

Vehicle Repair, Services and Retail Award 2020

Extension of the COVID-19 Schedule

On 11 May 2020 a new schedule was added to the *Vehicle, Repair, Services and Retail Award* which was intended to assist businesses and employees deal with the effects of the COVID-19 pandemic. The schedule varied a number of provisions in the Award to introduce greater flexibility and allowed employers more discretion in certain areas. For further details, see [Compliance Advice MA000089-01/2020](#).

The schedule was set to expire on 30 June 2020 but the Fair Work Commission (FWC) has decided to extend the schedule, with some amendments, until 27 September 2020.

From 1 July, the schedule includes the following elements:

- The schedule is entitled: Schedule I – Award flexibility during the COVID-19 Pandemic.
- The schedule does not apply to an employer that qualifies for the JobKeeper Scheme in respect of employees who are eligible for that scheme.
- Any directions made under the schedule are required to be in writing and cannot be unreasonable in all the circumstances. An employer must also advise the employee in writing that the employer consents to any dispute that may arise from a direction issued under the schedule being settled by the Commission through consent arbitration.

Temporary reduction in hours of work

For those employers who had already implemented a temporary reduction in hours under the provisions of the schedule prior to 30 June 2020, the reduction in hours may continue until 31 July subject to all of the requirements and safeguards set out in the schedule.

Annual leave

- An employer may request an employee to take any annual leave that has accrued, subject to considering the employee's personal circumstances, by giving at least 72 hours' notice. A request to take annual leave must not result in an employee having less than two weeks of accrued annual leave remaining. An employee must consider and may not unreasonably refuse a request. A request may only be made if both of the following are satisfied:
 - The request is for reasons attributable to the COVID-19 pandemic or to Government initiatives to slow the transmission of COVID-19; and
 - The request is made to assist the employer to avoid or minimise the loss of employment.

The period of annual leave must commence before 31 July 2020 but may end after this date.

- An employer and an employee may agree to the employee taking up to twice as much annual leave at a proportionately reduced pay rate.

What are the specific terms of the variations to the Award?

The specific terms of the Award variations are separately set out in the **attachment**.

What are the operative dates?

The variations come into effect from the first full pay period that starts on or after **1 July 2020**. The COVID-19 Schedule ceases to have effect from **31 July 2020** unless further extended by the Commission.

Do you require further advice?

For information or assistance relating to the application of the Commission's decision, please contact Ai Group's Workplace Advice Line on 1300 55 66 77.



Stephen Smith
HEAD OF NATIONAL WORKPLACE RELATIONS POLICY



DETERMINATION

Fair Work Act 2009

s.157—FWC may vary etc. modern awards if necessary to achieve modern awards objective

Victorian Automobile Chamber of Commerce and Ors
(AM2020/37)

VEHICLE REPAIR, SERVICES AND RETAIL AWARD 2020
[MA000089]

Vehicle industry

JUSTICE ROSS, PRESIDENT
DEPUTY PRESIDENT CLANCY
COMMISSIONER BISSETT

MELBOURNE, 30 JUNE 2020

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

A. Further to the decision ([2020] FWCFB 3416) issued by the Full Bench on 30 June 2020, the above award is varied as follows:

1. By deleting Schedule I and inserting the following:

Schedule I—Award Flexibility During the COVID-19 Pandemic

I.1 Award Flexibility during the Covid-19 Pandemic

- I.1.1** The provisions of Schedule I are aimed at preserving the ongoing viability of businesses and preserving jobs during the COVID-19 pandemic and not to set any precedent in relation to award entitlements after its expiry date. The provisions in clause I.2 to I.6 only operate during the operation of the Schedule.
- I.1.2** Schedule I operates from 11 May 2020 until 31 July 2020. The period of operation can be extended on application to the Fair Work Commission.
- I.1.3** A direction under Schedule I ceases to have effect when it is withdrawn, revoked or replaced by the employer, or on 31 July 2020, whichever is earlier.
- I.1.4** Schedule I does not apply to any employee employed by an employer that qualifies for the JobKeeper Scheme if the employee is an ‘eligible employee’ as defined in section 9 of the Coronavirus Economic Response Package (Payments and Benefits) Rules 2020.

