



Discussion Paper

Job Security

Fair Work Commission
5 February 2024





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1. Introduction

The Housing Industry Association (HIA) takes this opportunity to respond to the Discussion Paper – Job Security (Discussion Paper) issued by the Fair Work Commission (FWC) on 18 December 2023.

As outlined in the Discussion Paper and at the direction Minister for Employment and Workplace Relations Tony Burke, the FWC has been tasked with considering whether the terms of modern awards appropriately reflect the new object of the *Fair Work Act 2009* (the Act) and modern awards objective regarding job security and the need to improve access to secure work introduced by the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022*.

HIA notes that while the Discussion Paper indicates that this review is confined to the seven modern awards listed, a number of aspects of the Discussion Paper indicate a consideration of the Modern Awards more broadly, for example the consideration of, and specific reference to, standard clauses implies that the review intends to consider matters that impact Modern Awards beyond the seven listed.

Further, the discussion of the use and operation of ‘casual employment’ is of relevance to HIA and our members.

On that basis, HIA has a general interest in this matter, with specific interest in how these proceedings may impact the *Building and Construction Industry General Onsite Award 2020*, *Joinery and Building Trades Awards 2020* and the *Timber Industry Award 2020*.

HIA’s submission:

- Makes general observations regarding job security and casual employment in the residential building industry.
- Responds to some of the questions set out in the Discussion Paper.

2. Job security and causal employment

The Discussion Paper outlines an often observed link between job (in)security and casual employment.

HIA understands that the FWC has attempted to carry out a literature review on this issue. However, when combined with the questions posed in the Discussion Paper, HIA is concerned that the Discussion Paper implies that casual employment is an inherently insecure form of work and, therefore this entire category of employment risks offending the new additions to the Act and modern awards objectives.

Given that (as noted in the Discussion Paper) the share of casual employment as a proportion of all employees has remained relatively stable, to now suggest there is something inherently offensive about this category of employment is troubling.

The cyclical nature of the residential building industry demands flexible work arrangements, businesses, particularly small business must be agile to respond to external market forces. Operating in a very competitive market where low profit margins are maintained and where the effects of employment regulation are strongly felt casual employment is a beneficial and viable form of employment from both the perspective of the employer and employee.



As outlined in the Discussion Paper casual employment has long been recognised as a legitimate form of engagement and it is vital that this remains the case. The residential building industry relies on a cohort of casual employees to respond to the cyclical nature of the sector, as such employment conditions seen to encourage and facilitate the engagement of casual labour are considered necessary. On this basis, HIA is conscious of any moves that could impact how the casual employment category operates.

3. Response to questions

HIA provides a response to questions 4,5, 6, 7 and 8.

4. Having regard to the new modern awards objective, should the exclusion of casual employees from accessing certain NES entitlements (such as paid personal leave) continue?

5. Should any of the awards be varied to supplement these NES entitlement gaps for casual employees?

Generally, the rights and entitlements of casual employees should be determined by the Act as opposed to the Modern Awards. This approach has already been demonstrated by the insertion of a definition of casual employment and provisions in respect of casual conversion into the Act. To move away from this approach would simply exacerbate the current complexity associated with multiple regulatory instruments governing the employment relationship.

Further, it is the case that the ‘casual loading’ is specifically expressed to provide compensation for not receiving several NES entitlements. For example, clause 12.4 of the Building and Construction General Onsite Award provides that:

A casual employee must be paid a casual loading of 25% for ordinary hours as provided for in this award. The casual loading is paid as compensation for annual leave, personal/carer’s leave, community service leave, notice of termination and redundancy benefits and public holidays not worked.

HIA supports the status quo in terms of the NES entitlements that do and do not apply to casual employment.

6. Is there evidence that use of individual flexibility arrangements undermines job security?

No, HIA sees that individual flexibility arrangements are an important option for both employers, particularly small business employers and employees seeking some flexibility on an individual basis. In fact, having the option for employers and employees to reach an agreement regarding the work arrangements that suits their specific circumstances is important in supporting job security and providing certainty regarding the employment arrangement.

7. Having regard to the following modern award standard clauses:

- Individual flexibility arrangements;
- Consultation about major workplace change;
- Consultation about changes to rosters or hours of work;
- Dispute resolution;
- Termination of employment; and
- Redundancy.

a. Are provisions of the standard clauses consistent with the new modern awards objective?



b. Do any of the standard clauses negatively impact job security? If so, how?

c. Do any or any part of the standard clauses:

i. prevent or limit access to secure work?

ii. enhance access to secure work?

8. Are there variations to the standard clauses that could improve access to, or remove barriers to accessing, the standard clauses by employees who are vulnerable to job insecurity?

In broad terms, a number of these standard clauses require consultation with employees and/or their agreement prior to any changes or an employer taking any actions. Further, and in line with our comments outlined above, any changes to clauses that do not currently apply to casual employees i.e. termination of employment should only be made via a legislative process and not through the Modern Awards.



ABOUT THE HOUSING INDUSTRY ASSOCIATION

The Housing Industry Association (HIA) is Australia's only national industry association representing the interests of the residential building industry.

As the voice of the residential building industry, HIA represents a membership of 60,000 across Australia. Our members are involved in delivering on average more than 170,000 new homes each year through the construction of new housing estates, detached homes, low & medium-density housing developments, apartment buildings and completing renovations on Australia's 10 million existing homes.

HIA members comprise a diverse mix of companies, including large builders delivering thousands of new homes a year through to small and medium home builders delivering one or more custom built homes a year, building product manufacturers and suppliers, and businesses providing professional and allied services.

The residential building industry is one of Australia's most dynamic, innovative and efficient service industries and is a key driver of the Australian economy. The residential building industry has a wide reach into the manufacturing, supply and retail sectors.

Contributing over \$100 billion per annum and accounting for 5.8 per cent of Gross Domestic Product, the residential building industry employs over one million people, representing tens of thousands of small businesses and over 200,000 sub-contractors reliant on the industry for their livelihood.

The association operates offices in 22 centres around the nation providing a wide range of advocacy, business support services and products for members, including legal, technical, planning, workplace health and safety and business compliance advice, along with training services, contracts and stationary, industry awards for excellence, and member only discounts on goods and services.