

**AM2017/43 – General Retail Industry Award 2010 – 4 Yearly Review**

**Submissions of the Shop, Distributive and Allied Employees' Association (SDA)**

1. The SDA makes the following submission in relation to the directions issued on the 24<sup>th</sup> August 2018.
2. The Commission has directed the parties to file submissions in relation to the following:
  - i) the number of, and any other characteristics relating to, shift workers covered by the General Retail Industry Award 2010 (**GRIA**);
  - (ii) proposed transitional arrangements;and
  - (iii) the revised General Retail Industry profile dated 22 August 2018.

**Shiftwork number and characteristics**

3. The SDA membership system does not record if a member is employed as, or otherwise identifies as being, a shiftworker or a nightfill /fill employee. There are no internal records kept by the SDA that might identify shiftwork numbers, either amongst its membership or generally in the retail industry including whether employed under the GRIA or pursuant to some other operative industrial instrument nor has time permitted the SDA to undertake any formal or informal interrogation of its membership as to provide the Commission with any reliable data.
4. The SDA notes that the GRIA was formulated in 2008 on a basis which accorded with the view of the SDA that any new modern award needed to cover 24 hour operations in retail, which was not reflected in the then existing awards in retail. This was principally to ensure adequate coverage of 24 hour retail operators, bakery sites and nightfill/ fill functions in stores. Prior to 2008, there was limited nightfill provision across retail operations in a few States. This was generally only when the store was closed or only open to limited hours ie Midnight. The previous awards did not provide for general 24 hour operations in ordinary time. These additional retail operations that were outside ordinary hours were addressed as overtime.
5. The GRIA provided the retail industry with the capacity for a 24 hour, seven day a week award to cater for the ranging retail operations that were to be covered in current times.

6. The SDA is generally aware from past dealings with retail employers and their employees that there are retail employees falling or potentially falling within the definition of shiftworkers provided for in the GRIA who work in discrete aspects of the retail operations of some employers in the following categories of retail operations:
  - Large supermarkets who have an evening/night or dawn fill function and or who have bakery operations.
  - Supermarkets that trade extended hours or 24 hour operations
  - Airport Retail stores
  - Convenience Stores especially those that operate 24 hours.
7. The SDA considers by way of broad industry analysis that shiftworkers are likely to be older (over 21) than the average retail industry employee and are not likely to be junior or secondary school students. This conclusion is supported with reference to safety and transport issues where employees working at the times when shiftworkers are likely to be employed are more likely to be required to be self reliant and to be able to drive a car to attend the shifts.
8. In case it may relevantly bear upon the Commission's consideration, the SDA notes by way of additional observation that the Coles Supermarket Agreement 2017 (**Coles Agreement**), which provides for employees to work as fill employees overnight or as bakers or otherwise beyond the ordinary hours of retail workers on registers, has the same provisions as the GRIA to cover this work. Essentially, the Coles Agreement mirrors the GRIA in relation to this issue. There is also a provision in the Coles Agreement to reflect any penalty changes that could occur to shiftworkers or casual employees during the life of the Coles Agreement. This provision from the Coles Agreement is in Attachment 1.

#### **Transitioning any increase in penalty rates for Casuals**

9. The SDA's application is limited to casual employees only and not permanent employees. It is also limited to specific times. The Commission has received the expert evidence of Jeff Borland adduced by the SDA in relation to the marginal economic impact of the Commission in granting the SDA's application.
10. The SDA does not believe that transitioning should be a part of granting the application (were the Commission minded to do so) given the more limited number of retail employees it will affect and further the limited hours to which it will apply.
11. In this regard, it is appropriate to note that the SDA's application is concerned with correcting an anomaly which has benefited employers for some considerable time. The SDA's application was originally filed in March 2015 and then referred to a different Full Bench in 2015. Submissions on the matter had been filed in those proceedings. The application was then referred back to the Penalty Rate Full Bench following the decision issued on the 23<sup>rd</sup> February 2017. The SDA submits that employers have effectively been on notice since March 2015 that there was a possible increase to penalty rates for casuals at the times contemplated by the SDA's application. The filing of the various submissions over 2016 also continued to remind employers that there was a risk of a potential increase.

