

# CEO Forum

## Workplace Relations Update (June 2023)

# Workplace Relations Reforms

Aspect	Detail
<b>Amend casual definition</b>	Re-introduce consideration of post-contract conduct Amend casual conversion process
<b>Criminalising wage theft</b>	Criminal penalties for deliberate conduct Potential element of failure to undertake due diligence
<b>Employee-like work</b>	Impose minimum conditions of engagement for persons engaged via digital platforms
<b>Same Job, Same Pay</b>	Require labour hire workers to be paid the same as direct hire employees

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## Context

The GRIA commenced in 2010 and has been subject to a number of variations since that date, including so-called plain-English re-drafting changes in 2018.

In 2022, Minister Tony Burke indicated that the GRIA would be one of the first awards to be subject to review, as a result of negotiations with Senator David Pocock in the lead-up to passage of Secure Jobs, Better Pay Act.

Since then, the ARA has had assurance from the minister's office the no decision has been made in relation to a review of the GRIA. The ARA has been encouraged by the FWC to make an application to vary the award.

The government's workplace relations reforms provide an opportunity to create greater flexibility in the GRIA, which will be required to deliver on the government's goal of more secure work

## **Previous action**

In 2015 the ARA brought the retail industry together to initiate a landmark case directed to reducing the Sunday penalty rate under the GRIA.

ARA was able to bring industry bodies and retailers together under a united application

The ARA's application was ultimately successful in bringing about the reduction.

This would not have been achieved without the resources dedicated to the case and the unified approach.

Objective and Overview	
<b>Objective</b> Provide clarity, reduce complexity and increase flexibility for employers and employees	<b>Overview</b> Draft, substantiate and lodge application(s) to vary the GRIA to drive an increase in permanent work in the retail sector, by amending award provisions that <ul style="list-style-type: none"><li>▪ Impede flexibility</li><li>▪ Create compliance risks for employers, and</li><li>▪ Present barriers for casual employees wishing to convert</li></ul>

## Summary of changes

### Provide clarity

- Address plain English redrafts that have materially changed the award

### Reduce complexity

- Make provisions for salaried roles
- Remove current part time provisions of the GRIA and replace with provisions in the Hospitality Award
- Address the penalty that applies where employees do not have the required break between shifts

### Increase flexibility

Removing selected rostering provisions to achieve flexibility for employers and employees, for example

- options for working full time hours
- RDO for full time employees in stores that engage >15 employees
- the consecutive days off requirement
- the regularly working Sundays restriction

## Deliverables and Events

### 01 Program Plan

Develop plan articulating key dates and activities, including stakeholder engagement.

### 02 Member Steering Committee

Convene group of members making financial contribution to the project, to provide oversight, approve application(s) and endorse outcomes.

### 03 Peaks Working Group

Regular meetings, led by ARA, with BCA, ACCI and IA Group to ensure coordinated action by peaks.

### 04 Evidence Preparation

Commission research into impact of flexible permanent employment condition on prevalence of casual employment

Commission research into:

- retail operator attitudes and decision-making processes in the engagement of casual and permanent employees
- retail employee preferences in relation to permanent and casual employment

Prepare direct retail operator evidence

Prepare direct retail employee evidence

### 05 Application(s) to Change GRIA

Use subject matter experts to conduct research and draft documentation required to support application(s) to vary the award, with legal representation and expert witnesses in dealings with the FWC.

# FY24 Strategic Initiatives

## General Retail Industry Award (GRIA)



### Milestones

#### Week 01

(target 03-Jul-24)

Secure funding to engage dedicated resource and initiate project

#### Week 03

(target 17-Jul-23)

Convene Member Steering Committee. Present Program Plan for endorsement

Convene Employer Group Working Group. Present Program Plan for information

Engage Counsel to advocate. Conduct case strategy meeting

#### Week 04

(target 24-Jul-23)

Commission research agreed through case strategy meeting

Commence operator evidence identification process.

#### Weeks 05 - 09

(from 28-Aug-23)

Present case management updates to Steering Committee for endorsement and refinement

#### Week 10

(target 18-Sep-23)

File application

#### 27-Nov-23

12 months since government's agreement with Senator Pocock to support Secure Jobs, Better Pay Legislation

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FY24 Strategic Initiatives  
**General Retail Industry Award (GRIA)**

Costs	Detail	Estimated cost
<b>Counsel</b>	1 x King's Counsel (propose Wheelahan KC) 1 x Junior Counsel	\$450,000 - \$550,000
<b>Legal fees</b>	FCB Workplace Law instructing Counsel, engaging experts and preparing retail operator and employee lay evidence	\$150,000 - \$200,000
<b>Expert research</b>	1 x ABS data review and analysis 1 x quantitative and qualitative analysis for retail operator and employee views and preferences	\$250,000 - \$350,000
<b>Project manager</b>	Co-ordinate all elements of the case	\$100,000

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# FY24 Strategic Initiatives

## General Retail Industry Award (GRIA)



### Stakeholders

#### Sponsors

ARA Executive: Paul Zahra

ARA Members: representatives from member organisations making financial contribution to GRIA Review

#### Resources

FCB Lead: Nick Tindley

ARA Lead: Jason Robertson

### Funding

#### Member contributions (\$1.2 million)

- Members with >\$10b revenue (\$150k)
- Members with \$2-10b revenue (\$75k)
- Members with \$1-2b revenue (\$50k)
- Members with <\$1b revenue (\$25k)

#### ARA costs (up to \$1.2 million)

- Legal counsel (\$450k - \$550k)
- Legal fees (\$150k - \$200k)
- Expert research (\$250k - \$350k)
- Project manager (\$100k)

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# FY24 Strategic Initiatives

## General Retail Industry Award (GRIA)

### OBJECTIVE AND OVERVIEW

Objective: Provide clarity, reduce complexity and increase flexibility for employers and employees

Overview: Draft, substantiate and lodge application(s) to vary the GRIA to drive an increase in permanent work in the retail sector, by amending award provisions that impede flexibility, create compliance risks for employers and present barriers for casual employees wishing to convert.

