

IN THE FAIR WORK COMMISSION

Matter No.: AM2014/93

Re: *Vehicle Manufacturing, Repair, Services and Retail Award 2010*

**SUBMISSIONS OF THE AUSTRALIAN MANUFACTURING WORKERS UNION AND
THE AUSTRALIAN MANUFACTURING WORKERS UNION - VEHICLE DIVISION
(together referred to as the "AMWU")**

INTRODUCTION

1. The AMWU opposes the changes to the *Vehicle Manufacturing, Repair, Services and Retail Award 2010 (VMRSR Award)* proposed by the Fair Work Commission (**Commission**) in its Statement dated 2 November 2015 and accompanying exposure drafts.
2. The changes involve moving some (but not all) of the conditions for vehicle building employees from the VMRSR Award to the *Manufacturing and Associated Industries and Occupations Award 2010 (Manufacturing Award)*.
3. In summary, the reasons for opposing the changes are as follows:
 - (a) the VMRSR Award is not "unduly complex and difficult to understand", at least not compared to other awards;
 - (b) even if the award is objectively complex, the industrial parties are familiar with its terms and do not want them changed;
 - (c) the proposed change only simplifies the VMRSR Award at the cost of making the Manufacturing Award more complex, so there is no net decrease in complexity in the system;
 - (d) indeed, there is the potential for additional complexity (and disputation) as there will be uncertainty over whether Manufacturing Award clauses derived from the VMRSR Award, but expressed in different terms, were intended to preserve the pre-existing position or else to change it;
 - (e) the change would result in a loss of entitlements for vehicle building employees;
 - (f) the change would create compliance costs for employers;
 - (g) the change would throw into doubt the rights and obligations of many employees and employers covered by enterprise agreements which refer to the VMRSR Award; and

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- (h) the VMRSR Award met the “modern awards objective” in 2009 and there has been no relevant change in circumstances since then. In those circumstances, the stability of the award system suggests it should be left alone.
4. The structure of this submission is as follows. Part A sets out the legislative framework. Part B describes the history of the VMRSR Award. Part C expands on the reasons for opposing the proposed change.
5. In addition to this submission, the AMWU relies on witness statements from:
- (a) Andrew Dettmer – AMWU National President;
 - (b) Dave Smith – AMWU National Vehicle Division Secretary; and
 - (c) Ian Curry – AMWU National Coordinator, Skills Training & Apprenticeships;
 - (d) Ian Else – MaxiTrans Industries Ltd; and
 - (e) Greg Dober – Volvo Group Australia Pty Ltd.

A. LEGISLATIVE FRAMEWORK

6. The extant proceedings are being conducted by the Commission pursuant to s.156 of the Fair Work Act 2009 (Cth) (**FW Act**) which provides that the Commission must conduct a 4 yearly review of modern awards (**Review**) starting as soon as possible after each 4th anniversary of the commencement of Part 2-3 of the FW Act. Part 2-3 of the FW Act commenced on 1 January 2010.
7. In a decision handed down on 17 March 2014¹ a five member Full Bench of the Commission dealt with a range of preliminary jurisdictional issues in relation to the Review and these are set out in summary form below.
8. Relevantly, s 156 of the FW Act states:

Timing of 4 yearly reviews

- (1) the FWC must conclude a **4 yearly review of modern awards** starting as soon as practicable after each 4th anniversary of the commencement of this Part.

Note 1: The FWC must be constituted by a Full Bench to conduct 4 yearly reviews of modern awards, and to make determinations and modern awards in those reviews (see subsections 616 (1), (2) and (3)).

Note 2: The President may give directions about the conduct of 4 yearly reviews of modern awards (see section 582).

What has to be done in a 4 yearly review?

¹ [2014] FWCFCB 1788

- (2) In a 4 yearly review of modern awards, the FWC:
 - (a) must review all modern awards; and
 - (b) may make:
 - (i) one or more determinations varying modern awards; and
 - (ii) one or more modern awards; and
 - (iii) one or more determinations revoking modern awards;
 - (c) must not review or make a determination to vary a default fund term of a modern award.

Note 1: Special criteria apply to changing coverage of modern awards or revoking modern awards (see ss163 and 164).

Note 2: For reviews of default fund terms of modern awards, see Division 4A.

9. The Full Bench determined that in addition to s.156 a range of other provisions set out in the FW Act were also relevant to the Review being:

's 3 (objects of the Act); s.55 (interaction with the National Employment Standards (**NES**)); Part 2 - 2 (the NES); s.134 (the modern awards objective); s.135 (special provisions relating to modern award minimum wages); Divisions 3 (terms of modern awards) and 6 (general provisions relating to modern award powers) of Part 2-3; s.284 (the minimum wages objective); s.577 (performance of functions and exercise of powers of the Commission); s.578 (matters the Commission must take into account in performing functions and exercising powers); and Division 3 of Part 5-1 (conduct of matters before the Commission).²

10. The Full Bench made it clear that the general provisions relating to the performance of the Commission's general functions applied to the Review and most relevantly ss.577 and 578 of the FW Act³.

11. Section 577 of the FW Act states:

" The FWC must perform its functions and exercise its powers in a manner that:

- (a) is fair and just; and
- (b) is quick, informal and avoids unnecessary technicalities; and
- (c) is open and transparent; and
- (d) promotes harmonious and cooperative workplace relations.

² *ibid* at [10]

³ *ibid* at [11]

Note: The President also is responsible for ensuring that FWC performs its functions and exercises its powers efficiently etc. (see section 581)."

12. Section 578 states:

"In performing functions or exercising powers, in relation to a matter, under a part of this Act (including this Part, FWC must take into account:

- (a) the objects of this Act, and any objects of the part of this Act; and
- (b) equity, good conscience and the merits of the matter; and
- (c) the need to respect and value the diversity of the workforce by helping to prevent and eliminate discrimination on the basis of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, national extraction or social origin."

13. In undertaking the Review the Commission may exercise its usual procedural powers contained in Division 3 of Part 5-1 of the FW Act and may inform itself in relation to the review in such manner as it considers appropriate⁴.

14. The Full Bench determined that while the discretion in s.156 (2) to make determinations varying modern awards and to make or revoke modern awards in a Review, is expressed in general terms, the breadth of the discretion is nonetheless constrained by a number of other provisions in the FW Act⁵.

15. The Full Bench emphasised that in exercising its powers in a Review the Commission was exercising 'modern award powers' pursuant to s.134 (2)(a)⁶.

16. The Full Bench further determined that:

- (a) the Commission is obliged to ensure that modern awards, together with the NES, provide a fair and relevant minimum safety net that takes into account, among other things, the need to ensure a 'stable' modern award system pursuant to s.134 (1)(g)⁷.
- (b) where a significant change is proposed to a modern award it must be supported by submissions which address the relevant legislative provisions and are supported by probative evidence demonstrating the need for the proposed change.⁸
- (c) importantly in the context of the present proceedings, that in conducting the Review the Commission will have regard to the historical context applicable to each modern award and that the Commission will proceed on the basis that *prima facie* the modern award under review achieved

⁴ *ibid* at [13]

⁵ *ibid* at [15] and [17]

⁶ *ibid* at [17]

⁷ *ibid* at [23]

⁸ *ibid* at [23]

the modern awards objective at the time that it was made⁹ (emphasis added).

- (d) although the Commission is not bound by principles of *stare decisis* it generally follows previous Full Bench decisions¹⁰.
- (e) Again, importantly in the context of the present proceedings, the above policy considerations told strongly against the proposition that the review should proceed in isolation unencumbered by previous Commission decisions. In conducting the Review it was appropriate that the Commission take into account previous Commission decisions relevant to any contested issue. Previous Full Bench decisions should generally be followed in the absence of cogent reasons for deciding otherwise¹¹ (emphasis added).

17. The Full Bench gave careful consideration to the role of the modern awards objective in the Review process. The modern awards objective is set out in s.134 of the FW Act. Section 134 states:

"134 The modern awards objectives

What is the modern awards objective?

- (1) The FWC must ensure that modern awards, together with the National Employment Standards, provide a fair and relevant minimum safety net of terms and conditions, taking into account:
 - (a) relative living standards and the needs of the low-paid; and
 - (b) the need to encourage collective bargaining; and
 - (c) the need to promote social inclusion through increased workforce participation; and
 - (d) the need to promote flexible modern work practices and the efficient and productive performance of work; and
 - (da) the need to provide additional remuneration for:
 - (i) employees working overtime; or
 - (ii) employees working unsocial, irregular or unpredictable hours; or
 - (iii) employees working on weekends or public holidays; or
 - (iv) employees working shifts; and

⁹ *ibid* at [24]

¹⁰ *ibid* at [25]

¹¹ *ibid* at [27]

- (e) the principle of equal remuneration for work of equal or comparative value; and
- (f) the likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden; and
- (g) the need to ensure a simple, easy to understand, stable and sustainable modern award system for Australia that avoids unnecessary overlap of modern awards ; and
- (h) the likely impact of any exercise of modern award powers on employment growth, inflation and the sustainability, performance and competitiveness of the national economy.

*This is the **modern awards objective**.*

When does the modern awards objective apply?

- (2) The modern awards objective applies to the performance or exercise of the FWC's **modern award powers** which are:
 - (a) the FWC's functions or powers under this Part; and
 - (b) the FWC's functions or powers under Part 2-6, so far as they relate to modern award minimum wages.

Note: The FWC must also take into account the objects of this Act and any other applicable provisions. For example, if the FWC is setting, varying or revoking modern award minimum wages, the minimum wages objective also applies (see section 284)".

18. The modern awards objective applies to the exercise of the Commission's 'modern award powers'. As a corollary the modern awards objective applies to the Review¹².

19. Further the modern awards objective:

'... is directed at ensuring that modern awards, together with the NES, provide a "fair and relevant minimum safety net of terms and conditions" *taking into account* the particular considerations identified in paragraphs 134 (1) (a) to (h) (the s.134 considerations). The objective is very broadly expressed. The obligation is to take into account the matters set out in paragraphs 134 (1)(a) to (h) means each of the matters must be treated as a matter of significance in the decision-making process¹³.

20. The task of the Commission is to balance the various considerations set out in s.134(1) and ensure that modern awards provide a fair and relevant minimum safety net of terms and conditions¹⁴.

¹² *ibid* at [29]

¹³ *ibid* at [31]

¹⁴ *ibid* at [33]

21. Section 138 is also relevant as it deals with achieving the modern awards objective. Section 138 is expressed in the following terms:
- 'A modern award may include terms that it is permitted to include, and must include terms that it is required to include, only to the extent necessary to achieve the modern awards objective and (to the extent applicable) the minimum wages objective.'¹⁵
22. The Full Bench further determined that any variation that may be made to a modern award arising from the Review must comply with the requirements of the FW Act as they relate to the content of modern awards.¹⁶
23. Division 3 of Part 2-3 of the FW Act deals generally with the terms of modern awards and in particular with terms that may or may not be included or not included in modern awards¹⁷.
24. The Review is a function under Part 2-3 of the FW Act and, by dint of s.134(2)(a), it involves the exercise of modern award powers. As such, Division 6 of the FW Act applies.
25. If the Commission were to make a modern award or vary the coverage of an existing modern award in the Review, the requirements specified in s 162 must be satisfied.¹⁸

Relevantly s.163 provides:

"163 Special criteria relating to changing coverage of modern awards

Special rule about reducing coverage

- (1) The FWC must not make a determination varying a modern award so that certain employers or employees stop being covered by the award unless the FWC is satisfied that they will instead become covered by another modern award (other than the miscellaneous modern award) that is appropriate for them.¹⁹

..."

Extant Proceedings

26. On 13 August 2014 a Full Bench of the Commission issued a Statement²⁰ detailing how the Commission intended to deal with Group 1 awards 'as part of the Review'. As part of the Statement the Commission determined that six awards, including the VMRSR Award would be referred to separate Full Benches for determination of substantive matters.²¹

¹⁵ *ibid* at [35]

¹⁶ *ibid* at [40]

¹⁷ *ibid*

¹⁸ *ibid* at [54]

¹⁹ *ibid* at [53]

²⁰ [2014] FWCFB 5537

²¹ *ibid* at [8].

27. The stakeholders with an interest in the VMRSR Award have conferred since June 2014 with a view to reaching a consent position on proposed variations to the VMRSR Award. In addition to the AMWU, stakeholders are:
- Victorian Automobile Chamber of Commerce (**VACC**);
 - Motor Traders Associations of New South Wales and South Australia (**MTAs**);
 - Australian Industry Group (**AIG**);
 - Australian Business Industrial and New South Wales Business Chamber(**ABI**);
 - Australian Federation of Employers and Industries (**AFEI**);
 - Shop, Distributive and Allied Employees Association (**SDA**);
 - Australian Workers Union (**AWU**).
28. Post the commencement of conferences between the stakeholders two reports have been provided to the Full Bench of the Commission as presently constituted identifying the variations sought by the stakeholders and where consent positions had been reached.²²
29. On 24 December 2014 Ross J issued amended Directions referring other issues raised during exposure draft proceedings to the Full Bench as presently constituted.

B. AWARD HISTORY

The genesis of the VMRS Award

30. The VMRS Award was made by a Full Bench of the Commission on 4 September 2009²³.
31. The VMRS Award has its genesis in two awards that were developed over many years to meet the specific and on-going needs of the vehicle industry in Australia. The awards were the Vehicle Industry Award 2000 (**VIA**) and the Repair, Services and Retail Award 2002 (**RSR Award**).

Relevant award history

(a) The VIA

32. The VIA has its genesis in a number of disparate disputes and awards made by the Commonwealth Court of Conciliation and Arbitration (**the Court**) in settlement of those disputes in the 1920s. All of these disputes involved the Australian Coach, Motor Car, Tram Car, Wagon Builders and Rolling Stock Employees Federation (**the Federation**).

²² Reports to the Full Bench, 4 yearly award of modern awards: Vehicle Manufacturing, Services and Retail Award 2010 (AM 2014/93) dated 29 September 2015 and 18 December 2014

²³ [2009] AIRCFB 826

33. The first comprehensive award in the industry was made by Lukin J in 1927²⁴. The award was made in settlement of a dispute concerning wages and conditions between the Federation and a broad range of employers including Holdens' Motor Body Builders Limited, the Melbourne and Metropolitan Tramways Board and employers represented by Federations including the Master Motor Body, Coach and Wagon Builders Federation. Lukin J made the award by consent. The award was made as 'Award No. 1'. The industry clause in the award read as follows:

'1. The Industry

*This award has relation to the industry of employees engaged or usually engaged in the process, trade, or business connected with or incidental to the manufacture or repairing of carriages, cars, wagons, trucks, motor cars, railway cars, tram cars, side cars, aircraft and other vehicles used in air transit and all other vehicles or parts thereof in wood/or metal.'*²⁵

34. In October 1927 Lukin J made a further award (Award No. 2) binding certain respondents who were members of the Metal Trades Federation of New South Wales. These respondents had been reserved in the proceedings leading to the making of the No. 1 Award.²⁶
35. In December 1935 Beeby J of the Court made the award known as the 'Motor Body and Coach Building Award' (**the MBCB Award**) in settlement of industrial disputes between the Federation and a broad range of employers in relation to wages and working conditions in the vehicle industry.²⁷
36. The Area of Award clause in the MBCB award (clause 36) read as follows:

'This award, except as hereinafter provided, shall be binding on employer claimants and respondents engaged in the manufacturing, assembling or repairing of carriages, carts, wagons, trucks, motor cars, motorcycles, railway cars, tram cars, side-cars, aircraft and other vehicles used in air transit and all other vehicles or parts thereof in wood and/or metal.

