



National
Retail
Association

2020-21 PRE-BUDGET SUBMISSION

*Prepared by the National Retail Association
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1. Introduction

The National Retail Association is the voice of modern Australian retail. The association works with all-sized businesses, from the biggest retailers to the smallest, to create better opportunities for all who work in the retail sector. As the most representative organization in the industry, we pride ourselves on being at the forefront of modern Australian retail, keeping pace with the rapidly changing face of the sector across a wide range of issues. No organisation nationwide is better placed to inform government on the threats, challenges and opportunities facing the retail sector than the NRA.

2. The state of modern retail

Retail is the second-largest employer of any industry throughout Australia¹. The sector spans everything from mum-and-dad small businesses to large, nationwide retailers. Its importance to the Australian economy can simply not be overstated.

Retail experienced a challenging time in the 2019 calendar year. Low consumer confidence, sluggish wage growth and underwhelming sales figures throughout the year saw the sector experience one of its more difficult years in recent memory. It is vital that retail enjoys a far more prosperous year in 2020 to turbocharge the Australian economy and ensure that the nation's long period of unbroken economic growth continues.

Moreover, the sector is also undergoing change. The emergence of online retail now means that consumers can make retail purchases from a digital device while conducting everyday tasks such as riding public transport, sitting in their lounge rooms or waiting for an appointment. However, rather than viewing online retail as a threat, the NRA strongly believes that for the vast bulk of bricks and mortar retailers digital channels complement their physical stores.

Likewise, automation is another issue where the benefits outweigh the costs. The notion that 'machines or robots will take everyone's jobs' may generate an interesting headline, but it is hardly accurate. Automation has been occurring across all sectors of the economy, including retail, since the industrial revolution.

Rather than causing mass unemployment, advances in technology result in workers either performing different tasks within the same job or transitioning to new jobs due to innovation. For instance, a self-serve checkout or kiosk may mean that there's no longer an employee manually processing customer payments, but that does not mean they are no longer employed. Instead, they're now free to operate in other parts of the store or perform different tasks, in the process raising the overall standard of customer service provided by the outlet.

The above are just a snapshot of some of the manifestations that shape modern retail in the third decade of the 21st century. The NRA views its role as working constructively with governments at all levels to ensure the sector manages current challenges and continues to serve the Australian economy with the same level of esteem it has previously.

¹ <https://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/6291.0.55.003Main+Features1Aug%202019?OpenDocument>

3. Instant asset write-off

The instant asset write-off for small business was first introduced in the 2015-16 Federal Budget. In last year's Budget, the scheme was extended to cover inventory valued up to \$30,000 with the eligibility widened to include businesses with a turnover of up to \$50 million. Retailers ranging from local cafes, family-owned restaurants and many other small and medium-sized enterprises (SMEs) have benefitted greatly from the instant asset write-off.

However, the ongoing operation of the scheme has thus far been on a year-by-year proposition. The NRA sees no reason as to why the write-off should not be elevated to a permanent basis. Although the NRA understands that both the current and future governments need to be conscious of how such measures may impact the budget bottom-line, there is nothing preventing the government removing or amending the scheme in the future if there is a view that the costs outweigh the benefits. When Parliament legislates in favour of personal income reductions, they do not do so for a temporary period, so the same logic should be extended to the instant asset write-off scheme.

Crucially, by making the instant asset write-off a permanent feature of the Australian taxation system, the government would be providing much needed certainty to the small business community, particularly during a time when many are finding it challenging to invest and grow. The decision to expand operations is not something that any SME is able to make overnight. It usually requires thoughtful and considered planning on what equipment to purchase over several years as business owners ascertain their capacity to make additional investment.

Elevating the instant asset write-off to permanent status would be very beneficial to the small business community and we urge the Government to strongly consider this proposal.

4. Compliance

Industrial compliance took centre-stage in 2019, with a number of significant employers publicly disclosing that they had inadvertently underpaid employees over extended periods of time due to misapprehending the requirements of various industrial instruments.

