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Sent: Friday, 26 June 2020 5:31 PM
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Cc: Luis Izzo <Luis.Izzo@ablawyers.com.au>; Sophie Ismail <sismail@actu.org.au>; David.Smith@amwu.org.au; sue-anne@sda.org.au; Hamish.Harrington@aigroup.com.au; Tamsin Lawrence <Tamsin.Lawrence@australianchamber.com.au>; Chesterman, Bill <bchesterman@vacc.com.au>; bsavage@aada.asn.au
Subject: FW: Vehicles

Dear Associate

We act for the Victorian Automobile Chamber of Commerce, the Motor Trade Association of South Australia Incorporated, the Motor Traders Association of New South Wales and the Motor Trades Association of Queensland Industrial Organisation of Employers.

We **attach** an application to vary the Vehicle, Repair, Services and Retail Award 2020 to vary and extend the operation of Schedule I – Award Flexibility During COVID-19 Pandemic.

To that end, please find attached:

1. Form 46 application
2. Annexure A Draft Determination
3. Annexure B reasons in support of application.

We understand that there are no objections to the Application from the relevant unions with members covered by the Award and the ACTU.

The Application is also supported by the Australian Chamber of Commerce and Industry and the Australian Automotive Dealer Association (**AADA**).

Kind regards

David Collits

Associate

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Form F46 – Joint Application to vary a modern award

Fair Work Act 2009, ss.157–160

This is an application to the Fair Work Commission to make a modern award or make a determination varying or revoking a modern award, in accordance with Part 2-3 of the [Fair Work Act 2009](#).

Applicant



These are the details of the person who is making the application.

Title	[] Mr [] Mrs [] Ms [] Other please specify:		
First name(s)			
Surname			
Postal address	Level 7, 464 St Kilda Road		
Suburb	Melbourne		
State or territory	Victoria	Postcode	3004
Phone number	03 9829 1111	Fax number	
Email address	bchesterman@vacc.com.au		

If the Applicant is a company or organisation please also provide the following details

Legal name of business	<p>Victorian Automobile Chamber of Commerce (VACC)</p> <p>Motor Trade Association of South Australia Incorporated (MTASA)</p> <p>Motor Traders Association of New South Wales (MTANSW)</p> <p>Motor Trades Association of Queensland Industrial Organisation of Employers (MTAQ)</p>
Trading name of business	
ABN/ACN	
Contact person	William Chesterman, Industrial Relations Manager

Applicant

Title	<input type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Other please specify:		
First name(s)			
Surname			
Postal address	51 Walker Street		
Suburb	North Sydney		
State or territory	NSW	Postcode	2060
Phone number	0418 461 183	Fax number	
Email address	Brent.Ferguson@aigroup.com.au Hamish.Harrington@aigroup.com.au		

If the Applicant is a company or organisation please also provide the following details

Legal name of business	The Australian Industry Group
Trading name of business	Ai Group
ABN/ACN	76 369 958 788
Contact person	Brent Ferguson, National Manager – Workplace Relations Advocacy & Policy Hamish Harrington, Adviser – Workplace Relations Policy

Does the Applicant need an interpreter?



If the Applicant requires an interpreter (other than a friend or family member) in order to participate in conciliation, a conference or hearing, the Fair Work Commission will provide an interpreter at no cost.

Yes – Specify language

No

Does the Applicant require any special assistance at the hearing or conference (eg a hearing loop)?

Yes – Please specify the assistance required

No

Does either Applicant have a representative?



A representative is a person or organisation who is representing the applicant. This might be a lawyer or paid agent, a union or employer organisation, or a family member or friend. There is no requirement to have a representative.

Yes – VACC's representative's details below

No – Ai Group does not have a representative

VACC's representative



These are the details of the person or organisation who is representing the Applicant (if any).

Name of person	Luis Izzo, Managing Director - Sydney Workplace		
Firm, organisation or company	Australian Business Lawyers & Advisors		
Postal address	Level 15, 140 Arthur Street		
Suburb	North Sydney		
State or territory	NSW	Postcode	2060
Phone number	(02) 9458 7005	Fax number	
Email address	luis.izzo@ablawyers.com.au		

Is VACC's representative a lawyer or paid agent?

Yes

No

1. Coverage

1.1 What is the name of the modern award to which the application relates?



Include the Award ID/Code No. of the modern award

Vehicle, Repair, Services and Retail Award 2020 MA000089

1.2 What industry is the employer in?

Not applicable

2. Application

2.1 What are you seeking?

Specify which of the following you would like the Commission to make:

- a determination varying a modern award
- a modern award
- a determination revoking a modern award

2.2 What are the details of your application?

See Annexure A.

