

Part time and casual employment common issue

AM2014/196 and AM2014/197

Submission by the Australasian Meat Industry Employees Union (AMIEU)

1. This submission is in response to Direction 1 made by the Full Bench in [2017] FWCFB 3541 ('the Decision') in relation to part-time and casual employment common issues in AM2014/196 and AM2014/197.
2. The Full Bench has recognised the peculiarities in the meat industry, saying at paragraph 368:

(3) The Meat Industry Award 2010 provides, in respect of meat processing establishments, for an intermediate type of employment known as "daily hire". A daily hire employer is one "employed by the day or shift or part thereof as the case may be, without breaking service for the purposes of the award and the NES as to payment for public holidays, personal/carer's leave and annual leave"³²³, and accrues leave benefits and is paid a reduced loading of 10%.³²⁴ Where daily hire is permitted to be used, the award allows the employer (in the absence of agreement with the employee) to transfer the employee from full time employment to daily hire and vice versa on 7 days' notice.³²⁵ The concept of casual conversion as it has been considered in previous decisions did not address, and the ACTU claim for a model provision advanced in these proceedings was not adapted to meet, these unique features of the Meat Industry Award as it applies to meat processing businesses. It may be that the model clause we propose to develop could apply to employers and employees covered by the award other than in meat processing establishment and/or that the model clause could in some way be adapted to meet the unique features of employment in meat processing establishment, but we have not received submissions about this. We propose, as discussed later, to give interested parties an opportunity to make further submissions in this respect.

(Footnotes omitted.)

3. The Full Bench went on to invite submissions concerning a suitable model clause for the Meat Industry Award 2010, saying at paragraph 382:

We will provide interested parties an opportunity to make further submissions concerning this proposed model clause, including whether it requires adaption to meet the circumstances of particular awards, in accordance with the directions appearing at the end of this decision. We will also provide interested parties, in accordance with those directions, an opportunity to make further submissions concerning whether there is any appropriate form of casual conversion provision which might be placed in the Meat Industry Award 2010 or the Stevedoring Industry Award 2010 having regard to the views we have expressed in relation to those awards earlier in this decision.

4. We thank the Full Bench for the Decision and the opportunity to provide submissions concerning adjustments to the proposed model Casual Conversion Clause as pertains to meat processing establishments covered by the Meat Industry Award 2010.
5. We respectfully support and adopt the ACTU's submissions concerning the proposed model Casual Conversion Clause and the improvements that ought to be made to it. We limit our submissions and our specific drafting proposals to the adjustments necessary reflect the unique features of the categories of employment available in meat processing establishments. For the sake of clarity and convenience only, our commentary and drafting in support of our position uses the model term as drafted by the Full Bench as the starting point rather than a version of the model term which incorporates the ACTU's suggested improvements which we support.

Daily hire employment in meat processing establishments

6. The AMIEU proposes adjustments to the Casual Conversion Clause in order to ensure that the clause is relevant to meat processing establishments.
7. The proposed adjustments seek to maintain the integrity and intention of the Casual Conversion Clause while acknowledging both the prevalence of daily hire employment and the flexibilities inherent therein.

8. The AMIEU respectfully refers to the statement of Mr Graham Smith concerning the nature of daily hire and part-time daily hire employment in meat processing establishments.
9. It is on these bases that the AMIEU proposes adjustments to the Casual Conversion Clause set out in Annexure 1 and described below.

Subclause 15.14(a)

10. The AMIEU submits that the Casual Conversion Clause should be amended at subclause 15.14(a) to include references to daily hire and part-time daily hire as categories of employment into which regular casuals can request to be converted.

Subclause 15.14(b)

11. The AMIEU submits that the Casual Conversion Clause should be amended at subclause 15.14(b) to include references to daily hire and part-time daily hire, and the terms and conditions of those categories of employment, pursuant to the Award.

Subclauses 15.14(c) and (d)

12. The AMIEU respectfully submits that subclauses 15.14(c) and (d) should be adjusted to reflect the nature of work at meat processing establishments that utilise daily hire as the predominant category of employment. That is, consideration should be based on the work actually on offer by the employer rather than with reference to the average hours actually worked.

13. In support of this submission, Mr Smith has stated:

- a. Daily hire and part-time daily hire combine some features of casual employment and some features of permanent employment. It can be used in the same way as both.¹
- b. Daily hire provides for considerably flexibility, such as no work or work on only one, two, three or four days per week. Such arrangements can be for a

¹ Statement of Graham Smith, paragraph 15.

brief period, for a number of weeks or, theoretically, for the life of the employment.²

- c. In meat processing establishments where daily hire is the predominant category of employment, it is common for a pool of casual workers to be engaged.³
- d. The casual pool in meat processing establishments is often comprised of irregular casuals, used on an 'ad hoc' or as needs basis, and regular casuals who work the same or similar hours to the daily hire workers.⁴
- e. On a day or shift that daily hire workers are not employed, it is generally the case that the regular casual workers are similarly not required to work.⁵

14. It is the AMIEU's submission that subclause 15.14(c) be adjusted so that, where a regular casual employee has worked on all available days or shifts offered by the employer, the request for conversion pertains to conversion from casual to daily hire.