It is the experience of the NRA that non-compliance, in the overwhelming majority of cases, arises from ignorance and misunderstanding rather than malice. This points towards a lack of education rather than an excess of greed, as some rhetoricians would have the issue described.

Whilst the Office of the Fair Work Ombudsman (FWO) includes among its functions providing education to employers, for quite some time now this office has focussed its efforts on educating employees.

Although some assistance is available for employers via the FWO, it is very generic and not tailored to the specific requirements of any industry or modern award. The image cultivated by the FWO over the past 18 months as a stern and rather unforgiving regulator has also not encouraged businesses of any size to seek the aid of that office.

The issue therefore requires a two-fold approach:

- accessible and approachable education being made available to persons commencing, or proposing to commence, business operations which is tailored to the specific requirements of that industry and, in particular, the industrial instruments applicable to that industry; and
- additional compliance monitoring support provided to businesses already in being.

Industrial organisations such as the NRA are ideally placed to provide these services, both as entities having access to a large proportion of businesses in a particular industry and also being leading experts in the relevant industrial laws pertaining to their industries.

The NRA already provides educational sessions in industrial relations and employment law to new entrants of its network members (i.e. new franchisees/licensees of franchisors/licensors). These educational sessions typically last for three hours and traverse both:

- modern award compliance (award coverage, rates of pay, penalty rates, overtime, and understanding the situations in which they apply); and
- employee management (eg. employer rights and obligations in relation to unfair dismissals, general protections and anti-discrimination law).

Our educational services also include our popular Rostering for Compliance under the General Retail Industry Award 2010 webinar, which assists retail employers in navigating the complex roosting rules of the retail modern award and their overtime obligations thereunder.

The NRA also provides tailored sessions to meet the particular needs of employers where needed, often with a greater focus on modern award compliance. The NRA's compliance activities include payroll audits, which may be across a sample or an entire workforce and be either:

- “desktop” audits, which assess compliance on the basis of data provided by the employer; and
- “full” audits, which assess compliance on the basis of data provided by the employer and then verified in consultation with employees whose records are subject to the audit.

Currently, the NRA provides these to its members either as part of their membership (by agreement) or by payment of a fee when these services are required to account for the labour required to provide them. With government assistance, NRA would be able to provide these services to a wider array of businesses, and allow businesses to access elements.

5. Workplace reform

The NRA welcomed the news, announced in November 2019, that the Federal Government would initiate a review of Australia's modern award system in 2020. As the NRA has long advocated, the modern awards are complex, confusing, frequently anachronistic and not conducive to the needs of modern business, however large or small that business may be. The current framework should be streamlined to provide greater clarity to retailers across Australia.

Labour costs also pose a significant challenge to Australian retail businesses. Extensive and generous penalty rates, combined with the world's highest minimum wage rate at \$12.14 USD according to the OECD, are just a few of the labour expenses that Australian retailers need to navigate. These factors can make it challenging for businesses to employ people, particularly during times of low economic growth.

According to the ABS, Australia's labour productivity fell by an alarming 0.4 per cent in 2018-19², the first such decline in eight years. Improved productivity is key to achieving desirable goals such as strong

² <https://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/5260.0.55.002Main%20Features12018-19?opendocument&tabname=Summary&prodno=5260.0.55.002&issue=2018-19&num=&view=>

sales growth, wage increases and further business investment. Simplifying the modern awards in consultation with industrial organisations such as the NRA, who see these modern awards operate in all their impracticality on a daily basis, is an effective place to start.

Moreover, an overhaul of the Small Business Fair Dismissal Code (**SBFDC**) is another reform that the NRA supports. The current SBFDC is less a “code” and more a series of seven paragraphs containing largely aspirational statements or generalised summaries of the law, with only limited actual guidance for small business employers. Indeed, although it is supposed to streamline dismissals by small business employers, in reality the SBFDC in some circumstances imposes more stringent requirements on small businesses than on larger businesses.

