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IN THE FAIR WORK COMMISSION

Fair Work Act 2009

Clause 48 of Schedule 1
(Casual Terms Award Review 2021)

STAGE 2, GROUP 2 AWARDS
Provisional Views of the Full Bench as outlined in the Statement [2021] FWCFB 4928

SUBMISSION IN RESPONSE OF THE CONSTRUCTION, FORESTRY, MARITIME, MINING & ENERGY UNION (MANUFACTURING DIVISION)

In relation to the Textile, Clothing, Footwear and Associated Industries Award 2021 (clause 11.12 Casual Conversion, other than opening paragraph)

(26 August 2021)

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BACKGROUND

1. The Casual Terms Award Review 2021 ("Casual Terms Review") is being undertaken by the Fair Work Commission ("FWC") pursuant to clause 48 of Schedule 1 to the *Fair Work Act 2009* as amended ("the Act as amended").[1]

2. The 27 March 2021 Amendments to the Act, inter-alia:
    - introduced a definition of 'casual employee' (section 15A);
    - introduced a new NES entitlement concerning casual conversion arrangements (Division 4A of Part 2-2).

3. In undertaking the Casual Terms Review, the FWC is required to review 'relevant terms' in all awards, and vary awards where necessary to remove inconsistencies, difficulties or uncertainties caused by the amendments to the Act as amended.

4. The Casual Terms Review is being undertaken in 2 stages. On 16 July 2021, a 5 member Full Bench issued a decision [2021] FWCFB 4144 in relation to Stage 1 of the Casual Terms Review ("the Stage 1 Decision").[2] The Stage 1 Decision, amongst other things, outlined the statutory framework for the review (nature and scope) and reviewed and made findings about relevant terms in the initial group of 6 modern awards.

STAGE 2 AWARDS

5. On 3 August 2021, a Statement [2021] FWCFB 4714 ("*3 August 2021 Statement*") was issued by a newly constituted 3 member full bench setting out the process of review of the balance of modern awards in Stage 2.[3] Attachment A to the *3 August 2021 Statement* categorised the remaining modern awards into 4 groupings – Group 1, Group 2, Group 3 and Group 4.

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[1] The *Fair Work Act 2009* as amended on 27 March 2021 by the *Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Act 2021* (Cth).
[2] *Fair Work Act 2009* (Clause 48 of Schedule 1), Casual Terms Award Review 2021, Decision, [2021] FWCFB 4144 (16 July 2021)
[3] *Fair Work Act 2009* (Clause 48 of Schedule 1), Casual Terms Award Review 2021, Statement (AM2021/54) [2021] FWCFB 4714 (3 August 2021)

6. On 11 August 2021, the Full Bench issued a Statement, [2021] FWCFB 4928, in relation to Stage 2, Group 2 Awards (*"11 August 2021 Statement")*, including *provisional* views regarding relevant terms in each of those 45 awards.[4]

7. In Stage 2, Group 2, the CFMMEU-MD has an interest in the following modern awards:
    - *Textile, Clothing, Footwear and Associated Industries Award 2020* ("TCF Award")
    - *Timber Industry Award 2020* ("Timber Award")

8. The *11 August 2021 Statement* directed interested parties to (i) file any responses in relation to the *provisional* views concerning the Group 2 awards (as set out in the Statement and in Attachment A to the Statement) by 4:00pm (AEST) Wednesday, 18 August 2021;[5] and (ii) provide submissions in relation to specific issues identified concerning the Horse and Greyhound Award 2020 and the Textile Award about which the Full Bench has not expressed provisional views by 4:00pm (AEST) Wednesday, 18 August 2021.[6]

9. The CFMMEU-MD filed a submission on 18 August 2021 in response to direction 1 in accordance with paragraph [104] of the *11 August 2021 Statement* ("CFMMEU-MD First Submission").[7]

10. The CFMMEU-MD filed a second submission on 19 August 202 in response to direction 2 in paragraph [105] of the *11 August 2021 Statement* ("CFMMEU-MD Second Submission").[8]

11. On 25 August 2021, the CFMMEU-MD sought leave to file corrected versions of the First Submission and Second Submission, in order to correct a number of typographical errors.[9]

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[4] *Fair Work Act 2009* (Clause 48 of Schedule 1), Casual Terms Award Review 2021, Statement (AM2021/54) [2021] FWCFB 4928 (11 August 2021) – the Full Bench's provisional views are contained in the Statement and Attachment A to the Statement
[5] [2021] FWCFB 4928 at paragraph [104]
[6] [2021] FWCFB 4928 at paragraph [105]
[7] Casual Terms Award Review 2021, (AM2021/54) Group 2 Awards - Submission of the CFMMEU Manufacturing Division (18 August 2021)
[8] Casual Terms Award Review 2021, (AM2021/54) Group 2 Awards - Submission of the CFMMEU Manufacturing Division (19 August 2021)
[9] Casual Terms Award Review 2021, (AM2021/54) Group 2 Awards – Correspondence of the CFMMEU-Manufacturing Division, Corrected Submission (18 August 2021) and Corrected Submission (19 August 2021)

12. On 23 August 2021, a Directions Hearing was held before Vice President Hatcher with respect to a number of Group 2 awards (including the TCF Award) and for which there is a contest regarding the Full Bench's provisional views. The Directions subsequently issued (24 August 2021) provide in relation contested casual conversion terms:

> *Cement, Lime and Quarrying Award 2020; Concrete Products Award 2020; Graphic Arts, Printing and Publishing Award 2020; Textile, Clothing, Footwear and Associated Industries Award 2020; Vehicle Repair, Services and Retail Award 2020*
>
> *(1) The casual conversion provisions in the above awards shall be dealt with as a common issue in the proceedings.*
>
> *(2) Any parties opposing the provisional views in the Statement shall file any further submissions or evidence by 5.00pm on Thursday 26 August 2021.*
>
> *(3) Any submissions or evidence in response to (2) shall be filed by 5.00pm on Thursday 2 September 2021.*[10]

13. The CFMMEU-MD files these submissions pursuant to direction (2) above. In addition, it has also filed the following witness statements in support:
    (a) Witness Statement of Paris Nicholls
    (b) Witness Statement of Elizabeth Macpherson

14. With respect to clause 11.1 and 11.11 (Opening paragraph) of the TCF Award, the Directions (24 August 2021) provide:

> *Textile, Clothing, Footwear and Associated Industries Award 2020*
>
> *(9) Any submissions in response to submissions filed by the Construction, Forestry, Maritime, Mining and Energy Union on 18 August 2021 and 19 August 2021 or by the Ai Group on 19 August 2021 shall be filed by 5.00pm on Monday 30 August 2021.*

15. The CFMMEU-MD will file submissions in accordance with direction (9) subsequently.

[10] Casual Terms Award Review 2021, (AM2021/54) Group 2 Awards, Directions (23 August 2021), directions (1) – (3)

TCF AWARD – FULL BENCH PROVISIONAL VIEW ON CASUAL CONVERSION TERM

16. In the *11 August 2021 Statement* the Full Bench indicates at paragraphs [48] – [51] its *provisional view* regarding 11.12 (Casual conversion to full-time or part-time employment) of the TCF Award, with one exception, the opening paragraph of clause 11.12. The relevant paragraphs from the *11 August 2021 Statement* are reproduced below:

> *[48] The Textile, Clothing, Footwear and Associated Industries Award 2020 (Textile Award) does not contain the model conversion clause. Instead, it contains the following provision which has been included in the award since it commenced operation on 1 January 2010:*
>
> > ***11.12 Casual conversion to full time or part-time employment***
> >
> > *The employer will take all reasonable steps to provide its employees with secure employment by maximising the number of permanent positions in the employer's workforce, in particular by ensuring that casual employees have an opportunity to elect to become full time or part-time employees.*
> >
> > ***(a)** A casual employee engaged by a particular employer on a regular and systematic basis for a sequence of periods of employment under this award during a calendar period of 6 months will thereafter have the right to elect to have their ongoing contract of employment converted to permanent full-time employment or part-time employment if the employment is to continue beyond the conversion process prescribed by clause 11.12.*
> >
> > ***(b)** Every employer of such a casual employee must give the employee notice in writing of the provisions of clause 11.12 within 4 weeks of the employee having attained such period of 6 months. However, the employee retains their right of election under clause 11.12 if the employer fails to comply with this notice requirement.*
> >
> > ***(c)** Any casual employee who has a right to elect upon receiving notice or after the expiry of the time for giving such notice, may give 4 weeks' notice in writing to the employer that the employee seeks to elect to convert their ongoing contract of employment to full-time or part-time employment, and within 4 weeks of receiving such notice from the employee, the employer must consent to or refuse the election, but will not unreasonably so refuse.*
> >
> > ***(d)** Where an employer refuses an election to convert, the reasons for doing so must be fully stated and discussed with the employee concerned, and a genuine attempt will be made to reach agreement.*

(e) *Any casual employee who does not, within 4 weeks of receiving written notice from the employer, elect to convert their ongoing contract of employment to full-time employment or part-time employment will be deemed to have elected against any such conversion.*

(f) *Once a casual employee has elected to become and been converted to a full-time employee or a part-time employee, the employee may only revert to casual employment by written agreement with the employer.*

(g) *If a casual employee has elected to have their contract of employment converted to full-time or part-time employment, the employer and employee will, in accordance with clause 11.12(g), and subject to clause 11.12(c), discuss and agree upon:*

(i) *whether the employee will convert to full-time or part-time employment; and*

(ii) *if it is agreed that the employee will become a part-time employee, the number of hours and the pattern of hours that will be worked consistent with any other part-time employment provisions of this award.*

Provided that an employee who has worked on a full-time basis throughout the period of casual employment has the right to elect to convert their contract of employment to full-time employment and an employee who has worked on a part-time basis during the period of casual employment has the right to elect to convert their contract of employment to part-time employment, on the basis of the same number of hours and times of work as previously worked, unless other arrangements are agreed between the employer and the employee.

