

**AWARD MODERNISATION SUBMISSIONS AND  
DRAFT AWARD PROVISIONS**

**Stage 3 – Post Exposure Draft**

**Vehicle Industry (Repair, Services and Retail)  
and Vehicle Manufacturing**



**16 June 2009**

# AWARD MODERNISATION – STAGE 3

## VEHICLE INDUSTRY (REPAIR, SERVICE AND RETAIL) (AM2008/61) & VEHICLE MANUFACTURING INDUSTRY (AM2008/62)

### CHAPTER 1 – INTRODUCTION

1. 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.”

2. Ai Group is equally concerned about the *Exposure Draft – Vehicle Manufacturing, Repair, Services and Retail Award 2010*. Far from being modern – the 114 page draft award would cause major problems for employers and employees alike in the vehicle industry.
3. The vehicle manufacturing industry has experienced a recent huge reduction in demand for its products. The employees of several major vehicle component manufacturers are working reduced hours (less than 38 hours per week) by agreement between the employer, the employees and unions. The

last thing that employers in the industry need is for award modernisation to disrupt their operations.

4. Ai Group urges the Commission to reconsider its preliminary views and take a completely different approach to modernising awards in the vehicle industry. The approach which Ai Group proposes is a far simpler and more logical one than the draft approach which the Commission has devised.
5. The *Manufacturing and Associated Industries and Occupations Award 2010* (“the Modern Manufacturing Award”) is already drafted, and made, as the main modern award covering vehicle component manufacturing and it would be very inappropriate and harmful to both employers and employees in the vehicle industry if this was to change.
6. If the Commission proceeds with its preliminary view and makes a modern award in the terms reflected in the exposure draft, 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* and Metal Industry NAPSA’s will be negatively impacted.
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.
8. The terms of the Award Modernisation Request make it clear that the Commission should seek to reduce the amount of overlap between modern awards. Ai Group's proposed approach would result in a minimal amount of overlap.
  9. In several other industries, the Full Bench has made major changes to its initial draft approach and ultimately made modern awards which are workable and fair. Indeed, this is of course the purpose of the exposure draft stage – to flush out the relevant issues and concerns to enable an informed decision to be made. Ai Group urges the Commission to adopt a similar level of flexibility in the vehicle industry proceedings and rethink the structure of modern awards for the industry.
  10. Ai Group has a large membership in both the vehicle manufacturing industry and the vehicle industry repair, services and retail sector.
  11. Ai Group is a party to all of the major federal industry awards in the vehicle industry, including:
    - The *Metal, Engineering and Associated Industry Award 1998*;
    - The *Rubber, Plastic and Cablemaking Industry – General Award 1998*;
    - The *Vehicle Industry – Repair, Services and Retail Award 2002*; and
    - The *Vehicle Industry Award 2000*.

## CHAPTER 2 – THE MODERN MANUFACTURING AWARD COVERS THE VEHICLE COMPONENT MANUFACTURING SECTOR

12. There are numerous references to vehicles and vehicle components throughout the coverage clause of the Modern Manufacturing Award.
13. The coverage clause of the Modern Manufacturing Award arose from many months of negotiations between Ai Group and the six MTFU Unions (AMWU, AWU, CEPU, CFMEU, LHMU and NUW) and after extensive written and oral submissions.
14. The Modern Manufacturing Award is drafted (and made) to supersede all of the main federal industry awards covering the manufacture of vehicles and components, with the exception of the *Vehicle Industry Award 2000* (which ceased being a major award in the vehicle manufacturing industry many years ago) when all of the Motor Vehicle Producers (MVPs) and several large vehicle component manufacturers became bound by enterprise awards. The Modern Manufacturing Award has also been drafted (and made) to supersede the Metal Industry NAPSAs and various other NAPSAs that relate to vehicle component manufacturing.
15. Clause 4 – Coverage of the Modern Manufacturing Award specifies that the award covers the manufacture of:
  - 4.3(a) *“all products made from, or containing, steel, iron, metal, sheet metal, tin, brass, copper and non-ferrous metal.”*
  - 4.3(h) *“motor engines, motor cars, motor cycles and other motor driven vehicles and components.”*
  - 4.3(k) *“electrical, electronics....products, equipment, apparatus, installations, appliances, devices..”*
  - 4.3(l) *“recording, measuring and controlling devices...”*
  - 4.3(m) *“..radiators...batteries...air-conditioning equipment...engine packing.”*

4.3(r) “brake linings, disc pads, clutch facings and other friction materials for automotive or other industrial applications.”

4.3(s) “all products made from or containing plastic or rubber, or substitutes for plastic or rubber.”

4.3(dd) “....belts...car seats, gaskets...”

