Fair Work Commission

Modern Awards Review 2023-24 (AM2023/21)

Submission cover sheet

Name

(Please provide the name of the person lodging the submission)

Josh Cullinan, Secretary (RAFFWU)

Organisation

(If this submission is completed on behalf of an organisation or group of individuals, please provide details)

Retail and Fast Food Workers Union Incorporated (RAFFWU)

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Modern Award Review Stream:

Arts and Culture:	☐
Job Security:	☐
Work and Care:	☐
Usability of awards:	☒

BEFORE THE FAIR WORK COMMISSION

Modern Award Review – Making Awards Easier to Use

AM2023/21

OUTLINE OF SUBMISSIONS IN REPLY OF RAFFWU

1. The Retail and Fast Food Workers Union Incorporated ("**RAFFWU**") is a union of workers employed in the retail and fast food industries throughout Australia.

2. The predominant awards covering members of RAFFWU are the General Retail Industry Award 2020 (**GRIA**) and the Fast Food Industry Award 2020 (**FFIA**). Other awards covering members of RAFFWU include the Pharmacy Industry Award 2020, the Vehicle Repair, Services and Retail Award 2020 and the Miscellaneous Award 2020.

3. This submission responds to the proposals of employer representatives for specific changes to the GRIA and FFIA.

Nellers HR Consulting (GRIA)

4. The Nellers HR Consulting submission does not identify any specific changes. We submit there is no contradiction as alleged and compliance is straightforward. No examples are given by the proposer. We submit no change is required to the provisions.

ARA (GRIA & FFIA)

5. The ARA submissions for both the GRIA and FFIA do not identify any specific changes. No examples are given by the proposer. We submit no change arises from the submission of ARA.

ABI (GRIA)

6. The ABI Submission proposes an exclusion of casual workers from clauses 15.7 and 15.8 of the GRIA. The submission bases the proposal on orbiter commentary of a Full Bench in [2017] FWCFB 1001. The construction of the Award at the time should be considered by specific references in other parts of the Award to the application of provisions including, for example, at 12.9 (emphasis added):

Award entitlements

A part-time employee will be entitled to payments in respect of annual leave, public holidays, personal leave and compassionate leave arising under the NES or this award on a proportionate basis. Subject to the provisions contained in this clause **all other provisions of the award relevant to full-time employees will apply to part-time employees.**

7. On the proposal of ABI, a casual worker may never have a day off from work. Further, it raises questions as to whether such a casual employee could be converted to non-casual employment because such a pattern is not permitted under the Award for a non-casual employee.

8. We further note the provisions have an essential characteristic of supporting a safe working environment (by ensuring breaks from work.)

9. We submit the matter is best addressed in the Job Security stream of the Modern Awards Review.

Business Council of Australia (BCA)

10. The BCA submission does not identify any specific changes. We submit no change arises from the BCA commentary.

AHA (GRIA)

11. The AHA submission proposes a number of changes to GRIA. Each are responded to in turn below:
    a. The proposal to replace Clause 10 has previously been dealt with in other applications resulting in the current term. The proposed change is substantive and demonstrably diminishes the job security of employees. The AHA industries are a case in point of heavily casualised industries which have not improved job security by the implementation of such structures. In any event, any such changes should have been raised in the Job Security stream. No such changes should be made in this stream.
    b. Exemption salaries have been the subject of previous applications and cases before the Fair Work Commission in relation to GRIA. They were not pursued. The introduction of such arrangements is a substantial change. A 25% loading is not appropriate with such arrangements. The only simplicity this would introduce is the capacity for employers to avoid paying higher wages under the GRIA. The use of salaries in retail under the GRIA is common and managed efficiently by many

employers. Such arrangements should not be undermined by a catastrophically low buyout provision. No material is led as to how such a low buyout could possibly compensate for lost earnings and other rights. This stream must not be used as a stalking horse for cutting work conditions. We note many managerial roles in parts of the retail sector are heavily feminised.

c. The proposal in relation to abolishing monthly rostered days off is rejected by RAFFWU. The proposal alleges some impost or burden on employers of 15 or more regular employees in rostering across 19 rather than 20 days. The RDO structure is enjoyed by many workers. Placing the administrative burden on employees has an ersatz quality since the "reasonable business grounds" defence to ever implementing any 19 day arrangement is likely to be well utilised if implemented. There is no impediment to employers continuing to implement the RDO arrangements which are a clear benefit. The change would diminish the rights of workers.

