

IN THE FAIR WORK COMMISSION

Matter No: AM2019/17

Four Yearly Review of Modern Awards –Finalisation of Exposure Drafts – *Vehicle, Repair, Services and Retail Award 2020*

JOINT REPORT OF:

- **THE AUSTRALIAN INDUSTRY GROUP (AI GROUP)**
- **MOTOR TRADES ORGANISATIONS (MTOs)**
- **THE AUSTRALIAN MANUFACTURING WORKERS' UNION (AMWU)**

17 April 2020

1. This joint report is made pursuant to the directions of Commissioner Bissett issued at the Conference held via telephone link with the Fair Work Commission (**Commission**) on 3 April 2020. The Conference pertained to issues outlined in paragraphs [18] – [27] of the Commission's 23 March 2020 Decision¹ and originally raised in:
 - a. Ai Group's submissions filed on 28 February 2020 relating to the exposure draft of the *Vehicle Repair, Services and Retail Award 2020 (Vehicle Award)* and
 - b. VACC submissions filed on 28 February relating to the exposure draft of the Vehicle Award.
2. The parties agree that structural changes to the exposure draft in the early phases of the 4-yearly review of modern awards combined with the removal of the general exclusion for console operators in the 'meal and rest breaks' provision of the Vehicle Award, as outlined in Ai Group's 28 February 2020 submission may inadvertently result in the following outcomes:
 - a. Clause 26.2² which includes a penalty for working during or without a meal break applying to person principally employed to perform vehicle sales related duties, console operators or to employees on continuous shiftwork.
 - b. Clause 26.4 – Minimum breaks between shifts applying to employees who are excluded from the overtime provision in cl. 24, namely:
 - i. a person principally employed to perform vehicle sales related duties
 - ii. permanent and casual employees employed as driveway attendants, roadhouse attendants and console operators working in fuel retailing establishments
 - iii. other casual employees
 - c. The obligations concerning meal and rest breaks in cl. 26.1 applying to those console operators whose hours are organised pursuant to 27.1(a)(ii) of the exposure draft.

¹ [2020] FWCFB 1541.

² Unless otherwise stated, all clause references pertain to the 20 January 2020 iteration of the Exposure Draft for the *Vehicle Repair, Services and Retail Award 2020*.

3. Ai Group has had discussions with the MTOs and the AMWU. These discussions have confirmed that the abovementioned impacts on the Vehicle Award would constitute a substantive amendment to the current *Vehicle Manufacturing, Repair Services and Retail Award 2010*. As no such variations were intended by the relevant parties nor were the subject of detailed submissions in the course of the 4 yearly review, it is agreed that the Commission should make a variation to the exposure draft to avoid these unintended outcomes.
4. A proposed variation is attached to this report which would resolve these outstanding issues in a manner which is supported by Ai Group and the AMWU (**Annexure A**). It is understood that the MTOs will be providing a supplementary submission indicating these parties' positions with respect to this proposed variation.
5. In the course of the Conference which took place on 3 April 2020, it was suggested that there may be merit in extending the proposed exclusions in cl. 26 of the exposure draft to roadhouse attendants and driveway attendants. Special provisions for these employees which are relevant to meal and rest breaks are contained in cl. 27 of the exposure draft (cl. 43 of the current Award).
6. In order to ensure that the Vehicle Award appropriately deals with the specific circumstances which surround meal breaks for roadhouse attendants and driveway attendants, and as suggested by the Commissioner at the Conference on 3 April 2020, Ai Group has proposed an alternative variation. This is attached to this report and marked **Annexure B**. Owing to the limited timeframe available to the Commission in dealing with this matter and the fact that the variations made in the course of the 4-yearly review as outlined in the parties' submissions have inadvertently altered the meal break provisions as they relate specifically to console operators, Ai Group frames this proposed amendment as an alternative only.
7. For the sake of clarity, the AMWU does not support the proposal in Annexure B at this stage.
8. It is understood that the MTOs intend to make supplementary submissions regarding Annexure B.
9. The parties propose that after an appropriate time has been afforded to the Commission to consider the parties' positions, the Commission inform Ai Group of the outcome of its deliberations to enable an appropriate response to be coordinated.

