

Form F46 – Application to make, vary or revoke a modern award

Fair Work Act 2009, ss.157–161

This is an application to the Fair Work Commission to make a modern award or make a determination varying or revoking a modern award, in accordance with Part 2-3 of the [Fair Work Act 2009](#).

The Applicant



These are the details of the person who is making the application.

Title	<input type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Other please specify:		
First name(s)			
Surname			
Postal address			
Suburb			
State or territory		Postcode	
Phone number		Fax number	
Email address			

If the Applicant is not an individual, please also provide the following details

Applicant's legal name	Australian Retailers Association	
Applicant's trading name	ARA	
Applicant's ABN/ACN	ABN 99 064 713 718	
Contact person	Mr Paul Zahra CEO, Australian Retailers Association T: 61 03 8660 3306	

	Email: Paul Zahra < policy@retail.org.au >	
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Does the Applicant need an interpreter?



If the Applicant has trouble accessing this information, please contact us. We can arrange to provide it in another format. You can find information about [help for non-English speakers](#) on our website.

Yes – Specify language

No

Does the Applicant require any special assistance at the hearing or conference (eg a hearing loop)?

Yes – Please specify the assistance required

No

Does the Applicant have a representative?



A representative is a person or organisation who is representing the applicant. This might be a lawyer or paid agent, a union or employer organisation, or a family member or friend. There is no requirement to have a representative.

Yes – Provide representative’s details below

No

Applicant’s representative



These are the details of the person or organisation who is representing the Applicant (if any).

Name of person	Shea Wilding
Firm, organisation or company	Corrs Chambers Westgarth
Postal address	Level 25, 567 Collins Street
Suburb	Melbourne

State or territory	VIC	Postcode	3000
Phone number	9672 3537	Fax number	
Email address	shea.wilding@corrs.com.au		

Is the Applicant's representative a lawyer or paid agent? Yes No**1. Coverage****1.1 What is the name of the modern award to which the application relates?**

Include the Award ID/Code No. of the modern award.

General Retail industry Award 2020 (MA000004)

1.2 What industry is the employer in?

Retail.

1.3 Does the application relate to the Care and Community Sector?

The Care and Community Sector includes, but is not limited to, the aged care, early childhood education and care and disability care sectors. Applications to make, vary or revoke awards that relate to the Care and Community Sector are decided by Care and Community Sector Expert Panels. See sections 617(8) and (9) of the FW Act.

 Yes No Unsure

2. Application

2.1 What are you seeking?

Specify which of the following you would like the Commission to make:

a determination varying a modern award

a modern award

a determination revoking a modern award

2.2 Does the application seek to vary modern award minimum wages?

Yes

No

2.3 Does the application relate to gender pay equity?



Variations to awards relating to substantive gender pay equity matters are decided by pay equity Expert Panels. See sections 617(6) and (9) of the FW Act. See also work value reasons in s.157(2A) and (2B).

Yes

No

Unsure

2.4 What are the details of your application?

Outline the changes you are asking the Commission to make. For example - if you are asking the Commission to vary an existing award, you should set out which parts of the award you are asking the Commission to change and how you think these parts should be changed.

To vary the *General Retail Industry Award 2020* (the **GRIA 2020**) in accordance with the schedule attached to this application.

The Australian Retailers Association (the **ARA**) is an organisation that is entitled to represent the industrial interests of one or more employers or employees that are covered by the modern award, pursuant to section 158(1), item(1)(b) of the *Fair Work Act 2009* (Cth) (**FW Act**).

The variations are sought pursuant to s 157(1)(a) of the FW Act to apply from a date following the making of the orders, to be specified by the Commission. In the alternative, the variations listed in the schedule as C, E, H, I, K, M, N, O and Q are sought pursuant to s 160(1) of the FW Act.

The ARA makes the application pursuant to s 158(1), item(1)(b) of the FW Act. In the alternative, the ARA makes the application for the variations listed in the schedule as C, E, H, I, K, M, N, O and Q pursuant to s 160(2)(c) of the FW Act.

Attach additional pages, if necessary.

2.5 What are the grounds being relied on?

Using numbered paragraphs, specify the grounds on which you are seeking the proposed variations.



You must outline how the proposed variation etc is necessary in order to achieve the modern awards objective, and the minimum wages objective if it applies, as well as any additional requirements set out in the FW Act.

The ARA will seek directions from the Commission for the filing of evidence and submissions in relation to the Application. Outlined below is a brief summary of the grounds upon which it seeks the proposed variations. It is intended that these will be supplemented by the materials to be filed, and may change following feedback from other parties.

Background

1. Award complexity is the single biggest source of confusion, disputation and litigation in the retail sector. It leaves many employees in a situation in which they do not fully understand their entitlements and many small retailers in a position in which they do not fully understand their responsibilities. It also results in a costly drain on resources for all stakeholders, including employees, employers, unions and regulators. In the interests of all retail sector stakeholders, this situation requires comprehensive resolution.
2. The GRIA 2020 is difficult for employers to apply in practice and is not simple or easy for employees and their representatives to understand. The GRIA 2020 contains a number of provisions which are well known to be the subject of competing interpretations and practices across a number of employers, unions and regulators.
3. There are significant problems with the GRIA 2020 in a contemporary retail setting, evidenced by widespread inadvertent and unintentional compliance issues, historical and outdated rostering requirements, excessive length and restrictions on flexibility – all resulting in unnecessary complexity. The prescriptive nature of the GRIA 2020 makes adaptation, including changes to meet the requests of employees, very challenging to implement. This restricts the ability of employers to offer additional ordinary hours to part-time employees, meaning that they miss out on the benefits of superannuation and leave accruals which only apply to ordinary hours.
4. It is essential that the GRIA 2020 enables, rather than restricts, sensible collaborative flexibility in the various dynamic business environments across the sector. The current provisions include overly prescriptive restrictions that place undue weight on administratively burdensome processes that deliver little in the way of real benefit to employees. This needs to change, with the focus moved to easily understood and evidenced agreements reached between employers and employees in a way that best reflects their circumstances and the realities of the working environment.

