

## **Part time and casual employment common issue**

### **AM2014/196 and AM2014/197**

#### **Further submission by the Australasian Meat Industry Employees Union (AMIEU)**

1. The AMIEU makes these submissions in response to the Decision of the Full Bench<sup>1</sup> dated 24 November 2017 as concerns the Meat Industry Award 2010.
2. These submissions rely on the submissions filed by the AMIEU on 2 August 2017.
3. We thank the Full Bench for the opportunity to provide additional submissions concerning adjustments to the proposed model Casual Conversion Clause as pertains to meat processing establishments covered by the Meat Industry Award 2010.

#### **AMIEU Casual Conversion Clauses**

4. In the AMIEU's submissions of 2 August 2017, a proposed Casual Conversion Clause suitable for meat processing establishments was provided at Annexure 1.
5. The proposed Casual Conversion Clause at Annexure 1 sought to deal with the unsuitability of 38 hour averaging in meat processing establishments using the daily hire categorisation.
6. The AMIEU has taken the opportunity to further consider and propose an alternative Casual Conversion Clause, which is set out in Annexure A to these submissions.
7. The alternative Casual Conversion Clause in Annexure A departs from the AMIEU's earlier proposed casual conversion clause in two ways:
  - a. Firstly, all references to 38 hour averaging have been removed in favour of a 'like for like' conversion from casual employment into a reasonably comparable category of permanent employment: be it full-time, daily hire, part-time or part-time daily hire employment.

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<sup>1</sup> [2017] FWCFB 6181.

- b. Secondly, the reference to clause 14 of the Meat Industry Award 2010 has been removed.
8. In support of the AMIEU's contention that 38 hour averaging be removed, Mr Smith has provided evidence as follows.
- a. Daily hire provides for considerable flexibility, such as no work or work on only one, two, three or four days per week. Such arrangements can be for a brief period, for a number of weeks or, theoretically, for the life of the employment.<sup>2</sup>
- b. Daily hire, by definition, does not provide an average of 38 hours per week.<sup>3</sup>
- c. If a strict 38 hour average was to dictate the category of employment a regular casual would convert to, we would end up with some dubious and anomalous circumstances.<sup>4</sup>
- d. In meat processing establishments using daily hire, irregular casuals are generally used on an 'ad hoc' or 'as needs' basis and the regular casuals generally work the same or similar hours to the daily hire workers.<sup>5</sup>
- e. Those daily hire workers do not work an average of 38 hours per week and, as such, neither do the regular casual employees working those same hours.<sup>6</sup>
- f. Even though those daily hire workers work less than 38 hours per week on average, they are not classified as part-time daily hire.<sup>7</sup>

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<sup>2</sup> Statement of Graham Smith 2 August 2017, paragraph 18.

<sup>3</sup> Second statement of Graham Smith 22 December 2017, paragraph 3.

<sup>4</sup> Second statement of Graham Smith 22 December 2017, paragraph 6.

<sup>5</sup> Second statement of Graham Smith 22 December 2017, paragraph 8.

<sup>6</sup> Second statement of Graham Smith 22 December 2017, paragraph 9.

<sup>7</sup> Second statement of Graham Smith 22 December 2017, paragraph 10.

g. The model Casual Conversion Clause proposed by the Full Bench, as presently drafted, would have a regular casual employee converting to a *part-time* daily hire categorisation, notwithstanding:

- i. the regular casual is working the same hours as daily hire workers, and
- ii. part-time daily hire may not actually exist in practice (please see paragraph 13 of my first statement).<sup>8</sup>

h. In such a circumstance, those workers cannot integrate into the operation with the rest of the workforce, creating a completely anomalous situation.<sup>9</sup>

9. It is for these reasons that the AMIEU has provided two alternatives to deal with the issues of averaging for meat processing establishments that use daily hire.

10. The first alternative, outlined at Annexure 1 to the AMIEU's submissions dated 2 August 2017, proposed conversion to permanent employment based on the work actually on offer by the employer rather than with reference to the average hours actually worked.

