

The Australian Industry Group

Proposed Variations to the *General Retail Industry Award 2020*

Submission

(AM2024/9, AM2024/26, AM2024/33 &
AM2024/40)

1 November 2024



AM2024/9, AM2024/26, AM2024/33 & AM2024/40

**PROPOSED VARIATIONS TO THE *GENERAL RETAIL INDUSTRY
AWARD 2020***

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1. INTRODUCTION

1. This submission is filed pursuant to Direction [2] of the Further Amended Directions issued by the Fair Work Commission (**Commission**) on 19 September 2024.
2. Accordingly, this submission sets out the matters relied upon by the Australian Industry Group (**Ai Group**) in this proceeding to support the four variations which Ai Group moves the Commission to make to the *General Retail Industry Award 2020 (GRIA)*.
3. The terms of the proposed variations are set out in the draft determination attached to this submission.
4. In this submission, references to statutory provisions are references to provisions of the *Fair Work Act 2009*, and clause references are to clauses of the GRIA, unless stated otherwise.

2. CLAUSE 16 – BREAKS

5. Ai Group moves for a variation to clause 16 with respect to conditions for rest and meal breaks. The proposed variation introduces clause 16.6 to accommodate agreement between an employer and employee regarding the way in which these breaks can be taken.
6. The terms of Ai Group's proposed variation appear at paragraphs 1 – 3 of the draft determination. The following considerations support the proposed variation.

Agreement Required

7. Currently, clause 16.5 limits the options by which rest breaks and meal breaks can be taken. This is because, according to that provision, an employer '*cannot require*' an employee to:
 - (a) take a rest break or meal break within the first or last hour of work, or
 - (b) take a rest break combined with a meal break, or
 - (c) work more than five hours without taking a meal break.
8. The current provision is not explicit as to whether the limiting scenarios at (a) - (c) above are permitted if there is agreement between the employer and employee. In view of this, the current provision is a potential impediment to those employers and employees who otherwise agree (or would agree) that rest and meal breaks can be taken in those circumstances.
9. With Ai Group's proposed variation, each scenario at (a) - (c) is clearly permissible, as long as there is agreement between the employer and the employee. The proposed variation does not vary existing clause 16.5, hence the existing provision will continue to limit an employer in terms of what the employer can *require* of an employee.

10. As the proposed variation can only be implemented by agreement on the part of both the employer and the employee, the proposed variation does not impose an outcome upon an unwilling party.

Practicability, Desirability & Difficulty

11. The variation does not diminish from the undoubted benefit of rest breaks and meal breaks but rather, it will make the GRIA easier to use by providing a sensible facility expressed in clear and certain terms by which the employer and employee can respond to circumstances in which it is impracticable, undesirable or difficult to take a break in a manner compatible with clause 16.5.
12. Impracticability or difficulty could arise from unexpected events at the workplace or from matters personal to the employee, in which it suits the employee to take the break(s) at a time or in a manner described within the limitations at clause 16.5(a) - (c). Similarly, some employees may wish to, for example, take their rest and meal breaks jointly, resulting in a longer break that better enables them to attend to personal matters away from the workplace during that time.
13. Ai Group's proposed variation would ensure that such arrangements willingly agreed between an employer and employee are clearly compliant with the GRIA.

Comparable Conditions

14. Ai Group's proposed variation is not novel, as there are many modern awards in which departure from conditions prescribed for such breaks is permitted by agreement.

