



Fair Work Commission: 4 yearly review of modern awards

**AM2014/196 and AM2014/197 Casual and Part Time Proceedings
Submissions following Decision [2017] FWCFB 3541**

AUSTRALIAN BUSINESS INDUSTRIAL

- and -

THE NSW BUSINESS CHAMBER LTD

- and -

AUSTRALIAN CHILDCARE ALLIANCE

4 AUGUST 2017

1. INTRODUCTION

1.1 These submissions are made on behalf of Australian Business Industrial (**ABI**), the New South Wales Business Chamber Ltd (**NSWBC**) and the Australian Childcare Alliance (**ACA**).

1.2 The submissions address the following directions in these submissions:

Common claims

1. Any further written submissions which any interested party wishes to make concerning the proposed model casual conversion clause, including whether it requires adaptation to meet the circumstances of particular awards, shall be filed on or before 2 August 2017.

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3. Any further written submissions which any interested party wishes to make concerning the provisional view of the Full Bench to include a 2 hour daily minimum engagement period for casual employees in modern awards which currently do not contain a daily minimum engagement period for casual employees shall be filed on or before 2 August 2017.

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7. Any interested party which wishes to respond to United Voice's draft determinations in the Hospitality Award, the Restaurants Award and the Clubs Award may file a written submission on or before 2 August 2017.

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11. Any interested party which wishes to respond to the SDA's draft determinations for the variation of the General Retail Award, the Fast Food Award, and the Hair and Beauty Industry Award may file a written submission on or before 2 August 2017.

2. SUBMISSIONS IN RESPECT OF DIRECTIONS 1 AND 3: THE COMMON CLAIMS

2.1 ABI and NSWBC adopt and endorse the submissions of the Australian Chamber of Commerce and Industry (**Australian Chamber**) in respect of the proposed model casual conversion clause.

2.2 Our client's consultation with their members identifies concerns, already ventilated in the hearing of these proceedings, that the introduction of casual conversion clauses into modern awards with restrictive permanent employment provisions will be problematic. We endorse the proposal of the Australian Chamber to address this issue.

2.3 We also support the submission of the Australian Turf Club (**ATC**) dated 2 August 2017 which notes the insertion of the model casual conversion clause is unlikely to have any effect given the nature of the casualised workforce engaged under the *Racing Clubs and Events Award 2010* and the *Racing Industry Ground Maintenance Award 2010* (**Racing Awards**).

2.4 In respect of the Full Bench's proposal to insert a casual minimum engagement of 2 hours in all modern awards which do not currently have a casual minimum engagement, we restate the position put in the proceedings that minimum engagements must be calibrated to the particular circumstances of each modern award following consideration of those circumstances. We remain of the view that the introduction of a 2 hour casual minimum engagement clause will obviously be problematic in industries which regularly deploy casuals on shifts (likely to be specific tasks or 'jobs') shorter than 2 hours. We note that the length of these shifts may not necessarily be within the control of the

relevant employers and would ordinarily result from market, legislative or contractual conditions.

Commercial Sales Award 2010

- 2.5 Following the Decision, ABI and NSWBC have received feedback from membership that the adoption of a 2 hour casual minimum engagement will be problematic for some employers under the *Commercial Sales Award 2010*, particularly for employers in regional areas. We understand that the nature of work for casual salespersons is inconsistent with the operation of a two hours minimum engagement and due to the nature of short and irregular shifts.

Horticulture Award 2010

- 2.6 The potential effect of a casual minimum engagement period in the *Horticulture Award 2010* received considerable attention during the proceedings. While obviously preferable to the 4 hour minimum originally sought, the adoption of a 2 hour casual minimum engagement in the *Horticulture Award 2010* will be problematic for the reasons disclosed in our previous submissions dated [22 February 2016](#) and [8 August 2016](#).
- 2.7 We do not seek to repeat these submissions but consider that the Full Bench should have regard to these submissions (and supporting evidence) in assessing the appropriateness of the introduction of a 2 hour minimum casual engagement. On the basis of this evidence before the Commission, there are sound industry-specific reasons as to why the Horticulture Award does not contain a minimum casual engagement provision and this position should be maintained.

Educational Services (Teachers) Award 2010

- 2.8 On behalf of ACA, we note that the *Educational Services (Teachers) Award 2010* (**Teachers Award**) was identified by the Full Bench as being an award that does not currently contain a minimum engagement clause for casuals.
- 2.9 However, clause 14.5(b) requires casuals to be paid for a minimum half day (if working in a school) or a quarter day (if working in a childcare centre). We submit that this minimum payment clause has the same effect as a minimum engagement clause.
- 2.10 Inserting a new minimum engagement clause into the Teachers Award would therefore be confusing and superfluous.
- 2.11 Instead of inserting the new minimum engagement clause into the Teachers Award, ACA requests that 'quarter day' and 'half day' be amended to read '2 hours' and '4 hours' respectively. This would clarify the minimum engagement/payment amount under the award and have the same effect as inserting the new minimum engagement clause proposed by the Commission.

3. SUBMISSIONS IN RESPECT OF DIRECTION 7 - UNITED VOICE OVERTIME DETERMINATIONS

- 3.1 The draft determinations filed by United Voice appear to extend well beyond the intent of the Full Bench's decision.
- 3.2 The introduction of additional entitlements (which were not previously sought) such as further minimum casual engagement provisions and entitlements arising from rostered days off for casual employees are not necessary to give effect to the Full Bench's decision.

3.3 We note that other interested parties have filed competing draft determinations in response. We reserve our position in respect of the appropriate draft determination until all proposals have been finalised.

4. SUBMISSIONS IN RESPECT OF DIRECTION 11 - SDA OVERTIME DETERMINATIONS

4.1 The draft determinations filed by the Shop Distributive and Allied Employees Association (SDA) in relation to variations to the *General Retail Industry Award 2010*, the *Fast Food Industry Award 2010* and the *Hair and Beauty Industry Award 2010* appear to contain a number of material errors.

4.2 By way of example:

- (a) The draft determination in relation to the *Fast Food Industry Award 2010*:
 - (i) appears to include duplication in the scope of proposed clause 26.1 in that a 38 hour per week threshold for casual employees would be addressed by both 26.1(a)(i) and 26.1(f) and an 11 hour per day threshold would be addressed by both 26.1(a)(iii) and 26.1(f);
 - (ii) does not appear to address the limitation on overtime work included in clause 26.4;
 - (iii) appears to go beyond the scope of the decision in appearing to extend an entitlement to overtime for casuals to hours outside of their roster.
- (b) The draft determination in relation to the *General Retail Industry Award 2010* does not appear to address the limitation on overtime work included in clause 29.1(a).
- (c) The draft determination in relation to the *Hair and Beauty Industry Award 2010*:
 - (i) is incorrectly expressed as a variation to the General Retail Industry Award; and
 - (ii) does not appear to address the limitation on overtime work included in clause 31.1.

4.3 Given the above, we do not support the making of the SDA's draft determinations.



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On behalf of Australian Business Industrial and the NSW Business Chamber Ltd

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