The modern award objective

5. Under section 134(1) of the FW Act, the Fair Work Commission (**FWC**) must ensure that modern awards, together with the National Employment Standards, provide a fair and relevant minimum safety net of terms and conditions taking into account the matters raised in items (a) – (h) (**the modern awards objective**).

6. Relevantly, for the purpose of this application, the FWC may also make a determination varying a modern award under section 157(1)(a) of the FW Act, if the FWC is satisfied that making the determination is necessary to achieve the above modern awards objective.
7. This application is made on the basis that the variations are necessary to achieve the modern awards objective, as set out in section 134(1) of the FW Act.
8. The Commission will be satisfied that the proposed variations listed in the schedule are necessary to meet the modern awards objective.

The variations in the schedule meet the modern awards objective

A - Amendment to make clear that 'written' records include digital records

9. The ARA's position is that where an agreement is required in writing in the GRIA 2020, a digital record is sufficient to meet this obligation. There are already a number of 'Notes' in the GRIA 2020 which confirm this position. However, the ARA notes there is uncertainty and confusion across the retail sector in respect of whether this is the case.
10. In an increasingly digital world, it is appropriate that the terms of the GRIA 2020 reflect the reality that agreements and notices are provided through various electronic systems. Given the evolving nature of these systems, it is appropriate that broad language is used rather than unnecessarily prescribing the types of systems that employees and employers can utilise as part of a modern and productive workplace relations system.
11. Further, the ARA's position is that it is unnecessarily duplicative and confusing to have multiple 'Notes' in the body of the GRIA 2020 clarifying the availability of digital records in respect of distinct clauses, when it would be made simpler and easier to understand by confirming the availability of digital records in all cases at the beginning of the GRIA 2020.
12. The ARA relies on sections 134(1)(d), (f), (g) and (h) of the FW Act.

B - Amendment to allow for split shifts with employee agreement

13. The introduction of a new clause 15.X and amendment to clause 15.3 of the GRIA 2020 is required to suit flexible modern work practices, and to give effect to an employee's preference in working arrangements (particularly in respect of those who have carer and family responsibilities) in a manner that is not cost prohibitive to employers.
14. There are many employees who may prefer to work split shifts as it may help them to better balance other commitments (including care and family responsibilities) whilst increasing their level of workforce and economic participation.
15. The proposal will also provide employers with an opportunity to offer additional hours at peak times on a permanent basis, thereby improving access to secure work.
16. The proposal ensures protection for employees by requiring that split shift arrangements only occur with employee agreement.
17. The ARA relies on sections 134(1)(aa), (ab), (c), (d), (f) and (h) of the FW Act.

C - Amendment to minimum break between shifts on different days, and to clarify payment rate

18. The variation to amend clause 16.6 of the GRIA 2020 is required to allow for flexible modern work practices aligned with the minimum break period in other awards, and to remove complexity and uncertainty as to the calculation of the applicable penalty to be paid where the break is not provided.
19. By way of comparison, the *Hospitality Industry (General) Award 2020* provides for a default minimum 10 hour break between shifts (cl 15.5(e)), the *Restaurant Industry Award 2020* provides for a default minimum 8 hour break between shifts (cl 23.2), and the *Fast Food Industry Award 2020* provides no such minimum.
20. The current penalty in GRIA 2020, set at “200% of the rate of pay they would be entitled to” can lead to uncertainty in its interpretation, causes significant administrative difficulty to implement and can lead to disparity and inconsistent outcomes for employees across the industry. The proposed variation promotes simplicity, is aligned to the understood interpretation across large parts of the retail industry (which was endorsed by the Commission in Application by *Fantastic Furniture Pty Ltd* [2020] FWCA 699), and is easy to understand and implement.
21. The ARA relies on sections 134(1)(ab), (d), (f), (g) and (h) of the FW Act.

D - Amendment to improve ability to average hours over longer periods

22. The variation to clauses 15.6(g), 15.7(a) and 18.2 of the GRIA 2020 is required to provide employers and employees with the flexibility they require in a changing retail environment.
23. Employers and employees should be able to average the hours of work over longer periods than four weeks, as is the case in many other awards. Where this occurs, it is also appropriate that the payments owed to employees in respect of a particular pay cycle align to the average hours for that pay cycle.
24. The ARA relies on sections 134(1)(d), (f), (g) and (h) of the FW Act.

E - Amendment to clarify extended trading hours

25. The variation to clause 15.2(c) of the GRIA 2020 to replace the word ‘establishment’ with ‘retailer’ and to incorporate the wording ‘on all days of the week’ are suggested reversions to the terms of the GRIA 2010 and rectifies an unintended change that occurred during the ‘Plain English’ drafting amendments. The change proposed clarifies that clause 15.2(c) applies where a retail business has trading hours in any store extending beyond 9.00 pm on a Monday to Friday or 6.00 pm on a Saturday or Sunday and makes it clear that the finishing time for ordinary hours on any and all days of the week will be 11.00 pm.
26. The ARA relies on sections 134(1)(c), (d), (f), (g) and (h) of the FW Act.

