



Further Revised 31 March 2021

Conference Information for Parties

Award Flexibility – Hospitality and Retail Sectors AM2021/7

General Retail Industry Award 2020

Conference to discuss the meaning of clause 10 of the Retail Award and the provisional views of the Full Bench set out in [2021] FWCFB 1608

[1] The Full Bench in its most recent decision, [\[2021\] FWCFB 1608](#), stated the next steps as follows:

“[156] As mentioned earlier, the proper construction of the existing clause 10 is a threshold issue in our consideration of both the Joint Application and the ABI proposal. Further:

1. It is our view that clause 10 is uncertain and requires variation to resolve that uncertainty.
2. It is our provisional view that there may be merit in the variation of the Retail Award to introduce a mechanism whereby a part-time employee who regularly works additional hours may request that their guaranteed hours be reviewed and increased, and their employer cannot unreasonably refuse such a request.

[157] The next step in progressing these issues will be for Commissioner Hampton to convene a further conference to discuss the meaning and intent of clause 10 of the Retail Award and our provisional view regarding the variation of the Retail Award (at [155] above).

[158] In particular, the conference participants will be invited to address the following issues:

- Does clause 10.6 permit an agreement between an employer and a part-time employee to vary the regular pattern of work they have agreed under clause 10.5 so that the part-time employee may work additional ordinary hours (paid at the employees’ ordinary time rate)?

- Does clause 10.6 permit an agreed permanent variation to the regular pattern of work agreed under clause 10.5?
- In the context of clause 10 as a whole, does clause 10.6 permit an agreed ad hoc or temporary variation to the regular pattern of work agreed under clause 10.5? If permitted, can such a temporary variation:
 - increase the number of ordinary hours to be worked on a particular day?
 - vary the days of the week on which the employee will work?
 - vary the start and finish times?
 - vary when meal breaks are taken and their duration?
- Must a clause 10.6 variation be ‘in writing’?
- Does ‘in writing’ include by electronic means, such as a text message?
- If clause 10.6 permits the agreed temporary variation of a regular pattern of work does the variation agreement have to be recorded in writing before the additional hours as worked?
- To what extent does clause 15 apply to variations agreed under clause 10.6? Which elements of clause 15 apply?
- How does an agreed variation to work ‘additional hours’ interact with the minimum engagement term?
- In what other ways does clause 10 give rise to uncertainty?

[159] To inform the discussion at the conference, we draw the parties’ attention to the Information Note we published today regarding the history of the part-time provisions in the Retail Award.

[160] We intend to address the uncertainty attending the operation of clause 10 and in particular the parameters regarding the working of additional ordinary hours as a matter of priority.

[161] We propose to act on our own initiative under s.160(2)(a) to address these issues.

[162] The conference process set out above will conclude by no later than Friday 9 April. We expect that a Report will then be provided by Commissioner Hampton. We will publish a provisional draft variation in the week commencing Monday 12 April 2021. Parties will be given an opportunity to file submissions in respect of any such proposal.”

[2] **Please note:** Following requests for some delays to the conference process, the Full Bench has decided to adjust the timetable for publishing the provisional draft until the week commencing Monday 26 April 2021. As a result, the conference will also be delayed.

[3] Given the revised timeframes contemplated by the Full Bench, and to provide parties with notice and time to prepare, the proposed conference dates and arrangements are set out below.

[4] For planning and communication purposes, the Commission will proceed on the basis that all parties who participated in the previous conciliation conferences before Commissioner Hampton will also be involved in the further conference. Any party wishing to be added to the list of participants, or change any contact details, should advise the Chambers of Commissioner Hampton as soon as possible via email chambers.hampton.c@fwc.gov.au.

[5] To facilitate the process, those parties seeking to be involved are requested to provide to the Commission in advance of the first conference a **brief outline of responses** to the issues set out at paragraphs [157] and [158] of the Full Bench decision. **This is to be provided to AMOD@fwc.gov.au by no later than 12.00 noon (AEST), Tuesday 20 April 2021, 2.00pm (AEST), Monday 19 April 2021.**

[6] Any contributions provided by the parties in response to this request will not be published on the Commission's website; however, all parties participating in the conference process will be provided with a copy prior to the first conference.

Proposed conference arrangements:

[7] It is proposed that the conference will be convened via MS Teams video conferencing on the following dates:

- ~~Thursday 22 April 2021 at 2.00pm (AEST);~~ **Tuesday 20 April 2021 at 2.00pm (AEST);** and
- ~~Friday 23 April 2021 at 11.00am (AEST).~~ **Friday 23 April 2021 at 9.30am (AEST)**

[8] Details including dial in arrangements will be provided by a notice of listing to be provided in advance of the first conference.

Outcomes:

[9] Consistent with the framework provided by the Full Bench decision:

- Commissioner Hampton will prepare a Report for the Full Bench to confirm the outcome of the discussions, including the positions adopted by the parties and any agreed matters.
- As a result, unless contributions are provided on a without prejudice basis by the relevant party, the Report may disclose positions advanced during the conference.