16. This coverage is not surprising. The abovementioned items were covered under the awards which the Modern Manufacturing Award was designed to replace, including, for example:

- The *Metal, Engineering and Associated Industries Award 1998*, which covers “The making of metal motor body parts” (Ref. Schedule A, item 51);
- The *Rubber, Plastic and Cablemaking Industry – General Award 1998*, which covers virtually all items made from rubber and plastic, such as car tires, car door seals and plastic automotive trim;
- The *NSW Metal, Engineering and Associated Industries (State) NAPSA*, which covers “assemblers of motor chassis” (Ref. Schedule B – Industries and Callings);
- The *NSW Rubber Workers (State) NAPSA* which covers the “manufacture or repair of rubber tyres”.

17. The Bracks *Review of Australia’s Automotive Industry* (July 2008) found that there are over 200 firms producing automotive components for MVPs and another 500 firms which provide specialised tooling services<sup>1</sup>. The vast majority of these firms are Ai Group members and apply the *Metal, Engineering and Associated Industries Award 1998* or the *Rubber, Plastic and Cablemaking Industry – General Award 1998*. Several of the firms are represented on Ai Group’s Branch Councils and National Executive. Only a handful are covered by the *Vehicle Industry Award 2000*.

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<sup>1</sup> Review of Australia’s Automotive Industry, 22 July 2008, p.12.

18. There is simply no logical reason why the hundreds of vehicle component manufacturers currently covered under the *Metal, Engineering and Associated Industries Award 1998* and the *Rubber, Plastic and Cablemaking Award 1998* should not be covered under the Modern Manufacturing Award. The award is already drafted to cover them. It is not in the interests of employers or employees for the Commission to now change its view on this important issue and disturb the award conditions applicable to a very large group of employers.
19. Vehicle component manufacturing is one of the largest sectors of the metal and engineering industry and the rubber, plastic and cablemaking industry. The Commission is no doubt well aware of this given that vehicle component manufacturing companies covered by the *Metal, Engineering and Associated Industries Award 1998* and the *Rubber, Plastic and Cablemaking Industry – General Award 1998* have been heavy users of the Commission’s dispute avoidance and resolution services over the years.
20. Numerous companies in the manufacturing industry make vehicle components as well as other products (eg. manufacturers of fasteners, instruments, friction materials, glass, castings etc). It is important that these companies are able to maintain the consistent award conditions that currently apply to their manufacturing staff who work on different product lines.
21. The removal of vehicle component manufacturing from the Modern Manufacturing Award would be harmful for employees in the industry, who currently have the benefit of a well-established award classification structure, apprenticeship structures, industry training programs and career paths.
22. The recent decision of the Deputy Prime Minister, the Hon Julia Gillard MP, in March this year to move the regulation of vehicle industry training into the Manufacturing Skills Council highlights the Government’s view that vehicle manufacturing is an integral part of the manufacturing industry. This decision

was supported by Ai Group but opposed by some other employer associations who pursued extensive arguments about alleged critical links between vehicle manufacturing, and the repair, service and retail sector. The Government has rejected those arguments. The Government's decision is consistent with the approach recommended by the Bracks Review.

23. The links that some other employer organisations allege exist between vehicle component manufacturing and vehicle repair, service and retail are very much overstated. Few organisations of any size manufacture vehicle components as well as being involved in the repair, service and/or retail side of the industry.
24. Further, the importance of the after-sale modification sector is being overstated by some other employer organisations. The employers operating in this sector are typically very small and their operations are a world apart from vehicle component manufacturers operating with lean manufacturing systems and just-in-time delivery processes. Separate awards currently exist for manufacturing and repair, service and retail and there is no evidence that this is causing any problems for the employers involved in the after-sale modification sector. The 114 page exposure draft with its separate sections for manufacturing and repair, service and retail would most likely make things more, rather than less, complicated for these employers.

## **Earthmoving equipment**

25. With regard to earthmoving equipment, all of the major manufacturers of this equipment are covered by the *Metal, Engineering and Associated Industries Award 1998* and are now covered by the Modern Manufacturing Award.
26. The Modern Manufacturing Award covers:

4.2(a)(iii) "plant, equipment"

4.3(a) *“all products made from, or containing, steel, iron, metal, sheet metal, tin, brass, copper and non-ferrous metal.”*

4.3(h) *“industrial machinery”*

27. It is essential that the Modern Manufacturing Award’s wide coverage of earthmoving equipment not be disturbed.
28. If the Commission is of the view that there would be benefit in having a specific reference to “earthmoving equipment” in Clause 4 – Coverage, of the Modern Manufacturing Award then Ai Group would support this amendment.