15. In demonstration of this, each modern award cited below enables employer/employee(s) agreement about arrangements for rest and meal breaks, including arrangements comparable to those available through Ai Group's proposed variation:
- (a) Employer/employee agreement permitted to extend the period of work before a meal break from five ordinary hours to up to one hour: see *Cement, Lime and Quarrying Award 2020*, clause 15.1(a)(ii); *Cotton Ginning Award 2020*, clause 16.1; *Food, Beverage and Tobacco Manufacturing Award 2020*, clause 13.1(b); *Seafood Processing Award 2020*, clause 14.1(a)(ii); *Telecommunications Services Award 2020*, clause 14.4(a)(i).
 - (b) Similar extensions are permissible by agreement between an employer and a majority of employees: see *Food, Beverage and Tobacco Manufacturing Award 2020*, clause 13.1(b); *Pharmaceutical Industry Award 2020*, clause 14.1(b); *Seafood Processing Award 2020*, clause 14.1(a)(ii); *Telecommunications Services Award 2020*, clause 14.4(a)(i); *Textile, Clothing, Footwear and Associated Industries Award 2020*, clause 18.1(c)(i).
 - (c) Employer/employee agreement permitted to vary the requirement that an employee not work for longer than five hours without at least 30 minutes unpaid meal break: see *Meat Industry Award 2020*, clause 15.1(a).
 - (d) Where daily hours are six hours or less, agreement is permitted such that the employee may work without a meal break, and such agreement applies in place of a requirement that work not exceed five hours without a meal break: see *Banking, Finance and Insurance Award 2020*, clause 14.1(b); *Broadcasting, Recorded Entertainment and Cinemas Award 2020*, clause 30.1; *Business Equipment Award 2020*, clause 13.2(a)(i) (with a restriction on such agreement being able to be reached for 12 hour days or shifts); *Health Professionals and Support Services Award 2020*, clause 15.1(c); *Pharmaceutical Industry Award 2020*, clause 14.1(c);

Timber Industry Award 2020, clause 19.2; *Wine Industry Award 2020*, clause 14.2.

- (e) Employer/employee agreement permitted so that the meal break is taken after the first work hour and within first 6.5 hours: see *Restaurant Industry Award 2020*, clause 16.4(a).
- (f) By agreement afternoon rest break may be taken immediately before finishing work: see *Car Parking Award 2020*, clause 16.2(c); *Racing Clubs Events Award 2020*, clause 16.3(b); *Racing Industry Ground Maintenance Award 2020*, clause 14.2(c).
- (g) By agreement the afternoon rest break can be taken in the morning by joining it to the lunch break: see *Car Parking Award 2020*, clause 16.2(c).
- (h) By agreement the afternoon rest break can be taken immediately before finishing work: see *Car Parking Award 2020*, clause 16.2(c); *Racing Clubs Events Award 2020*, clause 16.3(b); *Racing Industry Ground Maintenance Award 2020*, clause 14.2(c).
- (i) Employer/employee may agree to combine the two 10-minute tea breaks into a 20-minute tea break: see *Health Professionals and Support Services Award 2020*, clause 15.2(b); *Nurses Award 2020*, clause 14.2(b).

Modern Awards Objective

- 16. The following elements of the modern awards objective weigh in favour of the proposed variation:
 - (a) The need to promote flexible modern work practices and the efficient and productive performance of work;¹
 - (b) The likely impact of any exercise of modern award powers on business including on productivity, employment costs and the regulatory burden;²

¹ Section 134(1)(d) of the Act.

² Section 134(1)(f) of the Act.

(c) The need to ensure a simple and easy to understand modern award system.³

³ Section 134(1)(g) of the Act.

3. CLAUSE 18 – PAYMENT OF WAGES

17. Ai Group moves for a variation at clause 18.2 to allow the option for wages to be paid on an averaging basis.
18. The terms of Ai Group’s proposed variation appear in our draft determination at paragraphs 4 – 5. The following considerations support the proposed variation.

Complementary and Compatible

19. The variation would complement existing conditions, which allow ordinary hours to be averaged. Those existing conditions appear in the GRIA at: (emphasis added)
 - (a) Clause 15.6(a), which expresses a requirement for an assessment to be made for ‘*arrangements for working the average of 38 ordinary hours per week...*’; and
 - (b) Clause 15.6(g), which expresses various ways in which rostered hours may be arranged including at (v), ‘*working an average of 38 hours per week over a longer period agreed between the employer and the employee.*’
20. Despite this, clause 16.1 requires that wages must be paid weekly or fortnightly (except in a narrow range of circumstances in which monthly pay periods are permitted). Further, clause 16.2 requires as follows:

Wages must be paid for a pay period according to the actual hours worked by the employee in the period or they may be averaged over a fortnight.

