



Fair Work Commission

Modern Awards Review 2023-24 (AM2023/21)

Submission into making awards easier to use

General Retail Industry Award 2020

December 2023

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Executive Summary

1. Master Grocers Australia Ltd (MGA) is an employer association registered with the Fair Work Commission (FWC) and welcomes the opportunity to comment on the Modern Awards Review 2023-24 (the Review). The Review, amongst other matters, seeks the views of stakeholders regarding what could be done to make awards easier to use. The review is confined to the seven most commonly used awards, including the General Retail Industry Award 2020 (GRIA), which applies to many of MGA's members' stores and their employees and is the focus of this submission.
2. MGA considers the GRIA to be a complex industrial instrument which could benefit from various improvements to make it easier to use.
3. Following consultation with its members, MGA has made **recommendations** within this submission on the following matters which it considers could make the GRIA easier to use:
 - a. Addition of an alphabetised index
 - b. Addition of summaries for key sections or concepts
 - c. Clarification of applicable rate of pay during and outside ordinary span of hours
 - d. Increased prominence of 'higher duties' provision
 - e. Creation of hyperlinks for key terms
 - f. Clarification of a key term in the 'special clothing allowance'
 - g. Clarification of a key term in the 'cold work allowance'
 - h. Clarification of when the 'recall allowance' is payable
 - i. Creation of templates within the GRIA for facilitative provisions

About Master Grocers Australia Ltd

4. MGA is a national employer industry member based organisation representing independent grocery, liquor, and other retail businesses including timber and hardware outlets, in all States and Territories. These businesses range in size from small, to medium and large, and make a significant contribution to the retail industry, accounting for approximately \$15 billion in retail sales.
5. There are approximately 2,700 branded independent grocery stores with MGA membership, trading under brand names such as: Supa IGA, IGA, IGA Xpress, Drakes, Farmer Jacks, FoodWorks, Foodland, Friendly Grocers and SPAR, with a further approximately 1,300 independent supermarkets trading under their own local brand names. In addition, there are numerous independent liquor stores operating throughout Australia and trading under names such as: Cellarbrations, The Bottle O, Bottlemart, Duncans, and Local Liquor, which are either single or multi-store owners. MGA members also own independent hardware stores that trade under brand names including frame and truss manufacturers, Mitre 10, Home Timber and Hardware, Thrifty Link and True Value Hardware. These stores, which collectively employ more than 120,000 staff, are comparatively smaller when juxtaposed against the large retailers, such as Coles, Woolworths and Bunnings, which combined represent approximately 80 per cent of the retail supermarket, liquor and hardware industries. Although MGA's members face similar industry challenges to the major supermarket and hardware chains, they have significantly less resources and face the fierce competition of those businesses. A significant portion of MGA's members are family operated businesses who face the same economic and financial pressures of the average Australian.
6. Most MGA members do not have internal HR or legal resources to rely on for industry-specific information to understand their industrial obligations, including those contained within modern awards. Instead, those businesses rely on MGA to understand their obligations and how to employ workers in accordance with law.

Introduction

7. Most MGA members employ workers who are covered by and to which the *General Retail Industry Award* (GRIA) applies. Whilst some MGA members employ workers under other modern awards or under enterprise agreements, the vast majority of employment relationships between MGA members and their employees are covered by the GRIA.
8. MGA members attempt to proactively understand their obligations under the GRIA and are committed to ensuring their businesses comply with its terms.
9. Unfortunately, some MGA members report that the GRIA can be difficult to understand and use, even by members that have interacted with the GRIA for many years and are familiar with its contents.
10. Some MGA members report that their endeavours to comply with obligations under the GRIA are frustrated by a document which in some instances is not easy to use.
11. In response to the FWC's call for submissions into making awards easier to use, MGA surveyed its members to understand common issues and themes which can inform this submission.
12. MGA has collated the views of its members to explain which key areas of the GRIA are of most concern and how they could be improved. In this submission we propose solutions the FWC could implement to make the GRIA easier to use and we hope this document is of utility to the FWC in its review.
13. MGA thanks the FWC for the opportunity to provide this submission and contribute to the review.