F - Amendment to remove restriction of 19 starts for full-time employees

27. The variation to remove clauses 15.6(i) and 15.6(j) of the GRIA 2020 is required to reflect modern working practices, increase flexibility and remove inconsistency in the entitlements owed by different employers in the same industry.
28. The ARA relies on sections 134(1)(d), (f), (g) and (h) of the FW Act.

G - Amendment to allow greater flexibility for 38 ordinary hours to be worked across four days

29. The variations to clauses 15.4 and 15.5 along with the corresponding amendment to clause 21.2(c) of the GRIA 2020 are required to reflect modern work practices and provide flexibility for

employees, including facilitating an increase in alternate working arrangements (such as the four day working week). These types of arrangements also provide pathways to inclusion for employees with personal circumstances (such as caring responsibilities) which mean a compressed working week is preferable, whilst retaining the benefits (such as superannuation and leave accrual) that come from those hours being treated as ‘ordinary hours’. The GRIA 2020 currently provides limited flexibility for the implementation of a compressed working week.

30. Increasing the maximum ordinary hours to 10 hours is consistent with many other modern awards including the *Clerks Private Sector Award 2020* (which provides for a maximum of 10 hours excluding unpaid meal breaks); the *Textile, Clothing, Footwear and Associated Industries Award 2020* and *Commercial Sales Award 2020* (which provides for a maximum of 10 hours on any day); and the *Wine Industry Award 2020* and *Miscellaneous Award 2020* (which provides for a maximum of 10 hours on any day, with the ability to agree to extend up to 12 hours).
31. The proposal also provides for less maximum ordinary hours per day than other comparable awards including the *Fast Food Industry Award 2020*, which provides for a maximum number of 11 ordinary hours worked in one day.
32. The proposal ensures protection for employees by only allowing the additional 11 hour shift length to occur with employee agreement.
33. The ARA relies on sections 134(1)(aa), (ab), (c), (d), (f), (g) and (h) of the FW Act.

H - Amendment to improve flexibility to remove requirement for consecutive days off by agreement

34. The variations to clause 15.7(d) of the GRIA 2020 are required to reflect modern work practices, increase flexibility, make the GRIA 2020 simpler to use and to reduce the administrative burden on employers.
35. The proposal retains the core protection that any such change occurs only with employee agreement.
36. The amended heading also clarifies that clause 15.7 is only applicable to full-time employees, which was clear under the GRIA 2010. The ‘Plain Language re-drafting’ proceedings leading to the loss of this clarity were not intended to have the effect of changing entitlements, and accordingly the ARA submits that the GRIA 2020 should be clarified consistent with the historical position.
37. The ARA relies on sections 134(1)(ab), (d), (f), (g) and (h) of the FW Act.

I - Amendment to clarify employees regularly working Sundays

38. The amendment of clauses 2 and 15.8 of the GRIA 2020 are required to reflect modern work practices, increase flexibility, make the GRIA 2020 simpler to use and to reduce the administrative burden on employers.
39. The ability to work on weekends is of importance to many employees as it allows them to work whilst balancing other commitments such as study and caring responsibilities. In this context it is relevant that work in similar industries (with similar customers and employee characteristics) is not subject to restrictions on regular Sunday work under the terms of those awards (see *Hospitality Industry (General) Award 2020*, *Restaurant Industry Award 2020* and the *Food Industry Award 2020*).

40. Further, there is currently an absence of clarity regarding which employees qualify for the entitlement, so it is appropriate that the GRIA 2020 be amended to provide a simple definition which can be assessed easily by employees and employers.

41. The ARA relies on sections 134(1)(ab), (c), (d), (f), (g) and (h) of the FW Act.

J - Amendment to introduce salaries absorption for managerial and higher-level staff

42. The insertion of new clause 17A of the GRIA 2020 is required as the GRIA 2020 does not currently appropriately recognise the seniority and responsibilities of managers and higher-level staff, hindering productivity and the flexibility that employers can give those managers in order to balance their personal and work commitments.

43. A simple, easy to understand absorption rate set at 125% of the annual equivalent of the minimum weekly rate in the GRIA 2020 creates sustainable and certain remuneration for these employees and allows for flexibility without an overly proscriptive compliance process for employers.

44. The proposed clause is largely based on the salaries absorption clause in the *Hospitality Industry (General) Award 2020* (clause 25), however the proposed clause provides an additional safeguard for employees such that the number of hours of work that can be absorbed is capped at an average of 43 hours per week (compared to no such protection in the *Hospitality Industry (General) Award 2020*).

45. It is also noted that the proposed clause does not seek to exclude from award coverage the senior roles in Retail which would under other awards, inclusive of the *Hospitality Industry (General) Award 2020*, be carved out of award coverage. Rather, the proposed clause seeks to provide improved flexibility and recognition of the seniority of the roles and the realities associated with management of retail operations.

46. The ARA relies on sections 134(1)(d), (f), (g) and (h) of the FW Act.

K - Amendment to clarify the availability of standing consent provisions

47. The amendment to clauses 10.6 and 10.7 of the GRIA 2020 is required to promote flexible modern work practices, improve access to secure work and workforce participation, and to confirm the availability of an administratively workable mechanism for part-time employees to be given the option to accept to work additional hours at ordinary rates.