(h) *Following an agreement being reached the employee will convert to full-time or part-time employment.*

(i) *An employee must not be engaged and re-engaged, dismissed or replaced in order to avoid any obligation under clause 11.12."*

[49] The Textile Award casual conversion clause is in substantially the same form as the Manufacturing Award. However, the Manufacturing Award provision contains no equivalent to the opening paragraph of clause 11.12 of the Textile Award. On one view, that opening paragraph is not simply a statement of the objective of the casual conversion provisions which follows because it arguably imposes a substantive obligation on employers to 'take all reasonable steps to provide its employees with secure employment by maximising the number of permanent positions in the employer's workforce', which is not confined to allowing for casual conversion.

[50] We are of the view that the casual conversion provisions of clause 11.12 (that is, paragraphs (a)-(i) are less beneficial than the NES residual right to because they provide for broader and less defined grounds for the employer to refuse an election under clause 11.12(c) and(d) of the Textile Award. In contrast, under the Act an employer must give an employee a written response to their request for casual conversion, the details of the reasons must be included in the response, the refusal must follow (not precede) consultation with the employee, and the reasonable grounds for refusal must be based on facts that are known, or reasonably foreseeable, at the time of refusing the request. The Act also provides examples of 'reasonable grounds of refusal.' Additionally, the Textile Award clause only provides for a 'one-off' right to elect for conversion, which is less beneficial than the NES residual right, as that is a continuing one. Accordingly, our provisional view is that paragraphs (a)-(i) of clause 11.12 should be deleted from the award and replaced with a reference to the NES casual conversion entitlements in order to satisfy the requirement in clause cl.48(3) of Schedule 1.

[51] Our provisional view does not extend to the opening paragraph of clause 11.12. It is clearly a relevant term but, if it is detached from the casual conversion provisions which follow so that it reads 'The employer will take all reasonable steps to provide its employees with secure employment by maximising the number of permanent positions in the employer's workforce', then on one view it neither gives rise to inconsistency with the Act nor causes any interaction difficulty. We do not propose to express any provisional view about this, and we will invite further submissions about the matter.[11] [

17. In the CFMMEU-MD First Submission, we confirmed our opposition to the Full Bench's *provisional* views regarding clause 11.12 (Casual Conversion) of the TCF Award (i.e., to delete the current clause 11.12 and replace it with a reference to the NES term, together with the Note regarding dispute resolution under clause 40.)[12]

[11] [2021] FWCFB 4928 at paragraphs [48] – [51]
[12] Casual Terms Award Review 2021, (AM2021/54) Submission of the CFMMEU Manufacturing Division (18 August 2021)

18. These further submissions and witness evidence filed in support, [include detail here] elaborate on the CFMMEU-MD's position in opposition to the Full Bench's provisional view regarding clause 11.12 (other than the opening paragraph) of the TCF Award.

19. In short summary, the CFMMEU-MD opposes the Full Bench's provisional view regarding clause 11.12 (other than the opening paragraph) for reasons, including:

    (a) The findings made by the 5 member Full Bench in relation to the Manufacturing Award in Stage 1of the Review should not automatically be flowed on to other awards containing similar casual conversion clauses, including the TCF Award.
    (b) A number of findings of the Full Bench in relation to the Manufacturing Award (as regards certain aspects of the NES casual conversion provision being more beneficial) are not sustainable when applied to the TCF industry.
    (c) The history of the insertion of the current clause 11.12 in the TCF Award is a relevant consideration regarding the purpose and necessity of its terms to ensure the award meets the moderns award objective (s134 and s.138).
    (d) The nature and characteristics of the TCF industry and its workforce are relevant considerations informing the need for award regulation for casual workers in the sector, and the specific form of the regulation.

TCF AWARD – HISTORY OF INCLUSION OF THE CASUAL CONVERSION TERM

20. The casual conversion term in the TCF Award (current clause 11.12) was first included when the award was first made as part of the Part 10 Award Modernisation process in 2008 as determined by the 7 member Full Bench.

21. Prior to Award Modernisation, the pre-reform federal *Clothing Trades Awards 1999* provided for a casual loading of 33 and 1/3%, a reflection of the regulatory need to dis-encourage widespread casualisation in an industry known for pervasive award non-compliance and exploitation in some sub-sectors. Other pre-reform federal awards and NAPSA's in the TCF industry also contained significant terms which regulated casual employment (discussed further below). This reflected a

long arbitral history whereby awards in the TCF industry contained comprehensive provisions regulating casual work in the respective sectors.

Regulation of casual employment in pre-reform and pre-simplified TCF sector awards

22. Historically, federal awards in the TCF sector contained significant limitations on the extent, and the conditions under which casual employment was permissible within TCF workplaces.

23. In the federal pre-simplified awards for the 3 main sub-sectors (textile, clothing and footwear), the incidence of casual employment was heavily qualified as outlined below.

24. Under the former *Clothing Trades Award 1982* ('CTA 1999'), the limitations on casual employment included[13]:

    - a maximum engagement of a casual employee during one 8 week period in any 12 months period (with one exception – see below);
    - a maximum engagement of a casual employee for a specific period of time to replace a designated person where the period of engagement dos does not exceed 13 weeks in aggregate in any 12 month period;
    - a casual loading of 33 and one third per cent;
    - restriction on an employer requiring a casual employee to attend for duty more than once on any day.

25. Under the former *Textile Industry Award 1994* ('TIA 1994'), the limitations on casual employment included[14]:

    - a 3 hour minimum daily engagement period;
    - an 8 hour minimum engagement in any one week;
    - an 8 week continuous maximum period of 40 working days of employment (period could be extended subject to the arrangement being confirmed in writing from the State Secretary of the Union);
    - a 4 week break in the employment cycle after completing an 8 week period above;
    - a ratio of 1:15 or fraction thereof (any change to ratio to be negotiated with union in accordance with Enterprise Flexibility clause);

[13] *Clothing Trades Award 1982*; clause 21
[14] *Textile Industry Award 1994*; clause 23A

- casual loading of 20%.

26. Under the former *Footwear-Manufacturing and Component Industries Award 1979* ("Footwear Award 1979'), the limitations on casual employment included:[15]

    - a 3 hour minimum engagement;
    - a 7.6 hour minimum engagement in any one week;
    - an 8 week continuous maximum period or 40 working days of employment (period could be extended subject to the arrangement being confirmed in writing from the State Secretary of the Union;
    - a 4 week break in the cycle after completing the period of 8 weeks above;
    - a ratio of 1:15 or fraction thereof (any change to ratio to be negotiated with union in accordance with Enterprise Flexibility clause);
    - casual loading of 20%.

27. As a result of the Award Simplification process under the *Workplace Relations Act 1996*, casual provisions in federal awards were generally altered, most particularly in relation to the inclusion of maximum periods and ratios. In the TCF industry, awards continued to include a number of limitations and safeguards in respect to casual employment as follows.

28. Under the *Clothing Trades Award 1999*[16], the limitations on casual employment included:

    - A definition of casual employment as one who is engaged in relieving work or work of a casual, irregular or intermittent nature (and not an employee who could be properly classified as full-time or regular part-time employee);
    - An employee not to be engaged as a casual employee to avoid any obligations under the award;
    - Casual loading of 33 and 1/3%;
    - Minimum payment of 3 hours work on each occasion casual employee required to work;
    - Entitlement to penalty payments for overtime, shiftwork and work on public holidays;
    - Employer must not require casual employee to attend for duty more than once on any day.

29. Under the *Textile Industry Award 2000*,[17] the limitations on casual employment included:

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[15] *Footwear – Manufacturing & Component – Industries Award 1979*; clause 7B
[16] *Clothing Trades Award 1999* [AP772144CAV] as varied to 5 December 2008; clause 18
[17] *Textile Industry Award 2000* [AP799036CRV] as varied to 5 December 2008; clause 18

- A definition of casual employment as one who is engaged in relieving work or work of a casual, irregular or intermittent nature (and not an employee who could be properly classified as full-time or regular part-time employee);
- An employee not to be engaged as a casual employee to avoid any obligations under the award;
- Casual loading of 20% ;
- Minimum payment for 3 hours work on each occasion casual employee required to work;
- Entitlement to penalty payments for overtime, shiftwork and work on public holidays;
- Employer must not require casual employee to attend for duty more than once on any day.

Under the *Footwear Industries Award 2000*,[18] the limitations on casual employment included:

- A definition of casual employment as one who is engaged in relieving work or work of a casual, irregular or intermittent nature (and not an employee who could be properly classified as full-time or regular part-time employee);
- An employee not to be engaged as a casual employee to avoid any obligations under the award;
- Casual loading of 20% ;
- Minimum payment for 3 hours work on each occasion casual employee required to work;
- Entitlement to penalty payments for overtime, shiftwork and work on public holidays.

Part 10A Award Modernisation Process

30. The reasoning of the Part 10A Award Modernisation Full Bench for the inclusion of a new casual conversion provision in the TCF Award is discernible in its Priority Award Decision [2008] AIRCFB 1000, issued on 19 December 2009.[19] In the making of the TCF Award, the Full Bench determined inter alia, that the 33 and 1/3 % casual loading for the clothing sector would no longer apply and that a uniform casual loading of 25% would apply respectively for the clothing, textile and footwear sectors. Relevantly, the Full Bench also came to the view that the inclusion of a casual conversion clause in the modern TCF Award was also necessary having regard to both the reduction in the 33

[18] *Footwear Industries Award* 2000 [AP781127CRV] as varied to 5 December 2008; clause 15.3
[19] Award Modernisation (AM2008/1-12) [2008] AIRCFB 1000 (19 December 2008)

and 1/3% casual loading, the nature of the TCF industry itself and the history of award regulation of casual employment in the sector.