21. The potential misalignment between the accrual of entitlements and payments made by an employer in a pay period was identified by the Commission during the Payment of Wages common issues proceedings, in the 4 yearly review of modern awards.

22. In a decision of 1 December 2016, a Full Bench of the Commission stated:
(emphasis added)

2.4 Accrual of wages and other amounts

[123] As discussed above, s.323 of the FW Act deals with the method and frequency with which employers must pay an employee 'amounts payable to the employee in relation to the performance of work', and appears to have the effect that such amounts must be paid no later than one month after accrual. Section 323 does not specify when 'amounts payable to the employee in relation to the performance of work' become payable, that is, when the entitlement to payment accrues.

[124] The FW Act does specify when various payments under the NES accrue. For example, the entitlement under the NES to payment in lieu of untaken paid annual leave and to redundancy pay is expressed to arise upon termination of employment (see ss.90(2) and 119(1)). As discussed at paragraphs [74] – [78] above, it seems that the FW Act requires payment in lieu of notice under the NES to be made before or at the time of termination of employment (s.117(2)) and the entitlement to redundancy pay under the NES would seem to arise when an employee's employment is terminated in certain circumstances (s.119(1)). Entitlement under the NES to payment for paid annual leave or for paid personal/carer's leave, is expressed to arise when an employee takes a period of such leave (ss.90(1) and 99) and similarly with compassionate leave (s.106), absence on jury service (s.111(2)) and absence on a public holiday (s.116).

[125] Notably, the FW Act does not appear to specify when wages accrue. In contrast, s.67 of the *Fair Work Act 1994* (SA) provides:

67—Accrual of wages

- (1) Wages accrue under a contract of employment from week to week.
- (2) However—
 - (a) if an employee is employed on an hourly basis, wages accrue from hour to hour; and
 - (b) if an employee is employed on a daily basis, wages accrue from day to day; and
 - (c) if a person is employed on neither an hourly nor a daily basis, but the period of employment is less than a week, wages accrue at the end of the period of employment.

[126] Academic commentary suggests that, absent express provision for accrual in an award, if wages are required to be paid periodically under the award (for example, weekly, fortnightly or monthly) then they will be taken to accrue with at least the same frequency.

[127] This would seem to accord with the terms of many award 'payment of wages' clauses. For example, the 'minimum weekly wages' clause (cl.17) of the *General Retail Industry Award 2010* contains only a table of weekly wage rates for the award classifications and does not expressly provide for accrual of wages whether on a

weekly, daily, hourly or other basis. However, the wording in the ‘payment of wages’ clause of that award (cl.23, as reproduced at paragraph [11] above) ‘[w]ages will be paid weekly or fortnightly’, might be read as entailing that wages must accrue at least weekly or fortnightly.

[128] In contrast to the ‘minimum weekly wages’ clause of the *General Retail Industry Award 2010*, express provision is made in the award for accrual, for example, of a meal allowance (see cl.18.1) and payment at overtime rates (see cl.20.1) during a pay period. It should be noted that some award terms may also provide for payment to be made in a subsequent pay period. For example, the ‘time off instead of payment for overtime’ model term includes the requirement that:

‘If time off for overtime that has been worked is not taken within the period of 6 months... [after the overtime is worked,] the employer must pay the employee for the overtime, in the next pay period following those 6 months ...’

...

[130] It has been suggested that an employee’s wages under an award will be taken to accrue hourly if the award specifies an hourly wage rate for the employee (perhaps in addition to a daily, weekly, annual or other rate) or the award specifies that wages are to be calculated on the basis of hours worked, but not all awards make such provision.

