



Motor Trades Association of Australia

Australian Motor Trades Industrial Council

Submission to the Award Modernisation Consultations conducted by the

Australian Industrial Relations Commission

1. Introduction

This Australian Motor Trades Industrial Council (AMTIC) submission incorporates the collective views of the motor trade associations and entities in response to the consultation request by the Australian Industrial Relations Commission on the award modernisation process. This submission is prepared by AMTIC in support of award modernisation priority listing for the two awards applying in the retail motor trades sector; the Vehicle Industry Repair Services and Retail Award 2002 and the Vehicle Industry Award 2000.

2. About the Australian Motor Trades Industrial Council

The AMTIC represents the following organisations that were established in the following years:

- Motor Traders Association of New South Wales (MTA NSW) founded in 1910;
- Motor Trade Association of South Australia Inc (MTA SA) formed in 1926;
- Motor Trade Association of Western Australia Inc (MTA WA) formed in 1934;
- Motor Trade Association of ACT Ltd (MTA ACT) founded in 1974;
- Motor Trade Association of Northern Territory Inc (MTA NT) formed in 1984; and
- Service Station Association Ltd (SSA) founded in 1935.

MTA NSW and MTA SA are federally registered Industrial Organisations.

These associations, along with the Australian Automobile Dealers Association are all Members of the Motor Trades Association of Australia (MTAA).

These associations each provide a dedicated range of services, publications, and advisings to their various members to assist in the development and management of businesses in the retail automotive sector. They provide industry training, industrial relations advice, occupational health and safety services and technical advice. In addition, as a collective they are the peak retail automotive trade bodies which represent the industry on a range of issues within their respective State or Territory as well as to the Australian Government.

3. The Industry

The AMTIC Members represent the vehicle retail, service and repair sector and have membership within the vehicle component and body building and manufacturing sector of the Australian automotive industry. The retail motor trades alone nationally consists of over 100,000 businesses with a combined turnover of over \$160 billion and which employ over 308,000 people. AMTIC is therefore the largest representative in industrial matters of small business in Australia.

4. Award Modernisation

4.1 The proposal: Priority Listing for Vehicle Industry

This submission is brief in relation to the Commission's obligations and processes with only key issues raised. The Award Modernisation Request from Government within the "Award Modernisation Process" section at paragraph 4 states that the Commission is to "create modern awards primarily along industry lines, but may also create modern awards along occupational lines as it considers appropriate." At paragraph 9 "The Commission is to have regard to the desirability of avoiding the overlap of awards and minimising the number of awards that may apply to a particular employee or employer."

AMTIC requests that the Commission include the vehicle repair service & retail trades and the vehicle manufacturing industry on the priority list for award modernisation. In doing so AMTIC supports the position presented by the ACTU in exhibit ACTU2 to the point that the

Commission include the vehicle trade and industry in this priority category. AMTIC also supports that part of the ACTU submissions in ACTU 1 which present the basis for identification of priority industries.

AMTIC also points to recent productive discussions it has held with the AMWU (Vehicle Division) and indicates that there is a spirit of cooperation between the respective bodies and a desire to advance this initiative.

AMTIC also believes that there will be a substantial level of cooperation between employer groups to achieve this outcome; in particular of course between those employer representatives who are Members of MTAA. Of course it is also AMTIC's intention to liaise with other interested employer groups throughout the award modernisation process. Employer groups in the automotive industry have a history of working cooperatively.

AMTIC is also aware of some resistance by only two employer groups against priority listing for the vehicle industry awards. This, by itself, should not be taken as an indication of any future lack of cooperation between employer parties through any award modernisation process.

The automotive industry proposal, aside from certain house awards, is to facilitate award modernisation with the two principal vehicle industry awards – one for vehicle manufacturing and the other for the vehicle repair, servicing and retail sector.

