



# DECISION

*Fair Amendment (Supporting Australia's Jobs and Economic Recovery) Act 2021*  
cl.48, Schedule 1 of the Fair Work Act 2009

## Casual terms award review 2021

(AM2021/54)

VICE PRESIDENT HATCHER  
DEPUTY PRESIDENT EASTON  
COMMISSIONER BISSETT

SYDNEY, 20 SEPTEMBER 2021

*Casual terms award review 2021 – Stage 1 – Pastoral Award 2020 – outstanding issue.*

[1] This decision concerns an outstanding issue concerning clause 50.1 of the *Pastoral Award 2020* (Award). Clause 50.1 of the Award currently provides:

**50.1** Employees engaged for work in a shed, other than Woolclassers and Shearing shed experts, will be engaged on a casual basis in one or more of the following categories:

- Shearer;
- Crutcher;
- Shed hand;
- Woolpresser; or
- Shearing cook.

A composite of these categories may apply where the employee has mixed functions, except Shearers.

[2] In a decision issued on 16 July 2021<sup>1</sup> (July 2021 decision), the Full Bench in Stage 1 of this review dealt with the question: ‘... *are the employment arrangements described as ‘casual’ under Part 9 of the Pastoral Award consistent with the definition of ‘casual employee’ in s.15A of the Act?*’ The Full Bench had earlier, in a statement issued on 21 June 2021,<sup>2</sup> expressed the following *provisional* answer to this question:

“No. Clause 50.1 of the Pastoral Award requires that all persons employed in a shed in one or more of the five prescribed categories be employed as casuals. As a consequence, workers who do not meet some or all of the conditions prescribed in paragraphs (a)-(c)

---

<sup>1</sup> [\[2021\] FWCFB 4144](#)

<sup>2</sup> [\[2021\] FWCFB 3555](#) at p.78 (Attachment B – Provisional Views)

of s.15A(1) may be treated as casuals under the award and paid in accordance with the provisions of Part 9 of the Pastoral Award, purportedly in lieu of receiving NES leave entitlements. Accordingly, a variation to clause 50.1 is required by cl.48(3) of Schedule 1.”

[3] In the July 2021 decision, the Full Bench said:

“[89] We confirm our *provisional* view that cl.50.1 of the Pastoral Award requires variation. A conference of the relevant parties will be convened shortly to finalise the content of the variation.”

[4] Pursuant to the July 2021 decision, conferences with interested parties were conducted by Deputy President Easton on 15 September 2021 and again earlier today. The Deputy President sent the parties an email prior to today’s conference which contained a proposal that clause 50.1 be varied to provide as follows:

“50.1 The minimum rates of pay provided for in clauses 51.1 to 51.6 will apply to casual employees engaged for work in a shed, other than Woolclassers and Shearing shed experts, in one or more of the following categories:

- Shearer;
- Crutcher;
- Shed hand;
- Woolpresser; or
- Shearing cook.

A composite of these categories may apply where the employee has mixed functions, except Shearers.”

[5] At the hearing before us today, the Australian Workers’ Union (AWU) supported the above proposal. The National Farmers’ Federation (NFF) also supported it but submitted that, in addition, a new clause 51.1A should be added to the Award as follows:

“The minimum rates of pay provided at clause 51.1 to 51.6 only apply with respect to casual employees.”

[6] The NFF submitted that this additional variation was needed because, otherwise, if an employer engaged an employee in one of the five categories specified in clause 50.1 who did not fall within the definition of casual employee in s.15A of the *Fair Work Act 2009* (Act), it would have to pay the employee piece rates which incorporated a casual loading as well as the paid leave entitlements provided for in Part 2-2 of the Act. The AWU did not oppose the NFF’s additional proposal.

[7] Our *provisional* view is:

- (1) Clause 50.1 should be varied in the terms set out in [4] above. This variation will remove the inconsistency identified in the July 2021 decision. This variation will be made in addition to the variations to the Award contained in the draft

determination published on 22 July 2021 and confirmed by the Full Bench in its Statement issued on 23 August 2021.<sup>3</sup>

- (2) The further variation proposed by the NFF should not be made. Both parties agreed, and we accept, that the possibility of a non-casual employee being employed in any of the categories specified in clause 50.1 is remote. If any party considers that there is a real prospect of non-casual employees being engaged in any of those categories, an application may be made to vary the award to provide for specific non-casual rates of pay. It is not within the scope of this review, legally or practically, to undertake such a task.

**[8]** Any party which wishes to file written submissions in opposition to this *provisional* view must do so on or before **2.00PM (AEST) THURSDAY, 23 SEPTEMBER 2021**.



VICE PRESIDENT

*Appearances:*

*S Crawford* on behalf of the AWU.  
*B Rogers* on behalf of the NFF.

*Hearing details:*

2021.

Sydney and Melbourne (by telephone).  
20 September.

Printed by authority of the Commonwealth Government Printer

<PR734124>

---

<sup>3</sup> [\[2021\] FWCFB 5198](#)