

From: Luis Izzo <Luis.Izzo@ablawyers.com.au>
Sent: Monday, 15 March 2021 4:14 PM
To: AMOD <AMOD@fwc.gov.au>
Subject: AM2021/7 - Award Flexibility - General Retail Industry Award 2010

Dear Sir/Madam

We **attach**, for the purposes of filing and uploading to the FWC website, a copy of a research report ABI and NSWBC intend to rely upon in the hearing of the above proceedings on Wednesday 17 March 2021.

The following materials are **attached** for filing:

- A. Research Report
- B. Email template that was utilised to distribute survey referenced in Research Report
- C. Survey Questionnaire that was completed as referenced in Research Report
- D. Initial letter of instruction to Senior Professor Paul Gollan – 13 June 2021
- E. Subsequent letter of instruction to Senior Professor Paul Gollan – 9 March 2021

In relation to the commissioning of the research, we confirm that:


- On 13 June 2019, a formal request was issued to Senior Professor Paul Gollan of the University of Wollongong to conduct research into engagement practices pertaining to casual employees in the Social, Community, Home Care and Disability Services Industry.
- In June 2020, our office and Professor Gollan agreed to vary the research project so that the same research was instead conducted with respect to the retail industry. Following developments in award flexibility proceedings in early 2021, on 9 March 2021, ABLA wrote to Professor Gollan, requesting the report be delivered as a matter of urgency and narrowing some of its scope, having regard to the urgent timeframe that has been imposed upon the parties with respect to filing evidence in these proceedings.

Both formal engagement letters are attached.

Yours faithfully

Luis Izzo

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Employers and the use of casuals in the Australian Retail Sector

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Honorary Professor Jonathan M. Hamberger (PSM, PhD)
University of Wollongong

March 2021

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Section 1 – Explanation of the Focus Group process that was conducted

This report was commissioned by Australian Business Lawyers & Advisors (ABLA) in relation to a proposal to vary the General Retail Industry Award 2010 (GRIA) with respect to the types of employment under the GRIA.

The issues that we were asked to particularly focus on were as follows:

- Why employers have traditionally engaged casual employees in this industry.
- Whether employers consider it desirable or necessary to continue to engage employees on a casual basis. If so, why?
- Whether employers consider it desirable or necessary to engage employees regularly as casuals. If so, why?
- Whether employers require an ability to change rosters for staff, even those who have been engaged for some time.

Our engagement commenced in July 2019, when we first received instructions with respect to a project pertaining to the Social, Community, Home Care and Disability Services Industry. However, in June 2020, ABLA requested that we instead research the above issues with respect to the retail and security services industries.

This report pertains only to the retail industry aspects of our research.

It was decided by the research team to undertake a research approach that would involve focus groups and an employer survey to fully explore the issues and views of employers. Two focus groups sessions were undertaken (28th and 29th of July 2020) to inform our knowledge of the types of questions that could be asked in the broader questionnaire and to principally understand why employers engage regular casuals in the Retail Industry. The participants were contacted by the New South Wales Business Chamber (NSWBC) and Australian Retailers Association (ARA) and asked to take part in the project. It was important that we had a diverse sample group of representatives reflective of the membership of ARA.

Each focus group lasted an hour and represented a broad range of retail organisations (please see section 2 below). All Chief Investigators from the University of Wollongong (Senior Professor Paul J Gollan, Associate Professor Martin O'Brien, and Honorary Professor Jonathan Hamberger) were present at these meetings and actively asked questions to participants with Senior Professor Paul Gollan Chairing the meetings. Due to COVID-19 restrictions, these focus groups were conducted via Zoom and organised by Luis Izzo, Managing Director, Sydney Workplace, Australian Business Lawyers & Advisors Pty Limited. Ethics approval was obtained and given by the University of Wollongong (2019/338).

The discussion and responses of the employer participants centred around five general questions:

1. Why employers have traditionally engaged casual employees in the retail industry?

2. Whether employers consider it desirable or necessary to continue to engage employees on a casual basis. If so, why?
3. Whether employers consider it desirable or necessary to engage employees regularly as casuals. If so, why?
4. Whether employers require an ability to change rosters for staff, even those who have been engaged for some time?
5. Do these organisations engage employees part-time? If not, why not?

Section 2 – A summary of types of participants in the focus groups

There were eleven participants in the 2 (two) focus groups from a wide range of different retailers. A summary of the participants is below.

A is the Head of Workplace Relations of a large retail conglomerate composed of a number of different chains, employing over 10,000 employees in total, the majority of whom are casuals. About 60-80% of casuals work fairly regular hours. The business has a number of peak periods throughout the year. It takes on an additional 3,000 casuals for the last three months of the year. Some of these casuals stay on as regulars.

B is the People Engagement Manager and Business Partner of a retail chain that employs over 1500 employees – about half of whom are casuals. There are about 300 full-timers and 500 part-timers. Employees are employed pursuant to the GRIA. Casuals are taken on to deal with peaks. Some Xmas casuals may stay afterwards. Casuals tend to be students who work as casuals for the company while they are at school and university ‘until they get a proper job.’