*Employers engaged in the manufacturing and/or repairing of metal parts used in such industries at the date of this award or hereafter bound by the provisions of the Metal Trades Awards of 1935, are exempted from this award.'*²⁸

37. Relevantly, and consistent with the view of the Court that the vehicle industry constituted a separate and distinct industry, Beeby J in making the 1930 Metal Trades Award exempted from its scope motor and body building establishments.
38. In 1953, in settlement of an industrial dispute concerning wages and working conditions involving the then Vehicle Builders Employees Federation of Australia (**the VBEF**) and a broad range of employers and employer

²⁴ 25 C.A.R. 327

²⁵ 25 C.A.R. at 328

²⁶ 25 C.A.R. at 1036

²⁷ 35. C.A.R. 599

²⁸ 35 C.A.R. 637

associations, Commissioner Galvin of the then Commonwealth Conciliation and Arbitration Commission (**the C&A Commission**) made the Vehicle Industry Award 1953.²⁹

39. In reaching his decision Galvin C was required to determine a threshold issue that was raised by the metal trades unions, namely that work performed by members of those unions in the vehicle industry should, in future, be covered not by the Motor Body and Coach Building Award but by the general Metal Trades Award.³⁰
40. Galvin C observed that in making the 1930 Metal Trades Award, Beeby J exempted from its scope motor body building establishments, except as to the general engineering section and a manufacturing division of the award. This exemption was further confirmed in the 1935 Metal Trades Award.
41. In rejecting the position advanced by the metal trade unions, Galvin C saw no reason to depart from the strongly held view of the court, and subsequently the C&A Commission, that a specific industry award was required to meet the needs of the vehicle industry. Galvin C concluded that the status quo should be maintained and in doing so he observed as follows:

'The principle of an award to cover a specific industry has much to commend it apart from whether members of a particular craft or crafts may be advantaged there or otherwise: it is a matter of common knowledge that the unions who are the applicants hereby are seeking the retention of industry awards in other fields. In the present case both employers and the Federation representing the great bulk of workers, seek a continuance of the same principle in this industry, and that, on being given due weight by me, leads me to the view that it results in the greatest good to the greatest number.

The conclusion I am forced to is that the applicants have not discharged the onus which lay upon them for disturbance of the status quo.

*That the industry has prospered can not be gainsaid. It has advanced beyond the dreams of imagination and is today one of the foremost value to the Nation's economy. This has been due largely to courageous and wise management, but in no small measure some credit for the paramount position is due also to the foresight evidenced in its formative years by the establishment of one award to cover the industry. To part therefrom at this stage of its advancement would, to my mind, not spell progress but would be a retrograde step. Apart from the resulting confusion, lack of adequate award prescriptions and the demarcation disputes which would inevitably arise if such a departure were made, there are many other weighty arguments which force me to the decision that the classifications now covered in the industry award should be continued.'*³¹

²⁹ 76 C.A.R. 280

³⁰ 76 C.A.R. 283

³¹ 76 C.A.R. at 289-290

42. On 29 November 1982 a Full Bench of the Australian Industrial Relations Commission (**'the AIRC'**) made the Vehicle Industry Award 1982 in settlement of disputes concerning wages and working conditions.³²
43. The Vehicle Industry Award 1982 was subsequently varied and simplified to become known as the VIA but without any change in the coverage clause of the VIA.
44. It is clear from the foregoing that the VIA is an award that was developed over many decades to suit the particular needs and requirements of the vehicle industry.

The genesis of the RSR Award

45. In March 1962 an application was filed on behalf of the Motor Traders Association of New South Wales and the Victorian Chamber of Commerce for a variation to the VIA by inserting a Part 2 to make specific provision for the retail motor industry.
46. The application was granted by Apsey C of the C & A Commission. Apsey C did not set out reasons for his decision save that the variation sought was agreed to by all relevant industry parties.³³ It is submitted that such agreement between the relevant industry parties reflected a strongly held view that specific award provisions were required for the retail sector of the vehicle industry.
47. In 1968 Senior Commissioner Tayler of the C & A Commission settled disputes involving the VBEF and other unions and the Victorian Automobile Chamber of Commerce (**VACC**) and other employer organisations and employers by the making of a new and separate award to cover employees in the repair, services and retail sector of the vehicle industry. That award was titled 'interim Award - Vehicle Industry - Repair, Services and Retail - 1968'. This interim award was the precursor to the current RSR Award and it came into effect on 1 December 1968.
48. Senior Commissioner Tayler did not provide extensive reasons for his decision to make the interim RSR Award save to note that certain of the parties to the dispute asked the Commission to make a new and separate award to cover what they called the repair, services and retail section of the industry. It can be assumed that those parties and the C & A Commission formed the view that separate award regulation was required for this sector of the vehicle industry.

Award coverage in the vehicle industry

49. The approach adopted by the Court and the Commission (and its predecessors) has been long characterised by a clear and enduring recognition that:
 - (a) the vehicle industry is a separate and distinct industry with unique needs and requirements in relation to the method, structure and organisation of work, including employment classification structures and training arrangements.

³² [Print F0813] 285 C.A.R.

³³ 99 C.A.R. 407

- (b) specific industry awards were required to regulate the different sectors of the vehicle industry comprising manufacturing, broadly defined, and repair, services and retail.

Award modernisation

50. As previously stated the VMRSR Award was made by the Award Modernisation Full Bench of the Commission on 4 September 2009.
51. Prior to the making of the VMRSR Award the Full Bench had received and considered comprehensive submissions and a substantial body of evidence from all relevant stakeholders. In addition, there were numerous consultation sessions and seven different exposure drafts that had been tendered during the course of the consultation sessions by both union and employer parties.
52. The Full Bench, after careful consideration, determined to create the integrated VMRSR Award. It is submitted that in incorporating the VIA and the RSR Award to form the VMRSR Award the Full Bench clearly recognised the continuing need for specific vehicle industry award regulation to deal with the specialised needs of the vehicle industry.
53. Indeed, the Full Bench maintained this industry focus notwithstanding that some parties to the proceedings, at least initially, pressed the view that the VIA should be subsumed within a broader based manufacturing industry modern award.
54. On 22 May 2009 as part of the Award Modernisation process, the Award Modernisation Full Bench issued an interim decision³⁴ accompanied by an initial exposure draft of the consolidated VMRSR Award for consultation and comment by all interested parties. Relevantly in its interim decision the Full Bench stated:

***'Vehicle Industry (repair, service and retail)
Vehicle manufacturing industry***

[224] *We publish a draft Vehicle Manufacturing, Repair, Services and Retail Award 2010. The proposed award is intended to deal comprehensively with the vehicle manufacturing sector and the repair, services and retail sector. It is our preliminary view that there will be operational benefits in having one industry award as there are many common conditions. Where necessary separate provision is made for distinct parts of the industry. Given the nature of much post-production and after-sale modification of specialised vehicles, it is anticipated that access to a single source of industrial regulation will assist employees and employers alike.*

[225] *The draft award does not markedly depart from the provisions of the existing pre-reform awards and existing conditions for employees involved in the sale of fuel and other vehicle related retailing have been adopted. We have decided not to include the pay and classification provisions from the Clerks Modern Award*

³⁴ [2009] AIRCFB 450.

or from any other award. It is our view at this stage that clerks should not be covered by the vehicle industry award.'

55. In its 4 September 2009 decision the Full Bench also made relevant observations about the unification of the vehicle industry awards as follows:

'Vehicle Industry (repair, service and retail)

Vehicle manufacturing industry

Vehicle Manufacturing, Repair, Services and Retail Award 2010

[270] *There has been widespread support for an integrated vehicle industry award to apply as reflected in the exposure draft - the Vehicle Manufacturing, Repair, Services and Retail Award 2010 (the Modern Vehicle Award). In adopting that course we have accepted a number of changes in the exposure draft arising from the parties' submissions, so that the modern award generally accords with the structure and content of the antecedent awards.*

[271] *Consistent with unification of the vehicle awards, and notwithstanding the representations of the Shop, Distributive and Allied Employees Association, we have preserved the existing classification structures, including provisions as to the retailing of fuel and other commodities through the console operations which characterise modern service/petrol stations and which have been the subject of review in several earlier Commission proceedings. Similarly we have accepted the need, given the specialised functions of the award requiring driving, for the retention of the current driving classification. An appropriate exclusion will appear in the RT & D Modern Award.*

[272] *As to coverage it is important that the making of the new award not unsettle the relationship which has existed satisfactorily for many years between the awards of the vehicle industry and the award regulating manufacturing. The fact of complementary exclusion provisions in the Motor Vehicle and the Manufacturing Modern awards is intended to have this effect. Where claims have been made for additions to the scope of coverage of the Modern Vehicle Award, to include, for example, boats and bicycles, our approach has been to maintain the status quo.'*

56. The AMWU submits that the industrial rationale for comprehensive and separate award regulation in the vehicle industry in Australia is as sound today as it was when the VMRSR Award was made and indeed when an award was first made for the industry by Lukin J 1927 in recognition of the special needs and circumstances of the vehicle industry.
57. It is submitted that this was clearly recognised by the Award Modernisation Full Bench as was the need to maintain the relationship, which had existed satisfactorily for many decades, between the vehicle industry awards and the award regulating the broader manufacturing industry.

Coverage of the VMRSR

58. The coverage of vehicle manufacturing under the VMRSR Award is broad in nature and is not confined to the manufacture of motor vehicles. The coverage extends (and has traditionally extended) to:
- truck body manufacturing;
 - caravan manufacturing;
 - campervan manufacturing;
 - bus vehicle manufacturing;
 - boat trailer manufacturing;
 - motorcycle manufacturing;
 - tram car manufacturing;
 - railway car manufacturing; and
 - components manufacturing for all of the above.
59. There is substantial interaction between businesses operating in the vehicle manufacturing sector (as broadly defined above) and the vehicle repair, service and retail sector. Indeed in many cases the VMRSR applies to both sectors within the one business entity.
60. According to ABS data, in August 2015 there were 48,300 persons employed in the motor vehicle (including parts) manufacturing industry.³⁵ While the closure of the major car manufacturing plants in Australia will lead to a reduction in this figure the fact is that thousands of people will remain employed in the sector particularly in the truck body and caravan manufacturing areas.
61. Further, the ABS counts a further 28,400 people employed in "Other Transport Equipment Manufacturing". This category picks up, amongst others, people engaged in the manufacture of train carriages³⁶ as well as motorcycles and electric scooters.³⁷ Accordingly, there are likely to be many thousands of people employed under this category. Take for example Alstom (the European-based train manufacturer), which employs 600 people in Australia.³⁸

C. REASONS NOT TO PROCEED WITH THE CHANGE

VMRSR Award not unduly complex

62. "Complexity" is a matter of judgment and impression. It is true that the VMRSR award is reasonably long and detailed. However, other modern awards are longer, and more detailed. Accordingly, it is difficult to conclude that the VMRSR is "complex" let alone "unduly complex", at least in comparison to other awards.

³⁵ ABS cat 6291.0.55.003 Table 1.

³⁶ ABS cat 1292.0 - Australian and New Zealand Standard Industrial Classification (ANZSIC), 2006 (Revision 1.0), Class 2393 ("Railway Rolling Stock Manufacturing and Repair Services").

³⁷ Ibid, class 2399 (Other Transport Equipment Manufacturing n.e.c)

³⁸ Alstom fact sheet, 'The Australian Leader in Urban Transport' available at www.alstom.com/%2FGlobal%2FAustralia%2FResources%2FDocuments%2FAlstom%2520Fact%2520Sheet.pdf

63. In any event, simplicity is not an end in itself. The ultimate goal for the award system must be to have awards that are well-understood by those who have to read and apply them, even if “objectively” the document can be said to be complex. The evidence from Mr Smith, as well as Mr Else and Mr Dober, bears out the proposition that VMRSR Award is well understood by major players in the industry.
64. In those circumstances, it is also important that (so the AMWU understands) every party represented in these proceedings will submit that the VMRSR Award is adequately understood, and that no party desires the simplification suggested by the Commission.
65. Further, if simplicity is the desired outcome, it must be appreciated that the change proposed by the Commission only simplifies the VMRSR Award at the cost of making the Manufacturing Award longer and more complex. Accordingly, there is no net gain.
66. The statement of Mr Dettmer tendered by the AMWU explains some of these complexities. They include:
- (a) the juxtaposition of different classification structures in the proposed Manufacturing Award (see [25]-[28] of the statement);
 - (b) the lack of a clear definition of a “vehicle manufacturing employee” (at [29]); and
 - (c) the circular reference in the coverage clause (at [30]).
67. Worse, the proposed translation of content from the VMRSR Award to the Manufacturing Award may actually increase overall complexity, in three ways.
68. First, the Commission is not proposing a straight transfer of language, but rather a paraphrasing and simplification of content. Whenever this occurs, there is a risk of a change in meaning, leading to debates about whether the original meaning or the “new” meaning should prevail. Errors in translation also inevitably occur. Attachment A to Mr Dettmer’s statement identifies a number of these ambiguities and errors.
69. Second, there are some employers, such as MaxiTrans, who both manufacture vehicles and engage in post-manufacture activities such as repairs or sales. Currently those employers need only be familiar with the VMRSR Award. If the Commission’s changes proceed, they will need to be familiar with both that award and the Manufacturing Award.
70. Third, as Mr Curry’s witness statement sets out, the training provisions of the Manufacturing Award do not line up neatly against the vehicle manufacturing training pathways offered by VET providers. Accordingly trainees and their employers may well be confused about whether and when trainees are entitled to progress to the next pay level under the Manufacturing Award.

Loss of entitlements

71. The proposed changes to the VMRSR Award will lead to a significant loss of conditions for vehicle manufacturing employees.

72. Annexure 1 contains a table setting out those lost entitlements.
73. In some cases the changes appear relatively minor, such as the loss of a few cents per hour for a particular allowance. However, over the course of a working year, or a working life, the loss of a few cents on a particular entitlement translates to large losses. Further, the effect of a large number of minor changes in conditions can have a large aggregate effect.
74. Finally, it is important to bear in mind that these entitlements have been hard won by the AMWU and its members over a hundred years. They should not lightly be discarded.
75. The major losses are as follows.

Rest breaks

76. Clause 26.7 of the VMRSR guarantees that if two rest breaks are given on the same day, the second one will be paid. The Manufacturing Award does not provide any rest break entitlements.
77. A 15 minute paid rest break is worth \$5.03 per shift for a Level 1 tradesperson (V5) worker, or \$1,207 per year, assuming they work 5 days a week, 48 weeks a year.
78. This monetary figure does not, of course, include the non-monetary benefit of rest and reinvigoration associated with a break from work.

Accident pay

79. Clause 22 of the VMRSR provides for 26 weeks' accident make-up pay. This is a valuable entitlement. For example, in Victoria, injured workers only receive statutory benefits representing 20.35 weeks' ordinary pay over the first 6 month period, meaning a loss of 5.65 weeks' pay.³⁹ For a Level 1 tradesperson (V5), the make-up pay is therefore currently worth up to \$4,321.
80. It is important to bear in mind that manufacturing is a relatively dangerous industry, so claims will be relatively frequent. In 2013-14, there were 15 serious claims (claims for more than 1 week's worker's compensation payments) per 1000 employees in manufacturing, which was more than 50% higher than the all-industry average of 9.8 per 1,000.⁴⁰
81. Once again, these monetary figures do not take into account the non-monetary benefit associated with workers being able to maintain their earnings – and so support their families, pay the mortgage, etc – when injured.
82. Further, accident make-up pay has a long history in this industry, and is an important part of the safety net for vehicle manufacturing workers. To remove it would be to act inconsistently with the approach taken by the Full Bench to accident make-up pay in its decision of 18 August 2015 ([2015] FWCFB 3523).

