IN THE FAIR WORK COMMISSION

AM2014/196
AM2014/197

4 yearly review of modern awards
Casual employment and part-time employment

SUBMISSIONS OF THE ACTU

1. These submissions are responsive to the Directions in sub-paragraphs 1, 3, 4, 7 and 11 of the Directions set out at paragraph 902 of the Full Bench Decision [2017] FWCFB 3541 ("the decision").

2. We consider that any decision as to whether there should be a further oral hearing on these matters, as referred to in paragraph 903 of the decision, should be deferred until the parties have had an opportunity to consider the opposing submissions made in this round.

Casual conversion

3. The decision embodies the acceptance by the Full Bench of casual conversion as a test case standard.

4. The Bench has sought submissions regarding the model conversion clause it has proposed (including whether it requires adaptation to meet the circumstances of particular awards). It has also sought submissions on the notification requirements in existing conversion clauses.

5. Whilst the directions contained at [902] of the decision refer to a "proposed model casual conversion clause", we state for completeness that whilst aspects of the such a model term do fall for determination via the current round of submissions, this proceeding differs from some other award review matters in that foundations upon which the proposed model term is built are conclusions, not provisional views. The current process is not an opportunity to challenge or re-agitate those conclusions. Those conclusions include the following:

    a. The characteristics of casual employment are highly heterogeneous[1] and the length and regularity of casual employment varies greatly[2]. A significant proportion of casual

[1] [349]
[2] [350]

Lodged by:	Australian Council of Trade Unions
Address for Service	Level 4, 365 Queen Street, Melbourne 3000
Telephone:	(03) 9664 7333
Facsimile:	(03) 9600 0050
Email:	tclarke@actu.org.au

employees have worked for their current employer for long periods of time and have a regular working pattern, which in some cases may consist of full-time hours.[3]

b. The reasons why employees become engaged as casuals, and their levels of satisfaction with their casual status, varies greatly: "..it can at least be concluded that a significant proportion of casual employees, probably a majority of them, are satisfied with their current casual employment arrangements and do not want permanent employment or additional working hours. Equally, a significant proportion of casual employees have accept their current casual employment because it was the only work available, and would prefer permanent and/or additional hours."[4]

c. The career trajectory of casual employees may vary greatly. Some are studying and do not intend a long term career in the field of their employment. Some are able to use their casual employment as stepping stones toward a potential career in an industry. Some may be engaged on a long term basis without there being any real prospects of career progression or even conversion to permanent status, which may or may not be by choice[5].

d. Employees accepting casual employment will usually not be doing so on a fully informed basis, because whether the employment will turn out to be short or long term, the number of hours that will be worked and their degree of regularity will usually not be known, or at least will not be guaranteed, at the point of engagement[6].

e. Common characteristics of casual employment include:

    i. A higher proportion of younger persons than the permanent workforce, although a majority who are in the 25-64 year age bracket;

    ii. Casual employees are disproportionately female, and a majority of long term casuals are female.

    iii. Casual employees are disproportionately award reliant and earn significantly less on average than permanent workers.

[3] [365]
[4] [354]
[5] [356]
[6] [364]

iv. Casual employment is overwhelmingly associated with a lack of paid annual leave and personal/carer's leave benefits.

v. Casual employees find it difficult to obtain housing finance and other forms of loans.[7]

f. The general characteristics of casual employment described above apply across all industry sectors covered by modern awards and in no industry sector can the proportion of casual employees be described as insignificant.[8]

g. A non-negligible proportion of long term casuals in every sector would prefer to be employed on a permanent basis[9]

h. Some employers "..engage casual employees not because there are any relevant circumstances which compel or favour their use, but merely because they (apparently) prefer the casual employment model to permanent employment".[10] Some employers do engage indefinitely as causals persons who under the relevant award may be, and want to be, employed permanently, with the result that the NES does not form part of the safety net as it applies to them and is rendered irrelevant.[11]

i. The lack of any constraint on choosing to engage as casuals persons who equally might readily be engaged as permanent full-time or part-time creates the potential to render the NES irrelevant to a significant proportion of the workforce.[12] Under most modern awards, the applicability of most NES entitlements depends on whether the employer chooses to engage and pay an employee as a casual, hence the employer notionally has the capacity to deny NES entitlements to anybody it employs, regardless of the incidents of employment.[13] The permanent denial to the casual employee of the relevant NES entitlements in this manner gives rise to unfairness[14].

