IN THE FAIR WORK COMMISSION

Matter No: **Section 156 of the *Fair Work Act 2009* (Cth)**
4 Yearly Review of Modern Awards

AM2014/196 & AM2014/197 - Casual and Part Time Employment

Applicant: **Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union" known as the Australian Manufacturing Workers' Union (AMWU) – Vehicle Division**

FINAL SUBMISSIONS OF AUSTRALIAN MANUFACTURING WORKERS UNION – VEHICLE DIVISION

RE: VEHICLE MANUFACTURING, REPAIR SERVICES AND RETAIL AWARD 2010

10 JUNE 2016

Lodged by the Applicant

Address for service
Attention: National Office – Vehicle Division
Australian Manufacturing Workers' Union
2/251 Queensberry St Phone: (03) 9230 5705
Carlton South VIC 305 Email: Lena.Lettau@amwu.asn.au

INTRODUCTION

1. The "Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union" known as the Australian Manufacturing Workers' Union - Vehicle Division ("AMWU – VD") has made an application to vary the *Vehicle Manufacturing, Repair, Service and Retail Award 2010* MA00089 ("VMRSR Award") in matters AM2014/196 & AM2014/197 Casual and Part Time Employment.

2. These submissions are filed pursuant to the directions of Vice President Hatcher.[1]

3. They follow submissions filed by the AMWU-VD on 2 November 2015[2] and reply submissions filed on 25 February 2016.[3]

4. The AMWU-VD application proposes to vary the VMRSR Award in the following manner:

    a. Improve the conditions of employment of part time employees, most significantly by inserting a minimum engagement period of employment;

    b. Improve the conditions for casual employees by replacing the casual conversion clause by election to one with deeming, among other changes.

5. These final submissions will address the following:

    a. The Issues Paper dated 11 April 2016,[4] released by the Fair Work Commission in relation to this matter;

    b. The AMWU-VD's claim in relation to part time and casual employment including supporting arguments;

    c. Evidence and data filed in support of the proposed variations;

    d. Evidence and data submitted in opposition of the proposed variations;

    e. Commentary on the weight to be given to this evidence and data.

6. We support and wholly adopt the submissions filed by the ACTU as part of these proceedings in respect of each variation proposed dated 19 October 2015.[5]

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[1] Directions - 4 Yearly Review of Modern Awards – Causal employment and Part time employment AM2014/196 & AM2014/197, dated 9 March 2016

[2] Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union" known as the Australian Manufacturing Workers' Union –Vehicle Division Submissions dated 2 November 2015 (AMWU-VD Submissions), available from: http://www.fwc.gov.au/documents/sites/awardsmodernfouryr/common/AM2014196-197-sub-AMWUVD-021115.pdf

[3] Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union" known as the Australian Manufacturing Workers' Union –Vehicle Division Reply Submissions dated 25 February 2016 (AMWU-VD Reply Submissions), available from: http://www.fwc.gov.au/documents/sites/awardsmodernfouryr/common/AM2014-196-197-sub-AMWU-25022016.pdf

[4] Issues Paper - 4 Yearly Review of Modern Awards – Common Issue - Casual and Part Time Employment , dated 11 April 2016 uploaded 11 April 2016, available from: http://www.fwc.gov.au/documents/sites/awardsmodernfouryr/common/2014196-197-issues-paper-110416.pdf

7. We support and wholly adopt the submissions and evidence filed by the AMWU as part of these proceedings in respect of each variation dated 13 October 2015.[6]

RESPONSE TO ISSUES PAPER

8. We have had the opportunity to read the submissions of the AMWU in response to the Commission's Issues Paper and support and endorse those submissions.

9. In addition to those submissions, the table below identifies AMWU-VD responses to questions raised in the Issues Paper.

Table 1. AMWU – VD responses to Issues Paper	
Question	**Reference**
5. Does the evidence demonstrate any change over time in the proportion of casual employees engaged including via labour hire businesses?	Witness evidence - Lewin – transcript – at [PN3139] AMWU-VD Submission[7] - at [69]
Question	**Paragraph reference within this submission**
10. Should employers be required to convert a casual employee to permanent employment (at the employee's election) where the employee's existing pattern of hours may, without major adjustment, be accommodated as permanent full time or part-time work under the relevant award?	At [18]
11. What would be the consequences for employers if "regular" casuals had an absolute right to convert to non-casual employment (after 6 or after 12 months)?	At [57]-[66]
18. Having regard to a number of factors, including in particular the continuing decline in union density, would the abolition of a requirement for the employer to notify employees of any casual conversion rights lead to casual conversion clauses becoming inutile due to lack of employee knowledge?	At [77]-[88]

[5] 4 Yearly Review of Modern Awards – Common Issue - Casual and Part Time Employment , dated 19 October 2015 uploaded 20 October 2015, available from: https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/AM2014196-197-sub-ACTU-191015.pdf

[6] Submissions of AMWU, dated 13 October 2015, uploaded 14 October 2015 available from: https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/common/AM2014196-197-sub-AMWU-121015.pdf

[7] Above n 2.

20. Is a 6 month period of engagement sufficient to account for seasonal factors that may affect the number and pattern of hours worked by a casual employee?	At [57]-[61]
34. Should there be scope for the parties to agree to a shorter minimum period of engagement than the award standard? If so, what arrangements/protections should apply e.g. should it be solely at the request of an employee?	At [92]
35. Should there be a shorter minimum period of engagement for school students engaged as casual employees? If so, what should the minimum period be and should it only apply at specific times, e.g. school days?	At [69] – [76]
36. Should a casual minimum engagement period be introduced in awards which do not currently have one (such as the *Vehicle Manufacturing, Repair, Services and Retail Award 2010)* of where the current minimum period is only nominal (such as for the home care employees under the *Social, Community, Home Care and Disability Services Industry Award 2010)*? If so, what should the length of the minimum period be?	At [67] and [68] (regarding casuals) At [90]; [95]-[96] (regarding part time employees)

AMWU VEHICLE DIVISION CLAIM – SUMMARY

10. As stated above, the AMWU-VD seeks to vary the VMRSR Award in respect of both casual and part time employees.

11. A Draft Determination outlining the AMWU-VD's proposed changes in detail has been provided at Attachment 1 of our November submission.[8] Attachment 2 of the same submission further provides for a comparison of the proposed variations and existing provisions in the VMRSR Award.[9] Summaries of these proposed changes are set out in turn below.

