ANNUAL WAGE REVIEW

20010/2011

Submissions to Fair Work Australia

Helping Australian Business Grow

National Retail Association

March 18, 2011

1. The National Retail Association (NRA) is Australia's largest and most representative employer association for the retail industry. NRA's membership embraces a diverse range of businesses within the retail, fast food and service industries, from some of Australia’s largest retail organisations to small family businesses.

2. NRA supports the broad thrust of the submissions of the Australian Chamber of Commerce and Industry urging the Panel to exercise caution and wage restraint.

3. NRA is particularly concerned to acquaint the Minimum Wages Panel with the stress currently being experienced in the retail sector and to renew the call we made in the last years submissions for the Panel to take into account the impact of award modernisation outcomes on both the retail and fast food sectors.

4. Fair Work Australia (FWA) is required, under section 285(1) of the *Fair Work Act 2009* (Cth) ("the Act"), to review modern award minimum wages. FWA may, under section 285(2)(b) of the Act, make one or more determinations about modern award minimum wages. It is therefore open to FWA to:

   I. decline to make any determination about modern award minimum wages; or
   II. make modern award minimum wage determinations specific to particular modern awards.

5. NRA submits that FWA should give special consideration to, and make specific determinations in relation to, the *Fast Food Industry Award 2010* and the *General Retail Industry Award 2010*. It is submitted that these specific determinations are appropriate in light of the increased costs to employers which flow from the commencement of the key elements of these awards from 1 July 2010.

6. In carrying out the Award Modernisation process the Australian Industrial Relations Commission ("the Commission") determined that key labour cost elements of modern awards would be phased in from 1 July 2010. While for a majority of industries these outcomes are relatively benign, the retail and fast food industries face significant cost increases.

7. In the retail industry the labour cost increases are predominantly due to:
   I. Increased penalty rate provisions for weekend work;
   II. Increased casual loadings;
   III. Increased allowances and
   IV. Increased basic rates of pay for particular classifications.

8. In the fast food industry the labour cost increases are predominantly due to:
   I. Increased penalty rate provisions for evening and weekend work;
   II. Increased casual loadings;
   III. Increased allowances; and
   IV. Increased basic rates of pay for particular classifications.

9. NRA provided a substantial amount of material to the Commission on the impacts of Award Modernisation on the retail and fast food industries. These materials were also provided to the Minimum Wage Panel in NRA's 2010 submission.

10. It is both appropriate and essential that the increased remuneration that will flow to employees in the retail and fast food industries as a result of award modernisation be taken into account by FWA in reaching its 2010-11 Annual Wage Review decision.

11. The following categories of business are most affected by modern award provisions:

- Businesses not covered by enterprise agreements prior to January 1, 2010
- Businesses operating under state instruments prior to January 1, 2010 and where the state conditions of employment are less onerous than the modern award provisions
- Businesses formed after March 27, 2006, who were operating under the pay scales and the Australian Fair Pay and Conditions Standard (who were not paying penalty rates) and who will be covered by the modern award from 1 January 2010
- New businesses forming after January 1, 2010 who will be automatically covered by the modern award

In the great majority of cases these categories of businesses will be small businesses. However, inevitably, as enterprise agreements are renegotiated the higher labour cost structure incorporated in the modern award (notwithstanding promises to the contrary) will impact many medium and large employers. In the current trading environment staff cut backs are a certain result.

12. Examples of direct increases in labour costs:

- <u>Fast Food, Retail Take-away Food, and Cafés and restaurants in SE Queensland</u> - The relevant modern awards will increase labour costs for <u>casual</u> employees by 10% after 9pm Monday to Friday; by 25% on Saturdays and by 50% on Sundays . Week-end trading will be the peak trading and staffing periods for many operators and simple modeling will show that if labour costs increase by 25% on Saturday and 50% on Sunday - the impact across the week will be in the order of 20%.

- Retail - In NSW and Queensland many retailers face an increase in the Sunday penalty from 50% to 100%. In SA the Sunday penalty increases from 60% to 100%. For small businesses in particular this increased penalty will mean that trading hours will be reduced and/or owners will work more hours in the business. Either way this means less job opportunities and in retail and fast food this means less job opportunities for young people.