Ai GROUP

MTOs

AMWU

17 April 2020

Annexure A

Proposed variation to the exposure draft of the Vehicle Repair, Services and Retail Award 2020 to deal with issues raised concerning application of the meal and rest break provision to persons principally employed to perform vehicle sales related duties, employees on continuous shiftwork and console operators

The following variations are proposed for the exposure draft of the *Vehicle Repair, Services and Retail Award 2020*:

24. Overtime

...

24.11 Breaks during and after overtime

~~An employee is entitled to breaks during and after overtime in accordance with clauses 26.3 and 26.4.~~

An employee is entitled to overtime crib breaks in accordance with clause 26.3

24.12 – Minimum break between shifts

(a) When overtime work, including work on a rostered day off or work on a Sunday or a public holiday is necessary, it will wherever reasonably practicable be arranged so that an employee works not more than 14 hours in any period of 24 consecutive hours and so that each employee may have at least 10 consecutive hours off duty in each such 24 consecutive hours.

(b) Subject to the exceptions referred to in clauses 24.8 and 24.9, on the completion of a period of work an employee is required to have a period of 10 consecutive hours off duty from their ordinary working time without loss of pay until recommencing work.

(c) If on the direction of the employer such an employee resumes or continues work without having had 10 consecutive hours off duty, the employee must be paid at **200%** of the minimum hourly rate until released from duty. The employee will then be entitled to be absent for 10 consecutive hours off duty without loss of pay for any ordinary working time occurring during such absence.

...

26. Breaks

26.1 Meal and rest breaks

~~(a) Clause 26.1 will not apply to a person principally employed to perform vehicle sales related duties, or to employees on continuous shiftwork.~~

(a) Clause 26.1 will not apply to a person principally employed to perform vehicle sales related duties, employees on continuous shiftwork or console operators whose hours are organised otherwise than under clause 27.1(a)(i).

...

26.2 Working during or without a meal break

(a) Clause 26.2 will not apply to a person principally employed to perform vehicle sales related duties, employees on continuous shiftwork or console operators.

...

26.4 Minimum break between shifts

~~**(a)** When overtime work, including work on a rostered day off or work on a Sunday or a public holiday is necessary, it will wherever reasonably practicable be arranged so that an employee works not more than 14 hours in any period of 24 consecutive hours and so that each employee may have at least 10 consecutive hours off duty in each such 24 consecutive hours.~~

~~**(b)** Subject to the exceptions referred to in clauses 24.8 and 24.9, on the completion of a period of work an employee is required to have a period of 10 consecutive hours off duty from their ordinary working time without loss of pay until recommencing work.~~

~~**(c)** If on the direction of the employer such an employee resumes or continues work without having had 10 consecutive hours off duty, the employee must be paid at **200%** of the minimum hourly rate until released from duty. The employee will then be entitled to be absent for 10 consecutive hours off duty without loss of pay for any ordinary working time occurring during such absence.~~

Annexure B

Proposed variation to the exposure draft of the Vehicle Repair, Services and Retail Award 2020 to deal with issues raised concerning application of the meal and rest break provision to persons principally employed to perform vehicle sales related duties, employees on continuous shiftwork, console operators, driveway attendants and roadhouse attendants

The following variations are proposed for the exposure draft of the *Vehicle Repair, Services and Retail Award 2020*:

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~~*(b) Subject to the exceptions referred to in clauses 24.8 and 24.9, on the completion of a period of work an employee is required to have a period of 10 consecutive hours off duty from their ordinary working time without loss of pay until recommencing work.*~~

~~*(c) If on the direction of the employer such an employee resumes or continues work without having had 10 consecutive hours off duty, the employee must be paid at **200%** of the minimum hourly rate until released from duty. The employee will then be entitled to be absent for 10 consecutive hours off duty without loss of pay for any ordinary working time occurring during such absence.*~~