C is a Human Resources Business Partner of a retail chain (with about 600 employees (all employed under the GRIA)). 500 of these are casuals; about 20 are part-timers the rest full-timers). Casuals work an average of 12 hours a week (but could go up to 38 in a peak period e.g., before Xmas).

D is the General Manager, HR for a chain of eyecare stores. Only about 10% of their staff are casuals.

E is the Manager, People and Culture for a chain of florists. About 90% of their retail staff is casual.

F is the Head of Human Resources for a café franchise group. 75-80% of employees in the stores would be casual. In the company, stores there would be a lower proportion of casuals, with a mix of part-timers as well.¹

¹ It is acknowledged that participant **F** is covered by the Restaurant Industry Award and not the GRIA. They are included in this research for illustrative purposes and this has been taken into account in the analysis.

G is the Group General Manager for a chain of pharmacies and other stores, some of which are covered by the GRIA. They have about 18-20% casuals.

H is the HR Manager for a camera company. It has only one 'true casual'.

I and **J** are the Employee Relations Manager and Employee Relations Advisor respectively of a supermarket and liquor chain. Their company has between 35-40% of casuals, though this would fluctuate according to demand.

K is a licensee of a phone store. About 30% would be casuals.

Section 3 – A summary of the themes that emerged from the focus groups

Three main themes emerged from the focus groups.

- 1. Award rules around the employment of part-timers are seen as restrictive and act as a disincentive to employing more employees on a non-casual basis, especially change of rosters and overtime provisions.**

C described the award provisions relating to part-timers as '*very inflexible*'. She contrasted the ease with which her company was able to change the rosters for permanent full-time staff with the difficulties they had with part-timers '*because the award does not have those limitations that it does have for part-timers*' (for example around their personal circumstances).

C also said that it would be '*great*' if part timers could work additional hours without it constituting overtime. '*That they could work up to 38 hours a week if required and it was paid at an ordinary rate.*' She noted that at Xmas the company offered casuals additional hours up to 38 per week. For part-timers if they wished to work 38 hours, they had to enter into a '*specific fixed term contract*' at 38 hours with an agreed roster. If they could, they would rather offer the extra hours to their permanent part-time employees (who are more experienced) rather than to the casuals.

C said it would be preferable if the part-time provisions that applied in New Zealand (NZ) could apply in Australia. In NZ, part-timers can work up to 38 hours without the payment of overtime.

A said her company's enterprise agreement had some flexibilities that made it easier for her company to engage part-timers by allowing changes to the pattern (not the number) of hours. They found the administrative impact of the rostering conditions in the award '*challenging*'. This was complicated by the capacity to make a '*mutual variation*', which could then impact pay.

B said if there was more hours flexibility, her company might employ more part-timers as opposed to casuals. '*The consultation period on changing anybody's fixed hours is really prohibitive to a retail business.*' She gave an example of a situation she was currently dealing

with where a group of employees had been working part-time, five hours a day Monday to Thursday, and simply refused to make any changes. When it was put to her that, the award appeared to allow a part-timer's roster to be changed (with seven days' notice). She said that there were *'ifs and buts and their personal circumstances and then you get the union involved and it's not as easy as that....the amount of hoops a business has to go through to change a roster is just hard and it's just easier to backfill with casual people, because you can then look at the business requirements in that specific environment.'*

B also said the need to record mutually agreed variations in writing was in practice not realistic – *'it's just not what happens in real life'*. **B** did agree that an award provision that allowed the company and a part-time employee to vary their hours temporarily by mutual consent would solve the problem for her business. She agreed that for changes in the permanent roster there should be notice and an opportunity to question the proposed change and take it further *'if it doesn't suit'*.

F said employing casuals were seen as *'easy'* by franchisees (who often speak English as a second language). They prefer to employ casuals because they do not have to worry, especially about rules around overtime. **F** said it was *'really complicated'* to change rosters for part-timers without incurring overtime, whereas it is very easy for casuals.

D said that for an industry, that has fluctuations around times of the year and trading patterns, the award does not offer much flexibility around part-time employment. Casuals are used to compensate for this lack of flexibility.

D also said they would be more likely to employ non-casuals if there was more flexibility with regard to work patterns. They would be happy to commit to giving someone 20 hours a week but could not always guarantee the same days each week. In addition, it would help to have the ability to *'flex up'* without having to pay overtime rates. **E** agreed on the *'flex up'* proposition.

E said getting changes agreed upon in writing was an administrative burden, especially for franchisees whose first language is not English.

J said they would want more flexibility with regard to rostering in the award. It was impractical to require every change in the pattern of work to be in writing. In their enterprise agreement, they have a *'standing consent'* arrangement that the employee is willing to change their regular pattern of work (which can be withdrawn at any time). There is therefore no need to put each change in writing. Additional hours are not deemed overtime (but may be refused).

2. Many employees prefer to work as casuals, because of the flexibility and the extra casual loading. Relatively few employees choose to convert to non-casual employment, when given the choice.

I emphasised that there *'was a huge pool of people who want to work casually'* in retail mainly because of the flexibility and the casual loading. This was particularly true for

students that require flexible arrangements to fit into academic time demands, and older workers who are 'semi-retired'.