d. The proposals to replace 15.7-15.9 disguise substantial changes. For example, there is no equivalent to 15.7(d), 15.7(e), 15.8(b)-(e), 15.9(c), 15.9(e)-(i) and many other parts to the proposal diminish rights such as 15.9(a) (all employees), 15.9(b)(i) (hours per week), 15.9(b)(ii) (days of the week), 15.7(e) (part-time exclusion). The proposed terms largely replicate the few terms remaining. We submit the changes ought be rejected.

e. The proposal to cut the first aid allowance paid to part-time and casual employees would reduce the allowance value paid to such employees. It is a cut in conditions and without evidence of the frequency of "inadvertent" exclusion ought be rejected.

f. It appears complaint is taken with the GRIA table at 16.2. AHA effectively proposes to remove the table (which many find is a simple statement of breaks) and replace it with a sentence about meal breaks. The many other beneficial terms of clause 16 are proposed to be deleted. We reject this proposal to diminish important rights of workers. Further, the proposal does not identify a rest break is required for shifts of 4 hours. Finally, we note there may be a perceived ambiguity in the stem introductory sentence of clause 16.2 and propose the second "or" be replaced with "and":

> 16.2 An employee who works the number of hours in any one shift specified in column 1 of **Table 3—Entitlements to meal and rest break(s)** is entitled to a rest break or rest breaks as specified in column 2 **and** a meal break or meal breaks as specified in column 3.

g. In relation to the pre-2014 rates for apprentices we agree with the AHA proposal and note the change, if it captured any person, would serve to only increase their rate.

h. The proposal of AHA in relation to overtime has two components. We reject the suggestion that 21.1 does not currently operate appropriately and clearly state the rights, and responsibilities, of employees. In relation to the collapsing of 21.2 into a short piece, there is some attraction however we note these matters were the subject of substantial consideration by the PLED reviews in the recent past. The proposal has a particular attraction because of what appears to be an error in the final implementation of the PLED. This is described below:

   i. Through the PLED process, the Award overtime clause was changed to limit the circumstances under which a part-time employee was able to be required (or requested) to work overtime.

   ii. Prior to the change, a part-time employee could be required to work reasonable overtime for hours worked outside the span of hours, in excess of their contracted hours, or outside the roster conditions of the Award. These issues were canvassed at length by a Full Bench in 2019 and it was decided to maintain an agreed position which held a status quo on part-time workers working reasonable overtime on the wider occasion[1].

   iii. The change, however, arose from an Order of the Fair Work Commission on 30 October 2020 at PR723906.

   iv. On 18 August 2020, a Full Bench issued draft determinations for Plain Language reviews for a number of Awards. The Award was described as a consensus position and at [304] it was stated:

> *We have decided to proceed on the basis of the consensus of interested parties in respect of the above awards.*

   v. Despite this, the draft determination (of August 2020) for the Award included the language of clause 21.2(a) which has the effect of limiting the circumstances under which part-time workers may work overtime.

   vi. The searches by RAFFWU cannot identify any discussion, transcript or decision which explains the basis of the change to limit the Award application of overtime to part-time employees between the express consideration in [2019] FWCFB 3626 and the draft determination of 18 August 2020.

[1] See [2019] FWCFB 3626

vii. It appears no further discussion was held in August or September 2020 before the change was implemented in October 2020.

viii. In light of the above, we suggest the Commission should either expressly state at 21.2(d) that the overtime arrangements *do* apply to part-time employees (thus honouring the consent position adopted in 2019 and "decision to proceed" of August 2020) or give direct and unequivocal guidance to employers that part-time employees must not be rostered to work outside the roster conditions or outside the span of hours.

i. In relation to the proposed changes to carers leave, at this time we don't oppose the changes and note the GRIA appears to be inconsistent with the rights of casual workers to be absent from work for a period of greater than 48 hours without the consent of their employer at law, pursuant to contracts, under other legislation and under the Fair Work Act. We note the oft employer claimed flexibility that a casual employee can reject any shift at any time.

j. We reject the proposed classification stream for clerical employees. There are many 'streams' of retail employees. We disagree that a separate stream would simplify matters, particularly where the duties of workers cover multiple 'streams.'

