

IN THE FAIR WORK COMMISSION

Matter No: AM2021/54

Casual terms award review 2021

UNITED WORKERS UNION

RESPONSE TO PROVISIONAL VIEWS - STAGE 2, GROUP 2 AWARDS

Background

1. On 16 July 2021, the Fair Work Commission (FWC) handed down their decision after a five-member Full Bench reviewed the 'relevant terms', per clause 48 of the *Fair Work Act 2009* (the Act), in an initial group of 6 modern awards (Stage 1 Decision).
2. Subsequently, the FWC has proceeded to review grouped Awards within the stage 2 phase of the casual term award review.
3. On 11 August, the FWC provided their provisional views in relation to stage 2, group 2 Awards. (Stage 2, Group 1 Statement).
4. The Stage 2, Group 2 Statement sets out the provisional view of the FWC with respect to the group 2 Awards and provides proposed actions for certain clauses in each of those Awards.¹
5. The FWC has requested that interested parties provide their response to those provisional views by 4pm, Wednesday 18 August 2021.
6. The United Workers Union (UWU) has an interest in the following of the group 2 Award:
 - a. *Alpine Resorts Award 2020*;
 - b. *Ambulance and Patient Transport Industry Award 2020*;
 - c. *Animal Care and Veterinary Services Award 2020*;
 - d. *Cleaning Services Award 2020*;
 - e. *Corrections and Detention (Private Sector) Award 2020*;
 - f. *Health Professionals and Support Services Award 2020*;
 - g. *Nurses Award 2010*;
 - h. *Pharmacy Industry Award 2020*;
 - i. *Poultry Processing Award 2020*;

¹ Statement [2021] FWCFB 4928 (11 August 2021), Attachment A

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- j. *Road Transport and Distribution Award 2020*;
- k. *Security Services Industry Award 2020*; and
- l. *Storage Services and Wholesale Award 2020*.

7. The UWU provides as follows its views in relation these Awards. Where the UWU provides no response to a provision view provided in the Stage 2, Group 2 Statement, it should be taken that the UWU does not oppose the provisional view.

No requirement to vary general terms in multiple Awards

8. Attachment A of the Stage 2, Group 2 Statement indicates the FWC provisional view in relation to each Award by way of a table that includes columns titled ‘clause’, ‘provisional view’, ‘action’ and ‘notes’.²
9. On the basis of inconsistency with the ‘provisional view’ column, the UWU raises concerns for the following Award clauses where “o variation necessary” is stated in the ‘action’ column:
- a. *Animal Care and Veterinary Services Award 2020* - clause 8.2 and 8.3
 - b. *Pharmacy Industry Award 2020* – clauses 19.5, 22.3, 24.3, and B.2
 - c. *Poultry Processing Award 2020* – clauses 19.5, 19.7, and B3
 - d. *Road Transport and Distribution Award 2020* – clauses 13.3, 19.2, 22.4, 22.8, 23.2, C.4, and C.5
 - e. *Security Services Industry Award 2020* – clauses 13.3, 13.6, 19.2, 20.2, 20.3 and B.3
10. In relation to each clause above, Attachment A states in the ‘provisional view’ column:
“term - not inconsistent (at [179] and [185] of [2021] FWCFB 4144)”³
11. Further, in the column titled ‘note’ in many instances for the clauses above Attachment A states:
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]⁴
12. However, the ‘action’ column in each instance is inconsistent with these provisional views and note as it states ‘o variation necessary’.⁵
13. The UWU submits that as the relevant clauses as general terms that do not create any inconsistency or uncertainty and, as such, no variations are required.

Matters not relevant terms in multiple Awards

² Ibid at Attachment A

³ Ibid at Attachment A

⁴ Ibid at Attachment A

⁵ Ibid at Attachment A

14. The UWU does not agree with the Attachment A provisional view (and where applicable the action proposed) for following Award clauses:
 - a. *Pharmacy Industry Award 2020* - clause 10.12
 - b. *Poultry Processing Award 2020* – clause 21.1
 - c. *Road Transport and Distribution Award 2020* – clause 21.4 and 24.1
 - d. *Security Services Industry Award 2020* – clause 21.1
15. In relation to each clause above, the provisional view provided is that it is a “relevant term”.⁶
16. The UWU submits that, as found by the Full Bench in the Stage 1 Decision, whether these terms are ‘relevant’ terms is inconsequential as they are general terms that are not inconsistent with s.15A(1) of the Act and they give no rise to any uncertainty or difficulty.⁷
17. The UWU submits that no variation is required in relation to these clauses.

Notification of casual status in Nurses Award not inconsistent with the Act

18. Attachment A of the Stage 2, Group 2 Statement provides the provisional view in relation to clause 10.1(c) of the *Nurses Award 2010* that the requirement to advise a casual employee of their casual status at commencement of employment is inconsistent with the Act in accordance with Stage 1 Decision at [120] to [121].⁸
19. We disagree with this provision view as a requirement to advise an employee of their casual status was found in the Stage 1 Statement to not be inconsistent with s.15A(1) of the Act.⁹

United Workers Union
18th August 2021

⁶ Ibid at Attachment A

⁷ Decision, 2021 FWCFB 4144 (16 July 2021) at [183-184]

⁸ Statement [2021] FWCFB 4928 (11 August 2021), Attachment A

⁹ Decision, 2021 FWCFB 4144 (16 July 2021) at [121]