13. The award modernisation increases are significant. Taking into account the transitional arrangements, on average, national employers (operating across the various jurisdictions) engaging employees under the *General Retail Industry Award 2010* were burdened with an increase in the order of 1.6% in their labour costs on 1 July 2010. For smaller employers who traditionally operate within states or territories (particularly NSW and Queensland) the increases were larger.

14. The Minimum Wages Panel increased rates by $26 per week from July 1, 2010. This represented a 4.33% increase for a shop assistant under the General Retail Award. This meant that, on average national retailers operating under the modern award would have been hit with a 6% increase in labour costs from July 1 last year (minimum wage increase plus modernisation increase). NSW and Queensland retailers would have been hit with a total increase around 7%.

15. In the fast food sector, the total increase would have been between 6% and 10%. The service sector in Queensland has been a substantial victim of the award modernisation process. The predominant awards servicing the retail, fast food, cafe and restaurant, and tourism sectors in Queensland have never provided for casuals to receive week-end penalty rates. Given that for many employers in the service sector the majority of the weekly trade is conducted over week-ends and given

that the predominant form of employment is casual, the award modernisation exercise was completed at a massive cost to these employers. It has been estimated that the modern fast food award will add 25% to the labour costs of many Queensland employers. Under transitional arrangements this will mean 5% per annum increase for five years. Consequently with the 2010 minimum wage increase, from July 1 last year many employers would have been hit with a 10% increase in labour costs and face a similar extraordinary hit this year unless the Panel accedes to NRA's request and allows off-setting.

16. The extraordinary quantum of these increases is confirmed by reference to data published by DEEWR which shows enterprise agreement wage outcomes. In broad terms this material establishes that typical enterprise agreement increases are in the order of 4% per annum.

17. In the circumstances, we submit that it is entirely appropriate for the Minimum Wage Panel to acknowledge the extraordinary impact of the award modernisation process in particular sectors and take action to minimise this impact. This can be achieved by allowing employers in the fast food and retail sectors to reduce the 2011 minimum wage increase by the same amount that they have been required to pay as a result of the operation of the award modernisation transitional provisions. That is, if the transitional provisions have meant that an employer was required to implement an increase in labour costs of 2% from July 1, 2010, this same amount can be deducted from the 2011 Minimum Wage increase.

18. It is also relevant to observe that increases in minimum safety net conditions of employment under the modern retail and fast food awards were not supported by productivity or efficiency gains and were not based on work value considerations. These payments can be accurately characterised as unbudgeted and unplanned ex gratia

awards apparently made in support of an ideal that uniform pay and conditions should operate across Australia.

19. It is also submitted that the modernisation process has operated in a discriminatory manner in that adverse outcomes are more likely to have been visited upon small business as opposed to large business. This is the case because the incidence of enterprise agreements is much more prevalent in the large business sector than it is in the small business sector. Hence it is smaller businesses that are exposed to the introduction of modern awards and also to decisions of the Minimum Wage Panel. Beyond this to the extent that the modern award provided some advantage to employers (for example a reduction in the casual rate in Victoria) these “swings and roundabout” factors can largely only be availed of by employers who operate in all or most states. Predictably this does not include small business which invariable operates within the boundaries of one state.

20. The circumstances of the fast food industry are more complex and typically more severe. The fast food industry is dominated by franchise arrangements and there has been in Australia for some time a relatively rapid growth of franchise businesses. Consequently the proportion of new businesses in the franchise sector is relatively high. New businesses formed after 27 March 2006 and prior to the commencement of modern awards, were permitted to operate under the Australian Fair Pay and Conditions Standard, including the applicable Australian Pay and Classification Scale. Such businesses were not subject to the provisions of awards and no penalty rates applied to these businesses.

21. From 1 July 2010 businesses which came into operation from 27 March 2006 were, for the first time, required to pay penalty rates. For fast food operators, a large proportion of their trade occurs on weekends, meaning that a large proportion of the hours worked in these businesses are worked on weekends. From 1 July 2010 these

businesses have moved from no penalty rate to a 5% penalty rate on Saturdays, from no penalty rate to a 10% penalty rate on Sundays and no penalty rate to a 50% penalty rate on Public Holidays. These businesses will also, for the first time, be required to pay uniform and other allowances.