ACCI (GRIA & FFIA)

12. The ACCI submission proposes a number of changes to GRIA and FFIA. Each are responded to in turn below:

    a. In relation to superannuation, we reject the proposals to change 20.1, 20.3 or 20.5 of the GRIA or 19.1, 19.3 and 19.5 of the FFIA. We see no utility in diminishing those terms and we note they provide useful guidance to workers in the sectors.

    b. In relation to Proposal B, we understand ACCI is not proposing any change to GRIA or FFIA clauses.

    c. In relation to Proposal C, we understand ACCI is not proposing any change to GRIA or FFIA clauses.

    d. In relation to Proposal D, we submit the proposal should be rejected. The allegation the NES 'mutual agreement' entitlement for employees covered by the GRIA and FFIA to take excessive annual leave is plain wrong.[2] Many workers covered by the GRIA and FFIA are directed they cannot take leave at certain times of the year and often leave balances become excessive *because* of the refusals. Eliminating rights

[2] See 5.20 in the ACCI Submission

of employees should only be considered if eliminating the capacity of an employer to direct workers to take excessive annual leave ***at all***.

e. In relation to Proposal E, we submit the proposal ought be rejected. Any changes to the consultation term should be dealt with by the Job Security stream. The changes proposed demonstrably remove or diminish the rights of workers to be consulted over workplace changes so that they may have a meaningful impact on decisions of employers to implement major changes. A positive obligation to consult is important (rather than simply 'notice' & 'invite'). Many minds will differ on the reasonableness of relevant information about changes and this will only lead to less information being given which does nothing to ensure the consultation imperative is met. It will serve to make the Award harder to use.

f. ACCI may bemoan the low take up of IFAs but we too often see major franchisors such as Bakers Delight and McDonald's use IFAs to diminish conditions – including as a condition of employment. The proposed changes are a stalking horse for diminishment of conditions through individual agreements. This attack on the rights of workers must be rejected in the strongest terms.

MGA (GRIA)

13. The MGA submission proposes a number of changes to GRIA. Each are responded to in turn below:

    a. We agree an alphabetised index would be of utility.

    b. We are concerned by the "summary" proposal. We are similarly concerned that MGA members would not have expertise available to them. We submit the terms of the Award are already short and drafted with plain language in mind. Any summary in our experience serves only to diminish entitlements. An employer cannot rely on a summary in any event.

    c. We are concerned by the span of hours commentary of MGA. It is not just that overtime rates apply when working overtime but that part-time workers must not be rostered to work outside the span of hours **and** the overtime protections must be honoured by employers – such as only requesting reasonable overtime and accepting an employee may refuse unreasonable overtime. Notes or summaries are liable to mislead an employer in relation to such matters.

    d. We do not object to the classification definition note and further suggest a note at clause 17.5 would help employers understand the obligation under clause 14 (that is, to properly classify all workers.)

e. We agree hyperlinking obviously defined terms within the GRIA is appropriate and will assist readers/users.

f. We are concerned by the proposals regarding special clothing. Our concern arises because many employers use uniforms or other special clothing in circumstances which may appear to some to be 'civilian wear'. For example, an employer which requires minimum wage casual workers to purchase expensive products from the brand that are on sale in the establishment in a specific season might argue it is 'civilian wear' whereas in truth the items are brand specific uniform. Whether or not an item is *special clothing* will be heavily fact dependent.

g. We agree the term "principally employed" creates a number of difficulties. Our review of precedent has yielded little guidance on its application. Some argue it is a 50% of time test, others argue it is a major duty test, others take different approaches. We submit the issue is worthy of consideration or dedicated consultation by interested parties subsequent to the stream review.

h. We are concerned the recall allowance entitlement may only be complicated by a note. We would benefit from a draft proposal.

i. We are concerned that an employer organisation would be seeking templates for its members for matters which are "at the written request of the employee". Of the 5 suggested templates, the first two are such matters. The third is a safety matter and any template should identify the serious risks posed by a 10 hour break between shifts. If there is to be a template, the fourth should identify that an employer could agree to much higher wages or time payment for recall allowance. We don't oppose a template on the fifth (time off instead of payment for overtime.)

