

Statement

No. AG2022/5615

Fair Work Commission

Justin Gusset

Applicant

Apple Pty Limited

Employer

Statement of: Bernard Ryan

Address: c/o Level 3/20 Martin Place Sydney NSW 2000

Occupation: Director of Employee & Labour Relations APAC

Date: 8 June 2023

I, Bernard Ryan say:

1. I am employed by Apple South Asia Pte Limited in the position of Employee & Labour Relations Director and commenced in this position on 1 April 2020. I was previously employed in Australia by Apple Pty Ltd (**Apple**) from 9 October 2012.
2. In my position, I am responsible for leading the APAC Employee & Labour Relations team.
3. I have worked on the project to negotiate a new enterprise agreement since early 2020 and I co-led negotiations for the first round of bargaining that commenced in August 2022.

My estimate of time required to implement the Retail Award

4. For the reasons I set out in this statement, I estimate that a total of 8 to 12 weeks would be the minimum time reasonably required by Apple to transition retail employees from the *Apple Retail Enterprise Agreement 2014* (**Retail EA**) to the *General Retail Industry Award 2020* (**Retail Award**).

If Apple was to implement the Retail Award

5. As at the time of this statement, Apple employs the following cohorts of employees pursuant to the Retail EA:

Filed on behalf of	Apple Pty Limited
Prepared by	Kerry O'Brien
Law firm	McCullough Robertson
Tel	(02) 8241 5617
Email	kobrien@mccullough.com.au
Address for service	Level 32, 25 Martin Place Sydney NSW 2000

- (a) 2,788 total employees, out of a total of approximately 3,624 employees in Australia;
 - (b) 1,386 are full-time employees;
 - (c) 1,402 are part-time employees; and
 - (d) approximately 300 employees who work pursuant to flexible working arrangements.
6. Apple does not currently employ casual employees in its retail stores.
7. Currently, full-time and part-time employees are scheduled in accordance with clause 6 and 7 of the Retail EA which contains flexible rostering principles and, for part-time employees, variable ordinary hours of work in each roster period.
8. I am aware that the Retail Award requires part-time employees and their employer to agree in writing on a regular pattern of work. Clause 10.5 provides:

10.5 At the time of engaging a part-time employee, the employer must agree in writing with the employee on a regular pattern of work that must include all of the following:

*(a) the number of hours to be worked on each particular day of the week (the **guaranteed hours**); and*

(b) the times at which the employee will start and finish work each particular day; and

(c) when meal breaks may be taken and their duration.

NOTE: An agreement under clause 10.5 could be recorded in writing including through an exchange of emails, text messages or by other electronic means.

9. The Retail Award, in clause 9 and 15.6, also provides for a full-time employee to work an average of 38 hours per week in accordance with an agreed hours of work arrangement.
10. If the Retail Award began to cover the employment relationship between Apple and its retail employees, Apple will carry out the following process to ensure its compliance with the Retail Award.
11. Apple would carry out a consultation process.

Who would carry out the consultation process?

12. Because of the size, locations, and complexity of the employee population who would be affected by a change to the Retail Award, it would not be possible for the Labour and Employee Relations team or People team (who carry out human resources functions at Apple) to complete this consultation exercise.

13. From a resourcing perspective, there is an insufficient number of team members to complete the consultation activities themselves.
14. In Australia, there are 4 Labour and Employee Relations permanent team members and 4 People team members. Where there are 22 retail stores and approximately 2800 employees (including around 1400 part-time employees).
15. Each Labour and Employee Relations and People team member, who range in seniority and experience, is at capacity with business as usual work and responsibilities.
16. This consultation project would require Apple to deploy these employees to this specific work.