22. Stress in the Retail Sector

The stress in the retail sector and the consequent fall in retail turnover and retail employment is attributable to a range of factors:

(a) Conservative spending patterns among consumers particularly for retail categories vulnerable to the discretionary spend;
(b) Increased operating costs attributable to a failure for many retailers to get rent relief; rising utilities costs; and increased and unbudgeted labour costs resulting from the modernisation process
(c) The operation of an inequitable tax and customs regime which favours foreign retailers at the expense of Australian based retailers.
(d) The situation will get worse if the recommendations of a taskforce, who wants to strip the service sector of training incentives and transfer them to traditional trade areas, are implemented.

19. There will be increasingly negative consequences for both the industry and the community flowing from these developments.

20. Retail was the largest employer of labour. It is now the second largest employing sector in the Australian economy. Significantly retail and fast food are the predominant source of employment for young people in Australia. It is these sectors that carry a disproportionate burden in inducting young people from school to work and in delivering critical employability skills to young Australians.

21. While regulators continue to make decisions that contribute to a destabilising of the retail and fast food sectors, the inevitable result will be small business failures and a loss of job opportunities particularly for young people. An increase in youth unemployment which is already running at around 12 percent will follow.

22. The retail sector is also being seriously harmed by the operation of a tax and customs regime which allows foreign retailers to supply Australian consumers with foreign product, absent the GST, duty and customs clearance fees. Consumers who buy on-line from off-shore retailers can save up to 20 per cent by avoiding GST, duty and customs clearance charges.

23. The retail sector is an importing sector with some retailers importing between 90% and 100% of their product. It is these retailers who are supplying the same product to the same consumers as foreign retailers who are most damaged by the GST loophole.

24. The ABS retail trade figures for January 2011 confirmed the continuing decline in discretionary spending. This is in part attributable to the impact of the GST loophole and the unfair competitive environment that is being fostered by a failure to correct the inequity.

Retail Sales Data

Annual Retail Sales Growth by Category – (seasonally adjusted excluding cafe and restaurants)

Category	Food	Household Goods	Clothing, Footwear & personal accessories	Department Stores	Other Retailing	Australia Total (ex. Café & rest. Data)
Year to Jan 2010	2.43%	0.32%	1.85%	2.08%	3.40%	2.10%
Year to Feb 2010	-1.48%	-2.75%	-1.10%	-5.28%	-2.55%	2.24%
Year to March 2010	1.41%	-0.57%	-4.11%	-3.15%	2.51%	-0.14%
Year to April 2010	0.28%	0.94%	-4.78%	-4.73%	1.51%	0.81%
Year to May 2010	2.37%	-0.22%	-3.62%	-5.82%	0.77%	0.24%
Year to June 2010	1.76%	-0.1%	-0.85%	1.6%	1.02%	0.83%
Year to July 2010	3.67%	0.46%	2.23%	0.29%	2.81%	2.44%
Year to Aug 2010	2.35%	0.87%	-0.01%	-0.41%	6.52%	2.22%
Year to Sept 2010	1.79%	1.76%	3.65%	0.74%	6.05%	2.63%
Year to Oct 2010	2.85%	1.76%	-1.69%	-3.21%	3.59%	1.77%
Year to Nov 2010	1.11%	0.69%	-3.74%	-2.39%	4.40%	0.77%
Year to Dec 2010	1.77%	3.45%	1.91%	-0.51%	2.62%	2.06%
Year to Jan 2011	**4.12%**	**-1.90%**	**-3.34%**	**-4.08%**	**4.19%**	**1.45%**

1. The table demonstrates that other than the “food” category and the “other retailing” category, the retail sector has experienced anaemic or negative growth during 2010. This trend is not expected to change in the first half of 2011 and may continue throughout the calendar year.

2. The “food” category contributes approximately 40% of total retail turnover and it is important to analyse the performance of the other categories to secure an understanding of the levels of stress in the retail sector.

