



STATEMENT

Fair Work Act 2009
Clause 48 of Schedule 1

Casual terms award review 2021 (AM2021/54)

JUSTICE ROSS, PRESIDENT

MELBOURNE, 9 APRIL 2021

*Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Act 2021—
casual amendments—review of modern awards.*

1. Background

[1] On 27 March 2021 the *Fair Work Act 2009* (FW Act) was amended by the *Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Act 2021* (amending Act).

[2] In summary, the amendments:

- introduce a definition of ‘casual employee’
- repeal the definition of ‘long term casual employee’ and introduce a new definition of ‘regular casual employee’
- introduce a new casual conversion National Employment Standard that:
 - requires employers, other than small business employers, to offer eligible casual employees conversion to full-time or part-time employment (subject to the employer having reasonable grounds not to do so), and
 - allows eligible casual employees (including casual employees of a small business employer) to request conversion to full-time or part-time employment
- provide for the Fair Work Commission (Commission) to conciliate disputes about casual conversion and allow some disputes about casual conversion to be dealt with in court as small claims
- require the Fair Work Ombudsman to produce a Casual Employment Information Statement that employers must give to their casual employees

- provide for courts to offset any casual loading paid to an employee against claims for unpaid relevant entitlements, and
- provide for the Commission to vary enterprise agreements and modern awards to resolve difficulties in their interaction with the new casual employee definition or casual conversion arrangements.

[3] Clause 48 of Schedule 1 to the FW Act requires the Commission to review and vary modern awards on the basis of their interaction with the new casual employee definition and casual conversion arrangements in the FW Act as amended (the Casual terms review):

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;

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 as 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 a 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] The Commission must complete its review of the ‘relevant terms’ in every modern award that contains such terms within the period of 6 months after commencement of the casual amendments (ie by 27 September 2021) (cl.48(1)).

[5] Where review of a relevant term finds an ‘inconsistency’ or ‘difficulty or uncertainty’ within the meaning of clause 48(2), the Commission must make a determination varying the modern award as soon as is reasonably practicable.

2. Proposed approach to the Casual terms review

[6] There are currently 121 modern awards and a further 34 state reference public sector or enterprise modern awards. Of these 155 modern awards, only 3 make no reference to ‘casual’ employment or ‘casual’ terms and conditions.¹

[7] The Casual terms review will be conducted in two stages.

[8] In the first stage of the Casual terms review a 5 member Full Bench will consider the nature and scope of the review required by clause 48 of Schedule 1 to the FW Act and will review relevant terms in a small initial group of modern awards that raise a range of possible interaction issues.

[9] The 5 member Full Bench will issue a decision on the outcome of its review of the initial group of awards and also determine the process for the second stage of the Casual terms review.

¹ The *Fire Fighting Industry Award 2020*, *Maritime Offshore Oil and Gas Award 2020* and *Seagoing Industry Award 2020* make no reference to ‘casual’ employment or to ‘casual’ terms and conditions. The *Australian Nuclear Science and Technology Organisation (ANSTO) Enterprise Award 2016* does not provide for ‘casual’ employment but contains some references to ‘casual’ terms and conditions. The *Australian Public Service Enterprise Award 2015* and *Parliamentary Departments Staff Enterprise Award 2016* provide for ‘irregular or intermittent’ employment, which attracts a ‘casual’ loading.

[10] In the second stage of the Casual terms review, a Full Bench of 3 members (a subset of the 5 member Full Bench) will review the remaining modern awards in convenient groupings.

2.1 First stage

[11] A discussion paper prepared by staff of the Commission will be issued shortly. The discussion paper will:

- provide some initial commentary on the Casual terms review
- identify relevant terms in the initial group of awards listed at [13] below and discuss the interaction between those terms and the FW Act as amended, and
- raise questions for interested parties to consider.

[12] Some preliminary issues in relation to the scope and nature of the Casual terms review are:

- the potential breadth of the phrase ‘relevant term’ and the requirement that the Review consider all such terms in each modern award
- what is meant in cl.48(2) by a relevant term in an award being ‘consistent’ with the FW Act as amended and by ‘uncertainty or difficulty’ relating to the interaction between the award and the FW Act as amended
- what is meant in cl.48(3) by making an award ‘operate effectively’ with the FW Act as amended
- whether the Commission need give any consideration in the Casual terms review to awards that exclude casual employment
- whether the modern awards objective in s.134 of the FW Act has any relevance to the Casual terms review, and
- whether in the course of the Casual terms review the Commission might also exercise its modern award powers under Part 2-3 of the FW Act to make incidental amendments to some award terms.

[13] The following initial group of 6 awards will be considered in the first stage of the Casual terms review:

- *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*, and
- *Fire Fighting Industry Award 2020*.

[14] Issues raised by the review of this initial group of awards are likely to include:

- whether existing award definitions of ‘casual employee’ or ‘casual employment’ should be retained in some form, or replaced with the new statutory ‘casual employee’ definition or a reference to it
- whether award model casual conversion clauses should be retained in some form, or replaced with a reference to the new casual conversion National Employment Standard
- whether award-specific casual conversion clauses should be retained in some form, or replaced with a reference to the new casual conversion National Employment Standard
- what other types of ‘relevant terms’ must be considered in the Casual terms review, and
- the implications of any award variations for existing employment arrangements and whether transitional arrangements may be needed.