[7] [357]
[8] [359]
[9] [360], [365]
[10] [353]
[11] [368]
[12] [367]
[13] [367]
[14] [365]

j. It is fair and necessary for the employee to have access to a mechanism by which the casual employment may be converted to an appropriate form of permanent employment[15].

k. It is necessary that modern awards containing unrestricted casual employment provisions contain a mechanism by which casual employees who:

i. have worked with the current employer for a long period of time as casual;

ii. have a regular working pattern (which in some cases may consist of full time hours); and

iii. are dissatisfied with their casual status and would prefer permanent employment

may convert to permanent employment[16].

6. Our commentary in the remainder of this section therefore appropriately proceeds on the basis that the above matters are no longer contestable. We also proceed on the basis that the commentary on the proposed model conversion clause should be limited by the fact that positions reached on the list of issues appearing under the heading "The form of the model casual conversion clause" at paragraph 374 are described in paragraph [381] as "conclusions".

Proposed model conversion clause

Language

7. The mechanism for conversion is framed in the model term as a "right to request", in its title and in paragraphs (a), (c), (d), (e), (f) and (h). Paragraph (p) however makes reference to "a casual employees *right* to convert" (emphasis added). In the discussion preceding the proposed model term, at paragraphs [374]-[381], numerous references are made to "eligibility", "eligibility for conversion", a "right to convert", the notification of "rights" and the "grounds" upon which a request may be "refused". There is also some discussion about the desirability for "firm criteria by which the employer can determine whether a casual employee is eligible for conversion" as opposed to requiring "the employer to make an evaluative judgement". We respectfully submit that the language of a "right to request" is inapt to describe the intended operation of the

[15] [365]
[16] [368]

mechanism proposed in the model term, and may lead to confusion and ultimately poor compliance.

8. In our submission, the mechanism as proposed is properly understood and better described as one where an application is made to exercise a conditional right, which may be accepted or refused by the employer. This conception and language is so common in industrial parlance that the Commission reasonably take on judicial notice that most other industrial entitlements are either referred to in this way in workplaces, such as an "application for annual leave", "application for voluntary redundancy" or "application for carer's leave". The language of "right to request" is a more recent invention and, in the *Fair Work Act* and in its common industrial understanding, is a term of art that describes rights that are not enforceable or signifies that they are not enforceable[17]. We consider that the model term would be rendered more simple and easy to understand if the process for accessing the right to convert was described as an application and that such applications were referred to as being "accepted" "allowed" or "granted" rather than "agreed"[18]. We do not oppose the use of the expression "refused". Additionally, the clause could benefit from an early indication that it was providing a conditional right, but a right nonetheless. For example, it could be titled "Right to casual conversion".

Qualification period

9. Paragraph (c) of the proposed model term deals with the issue of what might be referred to as "full time casuals" converting to full time employment. We are concerned that the paragraph may set the bar too high by requiring "an average of 38 or more hours a week in the period of 12 months casual employment". This is because averages can be brought down by absences of a nature that would not be regarded as unusual in the course of full time employment.

10. The decision, at paragraph [351], refers to 5 witness as particular examples of "long term casuals working wholly regular, full-time hours for many years"[19]. Without wishing to suggest the entirety of the case with respect to the rights for full time casuals rested on the evidence of those 5 persons, we point out that under the present draft of paragraph (b), its is possible the none of them would qualify for conversion to full time employment. In particular:

    a. *Mr Aiton* stated:

[17] See sections 44(2), 739(2) and 740(2) of the *Fair Work Act*.
[18] See paragraphs (f), (i) and (j) of the model term
[19] At [351]

"I *normally* work 38 hours per week Monday to Friday"[20]

"*I take time off work when I need to* but generally do not get paid for this"[21]

"When I get sick, *I usually take unpaid time off work*. Manu times however I have attended work sick"[22]

"I go on holidays *about once a year*" (emphasis added)

b. *Mr Fisher* stated:

"I *normally* work 38 to 40 hours per week Monday to Friday"

"I did take 8 months off to go to Europe on a holiday, When I came back I returned to a 38 hour week"

"Usually I take annual leave (unpaid) when the business is shut over Christmas. This can be anything from 1-2 weeks"

"If I am sick I attend work.. when *I did take a sick day*, it was unpaid" (emphasis added)

c. *Mr Kubli* stated:

"When I am sick I have to go and get a certificate from the Doctor, although the company doesn't pay us for when we are sick".[23]

