

**KPMG AUSTRALIA
STATUTORY REVIEW OF CASUAL EMPLOYMENT
LEGISLATION**



**SOUTH AUSTRALIAN WINE INDUSTRY
ASSOCIATION INCORPORATED**

SUBMISSION OF: **SOUTH AUSTRALIAN WINE INDUSTRY
ASSOCIATION INCORPORATED**

ABN: 43 807 200 928

ADDRESS: First Floor, Industry Offices
National Wine Centre
Botanic Road
ADELAIDE SA 5000

CONTACT PERSON: Adrian Richards

DATE: 21 July 2022

South Australian Wine Industry Association Incorporated

ABN 43 807 200 928

1st Floor Industry Offices, National Wine Centre, Botanic Road, Adelaide SA 5000
Tel: 61 8 8222 9277 Fax: 61 8 8222 9276 Email: admin@winesa.asn.au Web: www.winesa.asn.au

South Australian Wine Industry Association

The South Australian Wine Industry Association (SAWIA) is an employer and industry association representing the interests of wine grape growers and wine producers throughout the state of South Australia. SAWIA (as it is known today) was established in 1840 as the Society for the Introduction of Vines.

SAWIA is a not-for-profit incorporated association, funded by voluntary member subscriptions, grants and fee for service activities, whose mission is to provide leadership, advice and support to South Australian grape and wine businesses assisting them to prosper within a dynamic, diverse industry.

SAWIA membership represents approximately 96% of the grapes crushed in South Australia and about 36% of the land under viticulture. Each major wine region within South Australia is represented on the board governing our activities.

SAWIA has a strong track record as an industry leader and innovator in many areas. SAWIA pro-actively represents members and the greater wine industry with government and related agencies in all aspects of business in the wine sector.

What SAWIA does for members is covered in four key areas:

- Representation and Leadership
- Advice and Information
- Products and Services; and
- Promotion and Opportunities.

SAWIA has a strong track record as an industry leader and innovator in many areas. SAWIA pro-actively represents members and the greater wine industry with government and related agencies in all aspects of business in the wine sector.

SAWIA is a registered association of employers under the South Australian *Fair Work Act 1994* and is also a Recognised State-Registered Association under the *Fair Work (Registered Organisations) Act 2009*.

SAWIA has a long-standing interest in employment, immigration and related policy areas. SAWIA's policy positions in relation to employment are proposed and endorsed by our Employee Relations Committee, which comprises of HR Executives and Senior Managers, some with national responsibilities, drawn from the membership.

Basis of Submission

A Statutory Review is currently underway to examine how the amendments made to casual employment arrangements by the *Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Act 2021* (Cth) (the FW SAJER Act) are operating.

Consistent with the requirements of the FW SAJER Act, the review will:

- consider whether the operation of the amendments made is appropriate and effective in the context of Australia's changing employment and economic conditions
- identify unintended consequences and
- consider whether any legislative change is necessary to improve the operation of the amendments.

KPMG is undertaking stakeholder consultations and analysis and will provide the independent review report to the Minister for Employment and Workplace Relations.

1. The need for change and summary of changes

Prior to the commencement of the FW SAJER Act there was a lot of concern and confusion over what exactly constituted 'casual' employment and the ramifications of wrongly classifying an employee as 'casual', including potential payments for unpaid entitlements on top of any casual loading already paid (this was commonly referred to as 'double-dipping').

The FW SAJER Act addressed this primarily by:

- defining the meaning of a 'casual employee' in the *Fair Work Act 2009* (Cth) (FWA), which focuses on the start of the employment relationship
- setting out a procedure for conversion of casual employment (similar to what was already included in many modern awards)
- allowing the Fair Work Commission (FWC) to deal with disputes about casual conversion
- requiring casual employees to be provided with a Casual Employment Information Statement and
- enabling casual loading amounts to be offset against claims for leave (to prevent 'double-dipping').

2. Were the amendments appropriate and effective?

The amendments were a pragmatic way to provide more certainty about what casual employment legally means and provide employers and employees with clear distinctions between casual and permanent (full time and part time) employment.

The inclusion of a casual employment definition in the FWA has meant that terminology and provisions have had to be reviewed and adjusted in modern awards and new enterprise agreements. Members have reported that whilst some adjustments have needed to be made to new enterprise agreements, they have still been able to distinguish extra entitlements for some casual employees where desired (such as more monetary entitlements like redundancy pay or protections for longer term casuals).

