

## **AM2021/4**

s.160 - Application to vary a modern award to remove ambiguity or uncertainty or correct error

Variation to the *Vehicle Repair, Services and Retail Award 2020* on the initiative of the Commission

### **Shop Distributive and Allied Employees' Association (SDA) submission**

**16 March 2021**

- A. The SDA makes these submissions in line with the directions issued by the Commission on the 5<sup>th</sup> of March 2021.
- B. The Australian Manufacturing Workers' Union have been consulted on this issue and support the of the SDA submissions and agree with the proposed change to the award clause 16.
- C. The VMRSR Award was reviewed over several years as part of the 2014 Review of Modern Awards with extensive conferences, hearings and negotiations between parties who had in interest in the Award. .Parties who participated in this process included AIG, MTO, (or the individual State based organization such as VACC, MTA-NSW, MTA SA etc), AMWU, AWU and SDA.
- D. The result was the Vehicle Repair Service and Retail Award 2020 (**RSR Award**) which was largely an agreed document.
- E. The resultant wage schedules inserted into the RSR Award concerning Driveway Attendants, Roadhouse Attendants and Console operators were closely reviewed, examined and agreed between the parties over an extended period of time. The anomaly that has now been pointed out between the wage tables and the wording of some clauses is not one that can undermine the rates that are in the Schedules.
- F. The wording in the award clauses identified that portray possible ambiguity need to be clarified to continue the award approach and the parties approach that employees who are 20 years old employed as Driveway, Roadhouse and Console operators are paid as adults. This is an agreed position between the major parties who participated actively in the exposure draft process. Any examination of the process undertaken will reveal this.

- G. A brief overview of the wage schedule history and process in the RSR award is detailed in the following paragraphs
- H. Key parties initial position in the 2014 review process was to oppose the inclusion of the Schedules detailing the wage rates. However this became a criteria set by FWC to include wage schedules in awards which then required the parties to look and review the wage schedules for this award.
- I. The Review process was complicated as during the review it was decided to remove the manufacturing component from the award.
- J. The process of the Award Review involved redrafting the award by way of issuing Exposure Drafts
- K. Without trying to detail each and every moment and movement on this issue it can be seen that once engagement on the actual schedules in the Exposure Drafts was undertaken by the parties the following submissions and positions were provided publicly:

1. AMWU submission, **19 December 2016** at p. 25. Raised the concerns over the rates in Schedule B but no fulsome detail on the public record.
2. Joint submission of parties (employer and unions) **12 May 2017**<sup>1</sup> submitted an update on the progress parties were making on the exposure draft A further exposure draft was provided to FWC from the parties highlighting agreed areas or areas still being considered.

The explanation of the draft award has the following note:

Notes

- Schedule B is still subject to submissions by the MTAs
  - The following provisions still need to be updated:
    - Facilitative provisions (once award is finalised)
    - Minimum hourly rates for juniors
    - .Wage rates
3. A further **Exposure draft** was issued on **27 June 2018**<sup>2</sup>. This still contained the junior rate for 20 year old driveway/roadhouse/console employees (except for casuals)

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<sup>1</sup> <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am201493-sub-amwuandors-120517.pdf>

<sup>2</sup> <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/exposure-draft-vehicle-revised-270618.pdf>



Regarding the Schedule B it said:

#### **4. Schedule B.**

**Certain changes proposed by the parties in the submission of 30 October 2018 have not been picked up in the latest draft.**

a) While the amendment to include the words '*20 years and over*' after *full-time and part-time adult*' in B.3.1 was implemented, it has not been included in B.3.2 or B.3.3.

b) As previously notified as well, the rates in B.3.4 (b) require correction in relation to the last '150%' column.

Amend the rates of: \$11-93, \$12-56, \$15-71 and \$18-83 to \$13-49, \$14-19, \$17-75 and \$21-29 respectively.

c) In B.1.6 – Amend the preamble to read as: "*For drivers not covered by clause 11.6, the junior hourly rate (drivers) is based on a percentage of the **relevant adult driver** rate in accordance with clause 11.7*", (i.e. the same preamble as exists in clause 11.7).

(The submission of 30<sup>th</sup> October 2018 does not appear on the website. Some of the proceeding were dealt with via conferences)

7. A further Exposure draft was issued 14<sup>th</sup> October 2019<sup>7</sup> in the wages schedules continued 20 year olds being paid as adults.
8. Various submissions in relation to this exposure draft were made but these did not take issue with the 20 year old adult rate. The ABI submission of 27<sup>th</sup> November 2019<sup>8</sup> stated

#### **VEHICLE, MANUFACTURING, REPAIR SERVICES AND RETAIL AWARD Schedules**

54. We support the changes made to the wage tables at Schedule B3.4(a) and B3.6(a).

55. We support the changes made to the wage tables at Schedule B7.1 and B7.2 with respect to the casual Sunday penalty rate. The MTOs also made a comment on the Schedule but this was only in relation to some minor \$ amounts<sup>9</sup>

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<sup>7</sup> <https://www.fwc.gov.au/sites/awardsmodernfouryr/ma000089-ed-tracked.pdf>

<sup>8</sup> <https://www.fwc.gov.au/sites/awardsmodernfouryr/am201917-69-sub-abinswbc-271119.pdf>

<sup>9</sup> <https://www.fwc.gov.au/sites/awardsmodernfouryr/am201917-93-sub-mto-271119.pdf>

