

IN THE FAIR WORK COMMISSION

MATTER: CASUAL AWARD TERMS REVIEW 2021

MATTER NO: AM2021/54

OUTLINE OF SUBMISSIONS FOR THE AUSTRALIAN WORKERS' UNION – GROUP 2 AWARDS

BACKGROUND

1. On 27 March 2021, the *Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Act 2021* amended the *Fair Work Act 2009* ('**FW Act**') primarily to insert a new definition of "casual employee" into s 15A of the FW Act and to include casual conversion entitlements in the National Employment Standards ('**NES**').
2. The amendments also included a requirement, inserted as a new clause 48 of Schedule 1 to the FW Act, for the Fair Work Commission ('**FWC**') to review modern award terms relating to casual employment and resolve any inconsistencies and uncertainties generated by the amendments ('**Review**').
3. On 16 July 2021, a five-member Full Bench issued a decision as part of the Review concerning a priority group of 'Stage 1' awards: [2021] FWCFB 4144 ('**Stage 1 Decision**').
4. On 11 August 2021, a three-member Full Bench issued a statement concerning the Review of 'Group 2' awards: [2021] FWCFB 4928 ('**Statement**').
5. The Statement contains a number of provisional views concerning the Review of Group 2 awards, with the provisional views generally reflecting the outcome of issues considered in the Stage 1 Decision.
6. In accordance with the directions included in the Statement, the following are submissions from The Australian Workers' Union ('**AWU**') concerning the Full Bench's provisional views about Group 2 awards.

OPPOSITION TO PROVISIONAL VIEWS – ACCESS TO CASUAL CONVERSION AFTER SIX MONTHS

7. The AWU opposes the Full Bench's provisional view identified at [24] of the Statement concerning the casual conversion clause in the *Cement, Lime and*

Quarrying Award 2020 (**'Cement, Lime and Quarrying Award'**) and the provisional view identified at [26] of the Statement concerning the casual conversion clause in the *Concrete Products Award 2020* 9 (**'Concrete Products Award'**).

8. In both cases, the AWU is opposed to the provisional views because they will prevent eligible casual employees from accessing conversion to permanent employment until they have worked for an employer for 12 months. Under the Cement, Lime and Quarrying Award and the Concrete Products Award, eligible casual employees can access conversion after six months of employment.
9. In the Stage 1 Decision, the five-member Full Bench concluded that the NES casual conversion conditions are more beneficial considered on an overall basis than the existing casual conversion conditions in the *Manufacturing and Associated Industries and Occupations Award 2020* (**'Manufacturing Award'**), despite the benefit of accessing conversion after only six months of employment being available under the Manufacturing Award. As the Statement identifies, the casual conversion conditions in the Cement, Lime and Quarrying Award and the Concrete Products Award are in substantially the same terms as the Manufacturing Award.
10. However, the AWU submits the detriment associated with losing access to casual conversion after only six months of employment is substantial and outweighs the improvements that may arise for employees under the NES casual conversion provisions.
11. The introduction of casual conversion conditions into the NES was intended to provide a universal **minimum standard** for national-system employees. It is unfortunate that the largely administrative process of reviewing awards to ensure consistency with the minimum standards in the NES has led to, and may further lead to, a substantive reduction in existing conversion conditions.
12. As the AWU identified in its Stage 1 submissions concerning the Manufacturing Award, the explanatory documents and other background materials associated with the 'IR Working Groups' process suggest this type of substantive reduction in existing conversion conditions would be an unintended consequence of the amendments.

HORSE AND GREYHOUND TRAINING AWARD

13. As the Statement identifies at [38], clause 10.7 of the *Horse and Greyhound Training Award 2020* (**'Horse and Greyhound Training Award'**) provides a genuine casual conversion **right** which is not subject to the agreement of the employer. That clearly makes the provision far more beneficial than the casual conversion conditions in the NES and of a different nature.
14. In addition, the right to convert under clause 10.7 of the Horse and Greyhound Training Award arises after 12 consecutive weeks of working a regular pattern of hours and does not have a pre-requisite of 12 months of employment like the NES.
15. For these reasons, clause 10.7 of the Horse and Greyhound Training Award is different in nature to the casual conversion entitlements in the NES, is a *necessary* supplementary term and should be retained in its current form.
16. In the alternative, the AWU accepts confining the operation of clause 10.7 of the Horse and Greyhound Training Award to the first 12 months of employment is another option available to the Full Bench.

OTHER PROVISIONAL VIEWS

17. Some of the provisional views in Attachment A of the Statement are not easily identifiable because the content in the respective columns for a particular clause appears to conflict.
18. Based on an understanding of what the provisional views are intended to be informed by the Stage 1 Decision, the AWU does not oppose any other provisional views. However, the AWU reserves its right to raise additional issues if its understanding turns out to be incorrect.

18 AUGUST 2021