



Shop Distributive and Allied Employees' Association

**THE UNION FOR WORKERS IN  
RETAIL. FAST FOOD. WAREHOUSING.**

## **AM2021/54 - Fair Work Act 2009 Casual terms award review 2021**

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## I. INTRODUCTION

1. The Shop, Distributive and Allied Employees' Association ("SDA") makes these submissions in response to the 11 August 2021 statement of the Full Bench.

## II. ALPINE RESORTS AWARD 2020

### A. Multi-hiring arrangement clause

2. The SDA notes the provisional view of the Full Bench expressed at [62] and [63] of the 11 August Statement regarding the Multi-hiring arrangement clause at 20.3 of the *Alpine Resorts Award 2020* (Alpine Award).
3. While the Full Bench identifies that an inconsistency with the provision in the Alpine Award at clause 20.3, it is submitted that the proposed amendment could create inadvertent compliance issues with the other provisions of the Award.
4. The current provision limits the additional hours under a multi-hiring arrangement to 'any non-primary role is to be undertaken, and paid for, on a casual basis' at 20.3(c)(i). In so doing it applies to this non-primary role the protections of the Award for casual employees such as ordinary hours (clause 15.4) and overtime (clause 23).
5. The Full Bench at [62] of its statement proposed alternate wording
  - (c) The employer may then offer the employee, and the employee may undertake, a non-primary role (or roles) in any level or classification within Schedule A—Classification Definitions that they are qualified for, provided that any hours worked by an employee in a non-primary role do not count toward ordinary hours or overtime in the employee's primary role.
6. It is the SDA's submission that this wording raises several serious issues. The proposed wording deletes the reference to casual employment and simultaneously stating that 'provided that any hours worked by an employee in a non-primary role do not count toward ordinary hours or overtime in the employee's primary role'. This creates the anomalous situation that the hours so worked are neither casual hours nor do they count towards overtime or ordinary hours.
7. On this basis it is the SDA's submission that the current wording should be retained.

## III. PHARMACY INDUSTRY AWARD 2020

*A. Movement between types of employment*

8. The SDA agrees with the Full Bench's provisional view at [90] of its statement, that clause 8.3 of the Pharmacy Award does not require any change or variation.

*B. Part-time additional hours*

9. The statement of the Full Bench identified clause 10.12 of the Pharmacy Award as being inconsistent and requiring variation. The SDA submits that the provision does not address casual employment in itself but is rather an agreed variation between employer and employee.
10. The Note under 10.12 in the Award states that where a part-time employee is directed to work a reasonable number of additional hours, the overtime provisions of the Award apply.
11. For these reasons, clause 10.12 of the Pharmacy Award does not require variation.

*C. Clothing Allowance, Penalty Rates, Personal/Carers Leave and Compassionate Leave – Casual Employee and Summary of Hourly Rates*

12. The Statement of the Full Bench at Attachment A lists the relevant clauses of each Award the subject of the current review before the Commission and the relevant provisional view. It is to be noted that under Pharmacy Industry Award 2020, the Statement identifies that the following clauses require variation:
- Clothing Allowance;
  - Penalty Rates;
  - Personal/Carers Leave and Compassionate Leave – Casual Employee; and
  - Summary of Hourly Rates.
13. It is to be noted that in the Review in respect of the *General Retail Industry Award 2020* the equivalent provisions did not attract variation. Furthermore, Attachment A identifies in respect of each of the terms that that 'term – not inconsistent' and in respect of 19.5 – clothing allowance that 'This provision provides 'general terms and conditions of employment of casual employees' which the FWC Full Bench held (in priority awards) to be not inconsistent nor give rise to uncertainty [185]'.
14. In reference to 22.3 – penalty rates Attachment A identifies 'FWC held that it is unnecessary to determine whether such terms are 'relevant terms' (in priority awards) as they are not inconsistent and don't give rise to uncertainty [185]'.

15. On this basis, and with reference to the Decision of the Full Bench (also referenced at Attachment A) it is submitted that these terms are not inconsistent and do not give rise to uncertainty and so variation is unnecessary.

#### **IV. VEHICLE REPAIR, SERVICES AND RETAIL AWARD 2020**

16. The SDA recognises that the provision contained at clause 11.6 of the *Vehicle Repair, Services and Retail Award 2020* is substantially the same as that in the *Manufacturing and Associated Industries and Occupations Award 2020* (Manufacturing Award). The Union parties to the Manufacturing Award made submissions in respect of its casual conversion provision which the Full Bench considered in its 16 July 2021 Decision. The SDA formally supports these submissions in respect of the *Vehicle Repair, Services and Retail Award 2020*, noting that they have already been considered by the Full Bench and does not seek to be heard further in this regard.