

Australian Industry Group

4 YEARLY REVIEW OF MODERN AWARDS

Submission – Proposed Exposure Drafts
Vehicle Manufacturing, Repair, Services
and Retail Award 2010
(AM2014/93)

6 May 2016

Ai
GROUP

4 YEARLY REVIEW OF MODERN AWARDS

AM2014/93 – VEHICLE MANUFACTURING, REPAIR, SERVICES AND RETAIL AWARD 2010

1. INTRODUCTION

1. The Australian Industry Group (**Ai Group**) makes this submission in response to the Directions issued by the Fair Work Commission (**Commission**) on 13 April 2016. Those Directions require that interested parties file submissions and any evidence by 6 May 2016 in response to new exposure drafts for the *Vehicle Manufacturing, Repair, Services and Retail Award 2010 (Vehicle Award)* and the *Manufacturing and Associated Industries and Occupations Award 2010 (Manufacturing Award)*. A subsequent extension of time was granted to all parties on 6 May 2016.
2. The vehicle manufacturing industry is one of the largest sectors of Ai Group's membership. Our membership includes the major auto assembly firms as well as virtually all of the significant manufacturers of automotive components.
3. Far more of the first and second tier suppliers to auto assembly firms use the Manufacturing Award than the Vehicle Award. These suppliers previously used the *Metal, Engineering and Associated Industries Award 1998* and/or the *Rubber, Plastic and Cablemaking Industry – General – Award 1998*.
4. The split in award coverage between the various pre-modern awards was a function of union coverage. For example:
 - Factories manufacturing metal auto components whose employees were covered by the Metal Workers' Union (now the AMWU) applied the Metal Industry Award;
 - Factories manufacturing plastic auto components whose employees were covered by the Miscellaneous Workers' Union (now United Voice) applied the Metal Industry Award;

- Factories manufacturing rubber or plastic auto components whose employees were covered by one of the relevant unions that are now part of the National Union of Workers applied the Rubber, Plastic and Cablemaking Award; and
 - Factories manufacturing auto components whose employees were members of the Vehicle Builders' Union (now the AMWU – Vehicle Division) applied the Vehicle Industry Award.
 - The auto assembly firms had their own enterprise awards.
5. The above industrial history is important to understand why there are a large number of vehicle manufacturing operations currently covered by the modern Manufacturing Award and others currently covered by the modern Vehicle Industry Award, with substantially different award conditions applying to the two groups. The industrial history is also important in understanding why after a very vigorously contested award modernisation process, the Award Modernisation Full Bench elected to split the award coverage of manufacturing operations between the two awards, based upon the pre-modern award coverage.
6. Ai Group strongly opposes the Commission's proposal to remove vehicle manufacturing operations from the Vehicle Award and to include all vehicle manufacturing operations under the Manufacturing Award, for the following reasons:
- Since the Manufacturing Award and Vehicle Award came into operation on 1 January 2010, Ai Group has not detected any difficulties with the coverage of vehicle manufacturing operations being split between the two awards (based upon the pre-modern award coverage of businesses) and therefore we see no need to disturb the existing coverage of the two awards.

- The majority of vehicle manufacturing businesses and their employees are currently covered by the Manufacturing Award (e.g. the vast majority of Tier 1 and Tier 2 automotive component manufacturers), but there are also a substantial number covered by the Vehicle Award. We see no need to disturb the award coverage of any of these employers and employees.
- The concept of importing provisions from the Vehicle Award into the Manufacturing Award and applying them to all vehicle manufacturing operations under the Manufacturing Award would have a major adverse impact on the large number of vehicle manufacturing businesses already covered by the Manufacturing Award. This would result in a major increase in costs and loss of flexibility for vehicle manufacturing businesses already covered by Manufacturing Award in several important areas (e.g. maximum shift lengths, the loadings for certain shifts).
- The concept of importing provisions from the Vehicle Award into the Manufacturing Award and applying them to all vehicle manufacturing operations under the Manufacturing Award would have a major adverse impact on the large number of vehicle manufacturing employees already covered by the Manufacturing Award. A completely different classification structure would apply to the 14-level Manufacturing Award classification structure, with the alternative structure linked to a different industry training package than the Metal and Engineering Industry Training Package, and not linked to the metal and engineering industry competency standards.
- The disturbance of award coverage for those large number of vehicle manufacturing businesses currently covered by either the Manufacturing Award or the Vehicle Award will create major winners and losers, and will consequently lead to substantial disruption and disharmony.

