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29 February 2008

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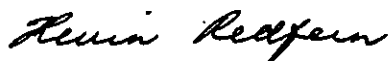
Dear Mr Carter

**RE: SUBMISSION IN RESPONSE TO THE WORKPLACE RELATIONS
(FORWARD WITH FAIRNESS) BILL 2008**

The attached submission incorporates the views of the Retail Vehicle Industry Employer Organisations in response to the Workplace Relations (Forward with Fairness) Bill 2008.

If you have any questions in respect of the attached submission, please do not hesitate to contact our offices.

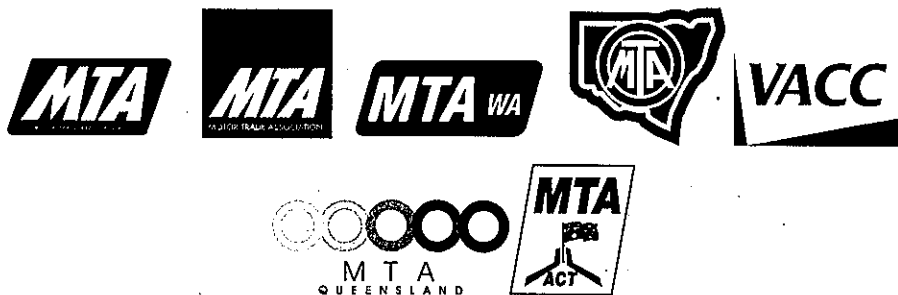
Yours sincerely



KEVIN REDFERN
Secretary Federal Industrial Council – Retail Motor Industry

***Submission of the Retail Vehicle Industry
Employer Organisations in response
to the Workplace Relations Amendment
(Transition to Forward with Fairness) Bill
2008***

February 2008



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Introduction

[1] This submission incorporates the collective views of the Victorian Automobile Chamber of Commerce and Motor Trade Organisations ("Retail Vehicle Industry Employer Organisations") ('RVIEO') in response to the Workplace Relations Amendment (Transition to Forward with Fairness) Bill 2008. The key issues addressed by the RVIEO include award modernisation, ITEA's and the extension to the life of agreements.

About the Retail Vehicle Industry Employer Organisations

[2] The RVIEO were established in the following years:

- Motor Traders Association of New South Wales (MTA NSW) founded in 1910;
- Victorian Automobile Chamber of Commerce (VACC) (representing Victoria and Tasmania) formed in 1918 and amalgamated with the Tasmanian Automobile Chamber of Commerce (TACC) which was established in 1928;
- Motor Trade Association of South Australia Inc (MTA SA) formed in 1926?;
- Motor Trades Association of Queensland (MTAQ) founded in 1929;
- Motor Trade Association of Western Australia Inc (MTA WA) formed in 1934;
- Motor Trade Association of ACT Ltd (MTA ACT) founded in 1974;
- Motor Trade Association of Northern Territory Inc (MTA NT) formed in 1984.

MTA NSW, VACC, TACC and MTA SA are all federally registered Industrial Organisations.

[3] The RVIEO also form the Retail Motor Industry Federal Industrial Council, which is the federal industrial relations policy making body.

[4] The RVIEO each provide a dedicated range of services, publications, and advices to its various members to assist in the development and management of businesses in the retail automotive sector. The RVIEO provide industry training, industrial relations advice, occupational health and safety services and technical advice. In addition, as a collective the RVIEO are the peak retail automotive industry organisations which represent the industry on a range of issues within their respective State or Territory as well as to Federal Government.

[5] RVIEO recognise that the Government has been elected with a mandate to introduce changes to the current Workplace Relations system. We acknowledge that the Government has consulted with business regarding the platform for these changes. RVIEO support the Government in its agenda to repeal some of the WorkChoices legislation. We support the introduction of new employment standards, as the previous minimum standards have been inflexible, confusing and inhibitive to many of our member's business operations. RVIEO advocate for an updated, flexible and modern award system that allows businesses to fairly employ staff with flexibility, whilst recognising the unique nature of our specific industry. Furthermore, RVIEO supports the implementation a workplace relations system that offers both employers and employees flexible work arrangements, and continues to promote productivity.

[6] In response to the call for submissions, RVIEO point out that there are some technical implications with the legislation in its current format. Where possible RVIEO have identified potential issues, and have provided technical suggestions on how the legislation might be enhanced to make the transitional provisions run more effectively.

