



2 February 2018

The Honourable Justice Iain Ross
President, Fair Work Commission
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Dear President Ross,

AM2015/2 – Family Friendly Working Arrangements

This correspondence is intended to serve as the submissions of the National Retail Association (**NRA**) with respect to the background papers issued by the Commission in the above matter on 12 January 2018, alongside the Commission's Statement in this matter [2018] FWCFB 99.

Background Paper 1

NRA is of the view that the description of NRA's position set out paragraphs [59] to [61] and [70] accurately reflect the position taken by NRA in this matter.

Background Paper 2

Background Paper 2 provides an overview of statutory rights to flexible working arrangements in other OECD countries.

NRA takes this opportunity to remind the Commission that it's task in this review process is to consider whether the awards under review meet the modern awards objective.

In this discrete matter, the task for the Commission is to determine whether the draft determination as proposed by the ACTU (being Attachment A to Background Paper 1), if inserted into the modern awards, would allow those awards to better meet the modern awards objective.

With this in mind, NRA cautions the Commission against placing much weight on statutory or regulatory regimes in other jurisdictions which are designed to address the particular socio-economic and legal situations present in those jurisdictions.

Most notably, of the 18 nations examined in the Background Paper, 16 of them are members of the European Union, and therefore subject to additional regulatory principals, including submission to the jurisdiction of the laws and courts of the European Union rather than their national laws, courts and tribunals alone.

Whilst it may be that the Commission draws indicative conclusions as to the effect that flexible working arrangements may have on productivity and such other matters, the Commission must take into consideration that these laws operate in a different socio-economic and regulatory environment. As such, that which is successful in (for example) Slovenia carries no guarantee of having similar effect when applied to Australia.

Ultimately, the Commission must bear in the forefront of its mind that these nations are not Australia, and the Commission is not tasked with replicating foreign laws.

Background Paper 3

NRA's position with respect to the matters traversed in Background Paper 2 are equally applicable to Background Paper 3.

Conclusion

NRA maintains its position that the draft determination as proposed by the ACTU does not meet the modern awards objective and the application should be dismissed.

NRA further maintains that whilst the approach of other jurisdictions may be educational, and indicative in some small way with respect to particular elements of the modern awards objective, little if any weight should be given to these matters given the social, economic, and legal frameworks within which these foreign regulatory regimes operate.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Dominique Lamb', written in a cursive style.

Dominique Lamb
CEO

