



29 January 2019

The Hon. Justice Iain Ross AO
President
Fair Work Commission
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Dear President Ross,

AM2016/15 – 4 yearly review of modern awards – Plain language re-drafting – *General Retail Industry Award 2010*

We have been provided with the submission of the Newsagents Association of NSW and ACT (**NANA**) in this matter dated 22 January 2019 with respect to the interaction of:

- (a) clause 24.2(c)(ii) as proposed at paragraph [12] of the decision of the Full Bench in [2019] FWCFB 276; and
- (b) clause 15 (Ordinary hours of work) in the current plain language exposure draft of the *General Retail Industry Award 2010* (current version dated 20 November 2018) (**PLRD**).

NANA submits that clause 24.2(c)(ii) as proposed results in overtime being payable in circumstances where employees are otherwise working ordinary hours, as the reference to clause 15.1 therein fails to account for the exceptions to clause 15.1 contained in clause 15.2.

The current structure of the *General Retail Industry Award 2010*

In its current form as published on the Fair Work Commission website (**Current Award**), the corresponding provision to clause 24.2(c)(ii) as proposed of the *General Retail Industry Award 2010* is clause 29.2(c)(ii).

Clause 29.2(c)(ii) of the Current Award refers to “the span of ordinary hours for each day specified in clause 27.2”.

In the Current Award, clause 27.2 captures both the span of hours for each day (at clause 27.2(a)) and the exception referred to by NANA (at clause 27.2(b)(ii)).

The structure of the PLRD

In the PLRD, clauses 27.2(a) and 27.2(b) of the Current Award are separated into clauses 15.1 and 15.2 respectively.

Therefore, any provision in the PLRD seeking to refer to the matters traversed in clause 27.2(a) and (b) of the Current Award must refer to both clauses 15.1 and 15.2.

NRA response to the submission of NANA

We agree with NANA that by referring exclusively to clause 15.1, clause 24.2(c)(ii) as proposed fails to account for the effect of clause 15.2 of the PLRD, and conflicts with the effect of the corresponding provision in the Current Award.

We further agree with NANA that this needs to be remedied to ensure that the separation of clause 27.2(a) and (b) in the Current Award into the new clauses 15.1 and 15.2 in the PLRD does not alter the entitlements and liabilities of those to whom the award applies.

We note this not only effects newsagents (provided for in clause 15.2(a)), but also video stores (per clause 15.2(b)) and retailers falling within the general exception in clause 15.2(c).

Proposed remedy

We respectfully submit that this conflict may be resolved by adding the words “subject to clause 15.2” immediately after the words “(Ordinary hours of work)” to the form of clause 24.2(c)(ii) as proposed.

If this were to be adopted, the final form of clause 24.2(c)(ii) would be as follows:

- (ii) outside the span of ordinary hours for each day specified in clause 15.1 (Ordinary hours of work) subject to clause 15.2;

This captures both the general requirement of clause 15.1 and the exception contained within clause 15.2, but excludes the other matters contained within clause 15 of the PLRD, these being beyond the scope of the intention of the corresponding provision in the Current Award.

Yours faithfully,



Lindsay Carroll
Deputy CEO



Alexander Millman
Senior Workplace Relations Advisor