11. The second alternative, expressed at Annexure A to these submissions, proposes conversion to a reasonably comparable category of permanent employment which would effectively leave the employer open to utilise whichever category of hire the meat processing establishment uses.

#### **Submissions confined to live issues**

12. The AMIEU has confined its submissions and statement to meat processing establishments covered by the Meat Industry Award 2010.

13. The AMIEU is aware that AMIC, in its 2 August 2017 submissions, has sought to considerably expand the scope of consideration to include manufacturing and

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<sup>8</sup> Second statement of Graham Smith 22 December 2017, paragraph 11.

<sup>9</sup> Second statement of Graham Smith 22 December 2017, paragraph 12.

retail/wholesale establishments: establishments that do not have the same unique categorisation of employment – daily hire.

14. The AMIEU does not agree with AMIC's submissions.
15. The AMIEU has refrained from making submissions concerning manufacturing and retail/wholesale establishments because:
  - a. parties have not been asked to do so, and
  - b. in making its submissions AMIC appears to be seeking to re-open and re-agitate matters that have been determined by the Full Bench of the Fair Work Commission.
16. The AMIEU would be pleased to provide submissions on these expanded matters if requested to do so.

### **Summary**

17. The AMIEU has proposed two alternative Casual Conversion Clauses to accommodate the peculiarities of daily hire in meat processing establishments, to recognise the need for operational flexibility in meat processing establishments and to provide eligible workers with an avenue to permanent employment with access to National Employment Standard entitlements.
18. The AMIEU supports the inclusion of the Casual Conversion Clause, in its entirety, in the Meat Industry Award 2010 as pertains to establishments that are not meat processing establishments.

**Australasian Meat Industry Employees Union**

**22 December 2017**

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### ANNEXURE A

#### **15.14 Right to request casual conversion in meat processing establishments.**

- (a) A person engaged by a particular employer as a regular casual employee may request that their employment be converted to full-time, **daily hire, part-time daily hire** or part-time employment.
- (b) A regular casual employee is a casual employee who has over a calendar period of at least 12 months worked a pattern of hours on an ongoing basis which, without significant adjustment, the employee could continue to perform as a full-time employee, part-time employee, **daily hire or part time daily hire employee under the provisions of this Award.**
- (c) A regular casual employee, as defined in paragraph (b), may request to have their casual employment converted to a reasonably comparable category of permanent employment.**
- (d) Any request under this subclause must be in writing and provided to the employer.
- (e) Where a regular casual employee seeks to convert to full-time, **daily hire, part-time daily hire or part-time employment**, the employer may agree to or refuse the request, but the request may only be refused on reasonable grounds and after there has been consultation with the employee.
- (f) Reasonable grounds for refusal include that:
- (i) it would require a significant adjustment to the casual employee's hours of work in order for the employee to be engaged as a full-time, **daily hire, part-time daily hire** or part-time employee in accordance with the provisions of this award – that is, the casual employee is not truly a regular casual as defined in paragraph (b);
  - (ii) it is known or reasonably foreseeable that the regular casual employee's position will cease to exist within the next 12 months;
  - (iii) it is known or reasonably foreseeable that the hours of work which the regular casual employee is required to perform will be significantly reduced in the next 12 months, **other than where daily hire is in operation and the reduction in hours is part of the normal seasonal nature of work in meat processing establishments as contemplated by the use of daily hire;** or
  - (iv) it is known or reasonably foreseeable that there will be a significant change in the days and/or times at which the employee's hours of work are required to be performed

in the next 12 months which cannot be accommodated within the days and/or hours during which the employee is available to work.

(g) Where the employer refuses a regular casual employee's request to convert, the employer must provide the casual employee with the employer's reasons for refusal in writing within 21 days of the request being made. If the employee does not accept the employer's refusal, this will constitute a dispute that will be dealt with under the dispute resolution procedure in clause 10 of this Award. Under that procedure, the employee or the employer may refer the matter to the Fair Work Commission if the dispute cannot be resolved at the workplace level.