...

[136] The issue of when payments accrue under modern awards might arise in the context of the Fair Work Ombudsman (FWO) assisting employees or former employees to recover unpaid wages and other amounts. The Full Bench would appreciate receiving information from FWO as to whether lack of clarity as to accrual of wages and other amounts, particularly in respect of incomplete pay periods, is an issue for FWO in practice.⁴

23. Ai Group is not aware of any information provided by the Fair Work Ombudsman in response to the Commission’s information request at [136] above.
24. As stated earlier, the GRIA expressly requires that on a given pay day, an employee must be paid the wages accrued for the hours worked during the relevant pay period. Accordingly, it is not clear whether an employee can be paid in accordance with the average hours worked.
25. The ability to average an employee’s ordinary hours is of little practical utility if pay averaging is not permitted; especially if the award prescribes pay periods that are shorter in duration than the maximum period over which ordinary hours

⁴ 4 yearly review of modern awards – *Payment of wages* [2016] FWCFB 8463 at [123] – [136].

can be averaged.⁵ Employers are potentially compelled to pay employees for actual hours worked, irrespective of the averaging system in place in respect of ordinary hours of work.

26. The proposed variation would provide a method for the payment of wages which is compatible with, and complimentary to, provisions that permit the averaging of ordinary hours.

Convenience and Certainty

27. The proposed clause is in the interests of both employers and employees. It would clearly permit pay averaging arrangements and provide certainty as to the method of remuneration that may apply where an employee's ordinary hours are averaged. The benefit of an ability to average ordinary hours of work would be properly realised.
28. This is particularly relevant in light of the civil penalties regime under the Act. If an employer withholds pay from an employee in a pay period in order to provide consistent payments to the employee during the roster cycle, the employer may be exposed to a civil penalty for breaching the GRIA.
29. The maximum civil penalties under the Act for a body corporate that contravenes an award are 300 penalty units (currently \$93,900) or 3,000 penalty units (currently \$939,000) for a '*serious contravention*'. The maximum civil penalties for an individual who contravenes an award are 60 penalty units (currently \$18,780) or 600 penalty units (currently \$187,800) for a '*serious contravention*'.
30. In addition to the civil penalties in the Act, the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* will introduce criminal penalties into the Act from 1 January 2025. These criminal penalties are in the form of a new wage theft offence in s.327A, which will apply to intentional failures to pay particular amounts to an employee on or before the day when payment is due. This will capture employers intentionally failing to pay employees amounts they are

⁵ See for example clause 16.1 of the FF Award.

owed under modern awards as well as intentional *late* payment of such amounts. As with the existing civil penalties in the Act, employers who withhold pay from employees in order to provide consistent payments across a roster cycle may also fall foul of the wage theft offence if the relevant award does not provide for pay averaging.

31. The potential punishment where a conviction is established is significant. The maximum punishment for an individual who is convicted of a wage theft offence is a term of imprisonment of up to 10 years or a fine of the greater of three times the underpayment amount or 5,000 penalty units (currently \$1,565,000). The maximum punishment for a body corporate is a fine of the greater of three times the underpayment amount or 25,000 penalty units (currently \$7,825,000). The exposure to such significant penalties, in particular potential jail time for individuals, is a disproportionate consequence for employers in circumstances where the GRIA does not provide for pay averaging.
32. Further, employees benefit from pay averaging through receiving consistent, rather than fluctuating, wage payments. Consistent wage payments make it easier for employees to manage spending, prepare household budgets and obtain loans.

Clear and Simple

33. Ai Group's proposed variation is expressed in clear and simple terms and so satisfies both the modern award objective at s.134(1)(g) and the expectation that obligations and entitlements in respect of wages payable under modern awards should be expressed in clear and simple terms, as expressed by the Commission in the Payment of Wages proceeding:

[132] The obligations and entitlements of employers and employees in respect of wages and other amounts payable under modern awards (and when they become payable) should be expressed in clear and simple terms. The modern award system should be simple and easy to understand.⁶

⁶ 4 yearly review of modern awards – *Payment of wages* [2016] FWCFB 8463 at [132].

