

From: Erin McCoy [mailto:emccoy@actu.org.au]
Sent: Wednesday, 12 November 2014 5:16 PM
To: AMOD; Chambers - Ross J
Subject: Revised ACTU Claim - AM2014/196 and AM2014/197

Dear President

A number of modern awards were inadvertently excluded from part of the ACTU claim filed on November 11 in relation to Matter No AM2014/196 – Part time Employment and AM2014/197 Casual Employment.

The ACTU claim and revised list of awards is attached. We request that the documents currently on the website be replaced.

The awards affected are as follows:

[Animal Care and Veterinary Services Award 2010 \[MA000118\]](#)

[Architects Award 2010 \[MA000079\]](#)

[Hydrocarbons Field Geologists Award 2010 \[MA000064\]](#)

[Professional Employees Award 2010 \[MA000065\]](#)

We apologise for any inconvenience caused.

Yours sincerely,

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IN THE FAIR WORK COMMISSION

4 Yearly Review of Modern Awards (Review)

Matter No.:

AM2014/196 – Part-time Employment

AM2014/197 – Casual Employment

Outline of Claim and List of Affected Awards of: Australian Council of Trade Unions (ACTU)

DATE: 11 November 2014

D No.: 141/2014

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Introduction

1. The ACTU submits this Outline of Claim and List of Affected Awards in accordance with the Statement ([2014 FWC 6904] issued by the President Justice Ross on 1 October 2014.
2. The ACTU proposes the following clauses:
 - a. Casual conversion – election;
 - b. Casual conversion – deeming;
 - c. Minimum engagements;
 - d. Other provisions.
3. Attachment A sets out the terms of the proposed clauses.
4. Attachment B sets out which awards are affected by the claim.

Casual conversion – election

5. The ACTU seeks to include the model casual conversion clause set out Attachment A in modern awards as indicated in Attachment B.
6. Some awards already contain a casual conversion clause. Where this is the case, we propose to vary and/or replace the existing provision so that it is consistent with the model provision.
7. Variations to the model provision may need to be made on an award-by-award basis.
8. In relation to the General Retail Industry Award and the Fast Food Industry Award, we propose a qualifying period of 12 rather than 6 months.

Casual conversion – deeming

9. The ACTU seeks to include a model conversion clause set out in Attachment A in a small number of modern awards. The affected awards are indicated in Attachment B.
10. Some awards already contain a casual conversion clause. Where this is the case, we propose to vary and/or replace the existing provision so that it is consistent with the model provision.
11. Variations to the model provision may need to be made on an award-by-award basis.

Minimum engagements

12. We propose a four hour minimum payment/engagement for casual employees and part-time employees covered by the awards as indicated in Attachment B.

Other provisions

13. The ACTU seeks to include the provisions set out in Attachment A in all modern awards that provide for casual and/or part-time employment as and where relevant.
14. With respect to clause X.2, the number of hours per week should equate to the number of ordinary hours for a full time employee covered by the relevant award.

Attachment A

Model Casual Conversion Clause (Election)

X. Casual Conversion

X.1 A casual employee, other than an irregular casual employee, who has been engaged by their employer for a sequence of periods of employment during a period of [six] months, thereafter has the right to elect to have their contract of employment converted to permanent full-time or part-time employment.

X.2 An irregular casual employee is one who has been engaged to perform work on an occasional or non-systematic or irregular basis.

X.3 An employee who has worked on a full-time basis throughout the period of casual employment has the right to convert to full-time employment. An employee who has worked on a part-time basis during the period of casual employment has the right to convert to part-time employment, on the basis of the same number of hours and times of work as previously worked.

X.4 The employer must give the employee notice in writing of the provisions of this clause within four weeks of the employee having attained the [six] month period.

X.5 An employee who has attained the [six] month period, may elect to convert to permanent employment by providing four weeks' notice in writing to their employer, and within four weeks of receiving such notice the employer must consent.

X.6 If a casual employee elects to convert to permanent employment, the employer and employee must discuss and document:

- i) whether the employee will become a full time or part-time employee;
- ii) if the employee will become a part-time employee, the number of hours and the pattern of hours that will be worked, in accordance with clause X—Part-time employment.

X.7 A casual employee's right to convert is not affected if the employer fails to comply with the notice requirements in this clause.

X.8 A casual employee who converts to permanent employment may only revert to casual employment by written agreement with their employer.