31. It is evident, that with the inclusion of the casual conversion clause in the modern TCF Award, the Full Bench took into account the particular nature and characteristics of the TCF industry. Relevant extracts from the Part 10 Award Modernisation, Priority Stage decision[20] are included below.

> ***Types of employment***
>
> ***[47]*** *In our statement of 12 September 2008 we indicated that we intended to adopt a standard loading of 25 per cent for casual employees. We received many representations in relation to that indication. For example, a number of employer representatives submitted that we should not adopt a standard casual loading or that if we did so 25 per cent was too high.*
>
> ***[48]*** *There is great variation in the casual loadings in NAPSAs and federal awards. In some cases the situation is complicated by the fact that casuals receive an annual leave payment, usually through an additional loading of one twelfth, although in most cases casuals do not receive annual leave payments. To take some examples, a casual loading of 25 per cent is common throughout the manufacturing industry, casual loadings in the retail industry vary from 15 per cent to 25 per cent. A loading of 25 per cent is very common, although not universal, throughout the hospitality industry. A number of pre-reform awards currently provide for a 33⅓ per cent loading and higher when the annual leave payment is taken into account. It seems to us to be desirable to standardise provisions to apply to casuals where it is practicable to do so to avoid claims in the future based on unjustified differences in loadings. We appreciate that there are casual employees in some industries in some States receiving loadings less than 25 per cent and we understand that employers of those employees will experience an increase in labour costs if the loading is standardised to 25 per cent. Equally, there will be reductions in labour costs where the loading, including the annual leave loading where it applies, exceeds 25 per cent currently.*
>
> ***[49]*** *In 2000 a Full Bench of this Commission considered the level of the casual loading in the Metal, Engineering and Associated Industries Award 1998 (the Metal industry award). 12 The Bench increased the casual loading in the award to 25 per cent.13 The decision contains full reasons for adopting a loading at that level. The same loading was later adopted by Full Benches in the pastoral industry.14 It has also been adopted in a number of other awards. Although the decisions in these cases were based on the circumstances of the industries concerned, we consider that the reasoning in that case is generally sound and that the 25 per cent loading is sufficiently common to qualify as a minimum standard.*

[20] Award Modernisation (AM2008/1-12) [2008] AIRCFB 1000 (19 December 2008)

[50] *In all the circumstances we have decided to confirm our earlier indication that we would adopt a standard casual loading of 25 per cent. We make it clear that the loading will compensate for annual leave and there will be no additional payment in that respect. Also, as a general rule, where penalties apply the penalties and the casual loading are both to be calculated on the ordinary time rate.*

[51] *An issue has also arisen concerning the provision permitting casuals to have the option to convert to non-casual employment in certain circumstances. This provision has its genesis in the Full Bench decision already mentioned in connection with the fixation of the casual loading of 25 per cent in the Metal industry award. 15 The Bench made it clear that it had formulated the casual conversion provision based on the circumstances of the industry covered by the award and that there had been no evidence concerning other industries. Section 515(1)(b) of the WR Act identifies casual conversion provisions as matters which cannot be included in awards. Section 525 provides that such terms have no effect. These sections were part of the Work Choices amendments. It appears, however, that casual conversion provisions in NAPSAs were not invalidated. Modern awards can contain a casual conversion provision. In light of the arbitral history of such provisions in the federal jurisdiction we shall maintain casual conversion provisions where they currently constitute an industry standard, but we shall only extend them in exceptional circumstances. The modern awards reflect this approach. We note in particular that we have decided to include a casual conversion provision in the Textile, Clothing, Footwear and Allied Industries Award 2010 (the Textile industry award) against the opposition of employers. We have done so taking into account the nature of the industry and the reduction in the casual loading from 33⅓ per cent to 25 per cent in part of the industry covered by the award.* [21]

Clothing industry (including footwear manufacturing), textile industry

[147] *During the second round of consultations a number of submissions were put on the need to ensure that employees properly understood any proposal advanced for individual or majority flexibility. As discussed earlier we have decided to broaden the obligation originally drafted so as to focus on, not just English as a second language, but on a person's comprehension or otherwise of written English.*

[148] *Particularly strong submissions were put in relation to casual employment. In the first place the TCFUA expressed great concern at the reduction in the casual loading from 33⅓ per cent to 25 per cent. The second aspect, which the Australian Industry Group (Ai Group) raised, was the question of casual conversion. As to the percentage loading for casuals, we dealt with that issue in the general part of our decision. After examining the casual conversion we have decided to retain the clause in the exposure draft. Award limitations on the use of casuals have been of two kinds: the level of the loading and a limit on the number of times a casual can be engaged in a calendar year; the latter approach being more common in NAPSAs.*

[21] Award Modernisation (AM2008/1-12) [2008] AIRCFB 1000 (19 December 2008) at paragraphs [47] – [51]

> ***[149]*** *We think that given the history of the use of casual employment in the sectors the better approach for a modern award to apply throughout Australia is to include provision for a casual who elects to do so to convert to weekly employment.*

32. It is notable that the Part 10A Full Bench in determining the content of the modern awards for the Priority Stage held '*we shall maintain casual conversion provisions where they currently constitute an industry standard, but we shall only extend them in exceptional circumstances.* It is submitted, the Full Bench, by inserting a casual conversion clause in the TCF Award, was satisfied that the TCF sector was an '*exceptional circumstance*' and its modern award required the additional term to be included. Further, it is evident from the decision, that the Part 10A Full Bench directly considered and weighed the submissions of the industrial parties regarding both an applicable casual loading for the sector and the inclusion of the casual conversion provision.

33. The Part 10A Award Modernisation Full Bench found that to ensure the modern TCF Award (together with the NES) provided a fair and relevant minimum safety net of terms and conditions for the TCF industry (the modern awards objective, s134), it was necessary (as contemplated by s.138) that:
    - a casual conversion term be included in the TCF Award; and
    - in the form of the current clause 11.12.

34. The form of the casual conversion clause inserted into the TCF Award as a result of the Part 10A Award Modernisation process has remained unchanged since then (with the exception of altered numbering arising from the Four Yearly Review of Modern Awards).

35. The casual conversion clause in the TCF Award was subsequently extensively reviewed as part of the 2012 Transitional Review and the Four Yearly Review of Modern Awards. [Preliminary issues decision; casual employment decision] The CFMMEU-MD submits the term remains a relevant and necessary provision and should not be deleted as a result of the Casual Terms Review (which is a relatively confined process).

Nature and characteristics of the TCF industry and its workforce

36. It is submitted the particular nature and characteristics of the TCF industry, and the demographic profile of its workforce are relevant considerations in the determination of the appropriate form of the casual conversion provision in the TCF Award.

37. The TCF industry is characterised by a mix of traditional TCF manufacturing undertaken in factories and a growing 'sweatshop' sector where workers labour under typically poor wages and health and safety conditions. There is also a significant but largely hidden outwork sector. The clothing sector in particular, features long and complex supply chains

38. There has been decades long restructuring in the TCF industry (driven substantially by the reduction in tariff on TCF products and a rise in lower cost TCF imports), which has resulted in enormous structural dislocation. The result of this restructuring has led to much smaller TCF factories, the shift of large amounts of TCF work to the home based sector and significant job losses. The impact has meant that workers in the TCF industry are very conscious of job and income security with some fearful of raising issues or disputes with their employer.

39. The demographic of the TCF workforce is one characterised by a relatively high percentage of workers from a culturally and linguistically diverse (CALD) background (predominantly Vietnamese and Chinese) and many have limited English language and literacy skills. A majority of workers in the TCF industry are women, most pronounced in the clothing and allied sectors. The TCF workforce is also an ageing one.

40. The TCF is highly award dependent and low paid. Even in workplaces with enterprise agreements in operation, wage rates tend to be modest such that many workers covered by agreement remain low compared, compared to many other industries and sectors. The low rate of enterprise bargaining in the TCF industry reflects the minimal bargaining power of workers covered by and reliant on the TCF Award.

41. Non-compliance with minimum safety net wages and conditions in the TCF industry is persistent and widespread. As part of its day to day organising and compliance activities, the CFMMEU-MD regularly uncovers breaches of award provisions, for example, in relation to hourly rates of pay, overtime and penalty rates, annual leave entitlements and unpaid superannuation. Health and

safety conditions are often poor and employee records are typically incomplete or inadequate to undertake easy compliance audits. Non-compliance in relation to casual employees is also common, including about casual loading, hours of work, shift arrangements and casual conversion.