Time Off in Lieu

³⁹ Workplace Injury Rehabilitation And Compensation Act 2013 (Vic) ss 161-2.

⁴⁰ Safe Work Australia, *Australian Workers' Compensation Statistics, 2013-14*, p 16.

83. Clause 28.3(c) of the VMRSR provides that if time off in lieu of overtime (TOIL) is provided, it shall be paid at overtime rates. In contrast, under proposed clause 30.7(a) of the Manufacturing Award, TOIL will be paid at single time.
84. It can be seen that a Level 1 tradesperson (V5) accustomed to working an hour's overtime each day Monday to Friday will lose 2.5 hours' TOIL each week, or 120 hours (15.79 working days) over a 48-week year.
85. Put another way, they will have to work an extra 16 days each year for the same pay.
86. The monetary value of 15.79 days' work at Level 1 wages is \$2,415, although it is accepted there is no monetary cost to the employee, only a loss of time off work. The value of that time off cannot be measured in money.
87. While in theory employees can refuse TOIL, and elect to receive overtime pay at higher rates, the employer is likely to respond by finding another employee willing to work the overtime in exchange for TOIL. In that way the availability of overtime work at loaded rates of pay will likely disappear.
88. Finally, TOIL (at overtime rates) is an important and longstanding part of the safety net for vehicle manufacturing workers. To remove it would be to act inconsistently with the Full Bench's recent decision on the question ([2015] FWCFB 4466).

Annual close down

89. Clause 29.9 of the VMRSR Award provides for a default annual close-down of at least 21 days. The Manufacturing Award only provides for a 14 day close-down.
90. The provision of a 21-day block of leave is a significant entitlement, as it permits employees to take an extended vacation with family. Accordingly, it is no answer to the loss of this entitlement to say that there is no loss in the total amount of leave that can be taken: it is the timing of that leave, in a long block, which is important. Nor is it sufficient to say that employees covered by the Manufacturing Award could simply request a third week's leave: that request may well be refused (see s 88 of the Act).
91. Finally, the close-down provisions in the VMRSR Award were recently considered by the Full Bench in [2015] FWCFB 3406, which endorsed an earlier 2008 decision not to "alter [close-down] provisions which have been specifically developed for particular industries": see [375]. In those circumstances, there is no warrant for varying the provision now.

Compliance costs

92. Due to the complexity of the changes, and the reduction in entitlements, there will be significant compliance costs for employers and unions.
93. Employers and unions alike will need to devote time and resources to understanding the new regime, and explaining it to workers.

94. This cost is unlikely to be a one-off cost. As mentioned above, the changes may well lead to ongoing disputation, in the event there is confusion about the meaning of new terms, or in the event that parties take advantage of a change in text to suggest that new meanings were intended to displace old ones, or vice versa.
95. Employers like MaxiTrans who will be covered by different sections of the Manufacturing Award will have ongoing costs associated with working out which provisions apply to which employees.
96. Employers like Volvo who have enterprise agreements based on the VMRSR Award will need to re-draft their agreements in the next bargaining round, to ensure they meet the BOOT test (see further below).
97. Employers will also face a significant upfront cost in changing their payroll systems to accommodate the new entitlements regime.

Effects on enterprise agreements

98. The AMWU has identified approximately 90 current enterprise agreements in the vehicle manufacturing sector which either state that they “incorporate” the VMRSR Award or are to be read “in conjunction with” that award, and which fail to clarify that the award is only incorporated as it appeared when the agreement was made. These agreements are listed in Annexure 2.
99. It is submitted that for those agreements, the view which best accords with the presumed intention of the parties is that the parties desired to pick up the VMRSR Award in an ambulatory way; ie, as it stands from time to time: see *Australasian Meat Industry Employees Union v Golden Cockerel Pty Ltd* (2014) 245 IR 394; see *Seymour v Stawell Timber Industries Pty Ltd* (1985) 9 FCR 241 (Full Court) at 260 (Gray J), with whom Northrop J agreed at 243
100. If that is right, then the removal of entitlements for vehicle manufacturing employees from the VMRSR Award will have the unintended consequence of reducing the entitlements of thousands of employees covered by agreements, in a way not expected by them.
101. Even if that is wrong, and if each agreement is not, ultimately, construed as incorporating the VMRSR Award in an ambulatory way, the mere existence of doubt about the matter would be sufficient to create unnecessary confusion and disputation in many, many workplaces. That is another strong reason not to proceed with the proposed change.
102. Further, as Mr Smith’s statement suggests, many employers have enterprise agreements based on the structure and content of the VMRSR Award, even if those agreements do not formally incorporate the award. That approach is often taken by employers to ensure that the agreement can easily be compared to the underlying award for the purposes of passing the BOOT test. Accordingly, for those employers, if there is a change in the underpinning award, there is a risk that merely rolling over the existing enterprise agreement (even with a significant wage increase) will not be sufficient to ensure the new agreement passes the BOOT test. As a result, if the proposed change goes ahead, it is likely that many responsible employers will need to devote significant resources

to re-drafting their enterprise agreements for the next bargaining round. This would be a significant undertaking.

Stability & certainty

103. A final consideration is the public interest in the stability of the modern award safety net, and the need (in the interests of certainty) to avoid changes without strong justification.
104. The modern awards objective is directed at ensuring that modern awards, together with the NES, provide a 'fair and relevant' safety net of terms and conditions taking into account the particular considerations in section 134 1(a) - (h) of the Act.
105. It must be accepted that VMRSR was consistent with the modern awards objective at the time it was made: see [2014] FWCFB 1788 at [24].
- A 7 member Full Bench made the VMRSR Award. They clearly did not find it, at the time, "unduly complex and difficult to understand".
106. In the Full Bench decision on the preliminary jurisdictional issues connected with the 4-yearly review ([2014] FWCFB 1788), the Full Bench stated at [27]: "Previous Full Bench [award modernisation] decisions should generally be followed, in the absence of cogent reasons for not doing so."
107. There are no cogent reasons to proceed with the major change suggested by the Commission. The particular reason now relied upon (complexity) is not a new consideration. The parties and the Commission had the opportunity to consider this factor in 2009, after which a 7-member Full Bench decided to make the VMRSR Award in the terms in which it now appears. Accordingly, the matter has been decided, and in the absence of any new developments in the industry, the public interest in the stability of the award system strongly suggests the VMRSR should be left in place.
108. **Other proposed changes** Having dealt with the question of the proposed transfer of content to the Manufacturing Award, the AMWU wishes to refer to two further matters raised by the exposure draft.

Shift length

109. In the parties' report to the Full Bench dated 29 September 2015 (**Report**), the parties (save for Ai Group) supported the prescription of a maximum of 10 ordinary hours' work per day, with a transitional provision for employers in the mining and infrastructure industries accustomed to using longer shifts: see [50].
110. This proposal has not been adopted in the latest draft. Instead, clause 18.5(b) preserves 12-hour shifts in enterprises which used them before 1 January 2016.
111. If this was an oversight by the Full Bench, the AMWU respectfully seeks for it to be rectified. If, instead, clause 18.5(b) reflects the Full Bench's provisional view as to the final form of the clause, the AMWU seeks a final opportunity to dissuade the Full Bench from making that change, in oral submissions.

Offsetting commissions

112. At [28] of the Report, all parties (save for Ai Group and AFEI) supported a clause prescribing a minimum remuneration for vehicle salespeople, and regulating the offsetting of commission payments.
113. The Commission's proposed clause 24.5 appears to be a plain English redraft of that proposal. If that is so, there has been an inadvertent change in meaning.
114. The parties' intent was that commission could only be set off against payments made over and above the minima prescribed by what is now clause 24.5(a). However, the proposed clause permits the commission payments to be set off against all award entitlements. That leads to perverse and unintended results.
115. Take the case of an employee who usually earns \$1,000 in wages for a 38 hour week, plus a \$500 commission. One week they work overtime during the week, earning \$200 in overtime payments, and also work on Sunday, earning \$200 in Sunday penalties. The intent of the parties was that the commission payment could be set off against the Sunday penalty only, such that the employee's take-home pay was \$1,700 (\$1,000 + \$500 commission + \$200 overtime).
116. However, the way that clause 24.5 is currently phrased allows the employer to set off the \$500 against either the Sunday penalty payment or the ordinary time earnings, meaning that the employee will only receive \$700 for the week (ie \$1,200 due under the award less \$500 commission).
117. On the assumption this was inadvertent, the AMWU respectfully seeks that the problem be rectified by returning to the language of the parties' original proposal.
118. Alternatively, if the change was deliberate, the AMWU seeks a final oral hearing to dissuade the Full Bench from adopting that course.

Dated: 11 May 2016



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COMPARISON OF VMRSR AWARD 2014 and MA10		
Clause reference - VMRSR Award (Exposure Draft 4 November 2015)	MA10 Clause (Exposure Draft 4 March 2016)	Comments
6.3 Full-time Employees	6.2	The current VMRSR Award (VMRSR) clause makes it clear that Full Time employees work no less than an average of 38 ordinary hours per week. In contrast, the MA10 Award (MA10) clause is not explicit on this point.
7 Juniors	11	<p>The VMRSR stipulates types of work which Junior employees are prohibited from engaging in. These exclusions are designed to protect Junior employees from engaging in dangerous work for which they do not have adequate training or experience.</p> <p>Whilst the MA10 does provide for Juniors, no prohibited work exclusions apply. Clause 11 of the MA10, for example, provides that Juniors may be employed in any classification under the Award. Clause 20.4 further provides that in certain positions Junior employees must be paid the adult pay rate.</p>
7 Juniors	20.1	It is unclear why vehicle classifications have been included in this table. Clause 7 of the VMRSR deals with juniors. However, there is no table similar to that in clause 20.1 of the MA10 which sets out the wage rates in section 2 of the VMRSR Award. This is likely to create confusion for existing Award readers.
7 Juniors	20.2	It is unclear why vehicle classifications have been included in this list. Junior employees would be excluded from performing this work by virtue of clause 7.2(d). It also may be prohibited by clause (a)-(c), (e) and (f). The reference to vehicle workers in this clause is inappropriate.
7.2(d) and (e), (f) Juniors - Prohibited Work	20.4(b) and (j)	This work is prohibited under the VMRSR clause. Juniors are also prohibited from working unsupervised. The absence of this exclusion expands the work that juniors can perform under the MA10. They also cannot work unsupervised under the VMRSR but now they can under MA10.

8 Apprentices (including adult and school-based apprentices) and trainees	7	<p>The VMRSR combined Apprentice and School Based apprentice conditions. The MA10 splits them up with the conditions of school based apprentices being listed in clause 8. The VMRSR clause is easier to read because it is more straight-forward for Award readers. The separation of these provisions in MA10 is therefore likely to cause confusion for Award readers.</p> <p>Clause 8.2 of the VMRSR contains a list of apprenticeship trades, which are not contained within the MA10.</p>
11.1(e) Meal and Rest Breaks	13.1	Unlike in the VMRSR there are no paid morning or afternoon tea-breaks provided for in the MA10.
11.4 Minimum Break Between Shifts	30.11 (d)/ (e)	In the MA10, by agreement between an employer and an employee the period for rest can be reduced to 8 hours. No equivalent clause exists in VMRSR. This is arguably a more detrimental clause for vehicle manufacturing workers.
13.1/13.3 Payment of Wages	23.1(a)(ii)	The MA10 introduces payment according to average no. of hours worked per fortnight, as opposed to base on actual ord. hours worked per week, fortnight or month - depending on when payment is made. This averaging arrangement is not preferred in the Vehicle Industry.
13.2 Payment of Wages	23.2	Clause 13.2 in the VMRSR notes that an employer is responsible to pay any fees or charges associated with a bank transfer. MA10 clause has no such requirement. This is a loss of entitlement for vehicle manufacturing workers.
13.3(c) Payment of Wages	No equivalent	The VMRSR requires that 4 weeks notice is to be given to employees if the pay day/period will change. This entitlement is lost in the MA10.
13.3(d) Payment of Wages	No equivalent	The VMRSR provides that wages will be paid no later than Thursday in a pay cycle, or Wednesday if a public holiday falls on the Thursday or Friday. There is no equivalent provision in the MA10, meaning employees lose the guarantee that their wages will be paid before the weekend.
13.3(e) Payment of Wages	No equivalent	Provides an employer cannot keep more money in hand than has accrued to an employee in respect of work performed on that day or previous day where wages are paid after 1.30pm. This provision is not replicated in the MA10.

13.3(f) Payment of Wages	No equivalent	Provides that an employer must state in writing the total amount of wages paid, including overtime and any deductions made. This provision is an additional safeguard in s 535 of the Fair Work Act. The MA10 has no equivalent provision.
13.4(a)(iii) Payment of Wages on Termination of Employment	No equivalent	The MA10 does not require that an employer pay an employee an additional 4 hours' ordinary pay where the employee is required to collect their wages on termination of employment from the employers's place of business. This represents a loss of entitlement.
13.7 Make Up time after stand-down	No equivalent	The 'make up time after stand-down' entitlement contained in the VMRSR is lost in the MA10.
16.3/16.4/18.5 Allowances	26.2(j)(k(l))	It is not clear that these allowances apply to Vehicle Workers.
16.3 Inspector Allowance	26.2(j)	The Inspector Allowance has been changed in the MA10. In the VMRSR the allowance is \$31.21, in contrast to \$30.44 in the MA10. This represents a loss of 0.77 cents/hour.
16.5 First Aid Allowance	16.5	First aid allowance is higher under VMRSR -\$15.30 v \$15.22.
16.7 Confined Spaces	26.3(f)	Clause 16.7 of the VMRSR Award is more detailed than the MA10. Although the allowance is higher under MA10, 16.7(b) gives specific examples of what confined spaces would be in the context of the Vehicle Industry. By comparison the MA10 clause is much more simplistic.

16.8 Dirty Work	26.3(g)	Clause 16.8 of the VMRSR Award is more prescriptive in listing and describing how to resolve a dispute arising where there is disagreement about whether work is dirty work for the purposes of the clause, including having the assistance of a shop steward and requiring that the employer's rep representative must make a decision within 48 hours. It also sets out the min. payment of \$2.25/day for dirty work. This VMRSR clause is preferable due to the explanation of how to handle any disagreement about whether work is dirty.
16.11 Glass or Slag Wool	Related clause: 26.3(k)	The Glass or Slag Wool Allowance contained in the MA10 does not apply to vehicle manufacturer workers and therefore this entitlement is lost. Specifically, clause 26.3(k) of the MA10 provides the entitlement to employees who are 'employed on ship construction or ship repairing or on the construction, repair or demolitions of furnaces, walls, floors and/or ceilings.'
16.12 Handling Garbage	Related clause: 26.3(g)	There is no equivalent Handling Garbage Allowance provided for in the MA10 as provided for in the VMRSR. The VMRSR does provide for a 'Dirty Work Allowance' at clause 26.3(g), however this does not represent an explicit transfer of this entitlement to vehicle manufacturer workers.
16.13 Livestock Transport	No equivalent	The Livestock Allowance contained in the VMRSR is not replicated in the MA10. This represents a loss of an entitlement.
16.15 Height Money	26.3(h)	The Height Money condition in the VMRSR is 0.44 cents. In the MA10 it is 0.42 cents. This represents a loss of 0.02 cents/hour.
16.19 Fork-lifts or Cranes	No equivalent	The Fork-lift or Crane Allowance contained in the VMRSR is not replicated in the MA10. This represents a loss of an entitlement.