### **Agricultural implements and machinery**

29. With regard to agricultural implements and machinery, the major manufacturers of these products are covered under the *Metal, Engineering and Associated Industries Award 1998* and are now covered under the Modern Manufacturing Award.
30. The *Metal, Engineering and Associated Industries Award 1998* superseded the *Agricultural Implement Making Award 1980* from 1998. The Metals Award contains a series of specific provisions dealing with agricultural implement making. An expansive definition applies to the concept of agricultural implements under the award, as set out in the following subclause of Schedule C, Clause 10 – Agricultural Implements:

*“10.1.3 For the purpose of this clause “agricultural implements, machinery and appliances” means farming or pastoral equipment such as harvesters, headers, windmills for the purpose of pumping river subterranean water, ploughs, harrows, discs, seeders, top-dressers, mowing equipment, mobile irrigation equipment, fruit and vegetable harvesting and sorting equipment and such other equipment as is used mainly or solely in the agricultural and or pastoral industry.”*

31. Again, it is essential that the Modern Manufacturing Award's wide coverage of agricultural implements, machinery and appliances not be disturbed.
32. If the Commission is of the view that, for clarity purposes, the term "*agricultural implements*" in paragraph 4.3(m) of the Modern Manufacturing Award should be replaced with the term of "*agricultural implements, machinery and appliances*", as used in Schedule C, Clause 10 of the *Metal, Engineering and Associated Industries Award 1998* then Ai Group would support this amendment.

## **CHAPTER 3 – SPECIFIC AMENDMENTS PROPOSED TO THE EXPOSURE DRAFT**

### **Title**

33. Given the very limited manufacturing coverage which Ai Group submits is appropriate for the modern award, the award should be called the *Vehicle Repair, Services and Retail Award 2010*. This will avoid any confusion given that the Modern Manufacturing Award would be the main award applying to vehicle component manufacturing.

### **Clause 4 – Coverage**

34. Ai Group submits that the following amendments should be made to Clause 4 of the exposure draft:

## 4. Coverage

4.1 This award covers employers throughout Australia in the **vehicle repair, services and retail industry** and their employees who are covered by the classifications in this award.

4.2 This award covers those employers in the **vehicle manufacturing industry** who were bound to and applying the *Vehicle Industry Award 2000* on 31 December 2009, and their employees who are covered by the classifications in this award.

4.3 **Vehicle repair, services and retail industry** means a business principally concerned with:

- (a) the selling, distributing, dismantling/wrecking/restoring and/or recycling /reconditioning, modifying, preparing for sale, storage, repairing, maintaining, towing, servicing, and/or parking of motor vehicles of all kinds, including light and heavy road, industrial, ~~earthmoving equipment~~, caravans, bicycles, trailers, ~~lawnmowers~~ or the like and equipment or parts or components or accessories thereof including the establishments concerned for such vehicles and the like;
- (b) operations or allied businesses concerned with selling, distributing or supplying running requirements for vehicles (including motor fuels, gas and oils);
- (c) operations incidental to the selling and/or handling and/or retreading and/or storing/distribution and/or fitting and/or repairing of tyres or the like made of any material;
- (d) the repair and servicing of motor vehicles in the establishment of an employer not falling within clauses 4.3(a), (b) and (c) but who is engaged in the motor vehicle rental business;
- (e) ~~the selling, preparing for sale, modifying or recycling for sale of bicycles, lawnmowers and the like, including brush cutters and mechanised snippers and components or accessories, where such operation or establishment includes the servicing, maintaining, reconditioning, or repairing of such items;~~
- (f) ~~the manufacturing, assembling or repairing of carriages, carts, wagons, trucks, motor cars, bodies, motorcycles, railway cars, tram cars, side cars or other vehicles or parts or components or accessories in wood, metal and/or other materials;~~
- (g) ~~manufacturing, fabricating, installing, servicing, maintaining, reconditioning or repairing of engines or vehicle servicing equipment and agricultural machinery or implements or the like;~~
- (h) ~~any operation concerned with roadside/mobile service; or~~
- (i) ~~driving school instruction.~~

**4.4** **Vehicle manufacturing industry means** the manufacturing, assembling or repairing of carriages, carts, wagons, trucks, motor cars, bodies, motorcycles, railway cars, tram cars, side-cars or other vehicles or parts or components or accessories in wood, metal and/or other materials (except for the making or repairing of motor engines or parts), by an employer who was bound to and applying the *Vehicle Industry Award 2000* on 31 December 2009, and their employees who are covered by the classifications in this award.

~~4.4~~ For the purposes of coverage of this award:

- ~~(a)~~ employees engaged in the **vehicle industry repair, services and retail** means employees covered by the classifications at clause X and for whom Section 1 applies; and
- ~~(b)~~ employees engaged in the **vehicle industry manufacturing** means employees covered by the classifications at clause X and for whom Section 2 applies.