4.2 NAPSAs Applying to the Industry

The vehicle repair, services and retail sector (R S & R sector), historically has been serviced by an industry type award covering, substantially, the vehicle retail, service, repair, distribution, reconditioning and parts recycling sectors in the majority of the Australian states and territories. For this sector, several state systems, from which (of course) NAPSA's are derived, have to a large degree maintained fairly common conditions and wage outcomes that are substantially aligned to the principal Federal, Vehicle Industry Repair Services & Retail Award 2002. That situation is likely to smooth the transition and rationalisation process for this sector.

Comparatively in relation to the VIRSR Award 2002, there are in the vicinity of 39 NAPSA's (nine in New South Wales, four in South Australia, 15 in Queensland, 10 in Western Australia and one in Tasmania) across Australia that will need to be considered. Appendix A contains a listing of those NAPSA's. There is also a Federal Clerks (VIRSR) Award, a Federal Vehicle Industry Repair Services and Retail (Long Service Leave) Award 1977, a common rule vehicle award in the Northern Territory and a common rule clerical award in the ACT to be considered in the modernisation process.

4.3 AWAs Applying in the Industry

It is somewhat more difficult to gauge the level of AWA's within the vehicle industry. The table in ACTU 1 at page 22 lists AWA industry statistics which reflect the retail industry having the highest uptake of AWA's. Within that category falls automotive for statistical purposes. In the vehicle industry AWA's prevail more so in certain sectors, such as service stations, and they are also centred within certain geographical areas, such as Western Australia. It is not unusual that in the vehicle industry AWA's may concentrate on only single or limited issues to overcome certain shortcomings in award flexibility. It is also noted that vehicle manufacturing falls within the manufacturing statistics in the same ACTU table.

Notwithstanding NAPSA and AWA coverage, the Commission is not constrained from including in the priority list other industries that it considers appropriate; particularly where there are high levels of consensus. Nor is the Commission limited in the numbers of industries it places within the priority list subject to the resources of the Commission and the parties.

AMTIC understands that the Commission has some resources to assist parties in preparing modernised awards. AMTIC is however prepared, in consultation and negotiation with the AMWU (Vehicle Division), to commence the process of drafting a modernised RS&R award immediately the Commission confirms that the vehicle industry awards are on the priority list for modernisation. However when the priority list is established, AMTIC understands that the Commission will provide guidance on addressing interstate differences and differences in conditions between the federal awards and NAPSA's and to the extent that the Commission is able to assist in that, it would be welcomed by AMTIC.

The R S & R sector comprises many small businesses. Members of the MTAA recognise the need to advance this initiative with a view to having adequate time to allow the MTAA Members to undertake an education program and to provide adequate time for the sector to adopt and promote the new modern award.

4.4 Vehicle/Parts Retailing is an Integral Part of Vehicle Industry

It is AMTIC's view that maintaining vehicle industry awards through the award modernisation process is in keeping with the Minister's request as quoted above. This outcome would deliver a modern award along industry lines that also meets the requirements of the trades and industry. For example the retail parts element of the vehicle industry mainly services the vehicle repair industry, albeit parts and accessories are sold at retail to the public. It is not unusual for parts and accessory sales establishments to have fitting facilities as these operations rely on a complete service and differing skill sets with

varying degrees of multi-skilling. The other retail product sales element is the vehicle sales function. This aspect of sales is done generally within a much larger automotive industry business that incorporates pre-delivery, accessory fitting, vehicle servicing and repairs, vehicle detailing and in some establishments includes other functions such as smash repair and/or service station type facilities.

Vehicle refuelling stations within which the principal activity is petrol retailing, inter-related with a number of other vehicle sector services including mechanical, car-washing, detailing and so on, is well established within the vehicle service sector of the vehicle industry. There are a number of decisions of this Commission to that end.

Indeed the R S & R sector is heavily reliant on trade skills and training due to the very different skill requirements when compared to ordinary or general retail. In this regard even the parts sales function offers a trade qualification of "Parts Interpreter Specialist" – the apprentice in this would undertake a sizable part of the automotive engineering trade training to acquire the knowledge necessary to undertake the parts and accessories sales role.