Individual Transitional Employment Agreements

[7] REVIO has long been involved in assisting employers across the retail motor industry in the drafting, negotiating and lodging of workplace

agreements. This includes all forms of agreement making options currently available to employer and employees; both prior to Workchoices and under the current system. The abolition of Australian Workplace Agreements (AWAs) and the introduction of individual transitional employment agreements (ITEAs) is an important issue for our membership. AWAs have been used within the retail motor trade industry, since their inception in 1996. They have been used to achieve flexibility not available under industry awards.

[8] The Workplace Relations Amendment (Transition to Forward with Fairness) Bill 2008 (*Forward with Fairness Bill*) proposes that an ITEA cannot be made unless the person whose employment is subject to the ITEA:

- (i) *did not commence that employment more than 14 days before the day on which the ITEA was made, and had not previously been employed by the employer*

[9] In effect the *Forward with Fairness Bill* limits those parties that can make ITEAs to new employees, and existing employees who were already employed under AWAs.

[10] All employees of a business that had AWAs implemented as at 1 December 2007 should have access to ITEAs. There are many reasons why an employer may not wish to offer an AWA (under the existing system) or an ITEA to a new staff member, but will want to offer such an instrument sometime during the employment relationship. Given the administration involved and the common delays with the approval process, many employers choose to defer the offer of a formal individual agreement until the end of a probationary period (up until which time employees are employed under an award arrangement). In addition, many employees within the retail motor trades industry use AWAs to encash annual leave and long service leave. If an existing employee makes a request to encash annual leave during the transitional period, but does not have an AWA, this flexibility is not available to that employee or his or her employer.

[11] Many businesses with AWAs and ITEAs will, for the purpose of maintaining consistent employment arrangements need to offer an ITEA to existing employees during the transitional period. We submit that this option should be made available.

[12] The *Forward with Fairness Bill* also excludes employees that had been previously employed by an employer from accessing an ITEA. We submit that there are many situations where this provision will be prohibitive. Categories of employees that might have been previously employed include; fixed term contract employees, casual employees. In the sub-sector of the retail Motor Trade industry, "Horticulture" dealerships and repairers often use seasonal hire employees under AWAs. The *Forward with Fairness Bill* excludes this category of employee from entering an ITEA. If all other requirements are met, it is the view of RVIEO that these employees should not be excluded from accessing an ITEA.

Nominal term for ITEAs

[13] Pre-transition AWAs can run their full term of up to five years, meaning some parties can remain on AWAs until sometime during 2013. RVIEO are of the view that the nominal expiry of 31 December 2009 for ITEAs is too short. The transitional period for these agreements should be extended to be consistent with the nominal expiry of pre-transition AWAs within the system.

No-disadvantage test

[14] The no-disadvantage test (NDT) introduces a new standard and benchmark to the approval process of individual agreements. Section 346D of the *Forward with Fairness Bill* provides that an ITEA passes the NDT if the agreement does not result in a reduction in the employee's overall terms and conditions of employment **under any reference instrument relating to the employee.**

[15] A reference instrument as set out in section 346E(1) sets up a hierarchy of instruments that will be used for assessment against the NDT. The first of these instruments is; **any relevant collective agreement**. We submit that collective agreements are bargained outcomes that do not represent or relate to a safety net standard, and therefore should not be considered a reference instrument. It is accepted and welcomed by RVIEO that individual agreements be assessed against a relevant instrument to ensure that employees are not disadvantaged, however that test should be conducted against the relevant safety net for that employee; an Award.

[16] Given there is now a more stringent approval test under the *Forward with Fairness Bill*, it follows that a safety net award should provide adequate protection to an employee offered an ITEA. Collective Agreements are not safety net instruments, therefore should not be considered in the hierarchy of reference instruments for approval.

Collective Agreements

[17] Subdivision B of the *Forward with Fairness Bill* deals with the introduction of the NDT. Section 346D(5) provides that when the Workplace Authority Director decides that an agreement is taken to pass the NDT (when the Workplace Authority Director is satisfied it is not contrary to the public interest) that the Workplace Authority Director must publish his or her reasons for doing so. RVIEO would argue that this provision could lead to commercially sensitive information being available to the wider public and employers' competitors. We submit that this provision would operate fairly if there was an additional provision made that protected the commercially sensitive and confidential information of the employer.

[18] The *Forward with Fairness Bill* provides that collective agreements take effect only after the approval of the Workplace Authority. RVIEO submits that if the parties to the agreement, (whether an employer collective or a union

collective agreement) have agreed upon terms, then collective agreements should be operative from lodgement, as under the current system. RVIEO employers are increasingly frustrated with the time it takes for both AWAs (currently) and collective agreements to be approved by the Workplace Authority. At times the delay in processing can take up to 6 months. If a collective workforce has negotiated an outcome and agreed upon terms to cover their employment, we argue that the parties have the right to have the agreement implemented as soon as practical after the voting period.

