

IN THE FAIR WORK COMMISSION

MATTER NO. AM2021/54

CASUAL TERMS AWARE REVIEW – STAGE 2, GROUP 1

Clause 48 of Schedule 1, Fair Work Act 2009

SUBMISSIONS OF THE HEALTH SERVICES UNION ON PROVISIONAL VIEWS

Introduction

1. Following amendments to the *Fair Work Act 2009* (Cth) (**the Act**) brought about by the enactment of the *Fair Work Amendment (Supporting Australia’s Jobs and Economic Recovery) Act 2021* (Cth), and pursuant to cl 48 of Sch 1 of the amended Act, the Fair Work Commission commenced a review of modern awards to address any inconsistencies, difficulties or uncertainties caused by the amendments to the Act (**Casual Terms Review**).
2. On 16 July 2021, a five-member Full Bench issued a decision in relation to first stage of the Casual Terms Review in *Casual Terms Award Review 2021* [2021] FWCFB 4144 (**Stage One Decision**).
3. Subsequently, a three-member Full Bench was constituted to deal with the second stage of the Casual Terms Review involving a review of the remaining modern awards in four groups.
4. On 3 August 2021, the three-member Full Bench issued a Statement (*Casual Terms Award Review 2021* [2021] FWCFB 4714) (**Statement**) confirming the groupings of the remaining modern awards (at Attachment A), and setting out *provisional views* in relation to the awards falling in ‘Group 1’ (at Attachment B). The Statement directed interested parties to provide any responses in relation to the *provisional views* by 4pm Tuesday, 10 August 2021.

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5. The Health Services Union (**HSU**) has an interest in the following four 'Group 1' awards:
 - a. *Aboriginal and Torres Strait Islander Health Workers and Practitioners and Aboriginal Community Controlled Health Services Award 2020*;
 - b. *Aged Care Award 2010*;
 - c. *Social, Community, Home Care and Disability Services Industry Award 2010*;
 - d. *Supported Employment Services Award 2010*.

6. The HSU makes this short submission in response to the *provisional views* contained in the Statement with respect to the four awards listed above.

Response to Provisional Views

Aboriginal and Torres Strait Islander Health Workers and Practitioners and Aboriginal Community Controlled Health Services Award 2020

7. The HSU does not seek to oppose the *provisional views* nor the proposed actions with respect to the following clauses:
 - a. Clause 11.1 – definition of casual employee;
 - b. Clause 11.5 – casual conversion.

8. The HSU supports the *provisional views* including that no variation is necessary in relation to the following clauses:
 - a. Clause 11.4 – minimum period of engagement;
 - b. Clause 12.4(c) – recognition of prior service;
 - c. Clause 14.2 – casual payment for work on public holiday;
 - d. Clauses 20.2 and 20.5(b) – overtime for casuals;
 - e. Clause 21.5 – shiftwork for casuals.

Aged Care Award 2010

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9. The HSU does not seek to oppose the *provisional views* nor the proposed actions with respect to the following clauses:
- a. Clause 10.4(a) – definition of casual employee;
 - b. Clause 10.5 – casual conversion;
 - c. Clause 14.4(c) – regular and systematic casual employment.
10. The HSU supports the *provisional views* including that no variation is necessary in relation to the following clauses:
- a. Clause 10.4(b) – casual loading;
 - b. Clause 22.3 – excluded from rostered days off;
 - c. Clause 22.6(b) – display of casual roster not obligatory;
 - d. Clause 22.7(b) – minimum period of engagement;
 - e. Clause 22.8(a) – broken shift;
 - f. Clause 22.9 – sleepovers;
 - g. Clauses 23.2 and 23.3 – penalty rates for casuals;
 - h. Clauses 25.1(c) and (d) – overtime for casuals – rest period after overtime;
 - i. Clause 29.2(c) – casual payment for work on public holiday;
 - j. Clause 33 – leave to deal with family and domestic violence.

Social, Community, Home Care and Disability Services Industry Award 2010

11. The HSU does not seek to oppose the *provisional view* nor the proposed action with respect to clause 10.5 – casual conversion.
12. The HSU supports the *provisional view* and proposed action with respect to clause 10.4(a) – definition of casual employee.
13. The HSU supports the *provisional views* including that no variation is necessary in relation to the following clauses:
- a. Clause 10.1(b) – requirement to inform on engagement;

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- b. Clause 10.4(b) – casual loading;
- c. Clause 10.4(c) – minimum payment;
- d. Clause 20.4(b) – first aid allowance;
- e. Clause 25.3 – rostered days off;
- f. Clause 25.5(c) – rosters;
- g. Clause 26.3 – Saturday and Sunday work – casual loading;
- h. Clause 26.4 – weekend penalty rates;
- i. Clause 28.1(b) – overtime rates;
- j. Clause 28.3 – rest period after overtime;
- k. Clauses 34.2(c)-(d) – public holiday penalty rates;
- l. Clause 36.1 – leave to deal with family and domestic violence;
- m. Clause 36.3(c) – leave to deal with family and domestic violence.

Supported Employment Services Award 2020

14. The HSU does not seek to oppose the *provisional views* nor the proposed actions with respect to the following clauses:
- a. Clause 11.1 – definition of casual employee;
 - b. Clause 11.8 – casual conversion.
15. The HSU supports the *provisional views* including that no variation is necessary in relation to the following clauses:
- a. Clauses 11.2 and 11.4 – casual loading;
 - b. Clauses 11.6 and 21.1 – overtime for casuals;
 - c. Clause 11.7 – minimum payment;
 - d. Clauses 23.1(a) and 28.3 – casuals excluded from annual leave and public holiday provisions.

10 August 2021

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