- “Vehicle manufacturing” is not able to be readily defined because of the large number of manufactured products that are used in the manufacture of vehicles and components – many of which are used in numerous sectors (e.g. bolts, screws, adhesive etc). Therefore, the concept of having separate award conditions within the Manufacturing Award for vehicle manufacturing employees is highly problematic.
- The major industrial parties representing employers and employees in the vehicle manufacturing sector are Ai Group, the MTAs / VACC and the AMWU, all of which strongly oppose the Commission’s proposal.
- These proceedings are forcing the industrial parties to devote substantial resources to re-running lengthy arguments that have already been run and determined by the Award Modernisation Full Bench, at a time when the 4 Yearly Review is already imposing major and unreasonable demands on their resources. The approach taken by the Award Modernisation Full Bench remains sound and appropriate.
- The proposal is inconsistent with the modern awards objective, inconsistent with s.138 of the *Fair Work Act 2009 (FW Act)* and inconsistent with the principles in the *Preliminary Jurisdictional Issues Decision*¹ for the 4 Yearly Review of Awards.

7. We urge the Commission to abandon its proposal.
8. Ai Group proposes that the hearing on 23 and 24 May 2016 should focus only on the threshold issue of whether the Commission’s proposal to remove vehicle manufacturing operations from the Vehicle Award and include all vehicle manufacturing operations under the Manufacturing Award has merit.
9. Ai Group has not, at this stage, undertaken a line-by-line examination of the new exposure drafts proposed by this Full Bench. This is primarily due to our involvement in numerous simultaneous Review proceedings. The resulting time constraints have regrettably precluded us from doing so. We have,

¹ [2014] FWCFB 1788

however, identified numerous concerns arising from the exposure draft from the Manufacturing Award, which we set out below to highlight the major problems that the Commission's proposal would lead to.

10. If the Full Bench decides, despite the strong opposing views of the major industrial parties, that its proposal will be implemented, we submit that the parties should be given the opportunity to review the exposure drafts in further detail, make submissions regarding any specific issues that arise from that examination and participate in discussions as to the award changes that should be made to each award. As such there should be a separate process for the finalisation of the terms and conditions in the Manufacturing Award and the Vehicle Award.

2. THE MANUFACTURING AWARD PROCEEDINGS BEFORE COMMISSIONER BISSETT

11. Ai Group and other parties are currently engaged in an extensive process before Commissioner Bissett in an endeavour to resolve numerous issues concerning the various iterations of the exposure draft that have been issued by the Commission relating to the Manufacturing Award. The latest exposure draft that the parties have been focussing on in the conferences before Commissioner Bissett was published on 4 November 2015. In response to the latest exposure draft Ai Group has:
 - Filed a detailed submission on 20 November 2015;
 - Filed a detailed submission in reply on 7 December 2015;
 - Participated in a Mention before Commissioner Bissett on 1 February 2016; and
 - Participated in a conference before Commissioner Bissett on 27 April 2016.

12. A further conference is scheduled before Commissioner Bissett on 6 June 2016. In addition, interested parties continue to participate in independent ongoing discussions in an attempt to resolve certain highly contentious issues that have arisen in respect of the Manufacturing Award exposure draft.
13. The submissions and conferences referred to above do not include a number of lengthy submissions, conferences and Full Bench hearings in 2014 and 2015, prior to the 4 November 2015 Manufacturing Award exposure draft being issued.
14. In a statement issued by Commissioner Bissett on 25 February 2016, the Commissioner stated:

“**[1]** Further to the mention of the above matter on 1 February 2015 I have now conferred with the President on matters raised by the parties and can advise as follows.

[2] Subject to paragraph [4] below, the President has directed that I deal with all outstanding matters raised in that part of the Full Bench decision ([2015] FWCFB 7236) in relation to this award and provide a report back to the Full Bench. This includes matters associated with the use of ‘applicable rate of pay’.”
15. In this submission, we have proceeded on the assumption that the Full Bench which is dealing with the vehicle industry matters does not intend to disturb the process that is underway before Commissioner Bissett, as directed by President Ross.
16. Accordingly, this submission only deals with the amendments that have been made to the Manufacturing Award exposure draft in respect of the removal of the vehicle manufacturing sector from the Vehicle Award and the inclusion of all employers and employees in this sector under the Manufacturing Award.