"When I got married, I had to put in a written application form for leave with three weeks notice. I applied for one week leave. I received no pay for the *period of leave*"[24]

"If I am sick, I am expected to call up the day I am sick and go to the Doctor and get a Doctor's certificate. *If I want to take extended leave, I have to apply* and give 3 weeks notice"[25]

"A couple of years ago when Rob was the Manager, *I was told to take a day off because there is not enough work*. This has happened three time [sic] since

[20] At [7]
[21] At [19]
[22] At [20]
[23] At [8]
[24] At [10]
[25] At [13]

I started working at the company, when I was a labour hire"[26] (emphasis added)

d. *Mr Proctor* stated:

"My hours of work were 8am-4PM. The maximum I would work was 76 hours per fortnight, but *sometimes the start times varied by one hour*. If it was quiet I was sent home although this didn't happen very often. This would be the process *until I went on WorkCover because of an injury I sustained at work*"[27]

"On 3 October 2013 I was in a car accident while delivering parts. I suffered bad back and neck injuries because of the accident. After this accident I was off work for about one month. I November 2013 I returned to work on *a return to work plan for 2 hours a day for 5 days a week.* This later increased to 8 hours per day".[28]

"the hardest part of being a casual was *taking a holiday* and not having a source of income over the holiday, or being sick and not having paid sick leave to help me along"[29] (emphasis added)

e. *Mr Hynes* stated:

"I was doing 37.5 hours a week, Monday to Friday. I only stopped work for Public Holidays or the Christmas shut down *for two weeks* when I wasn't paid"[30]

"The company also worked out the average hours that we worked to be about 32 hours a week, because they included all the time off that we had".

"Even if I was sick I still went to work. *If I was really bad I would stay home,* but I used to go to work sick because if I didn't go to work I didn't get paid. If had a really bad cold or a virus I'd still go to work. *If my diabetes was playing up then I would stay home*"[31]

[26] At [16]
[27] At [13]
[28] At [18]-[19]
[29] At [27]
[30] At [3]
[31] At [17]

> "We were treated like a permanent employee but when it came to shut downs, public holidays, sick leave we weren't paid. *They called us 'permanent full time casuals'*."[32] (emphasis added)

11. It would be an odd result if the persons that Commission chose to identify as casuals working "wholly regular, full time hours" were denied the right to convert in accordance with the model term. Furthermore, in addition to the absences that those particular witnesses described, casual employees have positive rights to be absent in accordant with the National Employment Standards pertaining to unpaid carer's leave[33], unpaid compassionate leave[34], unpaid community service leave[35] and the entitlement to be absent on a public holiday[36]. It would not be reasonable to deprive them of the right to convert based on them exercising their lawful entitlements in this regard.

12. Some assistance in resolving this matter may obtained from the decision in *Lacevski & Tolevsky v. Linfox*[37]. In that matter, the Commission was asked to resolve a dispute concerning casual conversion rights contained in an enterprise agreement. One pathway to conversion in the relevant agreement required the casual employees to have been engaged for six months on systematic and "full time equivalent basis". This necessitated the Commission interpreting the expression "full time equivalent basis". It said:

> "The words used in Clause 36.1 are not 'full time' casual employees for the purpose of defining the class of casual employees who will qualify for conversion after six months. The word equivalent requires the application of judgement as to what circumstances of casual employment will be of equal value to the circumstances of a full time employee.
>
> A full time employee will be entitled to annual leave and personal leave. In my view, in any evaluation the 'equivalent' status of a casual employee to that of a full time employee it is appropriate to take account of these entitlements. Thus over a period of six months an accrued annual leave entitlement would be no less than 76 hours and in the case of personal leave 38 hours. Following this approach it is appropriate to determine the status of a casual employee as a full time equivalent as follows:
>
> - Multiply 26 by 38 to arrive at the gross number of ordinary hours of work which would be equivalent to those of a full time employee over 6 months (988)

[32] At [18]
[33] s. 102 of the *Fair Work Act* 2009.
[34] s.104 and 106 of the *Fair Work Act* 2009.
[35] Division 8 of Part 2-2 of the *Fair Work Act* 2009.
[36] Division 10 of Part 2-2 of the *Fair Work Act* 2009.
[37] [2012] FWA 6713

- Reduce the total derived by 114 on account of annual leave and personal leave entitlements of a full time employee (874).

