



Fair Work
Commission

Modern Awards Review 2023-24 (AM2023/21)

Submission cover sheet

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Motor Trades Organisations

IN THE FAIR WORK COMMISSION

Modern Awards Review 2023-24 – Work and Care Discussion Paper (AM2023/21)

SUBMISSION IN REPLY ON BEHALF OF THE MOTOR TRADES ORGANISATIONS

1. This submission in reply is filed on behalf of the Victorian Automotive Chamber of Commerce, the Motor Traders' Association of NSW, the Motor Trade Association of South Australia and Northern Territory, the Motor Trades Association of Queensland, and the Motor Trade Association of Western Australia, (collectively, the Motor Trades Organisations) with reference to the Work and Care Discussion Paper published by the Fair Work Commission on 29 January 2024 ('**Discussion Paper**').
2. The Motor Trades Organisations ('**MTO**') also rely on their submission filed on 12 March 2024.
3. The MTO submission in reply is limited to a response to the Literature Review undertaken by the University of Western Sydney¹ and to the respective submissions filed by the Australian Manufacturing Workers' Union ('**AMWU**') and the Shop, Distributive and Allied Employees' Association ('**SDA**') on 12 March 2024, in relation to those submissions that relate directly to the *Vehicle Repair, Services and Retail Award 2020* ('**Vehicle Award**').

Literature Review

4. MTO does not offer any specific commentary into the quality of the research referenced in the Literature Review. However, MTO does note the dearth of research contained within it providing a genuine consideration of the perspectives and experiences of employers – and of small businesses in particular. Accordingly, in MTO's view, the Literature Review serves to highlight the

¹ Sara Charlesworth and Meg Smith (2024). *Literature Review for the Modern Awards Review 2023-24 relating to the workplace relations settings within modern awards that impact people when balancing work and care*. Sydney: Wester Sydney University.

opportunity for academic researchers in the field of workplace relations to address this glaring imbalance.

5. MTO notes that this lack of balanced consideration is concordant with concerns raised in our previous submissions, regarding the lack of evidentiary focus given to small businesses in the Senate Select Committee on Work and Care Final Report.
6. MTO therefore submits that, as with the Senate Select Committee on Work and Care Final Report, the Literature Review is of limited practical utility to the Commission in the context of a modern awards review.

AMWU Submission

7. MTO respectfully opposes the recommendations made in the AMWU Submission as they relate to the Vehicle Award and makes the observation that those recommendations appear reflective of general policy positions, rather than specific variation proposals. Accordingly, MTO submits that they lack the specificity and sufficient nexus and/or evidentiary justification as to how they are necessary to ensure the Vehicle Award continues to meet the modern awards objective. As such, MTO suggests that the recommendations are more appropriately proposed as ambit claims in the context of enterprise agreement negotiations with (larger) businesses operating in industries where such arrangements might be appropriate, such as the multi-national business operating in the printing industry referenced at [40] of the AMWU Submission.
8. MTO notes that that Vehicle Award is specifically referenced twice in the AMWU Submission, at Tables 1 and 2, with the tables relating to 'notice periods for roster changes and RDO changes' and 'minimum payment period for recall to duty' respectively.
9. In respect to Table 1 (and subsequent Recommendation 1), MTO notes that the AMWU Submission does not recognise the existing requirements under cls. 10 and 36 of the Vehicle Award as outlined in MTO's previous submissions.² In this regard, MTO further notes that the AMWU's Submission can be contrasted with the SDA Submission.³
10. In respect to Table 2 (and subsequent Recommendation 3), MTO notes that the AMWU submission does not accurately reflect the provisions of the Vehicle Award, including the difference between general call-backs under cl. 24.8 and call-backs for breakdowns, accidents and other emergency work under cl. 24.9. In particular, MTO notes that call-back under cl. 24.8 applies whether or not the employee was notified before or after leaving the premises;⁴ that call-back under cl. 24.9 includes reasonable travel time;⁵ and that standing by time is payable for employees that are regularly required to hold themselves in readiness for call-back in accordance with cl. 24.7.

² See [17] and [19].

³ See SDA Submission, [132].

⁴ Cl. 24.8(a).

⁵ Cl. 24.9(b).

11. Accordingly, MTO submits that the Commission should be satisfied that the AMWU Submission does not establish that variations are necessary to the Vehicle Award to ensure it continues to meet the modern awards objective.

