

# **AWARD MODERNISATION – GENERAL RETAIL INDUSTRY**

**Joint Submissions**



**National Retail Association**

**&**

**Australian National Retailers Association**



**MAY 2009**

1. NRA and ANRA do not accept the use of transitional provisions is a legitimate mechanism in circumstances where it can be established that substantial and widespread increases in labour costs will result from the implementation of certain provisions contained in the Retail Industry Award 2010 (“the Award”) in its current form.
2. It is therefore submitted that in its approach to the development of transitional provisions, it is appropriate for the Commission to review closely the impact of the Award on labour costs, and where it can be established that those impacts are significant and are not isolated in their application, then the Commission should review the particular provisions and make appropriate amendments to ensure that there is no resulting increase in labour costs or no significant increase in labour costs.
3. In any such review conducted by the Commission it is strongly submitted that the Commission must take into account the impact on employers of the current economic recession and ensure that any decision is based on the desirability of preserving jobs as opposed to the award of unsustainable increases in labour costs. This is entirely consistent with amendments proposed by the Federal Government to the *Fair Work (Transitional Provisions and Consequential Amendments) Bill 2009* in relation to the Award Modernisation process being carried out under Part 10A of the *Workplace Relations Act 1996*, which are as follows:

*(18) Schedule 5, item 2, page 53 (after line 16), at the end of the item, add:*

*(5) In continuing and completing the Part 10A award modernisation process, the Australian Industrial Relations Commission must have regard to:*

- a. the state of the national economy; and*
- b. the likely effects on the national economy of any modern award that the Commission is considering, or is proposing to make, with special reference to likely effects on the level of employment and on inflation.*

(6) This provision represents a significant shift in the parameters within which the Commission has been operating in carrying out the award modernisation process. The work undertaken to this point by the Commission in modernising awards has been undertaken in the absence of this clear direction. It is both appropriate and necessary for the Commission to review the content of modern awards that have been created to this point in order to determine their impact on the national economy.

(7) It is proposed that any such review should involve a hearing of the competing arguments, the presentation where appropriate of oral and other evidence, and a consideration of particular testimony dealing with the economic consequences of a decision to increase the labour costs of employers.

(8) There are five key areas which, in our submission, should lead the Commission to institute a review and, following this, should result in amendment to the prescriptions currently included in the proposed modern award. These areas are:

- a. Sunday penalty rate of 200% for permanent employees;
- b. Sunday penalty rate of 225% for casual employees;
- c. Casual loading of 25%;
- d. Shop Manager rates of pay;
- e. Spread of hours.

**(a) Sunday penalty – permanent employees**

(9) The Sunday penalty rate is of major concern to our membership. We have provided, in previous submissions, a comprehensive summary of current common rule penalty provisions, including Sunday penalty provisions. This is extracted again below.

<b>State/Territory</b>	<b>Sunday</b>
<b>Retail Award 2010</b>	<b>\$31.58</b>
<b>Victoria</b>	\$31.72
<b>New South Wales</b>	\$23.76
<b>Queensland</b>	\$31.72
<b>Non exempt stores</b>	
<b>Queensland – exempt and independent retailers</b>	\$23.79
<b>Western Australia – part time</b>	\$31.76
<b>South Australia – shops open after 12.30pm Saturday</b>	\$26.45
<b>Tasmania</b>	\$31.70
<b>Northern Territory</b>	\$31.72
<b>ACT</b>	\$23.76

(10) We have undertaken a number of assessments of the cost implications of the Award. We provide examples as attachments to these submissions. The Commission has also been provided with information from other parties, including the SDA. The information provided by the SDA (Exhibits SDA 11, SDA 12 and SDA 13), clearly showed that the imposition of a 200% Sunday penalty rate would cause major cost increases to employers.

(11) Our members are extremely concerned by the cost impacts of arising from the application of a 200% Sunday penalty. Further as a matter of balance we don't believe that a review of current provisions leads to a conclusion that a 200% penalty was an inevitable consequence. As highlighted in our table above, there are a number of States that do not provide for a 200% Sunday penalty. New South Wales, which employs the largest number of employees in the retail industry, provides for a penalty of 150%, Queensland provides for a penalty of 150% for a large proportion of retail employees and South Australia provides for a penalty of 160%.