Attach additional pages, if necessary.

2.3 What are the grounds being relied on?

Using numbered paragraphs, specify the grounds on which you are seeking the proposed variations.



You must outline how the proposed variation etc is necessary in order to achieve the modern awards objective as well as any additional requirements set out in the FW Act.

See Annexure B.

Attach additional pages, if necessary.

Signatures



If you are completing this form electronically and you do not have an electronic signature you can attach, it is sufficient to type your name in the signature field. You must still complete all the fields below.

Signature	
Name	Luis Izzo
Date	26 June 2020
Capacity/Position	Representative of VACC

Signature	
Name	Stephen Smith
Date	26 June 2020
Capacity/Position	Head of National Workplace Relations Policy for Ai Group



Where this form is not being completed and signed by the Applicant, include the name of the person who is completing the form on their behalf in the **Capacity/Position** section.

PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS



DETERMINATION

Fair Work Act 2009

s.157 — Application to vary or revoke a modern award

Victorian Automobile Chamber of Commerce and Ors
(AM2020/XX)

VEHICLE MANUFACTURING, REPAIR, SERVICES AND RETAIL AWARD 2010

[MA000089]

Vehicle manufacturing, repair services and retail industry

JUSTICE ROSS, PRESIDENT

XXXXXX

XXXXXX

MELBOURNE, XX XXXXX 2020

Application to vary the Vehicle Manufacturing, Repair, Services and Retail Award 2010.

A. Further to decision [[2020] FWCFB XXXX] issued by the Full Bench on _____, the above award is varied as follows:

1. By deleting the words “until 30 June 2020” in clause I.1.1 in Schedule I Award Flexibility During the COVID-19 Pandemic, and replacing them with the words “until 31 July 2020”.
2. By inserting the words “The provisions in clause I.2 to I.6 only operate during the operation of the Schedule” at the end of clause I.1.1
3. By deleting the words “on 30 June 2020” in clause I.1.2 and replacing them with the words “on 31 July 2020”
4. By deleting clause I.2.
5. By inserting before 1.3(a) the words “For employers who implemented a temporary reduction in hours of work under this clause I.2.2 before 30 June 2020, the following provisions apply:”
6. By deleting clause 1.5.

This determination comes into effect on 1 July 2020. In accordance with s.165(3) of the Fair Work Act 2009 this determination does not take effect until the start of the first full pay period that starts on or after XX June 2020.

MA000089

PRESIDENT

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Annexure B

General

1. The applicants seek a determination to vary the Vehicle, Repair, Services and Retail Award 2020 (the **Award**), to mitigate the current impacts COVID-19 is having on employees and employers covered by the Award, who operate in the Vehicle, Repair, Services and Retail industry (**Industry**).
2. The application seeks to extend the operation of some of the clauses contained in temporary Schedule I-Award flexibility during the COVID-19 Pandemic of the Award for a limited period, until 31 July 2020.
3. The extension of the variations to the Award are necessary to achieve the Modern Awards Objective (**MAO**) in the circumstances created by the COVID-19 virus and government responses to it worldwide.
4. The Australian Chamber of Commerce and Industry (**ACCI**) and the Australian Automotive Dealer Association (**AADA**), support the Application. The applicants, ACCI and AADA have had discussions with the relevant union parties including the ACTU and there are no objections from any relevant union party.
5. In December 2019/January 2020, an outbreak of a new coronavirus and disease began in Wuhan, China, which was subsequently identified as a new type of coronavirus (**COVID-19**).¹
6. On 11 March 2020, the WHO Director-General characterized COVID-19 as a pandemic (**Pandemic**).

¹ [World Health Organisation](#).

7. In Australia, as at 25 June 2020 there have been 7,558 confirmed cases of COVID-19 since 22 January 2020, with 37 new cases in the preceding 24 hours. Of the confirmed cases, 104 have died from COVID-19 and 6,942 recovered.²
8. To deal with the Pandemic, governments in Australia through numerous legislative determinations and public health orders restricted economic activity and personal movement. In recognition of the significant effects on the economy of these measures and in order to reduce the severity of those effects, governments introduced numerous stimulus packages.
9. One of these measures was the ‘JobKeeper’ scheme, which enables qualifying employers to receive a wage subsidy from the Australian Tax Office, in order to ameliorate the effects of the Pandemic on business and help maintain employment continuity. Not all entities qualify, however, for JobKeeper, according to the qualifying and eligibility criteria set out in the *Coronavirus Economic Response Package (Payments and Benefits) Rules 2020*.