X.9 A casual employee who converts to permanent employment shall have their service prior to conversion recognised and counted for the purposes of unfair dismissal, parental leave, right to

request, and redundancy under the NES and this Award. This does not include periods of service as an irregular casual.

X.10 Nothing in this clause obliges a casual employee to convert to permanent employment, nor does it permit an employer to require a casual employee to convert if the employee does not wish to do so.

X.11 Casual employees (including irregular casuals) must be given written notice of the provisions of this clause by their employer within four weeks of commencing employment.

X.12 An employer shall not reduce or vary an employee's hours of work in order to avoid or affect the provisions of this clause.

X.13 Any disputes about the application or operation of this clause shall be dealt with under the procedures set out in clause X - Dispute Resolution.

Model Casual Conversion Clause (Deeming)

X. Casual Conversion

X.1 A casual employee, other than an irregular casual employee, who has been engaged by their employer for a sequence of periods of employment under this award during a period of [six] months, thereafter is deemed to be employed on a permanent full-time or part-time basis unless the employee elects to remain employed as a casual employee.

X.2 An irregular casual employee is one who has been engaged to perform work on an occasional or non-systematic or irregular basis.

X.3 An employee who has worked on a full-time basis throughout the period of casual employment is deemed to convert to full-time employment. An employee who has worked on a part-time basis during the period of casual employment is deemed to convert to part-time employment, on the basis of the same number of hours and times of work as previously worked, unless other arrangements are agreed to by to the employee.

X.4 The employer must give the employee notice in writing of the provisions of this clause at least four weeks prior to the employee attaining the [six] month period.

X.5 An employee who would otherwise become a permanent employee may elect to remain a casual employee by providing notice in writing to their employer.

X.6 Unless the employee elects to remain a casual employee, the employer and employee must discuss, and document:

(i) whether the employee will become a full time or part-time employee; and

(ii) if the employee will become a part-time employee, the number of hours and the pattern of hours that will be worked, as set out in clause X—Part-time employment.

X.7 A casual employee's conversion to permanent employment is not affected if the employer fails to comply with the notice requirements in this clause.

X.8 A casual employee who is deemed to be employed on a permanent basis may only revert to casual employment:

(a) by providing written notice within 7 days of the deeming occurring; or

(b) by written agreement with the employer at any time.

X.9 A casual employee who is deemed to be employed on a permanent basis shall have their service prior to conversion recognised and counted for the purposes of unfair dismissal, parental leave, right to request, and redundancy under the NES and this Award. This does not include periods of service as an irregular casual.

X.10 Nothing in this clause obliges a casual employee who would otherwise be deemed to be employed on a permanent basis to elect to remain a casual employee, nor does it permit an employer to require an employee to remain in casual employment if the employee does not wish to do so.

X.11 Casual employees (including irregular casuals) must be given written notice of the provisions of this clause by their employer within four weeks of commencing employment.

X.12 An employer shall not reduce or vary an employee's hours of work in order to avoid or affect the provisions of this clause.

X.13 Any disputes about the application or operation of this clause shall be dealt with under the procedures set out in clause X - Dispute Resolution.

Minimum Engagement Provisions

A four hour minimum payment/engagement for casual employees and part-time employees covered by the awards listed in Attachment B.

Other claims

X.1 An employee must not be engaged and re-engaged, including as a casual employee, fixed term or task employee, an independent contractor, or outsourced, to avoid any obligation under this award.

X.2 An employer shall not increase the number of casual or part time employees without first allowing an existing casual or part time employee engaged on similar work, whose normal working hours are less than [38 hours per week], an opportunity to increase their normal working hours by agreement.

X.3 An employer when engaging a casual must inform the casual that they are employed as a casual, stating by whom the employee is employed, the classification level and rate of pay and the likely number of hours required.

Attachment B

ACTU Common Claim Proposed variations to Casual/Part-time Entitlements				
A	Casual Conversion	Minimum Engagement – Part-time employees	Minimum Engagement - Casuals	Other
Aboriginal Community Controlled Health Services Award 2010 [MA000115]	Election clause	No variation	Variation sought	Variation sought
Aged Care Award 2010 [MA000018]	Election clause	Variation sought	Variation sought	Variation sought
Air Pilots Award 2010 [MA000046]	Election clause	No variation	No variation	Variation sought
Aircraft Cabin Crew Award 2010 [MA000047]	Election clause	No variation	No variation	Variation sought
Airline Operations-Ground Staff Award 2010 [MA000048]	Election clause	No variation	No variation	Variation sought
Airport Employees Award 2010 [MA000049]	Election clause	Variation sought	Variation sought	Variation sought
Alpine Resorts Award 2010 [MA000092]	Election clause	Variation sought	Variation sought	Variation sought
Aluminium Industry Award 2010 [MA000060]	Election clause	Variation sought	Variation sought	Variation sought
Ambulance and Patient Transport Industry Award 2010 [MA000098]	Election clause	No variation	Variation sought	Variation sought
Amusement, Events and Recreation Award 2010 [MA000080]	Election clause	Variation sought	Variation sought	Variation sought