Establishing a project team and planning

17. Apple would need to select project managers from the Labour and Employee Relations team and People team to plan and complete the consultation project.
18. I estimate that this planning phase could be completed in one week.
19. I consider one week to be appropriate because the relevant employees would need to be selected based on their capacity to take on this work and re-arrange any other commitments or de-prioritise that work in favour of this project. Depending on the tasks and requirements, each employee assisting to deliver the project would be assigned different responsibilities and outcomes. This would be documented in a detailed terms of reference document.
20. Apple employees in Australia and outside Australia in other teams and areas, including Store Operations, Legal, Communications and the Retail business, would be identified as stakeholders and any known risks or issues about their participation (such as pre-planned leave) would be documented.
21. In addition, Apple has detailed project management guidelines including approval processes, record keeping and document management protocols and this would require a few days to put into place.

Developing training resources

22. The project team would be required to develop training resources to enable Store Leaders and store management to carry out the consultation activities for each of their stores. From my current knowledge, this training would include the following topics:
 - (a) the reason why the training is being conducted, and the Retail Award is being implemented in Apple retail stores in Australia;

- (b) the Retail Award itself, its content and the obligations it creates for Apple, store management and employees;
 - (c) any changes in Apple systems, including scheduling and payroll;
 - (d) Apple's consultation obligations to implement the change, including how to carry out consultation with full-time employees, part-time employees, employees who are currently working pursuant to a flexible working arrangement and the representatives who support employees during consultation; and
 - (e) how this interacts with the current bargaining for a new enterprise agreement.
23. I estimate that these resources could be developed in two weeks.
 24. I consider two weeks to be appropriate because the legal and technical content will need to be developed by Apple together with internal and external advice, and approved within Apple.

Delivering training to Store Leaders and store management

25. The project managers from the Labour and Employee Relations and People teams would undertake a training program with each retail store, at a time when these employees could be available.
26. This training would either be presented by the internal Apple employees or by an external facilitator, or a combination of both.
27. Although it is difficult to estimate, given the amount of new information and the importance of successfully educating Store Leaders and store management on the requirements of the Retail Award and of consultation obligations, I estimate that this training would take half a day to a full-day workshop.
28. As there are 22 retail stores, there are 22 Store Leaders, with management teams to support them. Management teams include Senior Managers and Managers, and one store may have up to 10 individuals in the management team depending on its size.
29. I estimate that this training could be completed for all Store Leaders and store management in 4 weeks.
30. I consider this to be an appropriate estimate because of the number of Store Leaders and store management, the likely length of the training itself and the potential availability issues that may occur. By availability issues, I mean pre-planned leave for Store Leaders and store management, unplanned leave as well as coordinating training to take into account the operational requirements in each store.

Assessing employee's pattern of working hours

31. At the same time as developing training resources and delivering the training I describe above, Apple would identify each employee's existing regular working hours, if any, and the pattern of work being the days of the week, hours per day, start, finish and break times. This includes full-time and part-time employees.
32. The purpose of this assessment is to identify, for each retail employee what hours of work Apple could provide, or agree with the employee, as a regular pattern of work.
33. If an employee does have a regular pattern of hours, the project managers would collaborate with Store Leaders and store management at the employee's store to review the current pattern of the employee's hours against the new roster arrangements being put in place at the store.
34. If the current pattern of the employee's hours could be accommodated, a decision would be made by the project managers and store management to offer the employee those regular hours going forward as their pattern of work as part of the consultation I set out later in this statement.
35. However, if an employee does not have a regular pattern of hours, Store Leaders in partnership with project managers would be required to determine what hours Apple would be able to offer the employee going forward as their regular pattern of work. This would become a starting point to conduct consultation with those employees I set out later in this statement.
36. Apple will also need to review and closely consider any specific arrangement for an employee's hours of work under a flexible working arrangement. These arrangements would all terminate automatically as a flexible working arrangement is made under the Retail EA.
37. Apple would need to specifically consult each employee on a flexible working arrangement and confirm if the pattern of work is suitable to Apple and the employee as a permanent arrangement, or if an alternate solution could be explored (for example, entering into a new flexible working arrangement under the Retail Award). Because employees who work in accordance with a flexible working arrangement at the moment are readily able to specify hours and days of work, where their colleagues work more flexibly, it may be difficult from an operational perspective to continue the same hours as previously offered or agreed for these employees where their colleagues would be working to a more fixed and inflexible pattern of work.
38. I estimate that this will require 4 to 6 weeks to complete, within the time I estimate for the developing the training resources and delivering the training.