12. As a further observation, the limited quantum of the increase here sought is a relevantly distinguishing feature of the application in contrast to the far more significant quantum of the decrease in penalty rates effected by the Commission in the Penalty Rates Case which the SDA submits was appropriately transitioned in circumstances where the decision deprived low paid retail employees of benefits already secured and relied upon.
  
13. In all the circumstances, the anomaly should be corrected as soon as possible and without stepping up.

**General Retail Industry profile dated 22 August 2018**

14. The SDA does not seek to make any further submission in relation to the profile as most recently amended

**Dated: 30 August 2018**

**A J MACKEN & CO.**

## APPENDIX E - IMPACT OF THE 4 YEARLY REVIEW ON THIS AGREEMENT

- E1. As at the time team member's voted to approve this Agreement, there are a number of outstanding matters before the FWC that relate to applications brought under s.156 of the Act seeking to vary the *General Retail Industry Award 2010*.
- E2. The purpose of the arrangements set out in this Appendix is to provide a mechanism to give effect to changes that are made to the *General Retail Industry Award 2010* resulting from the outcome of the proceedings identified in clause E3.
- E3. This Appendix applies to the following proceedings:
- a. **Casual Penalty Rates (Monday-Friday) Proceedings:** The application before the FWC to increase penalty rates for casual employees working evenings Monday to Friday after 6pm from 0% (125% of the full-time Base Rate of Pay, including casual loading) to 25% (150% of the full-time Base Rate of Pay, including casual loading)(see cl.29.4(a) of the *General Retail Industry Award 2010*).
  - b. **Casual Penalty Rates (Saturday) Proceedings:** The application before the FWC to increase penalty rates for casual employees working Saturday between 7am and 6pm (or 11pm in the case of retailers falling within cl.27.2(b)(iii)) from an additional 10% (135% of the full-time Base Rate of Pay, including casual loading) to 25% (150% of the full-time Base Rate of Pay, including casual loading) (see cl.29.4(b) of the *General Retail Industry Award 2010*).
  - c. **Shiftwork Penalty Rates Proceedings:** The application before the FWC to reduce penalty rates for shiftworkers working on Sundays from 200% (225% for casuals) to 150% (175% for casuals)(see cl.30.3(c) of the *General Retail Industry Award 2010*).
- E4. Apart from the proceedings identified in E3, Appendix E will not apply to any other proceedings whatsoever.
- E5. In respect of the Casual Penalty Rates (Monday-Friday) Proceedings, if the terms of subclause 29.4(a) of the *General Retail Industry Award 2010* are varied as a result of that proceeding, casual team members will from the Operative Date be entitled to the penalty rates provided under the amended subclause 29.4(a) of the *General Retail Industry Award 2010* or subclause **Error! Reference source not found.** of the Agreement, whichever entitlement is greater.
- E6. In respect of the Casual Penalty Rates (Saturday) Proceedings, if the terms of subclause 29.4(b) of the *General Retail Industry Award 2010* are varied as a result of that proceeding, casual team members will from the Operative Date be entitled to the penalty rates provided under the amended subclause 29.4(b) of the *General Retail Industry Award 2010* or subclause **Error! Reference source not found.**, whichever entitlement is greater.
- E7. In respect of the Shiftwork Penalty Rates Proceedings, if the terms of subclause 30.3(c) of the *General Retail Industry Award 2010* are varied as a result of that proceeding, team members will from the Operative Date cease to be entitled to the penalty rates provided in subclause **Error! Reference source not found.** of this Agreement and will instead be entitled to the penalty rate provided under the amended subclause 30.3(c) of the *General Retail Industry Award 2010* or 150% (175% for casuals), whichever entitlement is greater.
- E8. In order to allow the parties to have appropriate notice of any changes to the Agreement made pursuant to this Appendix, the 'Operative Date' is the day that the relevant change to the *General Retail Industry Award 2010* takes effect or 60 days from the date on which a published judgment or decision is issued confirming the substance of the change, whichever period is greater.
- E9. Notwithstanding anything else in this Agreement, any change to a team member's penalty rates made in accordance with this Appendix can only have prospective operation. Under no circumstances will this Appendix operate in such a way to allow for retrospective operation of any kind.