

Fair Work Act 2009 Clause 48 of Schedule 1 Casual terms award review 2021

ACTU SUBMISSION ON PROVISIONAL VIEWS – STAGE 2 GROUP 1

I. INTRODUCTION

1. The Fair Work Commission (FWC) is currently conducting a review (**Review**) of modern award provisions, in light of the amendments made to *the Fair Work Act 2009 (Cth)* (**FW Act**) by *the Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Act 2021* (**Amending Act**).
2. A 5 member Full Bench of the FWC has decided in relation to the first stage of the Review, which involved examination of 6 modern awards.¹
3. A 3 member Full Bench has now been constituted to conduct the Review in relation to the remaining awards. On 3 August, that Full Bench issued a statement, indicating a number of provisional views in relation to the first group of remaining awards.²
4. In response to those provisional view, the ACTU makes the following submissions.

II. ACTU RESPONSE TO PROVISIONAL VIEWS

5. The ACTU submission on the Full Bench's most recent provisional view is made by subject, rather than in relation to each specific term of each modern award. The ACTU notes that further industry and contextual factors may warrant different considerations, or outcomes, in relation to specific modern awards. The ACTU understands that our affiliates will make further and more detailed submissions in relation to particular modern awards and their terms.
6. In relation to the following awards, we refer to the submissions of our affiliates, which we support:
 - a. Building and Construction General On-site Award
 - b. Joinery and Building Trades Award
 - c. Mobile Crane Hiring Award

¹ [2021] FWCFB 4144

² [2021] FWCFB 4714

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7. For the avoidance of doubt, these submissions of the ACTU are not made in relation to *the Meat Industry Award 2020* for which separate directions are issued.

A. *Provisional Views supported by the ACTU*

8. In relation to a number of awards, the Full Bench has reached the following provisional views:
- a. That the “engaged as such” definitions is not consistent, and should be replaced by a definition which draws on the FW Act s 15A;
 - b. That no variation is necessary for clauses dealing with the following subject matter:
 - i. Minimum engagement periods;
 - ii. Payment for work on public holidays;
 - iii. Overtime and rest periods for casuals;
 - iv. Casual loading;
 - v. Exclusion of casual employees from rostered days off and/or work on rostered days off;
 - vi. Display of rosters;
 - vii. Broken shifts;
 - viii. Sleepovers;
 - ix. Penalty rates for casuals;
 - x. Requirements to inform casual workers that they are engaged as casual workers;
 - xi. Casual pay periods;
 - xii. Minimum payments;
 - xiii. Accident pay;
 - xiv. Definitions of full or part-time work;
 - xv. Ordinary hours for casual employees;
 - xvi. Cancellation of shift allowance;
 - xvii. First aid allowance;
 - xviii. Laundering allowance;
 - xix. Recognition of prior service
 - c. That the definition of regular and systematic casual employee should be modified;
 - d. That the limitations on casual employment should be retained, but recast in a non-definitional form.

9. The ACTU supports the above provisional views, save and except as follows:
 - a. The ACTU’s support for the provisional view is subject to any industry specific or contextual matters, which might warrant a different outcome in any particular award;
 - b. to the extent that the matter might be put in issue by another party, the ACTU refers to and repeats its submission that a number of the terms referred to above are not “relevant terms” (notwithstanding the ACTU’s acceptance that the provisional view makes determination of this question unnecessary).

B. Provisional Views Opposed by the ACTU

10. The Full Bench has also reached a provisional view that a number of award casual conversion clauses which provide for an entitlement to convert after a qualifying period of 6 months should be removed and replaced by a reference to the FW Act.
 11. The ACTU opposes these provisional views.
 12. In each case, we refer to the submissions of our affiliates, which we support.
 13. We understand that the submission of our affiliates will put forward reasons as to why an entitlement to convert from casual to permanent employment after 6 months in a number of industries should be retained. We urge the Full Bench to consider and adopt this course of action.
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Tuesday, 10 August 2021

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For the ACTU