#### **4.5 Exclusions**

(a) This award does not cover:

- (i) an employer that is bound by an enterprise award or an enterprise NAPSA with respect to any employee who is covered by an enterprise award or NAPSA;
- ~~(ii)~~ an employer who, on 12 July 1971, was engaged in the manufacture and/or assembly of metal parts and accessories and was bound to observe the Metal, Engineering and Associated Industries Award 1998; or
- ~~(ii)~~ an employee in a car park where the employee's undertaking does not provide repairs and service and/or servicing facilities of motor vehicles other than supplying petrol and oil.

(b) 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.

**4.6** The award does not cover an employee excluded from award coverage by the Act.

NOTE: Where there is no classification for a particular employee in this award it is possible that the employer and that employee are covered by an award with occupational coverage.

35. Ai Group submits that Clause 4 in the exposure draft is complicated and confusing. The manufacturing coverage of the award and the repair, services and retail coverage are combined in some parts of the clause (see sub-clause 4.1) and separated in others (see sub-clause 4.2). Ai Group submits that our amended clause is far simpler and reflects an appropriate approach whereby the Modern Manufacturing Award would remain the predominant award covering the manufacture of vehicle components.

#### **Paragraph 4.1**

36. Ai Group's amended paragraph 4.1 deals with the coverage of the award in the vehicle repair, services and retail industry.

#### **Paragraph 4.2**

37. Ai Group's amended paragraph 4.2 specifies the coverage of the clause in the vehicle manufacturing industry. As set out earlier in this submission, it is important and appropriate that the Modern Manufacturing Award remain the award that covers the manufacture of vehicle components for the vast majority of manufacturers.
38. 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 manufacturing - but only for those employers who were bound by and applying the *Vehicle Industry Award 2000* as at 31 December 2009.

## Paragraph 4.3(a)

39. The terms of paragraph 4.3(a), whilst retaining the form and aspects of the content of paragraph 3(a)(i) of the *Vehicle Industry – Repair, Services and Retail Award 2002*, expand upon its coverage in a number of important respects.
40. Ai Group submits that the references to industrial equipment, earthmoving equipment, bicycles and lawnmowers need to be removed.
41. These types of equipment are not currently covered by the *Vehicle Industry – Repair, Services and Retail Award 2002* and go beyond the ordinary and general meaning of a “motor vehicle”.
42. Ai Group garners support for this submission from the following dictionary definitions of the term ‘motor vehicle’:

*“motor vehicle / n. a road vehicle driven by a motor<sup>2</sup>.”*

*“motor vehicle / vehicle with motor engine for use on ordinary roads<sup>3</sup>”*

(Emphasis Added)

43. We contend that industrial equipment, earthmoving equipment and lawnmowers do not satisfy the above definitions as such equipment is not utilised on ‘ordinary roads’. Bicycles also do not satisfy the definition because they are not driven by a motor. Accordingly, we submit that these types of equipment are not of the type contemplated by the phrase “motor vehicles of all kinds” within the current *Vehicle Industry – Repair, Services and Retail*

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<sup>2</sup> *Macquarie Dictionary* 2<sup>nd</sup> Ed. Published by Macquarie Library Pty Ltd

<sup>3</sup> *The Australian Concise Oxford Dictionary* 7<sup>th</sup> Ed. Published by Oxford University Press Australia

*Award 2002* and to include them expands the coverage of the proposed modern award.

44. Indeed, we assert that if one reviews the other ‘types’ of vehicles which are reflected subsequent to the phrase within the current *Vehicle Industry – Repair, Services and Retail Award 2002*, namely “*caravans, trailers or the like*”, our proposition that motor vehicles should be limited to those vehicles which travel on roads is further supported.
45. It is important to note that omission of these provisions from the proposed modern award for the vehicle industry will not result in employees who perform repair and servicing of such equipment being award free. The manufacture and repair of all of this equipment is currently covered under the terms of the Modern Manufacturing Award. We submit that this is the appropriate instrument to regulate such work.
46. The vast majority of awards<sup>4</sup> and NAPSAs<sup>5</sup> within the repair, services and retail sector contain parallel coverage provisions to the *Vehicle Industry – Repair, Services and Retail Award 2002* and this supports our contention that that the least disruptive approach for employers and employees would be to maintain the existing coverage.

#### **Paragraph 4.3(e)**

47. As set out above, bicycles and lawnmowers are not motor vehicles and not covered under the *Vehicle Industry – Repair, Services and Retail Award 2002*. Mowers are referred to within the definition of agricultural equipment in Schedule, Clause 10 of the *Metal, Engineering and Associated Industries Award 1998*. Accordingly, paragraph 4.1(e) should be deleted.