2.2 Second stage

[15] After the first stage of the Casual terms review, the remaining modern awards will be divided into the groups set out in **Attachment A** for review by a 3 member Full Bench.

[16] For convenience, the award groupings are broadly based on the award stage groups from the 4 yearly review of modern awards. Due to the short timeframe for completion of the Casual terms review, 2 of the 4 yearly review groups of awards have been consolidated. The order in which the groups are to be considered has also been reversed, so that group 4 from the 4 yearly review will be considered first.

[17] Directions for the second stage of the Casual terms review will be issued in due course.

3. Next Steps

[18] Directions for lodging submissions in relation to the first stage of the Casual terms review will be issued with the discussion paper.

[19] A conference will be listed at **9:30am** on **Thursday 15 April 2021** to discuss the proposed process for conducting the Casual terms review. A listing notice and agenda will be published shortly.

[20] The Commission has established a dedicated [Major Cases](#) webpage for this matter.

[21] The Commission's award subscription service will be used to notify interested parties of updates during this matter such as deadlines for the filing of submissions, notices of listing and when any decisions or statements are issued. A dedicated subscription service called 'Casual terms award review 2021' has been established. Interested parties are encouraged to subscribe to receive notifications on the subscription services page on our website. Any questions about the subscription service can be sent to amod@fwc.gov.au.

PRESIDENT

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<PR728440>

Attachment A
Group 1

Award title	MA code
Aboriginal Community Controlled Health Services Award 2020	MA000115
Aged Care Award 2010	MA000018
Air Pilots Award 2020	MA000046
Aircraft Cabin Crew Award 2020	MA000047
Airline Operations-Ground Staff Award 2020	MA000048
Airport Employees Award 2020	MA000049
Amusement, Events and Recreation Award 2020	MA000080
Architects Award 2020	MA000079
Book Industry Award 2020	MA000078
Broadcasting, Recorded Entertainment and Cinemas Award 2020	MA000091
Building and Construction General On-site Award 2020	MA000020
Car Parking Award 2020	MA000095
Cemetery Industry Award 2020	MA000070
Children's Services Award 2010	MA000120
Dry Cleaning and Laundry Industry Award 2020	MA000096
Electrical, Electronic and Communications Contracting Award 2020	MA000025
Fast Food Industry Award 2010	MA000003
Food, Beverage and Tobacco Manufacturing Award 2020	MA000073
Funeral Industry Award 2020	MA000105
Hair and Beauty Industry Award 2010	MA000005

Hydrocarbons Field Geologists Award 2020	MA000064
Joinery and Building Trades Award 2020	MA000029
Journalists Published Media Award 2020	MA000067
Live Performance Award 2020	MA000081
Mannequins and Models Award 2020	MA000117
Meat Industry Award 2020	MA000059
Mobile Crane Hiring Award 2020	MA000032
Pest Control Industry Award 2020	MA000097
Plumbing and Fire Sprinklers Award 2020	MA000036
Professional Employees Award 2020	MA000065
Racing Clubs Events Award 2020	MA000013
Registered and Licensed Clubs Award 2020	MA000058
Restaurant Industry Award 2020	MA000119
Social, Community, Home Care and Disability Services Industry Award 2010	MA000100
Supported Employment Services Award 2020	MA000103
Surveying Award 2020	MA000066
Travelling Shows Award 2020	MA000102
Water Industry Award 2020	MA000113

Group 2

Award title	MA code
Alpine Resorts Award 2020	MA000092

Aluminium Industry Award 2020	MA000060
Ambulance and Patient Transport Industry Award 2020	MA000098
Animal Care and Veterinary Services Award 2020	MA000118
Aquaculture Industry Award 2020	MA000114
Asphalt Industry Award 2020	MA000054
Black Coal Mining Industry Award 2020	MA000001
Cement, Lime and Quarrying Award 2020	MA000055
Cleaning Services Award 2020	MA000022
Concrete Products Award 2020	MA000056
Corrections and Detention (Private Sector) Award 2020	MA000110
Cotton Ginning Award 2020	MA000024
Gas Industry Award 2020	MA000061
Graphic Arts, Printing and Publishing Award 2020	MA000026
Health Professionals and Support Services Award 2020	MA000027
Horse and Greyhound Training Award 2020	MA000008
Hydrocarbons Industry (Upstream) Award 2020	MA000062
Marine Tourism and Charter Vessels Award 2020	MA000093
Maritime Offshore Oil and Gas Award 2020	MA000086
Medical Practitioners Award 2020	MA000031
Mining Industry Award 2020	MA000011
Nurses Award 2020	MA000034