12. The AMWU-VD submits that the changes sought for casual and part time employees are necessary in order that the VMRSR Award meets the modern award objectives, particularly to provide for a fair and relevant minimum safety net of terms and conditions'.[10] This position is supported by overwhelming evidence

[8] Above n 2

[9] Ibid

[10] AM2014/1 4 Yearly Review of Modern Awards: Preliminary Jurisdicational Issues, [2014] FWCFB 1788 at [60][4]

that these changes are necessary to effectively uphold the interests of casual and part time employees, without causing unreasonable detriment to employers.

13. The changes proposed are consistent with the changes sought by the AMWU in respect of the Awards of their interest. They are also consistent with the changes proposed by the ACTU to relevant Awards, except in respect of the method proposed for casual conversion for employees in the Vehicle industry. Where the AMWU-VD proposes a deeming provision for casual conversion, the ACTU proposes conversion by election.

Casual Employees

14. For casual employees, we seek to:

    a. Change the casual conversion provisions so casuals are deemed to be permanent after 6 months, or 12 months by agreement;

    b. Include a minimum period of engagement period of 4 hours;

    c. Make the obligation to communicate the terms and conditions and employment clearer; and

    d. Include a requirement that an employer first offer additional hours of work to existing casual employees before increasing the number of part-time employees in employment.

15. These changes and the evidence supporting their implementation will be addressed in turn below. At the beginning of each relevant section a summary of the evidence provided by the AMWU-VD will be provided in table form, followed by a more substantive discussion of each of the key issues raised by this evidence.

A. Casual Conversion

16. The AMWU-VD seeks to replace the existing casual conversion provision with a new conversion clause that 'deems' a casual to be a permanent employee on either a full time or part time basis once they have completed a minimum period of 6 months, or 12 months by Agreement.[11] An employee's right to opt out of conversion is, however, importantly retained in the proposal.

17. We note that the AMWU-VD has rejected proposed changes made by the Ai Group to the current casual conversion clause in the VMRSR Award Exposure Draft, at clauses 6.6(a)(i), (ii), (ii) and (iv). We refer the Commission to paragraphs [22]-[26] of the AMWU-VD's reply submission[12] for further discussion of this position.

18. The key arguments put forward by the AMWU-VD in support of its proposal have been:

[11] See above n 2, Attachment 1 (Draft Determinations) at [7]
[12] Above n 3

a. There exists a significant group of casual employees in the Vehicle Industry who wish to convert to permanent employment; therefore conversion is a live issue;[13]

b. Casual employees in the Vehicle Industry face significant challenges and hurdles converting to permanent employment under the current framework;[14]

c. A deeming provision would serve to protect against the use of casual labour on a long-term basis;[15]

d. There has been a long history within the Vehicle Industry of deeming provisions for casual employees functioning successfully and the proposed conversion provision sufficiently addresses drafting concerns with the former deeming provisions;[16]

e. The deeming provision is not unreasonably detrimental to employers, as it preserves their right to hire staff casually and therefore affords them flexibility to respond to changing industry conditions.[17]

f. The proposed variations reinforce current protections regarding the engagement and re-engagement of casuals for the purpose of casual conversion and other Award provisions. This includes requiring that existing casual and part time employees be offered additional hours before the engagement of additional casual employees.[18]

19. Additionally, we support and adopt submissions and evidence filed by the AMWU and the ACTU. These submissions speak to factors including:

    a. The experience of being casual, in particular the disadvantage that casual employees experience relative to permanent employees.[19]

    b. The harmful effects of long-term casual employment on the health and wellbeing of employees who would prefer permanent employment. This includes:

        i. The contribution of job insecurity and lack of control to significant negative health outcomes;[20]

        ii. The impact of casual employment on women,[21] including a diminished likelihood of accessing flexible work arrangements, reduced prospects of conversion to permanent work[22] and pregnancy discrimination;

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[13] Ibid at [16]
[14] Above n 2, at [54]-[81]
[15] Ibid at [17] and [46]
[16] Ibid at [21]-[44]
[17] Ibid at [43]
[18] Ibid at [18]
[19] See above n 6, at Chapter 5 – 'The Experience of Being Casual' and above n 5, at p42 – 'The adverse consequences of casual employment'
[20] For example, above n 6 at [349] and [323]
[21] Above n 5, at [78]-[93]

iii. The social exclusion outcomes linked with long term casual employment;[23]

iv. The link identified between harassment in the workplace and casual employment;[24]

v. Evidence that casual workers have the least power of all workers and are characterised by over-representation amongst the low paid.[25]

vi. The loss of power associated with the precarious nature of casual employment and the associated detrimental impact this has on the ability of casuals to access award and NES entitlements.[26]

c. That the incorporation of a deeming provision is necessary to meet the modern awards objectives in the context of the VMRSR Award.[27]

20. We also note that the AMWU-VD raised objections to the Casual and Part-time Employment Survey (the Survey)[28] extensively relied upon by the Motor Trades Organisations (MTA Organisations) in a letter to the Fair work Commission on 11 March 2016.[29] In this letter we raised an objection to the admission of this Survey in its entirety on the basis of unfair prejudice.

21. It appears that the survey was administered by the MTA Organisations, as opposed to an independent consultant, and only completed by members of their organisations. Furthermore, the survey responses have not been attested or presented through any witness who can speak to the document's veracity or be cross examined on its content. It is noteworthy that only a nominal number of participants responded to a number of the questions[30] and that many of the written answers are of such an open-end and brief nature that they are rendered completely meaningless. For these reasons we argue that the Survey results are on the whole bias and lacking in probity and thus should be given no or little weight by the Commission.

Casual conversion is a live issue

22. Whilst it is accepted that there are casual employees who wish to remain casual, there is a significant proportion that would prefer to be employed on a permanent basis. For these people the issue of converting from casual to permanent

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[22] Above n 6, at [319]
[23] For example, above n 6, at [340]-[344]
[24] Above n 5, at [90]
[25] For example, above n 6, at [330]-[332], [351] and [357]
[26] Above n 6, at 5.2
[27] Ibid at 2.3 (s.134 The Modern Award Objective) and 2.4 (s.138 Achieving the Modern Award Objective)
[28] Motor Trades Organisations Submission dated February 2016, available from: http://www.fwc.gov.au/documents/sites/awardsmodernfouryr/common/AM2014196-197-sub-VACC-22022016.pdf
[29] Letter from AMWU-VD to Vice President Hatcher dated 11 March 2016, available from: http://www.fwc.gov.au/documents/sites/awardsmodernfouryr/common/AM2014196-197-corr-AMWU-110316.pdf
[30] For example, Questions 2-7, 21 and 31

employment is a very live one. The proposed deeming provision would serve to enable that group of employees to obtain the benefits of permanent employment, where they have been employed on a regular basis for a substantial period of time.