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<sup>4</sup> *Automotive Services (Northern Territory) Award 2002*; Clause 4

<sup>5</sup> *Vehicle Industry – Repair, Services and Retail (State) NAPSA (NSW)*; Clause 44 and *Vehicle Industry (SA) Repair Service and Retail Award*; sub-clause 1.3

## Paragraph 4.1(f)

48. The terms of paragraph 4.1(f) predominantly reproduce the coverage of the *Vehicle Industry Award 2000* as expressed by sub-clause 1.5.1(a) of that award.
49. In Ai Group's proposed Coverage clause, the wording from paragraph 4.1(f) have been replicated in sub-clause 4.4 with two important amendments.
50. Firstly, the existing exclusion in the *Vehicle Industry Award 2000* for the manufacture of engines or parts thereof has been re-inserted. The inclusion of this concept is of paramount importance as such work is covered by the provisions of the Modern Manufacturing Award. The *Vehicle Industry Award 2000* has for the vast majority of employers respondent to the award, never had application in respect of such manufacturing. We contend that such a submission is self evident from the terms of 1.5.1(a) of the *Vehicle Industry Award 2000*, which provides:

*"1.5.1(a) Subject to 1.5.1(b) hereof as to every operation carried on within or in connection with a plant principally concerned with the manufacturing, assembling or repairing of carriages, carts, wagons, trucks, motor cars, motor cycles, railway cars, tram cars, side-cars or other vehicles or parts or components thereof in wood, metal and/or other materials and in other plants as to all such operations except the making or repairing of motor engines or parts thereof." (Emphasis Added)*

51. This exclusion has been omitted from paragraph 4.1(f) and we contend that if not corrected will see the intrusion of the Modern Vehicle Award into areas of coverage that have almost exclusively been the domain of the *Metal, Engineering and Associated Industries Award 1998* and are reflected within the coverage of the Modern Manufacturing Award.

52. Secondly, consistent with the rationale set out earlier, our redrafted paragraph 4.1(f) ensures that the manufacturing coverage of the award is expressly limited to those employers who were bound by and applying the *Vehicle Industry Award 2000* on 31 December 2009.

**Paragraph 4.3(g)**

53. Ai Group has considered the Commission’s drafting of paragraph 4.3(g) and we do not support the retention of this provision within the modern award. We submit that the work described by this sub-clause is already covered by the terms of the Modern Manufacturing Award and that additionally, the *Metal, Engineering and Associated Industries Award 1998* is currently the dominant industrial instrument which covers metal fabrication, the manufacture of engines and automotive components, and agricultural implement making.

54. In advancing this contention we submit that it is important to understand the manner in which the relevant exclusions within the *Metal, Engineering and Associated Industries Award 1998* and *Vehicle Industry Award 2000* are currently prescribed. Respectfully, we do not believe that the Commission to date has correctly apprehended the interplay between the two awards.

55. In turning to consider these exclusions, it is perhaps first necessary to identify the specific provisions which create overlap between the *Metal, Engineering and Associated Industries Award 1998* and *Vehicle Industry Award 2000* as they relate to the manufacture of engines, automotive components and agricultural implements. Within the *Metal, Engineering and Associated Industries Award 1998*, this provision is found at items 13, 50 and 51 of Schedule A which state:

“13. *Agricultural implement making and repairing.*

... ..

50. *Making, repairing, reconditioning and maintenance of motor engines, and/or parts thereof, and of the mechanical and electrical parts including the transmission and chassis of motor cars, motor cycles and other motor driven vehicles.*

51. *The making of metal motor body parts.”*

56. Within the *Vehicle Industry Award 2000*, the equivalent provision is found at paragraph 1.5.4(a) in the following terms:

*“The organisation of employees and employer respondents specified in clause 1.6.5 in respect to every engineering, metal working and fabricating operation carried on within or in connection with an establishment of an employer whose undertaking is principally concerned with the manufacture, assembly, repair, reconditioning, maintenance and/or distribution of vehicle servicing equipment, engines, parts, components, or accessories of motor vehicles, agricultural machinery or implements.”*

57. The terms of 1.5.4(a) have largely been reproduced within the exposure draft, however there are two important omissions which are relevant to the application of paragraph 1.5.4(a) which have not been reflected within the exposure draft and which we submit serve to illustrate the inappropriateness of retaining paragraph 4.3(g) in the proposed modern award.