Award Regulation in the TCF Industry

42. Industrial tribunals at both state and federal levels, as well as state and federal governments, have for many decades acknowledged the particular vulnerabilities faced by classes of TCF workers, and provided specific regulation for the TCF industry in an attempt to ameliorate such adverse outcomes. The FWC and its predecessor tribunals have consistently confirmed the nature and characteristics of the TCF industry is a relevant consideration in determining an appropriate award safety net for the sector. This has involved a recognition of the particular circumstances experienced by TCF outworkers and the development of a comprehensive regulatory framework for this class of worker.[22] In addition, there has also been a general acceptance of the proposition that the TCF industry more broadly, is characterised as being low paid and highly award reliant.[23]

43. In determining what is a relevant safety net for the TCF industry, the AIRC and FWC has regularly held that additional safeguards are necessary in context of the nature and characteristics of the TCF sector and its workforce. Examples include:

    (a) In the development of the model IFA clause during the Part 10A Award Modernisation process, the Full Bench held the IFA clause in the Exposure Draft for the modern TCF Award should be modified '*directed to the nature of employment in that industry*' [24]to include additional requirements relating to the '*translation of proposals into a person's first language so that any proposals are fully understood'* and the provision of '*a period for consideration of any proposal under the clause*.'[25]

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[22] See *Re: Clothing Trades Award 1982*; (1987) IR 416; Schedule F (Outwork and Related Provisions), Textile, Clothing, Footwear and Associated Industries Award 2010 and 2020; *Award Modernisation*, [2008] AIRCFB 1000 at [150]; *Transitional Review of Modern Awards*; [2013] FWCFB 5729 at [60]
[23] See *Award Modernisation* [2008] AIRCFB 550 (20 June 2008) at [94] – [95]; *Award Modernisation* [2008] AIRCFB 717 (12 September 2008) at [100]; *4 Yearly Review of Modern Awards – Transitional Provisions*; [2015] FWCFB 3523 at [196]
[24] Award Modernisation [2008] AIRCFB 717 (12 September 2008) at [17]
[25] *Award Modernisation* [2008] AIRCFB 717 (12 September 2008) at [103]

(b) In the finalisation of the IFA term in the development of the modern TCF Award, the Part 10A Award Modernisation Full Bench determined '*to broaden the obligation originally drafted so as to focus on, not just English as a second language, but on a person's comprehension or otherwise of written English*.'[26]

(c) Relevant to the current proceedings, in the settlement of the terms for the modern TCF Award 2010, the Part 10A Award Modernisation Full Bench held that a casual conversion clause would be inserted, '*taking into account the nature of the industry and the reduction in the casual loading from 33 and 1/3% to 25% in part of the industry covered by the award*.'[27]

(d) During the Four Yearly Review of Modern Awards, in a decision relating to the review of the TCF Award,[28] a Full Bench determined to modify the model consultation clause (Changes to rosters or hours of work). The modification was to the effect that information required to be provided to affected employees is done so, '*in a manner which facilitates employee understanding of the proposed changes, having regard to their English language skills'* and which 'may include the translation of the information into an appropriate language.'[29]

FULL BENCH DECISION IN STAGE 1 – MANUFACTURING AWARD

44. The Stage 2 Full Bench's *provisional view* as outlined in the *11 August 2021 Statement* is that '*paragraphs (a)-(i) of clause 11.12* [other than the opening paragraph] *of the TCF Award should be deleted from the award and replaced with a reference to the NES casual conversion entitlements in order to satisfy the requirement in clause cl.48(3) of Schedule 1*.'[30]

[26] *Award Modernisation* [2008] AIRCFB 1000 (19 December 2008) at [147]
[27] *Award Modernisation* [2008] AIRCFB 1000 (19 December 2008) at [51]
[28] *Four Yearly Review of Modern Awards*; Textile, Clothing, Footwear and Associated Industries Award 2010; [2015] FWCFB 2831 (11 May 2015)
[29] *Four Yearly Review of Modern Awards*; Textile, Clothing, Footwear and Associated Industries Award 2010; [2015] FWCFB 2831 (11 May 2015) at [119] which amended clause 9.2(c) of the TCF Award 2010 (subsequently renumbered to clause 39.5 in the TCF Award 2020)
[30] [2021] FWCFB 4928 at paragraph [50]

45. The basis of the Full Bench's provisional view (other than the opening paragraph of clause 11.12) as outlined in the *11 August 2021 Statement* is:

    - Paragraphs (a)-(i) of clause 11.12 of the TCF Award are less beneficial than the NES residual right because they provide for broader and less defined grounds for the employer to refuse an election under clause 11.12(c) and (d) of the TCF Award. [31]

    - By contrast, under the Act, an employer must give an employee a written response to their request for casual conversion, the details of the reasons must be included in the response, the refusal must follow (not precede) consultation with the employee, and the reasonable grounds for refusal must be based on facts that are known, or reasonably foreseeable, at the time of refusing the request. The Act also provides examples of 'reasonable grounds of refusal'.[32]

    - In addition, the TCF Award clause only provides for a 'one off' right to elect for conversion, which is less beneficial than the NES residual right, as that is a continuing one.[33]

46. These *provisional* views with respect to clause 11.12 of the TCF Award appear to be based on the findings made by the Stage 1 Full Bench in relation to the Manufacturing Award in the Stage 1 Decision (16 July 2021).[34] It is submitted that a number of those findings are not sustainable when applied to clause 11.12 of the TCF Award in context of the particular nature and characteristics of the TCF industry.

47. Clause 11.12 of the TCF Award whilst similar to the Manufacturing Award casual conversion clause, it is not the same and differs in a number of respects including the absence of an equivalent term to clause 11.5(j) of the Manufacturing Award (individual and majority facilitation re: increase period to 12 months). The 12 month facilitation term (clause 11.5(j) was the subject of considerable submissions and consideration in the findings made in relation to clause 11.5 of the Manufacturing Award.

48. With respect to the 6 month eligibility period in clause 11.5(a) of the Manufacturing Award, the Stage 1 Full Bench's *provisional* view was:

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[31] [2021] FWCFB 4928 at paragraph [50]
[32] [2021] FWCFB 4928 at paragraph [50]
[33] [2021] FWCFB 4928 at paragraph [50]
[34] [2021] FWCFB 4144 (16 July 2021) at paragraphs [216] – [247]

'The Manufacturing Award casual conversion clause (cl. 11.5) is more beneficial than the residual right to casual conversion to the extent that it allows a request for conversion to be made after only 6 months employment. However, clause 11.5(j) provides for a facilitative mechanism for this period to be extended to 12 months in prescribed circumstances.'[35]

49. As clause 11.12 of the TCF Award does not contain such a facilitation term, it is submitted that any findings or observations made in the Stage 1 regarding this point are not applicable to the TCF Award.

50. With respect to the 6 month period, the Full Bench in the Stage 1 Decision ultimately did not change its view that the 6 month term in the Manufacturing Award was more beneficial than the residual right to casual conversion but qualified its position at paragraph [236] of the decision by stating, inter alia, '*it is not clear that this benefit is of the degree of significance assumed in the submissions of the AMWU and other unions….'*[36]

51. In relation to clause 11.12 of the TCF Award, which similarly contains a 6 month eligibility period (at clause 11.12(a), it is submitted the term constitutes a significant benefit as the residual right to request casual conversion is unlikely to be accessed to any appreciable extent by casual employees in the TCF industry. Furthermore, given the characteristics of the TCF industry, the great majority of casual employees in the TCF sector will only have access to the NES residual right to request casual conversion, given that Subdivision B does not apply to small business employers. This is elaborated further in the section of the submissions which follows.

52. The Full Bench in the Stage 1 decision also confirmed its provisional view that clause 11.5 of the Manufacturing Award is less beneficial than the residual right to request in the following respects:

    - it requires the employer to given notice of the right to request conversion within 4 weeks of the employee becoming qualified to do so (as distinct from before or as soon as practicable after the employee commences employment under s.125B);

[35] [2021] FWCFB 4144 at paragraph [218]
[36] [2021] FWCFB 4144 at paragraph [236]

- the award is a one off right, as distinct from the ongoing residual right in the Act;
- the time for the employer to respond to the request is shorter under the Act (21 days) than the award (4 weeks);
- the award arguably provides for broader and less defined grounds for the employer to refuse a request.[37]

53. In relation to the first dot point, the TCF Award contains a similar provision at sub-clause 11.12 (b). It is submitted that rather than the NES term being more beneficial than the award clause, the provision of the employer notice to a casual employee closer to the time when they have reached the eligibility period actually provides more practical utility in terms of triggering the process.

54. In relation to the third dot point, the difference between 21 or 28 days (in terms of a purported benefit under the NES residual right to request) is marginal at best, or otherwise has no basis in circumstances where there is a longer eligibility period of 12 months compared to 6 months under the TCF Award.

55. In relation to the fourth dot point, it is submitted that it is an open question whether the grounds for refusal of an employee request under the NES residual right to request actually constitutes a 'benefit'. On one view the grounds open to an employer to refuse a request (as set out in s.66H) operates to guide an employer on how to frame a refusal. Further, s66H(2) makes clear that the meaning to be ascribed to 'reasonable grounds to refuse a request' is not confined or limited to the matters detailed in s.66H(2)(a)-(e). The only minor qualification is that '*the reasonable grounds are based on facts that are known, or reasonably foreseeable, at the time of refusing the request*.' To put it frankly, this minor qualification is unlikely to prevent an employer successfully refusing a casual's employee request to concert under the NES residual right.

56. Further, clause 11.12 of the TCF Award, in addition to the 6 months eligibility term (11.12(b) also includes a substantive obligation at clause 11.12(d) whereby '*Where an employer refuses an election to convert, the reasons for doing so must be fully stated and discussed with the employee concerned,*

[37] [2021] FWCFB 4144 at paragraphs [218] and [236]

and a genuine attempt will be made to reach agreement.' No such obligation regarding genuine attempt to reach agreement exists under the NES Residual Right to Request Casual Conversion.

Limitations and qualifications on the NES Casual Conversion entitlement

57. The NES Casual Conversion entitlement is contained in Division 4A (ss.66A – 66M) of Part 2-2 of the Act as amended. The NES entitlement is effectively structured in 2 parts, 'Employer offers for casual conversion' (Subdivision B) and 'Residual right to request casual conversion' (Subdivision C). Other ancillary provisions (ss.66K – 66M) are also provided (Subdivision D).

58. Critically, significantly different rights and obligations apply under each of Subdivision B and C depending solely on whether a particular employer is a 'small business employer' as defined under the Act. Section 66A of the Act provides that Subdivision B does not apply to small business employers. A 'small business employer' is defined under section 12 by reference to section 23[38] to mean in effect 'at a particular time, if the employer employs fewer than 15 employees at that time.'