(12) It is important to note that, as we have cited in previous submissions, New South Wales is Australia’s largest State in terms of employment levels in the retail industry. While comprehensive data is not readily available, it is probable that in New South Wales, about one-third of retail employees (c.120,000 employees) work on a Sunday. Consistent with the national trend, about 22 per cent of these employees (26,400) are likely to be engaged under an award. Under the modern retail award, the hourly award rate in New South Wales for permanent employees working on Sunday will rise from \$23.76 to \$31.58. This suggests that the change to Sunday penalty rates in New South Wales alone would mean an increase in wage costs of up to \$1.4 million a week or up to \$75 million a year. As weekend work often involves a higher proportion of casual employees than other days, and casual employees will be entitled to an even higher award rate (\$35.53), the costs of increased penalty rates on weekends could even be higher.

**(b) Sunday penalty – casual employees**

(13) Our members are also concerned that the effective 225% penalty for casuals on Sundays fails to meet the terms of the Request. Again, in previous submissions we have set out for the Commission a summary of current common rule instruments and their treatment of the Sunday casual penalty. This summary is extracted below:

<b>State</b>	<b>Sunday</b>
<b>Retail Award 2010</b>	<b>\$35.53</b>
<b>Victoria</b>	\$33.04
<b>New South Wales</b>	\$28.84
<b>Queensland – non exempt stores</b>	\$31.72
<b>Queensland – exempt and independent retailers</b>	\$23.79
<b>Western Australia</b>	\$38.12
<b>South Australia</b>	\$33.73
<b>Tasmania</b>	\$34.87
<b>Northern Territory</b>	\$38.06
<b>ACT</b>	\$27.32

(14) The Victorian common rule award does not provide for a Sunday casual rate of this magnitude, nor do the Queensland, New South Wales or South Australian common rule awards. The table above identifies that the rate proposed in the Award is higher than all but the Western Australian and Northern Territory awards.

**(c) Casual loading**

(15) There is also concern among our members in relation to the casual loading of 25%. The Commission has determined that the casual loading in all awards will be 25%. Our members seek clarification on the reasoning applied by the Commission in reaching this conclusion, and how it balanced the increase that this imposes on employers in all states and territories excluding Victoria with reductions in other employment conditions.

(16) It was not our understanding that the modernisation process was intended to result in broad philosophical outcomes from the Commission on what it would deem to be an appropriate condition of employment, but rather it was intended to be a process of considering award content within an industry and developing, as far as possible, cost neutral outcomes.

**(d) Shop Manager rates**

(17) The Award provides for a two level Shop Manager classification structure. The Level 6 Shop Manager is defined as a manager of a shop without defined sections/departments. It follows that the Level 8 Shop Manager classification refers to managers of shops with defined sections/departments.

(18) The issue this raises in relation to cost increases for employers is that the Level 8 rate of pay of \$740.00 per week does not appear to have been drawn from current award or NAPSA content. We have reviewed current common rule award and NAPSA content and the highest rate for a Shop Manager that we can identify is \$655.12 per week for certain Shop Managers under the Victorian Shops Award (This excludes the South Australian Award rates as these rates are higher based on the removal of late night and Saturday penalties under that award). Our members seek clarification on the reasoning used by the Commission in creating this pay level, and how this complies with the provisions of the Request in relation to employer costs.

**(e) Spread of Hours**

- (19) The Commission has, through the extended spread of hours afforded to Video Hire retailers, identified within the General Retail Industry Award that consideration needs to be given to both the practical operations of particular types of retail businesses and the recognition of this in current common rule instruments.
- (20) In our submission the Commission should, with the assistance of the parties, undertake a process of identifying those types of retail businesses which have been afforded special consideration under current common rule instruments and translate this to the modern award. We have extracted below provisions of some of the current common rule instruments in the retail industry which may assist the Commission in undertaking this process:

**Shop Employees Award (NSW)**

***(III) Special and Confection Shops - Hours and Rosters –***

*ii) Commencing Times - The commencing time of the ordinary hours of work shall be 7.00 am (6.00 am in take-away food shops, fruit and vegetable shops and newsagencies).*

*(iii) Ceasing Times - The time for the cessation of the ordinary hours of work by employees shall be:*

*(a) In cake and pastry shops, cooked provisions shops, fish shops, pet shops, souvenir and gift shops, tobacconists' shops and small shops, Monday to Sunday, both days inclusive - 10.30 pm.*

*(b) In take-away food shops, Monday to Sunday, both days inclusive-midnight.*

*(c) In flower shops and garden plant shops, Monday to Sunday, both days inclusive - 8.30 pm.*

