

ARA SUBMISSION

SUBMISSION IN RESPONSE TO THE FAIR WORK COMMISSION'S MODERN AWARDS REVIEW 2023-2024 MAKING AWARDS EASIER TO USE – THE GENERAL RETAIL INDUSTRY AWARD 2020

19 FEBRUARY 2024

THE ARA

The Australian Retailers Association's (ARA) is the oldest, largest and most diverse national retail body, representing a \$420 billion sector that employs 1.4 million Australians – making retail the largest private sector employer in the country. As Australia's peak retail body, representing more than 120,000 retail shop fronts and online stores, the ARA informs, advocates, educates, protects and unifies our independent, national and international retail community.

The ARA represents the full spectrum of Australian retail, from our largest national and international retailers to our small and medium sized members, who make up 95% of our membership. Our members operate in all states and territories and across all categories - from food to fashion, hairdressing to hardware, and everything in between.

BACKGROUND

The ARA welcomes the initiative of the Minister and the Fair Work Commission (**FWC**) to commence the *Modern Awards Review 2023-24 (Awards Review)* to explore improvements designed to assist in making awards easier to use and supports the statements of the Minister that it is critically important that the modern award system is easy to understand, stable and sustainable. In response to the FWC request, the ARA made a submission dated 22 December 2023 to in relation to making the General Retail Industry Award 2020 (**GRIA**) easier to use (**First Submission**).

In the First Submission the ARA noted that the GRIA needs substantial reform to ensure that it reflects the changing circumstances of the retail industry and is consistent with the 'modern awards objective'. Following the making of submissions by other parties to the Awards Review, the ARA welcomes the opportunity to provide this submission in response.

The ARA has also had regard to the Statement issued by the Fair Work Commission on 17 January 2024 (being [2024] FWCFB 6). In the Statement, the Fair Work Commission observed that, independent of the Awards Review process, at any time an application can be made to vary a modern award pursuant to section 158 of the *Fair Work Act 2009* (Cth) (see paragraph [9]). Accordingly, consistent with the Statement, and in order to meet the principles set out in the ARA's First Submission, on 6 February 2024 the ARA filed an application to vary the GRIA (**ARA's Application**). The ARA's Application has been allocated the case number AM2024/9. The ARA is looking forward to the programming of the ARA's Application and the opportunities in both processes to achieve meaningful change for all industry participants.

POSITION

In the First Submission the ARA stated that it expected that reducing complexity in the GRIA would be a shared objective for all stakeholders in the industry and that better outcomes would flow for employers and employees alike as a result of such changes. The ARA has carefully considered the submissions of various parties to the Awards Review, and is pleased to see that there is a broad recognition and agreement across a number of parties regarding the unnecessary level of complexity in the GRIA. The ARA shares the view of a number of parties that this complexity contributes to inadvertent payroll errors and disputation in the sector. These outcomes commonly arise due to issues such as conflicting interpretations of particular clauses and difficulties automating payroll systems to align with those interpretations. These are problems that can, and should, be fixed.

The ARA also agrees with the position of the Australian Industry Group (AiG) and the Australian Hotels Association, that the part-time rostering provisions in the GRIA are unduly restrictive, out-of-step with awards in other industries and act as a limitation on the ability of employers to provide additional hours to permanent employees. The ARA's position is that these should be amended for the mutual benefit of employees and employers.

The ARA shares with AiG concerns that the FWC's plain language redrafting process has potentially led to a number of substantive changes to entitlements that was not intended and which should be rectified by the FWC. In particular, the ARA supports the change proposed by AiG at paragraph 351 of their submissions to replace the word 'establishment' with 'retailer' in clause 15.2(c) of the GRIA. The ARA also supports subsequent amendments to the clause (as outlined in the ARA's Application at proposal E) to ensure the substantive intent of the clause contained within the GRIA 2010 is not lost.

The ARA also notes that on 14 February 2023 the Australian Business Industrial and Business NSW have filed a further submission and a draft determination with respect of clauses 15.7 and 15.8 of the GRIA. In the brief time available to review these materials, the ARA notes that it agrees with the history of the corresponding clauses of 15.7 and 15.8 in clause 28 of the GRIA 2010 and that that history demonstrates that the clauses were only intended to apply to full-time employees. However, the ARA submits that the appropriate course to remedy this issue is for the FWC to confirm that clauses 15.7 and 15.8 apply only to full-time employees, which is the position contained in the ARA's Application (see proposal H and I).

The ARA otherwise notes that a number of parties have put forward suggested changes to clauses in the GRIA dealing with:

- rostering of hours;
- overtime entitlements;
- penalty rates;
- absorption/exemptions arrangements;
- allowances;
- breaks;
- leave entitlements; and
- termination provisions.

The ARA looks forward to the opportunity to explore these issues and proposals in the consultation sessions listed by the FWC and to make further comment and submissions following those consultations. The ARA welcomes the opportunity to engage constructively in that process, whilst noting its position that to the extent that any variation proposed by another party is inconsistent with the variations proposed in the ARA's Application, the FWC ought ultimately prefer making determinations varying the GRIA consistent with the ARA's Application. Any queries in relation to this submission can be directed to our policy team at policy@retail.org.au.