



Motor Trades Organisations

Application to vary the

Vehicle Repair, Services and Retail Award 2020

**Submission in Reply
(AM2021/4)**

7 May 2021

SUBMISSION IN REPLY ON BEHALF OF THE MOTOR TRADES ORGANISATIONS

1. This submission in reply has been prepared by and is filed on behalf of the Victorian Automotive Chamber of Commerce (VACC), the Motor Traders’ Association of NSW (MTANSW) and the Motor Trade Association of South Australia and Northern Territory (MTASANT) and the Motor Trade Association of Western Australia (MTAWA), (collectively, the Motor Trades Organisations), as an interested party pursuant to the [Directions](#) issued by the Fair Work Commission (the Commission) on 5 March 2021.
2. The Motor Trades Organisations rely on the submission filed on 16 April 2021 and note that the other submissions filed by interested parties in relation to this matter either support or provide no evidence to contradict that submission. It is further submitted that it is evident that whilst the Shop Distributive and Allied Employees’ Association submission is at odds with those from the Motor Trades Organisations and the Australian Industry Group in a number of respects, there is consensus that the history of the *Vehicle Repair, Services and Retail Award 2020* and its predecessors (the Award) and industry custom and practice in the ‘real working world’ should be the guiding principles for determining the intention of the parties in relation to the changes made to Schedule B – and by extension, how this matter should be resolved.

Australian Industry Group (Ai Group) Submission

3. In concordance with the MTO Trades Organisations submission, the Ai Group submission provides a detailed history of the Award that recognizes the special arrangements that apply to casual roadhouse attendants, driveway attendants and console operators. This history is summarized neatly in the Ai Group submission as follows:

“The discrepancy which emerged from the original 1970 Award has been maintained in the current vehicle Award whereby casual driveway attendants, console operators and roadhouse attendants commence receiving adult rates at the age of 20 while permanent driveway attendants, console operators and roadhouse attendants receive adult rates from the age of 21, consistently with other unapprenticed juniors”¹

4. Similarly, the Ai Group submission also provides a detailed history of the definition of roadhouse attendant under the Award, noting that the “20 years and over” age qualifier was at odds with how the Award had applied in practice:

“Regardless of the initial intent behind restricting the definition of a ‘roadhouse attendant’ to employees 20 years of age or older in the 1970 Award, the longstanding status quo has allowed for non-casual roadhouse attendants aged 20 years to be paid junior rates. As such, the current definition is apt to confuse.”²

¹ Ai Group, [Submission](#), 16 April 2021, [24].

² Ai Group, [Submission](#), 16 April 2021, [38].

5. The Motor Trades Organisations do note however, that the Ai Group proposed definition of “adult roadhouse attendant” at paragraph 40 of its submission may not fully address the confusion; and that accordingly, a definition which removes the reference to “adult” and returns to “roadhouse attendant” is to be preferred.³
6. Finally, the Motor Trades Organisations note that the Ai Group submission, in relation to the context of the changes made to Schedule B as part of the 4-yearly Award review process, is in accordance with our own. Namely, that the changes in question contradict the express provisions of clause 16.6 of the Award and occurred as part of a large number of alterations that were intended to be of a technical, rather than substantive, in nature:

“The variations to Schedule B contradict s. 16.6 which provides that the full and part-time console operators, driveway attendants and roadhouse attendants receive junior rates up to the age of 20. At the time the relevant alterations were made, a large number of changes were introduced with a view to resolving minor technical and drafting matters in the final stages of the 4 yearly review. If a substantive change were intended to be effected by the variations, which would be likely to have a significant impact for employers, it would be reasonable to assume that greater discussion of the issue would be present in the submissions drafted by the parties or decisions issued by the Commission.”⁴

Shop Distributive and Allied Employees’ Association (SDA) Submission

7. In contrast to the submissions of the Motor Trades Organisations and Ai Group, the SDA submission elects not to provide any analysis or commentary on the history of the Award prior to 19 December 2016, or to directly address the (adult) roadhouse attendant definitional issue. Rather, the SDA submission simply asserts that:

“The anomaly that has now been pointed out between the wage tables and the wording of some clauses is not one that can undermine the rates that are in the Schedules”⁵

8. In support of this assertion, the SDA appears to rely entirely on its interpretation of the exposure draft process, which in its view leads to a conclusion that the changes to Schedule B reflect the “intention and agreement of the parties”⁶, following a process whereby the wage schedules had been “closely reviewed, examined and agreed between the parties over an extended period of time”⁷.
9. However, as noted in both the Motor Trades Organisations and Ai Group submissions⁸, the evidence relied upon by the SDA does not support a conclusion that there was any such intention and agreement of the parties to introduce such a substantive change at odds with both 50 years of Award history and longstanding custom and practice. Rather, the evidence relied upon suggests only that it was the agreement of the parties to make technical changes needed to reflect the existing status quo.