Modern Awards Objective

34. The following elements of the modern awards objective weigh in favour of the proposed clause:
- (a) The relative living standards and the needs of the low paid;⁷
 - (b) The need to promote flexible modern work practices and the efficient and productive performance of work;⁸
 - (c) The likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden;⁹ and
 - (d) The need to ensure a simple and easy to understand modern award system.¹⁰

⁷ Section 134(1)(a) of the Act.

⁸ Section 134(1)(d) of the Act.

⁹ Section 134(1)(f) of the Act.

¹⁰ Section 134(1)(g) of the Act.

4. CLAUSE 19 – ALLOWANCES

35. Ai Group moves for a variation to replace clause 19.10(a) in the terms set out in our draft determination at paragraph 6. The following considerations support the proposed variation.

Appointment occasional or ongoing

36. Clause 19.10 is in the following terms:

19.10 First aid allowance

(a) Clause 19.10 applies to an employee who:

(i) has a current first aid qualification from St John Ambulance Australia or a similar body; and

(ii) is appointed by the employer to perform first aid duty.

(b) The employer must pay the employee an allowance of **\$13.42** per week.

37. Clause 19.10(a) is concerned with eligibility for the weekly first aid allowance at clause 19.10(b). Some employees can be appointed to perform first aid duty from time to time such that the employees are required to perform those duties during certain periods but not others. Others may be appointed on an ongoing basis.

38. Because appointment can be occasional (i.e. from time to time), clause 19.10(a) should be varied in the terms proposed, so that the clause clearly conveys that the allowance is payable only while the employee is so appointed by the employer and there is no entitlement while not appointed. The award appears to already operate as such; however, the proposed variation would put the matter beyond doubt.

Clear and Simple

39. The proposed variation is clear and simple, and thus satisfies the objective at s.134(1)(g).

5. CLAUSE 20 – EXEMPTION RATE

40. Ai Group moves for the inclusion of an exemption rate at new clause 20. The terms of Ai Group's proposed variation appear at paragraphs 7 – 8 of our draft determination.
41. The effect of the proposed variation is that various provisions of the award would not apply to certain employees who are paid a salary which is at least 25% more than the salary calculated from the relevant minimum weekly classification rate multiplied by 313/6.
42. Employees would not be exempt at large, but rather exemption would be confined to employees (whether full-time or part-time) classified at any of the four higher classification levels from Retail Employee Level 4 to Retail Employee Level 8.

Illustrative Example

43. By way of example, the exemption conditions would be engaged in the case of a full-time employee classified at Retail Employee Level 8, who is paid a salary which is at least 25% more than the rate derived from the minimum weekly rate for the level 8 classification, multiplied by 313/6.
44. At the date of this submission, the minimum weekly rate for Retail Employee Level 8 is \$1,191.50 (see GRIA, table B.1.1.at Schedule B). Thus:
- (a) the minimum annual rate = \$66,128.25
- i.e. $\$1,191.50 \times (313/6) = \$66,128.25$
- (b) the minimum annual salary for exemption purposes = \$82,660.31
- i.e. $\$66,128.25 \times 1.25 = \$82,660.31$.
45. Thus, certain provisions of the GRIA would not apply to a full-time employee classified at Level 8, if they are paid a salary that is at least \$82,660.31. Those provisions are identified at clause 20.2 of the proposed variation.