23. The following table provides a summary of the evidence provided by the AMWU-VD in support of this argument:

Table 2. Evidence of interest amongst casuals to convert to permanent employment, as contained in AMWU-VD Submission 2 November 2015[31] and Transcript of Proceedings[32]

	Evidence	**Nature of evidence**
1.	Witness evidence (statement) - Heit – at [21], [24] and [28]	Evidence of an employee making requests to convert to permanent employment
2.	Witness evidence (attachments)– Heit - 'CH-5' – Emails dated 29 September 2014 and 21 December 2014	Evidence of an employee making requests to convert to permanent employment
3.	Witness evidence (transcript – 16 March 2016) – Lewin – at [PN3184]	Evidence that a union official has raised casual conversion issues with management on a number of occasions
5.	Witness evidence (transcript – 22 March 2016) – Herbertson - at [PN8722] and [PN8729]	Evidence that casuals seeking conversion have approached a union official and that he has assisted members with writing letters to make a request to convert to permanent employment.
6.	Witness evidence (statement) – Procter – at [17], [21],[22], [26] and [27]	Evidence of an employee's desire to convert to permanent employment as well as evidence that he had made numerous requests to convert.
7.	Witness evidence (statement) – Elks – at [25]- [30]	Evidence of an employee's desire to convert to permanent employment as well as evidence that he had made numerous requests to convert.

24. As identified in the above table, the AMWU-VD have produced three statements from casual employees engaged in the vehicle repair services and retail sectors in support

[31] Above n 2
[32] Transcript of Proceedings – AM2014/196 & AM2014/197 – Four Yearly Review of Modern Awards – Casual Employment and Part-time Employment dated 14 – 24 March 2016

of the submission that casual conversion is a live issue. For example, Stephen Elks states in his statement that he had requested permanent employment on a number of occasions between 2010 and 2014.[33]

25. These statements further identify that employees wish to convert to permanent employment for reasons such as a preference for predictable hours, paid leave, weekly work for security, consistency of pay and peace of mind.[34]

26. Additionally, all three employees have been employed on a long term basis. For instance, Clinton Heit has been employed as a casual HD Fitter with Haynes Mechanical Pty Ltd since June 2010. He has worked regular hours for almost 6 years[35] (without a 25% casual loading) and has requested, unsuccessfully, to be shifted to permanent employment.

27. The statement from Clinton Lewin, a regional organiser with the AMWU-VD, corroborates that there is a very real contingent of casual employees wishing to convert to permanent employment. This is identified where he states that, 'I am approached by casual employees at general mass meetings who inform me through question time that they have tried to convert by asking their direct manager for permanent employment on numerous occasions…' [36]

28. This experience is further reflected by Glen DeClase, National Manager HR/IR & Payroll at Prixcar Services Pty Ltd and witness for the MTA Organisations, where he comments during cross examination that a proportion of employees offered conversion at Prixcar Services to permanent employment had taken the offer up.[37]

29. In contrast, the Ai Group dispute the claim that casual conversion is a live issue. They rely largely on a Joint Employer Survey formulated by themselves and the Australian Chamber of Commerce and Industry and other employer groups.[38] It is claimed that 73.72% of respondents who employed casuals with conversion entitlements reported that no conversion requests had been made since 1 January 2010.[39] Further, it is claimed that only 9.36% of employees eligible to request conversion to permanent employment had in fact made such a request since 1 January 2010.[40] On the basis of these figures the Ai Group contends that the desire among eligible casual employees to convert to permanent employment is not widespread enough to warrant the changes being proposed by the AMWU-VD and affiliate parties.[41]

30. We concede that there may be a significant proportion of casual employees who do not wish to convert to permanent employment. We submit, however, that there is a

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[33] Above n 2, Statement of Stephen Elks dated 26 October 2015, at [26]-[28]
[34] For example, ibid Statement of Sean Procter dated 26 October 2015, at [26]
[35] For example, ibid Statement of Clinton Heit dated 26 October 2015, at [9]
[36] Ibid, Statement of Clinton Lewin dated 26 October 2015, at [14]
[37] Above n 32, dated 21 March 2016, at [PN7726]
[38] Australian Industry Group – Reply Submission dated 26 February 2016 (Ai Group Reply Submission), at [137]
[39] Ibid at [161]
[40] Ibid at [162]
[41] Ibid at [164]

significant enough proportion of casual employees who do wish to convert and that this warrants amending the provision in the Award. We say that the Ai Group's survey establishes that, at the very least, almost 10% of eligible employees are making requests and that this is significant enough to render this a live issue. However, we contend that it is likely there are many more who would like to convert to permanent employment but who have not made a formal request for the reasons outlined below (see section titled: *Significant challenges faced by employees*). These employees, we argue, would not have been captured in the data tabled by the Ai Group. On this basis it is difficult to quantify the real number of people wishing to convert, however we can say that it is likely to be significantly more than the Ai Group contend.

31. The deeming provision is necessary to provide a safety net to these people who do wish to convert to permanent employment. Furthermore, it does not stipulate that all casual employees must convert, and therefore does not erode the rights of the remaining employees.

Significant challenges faced by employees wishing to convert to permanent employment

32. The current conversion clause is not effectively assisting these very same employees to move from casual to permanent employment. Whilst we accept that *some* casual employees have successfully converted to fulltime employment, we submit that for a significant proportion of those wishing to convert there have been serious challenges.

33. These challenges have included:

    a. Casual employees engaged pursuant to the Award (and enterprise agreements) have not been told of their right to elect to convert under the Award;

    b. Despite not being aware of the 'right to elect', employees had asked to convert to permanent employment on multiple occasions after completing the period of eligibility and their requests were refused in circumstances which could be argued to be unreasonable;

    c. Once becoming aware of their right to convert, casuals were too afraid to ask to convert because of fear of repercussions and detriment to their ongoing and systematic employment;

    d. The same problems affect labour hire casual employees in a similar way to directly engaged casual employees;

    e. The problems associated with conversion by 'election' provision are also present for employees engaged pursuant to enterprise agreements;

    f. There is no right to enforce the conversion provision.