3. It is important to review the “Australia” data set out in the last column. This shows that growth in retail sales in Australia, at least since January 2010 has been very poor and well below trend growth experienced in recent years of around 6%.

4. In so far as the most important trading period of the year is concerned – in December 09 retail sales growth was a miserable 0.21% and in December 10, off a low base, growth was 2.06%. Many retailers complete about 20% of their total annual sales in this period.

Retail Sales Data

Annual Retail Sales Growth by State – (seasonally adjusted)

State	NSW	VIC	QLD	SA	WA	TAS	NT	ACT
Year to January 2010	4.54%	2.88%	0.58%	2.09%	3.37%	1.85%	1.93%	3.42%
Year to Feb 2010	3.63%	3.94%	2.18%	2.51%	4.65%	3.24%	3.46%	3.75%
Year to March 2010	3.29%	1.21%	-1.91%	0.41%	2.37%	-1.08%	-0.09%	4.24%
Year to April 2010	1.84%	2.67%	-1.04%	3.63%	4.27%	-0.32%	5.22%	2.70%
Year to May 2010	2.32%	2.81%	-2.40%	1.83%	0.86%	-0.87%	3.96%	1.31%
Year to June 2010	2.83%	3.57%	-0.72%	1.46%	1.20%	-1.35%	5.50%	2.16%
Year to July 2010	4.88%	6.53%	2.49%	3.72%	0.07%	-1.05%	4.44%	1.92%
Year to Aug 2010	5.01%	5.80%	1.15%	3.17%	2.77%	-1.54%	3.81%	1.75%
Year to Sept 2010	4.03%	5.82%	1.14%	3.33%	4.43%	-2.10%	5.35%	1.75%
Year to Oct 2010	0.65%	6.02%	0.32%	3.16%	2.65%	-2.81%	-1.72%	2.76%
Year to Nov 2010	0.12%	4.30%	0.55%	-0.89%	1.52%	-2.13%	-3.23%	1.75%
Year to Dec 2010	0.72%	5.80%	1.36%	0.91%	1.33%	-2.63%	-2.79%	1.52%
Year to Jan 2011	**1.23%**	**2.72%**	**1.56%**	**0.43%**	**3.27%**	**-2.90%**	**1.94%**	**3.84%**

(Note the data in this table includes cafe and restaurant turnover)

1. This table demonstrates that while the Victorian sector showed reasonable growth for half of the year, and NSW experienced reasonable growth for about one third of the year, most other states struggled with Queensland and Tasmanian retailers trading in virtual recessionary conditions.

Labour Force Data

The stress in the retail sector is also evident in the labour force data.

Month	Total Retail Employment	Total Employment - Australia
Feb-2007	1195.8	10417.7
May-2007	1185.6	10538.0
Aug-2007	1226.6	10580.6
Nov-2007	1253.3	10658.9
Feb-2008	1237.0	10775.0
May-2008	1240.0	10818.8
Aug-2008	1232.4	10875.7
Nov-2008	1210.6	10875.6
Feb-2009	1230.7	10903.8
May-2009	1229.0	10912.3
Aug-2009	1184.8	10889.1
Nov-2009	1203.8	10975.4
Feb-2010	1194.5	11087.5
May-2010	1199.7	11155.4
Aug-2010	1220.8	11236.4
Nov-2010	1238.8	11377.1
Feb–2011	1243.8	11393.2

1. The above table shows that retail employment peaked in November 2007 but has not yet recovered to this level. By contrast total employment has continued to grow.
2. When the February 2011 data is compared with the November 2007 data it shows that retail employment has declined by almost 1% while total Australian employment has risen by nearly 7%.
3. This is revealed in the following table which also makes the comparisons from other points in time.

Comparison Points	**Growth in Retail Employment**	**Growth in Total Australian Employment**
Feb 11 v Feb 07	**4.01%**	**9.36%**
Feb 11 v Feb 08	**0.55%**	**5.74%**
Feb 11 v Feb 10	**4.13%**	**2.76%**
Feb 11 v Nov 07	**-0.76%**	**6.89%**