59. The distinction between Subdivisions B and C is directly relevant to the practical operation of the NES Casual Conversion entitlement as it applies to employers and employees in the TCF industry. This is because one of the defining characteristics of the TCF industry is the very high percentage of small business employers operating in the sector.

60. Annexure 'PN-1' to the witness statement of Paris Nicholls (filed with these submissions) contains various TCF industry data and statistics sourced from the Australian Bureau of Statistics (ABS). Figure 1 of 'PN-1' provides data regarding size of businesses in the TCF industry for 2019 and 2020. For 2020 there were a total of 2,789 employing businesses in the TCF industry. Of these, 2,524 were businesses that employed between 1-19 employees (equivalent to approximately 90%). The percentage of employing TCF businesses with 20+ employees was 10%.[39]

[38] Fair Work Act 2009, section 13 - FAIR WORK ACT 2009 - SECT 23 Meaning of small business employer (austlii.edu.au)
[39] (26 August 2021) Witness Statement of Paris Nicholls, Exhibit 'PN-1', Figure 1 – Employment Figures

61. We submit that it can be reasonably concluded that a significant portion of the 90% of TCF employing businesses which employ 1-19 employees, would meet the definition of a 'small business employer' as defined by section 23 of the Act as amended.

62. Therefore, it follows that for a significant number of casual employees in the TCF industry, the NES casual conversion entitlement will essentially be limited to the terms contained in Subdivision C (Residual right to request casual conversion). For reasons which are elaborated below, it is submitted that the NES Residual right request casual conversion will have minimal utility for casual employees engaged in the TCF sector, and as such is less beneficial than the effect of the current clause 11.12 of the TCF Award.

63. The differences rights and obligations between Subdivision B and Subdivision C (small business employer) are not insignificant as outlined below (as summarised):

Subdivision B – Employer offers for casual conversion (ss.66B – 66E)

- a positive, substantive obligation on an employer to make an offer of casual conversion to a casual employee who satisfies the eligibility criteria [s.66B(1)];
- the offer from the employer must be in writing and must be to either full time employment (for an employee which hours worked full time hours in the relevant 6 month period) or to part time employment (consistent with the regular pattern of hours worked during the relevant period) [s.66B(2)(a) & (b)];
- the offer must be given to the employee with 21 days after the end of the 12 month period of employment [s.66B(2)(c)];
- there are broad, multiple and unlimited 'reasonable' grounds available to an employer which permit them not to have to make an offer of casual conversion under s.66B [s.66C (1) & (2)];
- the employer must give written notice to an employee if they decide not to make an offer of casual conversion or the employee has been employed for a 12 month period, but does not meet the eligibility requirement in paragraph 66B(1)(b) [s.66C (3)];
- the employer's notice under s.66C(3) must be given to the employee within 21 days of the 12 month period and include details for the reasons for not making the offer [s.66C (4)];

- the employee must give a written response to an offer of casual conversion within 21 days after the offer is given, stating whether the offer is accepted or declined [s.66D(1)];
- if the employee fails to give the employer a written response in accordance with s.66D(1), the employee is taken to have declined the offer [s.66D(2)];
- if the offer is accepted by the employee, within 21 days the employer must give written notice to the employee stating (a) whether the conversion is to full time or part time employment; (b) the employee's hours of work after the conversion takes effect; and (c) the day the conversion takes effect [s.66E(1)];
- the employer must discuss with the employee the matters the employer intends to specify in accordance with s.66E(1), before giving the notice [s.66E(2)].

Subdivision C (Small business employer) (ss.66F – 66J)

- a casual employee can make a request of an employer for casual conversion if they meet all of the eligibility criteria (s.66F(1)(a)-(c) [s66F(1)];
- a request by an employee must be in writing and must be a request to convert to either full time employment (for an employee who has worked full time hours in the relevant period) or part-time employment (consistent with the regular pattern of hours worked during the relevant period) [s.66F(2));
- a written request by an employee under s.66F(2) must be given to the employer [s.66F(2)(c)];
- the employer must give the employee a written response to the request within 21 days, stating whether the request is granted or refused [s.66G];
- there are broad, multiple and unlimited 'reasonable' grounds available to an employer which permit them to refuse an employee's request for casual conversion under s.66F [s.66H] including an additional ground not contained under s.66C – '*it would require a significant adjustment to the employee's hours of work in order for the employee to be employed as a full-time or part-time employee'* [s.66H(1)-(2);
- if the employer refuses the request, its written response must include details of the reasons for refusal [s.66H(3)];

- if the employer grants the request, the employer must within 21 days after the day the request is given to the employer, give written notice to the employee stating (a) whether the conversion is to full time or part time employment; (b) the employee's hours of work after the conversion takes effect; and (c) the day the conversion takes effect [s66J(1)];
- the employer must discuss with the employee the matters the employer intends to specify for the purposes of s.66J(1) before giving the notice [s.66J(2)].

64. It is evident that there is a key and critical distinction between the 2 sets of rights and obligations. under Subdivision B there is an express and substantive obligation on an employer to (i) make an offer of casual conversion to an eligible (subject to the exceptions outlined in s.66C); and (ii) advise the employee in writing of such offer. By contrast, under Subdivision C, the onus completely shifts to a casual employee to make a request of their employer to convert to permanent employee.

65. In context of the nature and characteristics of the TCF industry and the demographic profile of its workforce this distinction significantly impacts on the utility of the provisions in Subdivision C. Embedded in the NES Residual right to request casual conversion is a number of assumptions which do not reflect the reality of many casual employees, but particularly so in the sectors of the TCF industry. These assumptions include:

    - that a casual employee will have knowledge of their rights under Subdivision C in order to make such a request;
    - that a casual employee, even if they are aware of such rights in a general sense, will understand the steps required of them (under Subdivision C) to facilitate those rights;
    - that a casual employee, assuming they are aware of their rights and understand the steps required, will still feel empowered enough to pursue those rights in circumstances where their casual employment is by its very nature insecure and precarious.

66. As outlined previously the TCF industry is generally acknowledged as being highly award dependent and low paid. The demographic profile of its workforce engaged in manufacturing and related work is characterised by a significant number of employees coming from a CALD background with a majority being women and an older cohort.

67. Exhibit 'PN-1' to the witness statement of Paris Nicholls contains data of relevance to this demographic profile.

68. Figure 1 (Employment Figures) of Exhibit 'PN-1' identifies that in 2021, of the 40,700 employees engaged in the TCF industry approximately 58% were female.[40]

69. Figure 3 (Age in Ten Year Groups) of Exhibit 'PN-1' identifies that on the basis of the 2016 Census Data, 73.98% of the TCF industry workforce was over the age of 40 years+. For the industry workforce over the age of 50 years + the percentage was 49.63%.[41]

70. In terms of high school attainment levels, Figure 4 (Highest Year of School Completed) of Exhibit 'PN-1' identifies only 46.37% of the TCF industry workforce had completed year 12 or equivalent, 10.40% had completed Year 11, 24.24% (i.e., nearly one quarter) had completed year 10, 7.73% had completed year 9, 7.35% had completed year 9 or below and 2.64% of relevant Census respondents stated they had never been to school.[42]

71. In terms of nationality and country of origin, Figure 5 (Country of Birth of Person – over 0.5% only) identifies that 54.52% of the TCF industry workforce were born overseas and of that grouping, 14.02% were born in Vietnam, 7.11% were born in China and 3.37% were born in the Philippines.[43]

72. In terms of language spoken at home, Figure 6 (Language Spoken at Home – over 0.5% only) identifies that 44.96% of the TCF industry workforce spoke a language other than English. Of this grouping, 13.03% spoke Vietnamese, 5.24% spoke Mandarin, 5.04% spoke Cantonese and 1.74% spoke Tagalog.[44]

73. The ABS and 2016 Census Data illustrates that the:

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[40] (26 August 2021) Witness Statement of Paris Nicholls, Exhibit 'PN-1', Figure 1 – Employment Figures
[41] (26 August 2021) Witness Statement of Paris Nicholls, Exhibit 'PN-1', Figure 3 – Employment Age in Ten Year Groups (2016 Census Data)
[42] (26 August 2021) Witness Statement of Paris Nicholls, Exhibit 'PN-1', Figure 4 – Highest Year of School Completed
[43] (26 August 2021) Witness Statement of Paris Nicholls, Exhibit 'PN-1', Figure 5 – Country of Birth of Person (over 0.5% only) 2016 Census Data
[44] 26 August 2021) Witness Statement of Paris Nicholls, Exhibit 'PN-1', Figure 6 – Language at Home Spoken (over 0.5% only) 2016 Census Data

- The TCF industry workforce is ethnically and linguistically diverse;
- that a language other than English is spoken at home by a significant number of TCF industry employees (nearly 45%);
- that there are low levels of year 12 school education attainment (46%) amongst employees in the TCF industry;
- that the majority of employees in the TCF industry are women (58%);
- that the TCF industry workforce is ageing (nearly 50% over the age of 50); and
- the great majority of employees in the TCF industry work for a small employer (i.e., less than 19 employees (90%).

74. These characteristics point to a TCF industry workforce which faces significant barriers in their employment and makes them particularly vulnerable to insecure and low paid employment. This vulnerability is amplified with respect to casual employees engaged in the TCF industry. It is in this context that the utility and efficacy of the NES Casual Conversion entitlement, in particular, the Residual Right to Convert should be considered.

