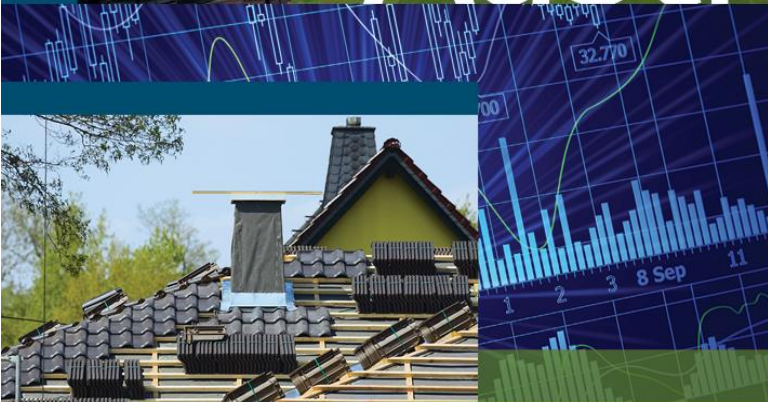




HOUSING INDUSTRY ASSOCIATION



Housing Australians



Submission to the
Fair Work Commission

Casual terms award review (AM2021/54)

24 May 2021



contents

1. INTRODUCTION	2
2. PRELIMINARY MATTERS	2
3. RESPONSE THE DISCUSSION PAPER	2

Housing Industry Association contact:

Melissa Adler
Executive Director – Industrial Relations and Legal Services

Housing Industry Association
79 Constitution Ave,
CAMPBELL ACT
Phone: 02 6245 1305
Email: m.adler@hia.com.au

1. INTRODUCTION

- 1.1.1. HIA refers to matter AM2021/54 Casual terms award review 2021.
- 1.1.2. On 27 March 2021, the *Fair Work Amendment (Supporting Australian's Jobs and Economic Recovery) Act 2021* amended the *Fair Work Act 2009* (Act) in relation to casual employment.
- 1.1.3. New clause 48 of Schedule 1 to the Act requires the Fair Work Commission (Commission) to review certain casual terms in modern awards and consider any variation that may be required to be made to the awards to address any interaction issues between the casual employment provision now in the Act and modern awards.
- 1.1.4. On 19 April the Commission issued a Discussion paper that set out a number of matters relating to the interaction between modern awards and the amendments made to the Act affecting casual employment (Discussion Paper).
- 1.1.5. This submission responds to that Discussion Paper.

2. PRELIMINARY MATTERS

- 2.1.1. HIA expresses an interest in the *Building and Construction General Onsite Award 2020* (Building Award), the *Joinery and Building Trades Award 2020* (Joinery Award) and the *Timber Industry Award 2020* (Timber Award) (Construction Awards).
- 2.1.2. While HIA does not have a specific interest in the initial group of 6 awards included in the first stage of the casual terms award review, given the nature of these proceedings and the approach indicated HIA takes this opportunity to broadly state our position on a number of matters outlined in the Discussion Paper.
- 2.1.3. When the Construction Awards as specifically considered by the Commission during these proceedings HIA will take that opportunity to make specific submissions in relation to those awards.

3. RESPONSE THE DISCUSSION PAPER

3.1. MEANING OF 'CONSISTENT', 'UNCERTAINTY OR DIFFICULTY' AND 'OPERATE EFFECTIVELY'

Question 1. Is it the case that:

- *the Commission does not have to address the considerations in s.134(1) of the Act in varying an award under Act Schedule 1 cl.48(3), but*
 - *an award as varied under cl.48(3) must satisfy s.138 of the Act?*
- 3.1.1. On a strict reading of the Act HIA agrees that the Commission does not have to address the modern awards objective as set out in section 134(1) when varying an award under Schedule 1 cl. 48(3) of the Act.
 - 3.1.2. However HIA also agrees that section 138 of the Act would apply to an award varied under cl. 48(3) of the Act.

3.2. DEFINITIONS OF CASUAL EMPLOYEE/CASUAL EMPLOYMENT

Question 3. Has Attachment 1 to this discussion paper wrongly categorised the casual definition in any award?

- 3.2.1. The Construction Awards appear to be correctly categorised.

Question 4. For the purposes of Act Schedule 1 cl.48(2):

- *is the 'engaged as a casual' type casual definition (as in the Retail Award, Hospitality Award and Manufacturing Award) consistent with the Act as amended, and*



- *does this type of definition give rise to uncertainty or difficulty relating to the interaction between these awards and the Act as amended?*

3.2.2. The Construction Awards include the 'engaged as a casual' type definition.

3.2.3. HIA foresees that this type of definition could give rise to uncertainty or difficulty relating to the interaction between these awards and the Act as amended.

Question 8. For the purposes of Act Schedule 1 cl.48(3), would replacing the casual definitions in the Retail Award, Hospitality Award, Manufacturing Award, Teachers Award and Pastoral Award with the definition in s.15A of the Act or with a reference to that definition, make the awards consistent or operate effectively with the Act as amended?

3.2.4. Yes.

Question 9. If an award is to be varied to adopt the casual definition in s.15A of the Act, should the Commission give advanced notice of the variation and the date it will take effect?

3.2.5. Yes

3.3. CASUAL LOADING AND LEAVE ENTITLEMENTS (QUESTIONS 17-18)

3.3.1. HIA is of the view that modern award provision relating to the casual loading are not a relevant terms for the purposes of cl.48(1)(c) of the Act.

3.3.2. However, if the Commission does ultimately determine that modern award provisions relating to casual loading are a relevant term, HIA is of the view that section 545A(3) adequately addresses the various approaches to the expression of the causal loading contained across the modern awards.

3.3.3. On this basis HIA does not see any uncertainty or difficulty arising from the interaction between these modern award terms and the Act as amended.

3.4. MODEL CASUAL CONVERSION CLAUSE (QUESTIONS 21 – 24)

3.4.1. The Timber Award contains the model casual conversion clause.

3.4.2. HIA sees that the most appropriate approach is to either replace the model casual conversion clause with the casual conversion clause now in the Act or reference the provision now in the Act in the modern awards.

3.5. MANUFACTURING CASUAL CONVERSION CLAUSE (QUESTIONS 25 – 27)

3.5.1. The Building and Joinery Awards contain the same casual conversion clause as that currently in the Manufacturing Award.

3.5.2. HIA sees that the most appropriate approach is to either replace the model casual conversion clause with the casual conversion clause now in the Act or reference the provision now in the Act in the modern awards.

