Australian Industry Group

Application to vary the General Retail Industry Award 2020

Submission – Variation C

(AM2024/9)

17 April 2024

AM2024/9 APPLICATION TO VARY THE GENERAL RETAIL INDUSTRY AWARD 2020

1. This submission of the Australian Industry Group (**Ai Group**) is advanced in support of a variation proposed by the Australian Retailers Association (**ARA**) to clause 16.6(b) of the *General Retail Industry Award 2020* (**GRIA**). Relevantly, by application, the ARA proposes the following variation:

   (b) If an employee starts work again without having had 12 hours off work, the employer must pay the employee at the rate of **200%** of the employee's minimum hourly rate otherwise applicable under clause 17 – Minimum rates ~~rate they would be entitled to~~ until the employee has a break of 12 consecutive hours.

2. The variation is referred to as item *'C'* in the ARA's application. It is sought pursuant to s.157(1)(a) of the *Fair Work Act 2009* (**Act**) or, in the alternate, pursuant to s.160(1) of the Act.

3. In advancing this submission, we note that it has been contended by some interested parties that clause 16.6(b), as currently drafted, requires the payment of 200% of all amounts payable for the time worked (**Compounding Interpretation**). Thus, for example, an employee performing ordinary hours of work on a Sunday would be entitled to 200% of 150% of the minimum hourly rate (the latter being the applicable rate prescribed by clause 22.1(b) of the GRIA).

4. Ai Group contests the Compounding Interpretation and supports the variation proposed, for the reasons that follow.

5. *First,* the proposed variation would put the meaning of the provision beyond doubt. It would thereafter clearly state that the provision requires the payment of 200% of the minimum hourly rate prescribed by clause 17 of the GRIA, for the employee's classification. By extension, it would clarify that the Compounding Interpretation does not apply. To that end, the proposed term is simple and easy to understand.[1]

[1] Section 134(1)(g) of the Act.

6. *Second*, the proposed clause would adopt an approach that is consistent with that found in other awards, which require the payment of a premium where an employee is required to perform work during what would otherwise be a break between shifts. The Compounding Interpretation is out-of-step with other awards in this regard.[2] There is no apparent justification for adopting a radically different approach in the GRIA.

7. *Third,* the proposed term espouses the proposition that generally, industrial instruments do not require the payment of a penalty on a penalty.[3]

8. *Fourth* and moreover, the application of a penalty on a penalty, as would be required by the Compounding Interpretation:

   (a) Would be inherently unfair to employers;[4]

   (b) Would impose significant employment costs;[5]

   (c) Would be difficult to apply in practice and thereby, compound the regulatory burden;[6] and

   (d) Would be unjustifiable and unsupported by industrial merit.

9. *Fifth*, the proposed variation would be consistent with the views expressed by the Commission in *Application by Fantastic Furniture Pty Ltd* [2020] FWC 559 at [18] – [21] and *Shop, Distributive and Allied Employees Association v Fantastic Furniture Pty Ltd T/A Fantastic Furniture* [2020] FWCFB 3570 at [29] – [41]. By extension, it would be consistent with the need to ensure a stable award system.[7]

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[2] See for example 57.5(c) of the *Manufacturing and Associated Industries and Occupations Award 2020* and clause 14.4 of the *Cleaning Services Award 2020*.

[3] See for example *Transport Workers' Union of Australia v SCT Logistics* [2013] FWC 1186 at [16] and *Australian Manufacturing Workers' Union (AMWU) v UGL Pty Ltd T/A UGL Limited* [2020] FWC 889 at [55].

[4] Sectio 134(1) of the Act.

[5] Section 134(1)(f) of the Act.

[6] Section 134(1)(f) of the Act.

[7] Section 134(1)(g) of the Act.