

IN THE FAIR WORK COMMISSION

Fair Work Act 2009

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

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

(24 May 2021)

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## BACKGROUND

1. On 9 April 2021, Justice Ross, President issued a Statement<sup>1</sup> following the passage of the *Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Act 2021*<sup>2</sup> ("Amending Act"). In short summary, the Amending Act introduced a number of amendments to the *Fair Work Act 2009* ("FW Act") which deal, in part, with the rights and obligations of casual employees and their employers.
2. The Amending Act, amongst other things, requires the Fair Work Commission ("Commission") to undertake a review of modern award provisions as provided by clause 48 of Schedule 1 of the FW Act as amended ("Casual terms review").
3. Clause 48 of Schedule 1, provides:

**48 Variations to modern awards**

(1) If:

- (a) a modern award is made before commencement; and
- (b) the modern award is in operation on commencement; and
- (c) immediately before commencement, the modern award includes a term (the relevant term) that:
  - (i) defines or describes casual employment; or
  - (ii) deals with the circumstances in which employees are to be employed as casual employees; or
  - (iii) provides for the manner in which casual employees are to be employed; or
  - (iv) provides for the conversion of casual employment to another type of employment;

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<sup>1</sup> *Fair Work Act 2009* (Clause 48 of Schedule 1), Statement [2021] FWC 1894 (9 April 2021)

*then the FWC must, within 6 months after commencement, review the relevant term in accordance with subclause (2).*

*(2) The review must consider the following:*

*(a) whether the relevant term is consistent with this Act as amended by Schedule 1 to the amending Act;*

*(b) whether there is any uncertainty or difficulty relating to the interaction between the award and the Act so amended.*

*(3) If the review of a relevant term under subclause (1) finds that:*

*(a) the relevant term is not consistent with this Act as amended by Schedule 1 to the amending Act; or*

*(b) there is difficulty or uncertainty relating to the interaction between the award and the Act as so amended;*

*then the FWC must make a determination varying the modern award to make the award consistent or operate effectively with the Act as so amended.*

*(4) The determination must be made as soon as reasonably practicable after the review is conducted.*

*(5) A determination under subclause (2) comes into operation on (and takes effect from) the start of the day the determination is made.*

*(6) Section 168 applies to a determination made under subclause (2) as if it were a determination made under Part 2-3.*

4. On 14 April 2021, a Conference was held of interested parties.

5. On 19 April 2020, the Full Bench issued a Statement and Directions, including setting out draft directions.<sup>3</sup> On the same date, the Commission issued a Discussion Paper<sup>4</sup>, including 3 attachments.<sup>5</sup> The Discussion Paper poses 31 questions for consideration of the parties.<sup>6</sup>
6. A further Conference was held of interested parties on 22 April 2021.
7. On 23 April 2021, the Full Bench issued a Statement and Directions<sup>7</sup> confirming the directions in the matter. The Directions require (as relevant to this stage of the proceedings):

1. *All interested parties to file submissions by 4.00pm (AEST) on Monday, 24 May 2021 responding to the questions in the Discussion Paper published by the Commission on Monday, 10 April 2021 and other matter the party wishes to raise. If a party is proposing a variation to one of the six Stage 1 Award then they should also file a proposed draft determination.*

*Note: The Commission staff will prepare a Submission Summary Document summarising the submissions in respect of each question posed in the Discussion Paper. The Full Bench will issue a statement publishing the Submission Summary Document and expressing some provisional views about the issues raised. It is anticipated that the*

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<sup>3</sup> *Fair Work Act 2009* (Clause 48 of Schedule 1), Statement and Directions [2021 FWC 2143 (19 April 2021)]

<sup>4</sup> FWC – Discussion Paper, ‘Interaction between modern awards and the casual amendments to the *Fair Work Act 2009*’

<sup>5</sup> *Ibid*;

- Attachment 1: ‘Modern Award Casual Definitions’
- Attachment 2: ‘Modern Award Casual Conversion Clauses’
- Attachment 3: ‘Comparison of the casual conversion NES and the award casual conversion clauses.’