Full Bench Decision

10. In response to the deterioration in the economy, to preserve ongoing business viability and employment continuity, the applicants sought, with the consent of employer representative bodies and unions, the inclusion of Schedule J (which became Schedule I) in the Award via application dated 5 May 2020.
11. On 11 May 2020, a Full Bench of the Fair Work Commission (**Commission**) granted the application and varied the Award according to the Determination accompanying the application ([2020] FWC 2367).

² <https://www.health.gov.au/news/health-alerts/novel-coronavirus-2019-ncov-health-alert/coronavirus-covid-19-current-situation-and-case-numbers>

12. In the context of data about “an industry in crisis”, the Commission found, in light of the statutory criteria set down in s 134 of the Fair Work Act (**Act**), that the Determination achieved the MAO to “provide a fair and relevant minimum safety net of terms and conditions”. It noted the difficult decisions confronting employers and employees, who seek to balance viability and employment continuity. It stated that “retention of as many employees as possible in employment, albeit on reduced hours, is plainly a priority” (at [98]).

Ongoing Crisis

13. The underlying economic conditions and challenges facing the Industry, which provided the context of the Full Bench decision, continue. Despite an easing of restrictions by governments and associated signs of improvement, the Industry experiences acute challenges, which commenced prior to, but which have been exacerbated by, the advent of COVID-19.
14. Australian Bureau of Statistics (ABS) analysis released on 3 June 2020 suggested that in the March Quarter of 2020, the Australian economy contracted by 0.3% in seasonally adjusted chain volume terms.³ The analysis does not cover the June Quarter, when many of restrictions on business activity were in place. The ABS observed that the Pandemic and restrictions on the free movement of people and other restrictions, including restrictions on international travel from 1 February, gathering restrictions and non-essential business closures, “generated an unprecedented shock to the global economy”.⁴ In response to these figures, the Commonwealth Treasurer

³ 5206.0 - Australian National Accounts: National Income, Expenditure and Product, Mar 2020: <https://www.abs.gov.au/ausstats/abs@.nsf/mf/5206.0>

⁴ 5206.0 - Australian National Accounts: National Income, Expenditure and Product, Mar 2020: <https://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/5206.0Main%20Features10Mar%202020?opendocument&tabname=Summary&prodno=5206.0&issue=Mar%202020&num=&view=>

acknowledged that Australia was in recession.⁵ Expectation is that the June Quarter will reveal greater decline in economic activity.

15. The International Monetary Fund, in its World Economic Outlook Update for June 2020, projects a 4.9% contraction in 2020, a projection greater than previously anticipated.⁶
16. In May 2020, across Australia, only 59,894 new cars were sold, which was a 35.3% decline compared to May 2019.⁷ It was the 26th month of negative growth in new car sales. The previous month experienced a 48.5% drop. New car dealerships are also experiencing a lack of new supply due to the shut-down of manufacturing plants overseas, including the United States and South Korea. The value of imported motor vehicles in May declined 40% to \$1.6bn (ABS 5368.0.55.024).

Variation Sought

17. The application seeks a selective extension of Schedule I of the Award, with limited duration. It does not seek the continued operation of clause I.2 (Classifications and Duties) or clause I.5 (Close-down), due to low utilisation of these clauses in the Industry.
18. The period of the extension of Schedule I is limited to 31 July 2020. This period has been chosen with specific regard to this Industry, as the Industry sees oscillating demand for business from month to month. By way of example, June is historically a relatively busy month (arising from the end of financial year sales) whereas July is

⁵ Michael Janda, "Australia in its first recession in 29 years as March quarter GDP shrinks", *ABC News*, 3 June 2020: <https://www.abc.net.au/news/2020-06-03/australian-economy-gdp-recession-march-quarter-2020/12315140>.

⁶ <https://www.imf.org/en/Publications/WEO/Issues/2020/06/24/WEOUpdateJune2020>

⁷ <http://www.fcail.com.au/news/index/view/news/636>

historically a quiet month. In August the sales part of the Industry starts to slowly build.

19. The limitation of the extension to 31 July 2020 ensures that the trends of demand specific to this Industry can be monitored and the need for the Schedule reassessed.
20. The considerations, which justified the Full Bench's conclusion that the variations met the MAO, remain relevant. Those considerations support the draft determination to this application.
21. The draft determination seeks to retain the flexibilities contained within clauses I.3 (Temporary reduction of hours) and I.4 (Annual leave), with the following limitations on their use:
 - (a) clause I.3 can only be used by those businesses which have already utilised it and implemented a temporary reduction in hours prior to 30 June 2020, with the existing limitations in the Schedule continuing; and
 - (b) existing protections in clause I.6 remain.
22. The proposed clauses in the draft determination will assist employers in the Industry to maintain a level of viability and employment retention. The applicants respectfully submit that the application to vary the Award be granted.