It is now clear that the employer and employee need to determine the relationship upon the commencement of employment, by agreeing to employment characteristics that clearly indicate whether the employee will be engaged casually or not.

There is now a mechanism for both award covered and award free employees whose employment initially commenced as casual, but end up being employed on a regular pattern of hours (subject to certain criteria), to convert to permanent employment.

The inclusion of a casual conversion requirement in the FWA, in broad terms, has not been a significant imposition on employers, as similar provisions already existed within the main modern awards that cover employees in the industry. It is SAWIA's view, based on the feedback it has received from its members, that this mechanism could be clearer and less complex to limit the administrative burden it places on employers and make it easier for both employer and employee, to understand when the entitlement to conversion applies.

SAWIA is not aware of the FWC dispute resolution process being accessed by any party in the wine industry, but upon review of the legislation and material available from FWC, the process seems clear and uncomplicated. SAWIA is supportive of the guidance provided by FWC that this should only be used once it is clear that an agreement has not been reached by the parties and other relevant dispute resolution procedures have been attempted (e.g., in an enterprise agreement).

The FWA now permits employers who have misclassified permanent employees as casuals, to offset clearly identified casual loading amounts previously paid to the employee against

any claims made by the employee for statutory entitlements. This was an appropriate change to both reduce the likelihood of monetary disputes occurring and the risk they previously posed, due to the possibility of what has been commonly referred to as ‘double dipping’.

3. Unintended consequences

As referenced in the previous section, the inclusion of casual conversion in the FWA, is an administrative burden for employers in relation to assessing employees that don’t qualify for conversion after 12 months (e.g., they haven’t worked regularly enough). The administrative burden and potential complexity can occur, as the employer needs to continue to monitor the employee’s employment, so that it can determine if they qualify at a later time.

Some of SAWIA’s members have reported that they have considered and/or used more fixed term contracts since the amendments commenced and that the legislative changes brought about by the FW SAJER Act have meant that their potential to negotiate with their workers about casual employment and conversion has been reduced.

Whilst these changes have not been welcomed by some of the members of SAWIA, they have acknowledged that these negative changes are small when compared to the other benefits that were brought about by the commencement of the FW SAJER Act.

4. Further legislative change

The changes made through the FW SAJER Act have not been in place for a significant amount of time. Based on SAWIA’s understanding, they have not posed a serious hardship on employers nor their employees within the wine industry.

SAWIA contends that the general labour shortage in the wine industry and throughout Australia, will mean that casual employees will typically not be worrying about not getting shifts and/or losing their jobs, due to the fact that they are casually employed.

SAWIA’s understanding is that the majority of those offered conversion refuse, and that employees are more likely to convert due to their own personal circumstances (family commitments, looking to buy a house etc.), than due to the benefits received by permanent employment. The additional loading that casual employees receive, remains a key incentive for employees to remain casual.

In conclusion, due to the FW SAJER Act, the FWA now provides employers and employees with more clarity and legal certainty in relation to when a person can be engaged as a casual and when that arrangement needs to be reassessed.

SAWIA contends that the changes are largely appropriate and effective and the unexpected consequences are minimal, when compared to what the FW SAJER Act has achieved. Therefore, no changes are sought by SAWIA in relation to casual employment legislation.

E N D

South Australian Wine Industry Association Incorporated

Question	Response
Q2a : Do you or your organisation consider the amendments regarding the definition of 'casual employee' under the FW SAJER Act are appropriate and effective?	Yes
Q2ai : Why do you or your organisation consider the amendments appropriate and effective?	<p>The amendments were a pragmatic way to provide more certainty about what casual employment legally means and provide employers and employees with clear distinctions between casual and permanent (full time and part time) employment. The inclusion of a casual employment definition in the FWA has meant that terminology and provisions have had to be reviewed and adjusted in modern awards and new enterprise agreements. Members have reported that whilst some adjustments have needed to be made to new enterprise agreements, they have still been able to distinguish extra entitlements for some casual employees where desired (such as more monetary entitlements like redundancy pay or protections for longer term casuals). It is now clear that the employer and employee need to determine the relationship upon the commencement of employment, by agreeing to employment characteristics that clearly indicate whether the employee will be engaged casually or not.</p>
Q2b : What concerns do you or your organisation hold about the definition of 'casual employee' provided by the FW SAJER Act?	
Q2c : What, if anything, would you change about the definition of 'casual employee' under the FW SAJER Act, or any other law?	
Q3a : Do you or your organisation consider the amendments regarding casual conversion are appropriate and effective?	Yes
Q3ai : Why do you or your organisation believe the amendments regarding	<p>There is now a mechanism for both award covered and award free employees whose employment initially commenced as casual, but end up being employed on a regular pattern of hours (subject to certain criteria), to</p>

