

IN THE FAIR WORK COMMISSION

MATTER: CASUAL AWARD TERMS REVIEW 2021

MATTER NO: AM2021/54

OUTLINE OF SUBMISSIONS FOR THE AUSTRALIAN WORKERS' UNION – GROUP 3 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 18 August 2021, a three-member Full Bench issued a statement concerning the Review of 'Group 3' awards: [2021] FWCFB 5123 ('**Statement**').
5. The Statement contains a number of provisional views concerning the Review of Group 3 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 3 awards.

OPPOSITION TO PROVISIONAL VIEW – ACCESS TO CASUAL CONVERSION AFTER SIX MONTHS – SUGAR AWARD

7. The AWU opposes the Full Bench’s provisional view identified at [27] of the Statement concerning the casual conversion clause in the *Sugar Industry Award 2020* (**‘Sugar Award’**).
8. The AWU is opposed to the provisional view because it will prevent eligible casual employees from accessing conversion to permanent employment until they have worked for an employer for 12 months. Under the Sugar Award, eligible casual employees¹ 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 Sugar 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 to existing conversion conditions would be an unintended consequence of the amendments.

¹ The conversion condition only applies to employees in the Milling, Distillery, Refinery and Maintenance stream.

13. The AWU does not oppose the other provisional views concerning the Sugar Award.

OTHER PROVISIONAL VIEWS – NOT OPPOSED

14. The AWU is not opposed to the provisional views expressed in relation to the following awards:

- (i) *Electrical Power Industry Award 2020;*
- (ii) *Fitness Industry Award 2020;*
- (iii) *Gardening and Landscaping Services Award 2020;*
- (iv) *Horticulture Award 2020;*
- (v) *Nursery Award 2020;*
- (vi) *Silviculture Award 2020; and*
- (vii) *Wine Industry Award 2020.*

25 AUGUST 2021