

**IN THE FAIR WORK COMMISSION  
AM2014/305**

**FOUR YEARLY REVIEW OF MODERN AWARDS  
PENALTY RATES**

**SUBMISSIONS IN REPLY OF AUSTRALIAN RETAILERS ASSOCIATION,  
MASTER GROCERS AUSTRALIA, AND THE NATIONAL RETAIL ASSOCIATION  
(THE RETAIL ASSOCIATIONS)**

1. These submissions address the submissions of the Shop, Distributive and Allied Employees Association (**SDA**) dated 14 October 2016.
2. The SDA, at paragraph 6 of those submissions note an increase in the proportion of employees who usually work weekdays only, and a decrease in the proportion of employees who work weekends, drawn from the updated Changing Work Patterns research document. The data presented in the updated document, and in particular Table 3.3, is drawn from the *ABS, Characteristics of Employment, Australia, August 2015, Catalogue No. 6333.0 (COE)*.
3. The SDA compares the COE data and compares it to the figures contained in Tables 3.1 and 3.2, which are drawn from the *ABS, Forms of Employment, Australia, Nov 2008, Catalogue No. 6359.0* and the *ABS, Forms of Employment, Australia, November 2013, Catalogue No. 6359.0* respectively (collectively referred to as the **FOE**).
4. The Retail Associations submit that the Fair Work Commission should adopt a cautious approach to the COE. While the SDA asserts, at paragraph 4 of its submission, that it is the data in respect of employees which is of principal relevance, the Commission should be mindful of the change in the way the ABS has reported this data.
5. The FOE, in reporting on different engagement types, referenced three categories – “Employees”, “Independent contractors” and “Other business operators”. The COE changed these categories to “Employees”, “owner

managers of incorporated entities (OMIEs)” and “owner managers of unincorporated entities (OMUEs)”.

6. The ABS provided the following information in the COE:

*“Information presented on independent contractors consists of persons who may be employees, owner managers of incorporated enterprises (OMIEs) and owner managers of unincorporated enterprises (OMUEs).”*

7. It is apparent from this that the August 2015 data is of a very different nature to the pre-August 2015 data, and as a result there is a high potential for the data to be unreliable in terms of its use as a comparator against the previous FOE reports. This is confirmed in the Explanatory Notes to the COE, where the ABS, at paragraph 28, says:

*“Caution should be exercised when comparing results from the 2015 COE to previous Forms of Employment surveys (FOE) (2008–2013) as the population Employees in COE is not directly comparable to the Employees population in FOE.*

8. The Retail Associations therefore submit that the conclusions posited by the SDA at paragraph 6 of their submission are unreliable.

**28 October 2016**