³ MTO, [Submission](#), 16 April 2021, [3].

⁴ Ai Group, [Submission](#), 16 April 2021,[48].

⁵ SDA, [Submission](#), 16 April 2021, [E].

⁶ SDA, [Submission](#), 16 April 2021, [L].

⁷ SDA, [Submission](#), 16 April 2021, [E].

⁸ See for example, MTO [Submission](#), 16 April 2021, [24]–[30]; and AiGroup, [Submission](#), 16 April 2021,[48].

10. Importantly, this appears to have been inadvertently acknowledged in the SDA submission, where it states:

“... In this award the parties involved agreed on the wage rates that applied under the award. This was a reflection of consideration of the issues and how the previous awards had applied across the industry in the real working world.”⁹

That is, to the extent that it was the agreed position of the parties that Schedule B wage rates would reflect how the previous awards have applied across the industry in the real working world, there can be no doubt that Schedule B is in error.

11. The Motor Trades Organisations submit that this explanation of what was agreed in relation to Schedule B is the only one reconcilable with the otherwise inexplicable decision of the parties as *“experienced operators in the industry”*¹⁰ to not amend the actual wage rate provisions of the Award, for consistency with Schedule B. That is, the reason that there was no amendment to the actual wage rates in clause 16.6 of the Award is because there was no agreed intention of the parties to make such a substantive change to the Award.
12. Further, it can be demonstrated that the proposed solution provided by the SDA at paragraph P and Attachment A of its submission, neither *“clarifies simply the issue before Commission”*¹¹, nor *“aligns the text of the award clause”*¹² with Schedule B, as claimed by the SDA. Specifically, the proposed addition of the words *“(100% of level 1 rate apply at 20 years)”* to the *“roadhouse attendant, required to cook takeaway foods”* classification at 16.6(b) of the Award leads to an outcome whereby a full-time or part-time 20-year-old roadhouse attendant required to cook takeaway foods:
- meets the current definition of *“adult roadhouse attendant”* at clause 2 of the Award;
 - is provided the applicable *“adult” Level 2* rates in the current Schedule B.3.1, B.3.2 and B.3.3;
 - is deemed an *“unapprenticed junior”* under clause 16.6 of the Award; and
 - is paid 100% of the **Level 1** rate under the proposed SDA amendment to clause 16.6(b) of the Award.
13. Therefore, rather than removing the ambiguity, the SDA proposal serves only to exacerbate it – ultimately providing support for the position that the only simple ‘fix’ is to acknowledge that it is Schedule B that is in error, and to amend accordingly.

Conclusion

14. For the reasons set out above, the Motor Trades Organisations submit that the following proposed variation to the *Vehicle Repair, Services and Retail Award 2020* (the 2020 Award), as set out in its submission filed on 16 April 2021, should be adopted by the Commission:

⁹ SDA, [Submission](#), 16 April 2021, [M].

¹⁰ SDA, [Submission](#), 16 April 2021, [N].

¹¹ SDA, [Submission](#), 16 April 2021, [Q].

¹² SDA, [Submission](#), 16 April 2021, [S].

- a. Amend the definition of adult roadhouse attendant in clause 2 of the 2020 Award, by deleting the words “adult” and “of 20 years of age or over” as follows:

~~adult roadhouse attendant~~ means an employee ~~of 20 years of age or over~~ employed in a roadhouse, snack bar, kiosk or restaurant being part of or operated as an integral part of an establishment falling within the area of this award.

Or, in the alternative, delete the definition of adult roadhouse attendant in its entirety.

- b. Amend B.3 at *Schedule B - Summary of Hourly Rates of Pay* of the 2020 Award to reflect the minimum rates for junior 20 year old full-time and part-time employees in the classification of console operators, driveway attendants and roadhouse attendants provided at clause 16.6 of the Award:

- (i) Delete the words “(20 years and over)” from the definition of full-time and part-time adult in B.3.1, B.3.2 and B.3.3 at Schedule B:

Full-time and part-time adult ~~(20 years and over)~~ console operators, driveway attendants and roadhouse attendants

- (ii) Insert junior rates for full and part-time 20-year-old Roadhouse Attendants, Driveway Attendants and Console Operators in B.3.4 and B.3.5 at Schedule B.