<sup>6</sup> Discussion Paper – at Appendix and in body of document

<sup>7</sup> *Fair Work Act 2009* (Clause 48 of Schedule 1), Statement and Directions [2021 FWC 2222 (23 April 2021)]

*Statement and Submission Summary document will be published in the week commencing 31 May 2021.*

8. The Construction, Forestry, Maritime, Mining and Energy Union – Manufacturing Division (“CFMMEU – MD”) files these submissions in accordance with direction [1] above.

#### **REVIEW TO BE CONDUCTED IN 2 STAGES**

9. The Commission has determined to undertake the Casual terms award review 2021 in 2 stages has outlined in the Statement and Directions (19 April 2021)<sup>8</sup>:

*[2] In short it was proposed that the Casual terms review be conducted in two stages:*

*1. **First stage** – a 5 member Full Bench will consider the nature and scope of Casual terms review and relevant terms in a small initial group of modern awards that raise a range of possible interaction issues. The Full Bench will then issue a decision on the outcome of its review and determine the process for the second stage.*

*The following initial group of 6 awards will be considered in the first stage of the Casual terms review (the Stage 1 Awards):*

- *General Retail Industry Award 2020*
- *Hospitality Industry (General) Award 2020*
- *Manufacturing and Associated Industries and Occupations Award 2020*
- *Educational Services (Teachers) Award 2020*
- *Pastoral Award 2020*

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<sup>8</sup> Statement and Directions (19 April 2021); op cit; at [2]

- *Fire Fighting Industry Award 2020*

**2.Second Stage** -a 3 member Full Bench (a subset of the 5 member Full Bench) will review the remaining modern award in convenient groupings.

[3] On 15 April 2021 a Conference was held to discuss the proposed approach. No substantive objections to the proposed approach were raised in the Conference...

10. With respect to the 6 modern awards in Stage 1, the CFMMEU – MD has a direct interest in the *Manufacturing and Associated Industries and Occupations Award 2020*<sup>9</sup>(“Manufacturing Award”).

11. With respect to Stage 2, the CFMMEU-MD has an interest in the following modern awards:

- *Dry Cleaning and Laundry Industry Award 2020*<sup>10</sup> (‘DC&LI Award’)
- *Joinery and Building Trades Award 2020*<sup>11</sup> (‘Joinery Award’)
- *Storage Services and Wholesale Award 2020*<sup>12</sup> (‘Storage Award’)
- *Textile, Clothing, Footwear and Associated Industries Award 2020*<sup>13</sup> (‘TCF Award’)
- *Timber Industry Award 2020*<sup>14</sup> (‘Timber Award’)

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<sup>9</sup> *Manufacturing and Associated Industries and Occupations Award 2020* [MA000010]

<sup>10</sup> *Dry Cleaning and Laundry Industry Award 2020* [MA000096]

<sup>11</sup> *Joinery and Building Trades Award 2020* [MA000029]

<sup>12</sup> *Storage Services and Wholesale Award 2020* [MA000084]

<sup>13</sup> *Textile, Clothing, Footwear and Associated Industries Award 2020* [MA000017]

<sup>14</sup> *Timber Industry Award 2020* [MA000071]

12. It is evident from the way in which the Casual terms review is to be undertaken, that decisions issued in relation to the Stage 1 award will have implications for the review of awards in Stage 2.

### **DISCUSSION PAPER – RESPONSE TO QUESTIONS**

13. By way of general application, the CFMMEU-MD supports and adopts the submissions of the ACTU filed in this matter.<sup>15</sup>

14. Further, with respect to the questions in the Discussion Paper which specifically relate to the Manufacturing Award, the CFMMEU-MD supports and adopts the submissions of the AMWU.<sup>16</sup>

### **Question 3 – Has Attachment 1 to this discussion paper wrongly categorised the casual definition in any award?**

15. The CFMMEU-MD has reviewed Attachment 1 and considers that it correctly categorises the casual definition in the awards in which it has an interest.

Filed on behalf of:

**Construction Forestry Maritime Mining and Energy Union  
(Manufacturing Division)**

Vivienne Wiles  
Senior National Industrial Officer and Co-ordinator  
(24 May 2021)

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<sup>15</sup> (AM2021/54) Casual terms award review 2021; ACTU Submission (24 May 2021)

<sup>16</sup> (AM2021/54) Casual terms award review 2021; AMWU Submission (24 May 2021)