AWCC (GRIA & FFIA)

14. The AWCC submission propose a large scale rewriting of the GRIA and FFIA. Each proposal is responded to in turn below:

    a. We are unclear on the reference to the Restaurant Industry Award 2020 at 4.2(a) and assume it is an error. Otherwise each item below corresponds to the same roman numeral item in the AWCC submission at 4.2.

        i. The term couldn't be clearer. The proposal should be rejected.

        ii. There is a much larger issue with the flat structure of the FFIA classifications. We submit the use of the word 'competence' does not create any usability issues.

        iii. We submit the part-time provisions are clear:

1. 3 hours are the minimum hours per week and less than 38 hours are the maximum hours per week;
2. 10.1(b) is defined by 10.3 and the remainder of the clause. 10.1(b) also has an historic meaning in industrial relations. Those broader meanings are not as simple as the code in a payroll spreadsheet.

iv. As AWCC will know, the timing and duration of paid rest breaks are in rosters so the employer will be "tracking" the breaks through their roster. An employer who does not give the paid break pursuant to the roster would appear to be non-compliant.

v. We don't understand the AWCC complaint about the national training wage being subsumed into the FFIA. We support the deletion of any minimum rates reference to the National Training Wage.

vi. We agree the term should stipulate the supply of a meal must be of a certain standard, quality and acceptability to the employee or the allowance must be paid. For example, a "happy meal" from McDonald's is hardly an acceptable meal. We do not consider "cancelled" overtime is a relevant factor for inclusion (to the extent it is an actual matter.)

vii. We do not consider the travelling time reimbursement clause is confusing or requires simplification. No example or explanation is given.

viii. We do not consider "other similar payments" needs to be further explained or detailed. The list provides the explanation and *ejusdem generus* applies.

ix. The tests of reasonable and unreasonable overtime are heavily fact dependent and precedent is developing over time.

x. AWCC appears to misunderstand that the FFIA does not have a span of hours clause and does not deal with shift workers. We are not sure what utility the proposed change would bring.

xi. The notes in 20.7 are not random and the commentary belies a misunderstanding of the power imbalance in the workplace. Further, the notes are instructive and assist.

xii. We agree there should be a specific notice period for major changes of at least 6 weeks but also recognise this is probably not the time to prosecute that case. We submit any specificity about notice periods is a matter for the Job Security stream at the current time.

xiii. We submit a summary of major variations will only serve to confuse the lay reader. Experienced industrial practitioners can find the variations.

xiv. There are no proposed changes to definitions and the statement is amorphous.
xv. There are no proposed changes to clause 3 and the statement is amorphous.
xvi. There are no proposed changes to coverage and the statement is amorphous.
xvii. There are no proposed changes to clause 5 and the statement is amorphous.
xviii. We are not sure which version of the FFIA the AWCC is referring to but the note appears to be larger and more prominent than the term itself in the online FWC version of the FFIA.
xix. There are no proposed changes to clause 7 and the statement is amorphous.
xx. Clause 9 provides a note to clause 13. This AWCC submission is without foundation. There are no clear proposed changes in any event.
xxi. There are no proposed changes to clause 10 and the statement is amorphous.
xxii. There are no proposed changes to clause 12.4 and the statement is amorphous. Further, the statements bely some expertise that we would have expected would be applied to proposing changes rather than claiming difficulty.

b. At 6.1(a), AWCC outlines a series of positions. There are no apparent proposed changes (save for 6.2) and the statements are generally amorphous. We don't respond here in detail but generally reject the proposition of any change which diminishes the rights of workers.
c. At 6.2, 19 changes are proposed. We deal with them below:
    i. We submit the change to clause 4 would not enhance usability and make complex coverage arrangements even more difficult to understand.
    ii. We submit the appropriateness test at clause 4.5 is not a simple box ticking exercise. There are various considerations. The scope of this proposal is substantial and AWCC should put forward a clear proposal for review.
    iii. We agree 5.11 should be updated as proposed.
    iv. We submit AWCC should have identified its changes to terms by way of markup or highlight rather than merely adding/deleting words. On the matter of a 'no coercion' clause we submit this is likely to make it more difficult to agree in writing – such as by sms. We are also concerned that the test for agreement is far lower than coercion. We are also concerned that there may still be overtime and such a clause or agreement may actually mislead parties.
    v. We don't agree the change to clause 10.9 is necessary. It is uncontroversial that an employee must be paid for their daily engagement. It is also a

concern that the proposed words include “attend” work. The addition of “attend” should be rejected.

vi. The same issues as 10.9 stated above arise for 11.2.

vii. We agree that some ambiguity may arise with banked RDOs. In theory, an employee could bank 5 every year for 30 years, leading to a bank of 150 days. It is also unclear as to whether banked RDOs mean the days are worked. If they are, it would appear to give rise to overtime rights for the hours worked on those days. The AWCC proposal that banked days (which may be actually worked hours) should be foregone must be rejected. We agree there should be discussion and clarity on how the clause operates and any further guidance required.