The consequence is that the number of hours of work of a casual employee must be no less than 874 ordinary hours over a 26 week period in order to qualify for an offer to convert their contract of employment from casual employment to full time employment. The number 874 is the equivalent mandatory ordinary hours of attendance over a 26 week period for a full time employee."[38]

13. It is unclear whether the other NES rights referred to at paragraph 11 above were brought to the Commissioner's attention in the matter. In any event, the approach of incorporating the notion of a "Full Time Equivalent" into the model clause has much to recommend it. This could be achieved by amending paragraph (c) of the model clause as follows:

"A regular casual employee who has worked:

An average of 38 hours or more a week; or

Full-time equivalent hours, having regard to a full-time employee's entitlements under this Award and the NES to access leave and be absent from work

in the period of 12 month's casual employment may *request* [or *apply,* if our submissions above are accepted] to have their employment converted into full-time employment."

14. Such a reformulation remains compatible with the Commission's conclusion at paragraph 377 of the decision:

"We therefore consider that the qualifying criterion should be that the casual employee (over a calendar period of 12 months) has worked a pattern of hours on an ongoing basis which, without significant adjustment, could continue to be performed in accordance with the full-time or part-time employment provisions of the relevant award. That formulation accommodates the possibility that conversion could require some adjustment to the employee's working pattern. It will obviously follow from the adoption of that criterion that the more flexible the hours of work provisions for full-time and part-time employees are, the greater the opportunity there will be for casual conversion to occur."

15. Additionally, and using the same logic, paragraph (d) could be usefully supplemented by adding the following sentence to it:

In calculating the average of hours worked, or the pattern of hours worked, all leave and absences accessed under the NES and this award should be treated as hours worked.

Reasonable grounds for refusal

[38] At [76]-[78]

16. Paragraph (g) serves to provide a non-exhaustive definition of the concept of "reasonable grounds for refusal", a phrase adopted in paragraph (f) to describe the sole basis upon which a request for conversion (or as we would have it, an application for conversion) may be refused. What is held to constitute "reasonable grounds for refusal" is therefore critically important.

17. The reasons for adopting the "reasonable grounds" criterion appear in paragraph 380 of the decision, as follows:

> "…We do not consider that the employer should be deprived of the capacity to refuse a casual conversion request on reasonable grounds. If it would require a significant adjustment to the casual employee's hours of work to accommodate them in full-time or part-time employment in accordance with the terms of the applicable modern award, or it is known or reasonably foreseeable that the casual employee's position will cease to exist or the employee's hours of work will significantly change or be reduced within the next 12 months, we consider that it would be unreasonable to require the employer nonetheless to convert the employee in those circumstances. *The circumstances we have identified would generally constitute the grounds upon which a conversion request could reasonably be refused, although there may be other grounds which we currently cannot contemplate*. We emphasise that for a ground for refusal to be reasonable, it must be based on facts which are known or reasonably foreseeable*, and not be based on speculation or some general lack of certainty about the employee's future employment*. A conversion request should only be able to be refused after consultation with the employee, the refusal and the reasons for it should be communicated in writing within a reasonable period, and if the reasons are not accepted resort should be had to the award's dispute resolution procedure." (emphasis added)

18. We are of the view that the definition of "reasonable grounds" of refusal should be revised in two ways.

19. <u>Firstly</u>, we consider the definition should be exhaustive and limited to the matters referred to in sub paragraphs (i)-(iv) of paragraph (g), which are consistent with the specific criteria identified in paragraph 380 of the decision. Having regard to the duration of these proceedings and the amount of material made available to the Commission in the course thereof, the Commission has never been in a better position to identify appropriate grounds for refusal than it was when it wrote the decision. The acknowledgement that "..there may be other grounds which we cannot currently contemplate"[39] is at the same time an acknowledgement that no additional grounds have been identified after a thorough review process, and this ought to be conclusive of the issue at this stage. There is no bar to employer interests, in the fullness of time, seeking to vary a term in one or more awards to include further reasonable grounds on the substantive merits.