58. The first of these omissions relates to the jurisdictions in which the coverage of the award as described by 1.5.4(a) will apply. Importantly, paragraph 1.5.4(a) does not apply to all the States which fall within the coverage of the award but instead is limited to three states. This is reflected in the terms of sub-clause 1.5.4 which prescribes where the coverage of 1.5.4(a) shall have application saying:

*“1.5.4 This award shall also apply in the States of New South Wales, Victoria and South Australia ... ..”*

59. Ai Group is cognisant of the requirements of the Act with respect to the determination of modern award conditions based upon State or Territory boundaries<sup>6</sup> and does not highlight this provision for the purpose of seeking its inclusion within the exposure draft. We do however contend that it is relevant to the broader question of the retention of paragraph 4.3(g) as it serves to illustrate the limited application of the provision from which it is derived under the existing federal award.
60. Our submissions on this theme are further reinforced through appreciation of the effect of the second concept which has been omitted from the drafting of paragraph 4.3(g) and which serves to further narrow the operation of paragraph 1.5.4(a) within the *Vehicle Industry Award 2000*. This second proposition is that the coverage described by 1.5.4(a) does not purport to cover all respondents to the *Vehicle Industry Award 2000* but instead is significantly limited and indeed only applies coverage of 1.5.4(a) to a few organisations of employers.
61. The limitation inherent in the coverage of 1.5.4(a) is not immediately apparent upon review of the clause as it is expressed to apply to:

*“1.5.4(a) The organisation of employees and employer respondents specified in clause 1.6.5...”*

62. However upon review of the terms of 1.6.5 it can be seen that this clause only identifies a limited number of respondents as follows:

*“1.6.5 In respect to the operations described in clause 1.5.4(a) hereof, this award shall be binding upon;*

- Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union, its officers and members; and,*
- Victorian Automobile Chamber of Commerce;*

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<sup>6</sup> Section 576T

- *The Motor Trade Association of South Australia Incorporated; and,*
- *Motor Traders' Association of New South Wales."*

63. Ai Group, the Metal Industries Association – South Australia<sup>7</sup>, the South Australian Automobile Chamber of Commerce Incorporated<sup>8</sup>, the Victorian Employers Chamber of Commerce and Industry, each of which are named as parties bound to the *Vehicle Industry Award 2000*<sup>9</sup>, are not covered by those aspects of the award which paragraph 1.5.4(a) describes. Consequently, any employers who are members of those organisations, also would not be bound to apply the terms of the *Vehicle Industry Award 2000* if performing such work.
64. Interestingly also, Ai Group submits that there is some doubt as to the effect of paragraph 1.6.5 in establishing responsency to the award for members of the Victorian Automobile Chamber of Commerce (“the VACC”), the Motor Trade Association of South Australia Incorporated (“the MTA-SA”) and the Motor Traders’ Association of New South Wales (“the MTA-NSW”). The reason for this is that whilst paragraph 1.6.2, which covers Ai Group, identifies that “*members of such organizations of employers of employees*” are also bound to the award, there is no such proposition intertwined in the coverage expressed in 1.6.5. It is therefore arguable in our submission that members of the VACC, MTA-SA and MTA-NSW do not obtain responsency to the *Vehicle Industry Award 2000* through membership to those organisations alone.
65. Should we be wrong on this matter, we nevertheless submit that Ai Group’s omission alone from the application of paragraph 1.5.4(a) substantially reduces the relevance of the *Vehicle Industry Award 2000* in regulating the manufacture, fabrication and reconditioning of engines, automotive components and agricultural implements, as a large proportion of the companies which perform this work are our members and perform such work under the *Metal, Engineering and Associated Industries Award 1998*.

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<sup>7</sup> Now the Engineering Employers Association, South Australia

<sup>8</sup> Now the Motor Traders Association of South Australia

<sup>9</sup> Sub-clause 1.6.2

66. We would further submit, that where such work is performed by employers other than those respondent to the *Metal, Engineering and Associated Industries Award 1998*, such work would be regulated not by the awards or NAPSAs identified in the Commission's indicative list of awards for the vehicle sector as these awards and NAPSAs do not contain an equivalent scope to that which is prescribed by 1.5.4(a). Instead, the following awards and NAPSAs, each of which were identified in the indicative lists of instruments for the manufacturing industry, would cover such work:

- Australian Capital Territory – *Metal Trades (Australian Capital Territory) Award 2000*;
- New South Wales – *Metal, Engineering and Associated Industries (State) NAPSA*
- Northern Territory – *Metal Industry (Northern Territory) Award 2003*
- Tasmania – *Metal and Engineering NAPSA*
- Western Australia – *Metal Trades (General) NAPSA 1966*

67. On this basis, we submit that it is not appropriate for paragraph 4.3(g) to be retained within any modern award for the vehicle sector, as not only is the provision from which 4.3(g) derived of limited application, but furthermore, the existing awards and NAPSAs which predominantly regulate such work have all been absorbed within the Modern Manufacturing Award and are provided for in the coverage of that award.

