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Subject: AM2021/7 - Award Flexibility - General Retail Industry Award 2010

Importance: High

Dear Associates and Amod team

I refer to the above proceedings, which are listed for hearing on Wednesday 17 March 2021.

The parties have held extensive without prejudice negotiations regarding a possible variation to the part-time employment provisions in the Award, which remain ongoing. It remains possible that a consensus position might be achieved in the coming days.

However, given the impending hearing date, a number of the joint employer parties wish to put all parties and the Commission on notice of the award variations that they will pursue at the hearing in the absence of a consensus position being achieved. The **attached** determination contains the award variations that ABI, NSWBC, NRA and ARA (**the Joint Employer Parties**) will pursue on Wednesday 17 March 2021.

The Commission may identify that this latest draft slightly differs from earlier versions filed. This is because the Joint Employer Parties have continued to adopt a number of compromises following discussions with union parties and have continued to consult extensively with other organisations (including Ai Group and NANA) in formulating a proposal that appropriately balances as many competing interests as possible.

The Joint Employer Parties remain open to holding further discussions directly with the union parties/MGA/COSBOA with a view to continuing to resolve any concerns and to try to reach a broad consensus on the award variations needed in this industry.

Should you have any queries in relation to this correspondence, please do not hesitate to contact our office.

Yours sincerely

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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

(AM2021/7)

GENERAL RETAIL INDUSTRY AWARD 2020

[MA000004]

Retail industry

JUSTICE ROSS, PRESIDENT
DEPUTY PRESIDENT ASBURY
COMMISSIONER HAMPTON

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 inserting new clauses 10.11 to 10.12 to the following effect:

10.11 Voluntary Additional Hours

(a) Despite anything in clause 10.10, an employer and part-time employee may make a standing written agreement that the employee may work additional ordinary hours to those agreed pursuant to clauses 10.5 and 10.6, provided that the total ordinary hours do not exceed 38 hours per week. The standing written agreement must be kept as an employee record for 7 years.

Note: A standing written agreement may be made in electronic form.

(b) A standing written agreement under this clause must specify the following matters:

- i. the employer can request the employee to work additional hours and the employee has the right to accept or refuse those additional hours;
- ii. if the employee accepts an offer of additional hours, those hours constitute ordinary hours; and
- iii. the employee may terminate the agreement at any time, with that termination taking effect from the commencement of the next roster period after the employee notifies the employer of the termination.

(c) An employer is not required to offer the additional hours referred to in the standing agreement in any particular week or weeks.

(d) If an employee is requested to work any additional ordinary hours pursuant to the standing written agreement, the employee has a right to refuse such a request.

(e) An employee may vary or revoke their standing written agreement at any time. Any variation must be kept as an employee record. Where an employee has already agreed to work additional hours under the standing written agreement in a roster period, the variation or revocation will apply from the commencement of the next roster period.

(f) The standing written agreement under this clause 10.11 cannot be made a condition of offering employment and cannot be signed concurrently with an offer employment.

10.12 Increasing guaranteed hours to match regular work pattern

(a) If a part-time employee has regularly worked additional ordinary hours in excess of their pattern of work agreed under clauses 10.5 and 10.6 for at least 12 months, the employee may request in writing that the employer vary the agreement under clause 10.5 to reflect the ordinary hours regularly being worked.

(b) The employer must respond in writing to the employee's request within 21 days.

(c) If the employer agrees to a request under clause 10.12(a), then the employer and the part-time employee must vary the agreement made under clause 10.5 to reflect the employee's new regular pattern of work. The variation must be recorded in writing before it occurs.

(d) The employer may refuse the request under clause 10.12(a) only on reasonable business grounds. The employer must notify the part-time employee in writing of a refusal and the grounds for it.

(e) Before refusing a request under clause 10.12(a), the employer must discuss the request with the employee and explore whether they can reach agreement on an increase to the number of hours agreed under clause 10.5 that will give the employee more predictable hours of work and reasonably accommodate the employee's circumstances.

10.13 The employer and employee parties to a standing written agreement consent to any dispute regarding clauses 10.12 and 10.13 being settled by the Commission through arbitration in accordance with clause 36 – Dispute resolution, except for any dispute pertaining to whether there were reasonable business grounds for refusing a request under clause 10.12(a).

10.14 Clauses 10.11, 10.12 and 10.13 will be subject to review to determine whether they will continue to operate beyond 15 September 2022.

2. By inserting a sentence and Note to the following effect to the end of clause 10.8:

Overtime rates will not apply to additional hours worked under clause 10.11

Note: additional hours worked under clause 10.11 must be ordinary hours and accordingly must fall within the spans identified in clauses 15.1 to 15.5 of the Award.

3. By inserting a sentence at the end of clause 15.9(h):

This subclause does not apply to the working of additional hours by part time employees under clause 10.11

4. By inserting a sentence to the following effect to the end of clause 21.2(b):

This subclause does not apply to the working of additional hours by part time employees under clause 10.11

5. By amending clause 10.6 in the following manner (additions underlined, deletions identified):

10.6 The employer and the employee may agree to vary the ~~regular pattern~~ times, days and hours of work agreed under clause 10.5 with effect from a future date or time. Any such agreement must be in writing.

- 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