48. Clause 10.6 of the GRIA 2020 already allows for a part-time employee to agree to vary the hours of any shift, however there is uncertainty as to whether it allows for the 'standing consent' arrangements which are common in enterprise agreements across the retail sector. The availability of 'standing consent' should be clarified as this provides an administratively workable mechanism for part-time employees to be able to access additional hours whilst at all times retaining the ability to decline any such hours when offered. The availability of such arrangements increases access to secure work and increases workforce participation for part-time employees (who are predominantly women).

49. Accessing additional ordinary hours provides employees with the opportunity to access further income, and to obtain the benefit of superannuation contributions and leave accruals in respect of those hours worked.

50. The ARA relies on sections 134(1)(aa),(ab),(c),(d),(f),(g) and (h) of the FW Act.

L – Amendment to remove various restrictions and provide greater roster flexibility

51. The amendment to delete clauses 10.5(c) and 16.3 of the GRIA 2020 is required to reflect modern work practices, increase flexibility, the need to promote social inclusion, make the GRIA 2020 simpler to use and to reduce administrative burden on employers.
52. Currently, clause 10.5(c) requires an employer to agree in writing with a part-time employee at the time of engagement as to when meal breaks may be taken and their duration. This practice is overly restrictive on both the employer and the employee. In practice, many employers and employees organise meal breaks with reference to the circumstances at the time (including when other staff members need to take breaks, staff availability, employee preference and in light of carer responsibilities). Many of these factors cannot be known at the time of engaging a part-time employee. The changes provide flexibility for employees and employers and align with modern ways of working.
53. Similarly, it is unclear why breaks need to be notified in a roster for full-time and casual employees weeks in advance of those breaks being taken. In a retail environment in which employees largely stay in the store (or in close proximity), it is difficult to see how notification of breaks is required several weeks in advance.
54. The ARA relies on sections 134(1)(aa),(c),(d),(f) and (g) of the FW Act.

M – Amendment to clarify application of overtime provisions for employees

55. The amendment to clause 21.2 of the GRIA 2020 is required to make the GRIA 2020 simple, easy to understand, stable and sustainable and to reduce regulatory burden upon employers.
56. Currently, clause 21.2 of the GRIA 2020 sets out how the payment of overtime works in respect of different groups of employees (i.e., full-time, part-time or casuals) in consecutive paragraphs. However, the paragraphs could be clearer and do not contain clear headings for each applicable group. The revised clause sets out the entitlements of each distinct work group in a table that makes the GRIA 2020 easier to use for employees and employers, minimizing the potential for non-compliance with the overtime provisions.
57. The proposed amendments also seek to use consistent language across each of the different groups of employees where the entitlements are intended to be the same. The ARA's position is that these amendments should be made even if the table format is not adopted.
58. The ARA relies on sections 134(1)(f) and (g).

N – Amendment to resolve rostering ambiguities

59. The amendment to clause 15.7(c) of the GRIA 2020 is required to improve access to secure work, promote social inclusion through workforce participation, promote modern work practices and make the GRIA 2020 simpler to use.
60. Currently, clause 15.7(c) of the GRIA 2020 provides that an employee can be rostered on to work six days in one week if the employee is rostered to work ordinary hours on no more than four days in the following week. In a modern workplace, this restriction on flexibility is unnecessarily proscriptive and fails to take into account employee rostering preferences which can vary depending on caring and personal arrangements.
61. The revisions to clause 15.7(c) keep the restriction in respect of the total number of days that can be worked in a fortnight (i.e., 10 days per fortnight) while removing the prohibitions in respect of the order in which those days are worked (i.e., it would allow for four days one week, six days the

second week). This affords employers and employees more flexibility while retaining appropriate limitations on an employee's total hours per fortnight.

62. The restriction on a maximum of six consecutive days work in clause 15.7(e) would remain.

63. The ARA relies on sections 134(1)(aa), (c),(d) and (g).

O – Amendment to clarify annual leave loading

64. The amendment to clause 28.3 of the GRIA 2020 is required to remedy a number of issues that have already been identified by a number of parties in respect of the GRIA including that:

- (a) the existing clause does not provide clarity in respect of how the rate of annual leave loading should be determined in circumstances where employees are performing variable hours of work. This leads to unintentional non-compliance where an employer is unsure of the employee's ordinary hours of work in the period (including whether it would include weekend penalty rates); and
- (b) in drafting the GRIA 2020, the scope of clause 28.3(c)(ii) was unintentionally expanded to take into account 'all penalty rates' (which would include evening penalty rates on weekdays and public holidays) whereas the previous drafting in cl 32.3(b)(i) of the GRIA 2010 only took into account 'relevant weekend penalty rates'.

65. The ARA's amendments to clause 28.3 rectify the above issues and are required to reduce regulatory burden on employers and ensure the GRIA 2020 is simple and easy to understand.

66. The ARA relies on sections 134(1)(aa),(c),(d),(f) and (g).

P – Amendment to provide an ability for employees to waive a meal break and go home early, or combine break entitlements

67. The amendment to clause 16.5 and insertion of new clause 16.6 of the GRIA 2020 is required to promote social inclusion, promote flexible modern work practices and ensure a simple and sustainable award.

68. Currently, clause 16.5 of the GRIA 2020 places a number of restrictions upon when an employer can require an employee to take a meal break. The ARA's drafting provides flexibility where an employee agrees to a particular alternative arrangement (such as taking meal breaks combined with rest breaks). This change is required to give effect to the preferences of employees, including those who would prefer to leave work earlier in order to attend to caring responsibilities (without loss of pay).