A said her company had a casual conversion clause but she had '*not seen one yet*'. She said that casuals often don't want to work as permanents '*because the pay rate isn't the same*'. Casuals were typically either students or semi-retirees – and were mainly interested in '*the dollars in the pocket*'.

C said her company had some casuals who have been employed for over 10 years but have had no one take up casual conversion. Casuals had not been willing to convert to part-time or full time because of '*the inflexibility around the roster and also the salary*'.

F said that as well as the loading casual staff often like the additional flexibility (though their ability to refuse shifts is limited by being rostered).

G said that permanent part-time work tended to attract people who wanted a regular pattern of hours because of other commitments such as family responsibilities whereas students were often quite happy to work quite 'unfamily friendly' hours.

B said her company had had very few casuals interested in converting to full-time or part-time, especially when they looked at changing rate of pay and the inflexibility. University students wanted to be able to change their availability every few months.

F said there had been no take-up of casual conversion in her company, despite the offer being made.

E said there had only been one employee taking up the offer of conversion in his company.

D said there had been '*a handful*' of employees who had requested conversion, but only one or two had taken it up when they realised they would lose the loading.

G said employees were reluctant to convert if it meant giving up the casual loading. There had only been one or two in the retail business. However, she said that they offered casual conversion in their distribution centres on a six-monthly cycle and some employees chose to convert for '*(job) security and permanency*'. (In the Distribution Centres in her business, the casuals are employed through a third party and are treated very differently).

K said most casuals in her business did opt to convert to permanent after 12 months.

3. While many casuals are used to respond to peak periods, many work fairly regular hours

A said that about 60 – 80 per cent of casuals work fairly regular hours. They take on an additional 3,000 casuals for the last three months of the year, some of whom stay on as '*regulars*'.

B said that 80 per cent of casuals could be described as '*regular and systematic*'.

C said about 60-80% of casuals work fairly regular hours. The business has a number of peak periods throughout the year. It takes on an additional 3,000 casuals for the last three months of the year. Some of these casuals stay on as regulars. Casuals are used to cater for peaks.

D said they employed a mix of *'regular casuals'* and *'true casuals'*.

E said about 24 per cent of their casuals were *'regular'* with the remaining students, who work around their studies.

F said most of the employees in the franchise stores were *'regular casuals'* (that is, that they work on *'a fairly regular basis'* with a regular roster.) in the company stores there would be a lower proportion of casuals, with a mix of part-timers as well.

G said most of their casuals would be *'regularly engaged'*.

I and **J** said about 70% of casuals would be employed on a regular basis.

K said about 30% of employees were casuals. Regular casuals would normally become permanent after 6 months.

Section 4 – A summary of the survey process conducted

Based on both the questions and popular/frequent responses received in the focus groups a survey was developed in Qualtrics software and was live from 4th November until 15th December.

The NSWBC and ARA both distributed the survey to their members by way of email in November/December 2020 after the survey went live.

A total of 316 responses was received in this time. Incomplete survey responses were removed from the sample as part of the data cleaning process, resulting in a sample of 182, with 79 from businesses identifying as being from the General Retail sector. The Business Owner was the survey respondent in 32 cases, followed by a Business Director (20), General Manager (9), and Human Resources Manager (8), Finance Manager (4), Manager (3) and other (3).

This report focuses on the responses received by employers who identified as being in the general retail industry.

Section 5 – A summary of the survey responses

1. Introduction

There were 79 complete responses to the survey from businesses in the General Retail sector. The distribution of these businesses by employment size and instrument governing employment is presented in Table 1. Small and Medium Enterprises (SMEs) dominate the sample distribution. Over two-thirds of the sample (67%) were from small businesses with SMEs comprising 87% of our sample. Crosschecking this against available Australian Bureau of Statistics data confirms that SMEs comprise over 90% of businesses within the Retail Trade division in Australia (ABS 2021).²

The vast majority of General Retail businesses in the sample utilised Modern Awards. Overall, 91% of businesses used Modern Awards only, 6% used both Modern Awards and Enterprise Agreements, and 2.5% used Enterprise Agreements only. This finding was influenced by business size, with 94% of small businesses, 88% of medium businesses and 80% of large businesses relying on Modern Awards only.

Table 1. Instrument Governing Employment - by Size of Business

Industry	Modern Award Only	Enterprise Agreement Only	Both	Total
Small	50	1	2	53
Medium	14	0	2	16
Large	8	1	1	10
Total	72	2	5	79