*(d) In hairdressers' shops, Monday to Friday, both days inclusive - 5.45 pm and Saturday - 12.45 pm.*

*(e) In retail liquor shops, Monday to Sunday, both days inclusive - 10.00 pm.*

#### **SDAEA Victorian Shops Interim Award**

##### **23.2 Times of beginning and ending work**

*Subject to 23.3, the ordinary times of beginning and ending work shall be:*

*23.2.2 in Class A Exempt Shops: 7.00 a.m. 10.00 p.m.*

*Provided that in the case of persons employed by an authorised newsagent and engaged in or in connection with the sale of newspapers and/or magazines the ordinary time of beginning work shall be 5.00 a.m. in lieu of 7.00 a.m.*

#### **Retail Industry Award (Qld)**

##### *6.1.3 Ordinary commencing and ceasing times*

*The commencing and ceasing times for ordinary hours of work shall be:*

*(a) Exempt Shops and Independent Retail Shops - The ordinary daily working hours shall be worked continuously without a break, except for meal breaks between 6.00 a.m. and 12 midnight each day.*

#### **Shop and Warehouse Award (WA)**

##### *PART II - ORDINARY HOURS*

*(1) (a) Subject to Part I of this Clause*

*Establishments shall arrange the ordinary hours of work each day according to the provisions herein:*

*.....*

*(c) "Small Retail Shops" - the ordinary hours of work shall be worked within a spread on 11 consecutive hours exclusive of meal breaks except on the day of late night trading where the spread may be 12 consecutive hours exclusive of meal breaks between the hours of 6.00a.m and 11.30p.m.*

*.....*

### **Review of Original Decision**

(21) NRA and ANRA submit that the cost implications of the Award would largely be remedied in the following way:

- a. Reduction of the Sunday penalty rate for permanent employees to 175%;
- b. Application of the permanent Sunday penalty rate to casual employees – casuals to receive 175% of the permanent employee rate with no additional loading;
- c. Reduction of the casual loading to 23%;
- d. Removal of the Level 8 Shop Manager classification; and
- e. More detailed recognition in the Award of current Award/NAPSA content with respect to particular types of business.

### **Other issues**

(22) The Shop Manager classification also raises issues of practical application. If the Commission is to sustain the inclusion of the Level 8 classification in the Award there needs to be further detail provided on the definition of shops with and without departments. Most retail stores could, on a strict reading of the current provision, be considered to have departments. Many small fashion stores have men's and women's sections. Independent hardware stores have paint, electrical and many other sections. Video Hire stores have sections for rental products and sections for products for purchase. It is inconceivable that managers operating in these circumstances would be entitled to the Level 8 Shop Manager rate of pay. NRA and ANRA submit that a prerequisite for a shop to fit within the Level 8 classification structure it must:

- a. Have a minimum of 3 departments;
- b. Each department must have a separate department manager appointed by the employer; and
- c. That department manager must oversee a minimum of two subordinate employees for the majority of their working week.

### **Transitional provisions**

(23) We reiterate that we accept it is appropriate and within the scope of the modernisation request to resolve some labour cost impacts through the use of phasing in techniques.

(24) In these circumstances we submit that the transitional provisions in the Award must be developed with an eye firmly on the current, and projected short term, economic situation. It is quite clear from all economic data that Australia is in the grip of a severe economic downturn. That downturn is projected to continue at least in the short term. The Retail Industry is being significantly impacted by this downturn. It follows, therefore, that the Retail Industry must be provided with maximum protection from labour cost increases, as any cost increases will only threaten more jobs within the industry.

(25) Subject to our primary submission that some provisions must be excluded from the transitional mechanism and should be subject to further review, we propose the following broad principles could apply in instances where transitional provisions were deemed appropriate:

- a. Transitional provisions are to be directed solely to the issue of employer costs;
- b. A 2 year moratorium on any changes to terms and conditions that will lead to labour cost increases;
- c. Increases beyond that 3 year moratorium be phased in equally over the following 2 years;
- d. Phasing in provisions relate to an outcome rather than a level of increase. This would mean that, rather than all conditions going up by a certain amount in each year of the transition period, they increase to a stated benchmark at the commencement of each year.

NATIONAL RETAIL ASSOCIATION

AUSTRALIAN NATIONAL RETAILERS ASSOCIATION

29 May 2009