

Australian Industry Group

Application to vary the Vehicle Repair,
Services and Retail Award 2020

Reply Submission
(AM2021/4)

7 MAY 2021

Ai
GROUP

AM2021/4 - APPLICATION TO VARY THE VEHICLE REPAIR, SERVICES AND RETAIL AWARD 2020

1. INTRODUCTION

1. These submissions are made by the Australian Industry Group (**Ai Group**) in accordance with the [Directions](#) issued by the Fair Work Commission on 5 March 2021 and in response to the [Submission](#) of the Shop, Distributive and Allied Employees' Association (**SDA**) dated 16 April 2021 relating to the *Vehicle Repair, Services and Retail Award 2020 (Vehicle Award)*.
2. Ai Group opposes the SDA's proposed variations to clause 16.6 of the Vehicle Award. The variations proposed would amend the body of the Award to provide that 20 year old full and part-time junior employees engaged as driveway attendants, roadhouse attendants and console operators receive 100% of the relevant adult rate.
3. The SDA's proposed amendments would constitute a substantive variation to minimum rates of pay in the Award which was not explored at the time of the 4 yearly review. Variations which were made to Schedule B in the exposure drafts of the Vehicle Award in the course of the review that are inconsistent with cl. 16.6 were made to address technical and drafting matters and not to vary the rates of pay for 20 year old juniors. If any proposals had been made in the course of the review which would have resulted in a substantive amendment, it is reasonable to suppose that this would have been the topic of submissions and debate on the record.
4. As outlined in Ai Group's [submission](#) from 16 April 2021, clause 16.6 of the Award continues the longstanding status quo that full and part-time driveway attendants, roadhouse attendants and console operators are paid 87.5% of either the Level 1 and Level 4 rate at the age of 20. The inconsistency that has been introduced by the variations made to B.3.1 – B.3.5 of the Award in the course of the 4 yearly review do not demonstrate the Commission's intent to make a substantive variation. The SDA's submission seeks to correct an

inadvertent error which arose out of the 4 yearly review in such a way which would unfairly increase costs for employers.

5. We urge the Commission not to make the variation proposed by the SDA on the grounds that the amendments proposed in its submission would alter the award in a manner which was not contemplated by the parties in the recent review and would be very unlikely to reflect current practice by companies covered by the Vehicle Award.
6. The Vehicle Award should be amended to remove the inconsistency that has arisen between clause 16.6 and other provisions of the Award as outlined in Ai Group's 16 April 2021 submission.

Reflecting the “parties’ approach”

7. The SDA's submission refers to employees who are 20 years old and employed as driveway attendants, roadhouse attendants and console operators being paid as adults as the “parties’ approach”. At its highest, this statement elevates silence on the issue of increasing the rates of pay for this subset of Award-covered workers to the level of agreement.
8. The purpose of the tables summarising the hourly rates of pay in Schedule B of the Award is to reflect entitlements found in the body of the Award. As outlined in paragraphs [44] – [49] of Ai Group's 16 April 2021 submission, the variations to Schedule B which resulted in the present inconsistency were made while parties were addressing technical and drafting matters in the latter stages of the review.
9. The simple fact that the variations to the exposure draft which removed the junior rates for 20 year old driveway attendants, roadhouse attendants and console operators from Schedule B was noted in the table summarising applicable amendments in the 14 October 2019 exposure draft as “parties agreed changes” should not distract from the fact that at this stage, many changes were being made which were minor and technical in nature. The inconsistency that has inadvertently arisen as a result of the variation should not be interpreted as tacit agreement to a substantive variation which would alter the longstanding status

quo that full and part-time driveway attendants, roadhouse attendants and console operators are not paid the full adult rate under the Vehicle Award until the age of 21.

10. To the extent that any common approach may be deduced from the materials available from the relevant stage of the 4 yearly review, it would not encompass a variation that would be consistent with the SDA's proposed amendments.
11. It is unsurprising, given the inadvertent nature of the change, that advice from the Fair Work Ombudsman, in the form of its Pay Guide for the Vehicle Award, continues to reflect the rates provided for in cl. 16.6 with 20 year old junior driveway attendants, roadhouse attendants and console operators receiving 87.5% of the applicable adult rate (**See Annexure A**). The FWO's Pay Guide is likely to reflect the current practices of employers who would not have anticipated such an increase in rates of pay applicable to relevant employees as a result of the 4 yearly review.

