

Australian Industry Group

# Casual Terms Award Review 2021

Stage 2 of the Review

Group 1 Awards

**Submission**

(AM2021/54)

10 August 2021



## AM2021/54 – CASUAL TERMS AWARD REVIEW 2021

### STAGE 2 – GROUP 1 AWARDS

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## 1. INTRODUCTION

1. This submission is made by the Australian Industry Group (**Ai Group**) in response to the Statement<sup>1</sup> (**Statement**) issued by the Fair Work Commission (**FWC**) on 3 August 2021 relating to the review of Group 1 Awards during Stage 2 of the Casual Terms Award Review 2021.
2. Ai Group has a significant interest in the following Group 1 Awards:
  - *Aged Care Award 2010* (**Aged Care Award**);
  - *Airline Operations-Ground Staff Award 2020* (**Airline Award**);
  - *Building and Construction General On-site Award 2020* (**Building Award**);
  - *Electrical, Electronic and Communications Contracting Award 2020* (**Electrical Award**);
  - *Fast Food Industry Award 2010* (**Fast Food Award**);
  - *Food, Beverage and Tobacco Manufacturing Award 2020* (**Food Manufacturing Award**);
  - *Hair and Beauty Industry Award 2010* (**Hair and Beauty Award**);
  - *Joinery and Building Trades Award 2020* (**Joinery Award**);
  - *Meat Industry Award 2020* (**Meat Award**);
  - *Mobile Crane Hiring Award 2020* (**Mobile Crane Award**);
  - *Plumbing and Fire Sprinklers Award 2020* (**Plumbing Award**);
  - *Professional Employees Award 2020* (**Professionals Award**);

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<sup>1</sup> [2021] FWCFB 4714.

- *Restaurant Industry Award 2020 (Restaurant Award)*;
  - *Social, Community, Home Care and Disability Services Industry Award 2010 (SCHCDS Award)*;
  - *Water Industry Award 2020 (Water Award)*.
3. Our responses in relation to the FWC's *provisional* views are set out below on each of the above awards other than the Meat Award.
  4. Ai Group will file a separate submission on the Meat Award.

## **2. CATEGORISATION OF CASUAL DEFINITION CLAUSES**

5. At paragraphs [12] to [15] of the FWC's Statement, the *provisional* view is expressed that:
  - The 'engaged and paid in accordance with the provisions of this clause' type definition is not consistent with the definition in s.15A of the *Fair Work Act 2009 (Act)*; and
  - This type of definition should be removed from the relevant awards and replaced with a new definition of 'casual employee' which references s.15A(1) of the Act to make it consistent or operate effectively with the Act.
6. Ai Group agrees with the above *provisional* view.

## **3. AGED CARE AWARD**

7. Ai Group agrees with the *provisional* views set out in Schedule B of the FWC's Statement.

## **4. AIRLINE AWARD**

8. Ai Group agrees with the *provisional* views set out in Schedule B of the FWC's Statement.

## 5. BUILDING AWARD

9. At paragraph [24] of the Statement, the *provisional* view is expressed that the Building Award casual conversion clause (clause 13) is in substantially the same form as the Manufacturing Award and the Food Manufacturing Award and that the term should be deleted from the award and replaced with a reference to the NES casual conversion entitlements. Ai Group agrees with this *provisional* view.
10. At paragraph [66] of the Building Award, the *provisional* view is expressed that daily hire employment does not fall within the definition of casual employment in s.15A of the Act and that clause 9 of the Building Award is therefore not a relevant term. Ai Group agrees with this *provisional* view.
11. Ai Group agrees with the *provisional* views set out in Schedule B of the FWC's Statement, except that the clause which defines a 'casual employee' should be worded as follows to clarify that a daily hire employee is not a casual employee:

**casual employee** has the meaning given by section 15A of the Act. A daily hire employee is not a casual employee.

## 6. ELECTRICAL AWARD

12. At paragraph [40] of the FWC's Statement, the *provisional* views are expressed that:
- The Electrical Award casual conversion clause (clause 11.5) is less beneficial overall than the residual right to casual conversion under the Act;
  - Difficulty or uncertainty arises in relation to this clause because of the significantly different prescriptions in the award and the Act about the same subject matter; and
  - The clause should be deleted and replaced with a reference to the NES casual conversion entitlements in order to satisfy the requirement in cl.48(3) of Schedule 1.