3. RELEVANT AWARD MODERNISATION DEVELOPMENTS

17. During the Award Modernisation Process between 2008 and 2009, there was a great deal of debate about whether or not the manufacture of vehicles and components should be covered by the Manufacturing Award or the Vehicle Award. The four main parties involved in the debate were Ai Group, the VACC/MTAs, the AMWU (as a whole union), and the AMWU (Vehicle

Division).

18. Ai Group's position at the time is set out in the following extract from Ai Group's Stage 3 – Pre-exposure Draft submission of 6 March 2009:

Chapter 26 – Vehicle Industry (Repair, Service and Retail)

294. Ai Group is a party to the *Vehicle Industry (Repair, Services and Retail) Award 2002* and has a substantial membership in this sector. Our members include car dealerships, service stations, motor vehicle repair outlets, national car hire firms and others.
295. Over many decades Ai Group has played a major role in industry negotiations with the AMWU (Vehicle Division) and in AIRC proceedings relating to the *Vehicle Industry (Repair, Services and Retail) Award 2002*.
296. Ai Group supports the retention of a separate *Vehicle Industry (Repair, Services and Retail) Award 2002*. The award's current scope reflects the supply chain and the key sectors of the industry. For example, a motor dealership typically sells cars as well as servicing and repairing them.
297. An appropriate coverage clause for a modern *Vehicle Industry – Repair, Services and Retail – Award 2010* is set out below. The coverage is largely similar to the coverage of the existing award but the wording has been simplified somewhat:

4. Coverage

4.1 *This award covers employers throughout Australia in the Vehicle Industry Repair Services and Retail Industry and their employees in the classifications listed in this award.*

4.2 ***Vehicle Industry Repair Services and Retail Industry*** means:

- (a)** *Businesses whose principal function is selling, distributing, repairing, maintaining, towing, wrecking, servicing and parking of motor vehicles, caravans, trailers of all kinds and the like, together with equipment, parts or components thereof and the supply of running requirements;*
- (b)** *Repair and servicing of motor vehicles in businesses engaged in the motor vehicle rental business; and*
- (c)** *Retailing, handling, retreading, storing, distribution, fitting and repairing of tyres or the like.*

4.3 ***The Vehicle Industry Repair Services and Retail Industry*** does not mean:

- (a)** *Work covered under the Manufacturing and Associated Industries and Occupations Award 2010*

(b) *Work covered under the Vehicle Industry Manufacturing Award 2010.*

4.4 *Where an Employer is covered by more than one award, an Employee of that Employer is covered by the award classification which is most appropriate to the work performed by the Employee and to the environment in which the Employee normally performs the work.*

298. Ai Group opposes any expansion in the coverage of the award to include manufacturing activities. Ai Group has a large number of member companies which manufacture a wide range of vehicle components, parts, and accessories, including:

- Major components of vehicles, such as brake systems, steering systems, engine parts, seats, instruments etc;
- Fasteners and other small parts;
- Agricultural vehicle components and implements²;
- Trailers;
- Bull bars and tow bars;
- Tray backs; and
- Vehicle bodies, to name a few.

299. Some of Ai Group's members carry out the above work under the *Metal, Engineering and Associated Industries Award 1998* whilst others apply the *Vehicle Industry Award 2000*. Manufacturing work is not currently covered under the *Vehicle Industry (Repair Services and Retail) Award 2002* and Ai Group strongly opposes such work being covered under any modern Vehicle Industry Repair Services and Retail Award.

300. Ai Group is a party to the *Clerks (Vehicle Industry – Repair, Services and Retail) Award 2003* which applies only in Queensland. There is merit in considering the inclusion of clerical classifications in a modern Vehicle Industry Repair Services and Retail Award given the nature of car dealerships, tyre outlets and the like. However, Ai Group strongly opposes the inclusion of clerical classifications in awards which apply to manufacturing.

Chapter 27 – Vehicle Manufacturing Industry

301. The vehicle manufacturing industry is one of the largest sectors of Ai Group's membership. Our membership includes the car assembly firms as well as virtually all of the significant manufacturers of automotive components.

² The Agricultural Implement Making Award was incorporated within the *Metal, Engineering and Associated Industries Award 1998* in 1998. The award contains specific provisions relating to this industry in Schedule C.