2. Prevalence of Casual and “Regular” Casual Employment

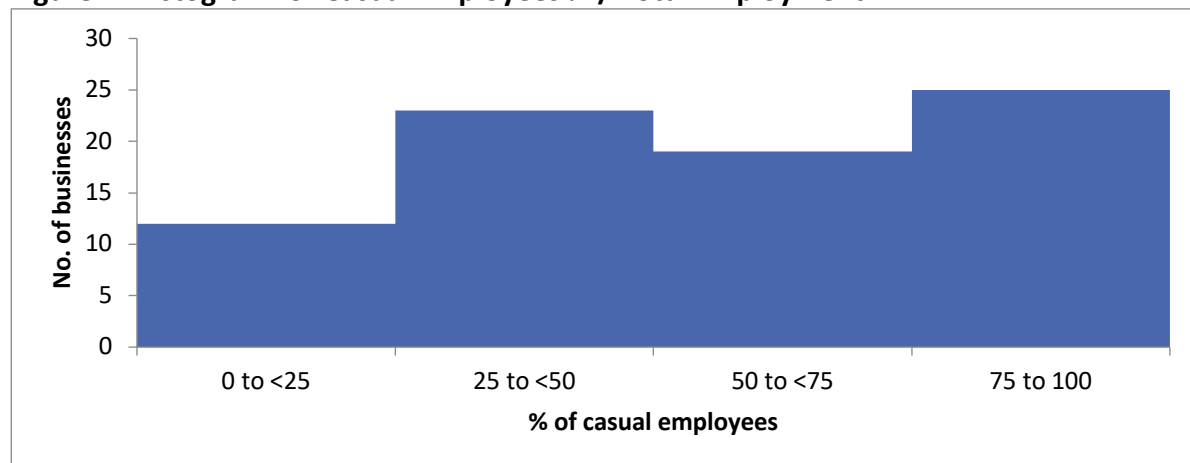
Respondents were asked how many full-time (non-casual), part-time (non-casual), and casual employees were typically employed by the business. Nearly all (75/79) General Retail businesses employed casual employees. Casual employment comprised an average of 55% of businesses’ total employment. However, further analysis indicated a high level of variation in the prevalence of casual employment across businesses in the sample, with a standard deviation of 29³.

² Small enterprises are defined as fewer than 20 employees, medium enterprises are defined from 20 to 199 employees. Large enterprises are defined having 200 or more employees.

³ In descriptive statistics, we are interested in the concepts of central tendency and variation. The most common measure of central tendency is the mean or average. The Variation then measures the extent to which our data is located near the mean or distributed relatively widely. The standard deviation is the most common measure of variation, measuring the average scatter of the data around the mean (Berenson *et al.* 2019). Often the standard deviation is compared to the magnitude of the mean in order to ascertain the relative size of variation. In our case, the standard deviation of 29 is over half the size of the mean value of 55. Put simply, it indicates that while, on average, casual employment represents 55% of employment in the General Retail businesses in our sample, it is not necessarily the norm, with the standard deviation indicating that there is relatively wide variation in the percentage of casual employees across our sample. This is subsequently depicted graphically in Figure 1, which demonstrates this wide variation in the prevalence for casual employment as a percentage of total employment in the sample of businesses.

Figure 1 breaks down this variation further, by showing the number of businesses in our sample employing fewer than 25% casual employees, 25 to <50%, 50 to <75%, and at least 75% casual employees as a proportion of their total employment. For example, 12 businesses employed fewer than 25% casual employees, 23 employed between 25 and 50%, 19 employed between 50 and 75%, and 25 businesses employed at least 75% casual employees, as a proportion of their total employment.

Figure 1. Histogram for Casual Employees % / Total Employment



Further statistical testing using ANOVA testing was done to determine if the percentage of casual employees within businesses differed by instrument governing employment or business size, however, results indicated that there was no statistically significant difference.

Employers were also asked for the number of casual employees employed on a “regular and systematic basis for at least six months”. On average, these regular casuals comprised approximately two thirds (65%) of a General Retail business’ total casual employment.

A relatively large standard deviation of 35 indicated a wide variation in this measure across businesses. For example, of the 75 businesses employing casuals, 10 stated they had no regular casuals, a further 10 stated they had exactly 50%, while 22 businesses indicated that 100% of their casuals were deemed to be employed on a regular and systematic basis. This finding would seem to confirm views from participants in our focus groups.

In addition, approximately a quarter (24%) of General Retail businesses stated that their regular casuals differed to short-term casual employees in terms of demographic profile or other observable characteristics. Optional comments describing these differences typically sited skill levels, student status, age and experience.

3. Sources of Fluctuations in Casual Employment Numbers

Businesses that employed casuals were asked about the main sources of fluctuations in casual employment numbers throughout a typical year. Various options were provided with respondents allowed to provide multiple responses. Results from Table 2 showed that regular seasonal demand changes was identified as the most important source of fluctuations with ad hoc or unpredictable demand changes ranked the least important. Notably, business or market conditions were not the only source of casual employment fluctuations, with the availability of casual employees ranked as the equal second popular response.