39. I consider this estimate to be appropriate given the number of employees impacted and the capacity of the project managers to complete this work in addition to other responsibilities.
40. I also consider this estimate to align to a similar exercise Apple conducted, which I was closely involved in, during the COVID-19 pandemic lockdowns. Apple adopted a policy of maintaining employee pay for retail employees when stores were closed and, to ensure employees did not lose pay, assessed regular patterns of work for employees to pay employees these amounts each week. This ensured that any penalty rates and overtime an employee would ordinarily receive was captured.
41. This exercise took at least 3 weeks to do, with a significant amount of collaboration and cross-functional work from the People, scheduling and payroll teams, when these teams had additional capacity to allocate to that project.

Consultation with employees

42. Apple will need to commence fulsome consultation with each employee affected by the change to the Retail Award.
43. This will be undertaken by Store Leaders and store management, with close support by the project managers and other teams, including the People and Legal teams where required.
44. There is an average of around 128 employees in each of the 22 Australian retail stores
45. Apple will consult employees by:
 - (a) giving notice of the changes to employees who may be affected by them and their representatives (if any) by informing the employee about the assessment made about their proposed regular pattern of hours;
 - (b) discussing with all employees and their representatives (if any) the introduction of changes, their likely effect and measures to avoid or reduce the adverse effects by outlining the changes to scheduling at their Apple store and for their own ongoing rostering;
 - (c) for the purpose of the discussion, Apple would provide employee communications to the each employee and their representative that sets out all relevant information about the changes underway because of the transition from the Retail EA to the Retail Award, including the nature of those changes and how those industrial instruments are different, the expected effect on Apple retail employees and any other matters that Apple can inform employees about to ensure that they are informed and feel supported throughout the transition; and

- (d) invite each employee to give their views about the impact of the change and consider their input.
46. Apple's general practice for employee consultation on broad changes or updates at Apple is to publish detailed internal communications explaining the changes and setting out timeframes for the transition.
47. For full-time and part-time employees, but particularly part-time employees, Apple will endeavour to reach agreement about a pattern of work so as to comply with the Retail Award.
48. For part-time employees, in addition to consulting this cohort about transition to part-time employment pursuant to the Retail Award, this may include offering full-time employment, where their previous pattern of work and additional hours selected by the employee to work over and above their scheduled hours of work rostered by Apple was closer to full-time hours each week or each fortnight.
49. I estimate that this would take 4 weeks.
50. I consider this to be an appropriate estimate because of the size of the employee population, as this transition will mean that Store Leaders and store management will be having thousands of individual conversations in the workplace around employee availability, with any reasonable periods of time for employees to provide feedback and for Apple to genuinely consider and respond to feedback.

Implementing new patterns of work

51. Apple will develop new template contracts of employment for each new category of employee based on the Retail Award and carry out this work simultaneously with the earlier stages but this may take additional time.
52. Once consultation is completed, the next stage will require Apple to implement the outcome of any finalised consultation by:
- (a) entering into a variation to the employee's contract of employment containing a written agreement with a part-time employee on their pattern of hours; or
 - (b) entering into a new contract of employment for part-time employees who agreed to transition to full-time employment; or
 - (c) entering into a new contract of employment for full-time employees who would continue as full-time employees but have their minimum entitlements provided by the Retail Award.

- 53. I estimate that the work in paragraph 52 above would be completed within one further week, to provide time to the employee to consider and return any new terms of their employment.
- 54. Where a part-time employee cannot agree with Apple on a regular pattern of hours as required by the Retail Award in the time period provided for above, and Apple cannot agree with the employee for operational reasons, Apple will then continue to work and communicate with the employee. For these employees, further time to agree to a regular pattern of work will be required.

S  _____