16.21 Combined Disabilities	Related clause: 26.3(a)	The Combined Disability Allowance is not explicitly replicated in the MA10. Clause 26.3(a) of the MA10 does set out a similar entitlement, which is that special rates are cumulative if they fall within a list of excepted allowances. The excepted allowances, however, differ between the two Awards. Specifically, the Handling Garbage and Livestock Transport Allowances as contained within the VMRSR, are not contained within the MA10 listed exceptions.
17.1 (e) Tool Allowance - tradespersons, Carpenters and Apprentices	26.1(c)(iv)	Clause 17.1(e) is clearer because it sets out in dollar amount how much allowance is payable to an apprentice in the clause itself.
17.2 Meal allowance	26.2(c)	Meal Allowance is higher under MA10 - \$13.51 v \$13.18. The VMRSR clause requires that it has to be paid if an employee is required to work more than 1.5 hours and not notified the previous day. Clause 17.2(c) also provides that unless the employee was advised on the previous day or earlier that overtime would include more than one meal, a second meal has to be provided.
17.3 Travelling Time, Accommodation and Meals	26.4 (a)/(e) (i)	Travelling time allowance for Saturday is lost in the MA10 - which only pays 150% for travel time when done on Sunday and public holidays. Under Clause 17.3 of VMRSR Award, the overtime rate is paid when travelling on Saturday, Sunday and public holidays. Clause 17.3(b) also states that if travel is done in business time, there is to be no loss of wages.
18A Accident Pay	No equivalent	Accident Pay was recently inserted back into the VMRSR. This re-insertion was made because the Commission determined that there was a clear industry standard in the Vehicle Industry that justified reinstating this entitlement. There is no equivalent Accident Pay provision in the MA10, representing a substantial loss of entitlement.
18.1(f) Protective Clothing	26.2(f)	The VMRSR clause 18.1(f) is more detailed and speaks to the type of work for which protective clothing would be required to be worn for the purposes of the Award. The MA10 clause by comparison is more general. A broader clause would be better as it would capture all work for which PPE is required to be worn.

18.3 Damage to clothing and tools	26.2(d)	The MA10 provides that an employer does not need to pay an employee where the employee is entitled to workers compensation in respect of the damage. The same exclusion does not apply under the VMRSR and represents a less favourable condition for vehicle manufacturing employees.
21.5(a) Minimum Overtime Payment on a Sunday or Public Holiday	No equivalent	This provision stipulates that employees must get paid for one hour if they are required to work over-time on a Sunday or a Public Holiday where they are working in order to maintain electric light or power. Additionally, such workers are to be paid for time spent getting to and from work, which is to be counted as time worked except for when the work is more than 2 hours. There is no equivalent entitlement in the MA10.
21.5 (b) Minimum Overtime Payment on a Sunday or Public Holiday	30.6	A minimum payment of 4 hours for vehicle manufacturing workers is stipulated in the VMRSR. In the MA10 it is 3 hours. Continuous and non-continuous shiftworkers also affected under the MA10 provision, but in the VMRSR this is covered by clause 44.5 of the Award.
21.6 Time off instead of Overtime Payment (TOIL)	Clause 30.7	Vehicle Manufacturing workers are entitled under the VMRSR to TOIL at overtime rates (clause 21.6(e)). MA10, conversely provides that TOIL is paid at ordinary time rates (clause 30.7). The removal of overtime rates for TOIL was successfully opposed in AM2014/300 on the basis that it has been an industry standard for 25 years. [Further to this, the decision in [2016] FWCFB 2602 provides that the Commission will not include the model TOIL clause in the RSR Award until a decision is made about the exposure drafts. This is despite the fact that Vehicle Manufacturing workers are equally entitled to TOIL at overtime rates.]
21.1 0 Overtime	30.14	The MA10 clause is similar to the VMRSR clause except that transport obligations apply to an employer where an employee usually uses public transport and concludes either over-time or shiftwork. Under the MA10 the entitlement only applies if the employee isn't regularly rostered to work such a shift.
22.2 and 22.3 Annual Leave	No equivalent	These clauses set out employees' Annual Leave entitlements. No equivalent provisions are provided for within the MA10.

22.7 Annual Close Down	31.7(f)	The VMRSR provides that where there are two periods of Annual Close Down that one of those periods must be for at least 21 days. Conversely, the MA10 provides that one of those periods must be for a period of at least 14 days. This represents a loss of a beneficial condition for vehicle manufacturing employees.
25.3 Rostered Days Off or Accumulated Time of Falling on a Public Holiday	34.5	This provision provides for how to deal with the situation of an RDO falling on a public holiday. It is more prescriptive under the MA10 than under VMRSR and therefore is more onerous for vehicle manufacturing workers.
40.1(b) Ordinary Hours of Work	12.2(c)	The ordinary hours of work in the VMRSR are stipulated as being Monday - Friday and 7am- noon on Saturday. Under the MA10 employees can work Saturday and Sunday by agreement (12.2(c)).
40.1(d)	12.2(d)	40.1(d) of the VMRSR Provides that all work performed outside the spread of hours is to be paid at overtime rates and will be deemed to be part of the ordinary hours of work. Clause 12.2(d) of the MA10, conversely, provides an exception regarding any work performed by an employee prior to the spread of hours which is continuous. This represents a loss of entitlement to the vehicle manufacturing workers.
40.3 Methods of Arranging Ordinary Working Hours (re Rostered days off)	12.7	Both the VMRSR and MA10 provide that rostered days off (RDOs) can be negotiated. The VMRSR, however, mandates that such an agreement it made by majority consensus. The MA10, conversely, enables employers to negotiate with <i>either</i> an individual employee or the majority (as per facilitative provisions in clause 5.3, applicable as per clause 12.1). The provision that requires majority consensus is an important provision used by the union to apply a roster that provides for an RDO. Allowing for individual consensus runs the risk of undermining this entitlement.
40.5 Substitute Day	No equivalent	There is no equivalent provision in the MA10. This represents a loss of entitlement for Vehicle manufacturer workers.
41.8(d) Apprentice Wage Rates and Progression	No equivalent	This provisions sets out apprenticeship progression for vehicle manufacturing workers. It is not replicated in the MA10.

41.9 Higher Engineering Tradesperson	16.7	Clause 16.7 is likely to create confusion because clause 41.9 has not been copied from the VMRSR Award into MA10.
43.1/43.2 Shiftwork and Rates	28.1 Penalties, 28.2 (a)-(g) Rates for Shiftworkers	<p>Clause 43.1 and 43.2 in the VMRSR should have been cut and paste into the MA10 in this section because the definitions for shiftwork in VMRSR are different to the MA10 definitions. For example, the definition of night shift in the MA10 is commencing after 8pm; in the VMRSR it is commencing after 6pm.</p> <p>Further, these provisions have been paste into clause 12.4 and 12.6 of MA10 but these clauses are better read in conjunction with the yellow provisions in clause 29. A reference should exits directing the readers back to clauses 12.4 and 12.6.</p> <p>Currently this provision is very confusing.</p>
44.1 Crib Breaks	Related clause: 30.10	Sets out employee Crib Break entitlements for employees working on a Sunday or a public holiday for more that 9.5 hours. The MA10 deals with rest breaks at clause 30.10, however it does not explicitly provide for a paid crib break after 9.5 hours, as per the VMRSR.
44.2 Minimum break between shifts	No equivalent	Entitles an employee to 10 consecutive hours off duty without deduction of pay, where he/she works on a Sunday or a public holiday. The MA10 does not contain this condition.
44.4/44.5 Public Holiday Work	12.2(g)	The VMRSR provides more comprehensive public holiday provisions than the MA10. The VMRSR, for instance, stipulates the public holiday penalty rates for evening shifts. This is particulalry relevant in the context of the vehicle manufacturing industry.
44.6(a) Minimum payment - maintenance employee	No equivalent	Stipulates pay entitlements for maintenance workers. For example, the minimum period of enagement for wokring a public holiday for employees other than shiftworkers is 4 hours in the VMRSR but in the MA10 it is 3 hours.This provision is not replicated in the MA10 award and represents a loss of entitlements.
45 Security Staff - Special Conditions	No equivalent	The MA10 has deleted all entitlements/conditions for security staff.
49.1(a) and (b) Casual Employment	6.4 (b) (iii) and (iv)	Clause has not been properly identified as having come from section 3 of the VMRSR Award and it is unclear that it is referring to employees in the Vehicle Manufacturing sector.

49.3 Classifications - Notification of Classification	15.4(b)	The MA10 equivalent provision is not as explicit as the VMRSR. Where the MA10 stipulates that employees are to be advised on their classification, the VMRSR stipulates that this notification needs to occur within two weeks of being engaged or being promoted.
49.5 Lower grade and higher grade duty	No equivalent	This condition, regarding drafting technical and planning employees, has been removed from the MA10.
49.6 Trainees	19.2	The definition of trainee found in clause 49.6(a) has been left out of the MA10 Award provision.
49.8 Cadets	18.2(a)	<p>Clause 18.2 is more prescriptive than the equivalent clause in the VMRSR. It is unclear why references to the Vehicle Classifications were included in clause 18.2, as there is generally no corresponding provision in the VMRSR Award to clause 18.2 other than clause 49.8.</p> <p>If the rates specified in clause 49.4 were taken and inserted into clause 18.2(a), as appears to be a possibility, it is inappropriate because the rates in clause 49.4 are not specifically for cadets.</p> <p>It is highly likely that this provision will create confusion for existing users of the VMRSR.</p>
Related clause: 49.9		There is no equivalent separate clause in VMRSR. The MA10 clause is very comprehensive and could create confusion for new users of Awards, as it is not clear that this section only applies to manufacturing employees. Note that clause 49.8 deals with pay rates for cadets only - Section 3 Drafting, Planning and Technical Employees. This clause is very short as compared with the MA10 clause.
50.1 Wage Related Allowance	26.10 €	There is no reference in the MA10 that this provision applies to vehicle manufacturing workers covered by Section 3 of the VMRSR.
50.2(b) Clothing and equipment - specific for Drafting employees	26.2(d)	These conditions are mirrored in the MA10 to a certain extent (26.2(d)), however the MA10 provisions are not as comprehensive as the VMRSR. For example, clause 50.2(b)(iii) of the VMRSR regarding reimbursement entitlements of employees working in abnormal conditions, is not reflected in the MA10.
50.2(c) Travelling Expenses	Relevant clause: 26.4	This provision provides for employee travel entitlements. These are generally dealt with in the MA10, however the specific allowance of \$11.11 for meals during air travel has not been transferred into the MA10.

51 Penalty Rates	No equivalent	Clause 51.1(a) entitles workers on a Sunday to a minimum of 4 hours payment, the MA10 does not contain this entitlement.
53.4 Contract of Employment	6.7	Clauses have not been properly identified as having come from section 4 of the VMRSR Award and it is unclear that it is referring to employees in the Vehicle Manufacturing sector.
53.5 Conditions of Employment	6.8	Clauses have not been properly identified as having come from section 4 of the VMRSR Award and it is unclear that it is referring to employees in the Vehicle Manufacturing sector.
53.5 Conditions of Employment	No equivalent	A provision which explicitly deals with Conditions of Employment has not been included in the MA10, as it has in the VMRSR.
53.6(b) Wages, Classification and Related Matters	26.1(f)	It is unclear if this allowance is same allowance payable in section 4 of the VMRSR - 53.6(b).
53.6 (b) and (c) Wages, Classification and Related Matters	No equivalent	This allowance is payable for supervisors/trainers/co-ordinators. The allowance includes over-award payments. It does not appear to be captured within the MA10.
53.7 Method of Calculation	No equivalent	This method of calculation for the rates in clauses 53.6(b) and (c) is not contained within the MA10.
Schedule H	No equivalent	There is no reference to boiler attendant or fireperson, leading 1st class or 2nd class definition in the MA10.
No Equivalent	12.(c) Twelve hour days or shifts	This clause permits the introduction of 12 hour shifts. This is detrimental to vehicle manufacturing employees as currently there are no 12 hour shifts permitted in the VMRSR.
No Equivalent	15.1(g) Annualised Salary Arrangement for Supervisor/Trainer/Coordinator Levels I and II	The MA10 introduces an annualised salary option for supervisors/trainers/co-ordinators. This does not exist in the VMRSR. This equates to the introduction of a new arrangement for vehicle manufacturing supervisors/trainers/co-ordinators.

No Equivalent	15.4(c) Procedure for Classifying Employees Covered by the National Metal and Engineering Competency Standards	<p>This clause in the MA10 sets out the procedure for classifying employees covered by the National Metal and Engineering Competency Standard. It is unclear on what basis the Vehicle Classifications have been inserted into this clause.</p> <p>References to Vehicle Classifications have been intergrated but it is unclear if this is appropriate. The VMRSR does not specify that in order to classify employees an employer is to have regard to the Metal Engineering competency standards, or any other standards. No similar explanation is found in schedule B of the VMRSR. The relevant classifications in the Vehicle Award are based on the explanations/definitions to be found in Schedule B. This is the competency strcuture to which vehicle manufacturing workers are to be classified in accordance with. Our view is that the intergration of the Vehicle Classifications without proper analysis is confusing and inappropriate.</p>
No Equivalent	16.3 Apprentice Minimum Wages	It is unclear why a reference to V10 has been inserted in a clause dealing with an apprentice completing a Diploma of Engineering. Clause will create confusion for Award reader.
No Equivalent	19.1 Trainee Minimum Wages	<p>In the VMRSR Award, Schedule F is relied upon for the relevant trainee wages and conditons. It is unclear how/why references to vehicle classifications have been included in the tables in clause 19.1(b), as there are no equivalent provisions in the VMRSR Award stipulating the same.</p> <p>By inserting references to Vehicle classifications throughout clause 19.1, the Commission has made it very confusing for the Award reader. This is apticularly the case bcause the traineeships referred to in clause 19 refer to those as advised by the Manufacturing skills council. It is unclear again whether any of the Vehicle Classifications/traineeships are consistent with those set out in clause 19.1</p>
No Equivalent	19.3 Trainee Engineer and Trainee Scientist Minimum Wages	The reference to vehicle workers in this clause is inappropriate.

No Equivalent	26.1(c)(v) Tool Allowance - Tradespersons and Apprentices	It is unclear why this does not apply to vehicle manufacturing workers
No Equivalent	27.4 Superannuation Funds	The VMRSR lists the following funds which are not referred to in the MA10 - Statewide Super Trust, TWUSuper, Retail Employees Superannuation Trust (REST)
No Equivalent	Rate for Working on Saturday Shifts	This rate for working a Saturday shift does not exist in the VMRSR. It creates confusion because of specific provisions in the VMRSR for working continuous or non-continuous shifts; including working on Saturday. There is not a separate provision for working on a Saturday like there is in the MA10.
No Equivalent	36 Absence from Duty	This represents a new condition for Vehicle manufacturing workers because not present in VMRSR Award.
No Equivalent	37 Abandonment of Employment	This represents a new condition for Vehicle manufacturing workers because not present in VMRSR Award.

