

6 May 2020

Fair Work Commission
Annual Wage Review 2019-20
GPO Box 1994
Melbourne VIC 3001

Dear Members of the Expert Panel,

Annual Wage Review 2019-20
Submissions in reply of the National Retail Association Limited, Union of Employers

In accordance with the timetable of the Annual Wage Review 2019–20 (**the Review**) as updated by the Expert Panel on 6 April 2020, the National Retail Association Limited, Union of Employers (**NRA**) makes these submissions in reply to initial submissions and to address data published after 27 March 2020.

These submissions will also deal with questions on notice addressed to all parties.

Having regard for the current economic situation, which has deteriorated further since the NRA's initial submissions on 27 March 2020, the NRA reiterates its submission that there ought to be **no increase to minimum wages as a result of the Review**.

Reply to initial submissions

At the outset, the NRA takes this opportunity to briefly address some matters raised in submissions of other parties.

Shop, Distributive and Allied Employees' Association

The NRA notes that the Shop, Distributive and Allied Employees' Association (**SDA**) at pages 2 to 4 of their submissions dated 20 March 2020 refer to the NRA's Industry Recovery Plan (**the Plan**)¹, announced in February 2020.

Point 3.2 of the Plan did indeed, as the SDA observes, recommend that any increase to minimum wages as a result of this Review not extend to either businesses severely affected by the bushfires which occurred over the summer of 2019-20, or to businesses reliant on imports/exports from China which are severely disrupted by the outbreak of COVID-19.²

As the Expert Panel will observe from the NRA's initial submissions to this Review, the rapid and significant change in circumstances between 14 February 2020, when the Plan was published, and 27 March 2020 when the NRA filed its initial submissions has caused the NRA to adopt a different approach to this Review than was foreshadowed in the Plan.

¹ National Retail Association (2020) *A Blueprint for Retail Recovery*, available at <https://www.nra.net.au/app/uploads/2020/02/200207-NRA-Blueprint-for-Retail-Recovery-FINAL.pdf>

² *Ibid*, at page 4

The result of this is that the SDA's concerns with the approach of the NRA foreshadowed in the Plan are no longer relevant.

Separately, we note the SDA's submission that increasing wages increases disposable income, thereby benefitting the economy.

In the NRA's respectful submission, the minimum wages objective and (to the extent applicable) the modern awards objective needs to be assessed in the context of the COVID-19 pandemic and the profound impact it has had, and will continue to have, on the Australian economy.

Specifically, the criterion of "relative living standards and the needs of the low paid"³ needs to be seen in the context of seeking to maintain the greatest level of employment for the greatest number of employees.

Similarly, the criteria of:

- (a) "the likely impact of any exercise of modern award powers on ... the sustainability, performance and competitiveness of the national economy";⁴ and
- (b) "the performance and competitiveness of the national economy, including productivity, business competitiveness and viability, inflation and employment growth";⁵

must be seen in the context of allowing businesses to survive the current and anticipated adverse economic situation so that they can sustain what employment they can and be in an effective position to recover and grow once the economic situation improves.

The economic data referred in the NRA's initial submission, and data released since 27 March 2020, does not support the notion that Australian businesses, particularly retail businesses, will be able to sustain an increase to minimum wages without having an adverse effect on the viability of those businesses and on the general level of employment.

Consequently, the presumption on which SDA's comments are based – that businesses can afford to sustain an increase to minimum wages in the current and anticipated economic climate – is not a position that the Expert Panel, on the information presently available to it, can adopt.

Economic outlook increasingly grim

In the five weeks since the NRA's initial submissions were filed, it has become increasingly evident that the adverse economic impact of COVID-19 will be both significant and extended.

