



**Amendment to
The Fair Work Act 2009**
29th December 2017

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Purpose

Master Grocers Australia and Timber Merchants Australia (MGA TMA) is an association of family enterprises and privately-owned businesses who operate independent supermarkets, liquor stores, hardware outlets and timber supplies, who are committed to supporting each other and promoting the interests of the independent retail supermarket, liquor, hardware and timber industries.

MGA TMA is a high performing organisation, with a team of professional staff who are dedicated and committed to assisting the members in all aspects of their businesses. We strongly believe in promoting the interests of our members through advocating on their behalf with Federal and State Governments and other administrative organisations and associations, with the objective of achieving outcomes that contribute to the sustainability and success of their businesses.

MGA TMA has developed a series of policies on specific topics that represent the views of our organisation and that affect the livelihood and future growth of our members businesses. Each policy is based on the principles of fairness for employers, employees and the community.

Principles

MGA TMA will consider the introduction of any industrial relations reforms in the light of the following principles:

- MGA TMA understands that in some circumstances the law may require amendments that would enhance the ability of our members and others to operate their business more efficiently and fairly in the interests of their businesses and their employees.
- MGA TMA recognises that there are barriers in the current industrial relations laws that are inhibiting businesses to engage in greater flexibility in the workplace and that therefore there is a need for change.
- MGA TMA supports there may be requirements to amend the Fair Work Act to provide for new rules that will govern industrial relations practices.
- MGA TMA supports the need to maintain fairness for all parties - should in the future there be any amendments to the Fair Work Act to provide for greater flexibility.

Objectives

The objectives of this policy are as follows:

- To ensure that our members are unhindered in their ability to operate their businesses profitably in the event of any amendments to the Fair Work Act.
- To provide our members views on the need for any legislative changes to the law makers and other affected parties.
- To ensure that our members have every opportunity to contribute their views on the current industrial relations laws and any future changes
- To provide members with all details of any proposed amendments to the current laws governing the “better off overall test” and its replacement with a viable alternative,
- To ensure that the above objectives are achieved on the basis of fairness and equity for all parties.

MGA TMA Position - Amendment to the “better off overall test” in the Fair Work Act 2009

- MGA TMA recognizes the importance of having industrial relations laws that enable employers to operate their businesses efficiently and profitably and for employees to earn a reasonable wage in a safe and productive environment.
- Operating a business requires commitment, knowledge, determination and hard work. Employers deserve to have an industrial instrument that enables them to operate the business in a manner that enable them to provide their employees with flexibility and opportunities to work at times that suit them and for them to receive a fair reward.
- The terms of the Fair Work Act (2009) (the Act) require that all employers operate under the terms and conditions of an award that is geared to the employer’s industry or that they operate under an agreement that is based on the relevant award but it must provide that the employee is better off under the agreement.
- The Federal Award system has over the past 7 years undergone a modernization process and the current award is the “benchmark for enterprise agreements.
- To deviate from the award, either by an enterprise agreement or “flexibility agreement” requires that either passes a “better off overall test” (the BOOT).
- The BOOT has become extremely restrictive in what the parties can achieve in the bargaining process and therefore employers are hesitant in engaging in enterprise bargaining. Also a

'flexibility agreement can only be initiated by an employee and often doubtful reasons to meet the BOOT are presented.

- It is apparent that if the BOOT is failing and the more restrictive terms of the award are being imposed upon the employer. With this in mind there should be a new test available for both enterprise agreements and flexibility agreements.
- MGA TMA proposes that the BOOT should be replaced and at a minimum the " no disadvantage test " should be substituted.
- Unless a new system for agreement making is introduced when all current outdated agreements are terminated, there will be a reluctance to make new enterprise agreements and the Award system will apply to the majority of employees in Australia.

Jos de Bruin



CEO

MGA TMA