302. The assembly firms have enterprise awards. The component companies apply either the *Metal, Engineering and Associated Industries Award 1998* or the *Vehicle Industry Award 2000*. Far more of the first and second tier suppliers use the *Metal, Engineering and Associated Industries Award 1998*, than use the *Vehicle Industry Award 2000*.
303. The *Rubber, Plastic and Cablemaking Industry – General – Award 1998* also applies to many automotive component companies (ie. those that make components out of plastic or rubber).
304. The coverage of the Stage 1 Modern Manufacturing Award applies widely to the manufacture and repair of vehicles, as specified in paragraph 4.3(j):
- “4.3 (j) *motor engines, motor cars, motor cycles and other motor driven vehicles and components*”.
305. During Stage 1 of award modernisation the parties were asked to consider the modernisation of awards in the vehicle manufacturing industry in conjunction with the modernisation of awards in the metal and engineering industry, the rubber, plastic and cablemaking industry, and the glue and gelatine industry.
306. Awards applicable to the metal and engineering industry, the rubber, plastic and cablemaking industry, and the glue and gelatine industry were all incorporated within the Modern Manufacturing Industry. The issue of whether a separate award should be made for vehicle manufacturing was deferred until Stage 3.
307. Ai Group supports the creation of a Modern Vehicle Industry Manufacturing Award, given the support expressed for such award by the car assemblers and some component suppliers who are currently using the *Vehicle Industry Award 2000*. However, such award would need to be drafted in a manner which does not disturb the award coverage of automotive component companies currently bound by the *Metal, Engineering and Associated Industries Award 1998* or the *Rubber, Plastic and Cablemaking Industry – General – Award 1998*. These automotive component companies are now covered by the Modern Manufacturing Award, as made at the conclusion of Stage 1 of the modernisation process.
19. When it released the *Exposure Draft – Vehicle Manufacturing, Repair, Services and Retail Award 2010* on 22 May 2009, the Award Modernisation Full Bench said:

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

[226] Submissions were put seeking that the pay and conditions of sales staff in the car rental industry be aligned with those of console operators. We have not accepted this proposal. To do so would segment the sales office staff from the purely administrative/clerical staff of the car rental companies who, with the car rental employers' call-centre staff, will also be covered by the Clerks Modern Award. At this stage it is our view that the sales staff should also be covered by that award.

[227] We draw attention to a number of draft provisions, and seek comment on them. Clause 4.2(a)(ii) has been included in the draft but both its utility and its legal effect are open to question. Clause 51.4 deals with the five day week and is on one view out of date. Clause 13.1 deals with prohibited work for juniors and may be inappropriate in a modern award. We invite any party to submit reasons why the provision might be included. We have not included a payment by results provision.

[228] We accept that the elimination of the differentials from several of the pay rates, casual loadings and shift premiums payable under Queensland and Western Australian NAPSAs will require staged implementation and note the arrangements proposed by the Motor Trades Association of Australia. These will be considered at a later stage.

[229] The relevant pre-reform awards contain different terms for conversion of casuals who have worked full-time hours, for four and six weeks respectively. Such provisions have the capacity to operate inflexibly against the interests of the casual employee and the employer. We have included the conversion provision found in the Manufacturing Modern Award.

[230] Finally we note that appropriate exclusions may be necessary in the coverage clauses of the Manufacturing Modern Award and the RT&D Modern Award."³

20. In response to the exposure draft, Ai Group and the AMWU (as a whole union, represented by its then President Julius Roe) expressed major concerns about the content of the exposure draft.

³ [2009] AIRCFB 450.

21. The following extract from Ai Group's Stage 3 Post-exposure draft submission of 12 June 2009 is relevant:

“CHAPTER 36 – VEHICLE INDUSTRY (REPAIR, SERVICE AND RETAIL) (AM2008/61) & VEHICLE MANUFACTURING INDUSTRY (AM2008/62)

466. Ai Group is extremely concerned about the preliminary views that the Commission has expressed regarding the modernisation of awards in the Vehicle Industry, as set out in the following extract from the Full Bench's Statement of 22 May:

“**[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.”