The R S & R sector is also very different to ordinary or general retail in that the R S & R sector sells its services through its labour to the consumer. Its services are delivered on site and off site – as in and for, breakdowns, home service and client on-site servicing (for example, at mines or on farms). The essential service nature of the vehicle trades requires breakdown services and fuelling operations to be constantly available to the public, motoring organisations and key clients such as the transport industry. The parts and components sector responds mainly to the service sector in this regard. The vehicle R S & R sector is highly regulated and licensed in some jurisdictions.

Therefore vehicle retail is very much integrated and established within the broader vehicle industry. The Commission has the discretion to determine the award coverage of an industry along the industry lines proposed by AMTIC.

There is a clear case in history of a Federal industry award for the vehicle R S & R sector that has delivered industry efficiencies for employers and employees. It is the submission of AMTIC that a modern award should apply to each of the vehicle trades and industry.

As suggested in paragraph 11 of the Commission's Statement, a logical commencement point for the vehicle trades and industry would be with the "principal Federal awards"; the Vehicle Industry Repair Services and Retail Award and the Vehicle Industry Award (in the case of manufacturing).

5. Support for the Draft Timetable

AMTIC supports the draft timetable as published by the Commission. AMTIC recognises the scale of this challenge. However, it believes this is a sensible timetable presented by the Commission, if the Commission and the parties are to achieve the ambitious agenda and timelines set by the Australian Government.

The AMTIC Members commit to providing and applying the resources necessary to the endeavour to achieve those outcomes within the timelines proposed.

6. Establishment of a Peak Industry Council or Negotiating Committee

AMTIC commits to the establishment of a consultative committee in relation to the award modernisation process. AMTIC recognises that that committee needs to have representatives of the AMWU (Vehicle Division) and AMTIC employer representatives. This committee may need also to consult with other employer groups who have an interest in the two vehicle industry awards.

7. Award Flexibility Clause

The Award Modernisation Request includes guidance to the Commission in relation to the preparation of a model flexibility clause at paragraph 10. Therein it states that that the clause is to “enable an employer and an individual employee to agree on arrangements to meet the genuine individual needs of the employer and the employee.” In AMTIC’s view this requires that a model clause refer to the method by which an individual employee and employer may come to an agreement.

In addition, the Commission has an important responsibility in the process of preparing a model clause to “ensure that the flexibility clause cannot be used to disadvantage the individual employee.” It is anticipated that the clause itself would need to attempt to address this obligation.

It is important that any new model flexibility clause does not reduce existing flexibilities that are incorporated within existing award clauses that over time have proven to work well without issue.

In general, provided the outcome agreed to between the employer and the employee does not provide a lesser outcome to the employee when comparing the total remuneration received by the employee than what would otherwise arise under the award, then this situation should be seen as not disadvantaging the employee.

Clearly the Commission has before it proposals on award flexibility clauses from both the ACTU and from employer organisations (ACCI and AiG). As noted above AMTIC supports the need for flexibility in awards and it would not wish to see any new arrangement reduce existing flexibilities. AMTIC would be pleased to negotiate with the AMWU (Vehicle Division) the terms of an award flexibility clause, which while supporting any principles that the AIRC endorses, will provide both employers and employees within the retail motor trades the flexibility and protections desired by both parties.

AMTIC considers that the following issues will need to be considered in the context of an appropriate award flexibility clause:

* *record-keeping*

There should be record keeping requirements placed on the employer so that any error or disadvantage, real or perceived, which may arise, can be assessed, determined and resolved. A copy of any agreement is to be provided to the employee.

* *employee's right to representation*

Any clause should state that representation or the seeking of further advice is a right of the employee in relation to award flexibility changes. There should be no obligation on employers to arrange such representation.

