

## Fair Work Commission

### Casual terms award review 2021

Matter no: AM2021/54

[2021] FWCFB 4714

## STATEMENT

### Outline of submissions on behalf of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (CEPU) – Plumbing Division

#### Response to provisional views

#### Background

1. On 3 August 2021 the Fair Work Commission (**the FWC**) released a statement (the Statement) concerning the Casual terms award review (AM2021/54). The Statement provides that following a review of the *July 2021 decision*<sup>1</sup> the Full Bench have “formed *provisional views* in relation to the Group 1 awards.”<sup>2</sup> The *Plumbing and Fire Sprinklers Award 2020 (the Plumbing Award)* is included in the Group 1 awards to be considered in the second stage of the review.
2. The Statement directs interested parties to provide any responses in relation to the provisional views concerning Group 1 awards, by 4.00pm on Tuesday, 10 August 2021.<sup>3</sup> Notably, the CEPU (Plumbing Division) has an interest in the Plumbing Award.

#### Provisional views

3. The CEPU (Plumbing Division) has identified a *provisional view* of the Full Bench that it does not support. The specific *provisional view* and the basis on which it is contested is set out in the following table:

Clause	Provisional view	Proposed Action	CEPU (Plumbing Division) position
12.4 – casual conversion	Replace award clause with reference to the NES provisions, considered as a whole, more beneficial than the model clause (per reasoning re Manufacturing	Delete clause 12.4  Insert new clause 12.4 as follows:	The Plumbing Award casual conversion clause 12.4 is more beneficial than the NES right to casual conversion to the extent that it allows a request for conversion to be

<sup>1</sup> *Casual terms award review - Decision* [2021] FWCFB 4144.

<sup>2</sup> *Casual terms award review - Statement* [2021] FWCFB 4714, [9].

<sup>3</sup> *Ibid*, [75].

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	Award – see [247] of [2021] FWCFB 4144)	<p><b>12.4 Offers and request for casual conversion</b></p> <p>Offers and requests for conversion from casual employment to full-time or part-time employment are provided for in the NES.</p>	<p>made after only 6 months' casual employment (see clause 12.4(a)).</p> <p>Clause 12.4(j) provides a mechanism for this period to be extended to 12 months in prescribed circumstances.</p> <p>The <i>provisional</i> view is opposed as this would remove existing entitlement (right) to <u>elect</u> to convert for casual employees employed for less than 12 months.</p> <p>The primary position of the CEPU (Plumbing Division) is that the FWC should not remove clause 12.4 entirely.</p> <p>It is submitted that clause 12.4 could be redrafted so that it states that it supplements the provisions of the NES. The CEPU (Plumbing Division) seeks to retain the election right under the existing clause 12.4(a) - that an employee is eligible to make a request if the employee has been employed by the employer for a period of at least <u>6 months</u> beginning the day the employment commenced.</p>
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4. The CEPU (Plumbing Division) submits that the more beneficial arrangement in clause 12.4(a) is permitted to be included in the Plumbing Award, pursuant to s.55(4) of *Fair Work Act 2009* (Cth) (**FW Act**) and should therefore remain.
5. Section 55(4) of the FW Act permits award terms and NES provisions dealing with the same entitlement operating in parallel. Supplementary terms are permitted.<sup>4</sup> The CEPU (Plumbing Division) maintains that retaining clause 12.4(a) with reference to the NES casual conversion entitlement, will satisfy the requirement in cl.48(3) of Schedule 1. Should the FWC find that there are identifiable inconsistencies, difficulties, or uncertainties with the relevant proposed term, then the FWC should only vary the Plumbing Award to address a particular inconsistency, difficulty or uncertainty, and not use this process, as an avenue to strip away existing award entitlements.

Date: 10 August 2021

CEPU Plumbing Division

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<sup>4</sup> See s 55(4)(b).