On 21 April 2020 the Governor of the Reserve Bank of Australia (**RBA**), Mr Philip Lowe, gave a stark short-term economic outlook, stating that "over the first half of 2020 we are likely to experience the biggest contraction in national output and income that we have witnessed since the 1930s."⁶

³ *Fair Work Act 2009* (Cth) ss 134(1)(a), 284(1)(c)

⁴ *Fair Work Act 2009* (Cth) s 134(1)(h)

⁵ *Fair Work Act 2009* (Cth) s 284(1)(a)

⁶ Lowe, P (2020) "An Economic and Financial Update", speech, Media statement by the Governor of the Reserve Bank of Australia, Sydney, NSW, 21 April

Mr Lowe then went on to state that the RBA predicted that by June 2020 the economic data would show a fall in national output by approximately 10%, a decline in total hours worked of approximately 20%, and the unemployment rate reaching approximately 10%.⁷

Although the RBA considers it a “plausible” scenario that the national economy will begin to “bounce back” commencing in the September quarter, Mr Lowe noted that this is dependent on the overall success of the response to the COVID-19 pandemic and consequently “it is difficult to be precise”.⁸

The preliminary estimate of retail turnover for the month of March 2020, released by the Australian Bureau of Statistics (ABS) on 22 April 2020 also paints a mixed but ultimately grim picture of the national economy.

According to this preliminary estimate, retail turnover grew 8.2% from February to March 2020. The ABS noted in its commentary that this is the strongest month-on-month rise in the history of the series.⁹

Although this may appear to indicate that the retail industry is experiencing unprecedented growth in turnover, the detail of these figures shows that the benefit of this growth is limited to a specific subset of retailers, with “strong sales across supermarkets, liquor retailing and other specialised food.”¹⁰

According to ABS data, the supermarket, liquor retailing and other specialised food retailing sub-industries account for only 13.5% of all retail businesses in Australia, totalling 17,936 businesses across all three of those sub-industries.¹¹

Conversely, the ABS noted that this unprecedented growth in turnover did not extend beyond the aforementioned subset of retailers, observing “strong falls in industries including cafes, restaurants and takeaway food services, and clothing, footwear and personal accessory retailing.”¹²

Cafes and restaurants account for 42,915 businesses, takeaway food services 25,784 businesses, and clothing, footwear and personal accessory retailing together totalling 13,058 businesses.¹³

Evidently, the benefit of that the increased turnover reported by the ABS is limited to a very small minority of retailers, with the majority of retail businesses still suffering a significant decline in business in the month of March 2020.

Businesses expect this and other negative impacts of the COVID-19 pandemic to continue, with 49% of Australian businesses reporting that that had already been negatively affected by the pandemic and 86% expecting to be negatively affected in future months.¹⁴

⁷ Ibid

⁸ Ibid

⁹ Australian Bureau of Statistics (2020) *Retail Trade, Australia, Preliminary, March 2020*, cat. no. 8501.0.55.008, viewed 28 April 2020, <https://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/8501.0.55.008Main%20Features1March%202020?opendocument&tabname=Summary&prodno=8501.0.55.008&issue=March%202020&num=&view=>

¹⁰ Australian Bureau of Statistics (2020) *Retail Trade, Australia, Preliminary, March 2020*, cat. no. 8501.0.55.008, viewed 28 April 2020, <https://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/8501.0.55.008Media%20Release1March%202020?opendocument&tabname=Summary&prodno=8501.0.55.008&issue=March%202020&num=&view=>

¹¹ Derived from Australian Bureau of Statistics (2019) *Counts of Australian Businesses, including Entries and Exits, June 2015 to June 2019*, Table 1: Businesses by Main State by Industry Class by Employment Size Ranges, June 2019 (a)(b) data cube 2: Excel spreadsheet, cat. no. 8165.0, viewed 29 April 2020,

<https://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/8165.0June%202015%20to%20June%202019?OpenDocument>

¹² Supra, note 10

¹³ Supra, note 11

¹⁴ Australian Bureau of Statistics (2020) *Business Indicators, Business Impacts of COVID-19, March 2020*, cat. no. 5676.0.55.003, viewed 29 April 2020, <https://www.abs.gov.au/AUSSTATS/abs@.nsf/allprimarymainfeatures/711C515C4F1F58B2CA258542007D2434?opendocument>

Just under 70% of businesses in the retail industry reported already being adversely affected by the COVID-19 pandemic in the two weeks prior to 26 March 2020, with over 80% expecting to be adversely affected in future months.¹⁵

The form of adverse affect reported and anticipated was overwhelmingly a reduction in local demand, with just over 80% of businesses reporting that they had already experienced such a reduction, with only a slightly lower proportion expecting a reduction in local demand in coming months.¹⁶

Data collected by the ABS through March 2020 reported that by the week commencing 30 March 2020, 24% of retail businesses were no longer trading.¹⁷

With 132,835 businesses engaged in the retail industry as at June 2019¹⁸, this means that over 31,800 retail businesses ceased trading in March 2020

Of businesses still trading, 66% reported a reduction in cash flow/turnover,¹⁹ which substantially accords with the preliminary retail turnover estimates.

