

16 March 2021

Justice Ross, President
Deputy president Ashbury
Commissioner Hampton
Fair Work Commission

By email to: amod@fwc.gov.au

Subject: Award Flexibility
General Retail Industry Award 2020
(AM2-021/7)

1. The Newsagents Association of NSW and ACT Ltd (NANA) which also represents Australian Newsagents Association Ltd trading as Australian Lotteries and Newsagents Association (ALNA) is neither a party to the amended Joint Application nor should it be identified as a party amongst the Joint Employers group.
2. NANA has had discussions with members of the Joint Applicants and the Joint Employers group at different stages during the development of their respective proposals.
3. Whilst NANA supports the achievement of increased flexibility attached to the conditions of employment around the engagement of part time employees under the General Retail Industry Award 2020 (the Award), it is concerned that whatever changes to the Award that may arise from either of the proposals:
 - a. must not disturb the existing structure of the plain language version of the Award; and
 - b. must not serve to cause confusion for those small business employers which rely on the Award as the main regulatory instrument which applies to their employees.
4. This submission addresses the Draft Determination lodged by the Joint Applicants. This submission does not address the submissions made by other parties including those referred to as the Joint Employers.
5. The Joint Application seeks to restrict agreements over additional ordinary hours for part time employees to those who employees “engaged to work more than 9 hours per week” (see I.2).
6. NANA considers the 9 hour minimum engagement specified at I.2 to be an arbitrary inclusion in the Joint Application and an artificial barrier to the achievement of increased flexibility for all part time employees. We do not consider a sufficient explanation or justification has been given by the Joint Applicants as to why a 9 hour threshold should apply.

7. The Award already includes minimum periods of engagement for part time employees – 3 consecutive hours per daily engagement (at Clause 10.9) and we believe that minimum is sufficient to protect employee interests.
8. The Joint Application contains terminology which can be confusing, possibly ambiguous and which fails to support the continuation of the plain language Award.
9. Clause I.2 refers to an “additional hours agreement”, yet in the note accompanying I.2 the agreement is referred to as the “Additional Hours Agreement”. The note at I.2 goes on to refer to the same agreement as the “additional hours agreement”. The inconsistency in capitalisation is carried on throughout the Draft Determination and at one point there is a reference to an “Additional hours agreement”.
10. Given the comments contained in the note at I.2 (Making an additional hours agreement will be an agreement **to mutually change a roster to include the increased hours into the roster.**) and those contained at I.4 (**..... will be an agreement to mutually change a roster to exclude the increased rostered hours.**), it appears the Additional Hours Agreement may actually be a standing change to the employee’s roster and not just an agreement as to additional agreed hours to be worked and paid as additional ordinary hours.
11. The existing Clause 10.6 of the Award states:

10.6 The employer and the employee may agree to vary the regular pattern of work agreed under clause 10.5 with effect from a future date or time. Any such agreement must be in writing.
12. It may be that the existing Clause 10.6, subject to minor variation to add certainty and confirm flexibility, already provides the flexibility necessary to achieve the essence of the outcomes sought by the Joint Applicants.
13. There may be greater utility in addressing any inadequacy in the existing Clause 10.6, including a sunset provision, rather than embarking on a process of significant structural change to the Award.
14. Should the Commission decide to proceed with a variation either the same or similar to those outlined in the Joint Applicants’ Draft Determination we believe the proposed sunset period included at I.1 and the additional accommodation included at I.13 are appropriate.
15. A copy of this submission has been forwarded to the other parties which have participated in proceedings to date.



Ian Booth
Chief Executive Officer