467. Ai Group urges the Commission to reconsider its preliminary view and substantially amend the coverage of the *Exposure Draft – Vehicle Manufacturing, Repair, Services and Retail Award 2010*. The Commission's preliminary view:

- Does not recognise that the vast majority of vehicle manufacturing organisations (leaving aside the car assembly firms all of which have enterprise awards) are covered under the *Metal, Engineering and Associated Industries Award 1998* and the *Rubber, Plastic and Cablemaking Award 1998*, and are now appropriately covered under the Modern Manufacturing Award;
- Fails to recognise that vehicle manufacturing is one of the largest sectors (in fact, arguably the largest sector) of the metal and engineering industry and the rubber, plastic and cablemaking industry;
- Fails to recognise that relatively few vehicle manufacturing organisations are covered by the *Vehicle Industry Award 2000*, when compared against the number covered by the *Metal, Engineering and Associated Industries Award 1998* or the *Rubber, Plastic and Cablemaking Award 1998*;
- Does not take account of the numerous references to vehicle component manufacturing through the Coverage clause of the Modern Manufacturing Award;
- Disregards the importance of consistent award conditions for the many organisations which have substantial involvement in the vehicle components sector, but also have substantial involvement in other sectors of the Metal and Engineering and/or Rubber,

Plastic and Cablemaking Industry (eg. manufacturers of fasteners, instruments and friction materials)

- Does not take account of developments in the industry training system, including the recent decision of the Deputy Prime Minister, the Hon Julia Gillard MP in March this year to move the regulation of training for the vehicle industry into the Manufacturing Skills Council;
 - Does not display an understanding of career paths and apprenticeship structures of employees in the automotive components sector of the metal, and engineering and the rubber, plastic and cablemaking industries;
 - Overstates the links between vehicle manufacturing and vehicle repair, service and retail. Few organisations of any size are involved in manufacturing as well as repair, service or retail;
 - Overstates the significance of the typically very small organisations which carry out after-sale modifications to vehicles in determining appropriate award structures for the vehicle manufacturing industry;
 - Fails to take account of the fact that all of the major manufacturers of earthmoving equipment are covered under the *Metal, Engineering and Associated Industries Award 1998* and are appropriately covered under the Modern Manufacturing Award;
 - Fails to take account of the fact that the major manufacturers of agricultural machinery and implements are covered under the *Metal, Engineering and Associated Industries Award 1998* (which superseded the *Agricultural Implement Making Award from 1998*) and are appropriately covered under the Modern Manufacturing Award;
 - Does not recognise that the vehicle industry is experiencing very tough times and the last thing that the industry needs is for huge and unnecessary changes to be made to existing award conditions and award coverage patterns.
468. As stated, Ai Group is very concerned about this issue. If the Commission proceeds with its preliminary view the operations of hundreds of vehicle component, earthmoving and agricultural machinery companies covered by the *Metal, Engineering and Associated Industries Award 1998*, the *Rubber, Plastic and Cablemaking Award 1998*, Metal Industry NAPSAs plus numerous other federal awards and NAPSAs will be negatively impacted.
469. In several other industries, the Commission has changed the preliminary view which it has expressed at the exposure draft stage and substantially altered the coverage of particular modern awards. Ai Group urges the Commission to adopt a similar level of flexibility in this industry.
470. The changes which Ai Group submits need to be made to the exposure

draft are set out below and in **Annexure F**.

Vehicle Manufacturing, Repair, Services and Retail Award 2010

Title

471. Ai Group submits that the title of the award needs to be amended to the **Vehicle Repair, Services and Retail Award 2010**. The existing title is not appropriate when the vast majority of vehicle and component manufacturing is currently carried out under *Metal, Engineering and Associated Industries Award 1998*, the *Rubber, Plastic and Cablemaking Award 1998* and enterprise awards.
 472. Throughout our various written and oral submissions relating to the modernisation of awards for the Vehicle Manufacturing Sector (“the VM Sector”) and the Vehicle Repair, Services and Retail Sector (“the RS&R Sector”), Ai Group has expressed serious concerns about overlap between any modern awards created for these sectors and the Modern Manufacturing Award which covers the manufacture of vehicles and components.
 473. Ai Group has reviewed the terms of the *Exposure Draft – Vehicle Manufacturing, Repair, Services and Retail Award 2010* and clearly there is substantial overlap between this exposure draft and the Modern Manufacturing Award. This overlap has the potential to disrupt the existing industrial arrangements of hundreds of Ai Group member companies in addition to potentially creating increased costs and industrial disputation.
 474. Accordingly, Ai Group has entered into discussions with the AMWU in an effort to devise an appropriate means of removing, or at the very least substantially reducing, the level of overlap between the two awards. Ai Group also intends further discussing the issue with the other major vehicle industry unions including the AWU, NUW and LHMU.
 475. The latest discussion between Ai Group and the AMWU occurred on Friday 12 June 2009, and further discussions are scheduled between the parties on Monday 15 June and it is hoped that an agreed position will be able to be reached to resolve the overlap between the Modern Manufacturing Award and the *Exposure Draft – Vehicle Manufacturing, Repair, Services and Retail Award 2010*, which Ai Group and the AMWU would submit for the Commission’s consideration.
 476. Ai Group has prepared a substantial Chapter of this submission which deals in detail with the exposure draft but, given the discussions which are underway between the parties, Ai Group is not in a position to finalise the Chapter today. We expect to be in a position to file our submissions on the vehicle industry exposure draft by Tuesday 16 June. We apologise for the delay and respectfully ask for the Commission’s understanding, and for our vehicle industry materials to be considered despite them being filed a few days late.”
22. On 16 June 2009, Ai Group filed another detailed submission on the AIRC’s *Exposure Draft – Vehicle Manufacturing, Repair, Services and Retail Award 2010*. The submission relevantly stated:

“7. Ai Group acknowledges that there are some vehicle component manufacturers (albeit a small number) who are currently covered under the *Vehicle Industry Award 2000* and who do not wish to be bound by the Modern Manufacturing Award. Some of the issues here relate more to relationships and politics concerning the Metals and Vehicle Divisions of the AMWU, rather than concerns about inappropriate award conditions. However, given the views of these employers, Ai Group supports the Modern Vehicle Repair Service and Retail Award applying to:

- Vehicle Repair, Service and Retail operations; and
- Vehicle manufacturing - but only for those employers who were bound by and applying the *Vehicle Industry Award 2000* as at 31 December 2009.”

23. Ultimately, the Award Modernisation Full Bench largely adopted Ai Group’s proposal and excluded from the Vehicle Award those employers who on 31 December 2009 were engaged in the manufacture and/or assembly of metal parts or accessories and were bound to observe the *Metal, Engineering and Associated Industries Award 1998*. The following extract from the AIRC’s Stage 3 Award Modernisation Decision is relevant:

“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 classifications. 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 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.

[273] Further submissions were made as to the existing record keeper classifications and as to the specialised skills and industry specific functions required of employees so classified. As it remains our view that such employment comes within the scope of the Clerks Modern Award these classifications have been removed from the award.

[274] We have been assisted by the parties' further submissions as to apprenticeships and the obsolescence of several provisions. The parties have also advised that it is their intention, after the Modern Vehicle Award comes into operation, to seek the assistance of Fair Work Australia in dealing with a number of outstanding issues, including finalising levels 7 and 8 of the repair, services and retail classification structure."⁴

4. MANUFACTURING AWARD EXPOSURE DRAFT

24. The following submissions highlight a series of major problems that would result if the Commission decides to remove the vehicle manufacturing sector from the Vehicle Award and to include all employers and employees in this sector under the Manufacturing Award. The submissions relate to the exposure draft of the Manufacturing Award dated 4 March 2016.

Clause 3.8(a)(xi) - Coverage

25. Clause 3.8(a)(xi) disturbs the structure of the coverage clause of the Manufacturing Award. The processes of "manufacturing, assembling and repairing" (of all items listed in clauses 3.8 and 3.9) are already covered under the Award as a result of clause 3.8(a)(i) and (iii).
26. Vehicle manufacturing operations are specifically referred to clause 3.9(h) but various other provisions within the coverage clause are also relevant based upon the type of material that a vehicle component is made out of (e.g. metal, plastic or rubber).

Clause 3.8(a)(xii) - Coverage

27. Clause 3.8(a)(xii) disturbs the structure of the coverage clause of the Manufacturing Award. The processes of "manufacturing", "assembling",

⁴ [2009] AIRCFB 826.

“fabricating”, “installing”, “maintaining”, “reconditioning” and “repairing” are already covered under clause 3.8(a)(i) and (iii).

28. Agricultural implements are already included in the Manufacturing Award under clause 3.9(m).
29. The references to the Vehicle Award 2000 or award coverage prior to 31 December 2009 would serve no purpose if all vehicle manufacturing operations were included in the Manufacturing Award. This wording is relevant in the current awards because the coverage of vehicle manufacturing is split between the Manufacturing Award and the Vehicle Award.