ALL AGREEMENTS BASED ON VMRSR AWARD

ID	Agreement No.	Title	Incorporates VMRSR?	How Award Is referenced	Industry	Type
AE408231	AG2014/6039	Woodbridge Australia Group (Victoria) Workplace Agreement 2014	Yes*	Incorporated	Vehicle Manufacturing	Car Components
AE408362	AG2014/6054	Futuris Automotive Interiors (Australia) Pty Ltd (Hume Highway) Enterprise Agreement 2014	Yes*	Incorporated - as varied from time to time	Vehicle Manufacturing	Car Components
AE408748	AG2014/6472	Moorabin Transit Workshop Enterprise Agreement 2014-2017	Yes	Incorporated - as varied from time to time	RSR	Bus
AE411174	AG2014/9819	US Bus Lines Workshop Enterprise Agreement 2014-2017	Yes	Incorporated - as varied from time to time	RSR	Bus
AE411178	AG2014/9800	Ventura Bus Lines (Croydon) Centre Workshop Enterprise Agreement 2014-2017	Yes	Incorporated - as varied from time to time	RSR	Bus
AE898931	AG2012/13897	Daimler Trucks Adelaide Enterprise Agreement 2012	Yes	Encompass all terms from Award; operates in conjunction with	RSR	Trucks
AE403149	AG2013/8021	Burson Automotive Pty Ltd (Distribution Centre) Union Collective Agreement 2013-2016	Yes	Incorporated	Vehicle Manufacturing	Car Components
AE404517	AG2013/10647	Cleanaway (Resource recovery) Ford Enterprise Agreement 2013	Yes	Incorporated	Vehicle Manufacturing	Cleaning
AE413737	AG2015/2237	GH Varley Queensland Enterprise Agreement 2015-2018	Yes	Incorporated	Vehicle Manufacturing	Emergency Vehicles
AE899825	AG2013/25	Kmart Tyre and Auto Service NSW/ACT Enterprise Agreement 2012	Yes	Incorporated	RSR	Vehicles
AE405484*	AG2013/10944	Lusty EMS Pty. Ltd. Enterprise Agreement 2013	Yes	Incorporated	Vehicle Manufacturing	Truck Trailers
AE412902	AG2015/392	MaxiTrans Australia Pty Ltd – Ballarat 2014	Yes	Incorporated	Vehicle Manufacturing	Truck/Trailer
AE415703	AG2015/4890	MaxiTrans Australia Pty Ltd Enterprise Agreement – Hallam Panels 2015	Yes	Incorporated	Vehicle Manufacturing	Truck Components
AE408660	AG2014/6423	Maxitrans Australia Pty Ltd Enterprise Agreement Dandenong 2014	Yes	Incorporated	Vehicle Manufacturing	Truck/Trailer
AE408022	AG2014/5634	NRMA Patrol Enterprise Agreement 2014	Yes	Incorporated	RSR	Road Service
AE886056	AG2011/9820	PACCAR Trucks Melbourne Enterprise Agreement	Yes	Incorporated	Vehicle Manufacturing	Truck
AE411680	AG2014/8368	Patrick Autocare (vehicle Processing) Enterprise Agreement 2014	Yes	Incorporated	RSR	Vehicle Processing
AE409188	AG2014/1611	Preston Motors (Essendon) Enterprise Agreement 2014-2017	Yes	Incorporated	RSR	Vehicle
AE896755*	AG2012/10630	Preston Motors (Parts Sales) Pty Ltd Dandenong Branch Enterprise Agreement 2012-2015	Yes	Incorporated	RSR	Car Components
AE400483*	AG2013/5663	Preston Motors (Parts Sales) Pty Ltd Geelong Branch Enterprise Agreement 2012-2015	Yes	Incorporated	RSR	Car Components
AE405480	AG2013/11404	Prixcar Services Enterprise Agreement 2013	Yes	Incorporated	RSR	Vehicle
AE404988*	AG2013/9846	RACV Surveillance and Incident Response Officers' Enterprise Agreement 2013 - 2016	Yes	Incorporated	RSR	Vehicles
AE407899	AG2014/5754	Skilled Group Limited SWS Vehicle Industry Labour Hire Enterprise Agreement 2014	Yes	Incorporated	Vehicle Manufacturing	Car Components
AE400032	AG2013/344	Stillwell Trucks Workshop, Parts & Detailing Enterprise Agreement 2013-2015	Yes	Incorporated	RSR	Truck
AE406720	AG2013/12235	Volvo Group Truck Operations CAB and Vehicle Assembly – Wacol Enterprise Agreement	Yes	Incorporated	Vehicle Manufacturing	Truck
AE410014*	AG2014/8744	Volvo Group Trucks Operations (GTO) Logistics Services (a division of Volvo Group Australia Pty Ltd) Collective Agreement 2014	Yes	Incorporated	Vehicle Manufacturing	Warehousing
AE400688	AG2013/5869	Woodbridge Australia Group (South Australia) Enterprise Agreement 2013	Yes	Incorporated	Vehicle Manufacturing	Car Components
AE414950	AG2015/2786	Autonexus Enterprise Agreement – VIC Vehicle Operations	Yes	Incorporated - as at commencement date of Agreement	RSR	Car Components
AE408661	AG2014/6424	Adtrans Truck Centre Pty Ltd – Laverton North Enterprise Agreement 2014	Yes	Incorporated - as varied from time to time	RSR	Trucks
AE400526	AG2013/687	BPW Transpec Pty Ltd Enterprise Agreement 2016	Yes	Incorporated - as varied from time to time	Vehicle Manufacturing	Truck/Car Components
AE402969	AG2013/7476	Brisbane Bus Build Pty Ltd Enterprise Agreement 2013	Yes	Incorporated - as varied from time to time	Vehicle Manufacturing	Bus
AE408747	AG2014/6467	Cardina Transit Workshop Enterprise Agreement 2014-2017	Yes	Incorporated - as varied from time to time	RSR	Bus

ID	Agreement No.	Title	Incorporates VMRSR?	How Award is referenced	Industry	Type	
AE404869	AG2013/2809	Custom Coaches (Sales) Pty Ltd Enterprise Agreement 2013	Yes	Incorporated - as varied from time to time	Vehicle Manufacturing	Bus	
AE410198	AG2014/1923	Dana Australia Pty Ltd Campbellfield Enterprise Bargaining Agreement 2014	Yes	Incorporated - as varied from time to time	Vehicle Manufacturing	Components	
AE411329	AG2014/9808	Eastcoast Truck and Bus Service Centre Workshop Enterprise Agreement 2014-2017	Yes	Incorporated - as varied from time to time	RSR	Truck & Bus	
AE413590	AG2015/2338	Fleet Support Services Enterprise Agreement 2014-2018	Yes	Incorporated - as varied from time to time	RSR	Car	
AE408742	AG2014/6471	Invicta Bus Service Workshop Enterprise Agreement 2014-2017	Yes	Incorporated - as varied from time to time	RSR	Bus	
AE411172	AG2014/9825	Ivanhoe Bus Company Workshop Enterprise Agreement 2014-2017	Yes	Incorporated - as varied from time to time	RSR	Bus	
AE898930	AG2012/14015	Kmart Tyre and Auto Service South Australia Enterprise Bargaining Agreement 2012	Yes	Incorporated - as varied from time to time	RSR	Vehicles	
AE416355	AG2015/6437	Kmart Tyre and Auto Service Victoria Enterprise Agreement 2015	Yes	Incorporated - as varied from time to time	RSR	Vehicles	
AE404675	AG2013/10771	Krueger Transport Equipment Pty Ltd Enterprise Agreement 2013-2016	Yes	Incorporated - as varied from time to time	Vehicle Manufacturing	Truck Components	
AE407011	AG2014/3674	Mader International Pty Ltd Enterprise Agreement	Yes	Incorporated - as varied from time to time	Vehicle Manufacturing	Emergency Vehicles	
AE408749	AG2014/6478	Peninsula Bus Lines Workshop Enterprise Agreement 2014-2017	Yes	Incorporated - as varied from time to time	RSR	Bus	
AE408745	AG2014/6468	Portsea Passenger Services Workshop Enterprise Agreement 2014-2017	Yes	Incorporated - as varied from time to time	RSR	Bus	
AE898907	AG2012/13808	Preston Motors (Campbellfield and Epping) Enterprise Agreement 2012-2015	Yes	Incorporated - as varied from time to time	RSR	Vehicle	
AE405825	AG2013/11438	Scania Australia Brisbane Branch Enterprise Agreement 2013-2015	Yes	Incorporated - as varied from time to time	RSR	Truck/Bus	
AE409405*	AG2014/6941	Steinborner Holden Union Collective Agreement 2014	Yes	Incorporated - as varied from time to time	RSR	Car	
AE413286	AG2015/685	Toyota Boshoku Australia (Interior Systems) Enterprise Agreement 2015	Yes	Incorporated - as varied from time to time	Vehicle Manufacturing	Car Components	
AE411175	AG2014/9796	Ventura Bus Lines (Oakleigh) Centre Workshop Enterprise Agreement 2014-2017	Yes	Incorporated - as varied from time to time	RSR	Bus	
AE408743	AG2014/6476	Ventura Transit Workshop Enterprise Agreement	Yes	Incorporated - as varied from time to time	RSR	Bus	
AE415376	AG2015/415	Volgren Australia Pty Ltd Dandenong Enterprise Agreement 2015	Yes	Incorporated - as varied from time to time	Vehicle Manufacturing	Bus	
AE898783*	AG2012/13865	Volgren Australia Pty Ltd Malaga Enterprise Agreement 2012	Yes	Incorporated - as varied from time to time	Vehicle Manufacturing	Bus	

ID	Agreement No.	Title	Incorporates VMRSR?	How Award is referenced	Industry	Type	
AE406004	AG2013/11812	Zupps Southside Pty Ltd, Rocklea and Caboolture Enterprise Agreement 2013	Yes	Incorporated - as varied from time to time	RSR	Car	
AE893659*	AG2011/12859	Flexiglass Challenge Collective Agreement 2011	Yes	Incorporated /applies in conjunction with Award as varied from time to time	Vehicle Manufacturing	Truck/Car Components	
AE408559*	AG2014/1215	Fleetwood Recreational Vehicles Enterprise Agreement 2014	Yes	Incorporated /read in conjunction with Award as varied from time to time	Vehicle Manufacturing	Caravans	
AE414874	AG2015/3862	Wallenius Wilhelmsen Logistics Australia Pty Ltd Enterprise Agreement 2015	Yes	Incorporated as at commencement date of Agreement	RSR	Warehousing	
AE885994	AG2011/9549	Jarvis Enterprise Bargaining Agreement	Yes	Incorporated/ read in conjunction with	RSR	Cars	
AE406657	AG2014/3445	Futuris Automotive Interiors (South Australia) Workplace Agreement 2013	Yes	Incorporated/ read in conjunction with - as at commencement date of Agreement	Vehicle Manufacturing	Car Components	
AE408158*	AG2014/4124	S & R Auto Action Car Repairs Pty Ltd Employee Collective Agreement 2014	Yes	N/A	RSR	Car	
AE407645	AG2014/4121	Holden Special Vehicles 2014-2015	Yes	Read in conjunction with	Vehicle Manufacturing	Car	
AE407645*	AG2014/4121	Holden Special Vehicles Collective Agreement 2014 - 2015	Yes	Read in conjunction with	Vehicle Manufacturing	Special Vehicles	
AE401800*	AG2013/1422	Meritor Heavy Vehicle Systems Agreement 2013	Yes	Read in conjunction with	Vehicle Manufacturing	Truck/Car Components	
AE411528	AG2014/8201	Yapp Australia Automotive Certified Agreement 2014-2017	Yes	Read in conjunction with	Vehicle Manufacturing	Car Components	
AE407076	AG2014/3657	Venture Campbellfield Enterprise Agreement 2014	Yes	Underpinned	Vehicle Manufacturing	Car Components	
AE409382	AG2014/6737	Neovia Logistics Pty Ltd – Laverton Site Enterprise Agreement 2014	No* (formerly Caterpillar Australia)	N/A	Vehicle Manufacturing	Warehousing	
AE411040	AG2014/9734	GM Holden Ltd Enterprise Agreement 2014	No*	N/A	Vehicle Manufacturing	Car	
AE404856	AG2014/10941	Iveco Trucks Australia Ltd and AMWU - Vehicle Division (Production) and NUW Agreement 2013-2016	No*	N/A	Vehicle Manufacturing	Truck	
AE400965	AG2013/5907	Nissan Warehouse Enterprise Agreement 2013	No*	N/A	Vehicle Manufacturing	Warehousing	
AE413208	AG2015/2143	Toyota Motor Corporation Australia (TMCA) Workplace Agreement (Altona) 2015	No*	N/A	Vehicle Manufacturing	Car	
AE413209	AG2015/2130	Toyota Motor Corporation Australia (TMCA) Workplace Agreement (Port Melbourne, Sydney and Regions) 2015	No*	N/A	Vehicle Manufacturing	Warehousing	
AE411324	AG2014/9805	Ford Australia Enterprise Agreement 2014 (Vehicle Division and General Salary Roll)	No *	N/A	Vehicle Manufacturing	Car	
AE415528	AG2015/4755	Kenworth Trucks – Enterprise Agreement 2015	No *	N/A	Vehicle Manufacturing	Truck	
AE410409	AG2014/9012	Nissan Casting Australia Pty Ltd Enterprise Agreement 2014-2018	No *	N/A	Vehicle Manufacturing	Car Components	
AE403150	AG2013/7714	PACCAR Parts Enterprise Agreement 2013	No *	Referenced in part	RSR	Truck Components	