Submission of 29 May 2019

12. The SDA claims that the agreed changes referred to in issue 4 of the 'agreed amendments' document referenced in the [AMWU's 29 May 2019 submission](#) demonstrate acquiescence of the parties to full and part-time driveway attendants, roadhouse attendants and console operators receiving adult rates from the age of 20.
13. The agreed changes referred to in the AMWU's submission noted that the words "(20 years and over)" had already been inserted in clause B.3.1. The parties' agreement to include the words in B.3.2 and B.3.3 appears only to have been to ensure that the headings were consistent across these provisions. No discussion of consistency with cl. 16.6 or any substantive amendment to the rates payable to 20 year old junior employees appears in the submission.
14. The agreed changes annexed to the 29 May 2019 submission primarily dealt with technical and drafting matters and referencing errors. No intent may be derived from the parties' agreed changes that a substantive amendment was to result from the variations to the headings in clauses B.3.1 – B.3.3.

15. The variations made have resulted in an anomaly where the rates in Schedule B do not reflect those to which junior full and part-time driveway attendants, roadhouse attendants and console operators are entitled in cl. 16.6. As such, Schedule B contains an error and should be corrected consistently with the variations proposed in Ai Group's 16 April 2021 submission.

Submission of Australian Business Industrial (ABL) and the NSW Business Chamber Ltd (NSWBC)

16. The SDA seeks to utilise a [submission](#) filed by ABL/NSWBC on 27 November 2019 to support its position that variations to Schedule B were intended by interested parties to result in an increase in the amount paid to 20 year old full and part-time driveway attendants, roadhouse attendants and console operators.
17. Extracted below is the part of the submission referred to by the SDA:

VEHICLE, MANUFACTURING, REPAIR SERVICES AND RETAIL AWARD

Schedules

54. We support the changes made to the wage tables at Schedule B3.4(a) and B3.6(a).

55. We support the changes made to the wage tables at Schedule B7.1 and B7.2 with respect to the casual Sunday penalty rate.

18. The ABL/NSWBC submission was filed in response to the issue of a large number of exposure drafts by the Commission on 14 October 2019, including the exposure draft of the Vehicle Award. The [14 October 2019 exposure draft](#) included notes provided by the Commission seeking commentary on specific amendments which had been made. These have been reproduced below:

The Commission has inserted 'after midday' after 'Saturday' in clauses B.3.4(a) and B.3.6(a) for consistency with clause 27.4(a). Parties are asked to confirm the incorporation of this change in accordance with the timetable issued in [2019] FWCFB 6077 at [36].

...

The Commission has amended the rates in the Sunday column in clauses B.7.1 and B.7.2 for consistency with clause 28.2(c). Parties are asked to confirm the incorporation of this change in accordance with the timetable issued in [2019] FWCFB 6077 at [36].

19. Considering the limited scope of ABL/NSWBC's submission to the matters specifically raised by the Commission in the 14 October 2019 exposure draft, it is illogical to interpret it as express acceptance of a variation which would result in a dramatic pay increase for 20 year old full and part-time driveway attendants, roadhouse attendants and console operators.
20. ABL/NSWBC's submission is consistent with Ai Group's position that the changes to clauses B.3.1 - B.3.5 which contradict the entitlements available under cl. 16.6 of the Vehicle Award inadvertently resulted in an inconsistency that was not anticipated by the parties. Changes to Schedule B at this late stage of the review were largely with a view to accurately reflecting entitlements found in the body of the award. At present, clauses B.3.1 – B.3.5 do not achieve this and need to be varied consistently with Ai Group's submission of 16 April 2021.

Consideration of pre-modern awards

21. At paragraph [M] of its submission, the SDA appears to be asserting that the payment of adult rates for 20 year old full and part-time driveway attendants, roadhouse attendants and console operators is a reflection of how previous awards had applied across the fuel retail industry. This is demonstrably false. The principal awards covering driveway attendants, roadhouse attendants and console operators historically provided junior rates for 20 year old full and part-time employees.
22. The relevant historical background provided in paragraphs [14] – [24] of Ai Group's 16 April 2021 submission reveals that the status quo up to and including the present has been that full and part-time driveway attendants, roadhouse attendants and console operators receive adult rates from the age of 21. Although this marks a distinction with casual driveway attendants, roadhouse attendants and console operators who receive adult rates from the age of 20, the discrepancy dates from at least 1970. The Commission should not assume that the parties agreed to alter the status quo currently preserved by cl. 16.6 of the Vehicle Award in the absence of a clear indication to the contrary.

23. The variation proposed by the SDA would mark a clear break from the longstanding status of full and part-time driveway attendants, roadhouse attendants and console operators who receive adult rates from the age of 21. Such a change is not reflected in earlier awards which formerly applied to the sector.