(h) Where it is agreed that a casual employee will have their employment converted to full-time, **daily hire, part time daily hire** or part-time employment as provided for in this clause, the employer and employee must discuss and record in writing:

(i) the form of employment to which the employee will convert – that is, full-time, **daily hire, part time daily hire** or part-time employment; and

(ii) if it is agreed that the employee will become a part-time **or part-time daily hire** employee, the matters referred to in clause 13 as applicable.

(i) The date from which the conversion will take effect is the commencement of the next pay cycle following such agreement being reached unless otherwise agreed.

(j) Once a casual employee has converted to full-time, **daily hire, part time daily hire** or part-time employment, the employee may only revert to casual employment with the written agreement of the employer.

(k) A casual employee must not be engaged and/or re-engaged (which includes a refusal to re-engage), or have his or her hours reduced or varied, in order to avoid any right or obligation under this clause.

(l) Nothing in this clause obliges a regular casual employee to convert to full-time, **daily hire, part time daily hire** or part-time employment, nor permits an employer to require a regular casual employee to so convert.

(m) Nothing in this clause requires an employer to increase the hours of a regular casual employee seeking conversion to full-time, **daily hire, part time daily hire** or part-time employment.

(n) An employer must provide a casual employee, whether a regular casual employee or not, with a copy of the provisions of this subclause within the first 12 months of the employee's first engagement to perform work.

(o) A casual employee's right to convert is not affected if the employer fails to comply with the notice requirements in paragraph (n).

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**The Australasian Meat Industry Employees Union (AMIEU)**

Second statement of Graham Smith

I, Graham Smith of 227 Henley Beach Road, Torrensville, in the State of South Australia, Union Official make the following statement:

1. I have previously provided a statement in this matter, and rely on the content of that statement herein.
2. I provide this additional statement to clarify the issue of averaging for meat processing establishments that utilise daily hire.
3. Daily hire, by definition, does not provide an average of 38 hours per week.
4. A daily hire worker does not have guaranteed hours per week, per month or per year.
5. It is for this reason that the AMIEU has proffered amendments to the proposed model Casual Conversion Clause that do not rely wholly and solely on an average of 38 hours.
6. If a strict 38 hour average was to dictate the category of employment a regular casual would convert to, we would end up with some dubious and anomalous circumstances.
7. As I have stated in my earlier statement, in meat processing establishments where daily hire is the predominant category of employment, it is common for a pool of regular and irregular casual workers to be engaged.
8. In meat processing establishments using daily hire, irregular casuals are generally used on an 'ad hoc' or 'as needs' basis and the regular casuals generally work the same or similar hours to the daily hire workers.
9. Those daily hire workers do not work an average of 38 hours per week and, as such, neither do the regular casual employees working those same hours.
10. Even though those daily hire workers work less than 38 hours per week on average, they are not classified as part-time daily hire.

11. The model Casual Conversion Clause proposed by the Full Bench, as presently drafted, would have a regular casual employee converting to a *part-time* daily hire categorisation, notwithstanding:
  - a. The regular casual is working the same hours as daily hire workers, and
  - b. Part-time daily hire may not actually exist in practice (please see paragraph 13 of my first statement).
12. In such a circumstance, those workers cannot integrate into the operation with the rest of the workforce, creating a completely anomalous situation.
13. It is for these reasons that the AMIEU has provided two alternatives to deal with the issues of averaging for meat processing establishments that use daily hire.
  - a. Annexure 1 to our submissions dated 2 August 2017, proposed conversion to permanent employment based on the work actually on offer by the employer rather than with reference to the average hours actually worked.
  - b. Annexure A to our submissions dated 22 December 2017, proposes conversion to a reasonably comparable category of permanent employment which would effectively leave the employer open to utilise whichever category of hire the processing establishment uses.
14. The two alternatives proposed do strike a fair balance between the operational flexibility needed by meat processing establishments, while providing eligible workers with an avenue to permanency and access to National Employment Standard entitlements.



**Graham Smith**

**22 December 2017**