

19 May 2016

Vice President Hatcher  
Fair Work Commission  
80 William Street  
Sydney NSW 2000

Dear Vice President Hatcher

**Re: AM2014/93 Vehicle Manufacturing, Repair Services and Retail Award 2010 – Excluding manufacturing provisions**

Business SA is writing to respectfully express its concern regarding the Fair Work Commission's (FWC) proposal to vary the *Vehicle Manufacturing, Repair, Services and Retail Award 2010 (VMRSR Award/the award)*. This letter is in support of submissions made by other employer and employee parties pursuant to Full Bench directions issued on 13 April 2016.<sup>1</sup> Reasons for our concern are outlined below.

**1) Suggested complexity of the VMRSR Award**

Having read the FWC's statement of 2 November 2015,<sup>2</sup> Business SA respectfully disagrees with the Commission's view the award is unduly complex and difficult to understand. Business SA believes modern awards should be easy to understand but not so simple as to lose legal meaning. The Motor Trades Organisations (MTO) submission notes aggregate employment in the automotive industry was 383,806 persons in June 2014.<sup>3</sup> Business SA believes the *VMRSR Award* should not be so simplified these people are no longer certain as to the extent of their legal rights and obligations. A degree of complexity provides this certainty.

Additionally, Business SA supports statements made by the parties regarding the award's actual complexity. The MTO have submitted the award is not unduly complex and difficult to understand.<sup>4</sup> The Australian Manufacturing Workers' Union (AMWU) submission make similar statements, especially when comparing this award to other awards.<sup>5</sup> Business SA believes the *Manufacturing and Associated Industries and Occupations Award 2010 (Manufacturing Award)* itself is already complex. Addition to the *Manufacturing Award* as proposed will simply create additional complexity; this is commented further below. Business SA agrees with comments made that the current award is not overly complex for those who use the award.<sup>6</sup> An award's complexity is subjective. Business SA believes modern awards should be balanced for those who most regularly use them.

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<sup>1</sup> [2016] FWCFB 2334.

<sup>2</sup> [2015] FWCFB 7275.

<sup>3</sup> Motor Trades Organisations, 'Outline of Submissions on Behalf of the Motor Trades Organisations', 11 May 2016, [57] ("MTA Submission").

<sup>4</sup> MTA Submission [119].

<sup>5</sup> Australian Manufacturing Workers Union, 'Submissions of the Australian Manufacturing Workers Union and the Australian Manufacturing Workers Union – Vehicle Division, 11 May 2016, [3(a)], [62] ("AMWU Submission").

<sup>6</sup> AMWU Submission [63]; MTA Submission [119].



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## 2) Solution proposed by the FWC

Business SA respectfully believes the solution proposed by the FWC is unsound. The award modernisation process consolidated over 1500 Australian awards into 122 modern awards. It is expected the resulting awards may carry a degree of complexity. Business SA does not believe excising vehicle manufacturing from the existing award and inserting that element into the *Manufacturing Award* is an effective remedy. At best this will merely replicate the complexity,<sup>7</sup> at worst this will make employment in the vehicle industry significantly more difficult. Vehicle industry employers and employees would have to determine where the *Vehicle, Repair, Services and Retail Award 2016*'s coverage ends and the *Manufacturing and Associated Industries and Occupations Award 2010*'s coverage begins. This will be particularly difficult for employers with employees engaging in elements of vehicle manufacture in conjunction with repair, service and retail functions. The MTO submission notes this consequence.<sup>8</sup>

Business SA also notes the Commission's current view may be contrary to previous full bench statements. In publishing the original draft for the *Vehicle Manufacturing, Repair, Services and Retail Award 2010*, the Australian Industrial Relations Commission (AIRC) stated their intention the proposed award "deal comprehensively with the vehicle manufacturing sector and the repair, services and retail sector." The AIRC also stated "...it is anticipated that access to a single source of industrial regulation will assist employees and employers alike."<sup>9</sup> The excision of manufacturing elements of the *VMRSR Award* will leave an award which does not comprehensively deal with the sector and will no longer provide a single source of industrial regulation. Business SA supports the MTO's submission on this point.<sup>10</sup>

## 3) Modern awards objective and the FWC's proposal

Business SA also wishes to express its concern the proposal may not accord with the modern awards objective.<sup>11</sup> The MTO, AMWU and Australian Industry Group (AiG) have provided effective discussion on this point.<sup>12</sup> These submissions are supported. Business SA would also like to acknowledge AiG's comments regarding the Commission's jurisdiction to make this change.<sup>13</sup> AiG's discussion and interpretation<sup>14</sup> of the *Preliminary Jurisdiction Issues Decision*<sup>15</sup> is respectfully supported.

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<sup>7</sup> This concern was also noted in the AMWU Submission at [65].

<sup>8</sup> MTO Submission [143].

<sup>9</sup> [2009] AIRCFB 450, [224].

<sup>10</sup> MTO Submission [51].

<sup>11</sup> *Fair Work Act 2009* (Cth) s 134.

<sup>12</sup> MTO Submission [121]-[128]; AMWU Submission [103]-[107]; Australian Industry Group, 'Submission – Proposed Exposure Drafts Vehicle Manufacturing, Repair, Services and Retail Award 2010 (AM2014/93), [42] (AiG Submission).

<sup>13</sup> AiG Submission [40]-[41].

<sup>14</sup> AiG Submission [45]-[47].

<sup>15</sup> [2014] FWCFB 1788.

In conclusion, Business SA respectfully urges the Commission not to proceed with this change to the *VMRSR Award*. This change is opposed by the major industrial parties and will not remedy the complexity. At best the complexity will simply be replicated. At worst removal of manufacturing from the award will cause confusion and uncertainty in both the *VMRSR Award* and the *Manufacturing Award*. In the absence of support by major industrial parties this change should not continue.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Nigel McBride', written over the typed name.

Nigel McBride  
Chief Executive Officer