Conclusion

24. Contrary to the submission of the SDA, the changes made to Schedule B which conflict with cl. 16.6 of the Award were not intended to substantively alter the entitlements available to 20 year old full and part time driveway attendants, roadhouse attendants and console operators.
25. The relevant variations made in the course of the 4 yearly review were intended to reflect existing rates provided for in the body of the Award and were made with a view to resolving technical and drafting matters only. Such alterations to the exposure drafts inadvertently introduced inconsistency within the Award and should not be taken as acquiescence of the parties to a substantive change which would dramatically increase costs for employers.
26. The purpose of the Summary of Hourly Rates of Pay in the Vehicle Award is not to introduce new entitlements but to reflect existing rates present in the body of the Award. If Schedule B fails to reflect cl. 16.6, it must be amended to conform with it. The SDA's proposed amendment would effectively 'lock in' the rates in Schedule B and require a variation to cl. 16.6. Such an approach assumes that the 'tail should wag the dog'.
27. If the SDA's proposed amendments are made, employers will be required to pay an increase which amounts to almost 15% of the current hourly rate for 20 year old permanent driveway attendants, roadhouse attendants and console operators without any consideration of work value. Such an outcome would be grossly unfair and act as a significant disincentive for employment.
28. The inconsistencies that have arisen within the Vehicle Award should be addressed to avoid any further confusion arising with respect to applicable rates

of pay. Ai Group urges the Commission to vary the Vehicle Award in the manner proposed in Ai Group's 16 April 2021 submission.



Pay Guide - Vehicle Repair, Services and Retail Award

[MA000089]

Published 18 February 2021

Pay rates change from 1 July each year, the rates in this guide apply from 01 February 2021.

Information about the definition and operation of allowances, penalties and overtime can be found in the [award](#) and the [Pay and Conditions Tool](#).

The best way to get general pay and conditions advice is to register for [My account](#) on our website. Once you have registered you can ask questions and save replies, view tailored information relevant to you and save pages, pay rates and awards.

Junior - Vehicle industry RS&R - Roadhouse attendant, driveway attendant or console operator - Full-time & part-time - 20 years

Table 1 of 3

Classification	Weekly pay rate	Hourly pay rate	Saturday - before 12 noon	Saturday - after 12 noon	Sunday
Roadhouse attendant required to cook take away meals only	\$659.58	\$17.36	\$17.36	\$26.04	\$26.04
Roadhouse attendant engaged primarily to cook other than take away meals	\$728.70	\$19.18	\$19.18	\$28.77	\$28.77
Driveway attendant	\$659.58	\$17.36	\$17.36	\$26.04	\$26.04
Console operator / Driveway attendant operating a console	\$728.70	\$19.18	\$19.18	\$28.77	\$28.77

Table 2 of 3

Classification	Public holiday	Overtime - Monday to Saturday - first 3 hours	Overtime - Monday to Saturday - after 3 hours	Overtime - Sunday	Delayed meal break / working through a meal break - non-maintenance work - not continuous shiftworkers
Roadhouse attendant required to cook take away meals only	\$34.72	\$26.04	\$34.72	\$34.72	\$26.04
Roadhouse attendant engaged primarily to cook other than take away meals	\$38.36	\$28.77	\$38.36	\$38.36	\$28.77
Driveway attendant	\$34.72	\$26.04	\$34.72	\$34.72	\$26.04
Console operator / Driveway attendant operating a console	\$38.36	\$28.77	\$38.36	\$38.36	N/A

Table 3 of 3

Classification	Afternoon shift - Monday to Friday - not alternating - 5 or more successive shifts	Night shift - Monday to Friday - not alternating - 5 or more successive shifts	Afternoon or night shift - Monday to Friday - less than 5 successive shifts	Afternoon or night shift - Monday to Friday - alternating with afternoons / nights - 5 or more successive shifts	Afternoon or night shift - Monday to Friday - alternating with days only or days & afternoons / nights - 5 or more successive shifts
Roadhouse attendant required to cook take away meals only	\$20.48	\$22.57	\$26.04	\$20.83	\$19.53
Roadhouse attendant engaged primarily to cook other than take away meals	\$22.63	\$24.93	\$28.77	\$23.02	\$21.58
Driveway attendant	\$20.48	\$22.57	\$26.04	\$20.83	\$19.53
Console operator / Driveway attendant operating a console	\$22.63	\$24.93	\$28.77	\$23.02	\$21.58