46. For completeness, the results of applying the calculation method to full-time employment classification levels Retail Employee Level 4 to Retail Employee Level 8 are as follows:

Classification	Min. annual rate	Min. exemption rate
Level 4	\$57,292.65	\$71,615.82
Level 5	\$59,645.85	\$74,557.31
Level 6	\$60,511.65	\$75,639.56
Level 7	\$63,547.50	\$79,434.38
Level 8	\$66,128.25	\$82,660.31

[Source: *General Retail Industry Award 2020*, table B.1.1, Schedule B as varied by FWC Determination PR773888, operative on/from 1 July 2024].

47. The following considerations support the proposed variation.

Historical and Existing Conditions

48. Exemption rates are known to award regulation and feature in other modern awards. In *Re Restaurant & Catering Industrial*¹¹, the Full Bench considered an application to vary the *Restaurant Industry Award 2020* to include, amongst other things, an exemption rate. At [84], the Full Bench noted that historically a small number of pre-reform awards and Notional Agreements Preserving State Awards had included exemption rate clauses which exempted employees at or above a certain classification from provisions concerning overtime payments, penalty rates and some allowances. At [94] (and Attachment A to the decision), the Full Bench identified six modern awards which include exemption rate clauses.

¹¹ [2021] FWCFB 4149.

49. Further at [91], the Full Bench accepted that the Commission can include exemption rates in modern awards provided that:
- (a) it is satisfied that they are necessary to achieve the modern awards objective at s.134 of the Act,
 - (b) they are about matters set out in s.139 of the Act,
 - (c) they are not terms that must not be included in a modern award, and
 - (d) they do not have the effect that employees earning above a certain rate stop being covered by the award altogether (unless the Commission is satisfied that those employees would instead be covered by another modern award (other than the Miscellaneous Award) that is appropriate for them).
50. At [92], the Full Bench accepted as a general proposition *‘that an exemption rate clause could reduce award complexity and the regulatory burden on business and may encourage collective bargaining’*.
51. The proposed variation is clearly about matters set out at s.139 and it is not a term that must not be included in a modern award.
52. The proposed variation would not have the effect that employees would stop being covered by the GRIA altogether – this is because the exemption operates to exempt eligible employees from parts of the GRIA, not its coverage. As noted above, the provisions affected by the exemption are identified at clause 20.2 of the proposed variation.
53. By insisting upon a remuneration floor of at least 25% above the minimum, the proposed variation encourages employer and employee bargaining for remuneration which exceeds prescribed minimum rates.

54. The exemption rate contributes to efficiency and ease of use of the GRIA, because the proposed clause would:
- (a) provide a pathway for remuneration by salary well above base minimum rates;
 - (b) facilitate arrangements that do not rely on common law offset arrangements. Many employers covered by the GRIA presently remunerate employees by way of a salary, pursuant to contractual arrangements, which are intended to satisfy their obligations to pay various entitlements prescribed by the award. However, as previously recognised by the Commission, *'this means of paying an annualised wage to an employee to whom a modern award applies is not entirely free from legal difficulty'*.¹²
 - (c) provide a method for remuneration by way of fixed amounts, thus alleviating the need to separately identify and calculate various entitlements that would otherwise be payable;
 - (d) result in employees receiving a fixed and certain amount each pay period irrespective of the number of hours worked, thus providing the advantage of predictable earnings (which is beneficial for the purposes of budgeting, seeking finance etc);
 - (e) alleviate the need for employers and employees to create, maintain and verify records as to the employees' hours of work. The requirements to do so under the *Fair Work Regulations 2009* result in considerable additional costs and compound the regulatory burden facing employers. Further, many employees do not wish to produce records of the hours worked and resist their employers' directions to do so. Employees often perceive that such requirements impede upon their independence and autonomy or misapprehend that the records are intended for some other purpose (e.g. for the employer to monitor and assess their working hours for

¹² *Annualised Wage Arrangements* [2018] FWCFB 154 at [102].

performance management purposes). Senior employees particularly resent being asked to use a *'bundy clock'* of any form; and

- (f) permit employees' hours of work to be arranged in more flexible ways, because the strictures of the award would not apply. This is particularly relevant given the increased prevalence of remote working arrangements, as discussed earlier.