SDA Submission

12. MTO respectfully opposes the recommendations made in the SDA Submission as they relate to the Vehicle Award in the same terms as provided in [7] in relation to the AMWU Submission – and notes that, as with the AMWU Submission, the SDA Submission confirms that a number of their recommendations have been successfully negotiated into enterprise agreements covering their members.⁶ In MTO’s view, this serves to reaffirm the position that such matters should be determined at the enterprise level, rather than through a misguided ‘one-size-fits-all’ approach via the modern award safety net.
13. In this regard, MTO notes the breadth of - and differences between - the industries and occupations covered by modern awards. These differences can be measured in a variety of different ways, including demographically. It is evident that the SDA Submission is underpinned by an analysis based on the demographic of gender. This is neatly summarised at [21] of the SDA Submission, which expresses its primary contention that there are:

“... stark differences in the terms and conditions, particularly in relation to spread of hours, overtime, and rostering, when comparing female dominated to male dominated Awards. This is resulting in less secure employment, more unpredictable and precarious working time arrangements and lower incomes, particularly for worker carers and women who work.”

14. MTO understands that in the SDA’s view, this is demonstrated by ‘good flexibility’ in modern awards covering male dominated industries and occupations and ‘bad flexibility’ in modern awards covering female dominated industries and occupations.⁷ Consistent with such a position, MTO notes the SDA Submission’s acknowledgement at [10] of its reliance upon the survey responses provided by SDA members working in ‘female dominated’ industries during the COVID-19 pandemic.⁸
15. In this context, it is therefore important to note that the SDA Submission acknowledges that the Vehicle Award is ‘male dominated’⁹ – a point also supported in ABS data that found the proportion of females under the Vehicle Award in 2021 was 27.8%. MTO submits that a categorisation of the Vehicle Award as an exemplar of ‘good flexibility’ is consistent with our previous submissions.
16. The Vehicle Award is specifically referenced at [72], [132], [137] and [195] of the SDA Submission. With the exception of [195] relating to span of hours, MTO notes that the references to the Vehicle Award are consistent with the views expressed above relating to modern awards covering ‘male dominated’ industries and occupations. In regard to span of hours, MTO does not accept the

⁶ See SDA Submission, [145], [243], [303].

⁷ See SDA Submission, [136]-[139].

⁸ Cortis, N., Blaxland, M. and Charlesworth, S. (2021). *Challenges of work, family and care for Australia’s retail, online retail warehousing and fast food workers*. Sydney: UNSW Social Policy Research Centre, p.10.

⁹ SDA Submission, [137].

inference made at [199] of the SDA Submission that there is no stability and certainty under the Vehicle Award regarding when an employee can be rostered – and notes both its inconsistency with [72] and [132] of the SDA Submission and disregard of the existing requirements under cls. 10 and 36 of the Vehicle Award.

17. More broadly, MTO submits that the SDA Submission’s claim that larger span of hours provisions are a reflection of the undervaluation of female dominated work¹⁰ and must be restricted to ensure workers can work and care¹¹ cannot be accepted, particularly as a justification for a recommendation to review the span of hours provisions in the (‘male dominated’) Vehicle Award. In addition to being contrary to its primary contention outlined at [13] herein, such a restrictive ‘one-size-fits-all’ approach to span of hours serves to limit the ability of an employer to facilitate workplace flexibility for employees with carer responsibilities in practice. Importantly, it also ignores the higher rates applicable under the Vehicle Award for the performance of ordinary hours of work on a Saturday or Sunday¹², as well as on afternoon and/or night shifts.¹³
18. Accordingly, MTO submits that the Commission should be satisfied that the SDA Submission does not establish that variations are necessary to the Vehicle Award to ensure it continues to meet the modern awards objective.

Conclusion

19. MTO reiterates its view that the best work and care outcomes are achieved for both employers and employees through mutual agreement, facilitated through flexibility and common sense, underpinned by the statutory safeguard provided by Div. 4 of the NES. Hence, MTO continues to recommend that no specific variations are necessary to the Vehicle Award to ensure it continues to meet the modern awards objective.

MOTOR TRADES ORGANISATIONS

26 March 2024

¹⁰ SDA Submission, [224]

¹¹ SDA Submission, [223].

¹² See for example, cl. 23.2(a) and 23.2(b).

¹³ See for example, cl. 25.2.