



**SOUTH AUSTRALIAN WINE INDUSTRY**  
ASSOCIATION INCORPORATED

24 August 2021

Vice President Hatcher  
Vice President Fair Work Commission

Via Email: [chambers.hatcher.vp@fwc.gov.au](mailto:chambers.hatcher.vp@fwc.gov.au), [AMOD@fwc.gov.au](mailto:AMOD@fwc.gov.au)

Dear Vice President Hatcher

**Re: AM2021/54 – Casual terms award review 2021**

**Background**

In accordance with the Statement [2021] FWCFB 5123 issued on 18 August 2021 in relation the Fair Work Commission's Casual terms award review, the South Australian Wine Industry Association (SAWIA) provides the following submission.

SAWIA is an industry association representing the interests of wine grape growers and wine producers throughout the state of South Australia. SAWIA is the oldest wine industry organisation in Australia and has existed, albeit with various name changes, since 1840. SAWIA is a registered association of employers under the South Australian *Fair Work Act 1994* and is also a Recognised State-Registered Association under the *Fair Work (Registered Organisations) Act 2009*.

SAWIA membership represents approximately 96% of the grapes crushed in South Australia and about 36% of the land under viticulture. Each major wine region within South Australia is represented on the board governing our activities.

SAWIA has a long-standing interest in employment and related policy areas. SAWIA's policy positions in relation to employment are proposed and endorsed by our Employee Relations Committee, which comprises of HR Executives and Senior Managers, some with national responsibilities, drawn from the membership.

We take a national lead on behalf of the Australian wine industry in relation to matters pertaining to industrial relations, including modern awards, vocational education, training and migration.

**The current casual employment definition and conversion terms**

The Wine Industry Award 2020 currently contains the following provisions:

*"11.1 A casual employee is an employee who is engaged and paid as a casual employee."*

*"11.4 Casual conversion to full-time or part-time employment*

*(a) A casual employee, other than an irregular casual employee, who has been engaged by a particular employer for a sequence of periods of employment under this award during a period of 12 months, thereafter has the right to elect to have their contract of employment converted to full-time or part-time employment if the employment is to continue beyond the conversion process.*

*(b) Every employer of such an employee must give the employee notice in writing of the provisions of clause 11.4 within 4 weeks of the employee having attained such period of 12 months. The employee retains their right of election under clause 11.4 if the employer fails to comply with clause 11.4(b).*

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**South Australian Wine Industry Association Incorporated**

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(c) Any such casual employee who does not within 4 weeks of receiving written notice elect to convert their contract of employment to full-time or part-time employment is deemed to have elected against any such conversion.

(d) Any casual employee who has a right to elect under clause 11.4(a), on receiving notice under clause 11.4(b) or after the expiry of the time for giving such notice, may give 4 weeks' notice in writing to the employer that they seek to elect to convert their contract of employment to full-time or part-time employment, and within 4 weeks of receiving such notice the employer must consent to or refuse the election but must not unreasonably so refuse.

(e) Once a casual employee has elected to become and been converted to a full-time or part-time employee, the employee may only revert to casual employment by written agreement with the employer.

(f) If a casual employee has elected to have their contract of employment converted to full-time or part-time employment in accordance with clause 11.4(d), the employer and employee must, subject to clause 11.4(d), discuss and agree on:

(i) which form of employment the employee will convert to, being full-time or part-time; and

(ii) if it is agreed that the employee will become a part-time employee, the number of hours and the pattern of hours that will be worked, as set out in clause 10—Part-time employees.

(g) An employee who has worked on a full-time basis throughout the period of casual employment has the right to elect to convert their contract of employment to full-time employment and an employee who has worked on a part-time basis during the period of casual employment has the right to elect to convert their contract of employment to part-time employment, on the basis of the same number of hours and times of work as previously worked, unless other arrangements are agreed on between the employer and employee.

(h) Following such agreement being reached, the employee converts to full-time or part-time employment.

(i) Where, in accordance with clause 11.4(d) an employer refuses an election to convert, the reasons for doing so must be fully stated to and discussed with the employee concerned and a genuine attempt made to reach agreement.

(j) For the purposes of clause 11.4, an irregular casual employee is one who has been engaged to perform work on an occasional or non-systematic or irregular basis.

11.5 An employee must not be engaged and re-engaged to avoid any obligation under this award."

SAWIA agrees with the FWC's assessment of the above provisions as set out in Attachment A of the Statement.

### **The proposed amendments**

SAWIA supports the FWC's provisional view that the terms should be deleted from the Wine Industry Award 2020 and replaced with the references to:

- casual employee has the meaning given by section 15A of the *Fair Work Act 2009* (the Act); and
- the NES casual conversion entitlements in order to satisfy the requirement in cl.48(3) of Schedule 1 of the Act.

Yours sincerely

**ADRIAN RICHARDS**  
Business and Workplace Adviser

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