Table 2. Main Source of Fluctuations in Casual Employment Numbers in Typical Year – Raw Count and Ranking

	Count	Rank
Regular seasonal demand changes	38	(1)
Availability of casual employees	26	(=2)
Do not typically experience fluctuations	26	(=2)
To cover departing employees or other employee movements	23	(4)
Ad Hoc / Unpredictable changes to demand	22	(5)

4. Reasons for Employing Casuals

Businesses were asked to rate the importance of a number of factors in their decision to employ casuals, from zero (no importance) to 10 (extremely important), with the mean and rank of these results reported in Table 3. The flexibility to vary weekly work hours in response to customer demand ranks as the most important reason for employing casuals. Echoing results from the previous section, the importance of labour supply is also prominent, with employee preferences for casual employment ranking as the second most important reason for employing casuals. The ability to “plug gaps” in the roster, ease of employing casual employees compared to non-casual employees, engagement for shorter shifts, and flexibility to engage or disengage on a weekly basis were all deemed important, providing a mean score above 5. Finally, costs considerations were deemed the least important reason for employing casuals. Again, this would confirm views expressed in the focus groups.

Table 3. Reasons for Employing Casuals – Mean of Raw Score (0 to 10) and Rank

	Mean Score	Rank
Flexibility to vary weekly work hours in response to customer demand	7.9	(1)
Employee preference for casual employment	6.7	(2)
To “plug gaps” in the roster	6.1	(3)
Easier than employing people on part-time or full-time (non-casual) status	5.7	(4)

Engagement for shorter shifts	5.6	(5)
Flexibility to engage or not engage employee on a weekly basis	5.5	(6)
The provisions within the relevant Modern Award make it preferable to employ casuals rather than part-time or full-time (non-casual) employees	4.6	(7)
Easier to terminate casual engagements than part-time or full-time (non-casuals)	4.3	(8)
Casual employees are more motivated to present to work than part-time and full-time (non-casual) employees (if they don't show up they don't get paid)	4.2	(9)
Tradition or custom	3.1	(10)
Lower cost than non-casual employees	2.4	(11)

5. Casual Conversion Issues

Over half (57%) of General Retail businesses had offered casual conversion to part-time or full-time employment. Of those businesses that had offered the casual conversion, on average just over half (52%) of employees had refused the offer. Loss of casual loading was the main reason provided by employees for turning down the casual conversion in over 50% of businesses, followed by loss of flexibility and choice of shifts. In contrast, only 9% of General Retail businesses had refused casual conversion requests from employees. It was suggested by the survey respondents that the main reasons provided were financial (loss of income) or that there was not enough stable work patterns to offer continuing employment.

6. Impediments to Part-time and Full-time (Non-Casual) Employment Growth

Respondents were asked, "If certain employment conditions in your Modern Award could be changed, would you employ a greater percentage of your workers on a part-time or full-time (non-casual) basis and fewer on a casual basis?" After excluding those businesses that did not employ casuals and those covered by Enterprise Agreements only, 21% of businesses stated "yes", 52% stated "maybe", and 27% said "no".

Those that answered "yes" or "maybe" were asked to rate the importance of various issues as barriers to employing a greater percentage of their workers on a part-time or full-time (non-casual) basis on a similar 0 to 10 scale as that used in section 4. All options below have a mean score above 5 indicating that they were all important. In terms of rankings, costs of overtime if weekly fixed hours for part-time employees are exceeded was the largest impediment to employing workers on a non-casual basis, followed by various complexities associated with changing fixed rosters, Modern Award compliance, and individual flexibility arrangements. Costs associated with paid leave ranked as the least important barrier. These results reflect the comments and views of our focus group participants.

Table 4. Barriers to Employing a Greater Percentage of Workers on a Part-time or Full-time (Non-casual) Basis - Mean of Raw Score (0 to 10) and Rank

	Mean Score	Rank
Costs of overtime if weekly fixed hours for part-time employees are exceeded	7.4	(1)
Complexities in changing fixed roster of days / hours	7.3	(2)
General Modern Award compliance complexities	6.9	(3)
Individual flexibility arrangement complexities	6.3	(4)
Staff reluctance to convert from casual to permanent part-time status	5.7	(5)
Difficulties in dismissing part-time or full-time (non-casual) employees	5.4	(6)
Costs associated with paid leave	5.3	(7)

Section 7 –The Authors background and experience

Senior Professor Paul J Gollan

Professor Paul J. Gollan holds an MSc (Econ) and PhD from the London School of Economics. He is currently a Senior Professor of Management in the Faculty of Business and Law, and Academic Director of the Executive MBA at the University of Wollongong. Previously he was Pro Vice Chancellor (South East Asia), Dean of Academic Programs (INTI) and MBA Director at Sydney Business School, University of Wollongong. He has been an Honorary Adjunct Professor at MGSM and Visiting Professor at Kings College London. Additionally, he was Professor of Management and the Director of The Australian Institute for Business and Economics in the Faculty of Business, Economics and Law at the University of Queensland and a Professor of Management and Associate Dean (Research) in the Faculty of Business and Economics at Macquarie University. He has also been a Visiting Professor in the Department of Management at the London School of Economics and Adjunct Professor at the Macquarie Graduate School of Management and a Visiting Senior Fellow at the Australian School of Business at the University of New South Wales. Previously he was a Lecturer in the Department of Industrial Relations at the London School of Economics.

He has lectured in industrial relations and human resource management at a number of universities and colleges throughout the United Kingdom and Australia including the University of Queensland, University of New South Wales (AGSM), Macquarie University, University of Sydney in Australia and the LSE, Imperial College London and Kings College London in the UK. Paul has published 17 books in the fields of human resources and industrial relations and written over 30 book chapters and 55 refereed articles in leading academic journals. He is also co-editor of *Advances in Industrial and Labor Relations*.