69. Importantly, the ARA's drafting still provides for appropriate limitations on meal and rest breaks as a baseline position, with the ability for flexibility only where an employee agrees to the changes. A safeguard is also applied whereby an employee can only work up to 6 hours without taking a meal break, even in circumstances where the employee's preference might be to agree to such an arrangement.

70. The ARA relies on sections 134(1)(aa),(c),(d) and (g).

Q – Amendment to clarify the application of the first aid allowance

71. The amendment to clause 19.10 of the GRIA 2020 is required in order to ensure that the GRIA is simple and easy to understand.

72. In particular, amendments are required to clarify that an employee is only entitled to a first aid allowance in circumstances where the employee has actually been appointed for the relevant working day or shift to be responsible for performing first aid duties. This is an interpretation that is already widely implemented in the sector.
73. Practically, some employees are appointed to be responsible for first aid duties for one shift per week, while others are appointed to be responsible for first aid duties for several shifts during the week. This leads to anomalous outcomes for employees in circumstances where the first aid allowance is payable weekly.
74. The ARA’s amendments clarify when the first aid allowance is applicable and also provide for an hourly payment rate, which better reflects the working arrangements of those who are responsible to perform first aid during work hours. An hourly allowance also makes it more likely that part-time and casual employees will be given the opportunity to earn the allowance.
75. The ARA relies on section 134(1)(g).

Attach additional pages, if necessary.

Signature



If you are completing this form electronically and you do not have an electronic signature you can attach, it is sufficient to type your name in the signature field. You must still complete all the fields below.

Signature	<i>Shea Wilding</i>
Name	Shea Wilding
Date	6.02.2024
Capacity/Position	Senior Associate, Corrs Chambers Westgarth (Representative for the Applicant)



Where this form is not being completed and signed by the Applicant, include the name of the person who is completing the form on their behalf in the **Capacity/Position** section.

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Schedule to Application to Vary a Modern Award

General Retail Industry Award 2020

Application by Australian Retailers Association

A - Amendment to make clear that ‘written’ records include digital records

1. Insert a new clause 2A in the GRIA 2020:

2A. For the purposes of any agreement or notice that is required to be recorded in writing under this award, the agreement or notice may be provided and recorded digitally, including through an exchange of emails, text messages, a record in an electronic system or by other electronic means.

2. Delete the below notes that appear at clauses 10.5 and 10.6:

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.

NOTE 1: An agreement under clause 10.6 could be recorded in writing including through an exchange of emails, text messages or by other electronic means.

B - Amendment to allow for split shifts with employee agreement

3. Amend clause 15.3 of the GRIA 2020 as follows:

15.3 Ordinary hours of work on any day are continuous, except for rest breaks and meal breaks as specified in clause 16 — Breaks, or where agreed between an employer and employee under clause 15.X.

4. Insert a new clause 15.X of the GRIA 2020 as follows:

15.X Split-shifts

- (1) *By agreement between the employer and an individual employee, the employee may be rostered to work a split-shift such that they work ordinary hours in two blocks on one day with an unpaid period of at least one hour in between the end of the first work block and the beginning of the second work block.*
- (2) *Where an employee works a split-shift pursuant to clause 15.X(a), clauses 10.9 and 11.2 will apply in respect of the totality of hours the employee is engaged for each day.*
- (3) *Where an employee works a split-shift pursuant to clause 15.X(a), clause 16.2 will apply in respect to the hours within each block, assessed separately.*
- (4) *For the avoidance of doubt, clause 16.6 does not apply to the period between the two blocks of ordinary hours rostered as part of a split-shift under clause 15.X(a).*

NOTE: The Recall allowance in clause 19.11 does not apply where an employee returns to work for the second part of a split-shift pursuant to clause 15.X.

5. Amend the title in Column 1 of Table 3 in clause 16.2 of the GRIA 2020 as follows:

Hours worked per shift, or per work block where a split-shift is worked pursuant to clause 15.X(a).

C - Amendment to minimum break between shifts on different days, and to clarify payment rate

6. Amend clauses 16.6(a) – (c) of the GRIA 2020 to read:

16.6 Breaks between work periods

(a) An employee must have a minimum break of ~~12~~ 10 hours between when the employee finishes work on one day and starts work on the next.

(b) If an employee starts work again without having had ~~12~~ 10 hours off work, the employer must pay the employee for each hour worked at the rate of 200% of the employee's minimum hourly rate otherwise applicable under clause 17 – Minimum rates ~~they would be entitled to until the employee has a break of ~~12~~ 10 consecutive hours.~~

(c) The employee must not suffer any loss of pay for ordinary hours not worked during the period of a break required by clause 16.6.

7. Delete clause 16.6(d) of the GRIA 2020.

D - Amendment to improve ability to average hours over longer periods

8. Amend clause 15.6(g)(v) of the GRIA 2020 to read:

(v) working an average of 38 hours per week over a longer period of up to six months or as agreed between the employer and the employee.

9. Amend clause 15.7(a) of the GRIA 2020 to read:

(a) A roster period cannot exceed 4 weeks ~~except by agreement in~~ where hours are averaged over a longer period pursuant to clause 15.6(g)(v).