34. The following table provides a summary of the evidence provided by the AMWU-VD in support of this argument that significant challenges are faced by employees attempting to convert to permanent employment:

Table 3. Evidence of significant challenges faced by employees attempting to convert to permanent employment, AMWU-VD Submission 2 November 2015		
	Evidence	**Nature of evidence**
1.	Witness evidence (Statement) – Elks - at [24]	Evidence that employee was not informed of right to convert to permanent employment.
2.	Witness evidence (Statement) – Elks - at [28]	Evidence that employee was too afraid to continue requesting permanent employment, states “given my age, and how hard it is to find employment, I didn’t want to cause a fuss or make waves’.
3.	Witness evidence (Statement) – Elks - at [26]	Evidence that employee was refused permanent employment on potentially unreasonable grounds (company’s assumption that employee would not pass a medical test. It is in dispute whether this test was even required for the position).
4.	Witness evidence (Statement) – Procter - at [21]-[22]	Evidence that employee did not receive a response from the company to multiple applications for permanent positions.
5.	Witness evidence (Statement) – Lewin - at [13]	Evidence that a company has only offered permanent positions to casual employees after the union intervened.
7.	Witness evidence (Transcript 22 March 2016) - Herbertson ⎯ at [PN8776]	Evidence that in Organiser’s experience “some businesses just don’t contact the employee when their six months is up to make the [conversion to permanent employment] request”.
8.	Witness evidence (Transcript 22 March 2016) - Herbertson ⎯ at [PN8740]	Evidence that some employers have not even been aware of their notification responsibilities when Organiser has raised matter with them.
9.	Witness evidence (Statement) – Herbertson - at [13]	Evidence that Organiser had to prompt employers and remind them of their obligations under the Award to notify casuals of their right to convert.
10.	Witness evidence (Statement) –	Evidence of a case where a number of

	Herbertson - at [17]-[22]	casual employees had not been made aware of their right to convert.
11.	Witness evidence (Statement) – Heit - at [23]	Evidence of a refusal to covert a long term casual employee to permanent employment on potentially unreasonable grounds.

35. The witness statements provided by the AMWU-VD evidence a number of these identified challenges faced by employees. In our 2 November 2015 Submission we detailed various examples of the challenges identified above that arose from the evidence provided by our witnesses.[42] These included the following:

    a. Two of the three witnesses were not told they had the right to convert to full time employment in their own position;[43]

    b. Union organisers experience of being the people who inform casual employees about their rights to convert in many instances;[44]

    c. Union organisers experience of having to actively prompt employers in the Vehicle Industry in respect of their obligation to notify and consider the conversion request of their employees;[45]

    d. Two examples of casual employees having their request for conversion to permanent employment refused in circumstances that could be argued to be unreasonable;[46]

    e. Accounts of casual employees being re-engaged with irregular shifts or not being re-engaged at all after requesting to convert to permanent employment;[47] and

    f. Labour hire casuals experiencing similar challenges.[48]

36. We further raised evidence that these difficulties which arise under the current Award casual conversion provisions are also mirrored in the experience of many employees covered by Enterprise Agreements. This is because a significant number of Enterprise Agreements rope in the VMRSR Award. A list of Enterprise Agreements obtained from the Department of Employment and an additional list of those to which the AMWU is a party were provided with our submissions.[49] An analysis of these

[42] Above n 2, at [58]-[81]
[43] Ibid Statement of Sean Procter dated 26 October 2015 at [17]; and Statement of Stephen Elks dated 26 October 2015 at [24].
[44] Ibid Statement of John Herbertson dated 26 October 2015 at [7]-[9]; and Statement of Clinton Lewin dated 26 October 2015 at [10].
[45] Ibid Statement of John Herbertson dated 26 October 2015 at [12]-[14]; Statement of Clinton Lewin at [13].
[46] Ibid Statement of Stephen Elks dated 26 October 2015, at [24]-[28]
[47] Ibid Statement of Clinton Lewin dated 26 October 2015, at [10], [16]
[48] Ibid Statement of Clinton Heit dated 26 October 2015, at [19]-[29]
[49] Ibid Attachments 3 and 4

Enterprise Agreements revealed that of the 109 Agreements identified covering employees across the Vehicle Industry, 68 incorporated the Award. Of this 68, 31 contained a conversion clause within the Agreement. 15 of these 31 provided for conversion by election. This reveals that a significant proportion of employees bound by an Enterprise Agreement face the same conversion provision as those governed directly by the Award. Organisers have corroborated this, recounting that casual workers experience similar problems effecting conversion under agreements.[50]

37. The MTA Organisations, conversely, claim that the 'award clause does not fail to achieve its intention or purpose of assisting regular casual employees to convert to full-time'.[51] The only example raised in support of this claim was that of Prixcar, a company they claim has an effective procedure to deal with converting casual employees to permanent employment.[52] We submit that not only does the AMWU-VD and affiliate parties' evidence clearly contradict this claim, but that the Prixcar example lacks probity on the basis that in spite of the conversion procedure in place the company had still failed to notify a number of its eligible casuals of their right to convert. This was evidenced in the statement of John Herbertson.[53]

38. The Ai Group has also dismissed that such challenges are faced by employees. For example, they say 'it should not be accepted on the material before the Commission that there is a widespread problem of employees being reluctant to access casual conversion under existing provisions.'[54] Further, they contend that 'it should not be accepted… that there is a widespread phenomenon of employees covered by awards the subject of the deeming proposal not making a request to convert because of concern over negative consequences. We submit that this is not the case'.[55] This is the extent, however, of the Ai Group's contention – they provide no evidence to substantiate their position.

39. On the whole, opposing parties have therefore provided no probative evidence that refutes the occurrence of these challenges. On that basis the AMWU-VD submits that the existence of these challenges present a compelling reason to change the conversion provision to a deeming provision. Currently the VMRSR Award affords employers too much power to prohibit eligible casual employees from converting to permanent employment. Put otherwise, as by the AMWU, 'it is a right to ask with a corresponding right to reject".[56] On top of affording employers such power, there is little oversight of decisions made by companies or effective enforcement mechanisms available to employees who have had their requests unreasonably rejected.[57]

Protection against use of casuals for long term employment

[50] Ibid Statement of Clinton Lewin dated 26 October 2015 at [13] and Statement of John Herbertson dated 26 October 2015 [15]-[22]
[51] Above n 28 at [86]
[52] Ibid at [86]
[53] Above n 2 dated 26 October 2015 at [15] –[22]
[54] Above n 38, at [355]
[55] Ibid[360]
[56] Above n 6, at [333]
[57] See above n 6, at section 5.3 – FWC and Relevant Decisions

40. The net effect of these challenges faced by employees attempting to convert to permanent employment is that many of them are ending up in long term casual employment. We submit that this goes against the intention of introducing casual employment into the workforce, is contrary to the modern award objectives and is ultimately detrimental to many employees.