He is a Fellow of the Australian Human Resources Institute and a Chartered Fellow of the Chartered Institute of Personnel and Development (UK). He has consulted for a number of leading corporations and organisations in the UK and Australia. He is a Trustee of the Committee of Economic Development Australia (CEDA).

Associate Professor Martin J O'Brien

Associate Professor Martin O'Brien is a labour economist, Director of the Centre for Human and Social Capital Research, and Director of the MBA program at the Sydney Business School, University of Wollongong. He has a long record of accomplishment of published labour market related research in economics and business management journals, as well as being an author of *Basic Business Statistics*, a leading textbook in tertiary statistics education. He has been an expert witness in five Fair Work Commission cases since 2015 and one Western Australia Industrial Relations Commission case.

Honorary Professor Jonathan M Hamberger

Jonathan Hamberger has been a Senior Deputy President of the Fair Work Commission (and its predecessors) since 2004. Prior to his appointment to the Commission, he spent over 20 years working as a policy adviser to Federal and State governments and as a senior public sector manager. He has an MA from Oxford University in Philosophy, Politics and Economics. He has a PhD from Macquarie University for his research into workplace dispute resolution in Australia.

CV's are attached for each author

Section 8 – Expert evidence code of conduct

I have been provided with a copy of the Harmonised Expert Witness Code of Conduct published by the Federal Court of Australia.

I have read, adhered to and agree to be bound by the Code of Conduct with respect to the provision of this report and agree to comply with any rules of the Fair Work Commission with respect to the report.

Senior Professor Paul J Gollan

References

ABS (2021) *Counts of Australian Businesses, Including Entries and Exits, July 2016 to June 2020*. Available at: <https://www.abs.gov.au/statistics/economy/business-indicators/counts-australian-businesses-including-entries-and-exits/latest-release> (viewed 8 March 2021).

Berenson, Levine, Krehbiel, Stephan, O'Brien, Jayne, Watson (2019) *Basic Business Statistics: Concepts and Applications* (5th Ed), Pearson Education Australia.

Dear [XXXX]

[INSERT ORGANISATION NAME] is participating in an academic research project to better understand casual employment practices in the retail and security industries.

The project is being conducted by the University of Wollongong. Once completed, the project will provide information to help inform policy decisions regarding the industry more broadly.

This type of research can be invaluable. It will help guide [INSERT ORGANISATION NAME] policy and advocacy platforms for years to come in relation to casual employment regulation, so we can help business thrive (particularly as we come out of COVID-19). However, it is critical we get the industry's help and support.

It's the operators in the industry who have the best knowledge of employment practices and we need your support to ensure we gather accurate information.

With this in mind, I would like to invite you to participate in the following short 5-7 minute survey. Whilst the survey is focused on retail and security businesses, other businesses can also participate should they wish.

https://uow.au1.qualtrics.com/jfe/form/SV_5tXWeUpc7JaI3LD

The Survey is hosted by the University, is entirely confidential and anonymous and your identity will not be collected by the University's research team.

We really need your help, so we can identify the real issues in your industry and help push the case for improved employment outcomes in these industries.

Please don't hesitate to contact XXX if you have any queries. Otherwise we look forward to you completing the survey and having your say about casual employment practices heard!



Casual Employees survey

iQ Score: Great

Published

Default Question Block

Block Options

Q1 What is your position description?

- Director
- Owner
- General Manager
- HR Manager / Officer
- Manager
- Finance Manager / Officer
- Other (please state)

Q2 What industry does the business operate in?

- General Retail
- Motor Vehicle and Fuel Retail
- Security Services
- Other (please state)

Q5 What instrument mainly governs the employment of your employees?

- Modern Award
- Enterprise Agreement
- Both
- Neither



Display This Question:
If False



Q08 Approximately how many employees are typically employed by the business?



	Number of employees
Full-time (non-casual)	<input type="text"/>
Part-time (non-casual)	<input type="text"/>
Casual	<input type="text"/>

Q29 Approximately how many employees are typically employed by the business? (enter 0 if not applicable)



	Number
Full-time (non-casual)	<input type="text"/>
Part-time (non-casual)	<input type="text"/>
Casual	<input type="text"/>

Q12 Approximately what percentage of your casual employees have been employed on a regular and systematic basis for at least 6 months?



Q13 In a typical year what is the main source of fluctuations in your casual employment numbers ? (multiple responses are allowed)



- Regular seasonal demand changes
- Ad hoc / unpredictable changes to demand
- Availability of casual employees
- To cover departing employees or other employee movements
- We do not typically experience fluctuations in casual employment numbers
- Other (please state)

■ Q16 Is the demographic profile or other observable characteristics of *regular / long-term* casual employees (employed > 12 months) significantly different to *short-term* casual employees?

