

OPENING STATEMENT

INQUIRY INTO THE PROVISIONS OF THE FAIR WORK AMENDMENT (PROTECTING PENALTY AND OVERTIME RATES) BILL 2025

13 AUGUST 2025

The ARA and the NRA together represent a sector that employs 1.4 million Australians, or one in ten working Australians. We represent the national and international retailers that support thousands of jobs in metropolitan and regional Australia. We represent small and independent businesses, which make up 95% of our membership.

We are aware that the implications from the passage of this bill will be reaching far beyond the retail sector. However, as our application to introduce an exemption rate into the general retail industry award is currently before the Fair Work Commission, we feel it is extremely important to clearly outline the facts of our proposal, and how the bill may impact these proceedings and the employees that stand to benefit.

Penalty rates have an appropriate place in our award framework - recognising the hours and times lower paid Australians work. That is why, at no point does our application seek to remove or reduce penalty rates or overtime from the award. Our proposal to include a salary exemption rate only applies to selected employees under the GRIA – those on level 4 and above, such as department or store managers.

In addition, when considering a proposal such as an exemption clause, safeguards play a critical role. In our application before the FWC, we have carefully designed safeguards to protect workers rights, providing them with choice, flexibility and greater pay certainty.

This includes a voluntary opt-in clause for employees, capping working hours at 43 hours per week before additional payments kick in, and maintaining separate entitlements in relation to public holidays and breaks.

Based on the original 17 rosters selected by the SDA for evidence, with these safeguards in place these workers would be on average \$5,861 better off each year – this is based on the rosters provided by the SDA. This is in addition to the benefits that a more consistent salary provide, and greater flexibility in their role.

We oppose the passage of this Bill, as it undermines the independence of the Fair Work Commission in carrying out its statutory functions, which already includes an obligation to ensure that modern awards provide a fair and relevant safety net of employment conditions.

By prohibiting any award variation that might theoretically reduce penalty or overtime rates for even a single employee, the Bill would foreclose sensible, evidence-based reforms that simplify awards, support compliance, foster flexibility and lift productivity. That is, if even 1 employee out of the 1.4 million workers in retail may be worse off then such a proposal would not be adopted - despite the proposed safeguards that that one employee would still have the choice to opt in.

It is important to highlight that the Bill, as currently drafted, does not introduce a 'principle', rather it introduces a complicated prohibition. As drafted, the Bill leaves the Commission with no discretion. The Bill would even prohibit a variation to an award on the Commission's own motion or a variation that was supported by the relevant union and that would deliver uplifts in entitlements for a significant proportion of the workforce.

The ARA is also concerned that the Bill seeks to limit the powers of the Commission to reduce award complexity, a problem widely acknowledged by industry stakeholders. The ARA's application to the Commission to vary the *General Retail Industry Award (GRIA)* followed on from the former Minister for Employment and Workplace Relations Tony Burke encouraging the Commission and parties to use the review of modern awards to identify opportunities to make awards easier to use.

Our proposal contain significant benefits for employees and employers of all sizes across the retail sector. If this is not permitted in the award, it is not realistic that this benefit will ever become available to most employees through enterprise bargaining.

In summary, the ARA and NRA recommend the Senate does not pass the Bill. There is no case for this legislative intervention which would permanently restrict the Commission's ability to appropriately respond to changing conditions over time.

We thank the Committee for the invitation to appear today and to contribute to this discussion on behalf of our members.