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Fair Work Commission
Modern Awards Review 2023-24
GPO Box 1994
Melbourne VIC 3001

By email: awards@fwc.gov.au

Dear President Hatcher,

Modern Awards Review 2023-24 Submissions of the National Retail Association Limited, Union of Employers

The National Retail Association Limited, Union of Employers (**NRA**) make the following submissions in reply concerning the Modern Awards Review 2023-24 (**Review**).

1. INTRODUCTION

- 1.1. The NRA is a peak industry body which has been representing businesses across the retail and associated sectors for close to 100 years. Retail is one of Australia's largest employers, with over 1.3 million Australians employed in the sector.
- 1.2. The NRA welcomes the opportunity to provide submissions in reply in relation to the 'making awards easier to use' stream of the Review. In preparing the reply submissions which follow below, the NRA has diligently engaged with our members to gather valuable insights and perspectives on their experience of working with Modern Awards. Through collaborative efforts and extensive consultations, we have endeavored to ensure that these reply submissions are well-informed by the diverse experiences and concerns within our industry. Our primary aim is to streamline and simplify the complexities surrounding Modern Awards, thereby fostering greater clarity and efficiency in their application and our participating in the Review is to contribute to a fair and accessible framework that aligns with the evolving needs of the retail industry.

2. THE REVIEW

- 2.1. The NRA broadly supports the proposals advanced in the submissions made by the Australian Industry Group (**Ai Group**) on 22 December 2023 regarding the General Retail Industry Award 2020 (**GRIA**), particularly in relation to the issues outlined below.

Clause 10 – Part-time employment

- 2.2. The current part-time provisions, at least in the modern award system, have their origin in the draft award of the Shop, Distributive and Allied Employees' Association (**SDA**) lodged with the Australian Industrial Relations Commission (**AIRC**) on 1 August 2008 in the initial stages of the award modernisation process.
- 2.3. These draft provisions were adopted by the AIRC in its exposure draft of the Retail Industry Award 2010, as published in September 2008, and have since been varied to allow employers and part-time employees to agree to perform hours outside of their regular pattern of work by agreement in writing.
- 2.4. Whilst the flexibility to vary part-time hours of work is welcomed, the administrative burden of an employer and employee being required to reach an agreement in writing on each occasion means clause 10.6 is not utilised on many occasions where employers wish to offer additional hours at short notice.
- 2.5. The NRA therefore supports the proposed insertion of a new clause 10.11 as outlined by Ai Group at [337] of their submission. This would enable part-time employees to give standing consent to work additional hours at ordinary rates of pay. The proposed variation does not reduce employee entitlements, as employees not wishing to give standing consent are not required to do so. Further, it enables part-time employees to be offered additional hours that would otherwise not be provided due to a perceived or actual administrative burden, or be provided to casual employees instead.
- 2.6. Further submissions have been made in relation to part-time employees. Ai Group have proposed that the timing and duration of meal breaks should not form part of the agreed pattern of work, as is currently required under clause 10.5(c). The NRA supports this approach, noting that it is extremely restrictive to require meal breaks for part-time employees to be taken at the same time on each occasion, allowing no flexibility for employee preferences, trading conditions, or staff absences.

Clause 15 – Ordinary hours of work and rostering arrangements

- 2.7. The NRA agrees with submissions that characterise clause 15 of the GRIA as being complex, and in no way easy to understand or use. For the purposes of the Review, the NRA supports proposals which call for reversion to the wording of clause 15.2(c) found in the equivalent clause in the *General Retail Industry Award 2010* (**GRIA 2010**), namely changing the word 'establishment' back to 'retailers'.
- 2.8. The GRIA 2010 provided that *"in the case of retailers whose trading hours extend beyond 9.00 pm Monday to Friday or 6.00 pm on Saturday or Sunday, the finishing time for ordinary hours on all days of the week will be 11.00 pm."* (our emphasis). During the plain language redrafting process, the exposure draft contained the altered wording providing that ordinary hours may be worked *"until 11.00 pm if the trading hours of the establishment extend beyond 9.00 pm on a Monday to Friday or 6.00 pm on a Saturday or Sunday."* (our emphasis).
- 2.9. This change in language was not the subject of discussion during the consultation process, and ultimately, was adopted into the GRIA. Whereas the wording contained in the GRIA 2010 clearly applied to employers (as a whole) whose trading hours extended beyond the prescribed times at any location, the amended wording in the GRIA arguably limits the

application to the trading hours of a particular location. The NRA submits that the change in wording substantially alters the meaning of clause 15.2(c) and should therefore be corrected as a part of the Review.

- 2.10. Further, the NRA supports Ai Group's proposed insertion of a new clause 15.6 in the GRIA to facilitate agreement between an employer and an employee that, where the employee is working remotely, their hours of work are not required to be continuous. This change will reflect modern ways of working, and allows employees to work in a way that suits their wishes, including, for example, working around caring responsibilities.

Clause 16 – Breaks

- 2.11. The NRA supports the amendment Ai Group proposes to clause 16 of the GRIA, at [363] of their submission, expressly confirming that employers and employees may agree on employees taking breaks during the first or last hour of a shift, combining breaks, and/or working up to 6 hours without taking a meal break.
- 2.12. This proposal does not reduce employee entitlements, noting employers would not be able to require an employee to work in the ways outlined at 2.11 but may reach agreement to do so.

Clause 18 – Payment of wages

- 2.13. The GRIA allows work for a full-time employee to be averaged over a 4 week period, however under clause 18.2 wages may only be averaged over a period of 2 weeks. A variation to the GRIA that permits wages to be averaged across the same time frame as an employee's hours are averaged will provide more certainty for employees, giving them predictable wage payments. Further, it would provide certainty to employers on how wages are paid when an employee's hours are averaged, noting that averaging hours provisions have limited utility if pay cannot also be averaged across the same period of time.

Clause 28 – Annual leave

- 2.14. To achieve clarity in relation to the amount of annual leave loading payable to employees, the NRA supports a variation to the GRIA to outline that where an employer is unable to determine the relevant weekend/shift penalties for a particular period of leave, the 17.5% annual leave loading provided for by 28.3(c)(i) will apply by default.
- 2.15. Noting the GRIA does not require the publication of rosters, there are occasions where an employee takes leave over a period where their work patterns have not yet been 'rostered', and whose pattern of work for that period of leave is not identifiable. The proposed variation would reduce uncertainty as to whether the rate at 28.3(c)(i) or 28.3(c)(ii) would be the appropriate additional payment on these occasions.

3. CONCLUSION

- 3.1. In summary, the NRA is supportive of measures that would achieve the modern awards objective of providing a fair and relevant minimum safety net of terms and conditions, whilst also reducing the overly-complex awards which are ultimately difficult for employers and employees to understand and comply with, and we look forward to engaging constructively in the upcoming conferences in relation to this matter.



Yours sincerely,

L. Carroll

Lindsay Carroll
Acting Chief Executive Officer
National Retail Association