68. Ai Group reiterates its earlier submission that the primary federal award which regulates the manufacture, fabrication, repair and reconditioning of engines, automotive components and agricultural implements is the *Metal, Engineering and Associated Industries Award 1998*. Accordingly, the Modern Manufacturing Award should be left to cover this work with the modern award for the vehicle industry yielding what limited coverage the *Vehicle Industry Award 2000* has in this area.

## **Roadside / mobile service**

69. Ai Group is aware that there are a large number of employees who work in the roadside / mobile service sector who are currently covered by the *Metal, Engineering and Associated Industries Award 1998* and are covered under the Modern Manufacturing Award. Accordingly, we submit that paragraph 4.3(h) should be deleted.

## **Driving school instruction**

70. It appears that driving school instruction is an award-free area. Consistent with the Award Modernisation Request, Ai Group submits that this area should remain award-free. Paragraph 4.3(h) should be deleted.

## **Why the current sub-clause 4.3(a)(ii) is not a viable proposition**

71. We note the exclusion for work covered under the *Metal, Engineering and Associated Industries Award 1998* as at 12 July 1971 that is contained within the exposure draft. However, such a provision we contend is manifestly inadequate to resolve the issues of overlap we have identified and also to provide certainty in relation to award coverage.

72. Within the Commission's Statement accompanying the Stage 3 exposure drafts, the Full Bench identified a range of provisions for which they sought specific comment from interested parties including what was identified as clause '4.2(a)(ii)' in the Statement<sup>10</sup>. Ai Group notes that there is no corresponding provision reflecting the numbering 4.2(a)(ii). We have presumed therefore that the Commission was intending to refer to sub-clause 4.3(a)(ii) and that the reference in the Statement reflects a typographical error.

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<sup>10</sup> [2009] AIRCFB450; at [227]

73. Before moving to consider the substance of what is proposed in 4.3(a)(ii), Ai Group has identified what it can only assume is an unintended error in the drafting of the sub-clause. This specifically relates to the reference within the sub-clause to the *Metal, Engineering and Associated Industries Award 1998* which we submit should instead be a reference to the *Metal Trades Award 1952*.
74. The basis upon which we make this contention is that the sub-clause as currently drafted, requires an employer as at 12 July 1971 being bound to the expressed award for the exclusion to be effective. Given the fact that the *Metal, Engineering and Associated Industries Award 1998* was created by order of the Commission on 28 April 1998<sup>11</sup>, as at 12 July 1971 there were no employers bound to the award which therefore renders the exclusion useless.
75. We do not believe that this was the intention which underpinned the drafting, and indeed if one reviews the parallel provision within the *Vehicle Industry Award 2000* it seems clear that the appropriate reference point is the 1952 award and not the *Metal, Engineering and Associated Industries Award 1998*. This in our view supports the submission that an inadvertent error was made in the drafting of the exposure draft provision.
76. Whilst this matter is of some consequence should 4.3(a)(ii) be retained in its present form, Ai Group submits that 4.3(a)(ii) should be deleted in its entirety and replaced by the approach which Ai Group has proposed. The draft exclusion only provides certainty of award coverage for a limited number of employers, namely those who as at 12 July 1971 were utilising the *Metal Trades Award 1952*.
77. We submit, that there are a large number of manufacturers, in particular automotive component manufacturers, who currently apply a variety of awards and NAPSAs to such work who are unassisted in determining award coverage

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<sup>11</sup> Print Q0444

by the terms of 4.3(a)(ii). Some of the awards and NAPSAAs which currently regulate this work include:

- *Rubber, Plastic and Cablemaking Industry – General – Award 1998;*
- *Plastic Moulding & C. NAPSA (NSW)*
- *Rubber and Plastic Industry NAPSA (QLD)*
- *Fibreglass and Plastics NAPSA (TAS)*
- *Plastics Manufacturing NAPSA 1977 (WA)*
- *Metal Trades (Australian Capital Territory) Award 2000;*
- *Metal, Engineering and Associated Industries (State) NAPSA (NSW)*
- *Metal Industry (Northern Territory) Award 2003*
- *Metal and Engineering NAPSA (TAS)*
- *Metal Trades (General) NAPSA 1966 (WA)*

78. There are also a range of employers who, although only commencing in the industry subsequent to 12 July 1971, may still legitimately be applying the terms of the *Metal, Engineering and Associated Industries Award 1998* to their automotive component manufacturing. Indeed a number of these are Ai Group members. For these employers the proposed exclusion fails to definitively establish whether they are covered by the Vehicle exposure draft or another modern award.

79. This final contention perhaps requires further clarification as, to date, a number of organisations<sup>12</sup> have asserted that the interaction between the coverage provisions of the *Vehicle Industry Award 2000* and the *Metal, Engineering and Associated Industries Award 1998* has meant that from 12 July 1971 any new entrants into the automotive component manufacturing sector would need to apply the terms of the *Vehicle Industry Award 2000* and could not apply the *Metal, Engineering and Associated Industries Award 1998*.