- I.1.5** Any direction or request given by an employer under Schedule I must be given in writing and does not apply to the employee if the direction is unreasonable in all of the circumstances.
- I.1.6** Any dispute regarding the operation of Schedule I may be referred to the Fair Work Commission in accordance with clause 37—Dispute resolution.
- I.1.7** Any direction given by an employer under Schedule I is not valid unless the employee is advised in writing that the employer consents to a dispute arising from the direction being settled by the Fair Work Commission through arbitration in accordance with clause 37—Dispute resolution and section 739(4) of the Act.
- I.2 Temporary reduction of hours of work—full-time and part-time employees**
- I.2.1** For employers who implemented a temporary reduction in hours of work under this clause I.2 before 30 June 2020, the following provisions apply.
- I.2.2** An employer may only implement a temporary reduction in hours of work under this clause if the employee cannot be usefully employed for their normal days or hours as a consequence of business changes attributable to the COVID-19 pandemic or government initiatives to slow the spread of the virus.
- I.2.3** Subject to clauses I.2.1, I.2.4, I.2.5 and I.2.7, and despite clause 9—Full-time employees, an employer may direct a full-time employee to work an average of between 22.8 and 38 ordinary hours per week. The employee will be paid on a pro-rata basis. The arrangements for working ordinary hours in clauses 22—Ordinary hours of work and rostering and 28.1(a) (which pertain to ordinary hours of work) will apply on a pro-rata basis.
- I.2.4** Subject to clauses I.2.1, I.2.6 and I.2.7, and despite clauses 10.3, 10.4, 10.5 and 28.1(b) (which pertain to part-time employment), an employer may direct a part-time employee to work an average of between 75% and 100% of their agreed hours per week, or an average of between 75% and 100% of their agreed hours per week over the roster cycle.
- I.2.5** Subject to clause I.2.5, a full-time employee at Level 1–5 may not have their hours reduced pursuant to clause I.2.2 where the amount payable under the reduced hours falls below \$1,115.70 a fortnight (not including any tool, meal or leading hand allowances paid under Part 3—Wages and Allowances), as a consequence of the reduction.
- I.2.6** A full-time Vehicle Industry Tradesperson at Level 1 or 2 may not have their hours reduced pursuant to clause I.2.3 where the amount payable under the reduced hours falls below \$1,500.00 a fortnight (not including any tool, meal or leading hand allowances paid under Part 3—Wages and Allowances), as a consequence of the reduction.
- I.2.7** A part-time employee who prior to the commencement of Schedule I had an agreed pattern of hours under clause 10—Part-time employees that would have entitled the

employee to earn over \$836.78 a fortnight in respect of those hours, may not have their ordinary hours reduced pursuant to clause I.2.3 to a point that would cause them to receive less than \$836.78 a fortnight (not including any tool, meal or leading hand allowances paid under Part 3—Wages and Allowances), as a consequence of the reduction.

- I.2.8** Prior to any employer issuing any direction under clauses I.2.3 or I.2.4 an employer must:
- (a) consult with the affected employee/s in accordance with clause 36— Consultation about changes to rosters or hours of work and provide as much notice as practicable; and
 - (b) if the affected employee/s are members of a union, notify the relevant union of its intention to implement these arrangements.
- I.2.9** Where the amount paid to an employee under this clause is less than the normal weekly pay an employee received prior to a directed reduction in hours under this clause, the employee can have their weekly pay increased, by agreement with the employer, to the normal weekly pay they received prior to a directed reduction in hours by access to accrued paid annual leave or any other form of accrued paid leave (other than personal/carer’s leave where the employee is not entitled to take this leave).
- I.2.10** An employee given a direction under clauses I.2.3 or I.2.4 will continue to accrue annual leave and personal leave, and any other applicable accruals under this award, based on each full-time or part-time employee’s ordinary hours of work prior to the commencement of Schedule I.
- I.2.11** Nothing in Schedule I prevents an employer and an individual employee agreeing in writing (including by electronic means) to reduce the employee’s hours or to move the employee temporarily from full-time to part-time hours of work, with a commensurate reduction in the minimum weekly wage.
- I.2.12** If an employee given a direction under clauses I.2.3 or I.2.4 takes a period of paid annual leave or personal leave, the payment for that leave will be based on the full-time or part-time employee’s ordinary hours of work prior to the commencement of Schedule I.
- I.2.13** If an employee who has been given a direction under clauses I.2.3 or I.2.4 is made redundant while working reduced hours, any applicable redundancy payment will be calculated based on each full-time or part-time employee’s ordinary hours of work prior to the commencement of Schedule I.
- I.2.14** An employee given a directive under this clause will revert to their ordinary hours of work prior to the commencement of Schedule I once the directive ceases to have effect in accordance with clause I.1.3.
- I.3 Annual leave**

- I.3.1** Subject to clause I.3.6 and despite clauses 29.8, 29.9 and 29.10 (Annual leave), an employer may, subject to considering an employee's personal circumstances, request an employee to take paid annual leave, provided that the request does not result in the employee retaining a balance of less than 2 weeks annual leave after the leave is taken. Such a request must be made a minimum of 72 hours before the date on which the annual leave is to commence.
- I.3.2** An employee must consider and may not unreasonably refuse a request to take annual leave made pursuant to clause I.3.
- I.3.3** Clauses I.3.1 and I.3.2 do not prevent an employer and an employee agreeing to the employee taking annual leave at any time.
- I.3.4** Employers and individual employees may agree to take up to twice as much annual leave at a proportionately reduced rate for all or part of any agreed or directed period away from work, including any close-down.
- I.3.5** The period of annual leave must commence before 31 July 2020 but may end after this date.
- I.3.6** An employer can only request that an employee take annual leave pursuant to this clause if the request is made for reasons attributable to the COVID-19 pandemic or Government initiatives to slow the transmission of COVID-19 and to assist the employer to avoid or minimise the loss of employment.

I.4 Secondary jobs/training

- I.4.1** If an employee is directed to work temporary reduced hours under clause I.2 and the employee makes a request to engage in:
- (a) reasonable secondary employment;
 - (b) training; or
 - (c) professional development;

the employer must consider and not unreasonably refuse the request.

2. By updating the table of contents and cross-references accordingly.

B. This determination comes into operation on 1 July 2020. In accordance with s.165(3) of the *Fair Work Act 2009* this determination does not take effect in relation to a particular employee until the start of the employee's first full pay period that starts on or after 1 July 2020.

PRESIDENT

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