

20 September 2018

Vice President Hatcher
Fair Work Commission
80 William Street
East Sydney 2010

By email: Chambers.Hatcher.VP@fwc.gov.au

By email: amod@fwc.gov.au

Dear Vice President Hatcher,

**4 Yearly Review of Modern Awards
(AM2014/196 and AM2014/197) Part-time employment and Casual employment
Timber Industry Award 2010**

We write in relation to an anomaly recently identified by the Construction, Forestry, Maritime, Mining and Energy Union – Manufacturing Division ('CFMMEU – Manufacturing Division') with respect to the casual conversion model term as it relates to the Timber Industry Award 2010 ('Timber Award').

In response to the ACTU's common claim, in a decision issued on 5 July 2017¹ ('*Principal Decision*') the Full Bench determined to insert a casual conversion clause into 85 identified modern awards (which did not contain an existing casual conversion clause) as well as expressing a provisional view as to the form of the casual conversion clause.

The Full Bench in the *Principal Decision* set out in significant detail its consideration and findings as to why the insertion of a model casual conversion clause into the group of 85 awards was necessary to meet the modern award objective in section 134.²

This group of 85 awards did not include the Timber Award, being an award which already contained a casual conversion term.

¹ [2017] FWCFB 3541 (5 July 2017) at [381], 269 IR 125 at [368]

² Ibid; at [333] – [373] and in particular, [368]



Further Full Bench decisions were issued on 24 November 2017³ and 9 August 2018⁴ which further determined the outstanding issues arising from the *Principal Decision*, including the finalisation of the casual conversion model term.

Timber Industry Award 2010

Clause 12.3 of the Timber Award contains an existing casual conversion clause which applies to employees engaged under the '*Classifications in the Wood and Timber Furniture Stream*' of the award. The classifications for employees in the '*Wood and Timber Furniture Stream*' are located in Schedule C of the award.

However, the Timber Award also contains coverage⁵ of, and classifications (and definitions) for two other streams of workers, being the '*General Timber Stream*'⁶ and the '*Pulp and Paper Stream*'⁷.

As a result of the operation of limited operation of clause 12.3, only workers covered by the classifications in the '*Wood and Timber Furniture Stream*' are covered by the existing casual conversion term. At the same time, workers covered by the '*General Timber Stream*' and the '*Pulp and Paper Stream*' are not captured by clause 12.3, yet do not have the benefit of the model casual conversion clause inserted into those awards which did not contain an existing casual conversion clause.

We submit that this exclusion of workers in the '*General Timber Stream*' and the '*Pulp and Paper Stream*' from the application of the model casual conversion term was unintentional and represents an anomaly given the findings made by the Full Bench in its *Principal Decision*, and subsequent decisions in the finalisation of the model term.

Relevantly, the Full Bench found in the *Principal Decision* that:

[359] Finally, and significantly having regard to the across-the board nature of the ACTU's claim, the evidence supports the proposition that the general characteristics of casual employment described above apply across all industry sectors covered by the modern awards. As the following figure demonstrates, some industry sectors have

³ [2017] FWCFB 6181 (24 November 2017)

⁴ [2018] FWCFB 4695 (9 August 2018)

⁵ Timber Industry Award 2010 – see Clause 4 (Coverage)

⁶ Timber Industry Award 2010 – see Clause 4 (Coverage) and Schedule B (Classification Structure and Definitions for the General Timber Stream)

⁷ Timber Industry Award 2010 – see Clause 4 (Coverage) and Schedule D (Classification Definitions for the Pulp and Paper Stream)


*much higher proportions of casual employees than others, but in no sector can the proportion of casual employees be characterised as insignificant:*⁸

Figure 2 (Casual employment density of industries, 2013), which directly followed the above finding in the Principal Decision, illustrates that in the industry of 'Agriculture, forestry and fishing' there was a casual employment density of 39.9% and in 'Manufacturing', 17.1%.⁹ [emphasis added]

It is submitted, that consistent with the findings reached by the Full Bench in its Principal Decision, the model casual conversion clause should also apply to workers in the '*General Timber Stream*' and the '*Pulp and Paper Stream*' of the Timber Award. We further submit that this is necessary to ensure that the Timber Award, together with the NES, provides a fair and relevant minimum safety net of terms and conditions, taking into account the considerations contained in section 134(1).

In conclusion, we apologise for the delay in bringing this matter to the attention of the Full Bench and any inconvenience caused to the Commission and relevant parties.

Yours Sincerely



MICHAEL O'CONNOR

National Secretary

Manufacturing Division

Construction, Maritime, Forestry, Mining and Energy Union

⁸ [2017] FWCFB 3541 (5 July 2017) at [359], 269 IR 125

⁹ *Ibid*; at [359]