⚙️ Yes
 No

↳ **Display This Question:**

If Is the demographic profile or other observable characteristics of regular / long-term casual empl... Yes Is Selected

■ Q17 Please describe the main demographic or other observable differences between your regular / long-term casual employees and your short-term employees

⚙️

■ Q18 Using a score between 0 (no importance) to 10 (extremely important) please rate your reasoning or rationale for why you have traditionally employed casual employees. (please rate all sections by dragging the slider to your chosen position)

	0	1	2	3	4	5	6	7	8	9	10
Flexibility to vary weekly work hours in response to customer demand											
Flexibility to engage or not engage employee on a weekly basis											
To "plug gaps" in the roster											
Engagement for shorter shifts											
Lower cost than non-casual employees											
Tradition or custom											
Employee preference for casual employment											

<p>Easier than employing people on part-time or full-time (non-casual) status</p>																				
<p>Easier to terminate casual engagements than part-time or full-time (non casuals)</p>																				
<p>Casual employees are more motivated to present to work than part-time and full-time (non-casual) employees (if they don't show up they don't get paid)</p>																				
<p>The provisions within the relevant Modern Award make it preferable to employ casuals rather than part-time or full-time (non-casual) employees</p>																				

Q19 If you have offered casual conversion (to part-time or full-time employment), what percentage of the casual employees have refused this offer?

Enter % in below box

× Not applicable

Display This Question: ▼

Q20 What reason(s) did employees provide when refusing the casual conversion offer? (multiple responses allowed)

Loss of flexibility / choice of shifts

Loss of casual loading

Other

Unknown

■ Have you ever refused casual conversion requests?

Q21



- Yes
- No



Display This Question:

If Have you ever refused casual conversion requests? Yes Is Selected



■ What reason(s) did you provide for refusing the casual conversion request?

Q22



■ If certain employment conditions in your Modern Award or Enterprise Agreement could be changed, would you employ a greater percentage of your workers on a part-time or full-time (non-casual) basis and fewer on a casual basis?

Q23



- Yes
- Maybe
- No

Display This Question:

If certain employment conditions in your Modern Award or Enterprise Agreement could be changed, w... No Is Not Selected

Q24



Using a score from 0 (no importance) to 10 (extremely important) please rate the relevance of these issues as barriers to you employing a greater percentage of your staff on a part-time or full-time (non-casual) basis. (please rate all sections by dragging the slider to your chosen position)

	0	1	2	3	4	5	6	7	8	9	10
Complexities in changing fixed roster of days / hours											
Costs associated with paid leave											
Costs of overtime if weekly fixed hours for part-time employees are exceeded											
Difficulties in dismissing part-time or full-time (non-casual) employees											
Individual flexibility arrangement complexities											
General Modern Award compliance complexities											
Staff reluctance to convert from casual to permanent part-time status											

Q25



In the Federal Court case WorkPac Pty Ltd v Skene and WorkPac Pty v Rossato it was determined that an employee is not a casual employee for the purposes of the Fair Work Act if their employment contains a firm advance commitment as to the duration of the employee's employment or the days (or hours) the employee will work. Has this decision altered your attitude or approach to employing casual employees?

- Yes
- No



Display This Question:

If In the Federal Court case WorkPac Pty Ltd v Skene and WorkPac Pty v Rossato it was determined tha... Yes Is Selected



Q26



How has this decision altered your approach your attitude or approach to employing casual employees? (multiple responses allowed)

- Review / audit of work practices to ensure employees are correctly classified
- Change to the engagement or rostering practices to try avoid casual employees being identified as having a firm advance commitment as to their duration of employment or the days/hours they work
- Incorporate explicit information on employment documentation regarding what the 25% casual loading is for
- Increased efforts to convert those casual employees working in a regular and systematic fashion to part-time or full-time (non-casual) status
- Recruiting more casual employees
- Recruiting less casual employees
- Other (please state)

Q27



Have any of the following changes occurred as a result of the COVID-19 pandemic? (multiple responses are allowed)

- Increase in number of short-term casual staff employed
- Decrease in number of short-term casual staff employed
- Increase in number of regular / long-term casual staff employed
- Decrease in number of regular / long-term casual staff employed
- Increase in part-time or full-time (non-casual) staff employed
- Decrease in part-time or full-time (non-casual) staff employed
- Increase in employee requests for conversion from casual to part-time or full-time (non-casual) status
- Increased need to change weekly roster days or times
- No significant changes
- Other (please state)

[Add Block](#)



End of Survey

[Survey Termination Options...](#)



13 June 2019

PRIVATE AND CONFIDENTIAL
SUBJECT TO LEGAL PROFESSIONAL PRIVILEGE
BY EMAIL pgollan@uow.edu.au

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Dear Paul

REQUEST FOR RESEARCH PROPOSAL FOR SOCIAL, COMMUNITY, HOME CARE AND DISABILITY SERVICES INDUSTRY

I refer to my previous correspondence dated 3 April 2019.

Our firm is acting for the New South Wales Business Chamber (**NSWBC**) in relation to a proposal to vary the *Social, Community, Homecare and Disability Services Award 2010 (SHCDS Award)* to include a new type of employment, named a “flexible ongoing” employee.