<p>casual conversion are appropriate and effective?</p>	<p>convert to permanent employment. The inclusion of a casual conversion requirement in the FWA, in broad terms, has not been a significant imposition on employers, as similar provisions already existed within the main modern awards that cover employees in the industry. It is SAWIA's view, based on the feedback it has received from its members, that this mechanism could be clearer and less complex to limit the administrative burden it places on employers and make it easier for both employer and employee, to understand when the entitlement to conversion applies. SAWIA is not aware of the FWC dispute resolution process being accessed by any party in the wine industry, but upon review of the legislation and material available from FWC, the process seems clear and uncomplicated. SAWIA is supportive of the guidance provided by FWC that this should only be used once it is clear that an agreement has not been reached by the parties and other relevant dispute resolution procedures have been attempted (e.g., in an enterprise agreement).</p>
<p>Q3b : What concerns do you or your organisation hold about casual conversion under the FW SAJER Act?</p>	
<p>Q3c : What, if anything, would you change about the casual conversion provisions under the FW SAJER Act, or any other law?</p>	
<p>Q4a : Do you or your organisation consider that there should be a different approach to casual conversion for employees of small business employers?</p>	<p>Not Applicable</p>
<p>Q4ai : Why should the casual conversion provisions under the FW SAJER Act apply differently, to small business employers?</p>	
<p>Q4b : In your view, how should the casual conversion provisions under the FW SAJER Act apply to small business employers?</p>	

<p>Q5a : Do you or your organisation consider the amendments regarding set-off of casual loading are appropriate and effective?</p>	<p>Yes</p>
<p>Q5ai : Why do you or your organisation consider the amendments regarding set-off of casual loading are appropriate and effective?</p>	<p>The FWA now permits employers who have misclassified permanent employees as casuals, to offset clearly identified casual loading amounts previously paid to the employee against any claims made by the employee for statutory entitlements. This was an appropriate change to both reduce the likelihood of monetary disputes occurring and the risk they previously posed, due to the possibility of what has been commonly referred to as 'double dipping'.</p>
<p>Q5b : What concerns do you or your organisation hold about set-off of casual loading?</p>	
<p>Q5c : What, if anything, would you change about set-off of casual loading under the FW SAJER Act, or any other law?</p>	
<p>Q6a : Do you or your organisation consider the Casual Employee Information Statement is appropriate and effective?</p>	<p>Yes</p>
<p>Q6ai : Why do you or your organisation consider that the Casual Employee Information Statement is appropriate and effective?</p>	<p>It serves a purpose, which is to explain relatively new rules</p>
<p>Q6b : What concerns do you or your organisation hold about the Casual Employment Information Statement?</p>	
<p>Q6c : What, if anything, would you change about the Casual Employment Information Statement under the FW SAJER Act, or any other law?</p>	
<p>Q7a : Please provide any additional views regarding the operation of the amendments to the FW SAJER Act, particularly in</p>	<p>SAWIA contends that the general labour shortage in the wine industry and throughout Australia, will mean that casual employees will typically not be worrying about not getting shifts and/or losing their jobs, due to the fact that</p>

the context of Australia's employment and economic conditions.	they are casually employed. SAWIA's understanding is that the majority of those offered conversion refuse, and that employees are more likely to convert due to their own personal circumstances (family commitments, looking to buy a house etc.), than due to the benefits received by permanent employment. The additional loading that casual employees receive, remains a key incentive for employees to remain casual.
Q8 : Do you wish to raise any other matters for the independent review to consider?	NA
Q9 : Should you wish to provide additional supporting documentation, you may upload an attachment here. Please do not upload any attachments that contain personal data (including names, addresses or personal financial information). The review will only consider matters relevant to the scope of this review.	South Australian Wine Industry Association Incorporated