Clause 3.10 - Coverage

30. This exclusion would exclude from the Manufacturing Award a large number of major automotive component companies and their employees who have been covered under the award from the time that it was made. These companies were covered under the Metals Award immediately prior to the commencement of the modern award system and they include the vast majority of Tier One automotive component suppliers.
31. The inclusion of this provision in the exposure draft is either a substantial error or it reflects a fundamental misunderstanding of the existing coverage of the Manufacturing Award which applies to the majority of vehicle manufacturing operations.

Clause 12 – Hours of work

32. The proposed separate hours of work provisions for vehicle manufacturing employees would disturb the award conditions of the large number of employers and employees in the vehicle manufacturing sector who are already covered under the Manufacturing Award with a major reduction in flexibility. For example:

- The 12 hour shift operations which are currently in operation in vehicle manufacturing workplaces covered by the Manufacturing Award would become unlawful;
 - Consecutive shifts over five days would become “continuous work” for vehicle operations currently covered by the Manufacturing Award (with all of the consequent additional costs such as paid meal breaks) when currently there is a six day requirement under the Manufacturing Award.
33. The concept of separate conditions for “vehicle manufacturing” employees fails to recognise the vast array of different products that are used in the manufacture of a vehicle or a vehicle component. For example, would an employee who is involved in the manufacture of bolts, screws, washers, adhesive, paint, glue, etc, as used in the manufacture of vehicles and components, be a vehicle manufacturing employee? If the answer is yes, this fails to take into account that such products are used in numerous other industries and the employee manufacturing the product would often not know what industry each product manufactured would ultimately be used in.

Clause 13.6 – Special provisions for vehicle manufacturing employees

34. The provisions in this clause are inconsistent with other provisions of the Manufacturing Award and would disturb award conditions for the large number of vehicle manufacturing employers and employees currently covered under the Manufacturing Award.

Clause 15.4(b) – Classifications

35. Ai Group strongly opposes the inclusion of clause 15.4(b) in the Award. This would have sweeping implications for all employers covered by the Manufacturing Award in all sectors. It would impose a major red tape burden. Thousands of employers currently use in-house job titles and do not refer to the specific classifications in the Award. So long as an employer is paying the award rates or above, the employer should not be exposed to actions for

award breaches for failure to refer to the award classifications.

Clause 29 – Shiftwork and rates – vehicle manufacturing employees

36. The proposed separate hours of work provisions for vehicle manufacturing employees would disturb the award conditions of the large number of employers and employees in the vehicle manufacturing sector who are already covered under the Manufacturing Award.
37. The concept of separate conditions for “vehicle manufacturing” employees fails to recognise the vast array of different products that are used in the manufacture of a vehicle or a vehicle component, and the fact that many of these products are used in other industries.

Schedule B – Vehicle classifications and Schedule I - Definitions

38. The inclusion of these classifications would disturb the classification structures in operation in the large number of businesses in the vehicle manufacturing sector which are currently covered by the Manufacturing Award. Training arrangements and career paths would be disturbed for thousands of employees.
39. Ai Group opposes importing into the Manufacturing Award the large number of old job titles that are included in this Schedule. This would take the terminology in the Award back to that which existed in the Metals / Manufacturing classification structure prior to 1989.

5. JURISDICTIONAL ISSUES

40. In determining whether to exercise its power to vary a modern award, the Commission must be satisfied that the relevant award includes terms only to the extent necessary to achieve the modern awards objective (s.138).
41. We submit that the Commission cannot be satisfied that the award changes which are reflected in the exposure drafts are necessary to meet the modern awards objective. Indeed the opposition of the major industrial parties with an interest in these proceedings, the absence of any claim or application having

been made for the variations proposed over the last six years since the modern awards were made and the clear lack of evidentiary material before the Commission that might establish that the variations proposed are necessary, tell against any need to make the proposed changes.

42. We also submit that for the reasons identified in this submission, the changes reflected in the exposure drafts are inconsistent with the modern awards objective. The changes would lead to significant unfairness for employers and employees and hence would not provide a fair and relevant minimum safety net of terms and conditions (s.134(1)). The changes would also conflict with the following aspects of the modern awards objective:

- the need to promote flexible modern work practices and the efficient and productive performance of work (s.134(1)(d));
- the likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden (s.134(1)(f));
- the need to ensure a simple, easy to understand, stable and sustainable modern award system for Australia that avoids unnecessary overlap of modern awards (s.134(1)(g)); and
- the likely impact of any exercise of modern award powers on employment growth, inflation and the sustainability, performance and competitiveness of the national economy (s.134(1)(h)).