Request for research

In order to assist the Commission in considering this proposal for a new type of employment, we wish to engage you to conduct research into:

- Why employers have traditionally engaged casual employees in this industry.
- Whether employers consider it desirable or necessary to continue to engage employees on a casual basis. If so, why?
- Whether employers consider it desirable or necessary to engage employees regularly as casuals. If so, why?
- Whether employers require an ability to change rosters for staff, even those who have been engaged for some time.

This is not an exhaustive list of issues. We are principally interested in understanding why employers engage regular casuals in this industry in the way they do.

We would also be interested in employee attitudes towards casual employment - although we understand there to be a significant amount of literature available in relation to this issue (including the literature filed in the Casual/Part time Fair Work Commission proceedings in 2017).

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Research stages

We would be eager for you to undertake the research identified on page 2 of your Proposal to ABLA dated 23 April 2019. This includes providing each of:

- a literature review;
- an online survey; and
- semi-structured interviews.

We consider that the research could be conducted in the following tranches:

Tranche 1

- ABLA to meet with Senior Professor Gollan in the week commencing 24 July 2019 to scope the work.
- ABLA to organise participants for Focus Groups (approximately 2, but possibly 3) in order to interview approximately 20 employers in depth.

Tranche 2

- Literature review conducted
- Focus Group meetings proceed
- Online survey tool to be built and distributed, following the benefit of the interviews

Tranche 3

- Report prepared

Importantly, ABLA wishes to ensure Tranche 1 is **concluded** before Tranches 2 and 3 proceed. Under this approach, if sufficient employer participants cannot be identified for Focus Group interviews (indicating a lack of engagement for this research project), we may cease the project at this time, without incurring further expense.

Costs

We are willing to engage you to perform the research work for the total costs previously quoted on 24 April 2019 and 27 April 2019 (for the respective employer participant numbers).

However, we wish to limit the costs for Tranche 1 to \$5,000. In this way, if the rest of the project does not proceed, minimal cost has been expended on the initial scoping project.

Timeframe

We wish to be able to file the evidence on 1 December 2019.

Accordingly, we would be grateful if a final report can be provided by 15 November 2019.

Additional matters

We wish to confirm that you will be personally engaged to perform the work (whether invoicing directly or through the Sydney Business School) and that you will supervise and have carriage of this project.

We anticipate providing some context to this research by providing statistical evidence from the ABS regarding:

- the prevalence of casual employment in this industry; and
- the periods for which casual employees are employed in this industry (ie. short periods vs longer periods).

The work will need to be conducted in accordance with the Federal Court Practice Notes pertaining to the provision of expert evidence for Court proceedings. We will provide a copy of this Practice Note to you for your reference.

Please don't hesitate to give me a call to discuss any of the above.

I look forward to hearing from you.

Yours sincerely



Luis Izzo

Managing Director - Sydney Workplace

Australian Business Lawyers & Advisors Pty Limited

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9 March 2021

PRIVATE AND CONFIDENTIAL
SUBJECT TO LEGAL PROFESSIONAL PRIVILEGE
BY EMAIL pgollan@uow.edu.au

Senior Professor Paul Gollan
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Dear Paul

REQUEST FOR RESEARCH PROPOSAL FOR RETAIL INDUSTRY

I refer to my previous correspondence dated 13 June 2019, regarding the request for research to be conducted with respect to the Social, Community, Homecare and Disability Services Industry.

As you know, in June 2020, we verbally agreed to change the industry that would be subject to the this research from the Social, Community, Homecare and Disability Services Industry to the Retail Industry.

The purpose of this letter is to formally confirm the variation to our request and to confirm the request for a research report enquiring into the following matters.

Request for research

In order to assist the Commission in considering a proposal for variations to the General Retail Industry Award (**Award**) we wish you to conduct and report upon research into:

- Why employers have traditionally engaged casual employees in this industry.
- Whether employers consider it desirable or necessary to continue to engage employees on a casual basis. If so, why?
- Whether employers consider it desirable or necessary to engage employees regularly as casuals. If so, why?
- Whether employers require an ability to change rosters for staff, even those who have been engaged for some time.

This is not an exhaustive list of issues. We are principally interested in understanding why employers engage regular casuals in this industry in the way they do.

We would also be interested in employee attitudes towards casual employment - although we understand there to be a significant amount of literature available in relation to this issue (including the literature filed in the Casual/Part time Fair Work Commission proceedings in 2017).

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Research stages

The research initially requested by way of our 13 June 2019 terms of reference involved a request for:

- a literature review;
- an online survey; and
- semi-structured interviews.

The timeframe in which we wish to obtain the report has been materially brought forward, due to urgent proceedings currently before the Fair Work Commission. We accordingly wish to obtain the report by **Friday 12 March 2021** at the latest.

Having regard to this, we request that you only report upon the semi-structured interviews and online survey and identify matters arising from this research.

The work will need to be conducted in accordance with the Federal Court expert witness code of conduct. We have provided a copy of this Code to you previously for your reference.

Please don't hesitate to give me a call to discuss any of the above.

I look forward to hearing from you.

Yours sincerely



Luis Izzo

Managing Director - Sydney Workplace

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