ID	Agreement No.	Title	Incorporates VMRSR?	How Award is referenced	Industry	Type	
AE899867	AG2013/4347	Mercedes-Benz Australia/Pacific Pty Ltd, Mercedes-Benz Commercial Vehicle Laverton and Somerton ("MBCV Laverton and Somerton") Enterprise Agreement 2012	No	N/A	RSR	Truck/Car	
AE410490	AG2014/9103	ULR Automotive Group (Spare Parts) Enterprise Bargaining Agreement 2014	No	N/A	RSR	Car	
AE412862	AG2015/2004	Linfox Victoria (Workshop – AMWU – Vehicle Division) Enterprise Agreement 2014	No		RSR	Truck Components	
AE409843	AG2014/6762	Denso Automotive Systems Australia Pty Ltd 2014	No	Award term is incorporated in Agreement (cl 5.6)	Vehicle Manufacturing	Car Components	
AE413544*	AG2015/2294	AES Equipment Solutions Enterprise Agreement 2015	No	Excludes Award	RSR	Mining equipment	
AE412060*	AG2014/10763	ECB PTY LTD SINGLE ENTERPRISE AGREEMENT 2014	No	Excludes Award	Vehicle Manufacturing	Truck/Car Components	
AE413932*	AG2015/992	General Dynamics Land Systems - Australia Pty Ltd Employee Collective Agreement 2015 - 2019	No	Excludes Award	Vehicle Manufacturing	Defence Vehicles	
AE898091*	AG2012/11415	McConnell Seats Australia Enterprise Agreement 2012	No	Excludes Award	Vehicle Manufacturing	Bus	
AE401617*	AG2013/1331	NB Industries Enterprise Agreement 2013	No	Excludes Award	Repair and Maintenance	Vehicles	
AE410222*	AG2014/1728	The Burt and Campbell Enterprise Agreement 2014 - 2018	No	Excludes Award	RSR	Truck/Bus	
AE401462*	AG2013/6291	TT Assembly Workplace Agreement 2013	No	Excludes Award	Vehicle Manufacturing	Car Components	
AE410200	AG2014/6843	Aisin Agreement 2014	No	N/A	RSR	Car Components	
AE410929	AG2014/8847	ATAP Derrimut Enterprise Agreement 2014	No	N/A	RSR	Truck/Car Components	
AE412413*	AG2014/8343	Australasian Port Services Pty Ltd Enterprise Agreement 2014-2018	No	N/A	Repair and Maintenance	Port equipment	
AE404933	AG2013/10795	AutoNexus Enterprise Agreement Greystanes Warehouse Operations 2013	No	N/A	RSR	Car Components	
AE406478	AG2013/12752	Ceva Logistics (Edinburgh Park SA) Enterprise Agreement 2013	No	N/A	Vehicle Manufacturing	Warehousing	
AE406351*	AG2013/12886	GPC Welshpool Distribution Centre Agreement 2013	No	N/A	Vehicle Manufacturing	Warehousing	
AE402038*	AG2013/7087	Luxton Plant Enterprise Agreement 2013	No	N/A	RSR	Earthmoving equipment	
AE415769	AG2015/3883	Menzies International Contract Cleaning Enterprise Agreement 2015	No	N/A	Vehicle Manufacturing	Cleaning	
AE897563	AG2012/8104	Mercedes-Benz Australia/Pacific Pty Ltd Commercial Vehicles Enterprise Agreement 2012	No	N/A	RSR	Truck/Car	
AE415059	AG2015/1355	Mitsubishi Motors Australia Ltd (Sydney Parts Distribution Centre) Enterprise Agreement 2015	No	N/A	Vehicle Manufacturing	Warehousing	
AE897789	AG2012/11350	O'Brien @ Automotive Network Enterprise Agreement 2012-2015	No	N/A	RSR	Glass	
AE895125*	AG2012/1870	Reggie Blake Mobile Auto Electrical Enterprise Agreement	No	N/A	RSR	Vehicles	
AE899276*	AG2012/13358	Scania Australia Pty Ltd South Australian Enterprise Agreement 2012-2015	No	N/A	Vehicle Manufacturing	Truck/Bus	
AE899348	AG2012/13171	TT Steel Centre Enterprise Agreement 2013	No	N/A	Vehicle Manufacturing	Car Components	
AE410677	AG2014/9104	ULR Automotive Group (Workshop) Enterprise Bargaining Agreement 2014	No	N/A	RSR	Car	
AE415616	AG2015/4247	Volvo Group Australia Retail, Governmental Sales and VMR Enterprise Agreement 2015	No	N/A	RSR	Truck	
AE411604*	AG2014/9619	WesTrac Pty Ltd (NSW and ACT Product Support) Enterprise Agreement 2014	No	N/A	RSR	Earthmoving equipment	
AE410427*	AG2014/8988	WesTrac Pty Ltd (NSW and ACT Warehouse) Enterprise Agreement 2014	No	N/A	RSR	Earthmoving equipment	
AE403134*	AG2013/7822	WesTrac Pty Ltd (Western Australian Service Operations) Enterprise Agreement 2013	No	N/A	RSR	Earthmoving equipment	
AE410588	AG2014/9160	ZF Lemforder Australia Pty Ltd Wages Employees Agreement 2014	No	N/A	RSR	Car	

IN THE FAIR WORK COMMISSION

FAIR WORK ACT 2009

Matter No: AM2014/93

s.156 4 Yearly Review of Modern Awards- review of the Vehicle Manufacturing, Repair, Servicing and Retail Award 2010

Applicant: Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union" known as the Australian Manufacturing Workers Union (AMWU) - Vehicle Division

STATEMENT OF ANDREW DETTMER

I ANDREW DETTMER of _____, in the State of _____ will affirm and say as follows:

BACKGROUND AND SUMMARY OF CREDENTIALS

1. I make this statement from my own knowledge except where I have indicated otherwise. Where I make a statement based on information provided to me, I believe the information is true and correct
2. I was born _____ and am _____ years old.
3. I qualified as a laboratory technician and commenced working as such in 1976 at Melbourne University. I joined various unions and became a rank and file activist.
4. I commenced employment at the Australian Railways Union as an Industrial Officer on 14 April 1986.
5. I commenced working with the Association of Draughting Scientific and Technical Employees (ADSTE) on 10 October 1988, as Federal Industrial Officer.
6. ADSTE amalgamated with the Amalgamated Metals Workers Union on 1 April 1991. On amalgamation I became a National Industrial Officer of the Technical and Supervisory Division (TSA) and in 2000 I became the Assistant National Secretary of the of the TSA division of the amalgamated union.
7. In 2001 I became the Assistant State Secretary of the Queensland Branch of the Union and in 2003 became the State Secretary.
8. In 2012 I was elected as the National President of the AMWU.

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9. I hold a number of board positions, including ACTU representative to SafeWork Australia (2012-current), board member of the Industry Capability Network, and board member of The Australia Institute.
10. I have been involved in Australian Industry Participation policy and vocational education and training policy for many years, seeking to improve the productive performance of Australia's manufacturing and construction industries and the role of workers and their representatives.
11. I was a member of the board of QMI Solutions (formerly the Queensland Manufacturing Institute) as an appointee of the Queensland Government and was a member of Industry Capability Network Queensland (2009-12), Construction Skills Queensland (2006-12) the Queensland Training and Employment Recognition Council (2006-2011), and Skills Queensland (2009-2012).
12. I was also a member of the Enterprise Connect Manufacturing Advisory Committee (2007-12) and Chair of Manufacturing Skills Queensland and its predecessor organisations (2002-12). I was a board member on the Australian Workforce and Productivity Agency from (2012-2014), prior to its abolition.
13. As the AMWU's international officer, I represent the union at many international conferences and delegations, including those convened by IndustriALL Global Union.
14. I served as Honorary ALP QLD State President from 2007-2012.
15. During my 28 years with ADSTE and the AMWU I have developed a working knowledge of the modern Manufacturing and Associated Industries and Occupations Award 2010 (Manufacturing Award) and the Vehicle Manufacturing, Repair, Service and Retail Award 2010 (Vehicle Award). I am aware of the broad issues currently facing both the broader manufacturing industry and those specific to the vehicle industry.

History of the awards

16. The relevant pre-modern awards in the vehicle industry were:
 - (a) *the Vehicle Industry Award 2000 ("the VIA")*; and
 - (b) *the Vehicle Industry Repair, Services and Retail Award 2002 ("the RSR Award")*. The principal award in the manufacturing industry was the *Metal, Engineering and Associated Industries Award 1998 ("the Metals Award")*

Overlapping Coverage and the Part 10A Award Modernisation process

17. Extensive submissions regarding the history of the stand alone VIA from its inception in the 1920s can be found in the Award Modernisation submissions of
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the AMWU Vehicle Division.¹ However, it is clear from the very early stages that there has been overlapping coverage between the VIA and the Metals Award, in particular to the manufacture of automotive parts and components. This was primarily managed by responsiveness of employers to a particular award under the pre-modern award system.

18. Extensive submissions were made during the award modernisation process on this matter, and the AMWU, and AMWU Vehicle Division in many instances made inconsistent submissions relating to coverage by the respective awards. A summary of the matter can be found in the oral submission of Julius Roe of 22 June 2009.² Mr. Roe established that the great majority of auto component and rolling stock manufacturers and repairers were covered by the metals award.
19. Nevertheless, the general submissions of all parties supported the continuation of a separate VIA as the distinct classification structures and other differences between the VIA and Metals Award were seen as distinct and incompatible. The commission adopted this view stating:

[272] As to coverage it is important that the making of the new award not unsettle the relationship which has existed satisfactorily for many years between the awards of the vehicle industry and the award regulating manufacturing. The fact of complementary exclusion provisions in the Modern Vehicle and the Manufacturing Modern awards is intended to have this effect. Where claims have been made for additions to the scope of coverage of the Modern Vehicle Award, to include, for example, boats and bicycles, our approach has been to maintain the status quo.³

20. As such, the modern Vehicle Award and the Manufacturing Award maintain the pre-modern status quo. In particular, clause 4.3(a)(iii) of the Vehicle Award still makes reference to the pre-modern Metals Award:

4.3 (a) This award does not cover: [...]

(iii) an employer who, on 31 December 2009 was engaged in the manufacture and/or assembly of metal parts or accessories and was bound to observe the Metal, Engineering and Associated Industries Award 1998;⁴

A single vehicle award

21. During the draft phase of the award modernisation process the AMWU Vehicle division, and other parties, proposed the modernisation of separate successor

¹ AMWU Vehicle Division Submissions AM2008/62 – 22 April 2009 pp. 3 - 8

² AM2008/61 Transcript—22 June 2009 - Melbourne PN353 - PN363

³ [2009] AIRCFB 826

⁴ MA000089 Vehicle Manufacturing, Repair, Services and Retail Award 2010

awards to the VIA and RSR Award. Ultimately the Commission took the decision to combine the vehicle awards into a single award, albeit one with distinct parts, stating:

[224] [...] The proposed award is intended to deal comprehensively with the vehicle manufacturing sector and the repair, services and retail sector. It is our preliminary view that there will be operational benefits in having one industry award as there are many common conditions. Where necessary separate provision is made for distinct parts of the industry. Given the nature of much post-production and after-sale modification of specialised vehicles, it is anticipated that access to a single source of industrial regulation will assist employees and employers alike.⁵

22. The modernisation Full Bench saw great utility in ordering the minimum wages of the vehicle industry under one modern award. The Part 10A Full Bench considered merging vehicle manufacturing with the modern manufacturing award as evidenced by the question put by Vice President Watson:

PN94 VICE PRESIDENT WATSON: Perhaps the more relevant question in the context of modern awards is why shouldn't the entire manufacturing sector be covered by one award?⁶

23. The award modernisation bench considered and rejected the proposition before the parties in the current matter. The views of the parties and the nature of the industry remain generally as presented during the Part 10A proceedings. The AMWU can find no cogent reason, nor has it observed any occurrence warranting, the overturning of a decision and outcome based on extensive submissions and the overwhelming desire of both industry employers and employees to retain a separate vehicle industry award

Objections to the integrated Manufacturing and Vehicle Industry Award

Fails to create a simpler award structure

24. While the objective of the Bench is to simplify the current Vehicle Award, the result is to simply move the complexity to the Manufacturing Award. The Manufacturing Award is already the result of the consolidation of numerous awards, and retains significant complexity, including two methods of classifying employees engaged under the Award. The existing complexity presents a challenge to workers and employees that rely on the award to understand their working conditions and pay structure. The proposed additions to the award only further add to its complexity, and are contrary to the modern awards objective for a "simple, easy to understand... modern award system..."⁷

⁵ [2009] AIRCFB 450

⁶ Transcript Ibid, PN94

⁷ Modern Awards Objective s.134 Fair Work Act 2009

Separate classification structures

25. In particular, despite the view of the bench that the Manufacturing Award is “highly compatible”⁸ with the vehicle manufacturing conditions, the two awards maintain distinct conditions and classification structures. The exposure draft maintains a separate schedule for vehicle manufacturing employees, creating two distinct streams of vehicle employees and non-vehicle employees. This creates 3 methods for classifying employees under the Award with employers mainly, and employees having to determine the appropriate stream.
26. Reviewing the submissions made during award modernisation, it is clear that a key concern about what differentiated the VIA and the Metals Award was these differing classification structures. The proposed changes only further confuse this issue by juxtaposing the schedules into the same award.
27. Additionally, the approach of simply sectioning off a group of workers under the same award was largely rejected by the Bench when the Manufacturing Award was created. In particular, the parties, in an attempt to maintain conditions of the numerous predecessor awards, had put forward such proposals⁹ which were rejected by the bench which stated:

[57] The draft manufacturing award substantially reflects the draft award prepared by the Australian Industry Group (Ai Group) and the union parties to the current Metal Industry Award. However, the opportunity has been taken to amalgamate the various parts of the draft award prepared by those parties, so that there are not separate parts for different occupations. Further, differing terms and conditions of employment between occupations have been rationalised as much as possible. An annualised salary arrangement clause has also been included for some supervisors with a view to clarifying the arrangements that can currently apply to such employees.¹⁰

28. In particular, further confusion is created in this instance because in many cases the workers perform the same jobs (e.g. metal fabrication) but in different industries, suggesting a separate award is more appropriate.

Confusion of coverage within a single award

29. The exposure draft lacks clarity and a simple explanation of which workers fall under the vehicle manufacturing stream, and which workers do not. The draft only includes one definition of a “vehicle manufacturing employee”, this is in

⁸ [2015] FWCFB 7275 at [3]

⁹ See for instance [AIG party draft](#) of 22 August 2008 which maintains separate parts from the Metals award in the form of separate parts for “draughting, planning and technical employees” and “manufacturing and associated industries/employees”

¹⁰ [2008] AIRCFB 717

Schedule I and occurs on the second last page of the exposure draft. The definition is ultimately unclear, as it refers to employees under the classification structure in Schedule B, however, as noted in the discussions about coverage overlap, Schedule B does not exhaustively delineate coverage of workers as many workers are in the same occupations. Schedule A provides little help stating "The classification structure and definitions set out in clauses A.2 and A.3 apply to employees covered by this award, except where otherwise specified." While 15.4(d) states "Where an employee's level is not determined by the Metal and Engineering competency standards, the classification level is to be determined by the classification structure and definitions at Schedule A.1 to A.3 and by reference to the indicative tasks in Schedule A.4."

30. Furthermore, the exposure draft simply inserts the coverage provision from 4.3(a)(iii) of the Vehicle Award:

3.10 Manufacturing and Associated Industries and Occupations does not mean: [...]

(j) an employer who, on 31 December 2009 was engaged in the manufacture and/or assembly of metal parts or accessories and was bound to observe the Metal, Engineering and Associated Industries Award 1998.

31. This is plainly false as it gives the perverse result of excluding core coverage of the Manufacturing Award from itself, and illustrates the difficulty of delineating the coverage of the two classification structures with similar occupational coverage once they sit in the same award.

Single industry covered by multiple awards

32. As noted by the bench when creating a single vehicle award, the primary driver was to maintain consistency across the vehicle industry. By separating coverage across two awards inevitably some employers will now be required to apply both the Manufacturing and proposed RS and R award, adding to confusion and costs for employers, contrary to the modern awards objective to consider "employment costs and the regulatory burden".¹¹

33. Additionally, the provisions separating the RSR coverage in the current Vehicle Award have not been brought across creating confusion about what would be covered by the new RSR Award.

Confusion in reading award

34. The exposure draft in many cases makes it more difficult to understand which term will apply in a given case. For instance, the meal breaks provisions of clause 13.4(b) states "An employer may stagger the time of taking meal and rest breaks to meet operational requirements" this appears to generally apply

¹¹ Modern Awards Objective s.134 Fair Work Act 2009

to all workers, however, an additional “Special provisions for vehicle manufacturing employees” conditions in clause 13.6(a) specifies staggering “within one hour”. A person reading the award therefore could easily miss this additional entitlement because the two clauses do not read as though they are mutually exclusive. Employers and employees cannot be expected to understand and apply the principles of the more specific provisions overriding the more general i.e. *generalia specialibus non derogant*.