viii. The proposal to alter 15.2 appears to bespeak a fundamental misunderstanding by AWCC clients or members as to overtime rates and penalty rates. We do not believe the proposed change is necessary but welcome examples of how this error has occurred.

ix. The proposal to delete 16.4 is rejected. GRIA covered workers are often called on to work during their breaks and this provision ensures that is rectified and also amenities are maintained.

x. In relation to 16.6(b), clarity is not needed. The payment is not overtime.

xi. In relation to 17.3, we agree the sections about pre-2014 can be removed as noted above in the AHA submission.

xii. Clause 18.4 is abundantly clear and the premise of clarity disguises the actual change which is to insert a capacity for an employer to agree something other than 7 days (and up to 14 days.) We too often see late payment and no doubt many employers will claim there was some agreement. We reject this reduction in worker rights.

xiii. We support superannuation choice but are not sure the term deals with the situation where an employee does not choose a fund.

xiv. We don’t agree there needs to be change to the recall allowance name but look forward to the contributions of other interested parties.

xv. We agree that payment for overtime should be clarified to include express reference to any leave or public holiday time not specifically worked. We submit that is the historical application and clear intent of the GRIA.

xvi. We do not agree that 21.2(e) is unclear.

xvii. We submit a further issue arises under clause 22.2(a) in that it is not clear that the penalty rates for weeknight or weekend work also must be paid. In

relation to 22.2(b), the time limit is clear and there is no time limit on annual leave. No time is "added to TOIL" but an alternative to annual leave is to have the day taken within 28 days. We do not understand the alleged ambiguity.

xviii. We do not understand there is an issue with the clause but rather an issue with payroll professionals not being trained to understand that leave loading may be called other things. The proposal only complicates the term and makes it more difficult to read. Perhaps a note could be added specifying that in previous decades the additional payment was sometimes referred to as annual leave loading.

AIG (GRIA & FFIA)

15. The AIG submission proposes a number of changes to GRIA and FFIA. Each are responded to in turn below.

16. In relation to the FFIA:

a. The proposed changes to meal break rights are a clear and express diminution in worker rights. We object in the strongest terms.

b. The proposed changes to 10.8 is the same old argument of AIG prosecuted in different guises over the last decade. It has been rejected before and should be again. We note the demographic of workers in Fast Food and the substantial power imbalance in the workplace. So much so that hundreds of thousands of workers at the largest Fast Food companies in Australia are currently pursuing compensation for their rest breaks having been stripped from them. The power imbalance is palpable and the proposals ought be rejected.

c. The proposed changes to engagement periods are also outright attacks on worker rights and ought be rejected. The true value of lost wages from diminished engagement length is currently the subject of another class action against a major fast food employer.

d. The split shifts proposal of AIG is an express attack on the fundamental worker entitlement to hours being worked continuously. We reiterate the scale of the power imbalance in fast food workplaces.

e. The beneficial and protective provisions about the taking of breaks should not be undermined. These are also important safety provisions. We note the very large proportion of young workers in the sector. In fact, new provisions should be inserted

to guarantee safe breaks. We encourage the Commission to insert an equivalent of clause 16.6 in GRIA and 15.1 in GRIA into the FFIA.

f. We submit the proposal to be able to direct workers to work in breaks ought be rejected. It is an attack on the rights of workers. We note our other responses to the AIG submission which are all relevant. The largest fast food employer in Australia, employing about half of all fast food workers in Australia, is currently subjected to a RAFFWU supported class action for not providing paid rest breaks to workers. This appears to be a blatant attempt at codifying that practice.

g. The annualised wage proposal should be rejected. It would allow an employer to pay a worker demonstrably less than they would have earned under the minimum Award. The lost opportunity in hoping an employer would compensate them some 12 months later is substantial. The Award has modest provisions and there has been no evidence such an arrangement would make the Award easier to use. To the contrary, it is very likely it would leave workers worse off – for at least 12 months or in any event.

h. We thank AIG for its concern about the application of the Broken Hill allowance. We are currently investigating this matter. We note the proposal would diminish the entitlements of workers – like most of the AIG submission – contrary to the terms of the review.