10. Amend clause 18.2 of the GRIA 2020 to read:

18.2 Wages must be paid for a pay period according to the number of hours worked by the employee in the period or where an employee's ordinary hours are averaged over a period of time permitted by this award an employee may be paid for the average number of ordinary hours attributed to the relevant pay period. ~~they may be averaged over a fortnight.~~

E – Amendment to clarify extended trading hours

11. Amend clause 15.2(c) of the GRIA 2020 to read:

(1) until 11.00 pm on all days of the week if the trading hours of the ~~establishment~~ retailer extend beyond 9.00 pm on a Monday to Friday or 6.00 pm on a Saturday or Sunday.

F - Amendment to remove restriction of 19 starts for full-time employees

12. Delete clauses 15.6(i) and 15.6(j) of the GRIA 2020.

G - Amendment to enable 38 ordinary hours to be worked across four days

13. Amend clause 15.4 of the GRIA 2020 to read:

15.4 Subject to clause 15.5, the maximum number of ordinary hours that can be worked on any day is 9~~10~~.

14. Amend clause 15.5 of the GRIA 2020 to read:

15.5 An employer may roster an employee to work up to 11 ordinary hours on one day per week, or two days per week by agreement between the employer and an individual employee.

15. Amend clause 21.2(c) of the GRIA 2020 to read:

(iii) in excess of the maximum daily ordinary hours determined by clauses 15.4 and 15.5. ~~11 hours on one day of the week and in excess of 9 hours on any other day of the week~~

H - Amendment to improve flexibility to remove requirement for consecutive days off by agreement

16. Amend the heading of clause 15.7 of the GRIA 2020 to read:

Full-time employees – rostering arrangements

17. Amend clause 15.7(d) of the GRIA 2020 to read:

d. Consecutive days off

- i. The employer must roster an employee to work ordinary hours in such a way that they have 2 consecutive days off per week or 3 consecutive days off per 2 week cycle.*
- ii. Clause 15.7(d)(i) is subject to any agreement for different arrangements entered into between the employer and an individual employee ~~at the written request of the employee.~~*
- ~~iii. Different arrangements agreed under clause 15.7(d)(ii) must be recorded in the time and wages record.~~*
- iv. The employee may end an agreement under clause 15.7(d)(ii) at any time by giving the employer 4 weeks' notice.*
- v. An employee cannot be required as a condition of employment to make an request agreement under clause 15.7(d)(ii).*

I – Amendment to clarify employees regularly working Sundays

18. Amend clause 15.8 of the GRIA 2020 to read:

Full-time employees regularly working Sundays

- (a) The employer must roster an employee who regularly works Sundays in such a way that they have 3 consecutive days off ~~(including Saturday and Sunday)~~ per 4 week cycle.*
- (b) Clause 15.8(a) is subject to any agreement for different arrangements entered into by the employer and an individual employee ~~at the written request of the employee.~~*
- ~~(c) Different arrangements agreed under clause 15.8(b) must be recorded in the time and wages record.~~*
- (d) The employee may end an agreement under clause 15.8(b) by giving the employer 4 weeks' notice.*
- (e) An employee cannot be required as a condition of employment to agree to an arrangement under clause 15.8(b).*

19. Insert new definition in clause 2 as follows:

Employee who regularly works Sundays means a full-time employee who based on that roster cycle will work at least three out of four Sundays.

J - Amendment to introduce salaries absorption for managerial and higher-level staff

20. Add a clause 17A to the GRIA 2020 as follows:

17A. Salaries absorption (Managerial and higher-level staff)

17A.1 This clause applies to employees, other than casual employees, classified at Retail Employee Level 4 to Retail Employee Level 8 who:

- (1) are paid an annual salary that is at least 125% of the minimum weekly rate (assessed on a pro-rata basis for part-time employees) specified in clause 17 applicable to the employee's classification multiplied by 52; and*
- (2) have agreed with their employer, in writing, to the application of this clause; and*
- (3) have been advised by their employer, in writing and prior to the employee agreeing to the application of this clause, of the annual salary that they will be paid and the provisions of the award that will not apply because of the application of this clause.*

17A.2 An employer must keep a record of any agreement reached in accordance with clause 17A.1 as an employee record until at least 7 years from the earliest of the date of the agreement ending, the employee ceasing to be covered by this Award, or the termination of the employee's employment.

17A.3 An employer must keep a record of the hours worked by each employee working under an agreement reached in accordance with clause 17A.1.

17A.4 An employee to whom this clause applies is not entitled to the benefit of the terms and conditions within the following clauses:

- (a) Clause 10.8 to 10.10 – Part-time employees;*
- (b) Clause 15 – Ordinary hours of work and rostering arrangements;*
- (c) Clause 16 – Breaks;*
- (d) Clause 17 – Minimum rates;*
- (e) Clause 19 – Allowances, except that clauses 19.6 – Moving expenses and 19.7 - Motor vehicle allowance will continue to apply;*
- (f) Clause 21 – Overtime;*
- (g) Clause 22 – Penalty Rates;*
- (h) Clause 28.3 – Payment for annual leave loading;*
- (i) Clause 33.3 and 33.4—Payment for work on public holiday or substitute day.*

17A.5 An employee to whom this clause applies should normally have a minimum of 16 days off during each 8-week cycle of work (or equivalent roster period). Where this does not occur, the employee must either be provided equivalent time off in lieu within six months or be paid for the additional hours worked (at the rate of pay calculated in accordance with clause 17A.11).

17A.6 An employee to whom this clause applies should normally have a 10 hour break between when the employee finishes work on one day and starts work on the next day, unless otherwise agreed between the employer and the employee. If an employee is required to start work again without having had 10 hours off work, the employer must pay the employee for each hour worked at the rate in clause 16.6(b) (subject to clause 17A.11) until the employee has a break of 10 consecutive hours.