35. In other cases, clauses are given that appear mutually exclusive, such as clause 12.3 *Ordinary hours of work—continuous shiftworkers—employees not engaged in vehicle manufacturing* and clause 12.4 *Ordinary hours of work—continuous work shifts—employees engaged in vehicle manufacturing*, however, other terms of the award have not been changed such as clause 13.2 which refers to *Paid meal breaks—continuous shiftworkers*. It’s not clear if this refers to all continuous shiftworkers, or only one stream.
36. Additionally, the exposure draft maintains both the C and V pay scales, with the C scale going down as wages increase while the V scale goes up. So for instance the C10 trade rate is equivalent to the V5 level, while the lowest C14 rate is equivalent to the V1 level. This creates confusion, and increases the chance that incorrect pay rates could be given from the award.
37. The addition of a possible 17.5% casual loading rate also adds significant complexity to interpreting casual provisions and reading the summary wage tables. A similar provision from the pre modern Draughting, Production Planning and Technical Workers Award 1998 was excluded from the modern manufacturing award.

Substantive changes to the interpretation of the award

38. Attached and marked “A” is a table identifying a non-exhaustive summary table of changes, or terms that may interact with inserted clauses. While some individual terms are beneficial for workers, it would be expected that these would be opposed by employer parties. As such, it would not appear that there is any justification to support the changes in their entirety.

Conclusion

39. The AMWU rejects the proposed integrated award.

ANDREW DETTMER
11 May, 2016

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FAIR WORK COMMISSION**Attachment A****Matter No:** AM2014/93**Re Applicant:** "Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union (Vehicle Division)" known as the Australian Manufacturing Workers' Union**WITNESS STATEMENT OF ANDREW DETTMER**

Table of differences

Clause of Exposure Draft	Comment
6.4(b)(iii) and (iv)	<p>Introduces a 17.5% casual loading for employees engaged in the technical field, without limitation to vehicle manufacturing employees. This is significantly below the 25% loading currently applying to technical workers engaged under the Manufacturing Award and to employees engaged under all other modern awards (excluding the Business Equipment Award 2010. Additionally, a similar term of the Metals Award for draughting, planning and technical employees¹²</p> <p>Additionally it is not clear that clause 6.4(b)(iii) is in exclusion of 6.4(b)(i).</p>
6.7 and 6.8	<p>Introduce requirements for the supervisor/trainer/coordinator field again without limitation to vehicle manufacturing employees. These are already defined in Schedule A. They also make reference to a contract of employment on a "weekly, fortnightly, bi-monthly, or monthly basis" without defining what this means, and without clarification of how this interacts with clause 23 relating to payment of wages.</p>
7.4	<p>Provisions for boilermakers etc. confusing as these would be covered by engineering tradesperson under existing classification structure and would add to the complexity of reading the award for workers under this occupation.</p>
10.4	<p>Beneficial change which provides generally for payment of fees for trainees.</p>
13.6(c)	<p>Duplication of terms for meal breaks for technical</p>

¹² See clause 4.2.3 and clause 8.2 of the *Metal, Engineering and Associated Industries Award, 1998 – Part II - Draughting, Planning and Technical Employees*

	employees in clause 13.3.
15.1(d)	Error appears 72% of C3/V10 rather than C3/V12.
15.1(a)	Driving classifications are general and could apply to other occupations covered by the Manufacturing Award, may be of interest to other unions as an expansion of coverage to the Award.
15.3	Potentially beneficial as it gives protection from reduction of salary when on lower grade duties, however, we would argue this is already implied by other terms of the award
15.4(b)	Beneficial term requires classification and changes to classification to be given in writing.
23.1	Provision for junior traces is confusing as this would also be a draughting occupation covered by the award.
26.2(g)	Boiler attendant addition may be beneficial.
26.2 (j)(k)(l)	Provide for new allowances for inspectors, carpenters and goggles. Unclear about how these interact with existing allowances, and if these are all purpose allowances.
27.4	Does not include Retail Employees Superannuation Trust (REST) from the current Vehicle Award
28.1(b)	Clause for payment for day workers on public holidays inserts exclusion to clause 28.2 which relates to payment for shift workers on public holidays. Unclear if this is a drafting error.
28	Unclear if this clause also applies to vehicle manufacturing employees or if they should refer exclusively to clause 29 Shiftwork and rates—vehicle manufacturing employees. Titles of clauses not exclusive.
31.9	Detrimental clause allows for deferment of annual leave for technical workers without limitation to vehicle manufacturing employees.
34.6	Day off in lieu for public holidays worked for technical workers without limitation to vehicle manufacturing employees.

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WITNESS STATEMENT

I, Ian Curry, National Coordinator, Skills Training & Apprenticeships for the Australian Manufacturing Workers' Union, (the Union) of _____ in the State of _____, affirm as follows:

Background

1. I am the National Coordinator, Skills Training & Apprenticeships employed by the Australian Manufacturing Workers' Union. I have been employed in this role since 2001.
2. I am responsible for prosecuting the AMWU's policies associated with skills, training and apprenticeships.
3. The contents contained herein are true and correct to the best of my knowledge, save where I otherwise indicate. My comments are made on the basis of my knowledge and experience over 26 years with Award Restructuring and skill related classification structures in the metal and manufacturing industries.
4. Amongst other things, I am the Deputy Chair of the Manufacturing Skills Australia (MSA) Board. Manufacturing Skills Australia was, until 31 December 2015, the Industry Skills Council responsible for facilitating the development and maintenance of the Metal & Engineering Industry Training Package (MEM05), the Industry Training Package that underpins the operation of the Manufacturing & Associated Industries & Occupations Award classification structure.
5. The actual development and maintenance work was carried out by a sub-committee of the MSA Board which I chaired.
6. A change of Commonwealth policy led to the abolition of Industry Skills Councils and their replacement with new bodies known as Skills Service Organisations (SSO's).
7. An SSO covering the Training Packages that MSA had been responsible for has yet to be appointed. In the interim Manufacturing Skills Australia has been contracted to the Commonwealth to act as a Skills Service Organisation and it is now responsible for servicing the MEM05 Industry Reference Committee that has carriage of the development and ongoing maintenance of MEM05.

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8. I currently chair the MEM05 Industry Reference Committee.
9. From approximately January 2011 to approximately August 2013 I was one of two MSA Observers to the Auto Skills Australia (ASA) Board which developed and maintained the Automotive Manufacturing Training Package and the Automotive RS&R Training Package. At that time ASA was a subsidiary wholly owned by MSA.
10. I am very familiar with the components that comprise Training Packages and am familiar with the role that competency standards and qualifications play in industrial classification structures such as the Classification Structure in MA000010, having participated in the original joint MTIA/MTFU Model Implementation Program that led to the establishment of the relationship between competency standards and classifications and the Award procedures for implementation of competency standards following Award Restructuring.

The Exposure Draft

11. I have been asked to comment on proposals contained in an Exposure Draft of MA000010 as it relates to the integration of Vehicle Manufacturing, Repair, Services and Retail Award 2010 (MA000089) Classifications and Skill Level Definitions into MA000010.
12. The Classification Structure contained in MA000010 has its basis in the Award Restructuring process undertaken in the late 1980's and early 1990's.
13. At that time a significant number of classifications were translated through a broad-banding process from the old Metal Industry Award into a new skills based classification structure according to an agreed process designed to collapse over 360 classifications based on tasks, into a new structure designed to facilitate classification based on competency, without destroying the industrial value of the existing worker's classification.
14. The broad-banding occurred based on the "*transfer of employees from existing classifications to their appropriate new classification*"¹ in the new structure. (Emphasis added)
15. The schedule for that translation was published in the Award Restructuring Implementation Manual produced by the industrial parties to the Award at that time.
16. In preparing this statement I have reviewed the Comparative Schedule of old classifications and new broad-banded wage levels contained in the Guide² in order to compare the treatment of former Metal Industry Award classifications transferred into the then new Award, now MA000010, with the Exposure Draft treatment of the same classifications from MA000089.

¹ Award Restructuring Implementation Manual page 3

² Appendix 6 – Award Restructuring Implementation Manual page 79

17. While, in the main, the treatment of classifications is generally consistent, there are a number of anomalies that reside toward the bottom of the structure, particularly at the C14/V1, C13/V2 and C12/V3 levels that are indicative of the inconsistent approach taken in the respective Awards.
18. The Vehicle Manufacturing Classifications and Skill Level Definitions contain various classifications that are aligned to the respective levels.
19. The following table samples the treatment in the Exposure Draft compared with the treatment in the former Metal Industry Award when allocating those same classifications into the new skills based classification levels that is the structure currently contained in MA000010.

Exposure Draft	Metal Industry Award Translation
V1 (C14)	
Greaser and/or Oiler	C13 or C12
Electroplater 3 rd Class	C13
Machinist 3 rd Class	C13
Shot and/sand Blast Operator	C12
V2 (C13)	
Dogman	C12 (Mobile equipment C11)
Trades Assistant	C12
Heat Treatment	C12
V3 (C12)	
Machine Setter	From C12 – C10
Moulder	From C13 – C10

20. The treatment of the respective classifications and their allocation to particular levels of the MA000010 structure is inconsistent and this is perhaps explained by the significantly different approaches that the respective industries have taken to the construction of their qualifications and competency standards over time.

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21. The classifications in MA000089 include definitions that specify the requirements for classification at the respective classification levels. They are, in the main, based on a minimum training requirement, indicative tasks and the specification of the classifications at that level.
22. There are inconsistencies between some of those skill level definitions and the classifications in MA000010 to which they have been aligned which include, for example, the absence of indicative tasks in the classifications related to the former Metal Industry Award classifications translated into what has become MA000010 following award restructuring, and the inconsistencies between the Training Packages designed for the respective industries.
23. The MA000010 classifications are points based as are the qualifications specified as the minimum training requirement, where MA000089 classifications are based on:
- (a) Particular combinations of 'skill' and 'knowledge' units which are constructed to an entirely different rationale which could lead to inconsistent classification results and confusion. Units of competency in the national training system, which is the basis for classification in MA000010 are now referred to as either Core units or Elective Units. I could not find any reference in the Exposure Draft to the source of these knowledge or skill units.
 - (b) 'Modules' of training towards higher level qualifications. The absence of definition in relation to what constitutes appropriate modules is inconsistent with the MA000010 approach which is directly linked to the relevant training package and the qualifications and competency units contained in the Training Package. Since 1998, Training Packages developed by industry have progressively replaced the former modular approach to nationally recognised training that was developed by the training system.
24. Many of the MA000010 provisions specify Metal & Engineering Training Package qualifications and or requirements that are not relevant to MA000089 classifications and other provisions that will result in inconsistencies or confusion such as the references in the exposure draft at, for example:
- 15.4 (c) refers to the procedure for classifying employees which is specific to the construction of the Metal & Engineering Training Package and the points and banding system used in that Training Package to quantify quantum and level of skill respectively, as well as the Guide for Implementing Competency Standards in the Metal & Engineering Industry which is a document published by the MSA.
- 16 (3) refers to the Diploma of Engineering, a qualification specific to the Metal & Engineering Training Package

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25.7 refers in a number of places to the attainment of XX% 'of the total competency points' for the relevant qualification

25. I note in passing that Clause 10.4 of the Exposure Draft relating to the payment of fees for Trainees which is inconsistent with the provisions of MA000010 at 15.11 (i) & (ii) which provide for the reimbursement of fees for apprentices.
26. I make this statement freely and to the best of my knowledge and recollection. I am prepared to rely on the contents of this statement and give evidence before any proceedings before Fair Work Australia.

Signed:

Ian Curry

Signed

11/5/2016

Dated

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IN THE FAIR WORK COMMISSION

FAIR WORK ACT 2009 (Cth)

Matter No: AM2014/93

S.156 4 Yearly Review of Modern Awards - Review of the *Vehicle, Manufacturing, Repair, Services and Retail Award 2010*

WITNESS STATEMENT OF DAVID SMITH

I, **David Smith** of _____, in the State of _____ make this statement based on my own knowledge and belief and I say as follows:

Relevant background

1. Since 2012 I have concurrently held the following positions:
 - (a) Assistant National Secretary of the Australian Manufacturing Workers Union (**AMWU**);
 - (b) National Divisional Secretary of the AMWU Vehicle Division (**Division**);
 - (c) Chairperson of the Federation of Vehicle Industry Unions (**FVIU**);
 - (d) Board member of the MTAA Superannuation Fund.

2. From 1996 to 2012 I held the position of Assistant National Divisional Secretary of the Division.

From 1993 to 1996 I was employed in the Victorian Branch of the Division as a work change adviser. For approximately fourteen years prior to that I worked in both the crash repair industry and the aerospace industry.

3. In my role as National Divisional Secretary of the Division I provide leadership and direction on behalf of the Division's approximately 10,000 members. This includes being responsible for the day-to-day direction of staff employed in the Division and for ensuring the policies of the AMWU and the Division are developed and implemented. I also undertake a number of other duties in my role including the following:
 - (a) negotiating with individual employers and industry/employer associations, in the context of enterprise bargaining and otherwise, in relation to improvements in members' wages and conditions and other matters such as the vocational education and training, superannuation and industry policy;

- (b) representing and coordinating matters on behalf of the Division in relation to proceedings before the Fair Work Commission and other jurisdictions such as the Federal Court of Australia;
 - (c) liaising with governments at both the State and Federal level over issues such as industry policy, superannuation, industrial relations, vocational education and training and local procurement policy;
 - (d) preparing and coordinating advice to State branches of the Division in relation to changes in relevant legislation, and award variations including award modernisation, and industry policy and developments;
 - (e) promoting appropriate policy initiatives within the Division such as cultural diversity and affirmative action including appropriate gender representation on decision making bodies;
 - (f) representing the Division at the level of the AMWU National Council and at National Conferences.
4. In my role as chairperson of FVIU I lead negotiations on behalf of all unions who are members of the FVIU as well as coordinating claims to be negotiated with employers and advice to the membership of the FVIU. On behalf of the FVIU I also liaise with the ACTU on a broad range of issues.
5. I also have extensive experience in the vehicle industry vocational education and training area and have been involved in this area for many years. Until its closure around 2011 I was a member of the board of Automotive Training Victoria.

Vehicle industry in Australia

6. The AMWU has membership across a broad range of areas within the vehicle industry. The vehicle industry in Australia includes the following:
- (a) motor vehicle manufacturing;
 - (b) motor vehicle component manufacturing;
 - (c) motor vehicle aftermarket component manufacturing;
 - (d) caravan and campervan manufacturing;
 - (e) body builders for emergency and similar types of vehicles including firetrucks ambulances and disability access vehicles;
 - (f) body builders for railway carriages;
 - (g) truck manufacturing and truck component makers;
 - (h) bus vehicle manufacturing and bus component makers;
 - (i) automotive warehousing;
 - (j) automotive retail;

- (k) crash repairers;
 - (l) motorcycle and motor vehicle repair and servicing.
7. As can be seen from the above the vehicle industry is far broader than motor vehicle manufacturing and motor vehicle component manufacturers.

Award coverage in the vehicle industry

8. The submissions of the AMWU in this matter set out in some detail the history of award coverage in the vehicle industry. It is clear that from as early as the 1920's awards have been made that apply to the vehicle industry only because of the specific needs and requirements of the vehicle industry in Australia. These specific needs and requirements relate in particular to the organisation and method of work and training arrangements and career structures developed over time to facilitate skill acquisition and promote efficiency and productivity.
9. Throughout much of this early period the relevant award was the *Vehicle Industry Award 2000 (the VIA)* and its various predecessors.
10. On occasions during this early period predecessors of the Fair Work Commission (**the Commission**) dealt with applications on the part of some employer parties to have the VIA incorporated into the *Metal, Engineering and Associated Industries Award 1998 (the Metals Award)*. Not only were these applications rejected on each occasion due to the specific needs and requirements of the vehicle industry, exclusions were included and maintained in the VIA and the Metals Award to minimise overlapping coverage between the two.
11. As late as 2009 the Full Bench of the Commission dealing with Award Modernisation resisted attempts to have the VIA incorporated into the Metals Award as part of the Award Modernisation process. The Full Bench subsequently made the *Vehicle Manufacturing, Repair, Services and Retail Award 2010 (the VMRSR Award)*. The VMRSR Award incorporated the VIA and the *Repair, Services and Retail Award 2002 (the RSR Award)*. The RSR Award was first made by the Commission in the 1960s to cover employees and employers in the repair, services and retail sectors of the vehicle industry.

