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

Dear Parties, Associates and Amod team

Please find attached a revised draft determination from the joint applicants.

There have been a number of changes made as a result of last week's conciliation. These changes were foreshadowed to the parties in those conciliations.

Kind Regards

Sue-Anne Burnley  
National Industrial Officer



**Shop Distributive and Allied Employees' Association**

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FAIR WORK COMMISSION

## DRAFT DETERMINATION

*Fair Work Act 2009*

S157 - FWC may vary. Etc. modern awards if necessary to achieve modern awards objective

**Award flexibility – Hospitality and Retail Sectors (AM2020/103)**

**GENERAL RETAIL INDUSTRY AWARD 2020**

MA000004

Retail Industry

JUSTICE ROSS, PRESIDENT  
DEPUTY PRESIDENT ASBURY  
COMMISSIONER HAMPTON

Melbourne, DD MM 2021

*S157 Determination varying a Modern Award*

- A. Further to the Decision and Reasons for Decision <<Decision Ref>> in AM2020/103, it is determined pursuant to section 157 of the Fair Work Act 2009, that the General Retail Industry Award 2020 be varied by including new Schedule I to the Award in the following terms:

**“Schedule I – Additional flexibility measures – Part time employees**

- I.1 Schedule I operates from [insert commencement date] until [insert date 18months later]. The period of operation can be extended on application.

**Additional hours agreements**

- I.2 Subject to clause 15, an employer and a part-time employee who is engaged to work more than 9 hours per week in accordance with clause 10.5, may make an agreement (an additional hours agreement) for the employee to work more ordinary hours than the number of hours agreed under clause 10.5 (the additional agreed hours), to a maximum total of 38 ordinary hours per week.

**Note:** For the avoidance of doubt clause 10.5 applies to the Additional Hours Agreement at the time the agreement is made. Making an additional hours agreement will be an agreement to mutually change a roster to include the increased hours into the roster.

- I.3 If an employer and part-time employee make an additional hours agreement, the employee must be paid for the additional agreed hours at their ordinary rate of pay, even if they are not required to work those hours.

- I.4 The parties to an additional hours agreement may, by mutual agreement, terminate the agreement with 24 hours' notice. Such agreement will not be unreasonably withheld.

NOTE: Terminating an additional hours agreement will be an agreement to mutually change a roster to exclude the increased rostered hours.

- I.5 The employee must be paid overtime for any additional agreed hours worked unless the following conditions are met:

- (a) the additional hours agreement is genuinely made by the employer and the individual employee without coercion or duress; and
- (b) if the additional hours agreement is for a particular rostered shift, it must be recorded in writing at or by the end of the affected shift, or as soon as is reasonably practicable; and
- (c) if the additional hours agreement is for a specified period of time other than a particular rostered shift, it must be recorded in writing before the start of the first period of additional agreed hours; and
- (d) the employer must keep a copy of the additional hours agreement.

- I.6 The additional hours agreement cannot be made a condition of securing employment and cannot be signed concurrently with an offer of employment.

**Note:** The agreement could be recorded in writing through an exchange of text messages or emails.

### **Review of number of hours**

- I.7 Where a part-time employee has regularly worked additional agreed hours for at least six 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.

- I.8 The employer must respond in writing to the employee's request within 21 days.

- I.9 The employer may refuse the request only on reasonable business grounds.

**EXAMPLE:** Reasonable business grounds to refuse the request may include that the reason that the employee has regularly worked additional agreed hours is temporary—for example where this is the direct result of another employee being absent on annual leave, long service leave or worker's compensation.

- I.10 Before refusing a request made under clause I.7, the employer must discuss the request with the employee and genuinely try to 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.

- I.11 If the employer and employee agree to vary the agreement under clause 10.5, the employer's written response must record the agreed variation. If the employer and employee do not

reach agreement, the employer's written response must set out the grounds on which the employer has refused the employee's request.

#### **Other Provisions**

I.12 The employer and employee parties to an additional hours agreement consent to any dispute in relation to Schedule I being settled by the Fair Work Commission through arbitration in accordance with clause 36 – Dispute resolution and section 739(4) of the Act.

**NOTE:** A dispute about the employer's handling of a request under clauses I.8- I10 can be dealt with under clause I.12. This could include a dispute about whether the employer's refusal of a request was reasonable, whether the employer discussed the request with the employee as required under clause I.10, or whether the employer responded in writing to the request as required under clauses I.8 , I.9 and I.11."

I.13 An Additional hours agreement may, when made, have an end date up to six months beyond the life of this schedule. The provisions of this Schedule continue to apply to it during such extended period.

**B.** This determination comes into force on and from DD MM 2021.

PRESIDING MEMBER