Modern Awards Objective

55. The following elements of the modern awards objective weigh in favour of the proposed clause:

- (a) The relative living standards and the needs of the low paid,¹³
- (b) The need to promote flexible modern work practices and the efficient and productive performance of work;¹⁴
- (c) The likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden;¹⁵ and
- (d) The need to ensure a simple and easy to understand modern award system.¹⁶

¹³ Section 134(1)(a) of the Act

¹⁴ Section 134(1)(d) of the Act.

¹⁵ Section 134(1)(f) of the Act.

¹⁶ Section 134(1)(g) of the Act.



DRAFT DETERMINATION

Fair Work Act 2009

s.157—FWC may vary etc. modern awards if necessary to achieve modern awards objective

Variation at the Commission’s own Initiative

(AM2024/33)

GENERAL RETAIL INDUSTRY AWARD 2020

[MA000004]

VICE PRESIDENT GIBIAN

SYDNEY, [DATE]

Variations the General Retail Industry Award 2020 at the Commission’s own initiative

Further to the decision issued by the Fair Work Commission on [insert date],¹ the *General Retail Industry Award 2020*² is varied by:

1. Adding the words “Subject to clause 16.6,” at the commencement of clause 16.5.
2. Renumbering clause 16.6 as 16.7.
3. Inserting a new clause 16.6 as follows:

16.6 An employer and employee may agree, on an ongoing basis or for a specified period of time, to one or more of the following arrangements, where the employee is entitled to the relevant break(s):

- (a) the employee will take rest breaks and / or meal breaks within the first and / or last hour of work;
- (b) the employee take rest breaks combined with meal breaks; and/or
- (c) the employee will work up to 6 hours without taking a meal break.

4. Renumbering clause 18.4 as 18.5.

¹ [citation].

² MA000004.

5. Inserting a new clause 18.4 as follows:

18.4 Notwithstanding anything else in this award, where an employee's ordinary hours are averaged over a period of time, an employee may be paid for the average number of ordinary hours attributed to the relevant pay period.

6. Deleting current clause 19.10(a) and replacing it with the following:

(a) Clause 19.10 applies to an employee who has a current first aid qualification from St John Ambulance or a similar body, whilst they are appointed by the employer to perform first aid duty.

7. Renumbering clauses 20 to 38 as 21 to 39.

8. Inserting a new clause 20 as follows:

20. Exemptions

20.1 This clause applies to:

(a) Full-time employees classified as Retail Employee Level 4 – Retail Employee Level 8 who are a paid a salary that is at least 25% more than the applicable minimum wage for their classification level, as prescribed by clause 17.1, multiplied by 313/6.

(b) Part-time employees classified as Retail Employee Level 4 – Retail Employee Level 8 who are a paid a salary that is at least 25% more than the applicable minimum wage for their classification level, as prescribed by clause 17.1, multiplied by 313/6 and calculated on a pro-rata basis.

20.2 The following provisions of the award do not apply the employees, where applicable:

(a) Clause 10 – Part-time employees;

(b) Clause 16 – Breaks;

(c) Clause 14 – Rostering arrangements (employees other than shiftworkers)

(d) Clause 16 – Breaks

(e) Clause 18 – Payment of wages

(f) Clause 19 – Allowances

(g) Clause 22 – Overtime

(h) Clause 23 – Penalty rates

(i) Clause 25 – What is shiftwork

- (j) Clause 26 – Rate of pay for shiftwork
- (k) Clause 27 – Rest breaks and meal breaks
- (l) Clause 28 – Rostering restrictions
- (m) Clause 29.3 – Additional payment for annual leave
- (n) Clause 34.3 – Payment for work on a public holiday or substitute day

9. Updating the cross-references accordingly.

B. This determination comes into operation on [date].

VICE PRESIDENT

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<PRXXXXXXXX>