The MTOs submission of 27<sup>th</sup> November deal with other junior rate issues not connected to the driveway/roadhouse or console employees.<sup>10</sup> A subsequent submission of the MTO's supported the ABI submission

- L. Clearly it was the intention and agreement of the parties who had been heavily involved in the 2014 Review and the Exposure draft process that the wage tables in Schedule B were to have 20 year rates deleted from the junior provisions and 20 year olds to be paid as adults. This was not a mistake or error but an issue that had been directly addressed by the parties through conferences and submissions about the Exposure draft.
- M. The level of agreement on the rates contained throughout Schedule B should not be now discarded. The role of awards is to provide the appropriate minimum conditions and setting wage rates. In this award the parties involved agreed on the wage rates that applied under the award. This was a reflection of consideration of the issues and how the previous awards had applied across the industry in the real working world.
- N. This might have been a step away from ensuring the internal consistency of the award wording and an anomaly that has been found. However the strength of the agreement between parties should not be dismissed. It was not an 'error' in setting the rates. It was set by the experienced operators in the industry
- O. In order to fix the anomaly that now confuses some, the junior rates provisions of clause 16 need to have included reference to the 20 year old driveway attendants, roadhouse attendants and console operators receiving the adult rate.
- P. It is proposed that clause 16.6(b) and (d) have added the words '100% of level 1 rate apply at 20 years' and '100% of level 4 rate apply at 20 years' next to the four classifications covering driveway attendants, roadhouse attendants and console operators.
- Q. This clarifies simply the issue before Commission and aligns the text of the award clause with the agreed wage schedules.
- R. Attached at A is the proposed clause 16.6 with the included words in red.
- S. The SDA believes this both reflects the position of the award parties and removes the ambiguity and should be adopted by the Commission.

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<sup>10</sup> <https://www.fwc.gov.au/sites/awardsmodernfouryr/am201917-93-sub-mto-271119.pdf>

**Attachment A (Clause rates as at 16 April 2021)**

**16.6 Vehicle industry RS&R—unapprenticed juniors**

- (a) The minimum weekly rate for a junior employed in the classifications as set out in clause 1.1(b), will be the following:

<b>Age</b>	<b>% of Level 1 rate</b>	<b>\$ per week (full-time employee)</b>	<b>\$ per hour</b>
16 years and under	47.5	358.06	9.42
17 years	50.0	376.90	9.92
18 years	62.5	471.13	12.40
19 years	75.0	565.35	14.88
20 years	87.5	659.58	17.36

- (b) For the purpose of clause 1.1(a), the following classifications apply:

- Battery repairer
- Car cleaner and/or washer
- Car polisher—by hand
- Detailer
- Driver—courtesy vehicle in relation to sales or sales promotion or in the course of registration or collection from or delivery to customer—vehicles up to and including maker’s capacity of 3 tonnes
- Driveway attendant (100% of level 1 rate apply at 20 years)
- Electroplater—2nd class
- Grinder and/or buffer metal using portable machine
- Lubritorium attendant
- Machinist (metal)—2nd class
- Office cleaner
- Painter—brush and/or spray on mechanical and/or chassis components
- Painter’s wet rubber
- Parking attendant
- Process worker
- Roadhouse attendant, required to cook takeaway foods (100% of level 1 rate apply at 20 years)

- Salesperson, first 6 months' experience
- Service receptionist (not being a tradesperson)
- Sewing machinist
- Spring service worker, spring coiling machinist and spring maker
- Steam cleaner and/or proof coater
- Store person – first 12 months' experience
- Tradesperson's assistant
- Tyre fitter
- Vehicle salesperson and/or agricultural vehicle salesperson—up to 6 months' experience
- Welder—electric spot and buff

(c) The minimum weekly rate for a junior employed in the classifications set out in clause 1.1(d), will be the following:

<b>Age</b>	<b>% of Level 4 rate</b>	<b>\$ per week (full-time employee)</b>	<b>\$ per hour</b>
16 years and under	47.5	395.58	10.41
17 years	50.0	416.40	10.96
18 years	62.5	520.50	13.70
19 years	75.0	624.60	16.44
20 years	87.5	728.70	19.18

(d) For the purposes of clause 1.1(c), the following classifications apply:

- Air hammer operator
- Assembler—accessories
- Assembler—body shop
- Assembler and/or wirer
- Automotive serviceperson and/or checker
- Bodymaker—2nd class
- Brake serviceperson
- Console operator (100% of level 4 rate apply at 20 years)
- Dent knocker

- Driver of courtesy car or vehicle in relation to sales or sales in the course of registration, collection from or delivery to customer—vehicle with maker's capacity over 3 tonnes
- Exhaust repairer
- Fork-lift driver and mobile crane driver
- Motorcycle assembler
- Radiator repairer, as defined
- Roadhouse attendant, if engaged primarily to cook other than takeaway foods  
(100% of level 4 rate apply at 20 years)
- Salesperson, other
- Spotter and/or toucher up
- Storeperson—more than 12 months' experience
- Storeperson and packer
- Trimmer sectional
- Vehicle salesperson and/or agricultural vehicle salesperson, after 6 months experience
- Welder other than trade using oxy, etc.
- Wheel aligner, other than a tradesperson
- Wheel builder and/or repairer
- Windscreen fitter and/or repairer
- Wrecker—automotive