

**Submission by Master Grocers Australia  
to the  
The Ministerial Interim Report  
of the Western Australian State Industrial Relations System  
Interim Report  
May 2018**

## **The Ministerial Interim Report of the Western Australian State industrial relations system.**

The Western Australian Government has conducted a Interim Report of key aspects of the State Industrial Relations System, which has not been updated since 2002. The result of the Interim Report has been the publication of the “Interim Report of the Ministerial Interim Report of the State Industrial Relations System” (the Interim Report). Master Grocers Australia (MGA) welcomes the proposed interim Interim Report and thanks the Western Australian Government for the opportunity to briefly respond to the publication.

### **About Master Grocers Australia**

MGA is a National Employer Industry Association representing independent supermarket and liquor store owners in all States and Territories. These businesses range in size from small, to medium and large, and make a significant contribution to the retail industry, employing 115,000 people and accounting for approximately \$14.5 billion in retail sales. MGA is a registered organization with the Fair Work Commission and is the member organization for all independent supermarket store owners in Western Australia. In Western Australia, MGA’s members trade under a variety of different brand names including; Farmer Jacks, FoodWorks, Supa IGA, IGA, IGA Xpress, Eziway, Cellarbrations, The Bottle O and Mitre 10 Hardware. We currently have 491 Western Australian members, who employ over 20,000 staff with a sales turnover of \$2.8b per annum. The independent grocery sector makes a significant contribution to the Western Australian economy and the communities in which they trade. Whilst a large number of our members are parties to the National system of industrial relations a number of them, particularly very small businesses are part of the WA Industrial Relations system.

### **Introduction**

In the recent submission made by MGA to the Ministerial Review of the State Industrial Relations System, MGA supported the proposal for the review of the WA award system which would be a major part of the modernization of the WA Industrial relations system. Several unincorporated MGA Western Australian members rely on the State industrial awards that determine the wages and conditions of their employees. In the retail and liquor industries WA retailers either make use of the Shop and Warehouse (Wholesale and Retail Establishments) State Award 1997 or the Licensed Establishments (Retail and Wholesale) Award 1979 (the awards). It is the intention of MGA to comment only on Section 7 of the Interim Report, “The State Awards” as it is this area which is of the greatest significance for our members. It is important that there are modern award mechanisms to ensure that there is total compliance with the industrial relations system to protect the interest of these parties who participate in the system. There is a need for clarity and simplification in these awards to ensure compliance and provide greater understanding of workplace

obligations. If there is greater clarity for employers in how to operate with modern awards and information is available on their employment obligations, then compliance becomes much easier and assured.

All State awards are subject to the annual wage Interim Report which is conducted by the WA Industrial Relations Commission and MGA submits that is the appropriate body to determine the remuneration of employees.

### **Comments from the Interim Report on the updating of State Awards**

It appears that the State awards are not currently being maintained and that is largely because there are fewer applications made to the WAIRC to vary the awards. If award changes continue to be reliant on such applications then it is inevitable that the current awards will continue to become cumbersome and even further outdated. The Interim Report found that because many awards have not been varied for some considerable time many employees are considered award free and are without a safety net and are therefore more vulnerable to exploitation.

It is not to say that recommendations have not been made over the last decade to remedy any deficiencies in the State award system. Reports have been undertaken and recommendations have been made but, at this stage there has not been any significant progress made with the process. The need for State award modernization has obviously been hampered over the years due mainly to the cost of such an undertaking. As mentioned in the Report at Paragraph 1174 this process has been hindered by the “resource intensive nature of the process.”

Furthermore, the use of the current State award system has declined as there has been a significant movement of employees from the State jurisdiction into the Federal jurisdiction. Therefore, the fact that many of the State awards are not in use has meant that the need for modernization has been neglected and as stated in Para 1169 of the Interim Report,

“Despite the award updating provisions of the IR Act having been in place for 15 years, the provisions and the language of State Awards has not been comprehensively Interim Reported and amended during this time to meet the intent of s. 40B f the IR Act”

And Para. 1170 states that,

examples of State awards contain

- a) Wages less than the minimum wage.
- b) Conditions less than those in the MCE Act.
- c) Discriminatory provisions.
- d) Obsolete and out of date provisions.