Navigation and explanation of the GRIA

Addition of a 'preliminary' section with alphabetised index

14. MGA members report that navigation of the GRIA could be enhanced by the inclusion of an alphabetised index. Ideally, such an index would be positioned at the beginning of the GRIA and would be in addition to, although likely a more utilised, supplement to the existing table of contents.
15. MGA members consider the use of the existing table of contents to not be an intuitive way to efficiently locate the section of the GRIA they need to reference. An alphabetised index would likely aid in the navigation and practical use of the GRIA.
16. MGA **recommends** the FWC considers including an alphabetised index of key concepts and entitlements within the GRIA.

Addition of 'summary' sections which explain key features of the GRIA

17. The GRIA contains important entitlements which MGA members are keen to ensure are paid to employees where required.
18. Unfortunately, the structure of the GRIA means that it may not always be apparent when a particular entitlement needs to be paid.
19. For example, the entitlement to overtime is ostensibly contained within clause 21 of the GRIA. However, an entitlement to be paid overtime rates also arises in other parts of the GRIA, for example within clause 10.8.
20. Employers who are experienced with the GRIA may understand that overtime obligations arise in clauses which do not appear under an 'overtime' subheading, however less experienced employers who are not familiar with the intricacies of the GRIA may assume that all overtime obligations are contained under the relevant subheading. This could result in the inadvertent underpayment of an employee.
21. To make key fragmented features of the GRIA easier to understand and use, MGA **recommends** the FWC considers including a summary which explains all circumstances where a key concept (for example, overtime) may give rise to an obligation. For example, under the heading 'overtime' at clause 21 of the GRIA, a brief paragraph could in summary format list all circumstances when an obligation to pay overtime may arise, including circumstances which are not currently under clause 21 but appear elsewhere in the GRIA.

Clause 15.1: Ordinary span of hours

22. It is not readily apparent by reading clause 15 of the GRIA that an obligation to pay overtime rates may arise where an employee (other than a shiftworker) works outside the defined ordinary span of hours.

23. 100% of surveyed MGA members reported that the addition of an editorial note at the conclusion of clause 15.1 of the GRIA which clarifies whether ordinary or overtime rates are payable would be of significant assistance.
24. MGA **recommends** the FWC considers the inclusion of a note within clause 15.1 which clarifies whether ordinary or overtime rates are payable and when they are payable.

Schedule A – Classification Definitions

25. Approximately 65% of surveyed MGA members report frequent use of clause 17.5 (higher duties) of the GRIA within their business. This clause assists members and their employees to flexibly agree on temporary higher duties, which can be particularly beneficial in workforce planning for businesses and career development for employees.
26. Approximately 85% of surveyed MGA members report that this clause has or would provide confidence in managing their businesses by assigning temporary higher duties.
27. Regrettably, almost 30% of surveyed MGA members reported being unaware of the existence of this clause until they had engaged in work leading up to the preparation of this submission.
28. 100% of surveyed MGA members supported the insertion of a cross-reference to clause 17.5 in Schedule A – Classification Definitions so that it is prominent and easier to locate in the Award.
29. MGA **recommends** the FWC considers the inclusion of a cross-reference to clause 17.5 within Schedule A of the GRIA which includes an accompanying note that clause 17.5 can allow for an employee to temporarily perform duties appropriate to a higher classification than that which is the basis of their employment.

Hyperlinked definitions

30. The GRIA is a complex and lengthy document which contains many terms with special meanings.
31. Less experienced readers of the GRIA may not be aware that some terms within it are defined in various clauses throughout.
32. 100% of surveyed MGA members reported they access the GRIA online.
33. MGA **recommends** the FWC considers hyperlinking key defined terms which appear throughout the GRIA to their defining clauses. For example, MGA considers the following terms are suitable for hyperlinking within the GRIA:
 - a. shop with departments or sections
 - b. shiftworker
 - c. higher duties (see previous recommendation).