[39] At [380]

20. Further, in relation to this first issue, it is notable that elsewhere in the decision the Full Bench is acutely aware of the changed dispute resolution framework in the *Fair Work Act* relative to its predecessors:

> **"**Mr Bauer and Mr Hynes described the situation which arose at Christie Tea where a number of casuals (including Mr Hynes) performing regular work sought conversion to permanency but were refused. In this case the AMWU actually invoked the dispute resolution procedure as contemplated by the casual conversion clause, and the matter went to Fair Work Australia (Hampton C) for resolution. The Commissioner issued recommendations in the matter, but they did not lead to the dispute being resolved, and it appears that the employees were ultimately not converted. Under s.595(3) of the FW Act, the Commission may only deal with a dispute by arbitration if it is expressly authorised to do so under or in accordance with another provision of the FW Act. *There is no provision in the FW Act which expressly authorises the arbitration of a dispute pursuant to a dispute resolution procedure in a modern award*, so the Commissioner in the Christie Tea case was not empowered to resolve the conversion dispute by arbitration. The AMWU pointed out that this was not the legislative position which prevailed at the time that the casual conversion provision in the Manufacturing Award was made*,* and it means that *an employer refusal is effectively unchallengeable and renders the casual conversion provision a dead letter.*
>
> *There is considerable substance in this proposition. The dispute resolution procedure no longer provides a ready mechanism to resolve deadlocked disputes about an employer refusal of a casual conversion request. The clause can be enforced in a relevant court but it would be necessary to demonstrate that the employer's refusal was unreasonable, which gives very broad scope for a defence of any enforcement proceedings*. However, we do not consider that the AMWU's proposed alternative deeming model, which entirely removes the capacity of the employer to reject a conversion request, is the appropriate answer to the problem identified.."[40] (emphasis added)

21. The decision also takes account of the enforcement mechanism in the *Fair Work Act* that applies to modern awards:

> "…the ACTU's proposed clause makes eligible for conversion after the qualifying period is reached all casual employees except an "*irregular casual employee*", which is defined to mean a casual employee "*engaged to perform work on an occasional or non-systematic or irregular basis*". Although this formulation captures the gravamen of the purpose of a casual conversion clause – that is, to allow casual employees engaged on a long-term, regular basis a mechanism to convert to permanent employment – we nonetheless have 2 concerns about this formulation. The first is that it is <u>lacking in firm criteria by which the employer can determine whether a casual employee is eligible for conversion, and essentially requires the employer to make an evaluative judgment</u>. Although the formulation is comparable to the criteria used in s.384(2)(a) of the FW Act for determining whether a casual employee has served the minimum employment period necessary to qualify as a person protected from unfair dismissal, <u>the critical difference is that under the ACTU proposal the employer would be liable for a civil penalty for breach of s.45 of the FW Act if it made the wrong judgment about whether the formulation was satisfied</u>."[41] (emphasis in underline added)

[40] Decision at [389]-[390]
[41] Decision at [376]

22. It should also be noted that the enforcement mechanism as it applies to modern awards under sections 45, 545 and 546 of the *Fair Work Act* is primarily one where any remedies are discretionary, mandatory/co-ercive orders are unusual and one which involves time and expense beyond that available to many individuals. In our submission, it is no suitable substitute for a low cost, accessible arbitration mechanism. The greater the scope for evaluative judgements in a casual conversion mechanism, the greater the scope for it to become a "dead letter" for most employees and fertile ground for protracted and uncertain legal proceedings in the few instances where it is contested through the enforcement mechanism.

23. Secondly, we consider that it critically important that the limitations on the concept of "reasonable foreseeability" articulated in paragraph 380 of the decision and emphasised above are explicitly included in the model term. This is particularly important given that the only forum of the enforcement of the term is a court. Courts would be most familiar with a test of "reasonable foreseeability" as a rather undemanding standard, connoting foresight of a *possibility* that the conduct of one person might harm another, or the *possibility* that such conduct of particular character may result in harm of a particular character to that other person. This stands in contrast to the more certain constraints intended by the Full Bench as evident from its decision.

Notification "within the first 12 months"

24. Whilst we are generally supportive of paragraph (o), we do have some concerns about the practical impact of it *if* the real world consequence is that the notification term is complied with through an "induction pack" (or otherwise included within what might be a rather extensive amount paperwork formally associated with commencing employment). In that setting, the knowledge of the contents of a document detailing what the employee's rights are 12 months into the future (should they remain an employee) are perhaps less likely to be retained than other more instantly important material distributed at that time. Anticipating that the Commission might wish to avoid the inflexibilities associated with a hard "trigger date" for notification in the industries to which conversion would be introduced by the model term, we suggest that the time frame for notification be changed to "between 6 and 11 months of the employees first engagement to perform work" as a workable modification. In addition, it might assist compliance and awareness if paragraphs (o) and (p) are moved to the start of the model term, rather than being located at the end.