43. As we have set out above, our preliminary review of the exposure draft for the Manufacturing Award highlights various instances in which employers would be adversely affected by way of an increase in costs, lesser flexibility or an increased regulatory burden.

44. Further, the need for a stable system, as contemplated by s.134(1)(g) should not be overlooked. The proposed changes would result in serious alterations to existing conditions that apply to employers and employees covered by the Manufacturing Award and Vehicle Award, absent cogent reasons for such

changes. These awards have now been in operation for some six years and we have not identified a need to vary the awards as now proposed. The disruption that would result if the Commission's proposal is adopted is both unnecessary and undesirable.

45. At the commencement of the Review, the Commission dealt with various preliminary issues that arise in the context of this Review. The Commission's *Preliminary Jurisdictional Issues Decision*⁵ provides the framework within which the Review is to proceed. The Commission indicated that the Review will proceed on the basis that the relevant modern award achieved the modern awards objective at the time that it was made (emphasis added):

"[24] In conducting the Review the Commission will also have regard to the historical context applicable to each modern award. Awards made as a result of the award modernisation process conducted by the former Australian Industrial Relations Commission (the AIRC) under Part 10A of the Workplace Relations Act 1996 (Cth) were deemed to be modern awards for the purposes of the FW Act (see Item 4 of Schedule 5 of the Transitional Act). Implicit in this is a legislative acceptance that at the time they were made the modern awards now being reviewed were consistent with the modern awards objective. The considerations specified in the legislative test applied by the AIRC in the Part 10A process is, in a number of important respects, identical or similar to the modern awards objective in s.134 of the FW Act. In the Review the Commission will proceed on the basis that prima facie the modern award being reviewed achieved the modern awards objective at the time that it was made."

46. The decision confirms that the Commission should generally follow previous Full Bench decisions that are relevant to a contested issue:

"[25] Although the Commission is not bound by principles of stare decisis it has generally followed previous Full Bench decisions. In another context three members of the High Court observed in *Nguyen v Nguyen*:

"When a court of appeal holds itself free to depart from an earlier decision it should do so cautiously and only when compelled to the conclusion that the earlier decision is wrong. The occasion upon which the departure from previous authority is warranted are infrequent and exceptional and pose no real threat to the doctrine of precedent and the predictability of the law: see *Queensland v The Commonwealth* (1977) 139 CLR 585 per Aickin J at 620 et seq."

[26] While the Commission is not a court, the public interest considerations underlying these observations have been applied with similar, if not equal,

⁵ [2014] FWCFB 1788.

force to appeal proceedings in the Commission. As a Full Bench of the Australian Industrial Relations Commission observed in *Cetin v Ripon Pty Ltd (T/as Parkview Hotel) (Cetin)*:

“Although the Commission is not, as a non-judicial body, bound by principles of stare decisis, as a matter of policy and sound administration it has generally followed previous Full Bench decisions relating to the issue to be determined, in the absence of cogent reasons for not doing so.”

[27] These policy considerations tell strongly against the proposition that the Review should proceed in isolation unencumbered by previous Commission decisions. In conducting the Review it is appropriate that the Commission take into account previous decisions relevant to any contested issue. The particular context in which those decisions were made will also need to be considered. Previous Full Bench decisions should generally be followed, in the absence of cogent reasons for not doing so.”

47. The Manufacturing Award and Vehicle Award (as the coverage is currently structured) met the modern awards objective at the time when they were made, and we submit that there is no evidence before the Commission to suggest that they are not currently continuing to meet the modern awards objective. Accordingly, consistent with the *Preliminary Jurisdiction Issues Decision*, the Commission should follow the decision of the Award Modernisation Full Bench and not disturb the existing award coverage.

6. CONCLUSION

48. The approach taken by the Award Modernisation Full Bench in 2009 to split the coverage of vehicle manufacturing operations between the Manufacturing Award and the Vehicle Award (depending upon the pre-modern award coverage of vehicle manufacturing businesses) remains sound and appropriate.
49. We urge the Full Bench to abandon its proposal to include all vehicle manufacturing operations under the Manufacturing Award.