

Annexure B

General

1. The applicants seek a determination to vary the Vehicle, Repair, Services and Retail Award 2020 (the **Award**), to mitigate the current impacts COVID-19 is having on employees and employers covered by the Award, who operate in the Vehicle, Repair, Services and Retail industry (**Industry**).
2. The application seeks to extend the operation of Schedule I-Award Flexibility During the COVID-19 Pandemic of the Award (as varied by PR720601) for a limited period, until 31 August 2020.
3. The extension of the Schedule I of the Award is necessary to achieve the Modern Awards Objective (**MAO**) in the circumstances created by the COVID-19 virus and government responses to it worldwide.
4. The Australian Chamber of Commerce and Industry (**ACCI**) and the Australian Automotive Dealer Association (**AADA**) support the Application. The applicants, ACCI and AADA have corresponded with the relevant union parties including the ACTU and there are no objections from any relevant union party.

COVID-19

5. In December 2019/January 2020, an outbreak of a new coronavirus and disease began in Wuhan, China, which was subsequently identified as a new type of coronavirus (**COVID-19**).¹
6. On 11 March 2020, the WHO Director-General characterized COVID-19 as a pandemic (**Pandemic**).

¹ [World Health Organisation](https://www.who.int/emergencies/diseases/novel-coronavirus-2019).

7. In Australia, as at 28 July 2020 there have been 15,304 confirmed cases of COVID-19 since 22 January 2020, with 400 new cases in the preceding 24 hours. There have been 167 total deaths from COVID-19 and 9,431 recovered.²
8. To deal with the Pandemic, governments in Australia have through numerous legislative determinations and public health orders restricted economic activity and personal movement. As is well known, in Victoria, there have been recently implemented strengthening of restrictions, which had previously been eased. In recognition of the significant effects on the economy of these measures and in order to reduce the severity of those effects, governments introduced numerous stimulus packages.
9. One of these measures has been the ‘JobKeeper’ scheme, which enables qualifying employers to receive a wage subsidy from the Australian Tax Office, in order to ameliorate the effects of the Pandemic on business and help maintain employment continuity. Not all entities qualify, however, for JobKeeper, according to the qualifying and eligibility criteria set out in the *Coronavirus Economic Response Package (Payments and Benefits) Rules 2020*. On 21 July 2020, it was announced that by the Commonwealth Government that it was extending the JobKeeper scheme from its previous end date until 28 March 2021, with modified eligibility criteria and payment rates.³

² <https://www.health.gov.au/news/health-alerts/novel-coronavirus-2019-ncov-health-alert/coronavirus-covid-19-current-situation-and-case-numbers>

³ <https://www.australia.gov.au/jobkeeper-payment-and-coronavirus-supplement-extended>

Full Bench Decisions

10. In response to the deterioration in the economy, to preserve ongoing business viability and employment continuity, the applicants sought, with the consent of employer representative bodies and unions, the inclusion of Schedule J (which became Schedule I) in the Award via application dated 5 May 2020.
11. On 11 May 2020, a Full Bench of the Fair Work Commission (**Commission**) granted the application and varied the Award according to the Determination accompanying the application ([2020] FWC 2367).
12. In the context of data about “an industry in crisis”, the Commission found, in light of the statutory criteria set down in s 134 of the Fair Work Act (**Act**), that the Determination achieved the MAO to “provide a fair and relevant minimum safety net of terms and conditions”. It noted the difficult decisions confronting employers and employees, who seek to balance viability and employment continuity. It stated that “retention of as many employees as possible in employment, albeit on reduced hours, is plainly a priority” (at [98]).
13. On 30 June 2020, a Full Bench of the Commission granted an application to extend the operation of Schedule I, as modified in that application, finding that the variation “was necessary to achieve the modern awards objective” ([2020] FWCFB 3416 at [49]).

Ongoing Crisis

14. The underlying economic conditions and challenges facing the Industry, which provided the context of the Full Bench decisions, continue. Despite an easing of restrictions by some governments and associated signs of improvement, the Industry experiences acute challenges, which commenced prior to, but which have been

exacerbated by, the advent of COVID-19 and remains confronted by government restrictions in certain parts of the country.