17A.7 Where an employee is required to work more than an average of 43 hours per week over a 6-month period (or the pro-rata equivalent for a part-time employee), all hours worked

in excess of that number will not be covered by the annual salary amount set out in clause 17A.1(a) and must be separately compensated for either through additional salary payments (at the base rate of pay calculated in accordance with clause 17A.11) and/or time off in lieu arrangements.

17A.8 Work on public holidays

An employee who is required to work on a public holiday is entitled to payment for those hours worked at the rate of pay calculated in accordance with clause 17A.11 or paid time off of equal length to the time worked on the public holiday. Such time off must be taken or paid in accordance with clause 17A.9.

17A.9 Accrued time off for working on a public holiday

(a) If the accrued time off referred to in clause 17A.8 is not taken or paid out within 6 months of its accrual, the employer must pay the employee for the accrued time off in the next pay period following those 6 months. This must be paid at the rate of pay calculated in accordance with clause 17A.11.

(b) If, on termination of the employee's employment, accrued time off for working on a public holiday has not been taken or paid out, the employer must pay the employee for the accrued time off at the rate of pay calculated in accordance with clause 17A.11.

17A.10 Meal Breaks

An employee must not be required to work for more than six hours without being allowed to take a meal break. The break must be for a minimum of 30 minutes duration.

17A.11 Calculation of hourly rate

Distinct to what the relevant base rate of pay is for the purposes of the NES for annualised wage arrangements which are not captured by clause 17A.1, the hourly amount payable to an employee under this clause (except for clause 17A.6) is to be 125% of the minimum hourly rate specified in clause 17.

It is the intention of this clause that where the annual salary amount paid by an employer to an employee already exceeds the amount set out in clause 17A.1(a), then the part of the annual salary that exceeds the amount described in 17A.1(a) can be used to satisfy (in full or in part) the amounts that would otherwise be due to the employee under clauses 17A.5, 17A.6, 17A.7, 17A.8 and 17A.9.

K - Amendment to clarify the availability of standing consent provisions

21. Amend clauses 10.6 and 10.7 of the GRIA 2020 to read:

10.6 Changes to regular pattern of work by agreement

The employer and the employee may agree to vary the regular pattern of work agreed under clause 10.5 on a temporary or ongoing basis, with effect from a future date or time (including before the end of an affected shift).

Any ~~such~~ agreement to an ongoing variation must be recorded in writing.

Any agreement to a temporary variation can be either:

(a) recorded in writing, including as a selected roster option in an electronic system; or

(b) if the employee has elected to provide written standing consent to verbally agree or decline to vary their regular pattern of work, to work additional hours at ordinary rates, then such agreement can be provided verbally.

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~~(a) if the agreement is to vary the employee’s regular pattern of work for a particular rostered shift – before the end of the affected shift; and~~

~~(b) otherwise – before the variation takes effect.~~

~~NOTE 1: An agreement under clause 10.6 could be recorded in writing including through an exchange of emails, text messages or by other electronic means.~~

NOTE 1: An employee cannot be required as a condition of their employment to provide ‘standing consent’ under clause 10.6(b).

NOTE 2: An employee who has provided ‘standing consent’ under clause 10.6(b), can on any occasion verbally refuse or accept a variation proposed by an employer.

NOTE 3: Where an employee terminates a ‘standing consent’ arrangement under clause 10.6(b), that termination will take effect at the commencement of the next full pay period.

NOTE 24: An agreement under clause 10.6 cannot result in the employee working in excess of 38 or more ordinary hours per week.

EXAMPLE: Sonya’s guaranteed hours include 5 hours work on Mondays. During a busy Monday shift, Sonya’s employer sends Sonya a text message asking her to vary her guaranteed hours that day to work 2 extra hours at ordinary rates (including any penalty rates). Sonya is happy to agree and replies by text message confirming that she agrees. The variation is agreed before Sonya works the extra 2 hours. Sonya’s regular pattern of work has been temporarily varied under clause 10.6(a). She is not entitled to overtime rates for the additional 2 hours.

10.7 *The employer must keep a copy of any agreement under clause 10.5, and any variation of it under clause 10.6(a) or 10.11, and, if requested by the employee, give another copy to the employee. The employer must keep a copy of any ‘standing consent’ record under clause 10.6(b), and, if requested by the employee, give another copy to the employee.*

L - Amendment to remove requirements to notify break times in advance

22. Delete clause 10.5(c).

23. Delete clause 16.3.

M - Amendment to clarify application of overtime provisions for employees

24. Delete clauses 21.2(a), 21.2(b) and 21.2(c) and replace as follows:

21.2 Payment of overtime

(a) An employer must pay an employee overtime in accordance with Table 10 – Application of overtime:

Table 10 – Application of overtime

Column 1	Column 2
Type of employment	When an employer must pay overtime
Full-time employee	A full-time employee must be paid overtime for hours worked:

	<p>(i) <i>in excess of the ordinary hours of work;</i> (ii) <i>outside the span of ordinary hours (excluding shiftwork), subject to clause 15.2; or</i> (iii) <i>outside the roster conditions prescribed in clause 15— Ordinary hours of work,</i> <i>at the overtime rate specified in column 2 of Table 110—Overtime rates.</i></p>
<i>Part-time employee</i>	<p><i>A part-time employee must be paid overtime for hours worked:</i> (i) <i>in excess of their guaranteed hours as agreed in clause 10.5(a) or as varied under clause 10.6 or clause 10.11; or</i> (ii) <i>outside the span of ordinary hours (excluding shiftwork), subject to clause 15.2,</i> <i>at the overtime rate specified in column 2 of Table 110—Overtime rates.</i></p>
<i>Casual employee</i>	<p><i>A casual employee must be paid <u>overtime</u> for hours worked by the casual employee:</i> (i) <i>in excess of 38 ordinary hours per week or, if the casual employee works in accordance with a roster, in excess of 38 ordinary hours per week averaged over the course of the roster cycle; or</i> (ii) <i>outside the span of ordinary hours (excluding shiftwork) for each day specified in clause 15.1 (Ordinary hours of work), subject to clause 15.2; or</i> (iii) <i>in excess of the maximum daily ordinary hours determined by clauses 15.4 and 15.5, 11 hours on one day of the week and in excess of 9-10 hours on any other day of the week.</i> <i>at the overtime rate specified in column 3 of Table 110—Overtime rates (inclusive of the casual loading)</i></p>

(bd) *Overtime is calculated on a daily basis.*

(ce) Overtime rate

An employer must pay an employee for overtime worked in accordance with clause 21.2 at the following rates:

Table 110—Overtime rates

Column 1 <i>For overtime worked on</i>	Column 2 Overtime rate <i>Full-time and part-time employees</i> % of minimum hourly rate of pay	Column 3 Overtime rate <i>Casual employees</i> % of minimum hourly rate of pay <i>(inclusive of casual loading)</i>
<i>Monday to Saturday— first 3 hours</i>	150%	175%
<i>Monday to Saturday— after 3 hours</i>	200%	225%

Sunday	200%	225%
Public holiday	250%	275%

NOTE 1: Schedule B—Summary of Hourly Rates of Pay sets out the hourly overtime rate for all employee classifications according to when overtime is worked.

NOTE 2: The overtime rates for casual employees have been calculated by adding the casual loading prescribed by clause 11.1 to the overtime rates for full-time and part-time employees prescribed by clause 21.2(c).

25. Renumbering of Table references and references to clauses 21.2(a) – (e) throughout the GRIA 2020 as appropriate.

N - Amendment to resolve rostering ambiguities

26. Amend clause 15.7(c) to read:

(c) The employer may roster an employee to work ordinary hours on ~~6 days in one week if the employee is rostered to work ordinary hours on no more than 4 days in the following week~~ no more than 10 days per 2 week cycle.

O - Amendment to clarify annual leave loading

27. Amend clause 28.3 to read:

28.3 Annual leave loading

(a) During a period of paid annual leave an employer must pay an employee an additional payment in accordance with clause 28.3 for the employee's ordinary hours of work in the period.

(b) The additional payment is payable on leave accrued.

(c) For an employee other than a shiftworker the additional payment is the greater of:

(i) 17.5% of the employee's minimum hourly rate for all ordinary hours of work in the period; or

(ii) ~~The employee's minimum hourly rate for all ordinary hours of work in the period inclusive of penalty component of the weekend penalty rates as specified in clause 22.1(Penalty rates)~~ for the employee's ordinary hours of work in the period.

(d) For a shiftworker the additional payment is the greater of:

(i) 17.5% of the employee's minimum hourly rate for all ordinary hours of work in the period; or

(ii) ~~The employee's minimum hourly rate for all ordinary hours of work in the period inclusive of penalty component of the penalty rates for shiftwork as specified in clause 25 (Rate of pay for shiftwork employees)~~ for the employee's ordinary hours of work in the period.

(e) Notwithstanding clauses 28.3(c) and 28.3(d), where the hours that would attract the relevant penalty or shift penalty amounts specified in clauses 28.3(c)(ii) or 28.3(d)(ii) is not known or identifiable, the employee must be paid 17.5% of the employee's minimum hourly rate for all ordinary hours of work in the period.

P - Amendment to provide an ability for employees to waive a meal break and go home early

28. Amend clause 16.5 of the GRIA 2020 to read:

16.5 Subject to clause 16.6, an employer cannot require an employee:

- (a) to take a rest break or meal break within the first or the last hour of work; or*
- (b) to take a rest break combined with a meal break; or*
- (c) to work more than 5 hours without taking a meal break.*

29. Insert new clause 16.6 as follows:

16.6 An employer and employee may agree, on an ongoing basis or for a specified period of time, to one or more of the following arrangements, where the employee is entitled to the relevant break(s):

- (a) the employee will take rest breaks and / or meal breaks within the first and / or last hour of work;*
- (b) the employee will take one or more rest break(s) combined with one or more meal break(s); and/or*
- (c) the employee will work up to 6 hours without taking a meal break.*

30. Rename existing clause 16.6 as clause 16.7 and other existing references to clause 16.6 in the GRIA 2020 to 16.7 accordingly.

Q - Amendment to clarify the application of the first aid allowance

31. Amend clause 19.10 as follows:

19.10 First aid allowance

(a) Clause 19.10 applies to an employee who:

(i) has a current first aid qualification from St John Ambulance Australia or a similar body; and

(ii) is ~~appointed~~ nominated by the employer to be responsible for performing first aid duties during particular nominated hours of work.

(b) If the employee has been nominated by the employer to be responsible for performing first aid duties under clause 19.10(a)(ii), the employer must pay the employee an allowance of \$0.3405 per hour (up to a maximum of \$12.94 per week) that the employee has been allocated to perform the first aid duties during their hours of work.