Why the VMRSR should continue to incorporate section 2 dealing with vehicle manufacturing employees

12. The AMWU opposes the proposal of the Full Bench in the current proceedings to vary the VMRSR Award by removing Section 2 and incorporating it into the *Manufacturing and Associated Industries and Occupations Award 2010 (the Manufacturing Award)*. It does so for the reasons set out below.
- (a) Training arrangements and classification structures in the vehicle industry
13. As previously stated, the training arrangements and classification structures for the vehicle industry and in particular the vehicle manufacturing sector of the industry have been developed over many decades to suit the specific needs and requirements of the industry.

14. Different philosophies have traditionally underpinned the training arrangements and classification structures in the vehicle manufacturing sector of the vehicle industry and those covering the broader manufacturing sector.
15. Employers in the vehicle manufacturing sector from very early on wanted a multi-skilled workforce comprised of employees who could understand and apply their particular production processes and work organisation. This included devolving the quality control functions to the shop floor as part of what is known as 'lean production'. As a result training arrangements and classification structures were developed over the years to meet these specific needs as well providing a path to career progression for employees. These arrangements and structures were essentially based on indicative tasks that lined up with, for example, the production worker classification structure and career path.
16. Employers in the vehicle manufacturing industry did not want the rigidity of the training arrangements and classification structures that applied in the broader manufacturing sector. These arrangements were essentially based on a points system that was very protective of traditional trades qualifications and classifications. Vehicle manufacturing employers did not consider that these arrangements and structures would meet the need for flexibility in the vehicle manufacturing industry including the need for flexibility at the enterprise level.
17. These training arrangements and classification structures do not only underpin the car manufacturing sector but also a range of other areas including truck, bus and caravan manufacturing.
18. In light of these different philosophies and training arrangements and classification structures, I believe that Section 2 of the VMRSR should remain in the VMRSR. The incorporation of Section 2 into the Manufacturing Award would in my view:
 - (a) lead to confusion amongst employers and employees as to what training arrangements and classification structures are to be applied going forward in relation to such matters as enterprise bargaining;
 - (b) result, at least potentially, in a weakening of the training arrangements and classification structures for vehicle manufacturing employees particular those thousands who will continue to be involved in areas such as truck, bus and caravan manufacturing to the detriment of those employees and their career progression. It is likely that over time pressure will mount to apply the broader manufacturing philosophy given that vehicle industry will come to be seen as part of the mainstream manufacturing industry given that it is regulated by the Manufacturing Award;
 - (c) give rise to significant inconsistencies as between the training arrangements and classification structures to apply to employees in the vehicle manufacturing sector and employees in the broader manufacturing sector. I have read the statements of Andrew Dettmer and Ian Curry filed on behalf of the AMWU in these proceedings and I adopt their observations on the different philosophies underpinning the training arrangements and classification structures and the inconsistencies and confusion that would arise in relation to those arrangements and structures in seeking to incorporate Section 2 of the VMRSR into the Manufacturing Award.

(d) Loss of entitlements

The AMWU has analysed the exposure drafts that have been circulated by the Full Bench. The proposed course of action by the Full Bench would result in the significant loss of long-held entitlements for employees in the vehicle manufacturing sector including in relation to rest breaks, accident pay, and time off in lieu. Details of these entitlements are set out in the submissions of the AMWU. I believe it would be highly unfair to remove these hard won employee entitlements as part of the Award Modernisation process.

(e) Enterprise bargaining

For many years my work as a union official has been in the sector of the vehicle industry that manufactures vehicles and vehicle components other than motor vehicles. In this capacity I have had an active involvement in negotiating enterprise agreements and dealing with a range of industrial issues at, for example, Kenworth Trucks, Volvo Trucks, Iveco Trucks and Krueger Transport and PACCAR Trucks. All of these respective enterprises have enterprise agreements in place and these are:

- Kenworth Trucks - Enterprise Agreement EA 2015;
- * Iveco Trucks Australia Ltd and AMWU - Vehicle Division (Production) and NUW agreement 2013-2015;
- Volvo Group Truck Operations, CAB and Vehicle Assembly - Wacol Enterprise Agreement;
- * Krueger Transport Equipment Pty Limited - Enterprise Agreement 2013-2016;
- * PACCAR Trucks - Melbourne Enterprise Agreement.

19. All of the above enterprise agreements (and their predecessors) have been underpinned by the VIA and later the VMRSR Award.

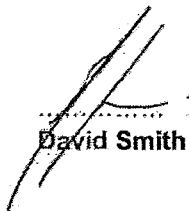
20. In addition, enterprise agreements underpinned by the VMRSR Award exist in a range of other vehicle manufacturing areas including bus manufacturing, recreational vehicle manufacturing and caravan manufacturing. Examples of these include:

- * Brisbane Bus Build Pty Ltd - Enterprise Agreement 2013;
- * Customs Coaches (Sales) Pty Ltd - Enterprise Agreement 2013;
- * Fleetwood Recreational Vehicles - Enterprise Agreement 2014;
- * Nova Caravans Enterprise Agreement 2015-2019.

21. In my experience employers in this part of the vehicle manufacturing industry are very familiar with the VIA and as a consequence are very familiar with Section 2 of the VMRSR Award. This familiarity with the underpinning award has enhanced the efficiency of enterprise bargaining in this part of the vehicle manufacturing industry.
22. The incorporation of Section 2 of the VMRSR Award into the Manufacturing Award will, in my view, give rise to confusion on the part of many employers who are unfamiliar with the complex Manufacturing Award and this will reduce efficiency in terms of the enterprise bargaining process. For example, many employers would find it difficult to understand the multiple and in some cases overlapping training arrangements and classification structures in the Manufacturing Award that would result if Section 2 of the VMRSR Award was incorporated.
23. Further, efficiency and enterprise bargaining in this part of the vehicle manufacturing sector has been enhanced for many companies by having to deal with one award only in relation to their businesses, being the VMRSR Award. These are primarily companies that are involved in, for example, truck manufacturing as well as retail and warehousing. For example:
- Volvo Trucks currently has three enterprise agreements in place covering its manufacturing operations, its retail operations including truck repair shops and pre-delivery work, and its distribution and warehousing operations;
 - PACCAR Trucks has a enterprise bargaining agreements covering part supplies and service centres;
 - Kenworth Trucks (a division of PACCAR) has Enterprise Agreements covering its manufacturing operations and its distribution and warehousing operations.
24. Enterprise bargaining will be rendered less efficient and effective and more confusing if companies like these have to apply two awards being the Manufacturing Award and the varied VMRSR Award in future rather than the VMRSR Award as it currently stands.
- (f) No need for change
25. Based on my long experience in the vehicle industry the VMRSR Award has operated well since its inception in 2010. I am not aware of any complaints from employers about the operation of the VMRSR Award.
26. While the VMRSR Award is a somewhat complex instrument it is reasonably well understood by employers, unions and employees in the vehicle industry. It has been applied by all of the industrial parties without serious complaint for approximately 6 years.
27. In my view the VMRSR Award would not be rendered less complex by the removal of Section 2.
28. The VMRSR Award continues to meet the operating needs of the vehicle industry and there is not in my view any industrial rationale for the substantial amendment of the VMRSR award proposed by the Full Bench in the current proceedings.

Declared at MELBOURNE on 10/5/2016
Before me,

DATED:



David Smith

DEBORAH VALLANCE
MBBS, Med. Reg. #MED0001071632
22 Jones Street, Brunswick, 3056

IN THE FAIR WORK COMMISSION

Matter No: AM2014/93 - 4 Yearly Review of Modern Awards – Vehicle
Manufacturing, Repair Services and Retail Award 2010

Applicant: Automotive, Food, Metals, Engineering, Printing and Kindred Industries
Union” known as the Australian Manufacturing Workers Union (AMWU)
– Vehicle Division

STATEMENT – MaxiTRANS Industries Limited

I Ian Leslie Else of _____ do hereby state as follows:

1. I was born in _____ and I am _____ years old.
2. I am employed by MaxiTRANS Industries Limited as the Group Human Resources Manager. I have held this role since December 2004 and have been employed with the company since February 2003.
3. In the role of Group Human Resources Manager my responsibilities encompass health & safety; employee & industrial relations; wage & salary administration; policy & procedure formulation & implementation; recruitment and training & development.

Key Business of MaxiTRANS

4. The MaxiTRANS group of companies is Australia’s largest supplier of road transport trailing solutions employing over 1,000 people across 31 different sites in Australia and New Zealand plus a panels manufacturing plant in China. MaxiTRANS operations consist of a complementary mix of activities centred on the broad needs of road transport operators. They include manufacture of leading trailer brands, supply and distribution of parts, provision of service and repair support, manufacture of urethane foam and body panel and the sales of new and used trailing equipment.
5. MaxiTRANS Industries is a publicly listed company (since 1998) and in recent years has embarked on a successful strategy to broaden and cement its role as an all-round provider of total transport solutions through acquisitions, joint ventures and partnerships and by undertaking new and complimentary business enterprises.
6. In 1998 Maxi-CUBE, a company listed on the Australian Stock Exchange since 1994, purchased Freighter Industries to create a group that was subsequently renamed

Lodged by the Applicant

Address for service

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MaxiTRANS. The acquisition united two prominent transport trailer brands – Freighter (founded in 1946) and Maxi-CUBE (founded in 1972) – that had pioneered their sectors of the Australian road transport industry. MaxiTRANS has since acquired 4 other leading trailer brands (Hamelex White, Lusty EMS, AZMEB and Peki), along with the Colrain and Queensland Diesel Spares parts businesses.

Current VMRSR Award [KEY POINTS]

7. Prior to the introduction of Modern Awards in 2010, the company operated under both the Vehicle Industry Award 2000 and the Vehicle Repair, Services and Retail Award 2002, depending upon the main activity at any given site. The Company also had numerous Enterprise Bargaining Agreements, Australian Workplace Agreements and Individual Transitional Employment Agreements in place. Since 2010, the Vehicle Manufacturing, Repair Services and Retail Award 2010 (VMRSR Award) has covered our employees and been the underlying Award for our various Enterprise Agreements.
8. In Australia we have two sites that are purely manufacturing, one site that is totally repair, service & retail, four sites that have combined manufacturing, repair, service and retail and twenty-three retail sites.
9. The introduction of the VMRSR Award has allowed for a far more efficient and consistent management and administration of Award obligations by the Human Resources department, payroll and site management, and underpinning all of our Enterprise Agreements.

View of the proposed merge with MA10

10. If the Commission proceed with the proposed split and merge with MA10, the decision is likely to have a substantial impact to our business. For example, we currently have one industrial instrument (VMRSR Award) whose terms and conditions are incorporated into five separate Enterprise Agreements. If the proposed split goes ahead, this will create a change in the underlying instrument upon which each of our agreements rely. We will be forced to apply different sets of conditions for the separate parts of our business, where since 2010 we only had to be concerned with the terms of the VMRSR Award. This will return the status to what it was prior to the introduction of Modern Awards in 2010 – confusion, inconsistency, prolonged decision-making and increased management & administration.
11. The majority of our industry is currently contained within one industrial instrument (VMRSR Award) and there is just one reference point regardless of whether it is manufacturing, repair, service or retail. If the Award is split, we then have two

reference points and it seems to make no sense to simply "cut" the manufacturing clauses from one Award and "paste" them into another Award. The Vehicle Manufacturing conditions will become integrated throughout MA10 and will become more difficult to identify, research, manage and administer.

12. We regularly transfer employees between various parts of our business and in doing so, it rarely necessitates a change in Award coverage however this will now change, creating additional administrative tasks, costs and confusion with employees.
13. There are potentially both additional costs and cost savings in splitting the Award. So on balance, we would again question the necessity of imposing additional costs on the Company and / or reducing benefits to employees. Reducing benefits is always a difficult process, especially when they form part of an Enterprise Agreement and therefore quite often those benefits are either never realised, or delayed in implementation.

Conclusion

14. We do not support and do not agree with the proposed split of the Awards. The introduction of Modern Awards in 2010 significantly simplified the administration and management of Awards within our company and also made it simpler for our employees to understand their terms and conditions of employment. The splitting of the Awards will be a retrograde step that is inconsistent with simplifying a process for both employers and employees and not practicable.

Signed 


Ian Else

Group Human Resources Manager – MaxiTRANS Industries Limited

Wednesday, May 11, 2016


Witness

CHARTERED ACCOUNTANT
MEMBER NO: 28545
11/5/2016
AT: 22 EFFICIENT DRIVE
MULANINA VIC 3029.

IN THE FAIR WORK COMMISSION

Matter No: AM2014/93 - 4 Yearly Review of Modern Awards – Vehicle Manufacturing, Repair Services and Retail Award 2010

Applicant: Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union” known as the Australian Manufacturing Workers Union (AMWU) – Vehicle Division

STATEMENT

I Greg Dober of _____ do hereby state as follows:

1. I was born in _____ and I am _____ years old.
2. I am employed by Volvo Group Australia Pty Ltd. I have held this role since January 2015.
3. My position is Vice President – Human Resources.

Key Business of Heavy Vehicle Industry

4. Volvo Group Australia is a leading provider of transport solutions, including manufacture, repair, sales and service of heavy and medium duty vehicles.
5. Volvo Group Australia will continue to operate post the closure of the car industry in Australia.

Current VMRSR Award

6. Traditionally we were covered by the Vehicle Industry Award 2000. Since 2010, the Vehicle Manufacturing, Repair Services and Retail Award 2010 (VMRSR Award) has covered our employees and been the underlying Award for our Enterprise Agreements.

Lodged by the Applicant

Address for service
Attention: National Office – Vehicle Division
Australian Manufacturing Workers' Union
2/251 Queensberry St
Carlton South VIC 3053

Phone: (03) 9230 5791
Email: lena.lettau@amwu.asn.au

THOMAS MARK GONZALEZ
VCA OREGON

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7. We had no difficulty applying the terms of the VMRSR Award. We have geared our business around it.
8. The VMRSR Award assisted the efficient operation of our business and interactions across both manufacture and repair/service sectors.
9. We are familiar with the terms of the VMRSR Award which are predominantly the same across both the RSR and Manufacturing sectors.

View of the proposed merge with MA10

10. If the Commission proceed with the proposed split and merge with MA10, the decision is likely to cause significant impact to our business. For example, we currently have one industrial instrument whose terms and conditions are incorporated into our enterprise Agreements. If the proposed split goes ahead, this will create a change in the underlying instrument upon which our agreements rely. We will be forced to apply different sets of conditions for the separate parts of our business, where before we only had to be concerned with the terms of the VMRSR Award.
11. The change in awards is likely to be a greater administrative and governance burden.

Conclusion

13. We don't support/agree with the proposed split of the Awards.

Signed

Greg Dober

Date

9th May 2016

THOMAS MARK GONKOW
VIA DIRECTOR