15. Consistent with the above it is the AMIEU's submission that subclause 15.14(d) be adjusted so that, where a regular casual employee has worked less than the full number of days or shifts offered by the employer, the request for conversion pertains to conversion from casual to either part-time daily hire or daily hire.

Subclauses 15.14(g)

16. The AMIEU respectfully submits that not all of the four (4) reasonable grounds for refusal as described at subclause 15.14(g) are suitable for meat processing establishments which use daily hire.

17. Daily hire, with the inbuilt flexibility for an employer not to employ a worker on any day or shift, means that rejection of a casual employee's request for conversion ought not to be on the basis of 15.14(g)(iii). That ground would, in effect, allow refusal on

² Statement of Graham Smith, paragraph 18.

³ Statement of Graham Smith, paragraph 21.

⁴ Statement of Graham Smith, paragraph 22.

⁵ Statement of Graham Smith, paragraph 23.

the basis of the normal circumstances of the meat industry and which are fully dealt with by use of the daily hire employment categorisation.

18. The AMIEU proposes an adjustment to 15.14(g)(iii) to prevent rejection on the basis of the normal seasonal nature of meat processing establishments which use daily hire.

All remaining subclauses

19. The AMIEU respectfully submits that some further adjustments to some remaining subclauses are necessary to acknowledge daily hire and part-time daily hire as employment categorisations.

Summary

20. The AMIEU respectfully proposes that two (2) Casual Conversion Clauses be inserted into the Meat Industry Award 2010; one (1) pertaining only to meat processing establishments and one (1) pertaining to all other establishments.
21. The AMIEU supports the inclusion of a Casual Conversion Clause, in its entirety, in the Meat Industry Award 2010 as pertains to establishments that are not meat processing establishments.
22. With respect to meat processing establishments, the AMIEU respectfully submits that the Casual Conversion Clause should be adjusted to reflect the unique features of the categories of employment available in meat processing establishments. The AMIEU has respectfully proposed those adjustments in Annexure 1 consistent with the above reasoning.

Australasian Meat Industry Employees Union

2 August 2017

Annexure 1

15.14 Right to request casual conversion in meat processing establishments.

- (a) A person engaged by a particular employer as a regular casual employee may request that their employment be converted to full-time, **daily hire, part-time daily hire** 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, part-time employee, **daily hire or part time daily hire 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 **or, in establishments where daily hire is the predominant category of employment, worked on all available days or shifts offered by the employer in accordance with clause 14 of this Award,** may request to have their employment converted to full-time employment **or daily hire 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 **or, in establishments where daily hire is the predominant category of employment, less than the full number of days or shifts offered by the employer in accordance with clause 14 of this Award,** may request to have their employment converted to part-time, **daily hire or part-time daily hire employment.**
- (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, **daily hire, part-time daily hire 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, **daily hire, part-time daily hire** 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, **other than where daily hire is in operation and the reduction in hours is part**

of the normal seasonal nature of work in meat processing establishments as contemplated by the use of daily hire; 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 10 of this Award. 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, daily hire, part time daily hire 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, daily hire, part time daily hire or part-time employment; and

(ii) if it is agreed that the employee will become a part-time or part-time daily hire employee, the matters referred to in clause 13 or clause 14 as applicable.

(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, daily hire, part time daily hire 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, daily hire, part time daily hire 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, daily hire, part time daily hire 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.

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

15.15 Right to request casual conversion in establishments other than meat processing establishments

(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.

(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 10. 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 13.

(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.

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

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The Australasian Meat Industry Employees Union (AMIEU)

Statement of Graham Smith

I, Graham Smith of 227 Henley Beach Road, Torrensville, in the State of South Australia, Union Official make the following statement:

Position and experience

1. I am the Federal Secretary Treasurer of the Australasian Meat Industry Employees' Union (**AMIEU**) and I am authorised to make this statement on behalf of the AMIEU.
2. I commenced employment with the AMIEU in 1989 and I have been in my role of Federal Secretary Treasurer for over four (4) years.
3. Prior to being the Federal Secretary Treasurer, I was the South and Western Australian Branch Secretary of the AMIEU.
4. Prior to my employment with the AMIEU, I was employed from 1976 through to 1989 at Metro Meat Ltd at its meat processing establishment in Noarlunga in South Australia. My duties were predominantly as a slaughterman, however our seniority system meant that there would be times where I would be working in other departments, such as the boning room, if my usual department, the slaughter floor, was not operating.
5. In my years at the meat processing establishment, I worked in almost every task in the meatworks at some point or another. I was never classified as a boner but I did perform boning work from time to time.
6. All employees at Noarlunga were engaged as daily hire employees under the terms of the South Australian Meatworks Industrial Agreement-Award 1982.
7. I have been into many meat processing establishment in South Australia, Western Australia and the country in general and am thoroughly conversant with all of the usual occupations, categories of employment and tasks within the meat industry.