* *providing information to employees when process is an employer-driven one*

In cases where the employer requests flexibilities, beyond what might already be available under an award, a copy of the award flexibility clause must be provided by the employer to any employee with whom the employer intends to raise and discuss award flexibility arrangements so that the employee is aware of the processes and their options, rights and obligations.

The employer should also be required to provide at some stage prior to the agreement a written copy of the employer proposal, the impact of the changes proposed both from a

working arrangements perspective and an earnings perspective to the employee taking into consideration language differences. Any agreement should be documented and filed with a copy provided to the employee.

* *employee should be required to place request in writing*

An employee request should be in writing from the employee to the employer and the agreement documented and kept on record with payroll and/or employee records. All the employer should be required to do here is provide a copy of the award flexibility clause. Any agreed arrangements are to be put in writing and kept by the employer and a copy provided to the employee.

**Australian Retail Motor Trades Industrial Council
of the MTAA National Secretariat
Canberra**

6 June 2008

Appendix A

W.A. State Awards Operating as 'NAPSA's - Relevant to the Motor Trades

- Metal Trades (General) Award.
- Vehicle Builders Award.
- Motor Vehicle (Service Station, Sales Establishments, Rust Prevention & Paint Protection) Industry Award.
- Shop & Warehouse (Wholesale & Retail Establishments) State Award.
- Clerks (Wholesale & Retail Establishments) Award.
- Transport Workers (Passenger Vehicles) Award.
- Transport Workers (General) Award.
- Cleaners & Caretakers Award.
- Restaurant, Tearoom & Catering Workers Award.
- Commercial Travellers & Sales Representatives Award.

NSW State Awards Operating as NAPSA's (for purposes of vehicle industry application) include:

- Coachmakers & Road and Perambulator State Award.
- Metal & Engineering & Associated Industries State Award.
- Vehicle Industry Repair Services & Retail State Award.
- Vehicle Salesman State Award
- Clerical & Administrative Employees State award.
- Transport Industry State Award.
- Storeman & Packers State Award
- Metal Trades Training Wage State Award.
- Rubber Workers State Award.

QLD State Awards Operating as NAPSA's as they apply to the Vehicle Industry

<i>Award</i>	<i>Type of Employees Covered</i>
Commercial Travellers Award	Sales representatives taking orders but not selling goods from vehicle
Clerical Employees Award	Clerk, receptionist, telephonist, book-keeper, secretary
Engineering Award	Motor mechanic, panel beater, spray painter, auto electrician, fitter, welder, engine re-conditioner, tradesman's assistant
Garage and Service Station Attendants Award	Driveway attendant, console operator,

(Excluding South-east District)	lube attendant, car cleaner, detailer, tyre fitter, roadhouse attendant
General Stores, Warehousing and Distribution Award	Storeworker and packer, fork lift driver
Miscellaneous Workers Award	Office/building cleaner, watchman, caretaker
Motor Drivers Etc. Award - Southern Division	Courtesy car/bus drivers
Motoring Services Award - South-eastern District	Driveway attendant, console operator, roadhouse attendant, car park attendant, lube operator, car cleaner, detailer, tyre fitter (in premises not having retread facilities)
Motor Vehicle Salesperson's Award - State	Motor Vehicle salesperson, agricultural machinery salesperson
Passenger Vehicle Drivers Award N'thn and Mackay	Drivers of courtesy cars, buses
Retail Industry Award	Spare parts salesperson, aftermarket salesperson
Rubber and Plastics Award	Tyre fitter (in premises having re-treading facilities), buffer, builder (tyre) moulder, fibreglass worker
Storeworkers and Packers Award - Northern and Mackay Division	Storeworker and packer, fork lift driver
Transport, Distribution and Courier Industry Award -Southern Division and Northern & Mackay	Delivery driver
Van Salesperson's Awards	Sales Representative selling goods from vehicle

Tasmania

Automotive Industries Award

South Australia

Clerks (South Australia) Award

Retail Industry (SA) Award

Vehicle Industry (SA) Repair, Service & Retail Award

Café and Restaurants (South Australia) Award