### SPONSORS

ARA Executive: Paul Zahra

ARA Members: representatives from member organisations making financial contribution to GRIA Review

### RESOURCES

FCB Lead: Nick Tindley

ARA Lead: Jason Robertson

ARA Project Manager: tbc

### STAKEHOLDERS

ARA Workplace Relations Advisory Committee

Fair Work Commission (FWC)

Aligned Employer Groups (BCA, ACCI, AIG)

Unions (SDA)

### BACKGROUND

The GRIA commenced on 1 January 2010 and has been subject to a number of variations since that date, including so-called plain-English re-drafting changes in 2018.

It covers employers in the retail sector and their employees, some of whom include:

- Sales assistants and check-out operators
- Stock hands and shelf stackers
- Supervisors, department and store managers
- Trades such as butchers, bakers and florists
- Back-office employees performing clerical work in a retail shop

In 2022, Minister Tony Burke indicated that the GRIA would be one of the first awards to be subject to review by the new government, as a result of negotiations with Senator David Pocock in the lead-up to passage of Secure Jobs, Better Pay Act.

Since then, the ARA has had assurance from the minister's office the no decision has been made in relation to a review of the GRIA and the ARA has been encouraged by the FWC to make an application to vary the award.

### SUMMARY OF CHANGES

#### Provide clarity

- Address plain English redrafts that have changed the award, for example "retail establishment" and "span of hours"

#### Reduce complexity

- Make provisions for salaried roles
- Remove the current part time provisions of the GRIA and replace with provisions in the Hospitality Industry (General) Award
- Address the penalty that applies where employees do not have the required break between shifts

#### Increase flexibility

- Removing selected rostering provisions to achieve flexibility for employers and employees, for example
  - options for working full time hours
  - RDO for full time employees in stores that engage 15 or more employees
  - the consecutive days off requirement
  - the regularly working Sundays restriction

### DELIVERABLES AND EVENTS

#### Program Plan

Develop plan articulating key dates and activities, including stakeholder engagement.

#### Member Steering Committee

Convene group of members making financial contribution to the project, to provide governance and oversight, approve application(s) and endorse FWC outcomes.

#### Evidence Preparation

Layers of evidence, including expert evidence analysing ABS data and conducting surveys and focus groups to present research paper, retail operator and employee lay evidence.

#### Application(s) to Change GRIA

Use subject matter experts to conduct research and draft documentation required to support application(s) to vary the award, with legal representation and expert witnesses in dealings with the FWC.

#### Peaks Working Group

Regular meetings, led by the ARA, with BCA, ACCI and IA Group to ensure coordinated action by employer groups.

Related activities:

#### Secure Jobs, Better Pay Legislation

Tranche 2 of the government's Reforms will be tabled in CY23. Passage of this legislation has the potential to accelerate the need for changes to the GRIA.

### MILESTONES

#### Week 01 (target 03-Jul-24)

Secure funding to engage dedicated resource and initiate project

#### Week 03 (target 17-Jul-23)

Convene Member Steering Committee. Present Program Plan for endorsement

#### Week 03 (target 17-Jul-23)

Convene Employer Group Working Group. Present Program Plan for information

#### Week 03 (target 17-Jul-23)

Engage Counsel to advocate. Conduct case strategy meeting.

#### Week 04 (target 24-Jul-23)

Commission research agreed through case strategy meeting. Commence operator evidence identification process.

#### Weeks 05 - 09 (fortnightly from 28-Aug-23)

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#### Week 10 (target 18-Sep-23)

File application

27-Nov-23

12 months since agreement with Senator David Pocock to support Secure Jobs, Better Pay Legislation

### SEGMENTS

- ☒ Major members
- ☒ Large members
- ☐ Small and medium sized members

### CHANNELS

- ☐ Media
- ☐ Social media (ARA LinkedIn)
- ☐ Website (ARA News and Insights)
- ☒ Resources (webinars, newsletters)
- ☒ Events (Member Workshops)

### ARA COSTS (UP TO \$1.2 MILLION)

Legal counsel (\$450k - \$550k)

Legal fees (\$150k - \$200k)

Expert research (\$250k - \$350k)

Project manager (\$100k for six months)

### MEMBER FUNDING (UP TO \$1.2 MILLION)

Members with >\$10b revenue (\$150k)

Members with \$2-10b revenue (\$75k)

Members with \$1-2b revenue (\$50k)

Members with <\$1b revenue (\$25k)

### RISKS AND DEPENDENCIES

Failure to secure funding or support from members, resulting in ARA cost overruns

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