

23 April 2021

Fair Work Commission
Annual Wage Review 2019-20
GPO Box 1994
Melbourne VIC 3001

By email: awr@fwc.gov.au

Dear Members of the Expert Panel,

Annual Wage Review 2020-21
Submissions in Reply of the National Retail Association Limited, Union of Employers

In accordance with the timetable of the Annual Wage Review 2020–21 the National Retail Association Limited, Union of Employers (**NRA**) makes the **below** submissions in reply.

For the purposes of these submissions, terms defined in our Initial Submissions filed on 26 March 2021 shall continue to have the same meaning in these submissions.

1. RESPONSE TO QUESTIONS ON NOTICE

1.1. Question to all parties

1.1.1. In the questions on notice published by the FWC in this matter on 7 April 2021, the following question is posed to all parties:

All parties are invited to comment on how the Expert Panel should deal with:

1. *the different operative dates from the 2019–20 Review; and*
2. *whether there should be any changes to the composition of the 3 industry clusters identified in the 2019–20 Review, giving consideration to movements in the change in employee jobs and total wages presented in the report by Professor Jeff Borland and the most recent data shown in the Fair Work Commission’s Statistical report– Annual Wage Review 2020–21.*

1.1.2. The question above arises as a result of several initial submissions made in this matter, including those of the NRA.

1.1.3. The NRA’s position in relation to the above question on notice is as per its initial submissions as filed on 26 March 2021.

2. SUBMISSIONS IN REPLY

2.1. Shop, Distributive and Allied Employees Association

Relevance of changes to penalty rates

- 2.1.1. The NRA notes that the SDA submission refers to “the scheduled 15 per cent cut to permanent retail workers’ Sunday penalty rates”¹ in relation to the outcome of the Annual Wage Review 2019-20.
- 2.1.2. As noted by the NRA in *Application by Shop, Distributive and Allied Employees’ Association* [2020] FWCFB 3427, the reduction in Sunday penalty rates for permanent employees (which, as observed by the Full Bench, amounted to approximately 12% of workers in the retail industry)² was not the only change in penalty rates in the Retail Award due to occur in that year.
- 2.1.3. The SDA submission in this respect conveniently disregards increases to penalty rates in the Retail Award for casual employees, specifically since 1 July 2020 a total increase of 10% to the evening penalty rate for casual employees. Since 1 November 2018, both the evening and Saturday penalty rates for casual employees has increased by 25%.
- 2.1.4. It should be noted that the Sunday penalty rate for casual employees decreased by only 25% in total since 1 July 2017. It should also be noted that the logical conclusion of the Full Bench’s observation noted at paragraph 2.1.2 above is that casual employees currently comprise the overwhelming majority of the workforce in the retail industry.
- 2.1.5. This necessarily implies that notwithstanding the reduction in Sunday penalty rates for permanent employees on 1 July 2020, the overall outcome for the retail workforce as a whole may well be more advantageous than the SDA attempts to portray.

Retail trade outcomes

- 2.1.6. The SDA submission also asserts that recovering retail trade figures ought to place upwards pressure on minimum wages.³ While the NRA accepts that current indications are cause for optimism, the volatility of retail trade referred to in our initial submission⁴ remains.
- 2.1.7. The NRA submits that the “global” approach taken by the SDA in this respect fails to acknowledge the severe impact that government responses to the COVID-19 pandemic has on retail trade, as outlined in our initial submission.⁵
- 2.1.8. The NRA submits that so long as “circuit breaker” lockdowns, as seen in Queensland in January 2021 and in Victoria and Western Australia in February 2021, continue to be part of the response to the COVID-19 pandemic, retail trade will continue to suffer.
- 2.1.9. The consequences of Queensland’s pre-Easter lockdown will not be known for some months, however the NRA expects this trend of adverse outcomes for retail to continue.
- 2.1.10. With this in mind, the NRA submits that recent retail turnover figures cannot be viewed at a “global” level, but must be viewed having regard for the specific circumstances of the industry sub-sectors and localities. The SDA’s submission, examining only headline retail trade data, fails to account for this level of nuance.

¹ SDA Submission, 26 March 2021, page 2

² [2020] FWCFB 3427 at [53]

³ SDA Submission, 26 March 2021, page 3

⁴ NRA Submission, 26 March 2021, paragraphs 4.1.4 to 4.1.6

⁵ NRA Submission, 26 March 2021, paragraph 4.1.7

Relevance of outcomes for specific employers

- 2.1.11. The SDA submission finally asserts that certain retail businesses experienced significant profits notwithstanding the COVID-19 pandemic, and has asserted that these have “not translated into improved wages for retail employees.”⁶
- 2.1.12. The NRA fails to see the utility of such a submission within the legislative context of the Review, and further notes that the SDA’s submission on this point is limited to some of the largest businesses in the sector to the exclusion of smaller businesses.
- 2.1.13. The NRA submits that the SDA’s submission in this respect is irrelevant for the purposes of the Review. The purpose of the Review is to set a minimum standard with which *all* businesses *must* comply, irrespective of how profitable or otherwise they may be.
- 2.1.14. To suggest that the retail industry as a whole no longer requires support, or can sustain a significant immediate increase to minimum wages, merely because some larger employers have made a profit would appear to invite the Panel to disregard ss.3(g) and 134(1)(f) of the FW Act. Indeed, the SDA submission appears to disregard small businesses entirely.
- 2.1.15. If the SDA’s assertion is that those particular businesses ought to pass profits on their employees, then that is a matter between those employers and their employees, or their representatives. It is not a matter for the Panel to resolve in this Review.

Yours sincerely,



Lindsay Carroll
Deputy Chief Executive Officer
M | 0411 318 643
E | l.carroll@nra.net.au
National Retail Association



Alexander Millman
Senior Workplace Relations Advisor
M | 0402 842 714
E | a.millman@nra.net.au
National Retail Association

⁶ SDA Submission, 26 March 2021, page 4