41. Table 4 identifies evidence provided by the AMWU in support of this contention.

Table 4. Evidence of long term casual employment, from AMWU-VD Submission 2 November 2015[58]		
	Evidence	**Nature of evidence**
1.	Witness evidence (Statement) – Heit - at [9]	Evidence of long term casual employment (approx. 5 years)
2.	Witness evidence (Statement) – Procter - at [10]	Evidence of long term casual employment (approx. 3 years)
3.	Witness evidence (Statement) – Elks - at [12] and [14]	Evidence of long term casual employment (approx. 6 years)

42. These witness statements represent the reality of long-term casual employment. Clinton Heit, for example has been working for almost 5 years as a casual Diesel Fitter at Goonyella-Riverside for Haynes Mechanical. Sean Procter has been working for approximately 3 years as a customer service employee with Repco Watergardens.

43. The AMWU-VD have also provided Australian Bureau of Statistics (ABS) data which highlights that casual employees represent a significant percentage of the vehicle repair service and retail and manufacturing industry.[59] This data, for example, shows that casual employment makes up 50.2% of the total employees in the fuel retailing sector and casual motor vehicle parts and tyre retailing employees make up 28.8% in their sector. In total, the data suggests that there are at least 279,200 people employed casually across relevant industries.

44. Data from the Joint Employer Survey referenced by the Ai Group further illustrates that casual labour is both significant and more pertinently that it is often long term. Whilst this data was obtained from respondents across a range of industries, we submit that it is still relevant to the Vehicle Industry contextually. The portion of casual employees employed by the respondents' total workforce was identified as being an average of 16.3%.[60] 17.42% of these casuals were found to be working full-time hours regularly and 50.13% were found to be working part-time hours regularly.[61] Finally, **60.17%** of those hired regularly averaged a period of service of

[58] Above n 2
[59] Above n 2, at [45]-[48]
[60] Above n 38, at [149]
[61] Ibid at [151]

more than 6 months. Thus, these figures suggest that approximately 68% of all casual employees are hired on a regular basis and that over 60% of them are hired on a long term basis.

45. We say that this combined data illustrates the significant use of casual labour across industries and in the vehicle industry specifically, especially the repair services and retail sectors. Given that casual employees make up such a significant proportion of overall employees, it is vital that as a group they are protected from being exploited by employers as long term casual employees.

46. The Ai Group have submitted that employers should have a right to refuse conversion, where there are reasonable grounds for doing so. We submit, however, that where an employer has required 6-12months of consistent work from an employee, the employee's right to permanent employment should outweigh the right of the employer to choose whether to afford conversion. We make this submission on the following grounds:

    a. Our evidence has highlighted that employers do, at times, provide unreasonable excuses for denying conversion;[62]

    b. If an employer has been able to provide consistent work for 6-12months, which indicates permanent work is available, it is unlikely there will be a reasonable excuse for denying conversion;

    c. The current enforcement mechanisms in place to ensure employers comply with a requirement to be reasonable are not adequate;[63]

    d. Employers benefit from utilising an employee on a casual basis for 6-12months, including the benefit of changing their hours, not paying various entitlements and being able to discard of them with no notice. This right should not be effective on a long term basis without an employee's consent.

47. The proposed clause will have the effect of discouraging the use of casual employees for long term regular engagements, as employers will be obliged to offer employees permanent employment where they have been engaged continuously over a period of time. The clause, however, still preserves casual employment as a mechanism to assist employers with peaks in demand, or to cover a shortage of staffing. It also preserves the rights of employees who wish to remain casual to do so. It these ways it meets the interests of all employees and employers. Finally, it is necessary to set such limits on this provision so as to discourage the use of it in a way that was unintended.

Historical inclusion of a deeming provision & favourable adjustments to proposed clause

48. Historically, the relevant vehicle industry Awards contained casual deeming provisions since 1964.[64] It was only during the Modern Award process that a casual conversion clause was inserted into the VMRSR Award.

[62] See above at [33(b)]
[63] See above n 6, at section 5.3 – FWC and Relevant Decisions

49. During this process the MTA Organisations sought to replace the deeming provision with a 'conversion by election' provision. This was made on the basis that employees were said to have concerns that they could be inadvertently shifted onto permanent employment.[65]

50. However, only general observations were put forward by the MTA Organisations in support of relinquishing the deeming provision. No probative evidence was put forth demonstrating that deeming was, in fact, causing actual concern for employees in the industry. On this basis we have argued that there was insufficient evidence provided at the time the provision was changed from deeming to election.

51. However, even if this claim were to have been substantiated by probative evidence, we say that the same issue would not arise were the current proposal enforced. This is because the proposed provision allows employees the right to 'opt out' of conversion to permanent employment. This provides greater flexibility to employees and safeguards against automatic deeming in instances where employees would prefer to remain casual.

52. In effect, the proposed casual conversion clause provides more flexibility than was historically present in the pre-modern vehicle awards of which the Full Bench was referring to when it made the decision to replace it with the current clause.

53. In opposition to a reversion to deeming, the MTA Organisations in oral submissions contended that the deeming provision 'did (also) trap or trick some businesses because they didn't realise that was the case [deeming] and it has been a problem from time to time in the past'.[66] However, again no evidence was been produced to substantiate this claim.

54. Nor has any evidence been raised that indicates the replacement of deeming to election resulted in an increased use in casual employment, that productivity rose, that new jobs were created or that women were given more jobs in the workforce. If the opposing parties' claims that all of these factors would be so direly affected by re-instating a deeming provision had merit, there would have been a notable impact on these indicators when the clause was changed during the Modern Award process.[67] The fact that no such impact has been identified suggests that a shift back to deeming would similarly have little impact on business productivity and overall job opportunity.

55. In fact, evidence from other awards substantiates this. As the AMWU noted,[68] when conversion through deeming was included in the Graphic Arts Award in 1998 and the Manufacturing Award in 2000, there was no collapse of business. Neither were there any excessive job losses. In fact, the data shows that the number of casuals in these industries rose during the mid-2000's. History, both in the context of the Vehicle Industry and other industries, therefore shows that deeming and conversion have no perceptible impact on the number of jobs available in an industry.