75. The Act as amended, as part of Schedule 1, introduced a new requirement with respect to the provision of a Casual Employment Information Statement to be prepared and published by the Fair Work Ombudsman (FWO) (see Division 12 of Part 2-2; ss. 125A – 125B). The Casual Employment Information Statement is not a legislative instrument (s.125B). Section 125B requires that an employer give each casual employee the Casual Employment Information Statement before, or as soon as practicable after, the employee starts employment as a casual employee with the employer. However, an employer is not required to give the employee the Statement more than once in any 12 months (s.125B).

76. There is no statutory requirement for the Casual Employment Information Statement to be provided to employees in a language other than English. The FWO Casual Employment Information Statement (last updated in August 2021) would appear only to be available in English.[45]

[45] Fair Work Ombudsman, Casual Employment Information Statement Casual Employment Information Statement (fairwork.gov.au)

77. The NES Casual Conversion provisions further assumes that each employer who engages one or more casual employee, will actually provide the Casual Employment Information Statement to those employees. Even if it so provided, it is only provided in English. It assumes that all casual employees will have a reasonable level of English language speaking and reading proficiency and that the concepts and procedures outlined in the NES Casual Conversion entitlement will easily be understood, comprehended an acted on. In our submission, such assumptions are illusory, particularly so in the TCF industry given the nature and characteristics of the sector and its workforce.

Variation of clause 11.12 of the TCF Award

78. The *provisional view* of the Stage 2 Full Bench is to replace clause 11.12 of the TCF Award with a reference to the NES casual conversion entitlements. The provisional view is strongly opposed by the CFMMEU-MD.

79. The CFMMEU-MD submits that the arbitral history of the TCF Award, the nature and the characteristics of the TCF industry and its workforce, necessitates that a different approach needs to be taken with respect to the TCF Award, to that taken by the Stage 1 Full Bench as regards the Manufacturing Award.

80. If the *provisional* view is accepted, it would effectively result in up to 90% of the TCF industry workforce effectively having no access to the NES casual conversion entitlements in Subdivision B, due to the statutory exemption that it does not apply to a small business employer. That would leave the NES residual right to request entitlement only for as significant majority of casual employees in the TCF industry. For the reasons outlined above, we submit that this entitlement would have little utility, would be rarely used and is unlikely to facilitate permanent employment in the TCF industry to any appreciable degree. As such the modern awards objective (s134) would be met to ensure that a fair and relevant minimum safety net of terms and conditions for the TCF industry.

81. The CFMMEU-MD submits the appropriate course for the Full Bench is to redraft clause 11.12 of the TCF Award only to the extent necessary to ensure consistency with the Act as amended but preserving the 6 month eligibility period for casual employees of all TCF employers of any size.

Filed on behalf of:

Construction Forestry Maritime Mining and Energy Union
(Manufacturing Division)

Vivienne Wiles
Senior National Industrial Officer and Co-ordinator

(26 August 2021)

FAIR WORK COMMISSION

Cl. 48, Schedule 1 of the *Fair Work Act 2009*

(AM2021/54)

CASUAL TERMS AWARD REVIEW 2021

(GROUP 2 AWARDS)

Textile, Clothing, Footwear and Associated Industries Award 2020

WITNESS STATEMENT OF ELIZABETH MARY MACPHERSON

I, ELIZABETH MARY MACPHERSON, of [redacted], Organiser and Compliance officer for the CFMMEU - Manufacturing Division, say as follows:

Background

1. I am authorised to make this witness statement on behalf of the CFMMEU - Manufacturing Division ("CFMMEU-MD"). I do so based on my direct observations and knowledge, except where I say otherwise, including having made inquiries of officers and/or employees of the CFMMEU-MD. Where I make statements based on information provided to me, I believe that information to be true and correct.

2. I provide this witness statement in support of the submissions made by the CFMMEU-MD in the Casual Terms Award Review 20201, Stage 2, Group 2 award, with respect to the Textile, Clothing, Footwear and Associated Industries Award 2020 ("TCF Award").

3. The CFMMEU-MD under its registered rules represents the industrial interests of workers in the textile, clothing, footwear and associated industries in Australia ('TCF industry'). This representation extends, for example, to workers employed in traditional manufacturing environments, design and production, those engaged as TCF outworkers and those workers in the less formalised TCF 'sweatshop' sector.

4. In March 2018, the former Textile, Clothing and Footwear Union of Australia ("TCFUA") and the Maritime Union of Australia ("MUA" amalgamated with the Construction, Forestry, Mining and Energy Union ("CFMEU") to form the Construction, Forestry, Maritime, Mining

and Energy Union of Australia ("CFMMEU"). The TCFUA's former coverage for the TCF industry was incorporated into the Manufacturing Division of the CFMMEU.

Experience and knowledge of the TCF industry

5. I have worked in the TCF industry for approximately 45 years, both as a production worker (1975 – 2002) and as an elected officer and/or employee of the former TCFUA and then the CFMMEU-MD(2002 – current). Effectively, apart from short periods when I took leave to care for my young children, I have spent my entire adult working life in the TCF industry. This combination of work in the TCF industry since 1975 has given me extensive experience and knowledge about the nature and characteristics of the TCF industry (all 3 primary sectors), its diverse workforce and the wages and conditions under which TCF products are made.

6. In terms of production work, I first started employment at Grosby Footwear in Geelong (Victoria) as a Binding machine operator between 1975 and 1977. I then worked as an overlocker/plain machinist at a number of companies in the clothing industry between 1978 and 1990. In the early 1980's I also worked as a clothing outworker at home making apparel for a clothing sportswear company for approximately 18 months. Between 1991 and 2001, I was employed in the textile industry as a warper machine operator for Godfrey Hirst Australia, a large carpet manufacturer in Geelong, Victoria. For the last seven of those years, I was an elected TCFUA delegate/shop steward.

7. During the course of 2002/2003, I commenced my first employee position with the former TCFUA with the then Victorian Branch. My key responsibilities were to coordinate the union's campaign around the proposed reduction in tariffs in the TCF industry, including giving evidence to a Senate Inquiry about the nature of clothing industry and the likely effects of further tariffs in the sector.

8. I have also been responsible for co-ordinating a report to the Victorian Clothing Trades Council, a body established pursuant to the Outworkers (Improved Protection) Act 2003 (Vic). The report assessed the state of regulatory compliance in the clothing industry regarding the prevalence of outworkers receiving their legal wages and entitlements of the extent of employer compliance with their obligations under the then Clothing Trades Award 1999 and other relevant laws. This involved a comprehensive assessment of the labour practices of over 150 employers in the clothing industry.

9. I commenced as an Organiser with the then TCFUA Victorian Branch on or around 2002.

10. I am currently employed as a full time Organiser/National Compliance Officer for the CFMMEU-MD (2018-Current). This role includes:
    - Comprehensive mapping and analysis of TCF supply chains at each level;
    - Undertaking detailed compliance visits and activity at TCF workplaces;
    - Representing members and workers in relation to a broad range of matters, including disputes arising under the TCF Award and various enterprise agreements;
    - Providing training, assistance and mentoring to other organisers/compliance officers;
    - Advocacy and assistance to TCF outworkers.

11. I am also responsible (with others in the CFMMEU-MD) for undertaking the compliance process on behalf of the Manufacturing Division for Ethical Clothing Australia's ('ECA'). ECA administers the Homeworkers Code of Practice, a voluntary accreditation process for businesses in the TCF industry, which aims to identify the full extent of a particular manufacturer's supply chain/s, including where the work is performed, by who and under what conditions. This involves agreement to have external third party auditing and verification undertaken by the Manufacturing Division.

12. I estimate that in an average week, I would personally undertake in the range of approximately 15 -20 compliance audits, including workplace visits. This equates to about 750 – 850 compliance audits in an average year. This is an average week and some weeks I would undertake more or less compliance audits depending on my other commitments etc. Over the last ten years since the commencement of modern awards I have visited thousands of workplaces in the TCF industry.

13. In respect to elected positions within the Manufacturing Division , I am currently the Victorian TCF Assistance Secretary (since approx. July 2018). I hold the position of the National Senior Vice President (since 2018). I was a member of the Committee of Management of the TCFUA (Victorian Branch) from 1996 - 2018. I was the President of the then Victorian Branch TCFUA (1999 – 2011), and of the then Victorian Queensland Branch

(2011 – 2015). At a national level, in 1998 I was elected to the TCFUA's governing body, the National Executive.

14. As a result of my Manufacturing Division responsibilities, activities and work history described above, I have developed an extensive understanding of the TCF industry and with the issues relevant to the interests and circumstances of TCF workers. More specifically, my years of experience as an organiser and my responsibilities for compliance and auditing work, has meant that I have comprehensive practical knowledge of the TCF Award 2020, as well as the pre-reform TCF industry awards. My evidence in this matter is informed by this knowledge and experience.

Nature of the TCF industry

15. The TCF industry is characterised by a mix of traditional TCF manufacturing undertaken in factories, and a significant but largely hidden outwork sector. There is also a sizeable sweatshop sector, primarily in the clothing industry and which is largely non-unionised. It is not uncommon for outworkers, in order to follow where garments and apparel is being produced, to move between outwork and sweatshop work. The clothing industry in particular features long and complex supply chains which operate both vertically and horizontally.

16. During my decades of work in the TCF industry I have seen first-hand the enormous structural dislocation caused by Australian tariff reductions and imports from low wage countries. When I first started in the industry, there was large, formalised factories which would employ hundreds of workers. Full time work was the norm and in my experience casual employees moved relatively quickly into permanent employment. The effects of restructuring in the TCF industry has resulted in much smaller factories, the move of large amounts of work to the outwork and sweatshop sectors and significant job losses and retrenchments.

17. The impact of this deep structural change in the TCF industry, means that TCF workers are very conscious of issues around job and income security. From my experience, this creates a level of vulnerability, whereby some workers are very fearful of being seen to raise issues or disputes with their employer. For example, they may tell me what the issues of concern are

in the workplace but on the condition that the union does not identify to their employer who told them.

