



STATEMENT

Fair Work Act 2009

s.157–FWC may vary etc. modern awards if necessary to achieve modern awards objective

Award flexibility–General Retail Industry Award 2020

(AM2021/7)

Retail industry

JUSTICE ROSS, PRESIDENT
DEPUTY PRESIDENT ASBURY
COMMISSIONER HAMPTON

MELBOURNE, 4 MARCH 2021

Industrial relations reform working groups – letter from Minister – award flexibility – joint application – part-time additional hours – General Retail Industry Award 2020

[1] As noted in a Statement¹ published on 1 March 2021 late on Friday 26 February 2021 the Shop, Distributive and Allied Employees’ Association (SDA), the Australian Workers’ Union (AWU) and Master Grocers Australia (MGA) (the Applicants) filed a joint application to vary the Retail Award (the Joint Application, AM2021/7). The Joint Application is said to flow from an indication by the Commission that parties should act collaboratively to reach consensus on proposed changes to the Award.

[2] The Joint Application seeks to insert a new schedule – Schedule I – Additional flexibility measures – Part-time employees – into the Retail Award. In broad terms the proposed new Schedule I facilitates agreements between an employer and certain part-time employees to work more ordinary hours than their guaranteed number of hours agreed under clause 10.5 (an additional hours agreement), up to a maximum total of 38 ordinary hours per week. Such ‘additional hours’ are to be paid at the employee’s ordinary time rate of pay, and are subject to the restrictions in clause 15 of the Retail Award and clause 1.4 of the proposed Schedule I. The Schedule also allows a part-time employee who has regularly worked additional agreed hours for at least 6 months to request a variation to the employee’s agreed part-time hours under clause 10.5 to reflect the ordinary hours actually being worked.

[3] The Applicants filed an [amended joint application](#) on 28 February 2021, which corrects some cross-referencing errors in the original application.

[4] The Joint Application is supported by the Australian Council of Trade Unions and the Council of Small Business Organisations Australia.

[5] The Applicants had requested that the matter be dealt with urgently.

¹ [\[2021\] FWC 1088](#)

[6] The 1 March Statement set out the following directions:

1. The applicants are to file a submission in support of the joint application by no later than **4pm Tuesday, 2 March 2021**.
2. Any other interested party (whether supporting or opposing the joint application) is to file a submission by no later than **12 noon Thursday, 4 March 2021**.
3. The joint application will be heard at **10.30am (AEDT) on Friday 5 March 2021**. Any party who wishes to attend the hearing should send an email to chambers.ross.j@fwc.gov.au specifying a name, organisation and contact telephone number by **12noon on Thursday, 4 March 2021**.

[7] Submissions in support of the application were received from:

- [ACTU](#) dated 2 March 2021
- [AWU](#) dated 2 March 2021
- [SDA](#) dated 2 March 2021
- [MGA](#) dated 2 March 2021

[8] Submissions opposing the application were received from:

- Australian Business Industrial, NSW Business Chamber and the Australian Chamber of Commerce and Industry ([ABI](#)) dated 4 March 2021
- National Retail Association ([NRA](#)) dated 4 March 2021
- Retail and Fast Food Workers Union ([RAFFWU](#)) dated 4 March 2021
- The Australian Industry Group ([Ai Group](#)) dated 4 March 2021 (filed late at 1:50pm)

[9] The submissions filed by the various parties opposing the Joint Application raised a number of issues, including the following threshold issues:

1. ABI submits that there is no basis for expediting the hearing of the Joint Application and that the most appropriate way to deal with the Joint Application is to:
 - (a) list the Joint Application for conference so that the determination proposed by the Applicants can be discussed and reviewed having regard to the objections and the Draft Joint Employer Determination;
 - (b) join the Joint Application with ABI and NSWBC's proposal to vary the Award in accordance with the Draft Joint Employer Determination, given that the two proposals deal with the same subject matter; and

- (c) depending on the outcome of the conferences, program the matters together for further directions and a hearing if necessary.
1. The NRA also objects to the expedited hearing of the matter and seeks the following:
- (a) the hearing listed on Friday 5 March 2021 to be adjourned;
 - (b) the Applicants to be required to file and serve evidence and more fulsome submissions in support of the Application; and
 - (c) other parties to be provided with a more fulsome and fair opportunity to reply to that evidence and those submissions.

[10] RAFFWU also object to the joint application being dealt with on an expedited basis and submit that ‘without any evidentiary base it should not be permitted to proceed’.

[11] These threshold issues will be dealt with at the commencement of the hearing at **10:30am (AEDT) on Friday 5 March 2021.**

PRESIDENT

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