The current situation means that retailers purveying essential items, such as groceries, are likely to continue to prosper, whilst retailers of more non-essential items, such as books, clothing, and electronics, are more likely to suffer reduction in turnover. In a survey of consumers, Deloitte noted that Australian consumers are significantly less likely over the coming weeks to spend on discretionary items, with a net reduction in spending intent on these items by 40%.²⁰

Separately, figures released by the ABS indicate that 61% of businesses have registered, or intend to register, to enrol in the Commonwealth Government's JobKeeper program.²¹

As this program requires businesses to have experienced a reduction in turnover of at least 30%, this can also be taken as an indication that 61% of businesses have experienced, or anticipate they will experience, a reduction in turnover of at least 30%.

¹⁵ Ibid

¹⁶ Ibid

¹⁷ Australian Bureau of Statistics (2020) *Business Indicators, Business Impacts of COVID-19, Week Commencing 30 March 2020*, cat. no. 5676.0.55.003, viewed 29 April 2020, <https://www.abs.gov.au/AUSSTATS/abs@.nsf/Latestproducts/5676.0.55.003Main%20Features2Week%20Commencing%2030%20March%202020?opendocument&tabname=Summary&prodno=5676.0.55.003&issue=Week%20Commencing%2030%20March%202020&num=&view=>

¹⁸ Australian Bureau of Statistics, 2019, *Counts of Australian Businesses, including Entries and Exits, June 2015 to June 2019*, 'Table 1: Businesses by Industry Division by Statistical Area Level 2 by Turnover Size Ranges, June 2019 (a) (b)' data cube 9: Excel spreadsheet, cat. no. 8165.0, viewed 24 April 2020, <https://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/8165.0June%202015%20to%20June%202019?OpenDocument>

¹⁹ Australian Bureau of Statistics (2020) *Business Indicators, Business Impacts of COVID-19, Week Commencing 30 March 2020*, cat. no. 5676.0.55.003, viewed 29 April 2020, <https://www.abs.gov.au/AUSSTATS/abs@.nsf/Latestproducts/5676.0.55.003Main%20Features4Week%20Commencing%2030%20March%202020?opendocument&tabname=Summary&prodno=5676.0.55.003&issue=Week%20Commencing%2030%20March%202020&num=&view=>

²⁰ Rogers S and Pieters L (2020) 'In the throes of a dual-front crisis - Establishing the road to a global consumer recovery', Deloitte Insights, accessed 30 April 2020, <https://www2.deloitte.com/us/en/insights/industry/retail-distribution/consumer-behavior-trends/covid-19-recovery.html?id=gx:2em:3int:4di6719:5awa:6cb:20200429>

²¹ Australian Bureau of Statistics (2020) *Business Indicators, Business Impacts of COVID-19, April 2020*, cat. no. 5676.0.55.003, viewed 4 May 2020, <https://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/5676.0.55.003Main%20Features2April%202020?opendocument&tabname=Summary&prodno=5676.0.55.003&issue=April%202020&num=&view=>

If this trend continues, the dire financial situation faced by many small and medium retailers will extend perhaps beyond the point of the ability of those businesses to endure.