18. Many workers in the TCF industry are award dependent and low paid. Although enterprise bargaining does exist, it tends to be more prevalent in the established parts of the textile sector or in the larger clothing workplaces. Even in workplaces with enterprise bargaining, the wage rates of workers tend to be very modest such that many remain low paid compared to many other industries.

19. In my experience and knowledge, a large proportion of workers in the TCF industry work in small or medium sized workplaces, with many of them employing less than 25 employees.

20. The profile of the TCF workforce is characterised by high numbers of workers from non-English backgrounds, including longer term migrants and more recent arrivals to Australia. Workers from Vietnamese and Chinese backgrounds represent the two nationalities most commonly found in the TCF sector workforce. Many have limited English language and literacy skills. To assist in organising and representation or NESB workers the CFMMEU-MD employs organisers and outreach workers with specific language and cultural skills.

21. The majority of workers in the TCF industry are women, particularly in the clothing sector. It is a relatively ageing workforce, although younger people do work in the industry but in smaller numbers.

22. The TCF industry is characterised by widespread non-compliance with award wages and conditions. As part of my compliance activities, I look at a whole range of issues, such as employment arrangements, types of employment, hours of work, skill classifications, and rates of pay, leave entitlements and OH&S. I can say that in my compliance and organising role I rarely come across a workplace where all the provisions of the TCF Award and other industrial laws are being complied with. For example, minimum conditions such as correct hourly rate, proper overtime and penalty rates, annual leave loading are commonly breached. Superannuation contributions are often in arrears, unlawful stand downs are not unusual, and health and safety conditions are generally poor, and sometimes dangerous. Employee records are also typically incomplete or inadequate to conduct a straightforward compliance audit. As a rule of thumb, the extent of non-compliance is usually more severe in

'sweatshop' type environments and in relation to the conditions of outworkers. However, in my experience non-compliance occurs at every level of the supply chain, in both traditional factories and at home, and in each sector of the TCF industry.

Casualisation in the TCF industry

23. From my organising and compliance work with the Manufacturing Division, I have observed that the numbers of casual workers relative to permanent workers remains significant. For example, in the supply chain work that I do in the clothing industry there appears to be an increase in casualisation resulting from the ebb and flow of production, particularly in uniforms and school wear which tend to have distinct seasons and timelines. Permanent work is still available, but generally I believe that the level of casual employment is increasing in this sector. Because of the specific nature of the clothing industry (which has traditionally and continues to have a predominantly female workforce), the majority of casual employees I see and represent tend also to be women.

24. Disputes in respect to casuals are common and concern issues such as incorrect casual loading, hours of work, shift arrangements and the failure of employers to follow, or correctly follow, the casual conversion process in the TCF Award.

25. In my organising and compliance work, there are many examples in which workers have been classified as a casual worker for extended periods of time and where the current TCF award casual conversion has not been met. During our auditing process this issue is regularly identified, on discussion with the workers there are a small number who say that they wish to stay as a casual, but most workers want the union to assist in converting them to a permanent position. The reasons vary for workers in the TCF industry seeking casual conversion, but typically it is for reasons including wanting secure employment, financial issues (loan accessibility) and set hours so they can better plan other things in their life, including family responsibilities.

CASUAL CONVERSION IN THE TCFI AWARD

26. The TCF Award (clause 11.12) currently contains a casual conversion clause as follows:

11.12 Casual Conversion to full-time or part-time employment

The employer will take all reasonable steps to provide to its employees with secure employment by maximising the number of permanent positions in the employer's workforce, in particular by ensuring that casual employees have an opportunity to elect to become full-time or part-time employees.

(a) *A casual employee engaged by a particular employer on a regular and systematic basis for a sequence of periods of employment under this award during a calendar period of six months will thereafter have the right to elect to have their ongoing contract of employment converted to permanent full-time employment or part-time employment if the employment is to continue beyond the conversion process prescribed by clause 11.12.*

(b) *Every employer of such a casual employee must give the employee notice in writing of the provisions of clause 11.12 within 4 weeks of the employee having attained such period of 6 months. However, the employee retains their right of election under clause 11.12 if the employer fails to comply with this notice requirement.*

(c) *Any casual employee who has a right to elect upon receiving notice or after the expiry of the time for giving such notice, may give 4 weeks' notice in writing to the employer that the employee seeks to convert their ongoing contract of employment to full-time or part-time employment, and within 4 weeks of receiving such notice from the employee, the employer must consent to or refuse the election, but will not unreasonably so refuse.*

(d) *Where an employer refuses an election to convert, the reasons for doing so must be fully stated and discussed with the employee concerned, and a genuine attempt will be made to reach agreement.*

(e) *Any casual employee who does not, within 4 weeks of receiving written notice from the employer, elect to convert their ongoing contract of employment to full-time employment or part-time employment will be deemed to have elected against such conversion.*

(f) *Once a casual employee had elected to become and been converted to a full-time employee or part-time employee, the employee may only revert to casual employment by written agreement with the employer.*

(g) *If a casual employee has elected to have their contract of employment converted to a full-time or part-time employment, the employer and employee will, in accordance with clause 11.12(g), and subject to clause 11.12(c), discuss and agree upon:*

(i) whether the employee will convert to full-time or part-time; and

(ii) if it is agreed that the employee will become a part-time employee, the number of hours and the pattern of hours that will be worked consistent with any part-time employment provisions of this award.

Provided that an employee who has worked on a full –time basis throughout the period of casual employment has the right to elect to convert their contract of employment to full-time employment and an employee who has worked on a part-time basis during the period of casual employment has the right to elect to convert their contract of employment to part-time employment, on the basis of the same number of hours and times of work as previously worked, unless other arrangements are agreed between the employer and the employee.

(h) *Following an agreement being reached the employee will convert to full-time or part-time employment.*

(i) *An employee must not be engaged and re-engaged, dismissed or replaced in order to avoid any obligation under clause 11.12.*

12. I am advised that the Casual Terms Award Review Full Bench, as part of the review of the TCF Award casual terms, has a provisional view that clause 11.12 (casual conversion) should be deleted and replaced with a reference to the new NES Casual Conversion entitlement.

13. Since the introduction of the casual conversion clause into the modern TCF Award in 2010, I have become very familiar with how the clause has worked on the ground in the TCF industry. In my experience, the current casual conversion clause in the TCF Award has been of assistance in having casual employees converted to permanent full-time or permanent employment. However, often it takes advocacy and assistance from the union in consultation with the particular casual employee in order to progress the conversion through the steps in clause 11.12.

14. Commonly the casual employees I meet in my organising and compliance work want permanent employment so that they can have a level of security and consistency in their work. Typically, the reasons given to me as to why a casual employee wants permanency is that as a casual employee they are unable to obtain a bank loan for a car or a mortgage and not being able to financially plan both week to week and into the future.

15. However, in my experience, often casual workers are fearful to raise the issue of permanent employment with their employer as they are concerned they won't be given any further work or will have the amount of work reduced.

16. In my experience in working with the casual conversion clause in the TCF Award, practically, there are a number of clauses which are particularly helpful in the process.

17. Clause 11.12(b) of the TCF Award requires an employer to give an (eligible) casual employee written notice of the provisions of clause 11.12 within 4 weeks of the employee having attained six months regular and systematic employment.

18. In my day to day experience as an organiser/compliance officer I regularly come across circumstances where casual employees are about to or have already reached or surpassed the six month mark in their employment. Some casual employees that I see have been employed casually for some years. In some cases, the employer has provided the required written notice to the worker, and in other cases they have not. But in either case, the obligation is important because it is part of the trigger to the right for an employee to seek to elect to convert and sets in train the other notice obligations in the clause.

19. I have found that in a practical sense, that if the notification obligation is complied with, it alerts the casual employee to the fact that they have such a right (casual conversion election) under the TCF Award, and to contact, and seek advice and assistance from the union and/or to start the discussion with their employer about the conversion process.

20. Even where the employer has not provided the written notice, but I become aware that a particular employer has casual employees with employment over 6 months, it assists in raising the issue with the employer directly. Some employers in the TCF industry (often smaller clothing companies) appear not to be aware of the casual conversion provisions in the TCF Award. When I advise them of their obligations and the award framework for casual conversion (particularly the requirement to give written notice) it lends a degree of formality and structure to a discussion about the conversion process. This assists in identifying reasonably quickly whether the casual employee wants to convert to permanent employment, and what is the position in response from the employer.

21. Based on my experience, the obligation on an employer to provide written notice to the casual employee, is a very important first step in triggering, in a practical way, the commencement of the conversion process i.e., it starts the conversation.

22. Shifting the onus to the casual employee to initiate the process would mean that, in reality, many casuals would never achieve conversion in this industry. I am advised that the NES casual conversion entitlement provides for casual employees with a small employer (less than 15) a Residual Right to Request Casual Conversion. I understand that this would permit a casual employee to make a request for casual conversion after 12 months of employment, rather than the employer being required to trigger the process. In my experience such a right is unlikely to lead to widespread casual conversion in the TCF industry because of the reasons I attest to elsewhere in my statement

23. Commonly, casual employees are not aware of their rights under the TCF Award, or even that an award exists which covers their employment. This is particularly so in small workplaces, and/or workplaces which are not unionised or have low union density. In workplaces where there are union members, it is not uncommon for some workers to be 'silent members' i.e., they become members of the Union on the condition that their employer and/or other workers are not made aware of their union membership. Further, many TCF workplaces do not have elected and trained shop stewards or delegates who can advise other workers about their rights and entitlements at the workplace level,

24. Even if a casual worker is aware of a casual conversion process, they still may be very reluctant of individually raising the issue of the permanent employment with their employer, for fear of losing what work they have or other retribution, for example, reduced hours. In my experience, although casuals may not know, or have little knowledge of their rights under the TCF Award, they are nevertheless very conscious of the lack of job and income security that comes with being a casual.

