



VACC Submission to the Senate Inquiry into the Fair Work (Transitional Provisions and Consequential Amendments) Bill 2008

April 2009

INTRODUCTION

The Victorian Automobile Chamber of Commerce (VACC) was formed in 1918 and has grown to represent approximately 5400 members predominantly in Victoria, Tasmania and Queensland. These businesses are principally involved in retail sales, manufacturing, assembling, distribution, parts and components, repairing and servicing of vehicles of all kinds. VACC has been a federally registered industrial organisation since 1940.

In Tasmania, members are represented by the Tasmanian Automobile Chamber of Commerce (TACC) which was federally registered from 1978 until 1998 when it merged with VACC. VACC is also a registered organisation in the Tasmanian industrial relations system.

VACC has also recently formed an affiliation with a NSW organisation, the Automotive Dealers Group (ADG), to provide administrative support, and employee relations and occupational health and safety advice. ADG has approximately 160 members.

PROFILE OF THE RETAIL MOTOR INDUSTRY

The retail motor industry in Australia is predominantly made up of small businesses which are spread across metropolitan regional and country areas. Until 2005, the retail motor industry organisations across Australia used an independent firm of consultants, AC Nielsen, to conduct a collective national survey of members.

These surveys, which were conducted from 2001 to December 2004, were used in support of submissions for national wage case hearings. They were also helpful to identify accurately the size, employment arrangements and economic considerations concerning wage adjustments.

The data derived from a national survey of members, conducted by AC Nielsen on behalf of the various retail motor industry organisations in December 2004, (*ACN December*

Survey 2004), indicated that up to 90% of the industry consisted of businesses employing fewer than 20 employees. The survey results also demonstrated that business activities in the retail motor industry are divided nationally across metropolitan, regional, (including country) locations.

Whilst some time has elapsed since the last national survey was conducted, VACC considers the statistical data remains a reliable indicator of the composition and distribution of businesses. A review of both ABS data and member demographics confirms this view.

SUBMISSION TO THE SENATE INQUIRY

VACC welcomes the opportunity to make a submission to the Senate Inquiry into the Fair Work (Transitional Provisions and Consequential Amendments) Bill 2008 (Cth) (the Bill). We also commend and support the submission made by the Australian Chamber of Commerce and Industry (ACCI).

VACC also wishes to highlight that the time frame for this inquiry was quite short particularly given the fact that the Fair Work Act 2009 (Cth) (the Act) together with its 225 amendments have only just been passed. It is hoped that there is ongoing consultation in relation to the implementation of the Fair Work Act through this Bill and other transitional instruments.

VACC does not intend to make comments on all aspects of Bill but will instead highlight a few issues that are of concern to the retail motor industry in Australia.

COSTS IMPACT

VACC is concerned that the costs of the Bill have not been considered in any detail. These costs include increased wages under the modern award system, the new National Employment Standards which will provide additional entitlements to most employees and

the likelihood that greater resources will need to be put into the bargaining process to comply with new bargaining requirements.

TAKE HOME PAY ORDERS

VACC is concerned about the ability of Fair Work Australia (FWA) to make take-home pay orders where pay is reduced as a result of award modernisation. Clause 12 in Schedule 6 dealing with Modern Enterprise Awards provides that if FWA is satisfied that an employee or class of employees has suffered a modernisation- related reduction in take-home pay then the FWA can make an order requiring or relating to the payment of an amount to remedy the situation.

VACC considers that these provisions provide FWA an unwarranted opportunity to review entitlements in modern awards. Wage rates and entitlements will be more than adequately dealt with during the award modernisation process and should not be subject to further review following the finalisation of that process. Allowing for further payments to be sought by employees prevents employers from being able to plan with any certainty for business on costs for the future once the modern awards have been made. VACC recommends that the provisions relating to take- home pay orders be removed from the Bill.

It should be emphasised that there will already be significant additional costs for many businesses following the implementation of the new modern awards. Orders to make

additional payments to employees are only going to exacerbate the already precarious financial position of many VACC members.

The Explanatory Memorandum provides that the scope for making take-home pay orders is tightly restrained. VACC does not consider this to be the case. The scope of the orders that can be made to extend beyond orders for payments to orders relating to payments. It is also problematic that there is no time limit on when orders can be sought by employees and that repeat applications are not prohibited.

THE 'NO DETRIMENT' RULE

VACC is also concerned about clause 23 in Schedule 3 of the Bill relating to the 'no detriment rule'.

Clause 23(1) provides that to the extent that a term of a transitional instrument is detrimental to an employee when compared to an entitlement under the National Employment Standards the term of the transitional instrument is of no effect.

The Explanatory Memorandum states that the no detriment test applies on “a line by line basis” which means that the NES entitlement will prevail over the corresponding entitlement in a transitional instrument if the term in the transitional instrument is detrimental to the employee in any respect in comparison to the NES.

This means that an employee may have entitlements that are drawn from both the NES and the transitional instrument which is likely to cause confusion for both employers and

employees. VACC considers a global test such as the current No Disadvantage Test (section 346D) should apply rather than a line by line examination.

UNFAIR DISMISSAL REMEDIES

VACC would also like to take this opportunity to raise its concern about one of the remedies provided in the Fair Work Act for unfair dismissal cases. Section 391 provides that reinstatement of an employee may be ordered and that such reinstatement may occur within the business of and associated entity of the employer. VACC recommends that this provision be amended so that if reinstatement is ordered it only be possible within the business of the employee's employer.