Clarifying or defining terms and the practical application of the GRIA

Clause 19.3: Special clothing

34. The GRIA currently defines ‘special clothing’ as the following:

*‘In clause 19.3 **special clothing** means any article of clothing (including uniform, waterproof or other protective clothing) that the employer requires the employee to wear or that it is necessary for the employee to wear.’*

35. Over 85% of surveyed MGA members consider they would benefit from a more comprehensive definition of ‘special clothing’, particularly what is meant by ‘uniform’.

36. One way the definition could be enhanced is by additionally specifying what ‘special clothing’ is not. For example: ‘Special clothing is not a preferred standard of attire or unbranded plain clothing suitable for ordinary civilian wear (such as plain black pants)’.

37. Another way the definition could be enhanced is by providing clear examples of what special clothing is, such as branded uniforms, frost-resistant gloves, absorbent aprons, etc.

38. MGA **recommends** the FWC considers enhancing the definition of ‘special clothing’ by:

- a) Providing examples of what constitutes ‘special clothing’; and
- b) Specifying what does not constitute ‘special clothing’.

Clause 19.9: Cold work allowance

39. The GRIA currently provides for a ‘cold work allowance’ as follows:

‘Clause 19.9 applies to an employee who is principally employed on any day to enter cold chambers or to stock or refill refrigerated storages such as dairy cases or freezer cabinets.’

40. Over 90% of surveyed MGA members support clarification of what is meant by ‘principally employed’ into clause 19.9 of the GRIA.

41. MGA considers ‘principally employed’ to be a subjective and vague term. For example, it is arguable that ‘principally employed’ could mean one or more or none of the following:

- a) The main duties of the employee – although it is unclear what would happen if an employee has many ad-hoc duties which can include cold work.
- b) An employee who on a given day may be asked to perform cold work on an ad-hoc basis which is not a part of their ordinary duties which are the basis of their employment.

- c) In circumstances where an employee spends at least 50% of their time undertaking cold work – although it is unclear what would happen if this fluctuates for various reasons.
- d) When directed by the employer to undertake work in cold areas for any part of the day.
- e) Part of a duty list or regular duties by custom and practice or expectation.

42. MGA **recommends** the FWC considers narrowing the meaning of ‘principally employed’ within clause 19.9 of the GRIA by providing an enhanced definition.

Clause 19.11: Recall allowance

43. Over 90% of surveyed MGA members support the insertion into the GRIA of a note which provides an outline of when the recall allowance in clause 19.11 of the GRIA is not payable.

44. For example, and in particular, a note could clarify that the allowance is not payable if the employee’s roster is changed by mutual agreement and pursuant to either clause 10.6 or 15.9(e) of the GRIA.

45. MGA **recommends** the FWC considers inserting a note within clause 19.11 which outlines the circumstances where payment of the recall allowance is not required.

Optional templates for facilitative provisions

46. The GRIA contains helpful templates in Schedules F and G - Agreement to Take Annual Leave in Advance and Agreement to Cash out Annual Leave.

47. MGA members report they and their employees frequently utilise the facilitative provisions in clause 7 of the GRIA and appreciate the flexibility those provisions provide in managing their businesses and meeting the needs of employees.

48. Over 90% of surveyed MGA members support the inclusion of additional Schedules into the GRIA containing template agreements to enable easy use of the facilitative provisions. MGA members would particularly appreciate the creation of templates for the following clauses:

- a) Clause 15.7(d): Rosters – minimum consecutive days off
- b) Clause 15.8(b): Employees regularly working Sundays
- c) Clause 16.6(d): Breaks between work periods
- d) Clause 19.11(b): Recall allowance
- e) Clause 21.3: Time off instead of payment for overtime

49. MGA **recommends** the FWC considers:

- c) the addition of templates into Schedules within the GRIA to enable easier use of facilitative provisions of the GRIA; and
- d) the insertion of a note within the GRIA at clause 7 and in the relevant clause listed above alerting readers to the existence of the optional templates within Schedules.

Conclusion

50. MGA considers various improvements to make the GRIA easier to use can be made in accordance with the recommendations above.
51. MGA would be pleased to participate in further consultation on the matters raised in this submission.
52. MGA thanks the FWC for the opportunity to provide this submission and for its consideration.