25. I am advised and understand that with the introduction of the casual amendments to the *Fair Work Act 2009*, there is a new obligation on employers to provide a 'Casual Employment Information Statement' ("CAIS") to each casual employee. Based on my years of organising and compliance work in the TCF industry, I would be surprised if a majority of TCF employers will actually undertake to do this. This is based on my experience and knowledge of the provision of the Fair Work Information Statement by employers in the TCF industry to date, which is generally low. In the course of my extensive workplace visits and dealings with workers, it is rare to find that an employer has provided new employees with the Fair Work Information Statement. Occasionally I have met a new employee in the

TCF industry who has been provided with this document, but it is very much the exception rather than the rule. If it has been provided to the worker it is in invariably in English and no attempt has been made to provide it in their primary language, if they are Vietnamese for example.

…….

Elizabeth Macpherson
Organiser and Compliance Officer (TCF Sector)
Construction, Forestry, Maritime, Mining and Energy Union – Manufacturing Division

26 August 2021

FAIR WORK COMMISSION

Cl. 48, Schedule 1 of the Fair Work Act 2009

(AM2021/54)

CASUAL TERMS AWARD REVIEW 2021

(GROUP 2 AWARDS)

WITNESS STATEMENT OF PARIS NICHOLLS

I, PARIS NICHOLLS, of [redacted], National Industrial Officer, state as follows:

Background

1. I am authorised to make this witness statement of behalf of the Construction Forestry Maritime Mining and Energy Union – Manufacturing Division ("**CFMMEU-MD**").

2. I am employed by the CFMMEU-MD in the position of National Industrial Officer.

3. I have been employed in that role since March 2019.

4. In my role I directly report to Vivienne Wiles (Senior National Industrial Officer) of the CFMMEU-MD ("**Ms Wiles**").

5. Prior to such time, I worked for approximately five years as a labour and employment lawyer in the United States.

6. I hold a Bachelor of Arts in Philosophy from the University of North Carolina and a Juris Doctor from New York University.

Casual Terms Award Review 2021

7. I am providing this witness statement as part of submissions prepared by the CFMMEU-MD with respect to the Stage 2, Group 2 Awards in the Casual Terms Award Review 2021, specifically with respect to the *Textile, Clothing, Footwear and Associated Industries Award 2020* ('**TCF Award 2020'**).

8. As part of the CFMMEU-MD submissions, Ms Wiles requested that I undertaken research regarding ABS and labour force data relevant to the textile, clothing, footwear and associated industries.

ABS - TableBuilder

9. The Australian Bureau of Statistics ("**ABS**") provides an online tool called "TableBuilder" to construct tables of Census data.

10. I have registered for a "TableBuilder Basic" account at the following website: https://www.abs.gov.au/websitedbs/censushome.nsf/home/tablebuilder.

11. I have prepared tables based on ABS publications and the TableBuilder function in order to include various data relevant to the textile, clothing and footwear industry as explained below. Attached to my witness statement and marked "**PN-1"** is a copy of these tables.

TCF Industry TableBuilder Data

12. Within TableBuilder, I have extracted 2016 Census data regarding certain employees in the Textile, Clothing and Footwear Industry. The class of employees I have used are those classified by the 2016 Census as within ANZSIC Subdivision 13 - Textile, Leather, Clothing and Footwear Manufacturing (within Division C – Manufacturing) ("TCF Industry"). I have further narrowed the group to exclude employees within the following OCCP occupations used by the Census: Managers, Professionals, Clerical and Administrative Workers, and Sales Workers, on the basis that these categories are unlikely, in most cases, to be covered by the TCF Award 2020.

13. After adding the class of individuals described in Clause 11 above to the column section of TableBuilder, I created separate tables with rows for values given by the Census for the following information:

    a. AGE10P Age in Ten Year Groups. (Fig. 3, PN-1)
    b. HSCP Highest Year of School Completed. (Fig. 4, PN-1)
    c. BPLP Country of Birth of Person (for this table, I have only included countries with more than 0.5% of the total). (Fig. 5, PN-1)
    d. LANP Language Spoken at Home (for this table, I have only included languages with more than 0.5% of the total). (Fig. 6, PN-1)
    e. INGP Indigenous Status. (Fig. 7, PN-1)

14. Definitions of the above variables can be found in the Census Dictionary, 2016, found at the following website: https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/2901.0Main%20Features12016

Employment Figures with Sex and Employment Status

15. I have created a table showing the yearly employment figures within the TCF Industry along with the number of males and females employed, with percentages, and the number of full-time and part-time employees, with percentages (Fig. 1, PN-1). This data was taken directly from ABS Publication 6291.0.55.001 – Labour Force, Australia, Detailed. The dates given for each year are as of May of such year.

Size of TCF Businesses

16. I have created a table showing the number of businesses, with further breakdowns by number of employees, for the years 2020 and 2019 (Fig. 2, PN-1). These numbers have been extracted from ABS Publication 8165.0 Counts of Australian Businesses, including Entries and Exits, June 2016 to June 2020. For each year, I have extracted and summed the end of financial year total given for the following groups, which constitute all groups within ANZSIC Subdivision 13 - Textile, Leather, Clothing and Footwear Manufacturing:
    a. Total Wool Scouring
    b. Total Natural Textile Manufacturing
    c. Total Synthetic Textile Manufacturing
    d. Total Leather Tanning, Fur Dressing and Leather Product Manufacturing
    e. Total Textile Floor Covering Manufacturing
    f. Total Rope, Cordage and Twine Manufacturing
    g. Total Cut and Sewn Textile Product Manufacturing
    h. Total Textile Finishing and Other Textile Product Manufacturing
    i. Total Knitted Product Manufacturing
    j. Total Clothing Manufacturing
    k. Total Footwear Manufacturing

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Paris Nicholls

National Industrial Officer, CFMMEU-Manufacturing Division

(26 August 2021)

EXHIBIT PN-1

Figure 1 - Employment Figures

(Numbers given in thousands taken from May of each year)	*2010*	*2011*	*2012*	*2013*	*2014*	*2015*	*2016*	*2017*	*2018*	*2019*	*2020*	*2021*
Total employed	47.5	42.6	40.7	39.5	29.6	34.7	35.9	33.5	41.3	30.3	31.8	40.7
Males Employed	19.1	16.8	17.9	13.2	13.4	15.1	13.1	15.6	18.0	12.1	12.5	17.0
Females Employed	28.4	25.8	22.8	26.3	16.2	19.6	22.7	17.9	23.3	18.1	19.3	23.7
Percentage Female	60%	61%	56%	67%	55%	56%	63%	53%	56%	60%	61%	58%
Full Time Employed	38.5	31.0	29.3	29.8	23.1	26.6	26.3	22.8	29.1	18.7	20.7	27.3
Part-time employed	9.0	11.6	11.4	9.7	6.5	8.1	9.6	10.7	12.2	11.5	11.0	13.4
Percentage Part-Time	19%	27%	28%	24%	22%	23%	27%	32%	30%	38%	35%	33%

Figure 2 - Size of Businesses

Year	*2019*	*2020*
Total Operating Businesses	6,263	6,138
Non-Employing businesses	3,321	3,331
1-19 Employees	2,666	2,524
20-199 Employees	250	257
200+ Employees	13	8
Total Employing businesses	2,929	2,789
Percentage of all business with no employees	53%	54%
Percent of employing businesses with 1-19 employees	91%	90%
Percent of employing businesses with 20+ employees	9%	10%

2016 Census Data

Figure 3 - Age in Ten Year Groups

10-19 years	1.61%
20-29 years	11.26%
30-39 years	13.07%
40-49 years	24.35%
50-59 years	31.68%
60-69 years	15.66%
70-79 years	2.06%
80-89 years	0.20%
90-99 years	0.03%

Figure 4 - Highest Year of School Completed

Year 12 or equivalent	46.37%
Year 11 or equivalent	10.40%
Year 10 or equivalent	24.24%
Year 9 or equivalent	7.73%
Year 8 or below	7.35%
Did not go to school	2.64%
Not stated	1.35%

2016 Census Data Cont'd

Figure 5 - Country of Birth of Person (over 0.5% only)

Australia	45.48%
Vietnam	14.02%
China (excludes SARs and Taiwan)	7.11%
New Zealand	3.58%
Philippines	3.37%
England	3.06%
India	1.78%
Cambodia	1.63%
Not stated	1.45%
Italy	1.12%
Hong Kong (SAR of China)	0.84%
The former Yugoslav Republic of Macedonia	0.69%
Thailand	0.65%
Sri Lanka	0.65%
Greece	0.63%
Korea, Republic of (South)	0.60%
Laos	0.58%
Timor-Leste	0.56%
Myanmar	0.55%
Malaysia	0.54%
South Africa	0.53%
Indonesia	0.52%
Fiji	0.51%

2016 Census Data Cont'd

Figure 6 - Language Spoken at Home (over 0.5% only)

English	55.04%
Vietnamese	13.03%
Mandarin	5.24%
Cantonese	5.04%
Tagalog	1.74%
Italian	1.56%
Greek	1.21%
Khmer	1.16%
Filipino	1.10%
Macedonian	0.78%
Spanish	0.72%
Korean	0.63%
Hindi	0.58%
Punjabi	0.57%
Croatian	0.53%
Russian	0.51%
Thai	0.51%

Figure 7 - Indigenous Status

Non-Indigenous	98.46%
Aboriginal	0.90%
Torres Strait Islander	0.02%
Both Aboriginal and Torres Strait Islander	0.02%
Not stated	0.55%