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<sup>12</sup> MTAA Further submission and reply – 21 April 2009; at [33]-[35]

80. We reject this assertion and submit that such a contention fundamentally misinterprets the way in which the two awards interact. Important in this regard is the fact that the *Vehicle Industry Award 2000*, at clause 1.5.4(b) identifies that the coverage described in paragraph 1.5.1(a)<sup>13</sup> will not apply to an employer already bound by the *Metal Industry Award 1984* or any award made in replacement of that award.
81. *Metal, Engineering and Associated Industries Award 1998* contains a parallel exclusion to that found in the *Vehicle Industry Award 2000*. Within the *Metal, Engineering and Associated Industries Award 1998* it is contained at Schedule B – Item 17.0 and its effect is identical to the *Vehicle Industry Award 2000* exclusion in that an employer bound to the *Vehicle Industry Award 1982* or any subsequent replacement award, shall not apply the terms of the *Metal, Engineering and Associated Industries Award 1998* insofar as the *Vehicle Industry Award 2000* is capable of applying to their employees.
82. We contend that the net effect of these two parallel exclusions is that rather than conveying exclusive coverage of automotive component manufacturing for any employer entering the industry after 12 July 1971 to the *Vehicle Industry Award 2000*, an employer was instead capable of being bound to either award. The critical test in determining which award would be applied was nothing more than a temporal one as the instrument to which the employer first became roped-in to, precluded coverage of the other award to that type of work.

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<sup>13</sup> 1.5.1(a) generates the majority of coverage under the award as a result of the limited application of the coverage described in 1.5.4(a). See paragraphs 53 – 68 which detail our contentions as to the limited operation of 1.5.4(a).

83. We submit that given this analysis of the manner in which the *Vehicle Industry Award 2000* and *Metal, Engineering and Associated Industries Award 1998* interact, an exclusion of the type proposed within the exposure draft is highly inadequate as it only establishes certainty of coverage for a limited number of employers given the diverse nature of award and NAPSA residency currently applicable in the industry.

### **Cost impacts of the exposure draft**

84. If vehicle component manufacturers are removed from the coverage of the Modern Manufacturing Award by the Commission there will be many cost impacts.

### **Additional allowances, restrictive working hours and higher shift penalties**

85. Should the terms of a modern vehicle award apply in lieu of the Modern Manufacturing Award the following potential increased costs would be imposed upon vehicle component manufacturers:

- Additional allowances<sup>14</sup>;
- Restriction on the ability to work ordinary hours on Saturday afternoon and Sunday for day workers<sup>15</sup>;
- Inability to work longer than 10 ordinary hour days or shifts<sup>16</sup> (i.e. no 12 hour shift operations); and
- Enhanced shift penalties for some shiftworkers<sup>17</sup>;

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<sup>14</sup> See for example sub-clause 19.16, 19.21 and 19.23

<sup>15</sup> Sub-clause 53.1

<sup>16</sup> Sub-clause 53.2

<sup>17</sup> Sub-clause 54.3

## **Reclassification claims**

86. Furthermore, Ai Group is very concerned about the potential for reclassification claims and other classification disputes to arise given the significant difference between the training and skills requirements of the classification structure in the Modern Manufacturing Award and the classification structure in the exposure draft.
87. The training requirements are far more rigorous under the classification structure and associated competency standards in the Modern Manufacturing Award than under the classification structure in the Vehicle Industry exposure draft. For example, the number of hours of training required to achieve an Engineering Production Certificate under the Manufacturing Award is hundreds of hours more than the hours of training required to achieve a Vehicle Industry Certificate.
88. Reclassification claims arising from changed award coverage could impose huge cost increases on vehicle component manufacturers.
89. We contend that the Commission must be extremely conscious of the potentially damaging effects that any increased costs may have on employers in this sector, as it is very obvious that companies in this sector are struggling to cope with the effects of the global financial crisis.

## **Juniors**

90. Sub-clause 14.2 identifies a range of duties and hours for which a junior employee is prohibited from working. The Full Bench in its Statement of 22 May 2009 suggested that such provisions may not be appropriate for a modern award and invited parties to advance a contrary view. Ai Group concurs with the Full Bench's provisional view and submits that such

restrictions within a modern award are unnecessary and contrary to the requirements of the Act.

91. Furthermore, we submit that the nature of the restrictions are such that they appear to be motivated by the objective of ensuring that junior employees are not exposed to unnecessary risks in the course of their employment. Whilst ensuring the health and safety of employees is undeniably an important issue, we do not believe that prescriptive restrictions of this nature are in line with modern notions of safety within the workplace.