The approval process

[19] RVIEO reiterates its frustration with the time delays in having formal agreements approved. We call for a more efficient and expedient process of approval. RVIEO supports any initiative or alternative fast track approach to the approval process. There are many experienced users of the agreement making system that are registered entities under the *Workplace Relations Act 1996* (Cth). A system that recognises their ability to lodge agreements that meet the NDT would assist with curtailing time delays for approval.

Award modernisation

[20] The RVIEO have two principal industry awards that apply to employers, namely the Vehicle Industry Repair Services and Retail Award 2002 and the Vehicle Industry Award 2000. Both these awards are "industry" by nature, providing a minimum set of standards for employers and employees as well as efficient and effective conduct of work within the industry.

[21] The two principal awards have a significant history of application. The Vehicle Industry Award 2000, commenced in 1953 and in 2001 integrated the Retail Motor Industry (Metals) Award 1993. The award was simplified in 2000 and is a common rule award in Victoria.

[22] The Vehicle Industry Repair, Services and Retail Award 2002 (the RSR Award) originated in 1968. The Award merged with the Motor Vehicle Salesman Award in 1970. The Award was consolidated in 1974, 1976 and again in 1980. In 1977 a related Long Service Leave Award was established and remained a separate Award following the award simplification process. In 1990 the Award merged with the Vehicle Industry Repair Services and Retail Award (Part II – Tyre Retail and Service Centre) Award. This Award applies a common rule award in Victoria and ACT.

[23] The RSR Award does not contain classifications for clerical employees, but the Vehicle Industry Award 2000 does. The RVIEO have always considered that clerical employees should be covered by the relevant industry award rather than an occupational based award. This would then be consistent with the principal undertaking of the business. The Clerks (Vehicle Industry Repair Services and Retail) Award 2003 was created in 1974 and has continued to apply in Queensland. An in principle agreement was reached with the Australian Services Union (ASU) for national coverage of the award however this was never achieved due to changes to the federal industrial relations system.

[24] The various state awards in many ways mirror the parent RSR Award and where applicable the Vehicle Industry Award 2000. Given the industry's demonstrated experience in award simplification and the RVIEO's efforts to reduce multiple award coverage in the industry, the RVIEO would like to be considered as an industry of priority. Although we are not an industry with a high number of Australian Workplace Agreements (AWA's), we are an industry striving for a single vehicle industry award across state boundaries, with industry specific terms and conditions, including an industry specific classification structure.

Award modernisation request

[25] RVIEO are mindful of the urgency in which the Federal Government is required to undertake the award modernisation process however the retail

motor vehicle industry does not want to be unnecessarily prejudiced by tight timeframes. It is our understanding that there are some 4300 awards that need to be modernised and implemented by 1 January 2010.

Procedure for carrying out the modernisation of award process

[26] The RVIEO supports the award modernisation process to be undertaken by the Australian Industrial Relations Commission (AIRC). The RVIEO would advocate for ample time to be allocated to meaningful industry consultation with the President or other Commission members of the AIRC.

[27] The RVIEO strongly supports the Commission's panel system and would be content for individual Commission members to handle the award modernisation process relevant to the retail motor industry where the member has already engaged in extensive contact with the representatives of the industry. We believe that this will achieve a better outcome for the retail motor industry.

[28] The RVIEO propose to put forward a draft model award to be forwarded to the Commission that would be compiled in consultation with the relevant union. This would expedite the consultation process and prevent the need for an exposure draft prepared by the Commission. The RVIEO would of course anticipate extensive meaningful consultation with respect to the proposed flexibility clause.

[29] The RVIEO support the proposal that employees earning above \$100,000 per annum will be free to agree their own pay and conditions without reference to awards. The RVIEO have noted that it is not contained in the *Forward with Fairness Bill* itself although reference is made at page 8 of the Explanatory Memorandum.

Terms of modern awards

[30] The RVIEO note that the proposed section 576J(1)(j) of the Bill refers to procedures for consultation, representation and dispute settlement as an allowable award matter. The RVIEO would suggest that further explanation is required as to the types of matters this provision would encompass.

[31] Section 576(2) of the *Forward with Fairness Bill* may include other matters specified in the award modernisation request to which the modern award relates. The RVIEO would suggest that the provision is limited and is not extended beyond the National Employment Standards.