17. In relation to the GRIA:

a. The proposed changes to meal break rights are a clear and express diminution in worker rights. We object in the strongest terms.

b. The proposal regarding 10.11 is simply not based in fact. Many employers utilise the current arrangements. These matters have all been the subject of recent review. The requirement to agree in writing on a change to the contractual arrangements is the *basis* for the hours not being overtime. Otherwise, they are simply additional hours requested to be worked and are, for all intents and purposes, overtime.

c. We note no proposal is put forward regarding clause 15.

d. We submit the attempt to change 15.2 should be rejected. Clearly it could never have been intended that a "retailer" could operate 100 stores and by simply opening a single store with wider hours capture the benefit for all 100 other stores. Such conduct would cause a windfall competitive benefit. We submit the clause was always intended and read as for the store or establishment. In any event, it is a substantive change impacting on many thousands of workplaces. It will have a substantial deleterious impact on the terms and conditions of workers and is contrary to the review.

e. We are concerned that the AIG proposal about working away from the workplace should be drafted in the context of a comprehensive working from home arrangement, including with all the safeguards and limits which should arise. We note that many employers have ***required*** employees to undertake training modules in their own time, on their own devices, and RAFFWU pursues such employers for compensation for that time. As has FWO. We welcome the opportunity to work with AIG and other interested parties on a comprehensive working from home approach which would guarantee access to certain classes of employees under the GRIA to working from home.

f. The beneficial and protective provisions about the taking of breaks should not be undermined. These are also important safety provisions. We note the large proportion of young workers in the sector. We submit the changes should be rejected.

g. The annualised wage proposal should be rejected. It would allow an employer to pay a worker demonstrably less than they would have earned under the minimum Award. The lost opportunity in hoping an employer would compensate them some 12 months later is substantial. The Award has modest provisions and there has been no evidence such an arrangement would make the Award easier to use. To the contrary, it is very likely it would leave workers worse off – for at least 12 months or in any event. These issues have been agitated before and not pursued by AIG.

h. Exemption salaries have been the subject of previous applications and cases before the Fair Work Commission in relation to GRIA. They were not pursued. The introduction of such arrangements is a substantial change. A 25% loading is not appropriate with such arrangements. The only simplicity this would introduce is the capacity for employers to avoid paying higher wages under the GRIA. The use of salaries in retail under the GRIA is common and managed efficiently by many employers. Such arrangements should not be undermined by a catastrophically low buyout provision. No material is led as to how such a low buyout could possibly compensate for lost earnings and other rights. This stream must not be used as a stalking horse for cutting work conditions. We note many managerial roles in parts of the retail sector are heavily feminised.

i. We submit the first aid allowance provision is not ambiguous and does not need to be modified.

18. The AIG also proposes a range of changes which would apply to all Awards including GRIA and FFIA. We deal with each proposal below:

a. We submit the proposals to reduce the minimum engagement periods should be rejected. They are without foundation. There is no evidence employees want these changes. To the contrary, they will diminish the workplace rights of workers. We know that some employers want such changes for their own benefit and to the detriment of employees.
b. We submit pay averaging is liable to lead employers into error more frequently than maintaining accurate records and ensuring workers are paid for the hours worked. Workers under the FFIA and GRIA are paid minimum rates and need to be able to assess their wage against the hours they work in a pay period. Averaging pay across periods makes it more difficult for them to analyse and correct errors. This change would lead to greater complexity and make the Award harder to use.
c. We are unaware of a single fast food or retail employee who wishes to be paid on a four weekly cycle. We would be assisted by the research of AIG into this issue and the identification of employers who are seeking such changes.
d. We submit IFAs should be made more restrictive rather than less. We submit the proposed change to allow different pay periods should be rejected. The Awards already deal with such matters. We are not aware of employers ***wanting*** to have individualised pay period arrangements and we welcome more information about the rationale employers have for such individualised arrangements.
e. In relation to annual leave loading, we make the following submissions:
    i. Caution should be exercised over any claim of variable patterns of work in retail. The underlying rosters should be the basis for leave loading. An employer should not be entitled to avoid higher weekend or weeknight loadings simply by claiming it could not identify the hours. We submit the proposal ought be rejected.
    ii. We submit there is no ambiguity or difficulty in the GRIA or FFIA on the rates and how they are applied.
    iii. We submit there is no ambiguity or difficulty in the GRIA or FFIA on the requirement to make a payment.
    iv. In relation to minimum weekly rates, we have no objection to a note or variation which makes clear the employer satisfies their obligation by paying the minimum weekly rate for ordinary hours not attracting penalties or other entitlements.
    v. To the extent that written agreements can be properly accessed by employees at any time without monitoring of their employer, written agreements should be able to be by electronic means. We are looking

forward to the consultation process on this issue to identify any issues which may arise in practice.

19. We look forward to participating in the consultation process.

RAFFWU

19 February 2024