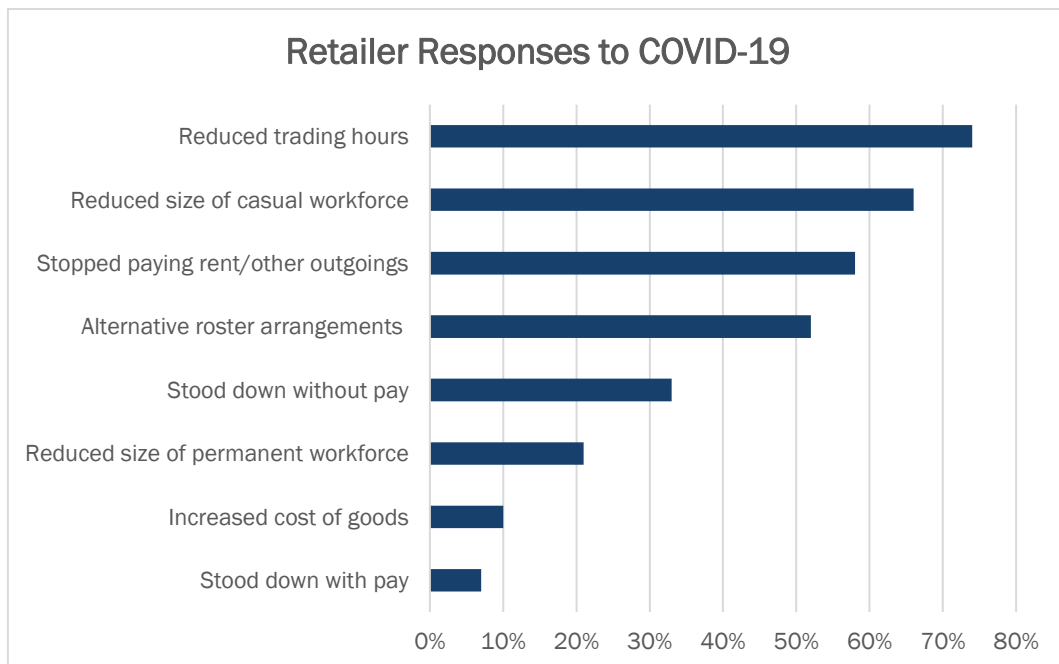
Retailer experience of the COVID-19 pandemic

In an effort to ascertain the impact of the COVID-19 pandemic on retailers, the NRA invited its members and other retailers to participate in a survey regarding the impact of the pandemic on their business.

95% of respondents indicated that they had been negatively affected by the COVID-19 pandemic, with \$18.2 million reported as lost across all respondents in the month of March 2020. If this figure is extrapolated to the retail industry generally, this indicates a total loss of revenue in excess of \$1 billion in the month of March 2020.

57% of respondents indicated that turnover had either stayed the same or decreased in the 2019 calendar year, whilst 94% reported that outgoings had either increased or remained the same in the 2019 calendar year.

The below chart indicates the measures that NRA members have implemented in efforts to address the impact of the COVID-19 pandemic (note that respondents could select more than one answer):



Respondents also reported significant concerns about their financial situation, with 89% strongly agreeing or agreeing with the proposition that they feel very anxious about their current financial situation and 85% strongly agreeing or agreeing with the proposition that they feel very anxious about their future and their ability to maintain their business.

Significantly, 95% of respondents strongly agreed or agreed with the proposition that it is difficult to ensure financial stability right now.

JobKeeper proving less effective for retailers

In relation to the government response to the COVID-19 pandemic, the NRA would like to make specific comment with respect to the Commonwealth Government's JobKeeper program.

Whilst many businesses have expressed gratitude for the passage of this scheme, in its terms it tends to operate most to the benefit of those businesses with a legal and contractual obligation to provide work, and therefore wages, to their employees.

This means that it primarily benefits those businesses with a significant cohort of permanent (either full-time or part-time) employees.

As casual employment, by its nature, imposes no obligation on the employer to provide work, and therefore payment, to an employee, for businesses with a significant cohort of casual employees JobKeeper represents a significant increase to their weekly labour costs, and more crucially alters those costs from variable to effectively fixed.

The feedback that the NRA has received from smaller businesses in particular, which typically lack the financial means to be able to support or secure the up-front payments required, is that the JobKeeper program is proving to not be an appropriate mechanism to ensure their ongoing viability, and these businesses are instead turning to the more limited grants schemes administered by the various State governments.

The NRA respectfully submits that these figures indicate that the retail industry as a whole is not in a position, in the current socio-economic climate, to sustainably afford an increase to minimum wages.

Yours sincerely,



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