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[64] Above n 2, at[24]-[25]
[65] Ibid, at [34] of VD subs
[66] Above n 32 dated 14 March 2016, at [PN312]
[67] For example, see above n 28, at [50]
[68] Above n 32 dated 14 March 2016, at [PN111]

56. The AMWU-VD submits that these facts, along with the arguments made by the AMWU in support of how the proposed clause meets the modern awards objectives,[69] represent cogent reasons for departing from to 2009 decision to depart from casual deeming.

Preserves right for employers to hire casually

57. In addition to ensuring a minimum safety net for casual employees, the proposed clause also adequately balances the interest of employers to access casual employment. The proposal allows for casual employment for 6 months, and 12 months where agreed upon. This is substantially more generous than previous deeming provisions, which in some instances have deemed casuals permanent after only 4-6 weeks of ongoing work.[70]

58. Such a provision thus enables employers to access a flexible workforce. This is sufficient in keeping them in step, as the Ai Group puts it, with a 'modern and flexible workplace relations system'.[71] It is also sufficient in addressing the concerns raised by respondents to the MTA Organisation's Survey in regards to being able to access casual employees[72] and benefit from the flexibility this entails.

59. The AMWU-VD does not dispute the necessity of being able to employ casual employees where business demands fluctuate and businesses need to remain agile and flexible to respond to moving market forces. There is, however, a stark difference between utilising casual employment for such purposes on a short-term, as-needs basis and retaining casual employees over the long term.

60. Opposing submissions have failed to distinguish between these two categories of casual employment when presenting evidence in support of businesses' ongoing need to access casual employment. Instead, they have relied on evidence and argument supporting a general need for casual employment, such as the need for flexibility to respond to the peaks and troughs of workflow, to enable probationary practices or to meet irregular business demands such as seasonal work or permanent worker absence. It can only be inferred that the same arguments are intended to justify utilising casual employment over the long term.

61. Such an inference is neither probative nor persuasive, because the rationales for short term access to temporary employment do not extend to the context of long-term casual employment. Where there is a need to retain an employee on regular full-time or part-time hours for 6 months and up to 12months, it is self-evident that the work place demands require and can cater for permanent employment. The 6-12 month window adequately provides for these contingencies.

62. Furthermore, the impact of casual employment on those who wish to be employed permanently is exacerbated over time.[73] It is unfair to favour business desire for

[69] Above n 6, at 2.3 (s.134 The Modern Award Objective) and 2.4 (s.138 Achieving the Modern Award Objective)
[70] Above n 32 dated 14 March 2016, at [PN312]
[71] Above n 32 dated 14 March 2016, at PN170].
[72] For example, see above n 28, at [51]
[73] Above n 6, at[319]-[321]

disposable and 'flexible' workers over the long term in the face of the significantly detrimental impact that this can have on permanent casual employees.

63. It has been a long-established standard in the vehicle manufacturing industry that regularly engaged casuals have a prima facie right to ongoing employment. The 2008 full Bench upheld this right, stating that it is consistent with a fair and relevant modern award.[74] This decision took account s134(1) criteria that employees who work consistently over a long period of time should be given the opportunity to become permanently employed and access the ensuing benefits.[75] In support of this precedent, the AMWU also raised a 2000 Full Bench decision, in which it was determined that the notion of permanent casual employment, if not a contradiction in terms, detracted from the integrity of an award safety net in which the entitlements and standards applicable to weekly workers' personal leave are fundamental.[76]

64. It is accepted that this principle needs to be balanced against the needs of employers to retain some flexibility with the work force, but not to the extent that the right of casuals to convert to permanent employment is placed at the whim of an employer. On this point we echo the AMWU submissions that 'flexible work practices are not a synonym for casual employment'[77] and that 'casual work is a type of employment. It is not a flexible work practice'.[78]

65. Finally, the AMWU-VD refutes the argument raised by the MTA Organisations that social inclusion would suffer through a decrease in workforce participation as a result of the proposed clauses.[79] As established above, the opposing parties have provided no probative evidence linking a deeming provision with a decrease in casual jobs. Additionally, any benefit of casual employment to an increase in social inclusion will not be lost, as employees are permitted to continue working casually if they so elect. We further rely on the AMWU and ACTU submissions in respect of the adverse impact of long-term casualization on social inclusion.[80]

66. In conclusion, opposing parties have failed to justify why casual employment is necessary in the long-term. Conversely, the AMWU-VD and affiliate parties have established with probative evidence that the impact of long-term casual employment on those who need the stability of permanent employment is significant and in some cases seriously detrimental. On this basis we submit that a deeming provision for the VMRSR Award is necessary to protect the interests of casual employees without being unreasonably detrimental to employers.

B. Minimum period of engagement

67. At the present time, the VMRSR Award does not have a minimum period of engagement for casual employees. We therefore propose to include a minimum

[74] Above n 32 dated 14 March 2016, at [PN140]
[75] Above n 32 dated 14 March 2016, at [PN139]
[76] Above n 32 dated 14 March 2016, at [PN134]
[77] Above n 32 dated 14 March 2016, at [PN125]
[78] Above n 32 dated 14 March 2016, at [PN127] re definition of flexible work arrangements, notably that casual employees are routine
[79] Above n 28, at [59]
[80] Above n 6, at [340]-[344]

engagement period of 4 hours.

68. The AMWU-VD support and rely on the submissions and evidence provided by the ACTU and AMWU in support of this proposed variation.[81]

69. In regards to the Motor Trades Organisation's proposal that a minimum four-hour period for casual and part-time employees would take away opportunities for secondary school students to find a pathway into the automotive industry[82], we make the following submissions.

70. The MTA Organisations rely heavily on one witness statement, that of Maria Meilak of Melita from Auto electrical Services to substantiate their claim. Ms Meilak contends that a four hour minimum shift length would be crippling to her business because she alleges that many apprentices start out as school students who work after-school hour shifts. She also states that such an amendment would 'diminish potential job opportunities for junior employees and school students'.[83]

71. In response, we argue that the number of secondary school students potentially affected by the proposed change would be minute, and would pale in comparison to the number of employees who would benefit from the advantages of a four hour minimum shift.

72. Aside from Ms Meliak's statement, the only other evidence that the MTA Organisations have provided to substantiate their claim has been the results from the Casual and Part-time Employment Survey.[84] The MTA Organisations note that many respondents in their survey mentioned 'not being able to employ students after school as being a problem'.[85] However, out of 252 responses to Q27 (What would be the effect of your organisation if all casual employees were entitled to a four (4) hour minimum engagement period per day/shift), only 6 responses referred to there being any effect on a businesses ability to hire school students. No further evidence identifying the proportion of businesses who hire school students has been provided by the MTA Organisations.