The value of the SBFDC is itself undermined by the fact that a business that seeks to rely on it must prove, in a hearing before the Fair Work Commission (**FWC**), that the SBFDC applied to the business and that the employee in question was dismissed in accordance with its terms. These are complicated areas which are often costly to navigate, and any cost savings to businesses from applying the SBFDC are often lost (several times over) in the course of relying on it.

In recent months, it has been observed by several Members of the FWC that for a relatively small filing fee of \$73.20, an application is required to be dealt with by the FWC, including its administrative staff, a staff conciliator, and finally a Member of the Commission, as well as responded to by the employer. The FWC’s no-cost structure means that both the Commonwealth and the respondent employer must expend time and resources far in excess of the filing fee, and the recalcitrant employee is effectively immune from any formal consequences.

It has been noted that in any other court or tribunal, such conduct would result in the recalcitrant party paying costs, and the NRA is of the view that the current system under which the FWC is required by statute to operate is unfairly biased against employers, particularly small business employers.

Hiring and retaining good staff members is something on which every small business owner places a premium, and often the decision to let an employee go is the last resort. Small businesses lack the resources to engage in unmeritorious claims, especially those that are not seriously pursued by an employee applicant, and the taxpayer ought not to foot the bill for an applicant who fails, without good cause, to pursue their claim.

Whilst the deficiencies of the current system have been remarked upon several times, the question which follows is what should take its place. The NRA is of the view that a working group comprised of key stakeholders including employer organisations and the FWC will be able to review both the SBFDC and the relevant provisions of the Fair Work Act 2009 (Cth) and provide meaningful proposals for real change to the Minister for tabling and/or introduction to Parliament. The involvement of the FWC in such a process would necessarily require some resources of that body to be allocated to such a task.

6. Employment, skills and training

Unlike many other sectors, retail makes a significant contribution to the Australian economy without the need for significant input or oversight by government. While large industries such as mining or construction require heavy oversight, and emerging industries in areas of science and technology require significant support, the retail sector simply gets on with the business of producing jobs.

Unfortunately, this does mean that retail is not always top of mind when it comes to the allocation of resources for employment, skills and training.

The NRA urges the Federal Government to focus on supporting retail and fast food workers by boosting support for training and skills development, which would allow businesses to employ additional staff more easily. Despite being one of the nation's largest employment sectors, retail does not have a dedicated government department at either state or federal level to support the industry. Furthermore, retail is also one of the few industries that can scale up job creation very rapidly.

However, boosting employment in retail relies on both a strong and confident consumer base, and a skilled workforce. Although the Government has sought to boost consumer confidence by delivering personal income tax cuts, the Government should also capitalise on the extra economic activity with additional training and skills development in the retail sector.

7. About the submitter

The National Retail Association is Australia's largest and most representative retail industry organisation, servicing more than 28,000 retail and fast food outlets nationwide. At our core, we help retail and service sector businesses navigate and comply with an ever-changing, highly competitive environment.

Our members range from small, family owned and operated businesses to leading national brands; and span nearly every retail category including fashion, groceries, department stores, household goods, hardware, fast food, cafes and services. Unlike other associations, the NRA is the only retail industry association to deliver practical legal advice through its wholly owned and incorporated legal practice, NRA Legal. We never outsource. We are also a national RTO (Registered Training Organisation), meaning we can deliver a wide range of accredited and non-accredited courses upon request. These range from certificate and diploma qualifications and pre-employment programs right through to customer service training, retail traineeships and mystery shopping services.

The NRA's reputation as the preeminent provider of professional services to the sector is demonstrated by the significant number of associations, buying groups and franchise networks who have chosen to partner with the NRA. Partnership with the NRA means affiliation with the peak national retail body and positioning your company as a preferred provider to a valuable segment of Australia's retail industry.

A handwritten signature in black ink, appearing to read 'Dominique Lamb', written in a cursive style.

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