The Union

8. The AMIEU is a registered employee association and employee organisation within the meaning of the *Fair Work (Registered Organisations) Act 2009* and *Fair Work Act 2009*.

9. The AMIEU is entitled to represent the industrial interests of its members including those who work, who are qualified to work or who desire to work in the butchering industry, meat industry, meat refrigeration industry and kindred industries.

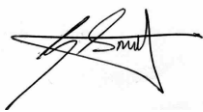
Daily Hire in the Meat Industry Award 2010

10. The Meat Industry Award 2010 provides for five categories of employment in meat processing establishments; full-time, part-time, daily hire, part-time daily hire and casual.
11. It is with daily hire and part-time daily hire in meat processing establishments that this statement is concerned.
12. Daily hire employment is a category of employment rarely encountered in modern awards and is not extensively utilised in any other industry, with the possible exception of building and construction as pertains to tradespeople or labourers (see, for example, clause 11 of the Building and Construction General On-site Award 2010).
13. Part-time daily hire, if used, is rarer still. I say 'if used' because I am unaware of any meat processing establishment using part-time daily hire.
14. Daily hire cannot accurately be described as being equivalent to full time work; daily hire workers can be employed to work full time equivalent hours or, when seasonal fluctuations come into play, not receive any employment. Similarly, part-time daily hire cannot accurately be described as being equivalent to part-time work for the same reasons.
15. Daily hire and part-time daily hire combine some features of casual employment and some features of permanent employment. It can be used in the same way as both.
16. Because the employee is employed (as distinct from engaged) by the day or shift or part thereof, the employment can be episodic in the nature of a casual, providing the employer with the flexibility to match the workforce to the available meat for processing on a day by day basis. As the employee remains engaged – and that engagement is continuous - for a number of purposes at the end of each shift, there is a degree of permanence and other benefits including NES entitlements that do not apply to casuals. It must also be noted that the worker receives higher wages when they work; a 10% loading applies.
17. The employer is not obliged to provide daily hire employees with employment on any day that the employer:
 - a. chooses not to operate a section or sections of the plant,

- b. chooses to operate at lower production levels in any section which results in less workers being required, or
 - c. chooses not to operate the entire plantat its discretion and for whatever reason, including commercial reasons.
- 18. Daily hire provides for considerably flexibility, such as no work or work on only one, two, three or four days per week. Such arrangements can be for a brief period, for a number of weeks or, theoretically, for the life of the employment.
- 19. The prominent features of daily hire as set out in the Meat Industry Award 2010 are that:
 - a. The engagement is continuous and ongoing; employment is by the day. As such, the employee has continuity of engagement, whether they work or not.
 - b. NES entitlements such as pay on public holidays and leave entitlements apply.
 - c. Leave entitlements are not paid out as a loading on ordinary wages but accrue pro rata according to the time worked.
 - d. The employee is required to attend for work, unless advised in advance that no work is available.
 - e. The employer may offer work at its discretion.
 - f. The employer pays a 10% loading to the worker.
- 20. The clear difference between daily hire and part-time daily hire in the Meat Industry Award 2010 is the minimum engagement; a part-time daily hire employee may be required by the employer to work no less than four consecutive hours whereas a daily hire employee may be required by the employer to work no less than 7.6 ordinary hours for each day they are employed.
- 21. In meat processing establishments where daily hire is the predominant category of employment, it is common for a pool of casual workers to be engaged.
- 22. The casual pool in meat processing establishments is often comprised of irregular casuals, used on an 'ad hoc' or as needs basis, and regular casuals who work the same or similar hours to the daily hire workers.
- 23. On a day or shift that daily hire workers are not employed, it is generally the case that the regular casual workers are similarly not required to work.
- 24. The inclusion of a Casual Conversion Clause for meat processing establishments would not limit the flexibility which is absolutely necessary in meat processing establishments. As described above, flexibility is inherent in the daily hire employment

categorisation which is commonly used to overcome challenges associated with the seasonality of the industry. Further flexibility is contained within subclause 11.4 which states that an employer can transfer permanent workers between categories of permanent employment upon the giving of notice.

25. Of course, genuinely irregular casuals would not be able to access the Casual Conversion Clause; the Casual Conversion Clause would be available to demonstrably regular casuals.
26. As the Full Bench has pointed out, the applicability of most NES entitlements depends on whether the employer chooses to engage and pay an employee as a casual; the employer notionally has the capacity to deny NES entitlements to anybody it employs, regardless of the incidents of the employment. It would appear to me that the ability for regular casuals to request conversion to daily hire or part-time daily hire would, in effect, support the proposition that the NES provides an important and relevant safety net.
27. The AMIEU is supportive of the inclusion of a Casual Conversion Clause in the Meat Industry Award 2010 for all employers and employees covered.
28. The AMIEU is of the view that some minor adjustments to the Casual Conversion Clause for the purposes of meat processing establishments would be necessary to reflect the unique features of categories of employment available in meat processing establishments.



Graham Smith

2 August 2017