this section to continuous service with the employer does not include periods of employment as a casual employee of the employer.
14 **Paragraph 121(1)(a)**

After “with the employer”, insert “(other than periods of employment as a casual employee of the employer)’’.

15 **Paragraph 201(1)(b)**

Repeal the paragraph, substitute:

(b) any of the following apply:

(i) the model flexibility term is taken, under subsection 202(4), to be a term of the agreement;

(ii) the model consultation term is taken, under subsection 205(2), to be a term of the agreement;

(iii) a casual conversion term is taken, under subsection 205A(3), to be a term of the agreement;

16 **Subsection 539(2) (after table item 5)**

Insert:

<table>
<thead>
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<th>Part 2-2—The National Employment Standards</th>
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<tr>
<td>66G(3) (3)</td>
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17 **In the appropriate position in Schedule 1**

Insert:

**Part 9—Amendments made by the Fair Work Amendment (Right to Request Casual Conversion) Act 2019**

41 **Resolving uncertainties and difficulties about interaction between enterprise agreements and casual conversion terms**

(1) On application by an employer, employee or employee organisation covered by an enterprise agreement that was made
before the commencement of the *Fair Work Amendment (Right to Request Casual Conversion) Act 2019*, the FWC may make a determination varying the agreement:

(a) to resolve an uncertainty or difficulty relating to the interaction between the agreement and the provisions of Division 4A of Part 2-2 (as inserted by that Act) or section 205A (as inserted by that Act); or

(b) to make the agreement operate effectively with those provisions.

(2) A variation of an enterprise agreement under this clause operates from the day specified in the determination, which may be a day before the determination is made.

42 Giving existing employees updated Fair Work Information Statement

(1) This clause applies to an employer if, immediately after the commencement of the *Fair Work Amendment (Right to Request Casual Conversion) Act 2019*:

(a) an employee of the employer is designated as a casual employee by the employer for the purposes of:

(i) any fair work instrument that applies to the employee; or

(ii) the employee’s contract of employment; and

(b) neither of the following apply to the employee:

(i) a modern award that includes a casual conversion term;

(ii) an enterprise agreement that includes a casual conversion term that complies with the requirements set out in subsection 205A(2).

(2) The employer must, within 3 months after the day that Act commences, give each such employee the Fair Work Information Statement.

Note: Any changes to the Fair Work Information Statement to reflect Division 4A of Part 2-2 (as inserted by that Act) are required to be published by the Fair Work Ombudsman (see section 124).
43 Application of certain amendments

(1) Division 4A of Part 2-2 (as inserted by the *Fair Work Amendment (Right to Request Casual Conversion) Act 2019*) applies in relation to terms included in a modern award or enterprise agreement before, on or after the commencement of that Act.

(2) Section 205A (as inserted by that Act) applies in relation to an enterprise agreement that was made before, on or after the commencement of that Act.

(3) A reference to periods of employment as a casual employee (as inserted by that Act) in section 87, 96, 117, 119 or 121 applies to periods of employment starting before, on or after the commencement of that Act.