Animal Care and Veterinary Services Award 2010 [MA000118]	Election clause	Variation sought	No variation	Variation sought
Aquaculture Industry Award 2010 [MA000114]	Election clause	Variation sought	Variation sought	Variation sought
Architects Award 2010 [MA000079]	Election clause	Variation sought	Variation sought	Variation sought
Asphalt Industry Award 2010 [MA000054]	Election Clause	Variation sought	No variation	Variation sought
B				
Banking, Finance and Insurance Award 2010 [MA000019]	Election clause	No variation	No variation	Variation sought
Black Coal Mining Industry Award 2010 [MA000001]	Election clause	No variation	No variation	Variation sought
Book Industry Award 2010 [MA000078]	Election clause	No variation	No variation	Variation sought
Broadcasting and Recorded Entertainment Award 2010 [MA000091]	Election clause	No variation	No variation	Variation sought
Building and Construction General On-site Award 2010 [MA000020]	No variation	No variation	No variation	No variation
Business Equipment Award 2010 [MA000021]	Election clause	Variation sought	Variation sought	Variation sought
C				
Car Parking Award 2010 [MA000095]	Election clause	No variation	No variation	Variation sought
Cement and Lime Award 2010 [MA000055]	Election clause	Variation sought	Variation sought	Variation sought
Cemetery Industry Award 2010 [MA000070]	Election clause	Variation sought	Variation sought	Variation sought
Children's Services Award 2010 [MA000120]	Election clause	Variation sought	Variation sought	Variation sought

Cleaning Services Award 2010 [MA000022]	Election clause	Variation sought	Variation sought	Variation sought
Clerks - Private Sector Award 2010 [MA000002]	Election clause	Variation sought	Variation sought	Variation sought
Coal Export Terminals Award 2010 [MA000045]	Election clause	No variation	No variation	Variation sought
Commercial Sales Award 2010 [MA000083]	Election clause	No variation	No variation	Variation sought
Concrete Products Award 2010 [MA000056]	Election clause	Variation sought	No variation	Variation sought
Contract Call Centres Award 2010 [MA000023]	Election clause	Variation sought	Variation sought	Variation sought
Corrections and Detention (Private Sector) Award 2010 [MA000110]	Election clause	Variation sought	Variation sought	Variation sought
Cotton Ginning Award 2010 [MA000024]	Election clause	Variation sought	Variation sought	Variation sought
D				
Dredging Industry Award 2010 [MA000085]	Election clause	Variation sought	Variation sought	Variation sought
Dry Cleaning and Laundry Industry Award 2010 [MA000096]	Election clause	Variation sought	Variation sought	Variation sought
E				
Educational Services (Post-Secondary Education) Award 2010 [MA000075]	No variation	No variation	No variation	No variation
Educational Services (Schools) General Staff Award 2010 [MA000076]	Election clause	Variation sought	Variation sought	Variation sought
Educational Services (Teachers) Award 2010	Election clause	Variation sought	Variation sought	Variation sought

[MA000077]				
Electrical Power Industry Award 2010 [MA000088]	Election clause	Variation sought	Variation sought	Variation sought
Electrical, Electronic and Communications Contracting Award 2010 [MA000025]	Election clause	Variation sought	Variation sought	Variation sought
F				
Fast Food Industry Award 2010 [MA000003]	Election clause 12 month qualifying period	Variation sought	Variation sought	Variation sought
Fire Fighting Industry Award 2010 [MA000111]	No variation	No variation	No variation	No variation
Fitness Industry Award 2010 [MA000094]	Election clause	No variation	No variation	Variation sought
Food, Beverage and Tobacco Manufacturing Award 2010 [MA000073]	Election clause	Variation sought	No variation	Variation sought
Funeral Industry Award 2010 [MA000105]	Election clause	No variation	No variation	Variation sought
G				
Gardening and Landscaping Services Award 2010 [MA000101]	Election clause	Variation sought	Variation sought	Variation sought
Gas Industry Award 2010 [MA000061]	Election clause	No variation	Variation sought	Variation sought
General Retail Industry Award 2010 [MA000004]	Election clause 12 month qualifying period	Variation sought	Variation sought	Variation sought
Graphic Arts, Printing and Publishing Award 2010 [MA000026]	Deeming clause	Variation sought	Variation sought	Variation sought
H				

