

## ARA SUBMISSION

# FAIR WORK COMMISSION MODERN AWARDS REVIEW 2023-24 (MAKING AWARDS EASIER TO USE)

GENERAL RETAIL INDUSTRY AWARD 2020

### EXECUTIVE SUMMARY

The Australian Retailers Association (**ARA**) welcomes the opportunity to provide this submission to the Fair Work Commission (**FWC**) on making the *General Retail Industry Award 2020* (**GRIA**) easier to use.

The 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.

Many of the issues with the GRIA are well understood by the key stakeholders - employees, employers, industry groups and unions. Confusion arising from award complexity and ambiguity has led to compliance issues for employers, a lack of flexibility for employees and employers, and a burden on regulators, unions, employers, employees and the FWC. All parties have an interest in having these issues resolved.

The retail industry needs to remain innovative and agile to keep pace with the changing needs of Australian consumers and the broader economy. The industry requires an award that facilitates modern working practices and is easy to understand and administer, rather than hindering the retail sector’s ability to create jobs, drive wages growth and improve productivity.

This review presents a unique opportunity to respond positively to the changing nature of retail, to ensure the GRIA is fit-for-purpose today and into the future. The ARA approaches this opportunity in good faith and believes that the process can lead to significant benefits for employers and employees alike.

Making improvements to the GRIA will lead to greater flexibility for employers and more flexible employment opportunities. There is also an opportunity for fewer regulatory and compliance issues, less workplace conflict and better outcomes for businesses - large and small.

We also see the potential for improved outcomes for employees including the ability to provide more hours and greater flexibility for employees, to meet their personal circumstances. Change to the GRIA is needed to ensure that the ‘modern awards objective’ is met.

## BACKGROUND

On 12 September 2023, the Hon. Tony Burke MP, Minister for Employment and Workplace Relations, wrote to the President of the FWC, the Hon. Justice Adam Hatcher, expressing the Australian Government's interest in the FWC initiating a "targeted review" of modern awards.

In a Statement dated 15 September 2023, the President of the FWC determined to initiate an award review on the Commission's own motion under s 576(2)(aa) of the *Fair Work Act 2009* (Cth) (the **FW Act**) to consider three of the four areas outlined in the Minister's letter, including a review into making the seven most-commonly used awards easier to use.

The ARA welcomes the opportunity to make this submission to the Fair Work Commission Modern Awards Review 2023-24 (**Awards Review**).

## CONTEXT

The retail sector employs one-in-ten Australians, making retail the country's largest private sector employers.

The retail sector continues to see significant changes to consumer shopping habits. Changing consumer demands (including extended shopping hours and a shift to on-line shopping) necessitate the need for operational agility for many retailers, which flexible modern working practices should be able to facilitate.

The retail industry has demonstrated remarkable resilience in recent years, adapting and responding to multiple disruptions that have impacted consumer spending, labour markets and supply chains. The above challenges occur at a significant scale. With profit margins less than half of the all-industry average, and a high incidence of small and medium size businesses, business survival rates in the retail sector are lower than the all-industry average.

The prescriptive nature of the GRIA inhibits the sector's ability to adapt to these changing dynamics, including the ability for the sector to respond to the general need of employees for greater flexibility.

The ARA is committed to addressing these issues constructively and welcomes the opportunity to engage with the FWC and other stakeholders in relation to these processes.

## POSITION

The ARA has consistently expressed concern about the complexity of the modern award system, which is difficult for business to navigate and generally restrictive when it comes to flexibility for both employees and employers. Award reform is of fundamental importance to the retail industry and the broader Australian economy.

Award complexity is the single biggest source of confusion, disputation and litigation in the retail sector. It results in a costly drain on resources for all stakeholders and regulators. In the interests of all retail sector stakeholders, this situation requires comprehensive resolution in a responsible and collaborative manner.

Ambiguity and uncertainty should not be a 'cost of doing business'. Where issues are identified, they should be resolved so that all parties can move on with a clear and practical understanding of their entitlements and responsibilities. Employers should not bear the burden of historic award ambiguity.

In principle, the ARA supports the submissions of the Australian Chamber of Commerce and Industry on the overall approach to the review of modern awards. In particular, the ARA submits that there are significant problems with the award system, evidenced by widespread inadvertent and unintentional compliance issues, historical and outdated rostering practices, excessive length and restrictions on flexibility – all resulting in unnecessary complexity.

It is in the interests of employees and employers that these issues be addressed in a comprehensive and meaningful manner resulting in genuine reform.

## PRINCIPLES

The ARA supports the guiding principles advanced by other stakeholders in designing an award system that suits the interests of retail industry stakeholders. These include:

- Award coverage should be clear and unambiguous.
- Awards should promote - not inhibit - access to secure work by allowing appropriate flexibility for employees, including part-time employees.
- Awards should also provide greater flexibility for employers.
- As a safety net, award terms should be consistent within and across industry sectors where the same or similar circumstances exist.
- Awards should be user-friendly but so-called plain-English changes to awards should not have the effect of materially varying interpretation of an award.
- Awards should be readily understood and applied by all affected stakeholders, including:
  - represented and unrepresented employees (including those employees for whom English is not their first language),
  - business owners and managers,
  - enforcement agencies, courts and tribunals, and
  - rostering, payroll and other associated service providers.
- Classifications should be clear and confined to logical skill categories.
- The number of classifications should be minimised so that they are confined to levels which adequately differentiate the range of skills required to be exercised in the modern retail environment.
- Awards should comprehend the changing nature of business and work, changes in the incidence of workplace attendance and the different expectations and responsibilities of employees. For retailers, this includes the evolution of omni channel retail requiring employees to work in different roles in the retail environment.
- Awards should promote flexible modern work practices in a way that is reflective of, and contributes to the national economy, the diverse needs of the communities that retailers serve and the changing expectations that employees have in terms of seeking balance between their work commitments and personal circumstances.
- Awards should promote social inclusion and gender equality through increased workforce participation. This includes meeting the legitimate needs of employees for flexibility, balance and more meaningful hours of work.