13. Ai Group agrees with the above *provisional* views.
14. Ai Group agrees with the *provisional* views set out in Schedule B of the FWC's Statement.

## **7. FAST FOOD AWARD**

15. Ai Group agrees with the *provisional* views set out in Schedule B of the FWC's Statement.

## **8. FOOD MANUFACTURING AWARD**

16. At paragraph [22] of the FWC's Statement, the *provisional* views are expressed that:

- The Food Manufacturing Award casual conversion clause (clause 10.8) is less beneficial overall than the residual right to casual conversion under the Act;
- Difficulty or uncertainty arises in relation to this clause because of the significantly different prescriptions in the award and the Act about the same subject matter; and
- The clause should be deleted and replaced with a reference to the NES casual conversion entitlements in order to satisfy the requirement in cl.48(3) of Schedule 1.

17. Ai Group agrees with the above *provisional* views.
18. Ai Group agrees with the *provisional* views set out in Schedule B of the FWC's Statement.

## **9. HAIR AND BEAUTY AWARD**

19. Ai Group agrees with the *provisional* views set out in Schedule B of the FWC's Statement.

## 10. JOINERY AWARD

20. At paragraph [26] of the Statement, the provisional view is expressed that the Joinery Award casual conversion clause (clause 12) is in substantially the same form as the Manufacturing Award, the Food Manufacturing Award and the Building Award and that the term should be deleted from the award and replaced with a reference to the NES casual conversion entitlements. Ai Group agrees with this *provisional* view.
21. At paragraph [28] of the Statement, the *provisional* view is expressed that clause 11.8, which prohibits engagement and re-engagement to avoid award obligations, should be deleted. Ai Group agrees with this *provisional* view.
22. At paragraphs [29] and [30] of the Statement, the provisional view is expressed that clause 11.3 should be amended as follows:
- 11.3** A casual employee ~~is engaged by the hour with~~ must have a minimum daily engagement of 7.6 hours.”
23. Ai Group agrees with the above *provisional* view.
24. Ai Group agrees with the *provisional* views set out in Schedule B of the FWC’s Statement.

## 11. MOBILE CRANE AWARD

25. At paragraph [32] of the Statement, the *provisional* view is expressed that the Mobile Crane Award casual conversion clause (clause 9.7) is in substantially the same form as the Manufacturing Award, the Food Manufacturing Award, the Building Award and the Joinery Award and that the term should be deleted from the award and replaced with a reference to the NES casual conversion entitlements. Ai Group agrees with this *provisional* view.
26. Ai Group agrees with the *provisional* views set out in Schedule B of the FWC’s Statement.

## **12. PLUMBING AWARD**

27. At paragraph [34] of the Statement, the *provisional* view is expressed that the Plumbing Award casual conversion clause (clause 12.4) is in substantially the same form as the Manufacturing Award, the Food Manufacturing Award, the Building Award, the Joinery Award and the Mobile Crane Award and that the term should be deleted from the award and replaced with a reference to the NES casual conversion entitlements. Ai Group agrees with this *provisional* view.
28. Ai Group agrees with the *provisional* views set out in Schedule B of the FWC's Statement.

## **13. PROFESSIONALS AWARD**

29. Ai Group agrees with the *provisional* views set out in Schedule B of the FWC's Statement.

## **14. RESTAURANT AWARD**

30. Ai Group agrees with the *provisional* views set out in Schedule B of the FWC's Statement.

## **15. SCHCDS AWARD**

31. Ai Group agrees with the *provisional* views set out in Schedule B of the FWC's Statement.

## **16. WATER AWARD**

32. Ai Group agrees with the *provisional* views set out in Schedule B of the FWC's Statement.