It is also clear that the State awards are not reflecting current contemporary workplaces and references to obsolete terms need to be eliminated. The State awards require a major overhaul to reflect modern standards of workplace relations.

## **The proposed Recommendations for State Award Modernization.**

The Interim Report considered a range of options for the award modernization process.

1. The first option that was considered involved an examination of each of the modern Federal awards and the contents of each one would then provide a template for the State award covering the same industry. The WAIRC would then make appropriate amendments reflecting the fact that the award would operate in the State system. Where there is no coverage for a specific industry then a Miscellaneous Award would be created. There is a degree of benefit in this approach as the awards would reflect the already comprehensive terms of the awards in the federal system. However, the 122 federal awards still contain many complexities and this high number of awards may not be appropriate for the State system.
2. The second option is to emulate the process that has been adopted federally which would mean a review of every State award. The process in the Federal system has been a long and tedious one. To adopt this process would be a very time consuming and expensive project.
3. The third option suggested, is one that would involve placing the review of each of the awards into the hands of the WAIRC, involving a consultation process with third parties. This approach would minimize the “resource and commitment required from unions and employer bodies.” The framework for the awards would become the subject of legislation and the modernization provisions would be also included in the IR Act to define the parameters for modernization. Drafts for each award would be made public and comments would be called for from all interested parties. Whilst the initial drafting would not have the input from unions or employer associations there would still be opportunities for intervention through the public commenting process.
4. The fourth option would be for an updating process for each of the private sector awards over a two- year period. Laws would determine the requirements for each award. The WAIRC would be required to consult with all relevant parties and exposure drafts would be released, with Unions and employer associations named as parties to each award. Time lines and criteria for updating would be provided. This option could result in less harmonization with the federal awards

## **The Interim Report proposed Recommended Opinion choice**

The Interim Report recommended the fourth option as the most suitable for award modernization. The Interim Report was adamant that the WA award system needs reform and that such reform would provide protection for employees and certainty for employers. Employers often have difficulty in establishing the appropriate award and having once established the award there is often difficulty with interpretation. There is no doubt that historically the current awards

reflect terms that may have relevance to a number of different specific industries but they are no longer suited to modern conditions.

The Interim Report believes that the “major problem with the awards is their number and complexity” and recognized that unions that might find it difficult to accept the modernization of the award being left in the hands of the WAIRC, although the proposed system does provide for input and suggestions from all persons after the initial process has been undertaken. Added to this the IR Act will also be used to engage in the “award rejuvenation process” (paragraph 1274). Clearly the modern WA Awards will not be drafted only by the WAIRC as there will be ample opportunity for employer and employee organizations to assist in the production of clear and thorough awards.

The Interim Report was aware of the cost to all parties of participating in the Interim Report process and noted that the WA Government is unlikely to commit funding to the process at this time.

MGA views on the proposed Recommendation

MGA supports the adoption the fourth option as recommended in the Report.

Like many other associations of employers and employees that have been involved in the modernization of Federal awards MGA is aware of the difficulties that have presented themselves throughout the Federal award modernization process. The proposal by the Interim Report that the process should initially be left to the WAIRC is an appropriate one, with opportunities for input from employer and employee associations later.

When the Federal award modernization process began in 2010, there were complexities from the outset, particularly when the highest penalty rates in Victoria were adopted as the norm for the one federal retail award. The issue of the penalties in that award are still being considered in 2018 as part of the second 4 yearly Interim Report. The Federal award modernization process has not been without difficulty and issues such as producing awards written in plain English are still not completed. The Interim Report’s recommendation in respect of modernizing the State awards in the WAIRC will hopefully be less time consuming and quicker, thereby ensuring that employers and employees enjoy the benefits of simple and straightforward guides to their correct remuneration and entitlements.

### **Conclusion**

MGA thanks the Interim Report committee for the opportunity to comment on the award modernization process

MGA thanks the WA Government for the opportunity to make this submission to the Interim Report Panel.

Jos de Bruin



CEO.

Master Grocers Australia

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