In respect of this review, we also believe that any changes should not impose additional costs for business, just as there is an expectation that any changes do not reduce employee entitlements.

## OPPORTUNITIES

The ARA supports an equitable workplace relations system that balances the needs of employees and employers while driving productivity, job creation, secure work and wage growth.

Notwithstanding the making of the GRIA in 2010 and subsequent reviews, the ARA believes that the GRIA needs substantial reform to ensure that it reflects the changing circumstances of the retail industry is consistent with the 'modern awards objective' and is easy to understand, stable and sustainable.

In approaching these matters, it is imperative that consideration be given to the circumstances of the retail industry and the constant changes that occur within it, much of which is driven out of changing consumer behaviour and other external forces.

We present the following observations and opportunities.

1. The GRIA is the most commonly used award in the retail sector and covers the largest number of employees out of all awards. The retail sector has a much higher incidence of award reliance than the all-industry average, estimated to be around 35%.
2. An understanding of the demographics of businesses and employees covered by the award is essential to recalibrating historical and outdated concepts to advance the interests of stakeholders in the 2020s and beyond. Relevantly, important information regarding the demographics of the retail industry includes that:
  - a. Most employees in the retail sector are female and around half are employed other than on a full-time basis.
  - b. A higher proportion of retail employees are underemployed compared to the all-industry average.
  - c. The percentage of young people employed in retail is more than double the all-industry average.
  - d. There is a proportion of retail workers for whom English is not their first language, such as international students and migrant workers.
3. These demographics highlight the importance of achieving the 'modern awards objective' in the retail industry, as removing prescription and complexity will make GRIA easier to use and have flow on effects in relation to other objectives such as gender equality and the promotion of social inclusion.
4. As the economy and society changes, and consumers demand longer and more flexible trading hours, retailers experience significant variations in labour requirements and require the availability of employment models that provide an appropriate level of flexibility and a sustainable level of job security and predictability. Full-time, part-time and casual employment categories should be readily available and viable across all parts of the retail sector. Change to the GRIA is needed to make this a reality.
5. Not all retail jobs are based on attendance at work at defined times. Increasingly, the requirements of roles, especially senior roles, involve the achievement of outcomes, independent of time spent. The expectations of employees in these senior roles have also changed over time, particularly marked by the desire for a long-term

and stable career in retail. These roles require different modes of regulation to a traditional rigid time-based model.

6. The sector must also keep pace with changing consumer and workforce expectations, including a desire from many employees for increased flexibility, control and autonomy over their hours of work. This need is recognised by the 'modern awards objective', including the need to promote flexible modern work practices and the efficient and productive performance of work.
7. The retail industry already involves a high level of co-ordination between employees and their managers. Informal give and take is fundamental to successful working environments and to facilitating the flexibility sought by many employees. It is essential that the GRIA enables, rather than restricts, sensible collaborative flexibility in the various dynamic settings 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 agreements reached between employers and employees in a way that best reflects their circumstances and the realities of the working environment.
8. Complexity and uncertainty regarding the application of the GRIA has led to a number of highly publicised disputes regarding inadvertent and unintentional underpayments. The GRIA is extremely difficult for employers to apply in practice and is not simple or easy for employees and their representatives to understand. The GRIA 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.
9. Uncertainty and disputation leads to greater administrative cost and regulatory burden and is inconsistent with the 'modern awards objective' and the broader objects of the FW Act. This drain on resources is experienced by all parties (including employers, employees, unions, courts, regulators and the Commission). We expect that reducing this complexity will be a shared objective for all stakeholders and better outcomes will flow for employers and employees alike.

## CONCLUSION

The ARA anticipates there will be broad support in relation to the nature of problems with the GRIA and that there should be a preparedness to engage constructively to resolve those problems in the interests of all. This presents a unique opportunity for industry consensus in relation to the resolution of issues where there is common ground.

These areas include agreement on the need to reduce complexity, increase flexibility, make the GRIA easier to use (for small and large employers alike) and to ensure the achievement of the 'modern awards objective'. The ARA expects that the benefits of these changes will flow through to the industry (including employees and employers), consumers and the broader economy.

The ARA accepts that the objectives of meaningful reform will require extensive effort by all stakeholders and is committed to approaching these tasks energetically and constructively. We believe that if all stakeholders adopt a similar approach, there is significant scope for the sort of meaningful reform that will drive widespread benefits.

The ARA and its members thank the Commission for the opportunity to provide a submission to this important review. In line with the President's Statement, the ARA will give consideration to the appropriateness of specific applications to vary the GRIA. Any queries in relation to this submission can be directed to our policy team at [policy@retail.org.au](mailto:policy@retail.org.au).