73. Whilst we dismiss the overall veracity of the MTA Organisations' survey, for reasons given above, these results reflects the AMWU-VD claim that school students make up a very small proportion of overall employees. Therefore, we submit that Ms Meliak's statement is not reflective of the industry norm.

74. Furthermore, we note that at the time of cross-examination Ms Meliak confirmed that not a single school student was employed by the business.[86] This suggests that even within the business of Melita Auto electrical Services the use of school students is not wide-spread.

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[81] Above n 2, at [86]
[82] Above n 28, at [25]
[83] Ibid Attachment C, Affidavit Maria Meilak, at [14]
[84] Ibid Attachment B
[85] Above n 28, at [30]
[86] Above n 32 dated 14 March 2016, at [PN7368]

75. Additionally, we submit that where job opportunities exist for school students they could continue to be employed on weekends and meet the four-hour minimum requirement. Other opportunities for work-experience are also available, such as work experience placements and school-based apprenticeship arrangements. Therefore job opportunities could still be accommodated and businesses could continue to identify suitable apprentice candidates.

76. Ultimately, the benefits of a minimum four hour shift for the vast majority of employees should not be curtailed in the interests of a small minority.

C. Terms and conditions of employment

77. The AMWU-VD seeks two amendments to the terms and conditions of casual employees' terms and conditions. Firstly, we propose to make more detailed the requirement of an employer to inform a casual employee as to the specific nature and terms of their employment, including the right to convert to permanent employment pursuant to the casual conversion provision.

78. Secondly, we propose that this variation include a requirement that an employer first offer additional hours of work to existing casual employees before increasing the number of part-time employees in employment.

79. The AMWU-VD support and rely on the submissions and evidence provided by the ACTU and AMWU in support of these proposed variations.[87]

80. Table 3 re-iterates the evidence identified in our submission that substantiates our claim that there is a need to make a more detailed notification requirement for employers.

Table 5. Evidence of interest amongst casuals to convert to permanent employment, AMWU-VD Submission 2 November 2015

	Evidence	**Nature of evidence**
1.	Witness evidence (Statement) – Elks - at [24]	Evidence that employee was not informed of right to convert to permanent employment.
2.	Witness evidence (Statement) – Lewin - at [13]	Evidence that a company has only offered permanent positions to casual employees after the union intervened.
3.	Witness evidence (Transcript 22 March 2016) - Herbertson — at [PN8776]	Evidence that in Organiser's experience "some businesses just don't contact the employee when their six months is up to make the [conversion to permanent employment] request".
4.	Witness evidence (Transcript 22	Evidence that some employers have not

[87] Above n 5 & 6

	March 2016) - Herbertson — at [PN8740]	even been aware of their notification responsibilities when Organiser has raised matter with them.
5.	Witness evidence (Statement) – Herbertson - at [13]	Evidence that Organiser had to prompt employers and remind them of their obligations under the Award to notify casuals of their right to convert.
6.	Witness evidence (Statement) – Herbertson - at [17]-[22]	Evidence of a case where a number of casual employees had not been made aware of their right to convert.

81. This evidence identifies that the current notification provision is not effective, with some employees remaining unaware of their conversion rights under the Awards. This is in spite of there being an explicit obligation on an employer to inform them of such rights.[88] And even where employees are aware of their rights, they often do not request conversion out of fear of the repercussions. These findings are corroborated by the evidence submitted by the AMWU.[89]

82. The Ai Group and the Recruiting and Consultancy Services Australia (RSCA) have sought to remove the current notification requirement, which mandates that employers are to notify employees of their right to apply for conversion to permanent employment after a 6-month qualifying period.[90]

83. These two parties have argued that:

    a. The merits of the notification requirement into awards were not separately considered by the Commission when it was included in the first casual conversion provision[91]. In any event is no longer relevant in Modern Awards as the context has changed;[92]

    b. The notification requirement imposes great administrative burden on employers which is disproportionate to the take up of permanent employment by casual employees;[93]

    c. Casual employees have access to other resources notifying them of their award entitlements therefore it's unnecessary for employers to directly notify them of their right to convert;[94]

[88] Vehicle Manufacturing, Repair Services and Retail Award 2010, see clause 13.3(b).
[89] Above n 6, at[322]-[332]
[90] Above n 88
[91] Australian Industry Group Submissions dated 14 October 2015 (Ai Group Submissions), at [35]-[49]
[92] Ai Group Submissions, at [50]-[56] and RSCA Submissions dated 12 October 2015 (RSCA Submissions), at [37]
[93] Ai Group Submissions at [57-62] and RCSA Submissions at [37]
[94] Ai Group Submissions at [63]-[79] and RCSA Submissions at [17], [43]

d. The very low take-up of the conversion by casual employees,[95] which suggests that casual employees prefer casual to permanent employment;[96]

e. Casual employment is needed to improve flexibility.[97]

f. The notification requirement is not necessary to meet the Modern Awards Objective[98] such that the removal of the requirement supports the Modern Awards objective;[99]

84. In addition to adopting the reply submissions and evidence filed by the ACTU[100] and the AMWU[101] on this point, we have made the following arguments in support of our position:

a. Neither the Ai Group nor the RCSA have provided probative evidence in support of their proposed variation. For example, the witness evidence produced and relied upon was sourced from representatives of labour hire organisations whose employees represent only 2% of the workforce.[102] The survey results relied upon by the parties is similarly lacking in probative value on the basis that its sample size was only 28 respondents.[103]

b. Current ABS data, further referred to in the Additional Submissions filed by the AMWU,[104] sets out the number of people engaged as casual employees across the workforce as being (2.306 million people). This is compared with the number of employees (permanent or otherwise) engaged as labour hire employees (124,000).[105] This substantiates our assertion that the evidence provided does not validly represent the Vehicle Industry standard.

c. Evidence demonstrating that the right to convert to permanent employment is not widely known or understood;[106] that there is significant interest among casuals to convert to permanent employment[107] and that not all eligible casual employees are notified of having qualified for the right to covert[108] provides strong reasons to maintain the notification provision.