Hair and Beauty Industry Award 2010 [MA000005]	Election clause	Variation sought	Variation sought	Variation sought
Health Professionals and Support Services Award 2010 [MA000027]	Election clause	Variation sought	Variation sought	Variation sought
Higher Education Industry-Academic Staff-Award 2010 [MA000006] <i>Note: NTEU may pursue a separate claim</i>	No variation	No variation	No variation	No variation
Higher Education Industry-General Staff-Award 2010 [MA000007]	Deeming clause	No variation	Variation sought	Variation sought
Horse and Greyhound Training Award 2010 [MA000008]	No variation	Variation sought	Variation sought	Variation sought
Horticulture Award 2010 [MA000028]	Election clause	Variation sought	Variation sought	Variation sought
Hospitality Industry (General) Award 2010 [MA000009]	Election clause	Variation sought	Variation sought	Variation sought
Hydrocarbons Field Geologists Award 2010 [MA000064]	Election clause	Variation sought	Variation sought	Variation sought
Hydrocarbons Industry (Upstream) Award 2010 [MA000062]	Election clause	No variation	No variation	Variation sought
J				
Joinery and Building Trades Award 2010 [MA000029]	No variation	No variation	No variation	No variation
Journalists Published Media Award 2010	Election clause	No variation	No variation	Variation sought

[MA000067]				
L				
Labour Market Assistance Industry Award 2010 [MA000099]	Election clause	Variation sought	Variation sought	Variation sought
Legal Services Award 2010 [MA000116]	Election clause	Variation sought	No variation	Variation sought
Live Performance Award 2010 [MA000081]	Election clause	No variation	No variation	Variation sought
Local Government Industry Award 2010 [MA000112]	Election clause	Variation sought	Variation sought	Variation sought
M				
Mannequins and Models Award 2010 [MA000117]	No variation	No variation	No variation	No variation
Manufacturing and Associated Industries and Occupations Award 2010 [MA000010]	Deeming clause	Variation sought	No variation	Variation sought
Marine Tourism and Charter Vessels Award 2010 [MA000093]	Election clause	No variation	No variation	Variation sought
Marine Towage Award 2010 [MA000050]	Election clause	No variation	No variation	Variation sought
Maritime Offshore Oil and Gas Award 2010 [MA000086]	No variation	No variation	No variation	No variation
Market and Social Research Award 2010 [MA000030]	Election clause	No variation	No variation	Variation sought
Meat Industry Award 2010 [MA000059]	Election clause	No variation	No variation	Variation sought

Medical Practitioners Award 2010 [MA000031]	Election clause	Variation sought	Variation sought	Variation sought
Mining Industry Award 2010 [MA000011]	Election clause	Variation sought	Variation sought	Variation sought
Miscellaneous Award 2010 [MA000104]	Election clause	Variation sought	Variation sought	Variation sought
Mobile Crane Hiring Award 2010 [MA000032]	No variation	No variation	No variation	No variation
N				
Nursery Award 2010 [MA000033]	Election clause	Variation sought	Variation sought	Variation sought
Nurses Award 2010 [MA000034]	Election clause	Variation sought	Variation sought	Variation sought
O				
Oil Refining and Manufacturing Award 2010 [MA000072]	Election clause	Variation sought	No variation	Variation sought
P				
Passenger Vehicle Transportation Award 2010 [MA000063]	Election clause	Variation sought	Variation sought	Variation sought
Pastoral Award 2010 [MA000035]	Election clause	Variation sought	Variation sought	Variation sought
Pest Control Industry Award 2010 [MA000097]	Election clause	No variation	No variation	Variation sought
Pharmaceutical Industry Award 2010 [MA000069]	Election Clause	Variation sought	Variation sought	Variation sought
Pharmacy Industry Award 2010 [MA000012]	No variation	Variation sought	Variation sought	Variation sought
Plumbing and Fire Sprinklers Award 2010 [MA000036]	Election clause	Variation sought	Variation sought	Variation sought