Communication "in writing"

25. We assume the references to written communication in paragraphs (e), (h) and (i) are capable of capturing electronic forms of communication that are prevalent. However, should this be regarded as not without doubt we consider it ought to be specified.

Notification requirements in other conversion clauses

26. We do not support the substitution of the notification requirement in existing casual conversion clauses with that proposed in the model term. We would, however, not oppose supplementing existing clauses with the notification requirement from the model term in some form, noting that the qualification period in some existing awards is less than 12 months .

27. We acknowledge the decision has concluded that for the awards that will receive casual conversion as a result of the decision, the notification process will be different to that which is currently set out in existing casual conversion clauses. Our concern about amending the notification requirements in those existing conversion clauses to match the model term is highlighted by the fact that the conclusions reached in paragraph 378 of the decision about the utility and necessity of notification rights is drawn from an evidence base (such as the survey findings analysed in the *Third Markey Report* and referred to at paragraph 130 of the decision) that is necessarily shaped by the rights as they are currently expressed.

28. We would appreciate the opportunity to respond more fully in reply, or at an oral hearing, should the employer interests avail themselves of the opportunity provided in paragraph 398 of the decision and paragraph 2 of the directions to seek to modify the notification requirements in the existing conversion clauses.

Treatment of specific awards

29. Sub paragraph 3 of paragraph 368 of the decision deals with a potential exception to the general proposition that the awards listed at Attachment A of the decision be subject to the proposed model term. The exception concerns the *Meat Industry Award*:

> "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."

30. The Australasian Meat Industry Employee's Union has developed a proposal which adapts the model term for application in meat processing establishments, but otherwise supports the model term applying to other establishments covered by the *Meat Industry Award*. We support the proposal.

31. Sub paragraph 4 of paragraph 368 of the decision deals with a further potential exception to the general proposition that the awards listed at Attachment A of the decision be subject to the proposed model term. The exception concerns the *Stevedoring Industry Award*:

> "The *Stevedoring Industry Award 2010* also contains a unique intermediate category of employment, namely "*Guaranteed wage employment*", which makes the award ill-adapted for a casual conversion clause of the conventional type. We will likewise invite further submissions in relation to this award, as discussed below."

32. The Maritime Union of Australia has developed a proposal which adapts the model term to deal with "Guaranteed wage employment". We support the proposal.

33. We note that the *Educational Services (Teachers) Award* was listed in our materials (and in Attachment A to the decision) as an Award in relation to which the claim for casual conversion was pressed. Clause 10.5 of this award limits the period of engagement of any casual to a maximum of one school term. Should the model term be included it would have no work to do. We do not press the claim in respect of this Award. We are advised that the Associations of Independent Schools (AIS), on behalf of all non-government school-based employers where the award is in operation, also and for the reason referred to above, do not support the variation of this award to include the model term.

34. Due to an error, the *Educational Services (Post-Secondary Education) Award* was not listed in our materials. We seek to have the model term apply to this award. If necessary the unions with coverage in this sector of the education industry can, at short notice, provide evidentiary materials including witness evidence, in support of the inclusion of the model term.

35. The *Educational Services (Post-Secondary Education) Award* applies broadly to all categories of employee in non-school and non-higher education based services providing a wide range of vocational education and training (VET). There is no single accepted measure of size and composition of the whole VET workforce. The most reliable recent estimates are contained in the Productivity Commission's 2011 Research Report *Vocational Education and Training Workforce.* Table 7 of that report estimates the total workforce in the sector at that time as 223,400. Further to this Table 5 of the report estimates the number of casuals at around 10-11% nationally, but

those figures are confined to TAFE colleges. Currently 23% of all union members working in the sector have identified as long-term casual employees.

36. The issue of whether the model term requires further tailoring to meet the circumstances of other industries, to the extent that issue is raised by the Directions, ought to be deferred until after the content of the model term is finalised.

Minimum engagement

37. The decision expresses a provisional view that awards with no minimum engagement period for casual employees should be varied to provide a minimum engagement period of 2 hours for those casual employees. We are not in a position in the time allowed to put any new material to displace that provisional view, which was formed on the basis of the material available to the Commission in the substantive proceeding.

Draft determinations filed by other parties

38. We support the draft determinations on other issues filed by our affiliates the Shop, Distributive and Allied Employees Association and United Voice.

Australian Council of Trade Unions