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[95] RCSA Submissions at [16]-[33]
[96] Above n 91, at [15]-[24]
[97] Ai Group Submissions and RSCA Submissions
[98] Ai Group Submissions [80]-[99 and RCSA Submissions [22]-[50]
[99] Ibid
[100] Australian Council of Trade Unions Submissions in Response, dated 22 February 2016 (ACTU Submissions in Response) and Australian Manufacturing Workers Union Submissions in Reply dated 22 February 2016 (AMWU Submissions in Reply)
[101] AM2014/1 4 Yearly Review of Modern Awards: Preliminary Jurisdictional Issues, [2014] FWCFB 1788
[102] ACTU Evidence in support, Statement of Raymond Markey, Attachment RM2 – Expert Report, p14
[103] RSCA Submissions, Statement of Carly Fordred, attachment CF4
[104] AMWU Additional Submission, dated 22 December 2015
[105] Ibid, at [5], [12]-[18].
[106] Above n 2, at [58]-[59]
[107] Ibid, see statements in support provided by Clinton Heit,Stephen Elks and Sean Procter
[108] Above n 2, at [58][59]

d. Removing the notification provision would likely increase the fear and anxiety experienced by casuals associated with asking employers to convert to permanent employment.[109]

e. The removal of the notification requirement is not necessary to meet the Modern Award Objective. Conversely, the presence of the notification requirement meets the modern Awards objective.[110]

f. The Commission should take into account the decisions of the Full Bench in its jurisdictional decisions in relation to the 4 yearly Modern Award Review Proceedings, specifically that [60]:

i. "[3] … *where a significant change is proposed it must be supported by a submission which addresses the relevant legislative provisions and be accompanied by probative evidence properly directed to demonstrating the facts supporting the proposed variation… In conducting the Review the Commission will also have regard to the historical context applicable to each modern award… The Commission will proceed on the basis that prima facie the modern award being reviewed achieved the modern awards objective at the time it was made."*

ii. That the modern award objective is applied in order that a '[4] *fair an relevant minimum safety net of terms and conditions'* is upheld

85. In addition to these points we wish to raise the following in response to the opposing parties submissions:

86. In regards to the Ai Group's submission that the notification requirement constitutes an unwarranted regulatory administrative burden on employers, we maintain that the interest of ensuring employees are aware of the conversion rights is paramount.

87. We have raised evidence that has established that the right to convert to permanent employment is not widely known or understood. This demonstrates that under the current regime employees are still, in some instances, not being notified of their conversion rights. The Ai Group have argued that with access to mechanisms such as the internet to view Award content the need for notification by employers of conversion rights is made redundant. We say that the internet has been available for a substantial period of time and that in spite of this the casual employees are still failing to be properly notified and/or remain unaware of their conversion rights. This would suggest that, if anything, the notification requirement needs to be extended upon to ensure greater compliance, not diminished.

88. In our view, on the basis of these arguments, that the Ai Group and the RSCA do not substantiate their claims with probative evidence. Their claims are therefore without merit and should be rejected by the Commission. It follows then that the prima facie

[109] Second Supplementary Report: Casual and Part Time Employment in Australia, Markey, O'Brien and McIvor, at p17. See also Supplementary Report, section 4.2

[110] We rely on the following in support of this contention: AMWU Submissions in at [40]-[55]; AMWU Submission; and AMWU Submissions at [333]-[338] & Attachment 11.

assumption that all Awards containing this notification requirement in casual conversion clauses met the Modern Awards objective at the time they were made. Removing this requirement will only result in cementing the barriers already faced by long-term permanent casual employees in accessing permanent employment, as the notification requirement is one of the only mechanisms assisting these employees.

Part time employment

89. The AMWU-VD have made three proposals in relation to part time Vehicle Manufacturing workers. They are as follows:

90. Firstly, consistent with the ACTU and AMWU's claim, the AMWU-VD are seeking to improve the conditions for part time employees engaged under the Award by providing a minimum engagement period of 4 consecutive hours of employment per shift per day.

91. Secondly, in order to accommodate the personal circumstances of a part time employee, the AMWU-VD propose a facilitative arrangement to be included in the clause that enables a part-time employee to request an engagement of no less than three hours per day or shift. This permits individual agreement to be reached where necessary. It further assists in accommodating the needs of part-time employees by providing flexibility in the minimum number of hours that can be worked but ensuring there is a minimum number that must be worked in those circumstances.

92. Thirdly, we propose that this variation include a requirement that an employer first offer additional hours of work to existing part-time as per our proposal for casual employees, before increasing the number of part-time employees in employment.

93. Table four outlines the additional evidence we have relied upon in support of these proposals:

Table 5. Evidence in support of provisions proposed by the AMWU-VD in relation to part time workers under the VMRSR Award, as contained within the AMWU-VD Submissions[111]

Evidence	Source	Relevance
ABS data	Table 5, p17	Identifies number of employees across relevant industries who consider themselves to be full time or part time employed
ABS data	Table 6, p18	Identifies the proportion of employees who consider themselves part time employed

[111] Above n 2

94. In support of the AMWU and ACTU submissions on this proposal we included the above ABS data. This data indicates that there is a high percentage of employees who consider themselves part time employed in the Motor vehicle retailing, Fuel retailing, automotive repair and maintenance and motor vehicle and motor vehicle parts manufacturing industries. For example, part time employees make up 54.9% of the Fuel retailing sector and over 101,500 employees in the Automotive repair and maintenance sector.

95. Whilst these figures may include casual employees they still reflect the likelihood that a significant number of employees in the Vehicle Industry who would benefit from the proposed provisions.

Application

96. In respect of how all of the proposed variations to the VMRSR Award meet the modern awards objective, we rely on and adopt the submissions made by the ACTU and AMWU.

97. We further reject the MTA Organisation's argument that stability should be a priority over other Modern Award objectives,[112] and argue that all factors relevant to meeting a fair and relevant minimum safety net of terms and conditions be considered equally.

Conclusion

98. The current VMRSR Award, in regards to the clauses in question, does not meet the modern award objective.

99. The AMWU-VD, along with the AMWU and ACTU, have provided extensive evidence in the form of witness statements, surveys, academic reports and ABS Statistics which quantitatively highlights how the current clauses do not meet this objective. This evidence provides a compelling basis upon which to depart from the current clauses. Fundamentally, it has been established that the current casual conversion clauses are ineffective in preventing long term casualization, that the current notification procedures are ineffective in guaranteeing that employees are informed of their rights and that the wellbeing of employees is suffering under the current provisions, among other things.

100. Our submissions have further highlighted that the clauses proposed effectively balance the interests of both employees and employers and do not cause unreasonable detriment to employers.

101. On these grounds we reject the MTA Organisation's claim that the casual and part-time clauses should be left as decided by the Award Modernisation Decisions [2009] AIRCFB 862 (4 September 2009)[113] and maintain that the positions put forward in our submission be adopted by the Commission.

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[112] Above n 28, at [14]
[113] Above n 28, at [9]