

In the Fair Work Commission

Casual terms award review 2021

Matter No.: AM2021/54

SUBMISSIONS IN REPLY

Introduction

1. These submissions in reply are made by the in the Australian Education Union (“**AEU**”) in response to the direction at paragraph [5] of the Fair Work Commission (“**FWC**”) 23 April 2021 Statement and Directions.
2. These submissions respond to submissions made on 24 June 2021 by the Australian Council of Trade Unions (“**ACTU**”), the Independent Education Union (“**IEU**”), the Australian Industry Group (“**AIG**”), and the Australian Chamber of Commerce and Industry (“**ACCI**”) in response to questions in the Discussion Paper published by the Commission on 19 April 2021 (“**Discussion Paper**”).

Reply to IEU and ACTU submissions

3. The IEU’s submissions regarding Questions 6 and 7 of the Discussion Paper distinguish between the s 15A of the *Fair Work Act 2009* (Cth) (“**FW Act**”) definition of “casual employee” and the cl 12.1 of the Teachers Award definition of “casual employment”, on which basis the IEU contends there is no inconsistency between the *Educational Service (Teachers) Award 2020* (“**Teachers Award**”) and the FW Act.
4. The AEU considers that the IEU’s submissions regarding Questions 6 and 7 raise an important issue as to the meaning and interaction of the terms casual “employee” and “employment”, issues which have not been raised by other parties to this Review. The AEU submits that the FWC should consider the IEU’s submissions in the first instance before assessing other parties’ submissions regarding Questions 6 and 7.
5. On consideration of the IEU and ACTU’s submissions regarding whether the terms identified at Questions 15, 16, 17, 18 and 20 are “relevant terms” for the purposes of this Review, the AEU withdraws its submission that such terms are “relevant terms”, and supports the IEU and ACTU’s positions that the terms identified are not “relevant terms”.

Reply to AIG and ACCI submissions regarding Question 7 of the Discussion Paper

6. The AIG and ACCI, in each of their responses to Question 7, contend that the FWC should not recast cl 12.1 of the Teachers Award as a separate maximum casual engagement period as doing so would exclude the casual conversion entitlements at Part 2-2, Division 4A of the FW Act, part of the National Employment Standards (“**NES**”) and would thereby contravene s 55(1) of the FW Act. See AIG submissions paragraphs [99]-[101] and ACCI submissions paragraphs [52]-[55].
7. The AEU rejects the AIG’s and ACCI’s contention that maximum casual engagement period in the Teachers Award would exclude the casual conversion entitlements in the NES. The AEU has had the opportunity to review the IEU’s submissions in reply on this issue and supports the IEU’s submissions.

8. The AIG makes the further contention that it is not necessary to so vary the Teachers Award (or any other award) for it to meet the modern awards objective. See AIG submissions paragraphs [102]-[106].
9. The AEU rejects the AIG's contention that, if it is necessary to amend the definition in the Teachers Award, it is unnecessary to recast the maximum casual engagement period in the Teachers Award to meet the modern awards objective. In response the AEU refers to paragraphs [21]-[22] of its 14 May 2021 submissions in this Review, and further notes that:
 - 9.1. Not recasting the maximum casual engagement period at cl 12.1 would have the practical effect of removing a substantive and longstanding provision of the Teachers Award.
 - 9.2. Varying an award to remove such a substantive, longstanding provision requires a strong case to be made that such a variation meets the modern awards objective.
 - 9.3. There is no evidentiary case, and minimal submissions before the Commission that such a variation would meet the modern awards objective, and we note that the AIG itself does not have a direct interest in the Teachers Award.
 - 9.4. In the absence of such a case is therefore necessary to maintain the status quo of the Award to make such a variation recasting the maximum casual engagement period at cl 12.1 of the Teachers Award.