Port Authorities Award 2010 [MA000051]	Election clause	No variation	No variation	Variation sought
Ports, Harbours and Enclosed Water Vessels Award 2010 [MA000052]	Election clause	No variation	No variation	Variation sought
Poultry Processing Award 2010 [MA000074]	Election clause	Variation sought	Variation sought	Variation sought
Premixed Concrete Award 2010 [MA000057]	Election clause	Variation sought	Variation sought	Variation sought
Professional Diving Industry (Industrial) Award 2010 [MA000108]	Election clause	No variation	No variation	Variation sought
Professional Diving Industry (Recreational) Award 2010 [MA000109]	Election clause	No variation	No variation	Variation sought
Professional Employees Award 2010 [MA000065]	Election clause	Variation sought	Variation sought	Variation sought
Q				
Quarrying Award 2010 [MA000037]	Election clause	Variation sought	Variation sought	Variation sought
R				
Racing Clubs Events Award 2010 [MA000013]	Election clause	No variation	Variation sought	Variation sought
Racing Industry Ground Maintenance Award 2010 [MA000014]	Election clause	Variation sought	Variation sought	Variation sought
Rail Industry Award 2010 [MA000015]	Election clause	Variation sought	Variation sought	Variation sought
Real Estate Industry Award 2010 [MA000106]	Election clause	No variation	No variation	Variation sought
Registered and Licensed Clubs Award 2010 [MA000058]	Election clause	Variation sought	Variation sought	Variation sought

Restaurant Industry Award 2010 [MA000119]	Election clause	Variation sought	Variation sought	Variation sought
Road Transport (Long Distance Operations) Award 2010 [MA000039]	Election clause	No variation	No variation	Variation sought
Road Transport and Distribution Award 2010 [MA000038]	Election clause	No variation	No variation	Variation sought
S				
Salt Industry Award 2010 [MA000107]	Election clause	Variation sought	No variation	Variation sought
Seafood Processing Award 2010 [MA000068]	Election clause	Variation sought	Variation sought	Variation sought
Seagoing Industry Award 2010 [MA000122]	No variation	No variation	No variation	No variation
Security Services Industry Award 2010 [MA000016]	Election clause	No variation	No variation	No variation
Silviculture Award 2010 [MA000040]	Election clause	Variation sought	Variation sought	Variation sought
Social, Community, Home Care and Disability Services Industry Award 2010 [MA000100]	Election clause	Variation sought	Variation sought	Variation sought
Sporting Organisations Award 2010 [MA000082]	Election clause	No variation	No variation	Variation sought
State Government Agencies Administration Award 2010 [MA000121]	Election clause	No variation	No variation	Variation sought
Stevedoring Industry Award 2010 [MA000053]	Election clause	No variation	No variation	Variation sought
Storage Services and Wholesale Award 2010 [MA000084]	Election clause	Variation sought	No variation	Variation sought

Sugar Industry Award 2010 [MA000087]	Election clause	Variation sought	Variation sought	Variation sought
Supported Employment Services Award 2010 [MA000103]	Election clause	Variation sought	Variation sought	Variation sought
Surveying Award 2010 [MA000066]	Election clause	No variation	No variation	Variation sought
T				
Telecommunications Services Award 2010 [MA000041]	Election clause	No variation	No variation	Variation sought
Textile, Clothing, Footwear and Associated Industries Award 2010 [MA000017]	No variation	No variation	No variation	No variation
Timber Industry Award 2010 [MA000071]	Deeming clause	No variation	No variation	Variation sought
Transport (Cash in Transit) Award 2010 [MA000042]	Election clause	Variation sought	Variation sought	Variation sought
Travelling Shows Award 2010 [MA000102]	Election clause	No variation	No variation	Variation sought
V				
Vehicle Manufacturing, Repair, Services and Retail Award 2010 [MA000089]	Deeming clause	Variation sought	Variation sought	Variation sought
W				
Waste Management Award 2010 [MA000043]	Election clause	No variation	No variation	Variation sought
Water Industry Award 2010 [MA000113]	Election clause	Variation sought	Variation sought	Variation sought
Wine Industry Award 2010 [MA000090]	Election clause	Variation sought	No variation	Variation sought

Wool Storage, Sampling and Testing Award 2010 [MA000044]	Election clause	Variation sought	Variation sought	Variation sought
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