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## IN THE FAIR WORK COMMISSION - CASUAL TERMS REVIEW 2021 (AM2021/54)

### Various Group 1 Stage 2 and Group 2 Awards

1. This brief submission is filed on behalf of Australian Business Industrial (**ABI**) and the NSW Business Chamber (**NSWBC**) in the Casual Terms Award Review (**Review**).
2. The Full Bench made Decision [2021] FWCFB 4144 on 16 July 2021 (**July Decision**) in relation to Group 1 Awards.
3. Relevantly, the Full Bench in the July Decision determined that the terms of the Review required it to delete the casual conversion clause from the *Manufacturing and Associated Industries and Occupations Award 2020* (**Manufacturing Award**) and replace it with a reference to the relevant NES casual conversion entitlements.
4. On 3 August 2021 and on 11 August 2021 respectively, the Full Bench issued Statements [2021] FWCFB 4714 concerning the Review of 'Group 1 Stage 2' Awards and [2021] FWCFB 4928 concerning the Review of 'Group 2' Awards (**Statements**).
5. By way of relevant summary, the Statements included provisional views about a number of Group 1 and 2 modern awards, including the Building and Construction General On-site Award 2020; the Joinery and Building Trades Award 2020; the Mobile Crane Hiring Award 2020; the Plumbing and Fire Sprinklers Award 2020; Food, Beverage and Tobacco Manufacturing Award 2020; the Cement, Lime and Quarrying Award 2020; the Concrete Products Award 2020; the Graphic Arts, Printing and Publishing Award 2020; and Vehicle Repair, Services and Retail Award 2020 (**Awards**).
6. Relevantly for this submission, these provisional views were to the effect that the relevant casual conversion clauses in the Awards were in substantially the same form as the Manufacturing Award and, for the reasons which moved the Full Bench in the July Decision in relation to the Manufacturing Award, the Awards should be varied such that the casual conversion clauses should be deleted and replaced with references to the NES casual conversion entitlements in order to satisfy the requirements in cl.48(3) of Schedule 1.
7. Since that time, directions have been issued inviting parties to respond to parties' submissions opposing the Full Bench's provisional views expressed in the Statements.
8. For the purposes of responding to the submissions of those parties opposing the Full Bench's provisional views, ABI and NSWBC simply wish to note their agreement with the provisional views that the reasoning from July Decision relating to the *Manufacturing Award* should be adopted with respect to the Awards.
9. Consistent with our previous submissions and the findings of the Full Bench in the July Decision, the prospect of concurrent and different casual conversion regimes existing in both the Act and a relevant award will necessarily give rise to uncertainty and difficulty, particularly where the concurrent casual conversion regimes overlap in time. Within the context of the requirements of the Review, such uncertainty and difficulty should be clarified by variations to the Awards.
10. To that point, we again refer to the finding of the Full Bench in the July Decision at [238] concerning the *Manufacturing Award*:

*When this occurs, the employer will be faced with compliance with different and competing conversion requirements, and the operation of the award provision in that context will 'alter, impair or detract from', and thus be inconsistent with, the*

*NES. Further, there can be no serious question that, by reason of the same circumstance, there would be uncertainty and difficulty concerning the interaction between the award and the NES. .... It may not be impossible to find a narrow route to simultaneous compliance with both sets of obligations, but there can be no doubt that difficulty and confusion would result for employers and employees.*

11. ABI and NSWBC endorse the findings of the Full Bench in the July Decision and commend the Full Bench to confirm its provisional views in relation to the casual conversions clauses of the Awards.
12. With respect to the materials filed by the parties opposing the provisional views, ABI and NSWBC submit that those materials:
  - are not sufficient to displace the reasoning of the Full Bench such that its provisional views should be departed from; and
  - if such an argument is to be put, do not advance a sufficient case to suggest that the Full Bench was incorrect in relation to its reasoning in the July Decision vis-à-vis the Manufacturing Award, such that this reasoning should not be followed again.
13. On the basis of the above, ABI and NSWBC submit that the Full Bench's provisional views should be confirmed.

**2 September 2021**