

31 May 2021

Justice Iain Ross  
President  
Fair Work Commission



By email to: [amod@fwc.gov.au](mailto:amod@fwc.gov.au)

Dear President

Subject: Draft Determination - [2021] FWCFB 2820  
Award Flexibility - General Retail Industry Award 2020 (AM2021/7)

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The Newsagents Association of NSW and ACT Ltd (and also on behalf of members of Australian Newsagents Federation t/as Australian Lottery and Newsagents Association) makes the following submission in relation to the DRAFT Determination which appeared as Attachment A to the Statement ([2021] FWCFB 2820) dated 18 May 2021.

We support the Commission's stated intention of arriving at a resolution in this matter which provides for greater clarity in the application of Clauses 10 and in 15.9. To this end, we suggest that the NOTE which appears in Clause 10.5 and NOTE 1 which appears in Clause 10.6 include the word "including" to ensure all parties understand electronic methods of recording are not the only allowable methodologies and so that the NOTES will appear as:

Delete the NOTE which appears immediately after clause 10.5 (c) and before clause 10.6 and replace it with:

NOTE: An agreement under clause 10.5 could be recorded in writing ***including*** through an exchange of emails, text messages or by other electronic means." (***Our emphasis***)

Delete NOTE 1 which appears immediately after clause 10.6 (b) and before NOTE 2 and replace it with:

NOTE 1: An agreement under clause 10.5 could be recorded in writing ***including*** through an exchange of emails, text messages or by other electronic means." (***Our emphasis***)

To ensure further clarity in relation to the hours worked under a clause 10.6 agreement, we suggest the DRAFT for Clause 10.8 is amended as follows:

- 10.8 For any time worked in excess of their guaranteed hours **agreed under clause 10.5 or those hours agreed under clause 10.6**, the part-time employee must be paid at the overtime rate specified in **Table 10 – Overtime rates**. (**Our emphasis**)

To ensure clarity in relation to rostering requirements, which we do not believe apply to casual employees, we submit that the DRAFT of clause **15.9 Notification of rosters** be replaced in its entirety by the following:

#### **15.9 Notification of rosters**

(a) The employer must ensure that the work roster is available to all **full-time and part-time** employees, either exhibited on a notice board which is conveniently located at or near the workplace or through accessible electronic means. (**Our emphasis**)

(b) The roster must show for each **full time and part-time** employee:  
(i) the number of ordinary hours to be worked by them each week;  
and  
(ii) the days of the week on which they will work; and  
(iii) the times at which they start and finish work.  
(**Our emphasis**)

(c) The employer must retain a copy of each completed work roster for at least 12 months and produce it, on request, for inspection to an authorised person.

(d) Due to unexpected operational requirements, the roster of **a full-time** employee may be changed by mutual agreement by the employer and the employee at any time before the employee arrives for work. (**Our emphasis**)

NOTE: Clause 10.6 deals with when the roster of a part-time employee may be changed by mutual agreement.

(e) For **full-time** employees, the employer may make permanent roster changes at any time by giving the employee at least 7 days' written notice of the change. If the employee disagrees with the change, the period of written notice of the change required to be given is extended to at least 14 days in total. (**Our emphasis**)

NOTE: Clause 10.10 deals with when the roster of a part-time employee may be changed by their employer.

(f) The employer and employee may seek to resolve a dispute about a roster change in accordance with clause 36–Dispute resolution.

(g) Clause 15.9(h) applies to a full-time employee whose roster is changed in a particular week for a one-off event that does not constitute an emergency and then reverts to the previous roster in the following week. (Our emphasis)

(h) The employer must pay the full-time employee at the overtime rate specified in [Table 10– Overtime rates](#) for any extra time worked by the employee because of the roster change in clause 15.9(g). (Our emphasis)

(i) An employer must not change the roster of an employee with the intention of avoiding payment of shiftwork or penalty rates, loadings or other applicable benefits. If the employer does so, the employee must be paid any shiftwork or penalty rates, loadings or benefits as if the roster had not been changed.

NOTE: See clause 27 – Rostering restrictions for the rosters of shiftworkers.

We make no definitive submission in relation to the operative date of the proposed changes other than that the Award should be varied at the earliest opportunity.

A handwritten signature in blue ink, appearing to read 'Ian Booth', is positioned above the typed name and title.

Ian Booth FSAE  
Chief Executive Officer