
IN THE FAIR WORK COMMISSION - CASUAL TERMS REVIEW 2021 (AM2021/54)

Horse and Greyhound Training Award

1. This submission is filed on behalf of Australian Business Industrial (**ABI**) and the NSW Business Chamber (**NSWBC**) in the Casual Terms Award Review.
2. On 11 August 2021, the Full Bench issued a statement concerning the Review of 'Group 2' awards: [2021] FWCFB 4928 (**Statement**).
3. On 18 August 2021, the Australian Workers Union filed submissions concerning the Horse and Greyhound Training Award 2020 (**Horse and Greyhound Training Award**) in response to the Statement. These submissions respond to the AWU's submission in accordance with Directions made 24 August 2021.
4. ABI and NSWBC do not contest the AWU submission that clause 10.7 of Horse and Greyhound Training Award is more beneficial to employees than the NES casual conversion regime and is obviously a different entitlement.
5. We note that in Decision [2021] FWCFB 4144 at [36], the Full Bench found that relevant award terms are not 'inconsistent with' the *Fair Work Act 2009* (Cth) as amended merely because they differ from the newly enacted provisions. We do not, for the purposes of this submission, seek to contest that finding.
6. As noted in our primary submission however, the prospect of concurrent and different casual conversion regimes existing in both the Act and a relevant Award will give rise to considerable uncertainty and confusion, particularly where the concurrent casual conversion regimes overlap in time.
7. To that point, we refer to the finding of the Full Bench in [2021] FWCFB 4144 at [238] *Manufacturing Award*:

When this occurs, the employer will be faced with compliance with different and competing conversion requirements, and the operation of the award provision in that context will 'alter, impair or detract from', and thus be inconsistent with, the NES. Further, there can be no serious question that, by reason of the same circumstance, there would be uncertainty and difficulty concerning the interaction between the award and the NES. It may not be impossible to find a narrow route to simultaneous compliance with both sets of obligations, but there can be no doubt that difficulty and confusion would result for employers and employees.
8. On the basis of the above, ABI and NSWBC submit that in relation to the Horse and Greyhound Training Award (and in other awards where there is concurrent operation of multiple casual conversion regimes) the Full Bench should make necessary variations so as to ensure that the competing casual conversion regimes in both the NES and under the award do not have concurrent operation.

27 August 2021