15. Australian Bureau of Statistics (ABS) analysis released on 3 June 2020 suggested that in the March Quarter of 2020, the Australian economy contracted by 0.3% in seasonally adjusted chain volume terms.⁴ The analysis does not cover the June Quarter, when many of restrictions on business activity were in place. The ABS observed that the Pandemic and restrictions on the free movement of people and other restrictions, including restrictions on international travel from 1 February, gathering restrictions and non-essential business closures, “generated an unprecedented shock to the global economy”.⁵ In response to these figures, the Commonwealth Treasurer acknowledged that Australia was in recession.⁶ Expectation is that the June Quarter will reveal greater decline in economic activity.
16. The International Monetary Fund, in its World Economic Outlook Update for June 2020, projects a 4.9% contraction in 2020, a projection greater than previously anticipated.⁷
17. In June 2020, across Australia, 110, 234 new vehicles were sold, which was a 6.4% decline compared to June 2019.⁸ Although there was an uptick in June 2020 of new vehicle sales compared to May 2020,⁹ the increase is set against a backdrop of

⁴ 5206.0 - Australian National Accounts: National Income, Expenditure and Product, Mar 2020: <https://www.abs.gov.au/ausstats/abs@.nsf/mf/5206.0>

⁵ 5206.0 - Australian National Accounts: National Income, Expenditure and Product, Mar 2020: <https://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/5206.0Main%20Features10Mar%202020?opendocument&tabname=Summary&prodno=5206.0&issue=Mar%202020&num=&view=>

⁶ Michael Janda, “Australia in its first recession in 29 years as March quarter GDP shrinks”, *ABC News*, 3 June 2020: <https://www.abc.net.au/news/2020-06-03/australian-economy-gdp-recession-march-quarter-2020/12315140>.

⁷ <https://www.imf.org/en/Publications/WEO/Issues/2020/06/24/WEOUpdateJune2020>

⁸ <https://www.fcai.com.au/news/index/view/news/649>

⁹ June historically is a month of relatively strong new vehicle sales performance. In June 2020, the uptick of sales has been credited to end of financial year campaigns and the extension of the Commonwealth Government’s instant asset write-off scheme. Passenger and sports utility vehicles experienced declines in sale compared to June 2019 (26.1% and 2.9% respectively), whereas light commercial and heavy commercial vehicle

sustained poor performance in the Industry. In May 2020, there was a 35.3% decline compared to May 2019.¹⁰ June 2020 was the 27th month of negative growth in new car sales.¹¹ The month of April experienced a 48.5% drop. New car dealerships are also experiencing a lack of new supply due to the shut-down of manufacturing plants overseas, including the United States and South Korea. The value of imported motor vehicles in May declined 40% to \$1.6bn, which has continued in June, in which the value of imported motor vehicles remains at \$1.6bn (ABS 5368.0.55.024).

Variation Sought

18. The application seeks a selective extension of Schedule I of the Award, as varied on 30 June 2020, with limited duration.
19. The period of the extension of Schedule I is limited to 31 August 2020. This period has been chosen with specific regard to this Industry, as the Industry sees oscillating demand for business from month to month. By way of example, June is historically a relatively busy month (arising from the end of financial year sales) whereas July is historically a quiet month. In August the sales part of the Industry starts to slowly build.
20. The limitation of the extension to 31 August 2020 ensures that the trends of demand specific to this Industry can be monitored and the need for the Schedule reassessed.
21. The considerations, which justified the Full Bench's decisions that the variations met the MAO, remain relevant. Those considerations support the draft determination to this application.

markets increased by 8.6% and 13.5% (compared to May 2019):

<https://www.fcail.com.au/news/index/view/news/649>

¹⁰ <http://www.fcail.com.au/news/index/view/news/636>

¹¹ <https://www.fcail.com.au/news/index/view/news/649>

22. The proposed draft determination will assist employers in the Industry to maintain a level of viability and employment retention. The applicants respectfully submit that the application to vary the Award be granted.