Oil Refining and Manufacturing Award 2020	MA000072
Passenger Vehicle Transportation Award 2020	MA000063
Pharmaceutical Industry Award 2020	MA000069
Pharmacy Industry Award 2020	MA000012
Poultry Processing Award 2020	MA000074
Premixed Concrete Award 2020	MA000057
Professional Diving Industry (Industrial) Award 2020	MA000108
Professional Diving Industry (Recreational) Award 2020	MA000109
Racing Industry Ground Maintenance Award 2020	MA000014
Rail Industry Award 2020	MA000015
Road Transport (Long Distance Operations) Award 2020	MA000039
Road Transport and Distribution Award 2020	MA000038
Salt Industry Award 2020	MA000107
Seafood Processing Award 2020	MA000068
Security Services Industry Award 2020	MA000016
Stevedoring Industry Award 2020	MA000053
Storage Services and Wholesale Award 2020	MA000084
Textile, Clothing, Footwear and Associated Industries Award 2020	MA000017
Timber Industry Award 2020	MA000071
Transport (Cash in Transit) Award 2020	MA000042
Vehicle Manufacturing, Repair, Services and Retail Award 2020	MA000089

Waste Management Award 2020	MA000043
Wool Storage, Sampling and Testing Award 2020	MA000044

Group 3

Award title	MA code
Banking, Finance and Insurance Award 2020	MA000019
Business Equipment Award 2020	MA000021
Clerks - Private Sector Award 2020	MA000002
Coal Export Terminals Award 2020	MA000045
Commercial Sales Award 2020	MA000083
Contract Call Centres Award 2020	MA000023
Dredging Industry Award 2020	MA000085
Educational Services (Post-Secondary Education) Award 2020	MA000075
Educational Services (Schools) General Staff Award 2020	MA000076
Electrical Power Industry Award 2020	MA000088
Fitness Industry Award 2020	MA000094
Gardening and Landscaping Services Award 2020	MA000101
Higher Education Industry-Academic Staff-Award 2020	MA000006
Higher Education Industry-General Staff-Award 2020	MA000007
Horticulture Award 2020	MA000028
Labour Market Assistance Industry Award 2020	MA000099
Legal Services Award 2020	MA000116

Local Government Industry Award 2020	MA000112
Marine Towage Award 2020	MA000050
Market and Social Research Award 2020	MA000030
Miscellaneous Award 2020	MA000104
Nursery Award 2020	MA000033
Port Authorities Award 2020	MA000051
Ports, Harbours and Enclosed Water Vessels Award 2020	MA000052
Real Estate Industry Award 2020	MA000106
Seagoing Industry Award 2020	MA000122
Silviculture Award 2020	MA000040
Sporting Organisations Award 2020	MA000082
State Government Agencies Award 2020	MA000121
Sugar Industry Award 2020	MA000087
Telecommunications Services Award 2020	MA000041
Wine Industry Award 2020	MA000090

Group 4—State Reference Public Sector and Enterprise Modern Awards

Award title	MA code
Aboriginal Legal Rights Movement Award 2016	MA000139
Airservices Australia Enterprise Award 2016	MA000141
Australian Broadcasting Corporation Enterprise Award 2016	MA000147
Australian Bureau of Statistics (Interviewers) Enterprise Award 2016	MA000143

Australian Capital Territory Public Sector Enterprise Award 2016	MA000146
Australian Federal Police Enterprise Award 2016	MA000142
Australian Government Industry Award 2016	MA000153
Australian Nuclear Science and Technology Organisation (ANSTO) Enterprise Award 2016	MA000144
Australian Public Service Enterprise Award 2015	MA000124
Australia Post Enterprise Award 2015	MA000137
Christmas Island Administration Enterprise Award 2016	MA000149
Chullora Printing Award 2015	MA000127
CSIRO Enterprise Award 2016	MA000148
GrainCorp Country Operations Award 2015	MA000138
Health Professionals, Medical Scientists and Support Services (Victoria) State Reference Public Sector Modern Award 2018	MA000157
Metropolitan Newspapers (South Australia and Tasmania) Printing Award 2015	MA000130
Northern Territory News Award 2015	MA000129
Northern Territory Public Sector Enterprise Award 2016	MA000151
Note Printing Australia Award 2016	MA000156
Nurses and Midwives (Victoria) State Reference Public Sector Award 2015	MA000125
Nurses (ANMF - Victorian Local Government) Award 2015	MA000131
Optus Award 2015	MA000133

Parliamentary Departments Staff Enterprise Award 2016	MA000145
Printing Industry – Herald & Weekly Times – Production Award 2015	MA000126
Queensland Newspapers Pty Ltd Printing (Murarrie) Award 2015	MA000128
Reserve Bank of Australia Award 2016	MA000140
Telstra Award 2015	MA000123
Victorian Government Schools Award 2016	MA000155
Victorian Government Schools - Early Childhood - Award 2016	MA00015
Victorian Local Government Award 2015	MA000132
Victorian Local Government (Early Childhood Education Employees) Award 2016	MA000150
Victorian Public Service Award 2016	MA000135
Victorian State Government Agencies Award 2015	MA000134
Viterra Bulk Handling and Storage of Grains, Pulses and Minerals Award 2015	MA000136