

ARA SUBMISSION

MODEL TERMS FOR CASUAL EMPLOYMENT

JULY 2024

The Australian Retailers Association (ARA) welcomes the opportunity to make a submission to the Fair Work Commission (FWC) in response to the proposed variations to modern awards, as outlined in the Commission's own-initiative on casual employment terms (AM2024/29) published in the [FWC Statement](#) on 19 July 2024.

The ARA is the oldest, largest and most diverse national retail body, representing a \$420 billion sector that employs 1.4 million Australians – making retail the largest private sector employer in the country. We represent the full spectrum of Australian retail, from our largest national and international retailers to our small and medium sized members, who make up 95% of our membership. Our members operate in all states and across all categories - from food to fashion, hairdressing to hardware, and everything in between.

Our interest in this matter is the result of the high usage amongst our membership and sector of a number of awards referenced in the commission's statement and draft determinations, including but not limited to:

- Clerks - Private Sector Award 2020 [MA000002]
- Fast Food Industry Award 2020 [MA000003]
- General Retail Industry Award 2020 [MA000004]
- Hair and Beauty Industry Award 2020 [MA000005]
- Hospitality Industry (General) Award 2020 [MA000009]
- Pharmacy Industry Award 2020 [MA000012]
- Restaurant Industry Award 2020 [MA000119]

In-principle, the ARA is supportive of the model terms proposed by the FWC in respect of casual employment because of the close alignment with the changes to the *Fair Work Act 2009 (Cth)*, mandated by the passage of the *Fair Work Legislation Amendment (Closing Loopholes No.2) Act 2024* in February 2024.

While the ARA put forward alternative recommendations in respect of casual employment terms through the consultation process on Closing Loopholes, we recognise that the issues raised by the ARA with government are beyond the remit of the FWC and so we appreciate the approach taken to align the model terms with the legislation, because this will minimise compliance risk, confusion and complexity for employers.

We also note and provide in-principle support for the FWC's proposals in relation to clarified dispute resolution mechanisms and amendments to the National Employment Standards to reflect the new employee-initiated casual conversion pathways in nine commonly-used awards, including a number used by our sector.

More generally, we believe that the government's reform agenda, requiring multiple variations to awards, raises the issue of small business capability to manage an increasingly complex workplace relations system. We believe this supports the proposition that the definition of small business, outlined in the Act and relied upon by the FWC, should be increased to 20 employees, in-line with other definitions used by other parts of government.

This submission has been informed by the ARA Employment Relations Advisory Committee, who thank you for the opportunity to make this submission. Any questions should be directed to policy@retail.org.au.

APPENDIX

On 19 July 2024, the Full Bench of the FWC issued a statement announcing a variation of modern awards on the commission’s own initiative to remove uncertainty or difficulty. Within the statement, the Full Bench set out their provisional views as to how modern award provisions relative to casual employment should be amended to ensure consistency with the *Fair Work Legislation Amendment (Closing Loopholes No.2) Act 2024 (Cth)* changes, which are set to come into effect from 26 August 2024.

The model terms on casual employment proposed by the Full Bench seek to make amendments to casual conversion provisions within 144 awards, dispute resolution clauses within 122 awards and the National Employment Standards (NES) provisions across 9 awards.

The ARA has reviewed the provisional view and provides in-principle support for the proposed changes. We support the FWC view that modern awards should be amended to ensure consistency to the legislation and thereby, enhance award-utility for employers and employees alike.

The ARA has reviewed the casual employment term amendments and have assessed the provisional amendments to casual employment terms within modern awards to be aligned with the legislative changes.

The following table compares a summary of the FWC provisional amendments to casual employment terms within modern awards, against the ARA’s commentary on these changes.

FWC PROVISIONAL AMENDMENT	ARA COMMENTS								
<p>Changes to casual employment status</p> <p><i>A pathway for employees to change from casual employment to full-time or part-time employment is provided for in the NES. See sections 66A to 66MA of the Act.</i></p> <p><i>NOTE: Disputes about changes to casual employment status may be dealt with under sections 66M and 66MA of the Act and/or under clause X—Dispute resolution.</i></p>	<p>The FWC proposal model term is consistent with the Closing Loopholes No.2 amendments to casual employment terms within s66A to 66MA of the Act. The amendments reflect the newly introduced employee-choice pathway which substitute the previous casual conversion pathway.</p>								
<p>Amendments to dispute resolution</p> <p><i>NOTE: In addition to clause X, the Act contains dispute resolution procedures as follows:</i></p> <table border="1" data-bbox="153 1570 839 1756"> <thead> <tr> <th><i>For a dispute about rights under the Act to</i></th> <th><i>Section</i></th> </tr> </thead> <tbody> <tr> <td><i>Request Flexible Work Arrangements</i></td> <td><i>65B</i></td> </tr> <tr> <td><i>Change casual employment status</i></td> <td><i>66M</i></td> </tr> <tr> <td><i>Request an extension to unpaid parental leave</i></td> <td><i>76B</i></td> </tr> </tbody> </table>	<i>For a dispute about rights under the Act to</i>	<i>Section</i>	<i>Request Flexible Work Arrangements</i>	<i>65B</i>	<i>Change casual employment status</i>	<i>66M</i>	<i>Request an extension to unpaid parental leave</i>	<i>76B</i>	<p>The FWC proposed model term reflects the Closing Loophole No.2 amendments to the Act which introduced a dispute resolution pathway through the FWC for disputes arising within Subdivision B of the Act.</p>
<i>For a dispute about rights under the Act to</i>	<i>Section</i>								
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<p>Amending NES definitions in paragraph (ba)</p> <p><i>(ba) casual employment (Division 4A).</i></p>	<p>The FWC Proposed model term is consistent with the amendments made to Division 4A of the Act which repeal the casual conversion pathway and instead refer to ‘casual employment’.</p>								

<p>No amendments to clause 12.8 in the Meat Industry Award and no further amendments necessary to address the interaction between casual and daily hire employment.</p>	<p>The ARA supports the FWC Provisional view that no change is needed to the Meat Industry Award relative to clause 12.8 or to address the interaction between casual and daily hire employment.</p>
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The ARA also highlights the extent of these changes on retail, with the three provisional model terms to interact with as many as eight modern awards in our sector.

MODERN AWARD	FWC MODEL TERM (1)	FWC MODEL TERM (2)	FWC MODEL TERM (3)	OTHER REQUIRED VARIATIONS
General Retail Industry Award 2020	Applicable	Applicable	Applicable	Not applicable
Fast Food Industry Award 2020	Applicable	Applicable	Applicable	Not applicable
Restaurant Industry Award 2020	Applicable	Applicable	Applicable	Not applicable
Clerks Private Sector Award 2020	Applicable	Applicable	Applicable	Not applicable
Hair & Beauty Industry Award 2020	Applicable	Applicable	Applicable	Not applicable
Pharmacy Industry Award 2020	Applicable	Applicable	Applicable	Not applicable
Hospitality Industry (General) Award 2020	Applicable	Applicable	Applicable	Not applicable
Meat Industry Award 2020	Not applicable	Applicable	Not applicable	Not applicable

We also note the Full Bench of the FWC has invited interested parties to lodge submissions on other casual terms within modern award that may lead to uncertainty or difficulties in light of the Closing Loopholes No.2 amendments to the FW Act.

Having undertaken an audit of applicable modern awards relevant to the retail sector, we believe no further amendments to casual employment terms, in light of the Closing Loopholes No.2 amendments, are necessary at this time.