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Sent: Thursday, 28 January 2021 4:22 PM

To: AMOD <AMOD@fwc.gov.au>; Chambers - Ross J <Chambers.Ross.j@fwc.gov.au>

Cc: Nick Tindley <nrt@fcbgroup.com.au>; Alex Millman <a.millman@nra.net.au>; Brent Ferguson <Brent.Ferguson@aigroup.com.au>

Subject: AM2020/103 - Award flexibility - Hospitality and Retail Sectors - Draft Determination

Dear Sir/Madam

We act for the NSW Business Chamber and ABI in relation to the above proceedings.

We **attach** a draft determination giving effect to changes that our clients are seeking to be made to the General Retail Award in these proceedings.

I note that the ARA, NRA and Ai Group have also filed draft determinations seeking to give rise to exemption rates in the General Retail Award. Our clients support these applications, but do not file their own separate draft determination with respect to this issue.

Should you have any queries, please do not hesitate to contact me.

Yours faithfully

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DRAFT DETERMINATION

Fair Work Act 2009

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

Award flexibility - Hospitality and Retail Sectors

(AM2020/103)

GENERAL RETAIL INDUSTRY AWARD 2020

[MA000004]

Retail industry

JUSTICE ROSS, PRESIDENT

XX

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MELBOURNE, XX XXX 2021

Variation to the General Retail Industry Award 2021.

A. Further to the decision [[2021] FWCFB XX] issued by the Full Bench on XX XXX 2021, the above award is varied as follows:

1. By deleting clause 10 and inserting in lieu a new clause 10 to the following effect:

10. Part time employees

10.1 Classifications

An employer may employ part-time employees in any classification defined in Schedule A - Classification Structure and Definitions.

10.2 Definition of part-time employee

A part-time employee is an employee who:

- (a) is engaged to work at least 8 and fewer than 38 ordinary hours per week (or, if the employer operates a roster, an average of at least 8 and fewer than 38 hours per week over the roster cycle); and
- (b) has reasonably predictable hours of work.

10.3 A part-time employee is entitled, on a proportionate basis, to the same pay and conditions as those of full-time employees who do the same kind of work.

10.4 Setting guaranteed hours and availability

At the time of engaging a part-time employee, the employer must agree in writing with the employee on all of the following:

- (a) the number of hours of work which is guaranteed to be provided and paid to the employee each week or, where the employer operates a roster, the number of hours of work which is guaranteed to be provided and paid to the employee over the roster cycle (**the guaranteed hours**); and
- (b) the days of the week on which, and the hours on those days during which, the employee is available to work the guaranteed hours (**the employee's availability**).

10.5 Any change to a part-time employee's guaranteed hours may only be made with the written consent of the employee.

10.6 Rostering

The employer may roster a part-time employee to work their guaranteed hours and any additional hours in accordance with clause 15—Ordinary hours of work and rostering arrangements, save that to the extent that any matter in clauses 15.7 or 15.8 may be altered by agreement, the employee's availability shall constitute such agreement.

10.7 However, a part-time employee:

- (a) must not be rostered to work any hours outside the employee's availability; and
- (b) must have at least 2 days off each week; and
- (c) must not be rostered for less than three consecutive hours in each engagement.

10.8 Increasing guaranteed hours to match regular work pattern

If a part-time employee has regularly worked a number of ordinary hours in excess of their guaranteed hours for at least 12 months, then they may request in writing that the employer agree to increase their guaranteed hours.

10.9 If the employer agrees to a request under clause 10.8, then the employer and the part-time employee must vary the agreement made under clause 10.4 to reflect the employee's new guaranteed hours. The variation must be recorded in writing before it occurs.

10.10 The employer may only refuse a request under clause 10.8 on reasonable business grounds. The employer must notify the part-time employee in writing of a refusal and the grounds for it.

10.11 Change in employee's circumstances that changes their availability

If there is a genuine and ongoing change in the part-time employee's personal circumstances, then they may alter the times they are available by giving 14 days' written notice of the alteration to the employer.

10.12 If the employer cannot reasonably accommodate the alteration to the part-time employee's availability under clause 10.11, then (regardless of clause 10.5):

- (a) the part-time employee's guaranteed hours agreed under clause 10.4 cease to apply; and
- (b) the employer and the part-time employee must agree a new set of guaranteed hours under clause 10.4.

10.13 Payment rates

- (a) An employer must pay a part-time employee for ordinary hours worked in accordance with clause 17—Minimum rates.
- (b) An employer must pay a part-time employee at the rates prescribed in clause 21.2 —Payment of overtime for all time worked in excess of:
 - (i) 38 hours per week or, if the employee works in accordance with a roster, an average of 38 hours per week over the roster cycle; or
 - (ii) the maximum daily hours limitations specified in clause 15.1 (Ordinary hours of work); or
 - (iii) the employee's rostered hours.

2. By deleting paragraph 21.2(b) and replacing it with the following:

- (b) An employer must pay a part-time employee for hours worked outside the conditions specified in clause 10.13(b) at the rate specified in Column 2 of Table 10 – Overtime Rates.

B. This determination comes into effect on XX XXX 2021. In accordance with s.165(3) of the Fair Work Act 2009 this determination does not take effect until the start of the first full pay period that starts on or after XX XXX 2021.

PRESIDENT