

ARA SUBMISSION

FAIR WORK COMMISSION MODERN AWARDS REVIEW 2023-24 (WORK AND CARE)

The Australian Retailers Association (**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, across all categories - from food to fashion, hairdressing to hardware, and everything in between.

BACKGROUND

The ARA welcomes the opportunity to provide a submission to the work and care stream of the Fair Work Commission (**FWC**) *Modern Awards Review 2023-24 (Awards Review)*.

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

As part of the targeted review, the Minister suggested focus areas including commencing a consultation and research process considering the impact of workplace relation settings on work and care, having regard to relevant findings and recommendations of the Final Report of the Senate Select Committee on Work and Care (Senate Report).

In a Statement dated 15 September 2023, the President of the FWC determined to initiate an award review on the FWC’s own motion under s 576(2)(aa) of the *Fair Work Act 2009* (Cth) (FW Act) to consider, among other areas, the process considering the impact of workplace relations settings on work and care. On 29 January 2024, the FWC published a Discussion Paper: Work and Care (Discussion Paper) as part of the Awards Review. Parties have been invited to lodge submissions in response to the Discussion Paper by 12 March 2024.

The ARA sets out its response to the Discussion Paper below.

POSITION AND PRINCIPLES

In broad terms, the ARA’s position is that the FW Act does contain protections for carers. However, the ARA considers that further flexibilities can be provided to employees with carer responsibilities in the retail sector by making changes to the *General Retail Industry Award 2020* (GRIA), consistent with the proposals in the ARA’s application to vary the GRIA dated 6 February 2024 (ARA’s Application). The ARA’s Application has been allocated the case number AM2024/9.

The ARA looks forward to the programming of its Application and the opportunities in both the Award Review process and the ARA's broader Application to achieve meaningful change for all industry participants.

While our members endeavour to accommodate reasonable requests for flexible work practices (including flexible work arrangements), the proscriptive nature of the GRIA and operational requirements of a retail business sometimes make it more difficult to accommodate flexible work practices for employees with caring responsibilities, in comparison to other industries. For example, the GRIA contains prohibitive rostering provisions and in circumstances where full-time and part-time employees have agreed to a regular pattern of work, there are onerous administrative requirements that must be followed if flexibility is required.

As a result of restrictive GRIA provisions, employees face additional barriers in seeking the flexibility they may require, including to attend to unplanned family commitments. Employees may also agree to work fewer hours than they might wish to work in order to achieve the level of flexibility they need to strike a balance between work and caring responsibilities.

The ARA's Application addresses these issues by seeking amendments that include, but are not limited to, providing greater rostering flexibility, averaging hours over longer periods, and clarifying the availability for standing consent.

In respect of specific variations to part-time provisions in the GRIA to ensure they continue to meet the modern awards objective, the ARA's position is that the part-time rostering provisions in the GRIA are unduly restrictive and should be amended for the mutual benefit of employees and employers. For example, Proposal L of the ARA's Application contains an amendment to remove various restrictions on rostering part-time employees, including by removing proscriptive requirements in respect of when meal breaks may be taken and their duration, which provides flexibilities for carers.

In relation to other matters and questions raised in the Discussion Paper, the ARA's Application seeks variations to the GRIA to improve flexibility in a number of other respects. For example:

- Proposal B contains an amendment to allow for split shifts with employee agreement. This change acknowledges that there are many employees who may prefer to work split shifts to assist them in balancing other commitments (including care and family responsibilities);
- Proposal G contains an amendment to allow greater flexibility for 38 ordinary hours to be worked across four days;
- Proposal K clarifies the availability of standing consent provisions within the GRIA. The amendments to clauses 10.6 and 10.7 of the GRIA are designed to promote flexible work practices and provide an administratively workable mechanism for part-time employees, including carers, to access further additional hours whilst balancing caring responsibilities; and
- Proposal P contains an amendment which provides an ability for employees to waive a meal break and go home early or combine their break entitlements. This change will assist employees who may prefer to leave work earlier in order to attend caring responsibilities (without loss of pay).

CONCLUSION

We believe there are opportunities to provide for a more balanced approach to work and care. In our sector, we believe that these outcomes can be delivered through variations to the GRIA, with minimal reliance placed on the recommendations of the Senate Report.

The ARA looks forward to exploring these issues and proposals in the consultation sessions listed by the FWC and to will make further comment and submissions following those consultations.

The ARA welcomes the opportunity to engage constructively in that process, whilst noting its position that to the extent that any variation proposed by another party is inconsistent with the variations proposed in the ARA's Application, the FWC ought prefer making determinations varying the GRIA consistent with the ARA's Application.

In all other matters outlined in the Discussion Paper, we refer the FWC to the submission made by the Australian Chamber of Commerce and Industry, which the ARA supports.

The ARA and its members thank the FWC for the opportunity to provide a submission to this important review. Any queries in relation to this submission can be directed to our policy team at policy@retail.org.au.