



Victorian Automobile
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Vice President Hatcher
Fair Work Commission
Terrace Tower
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By Email: **chambers.hatcher.vp@fwc.gov.au**
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Dear Vice President,

S.156 – 4 yearly review of modern awards
Matter no: AM2014/93

Please see **attached** reply submissions for and on behalf of the Victorian Automobile Chamber of Commerce (**VACC**), the Motor Traders' Association of NSW (**MTANSW**) and the Motor Trade Associations of South Australia (**MTASA**) and Western Australia (**MTAWA**) (collectively, the Motor Trades Organisations).

Yours faithfully

Bill Chesterman
Industrial Relations Manager
VACC
For and on behalf of MTA NSW, South Australia and Western Australia

s.156 – 4 yearly review of modern awards

Group 1C - Vehicle Manufacturing, Repair, Services and Retail Award 2010

REPLY SUBMISSIONS FROM MOTOR TRADES ORGANISATIONS

Introduction

1. This reply submission has been prepared and is filed on behalf the Victorian Automobile Chamber of Commerce (**VACC**), the Motor Traders' Association of NSW (**MTANSW**) and the Motor Trade Associations of South Australia (**MTASA**) and Western Australia (**MTAWA**) (collectively referred to as the **Motor Trades Organisations**).
2. The reply submission primarily covers the concerns the Motor Trades Organisations have in relation to the wording of some clauses or additional clauses which have been included in the Vehicle, Repair, Services and Retail Award 2016, (the **Draft Exposure Award**) issued by the Fair Work Commission on 22 April 2016. In a number of cases, changes to existing award clauses or additional clauses have not been the subject of any discussion or agreement between the parties during the four-year award review process.
3. In addition, this reply also makes some preliminary submissions regarding the s.160 Application to Vary the Vehicle Manufacturing, Repair, Services and Retail Award 2010 filed by the Shop Distributive & Allied Employees' Association (**SDA**) on 5 October 2015.

Motor Trades Organisations issues with award clauses

4. The chart set out in paragraph 5 sets out the clauses in the Draft Exposure Award identified by the Motor Trades Organisations, which have either been added to the Draft Exposure Award without prior discussion by the major parties during the four-year review process or the numbering of clauses is incorrect. The wording of some other existing clauses has been changed which has altered the way a particular provision has operated since the Vehicle Manufacturing, Repair, Services and Retail Award came into operation on 1 January 2010.

Clause No	Motors Trades Organisations issues with additional clauses and /or wording of clauses in the Draft Exposure Award (not including coverage issues)
1. Clause 6.7	Casual Conversion - subclause (c) (iv) – reference to clause 5 should be to clause 6.7 (d).
2. Clause 8.3	Training fees – sub-clause (a) requires amendment (as previously identified by MTA-SA).
3. Clause 8.7	Recognition of training and conditions of employment – sub-clause (b) requires amendment (as previously identified by MTA-SA).
4. Clause 10.1	Proposed drafting of clause 10.1 does not reflect any of the parties' positions as detailed in the Report to the Full Bench dated 29 September 2015 .
5. Clause 11.6	Proposed removal of indicative roles for junior employees in clause 11.6 is opposed – no party has sought such a change and having the roles assists employers in classifying juniors.
6. Clause 12	Payment of wages – Substantially amended to reflect Manufacturing Award provisions - no parties were consulted on this. Change of payday provision has been deleted as has authority to deduct monies from wages.
7. Clause 12.7	Make-up time after stand down included, however the actual make-up time provisions have been deleted.
8. Clause 15.5	Tool allowance – sub-clause (b) refers to classifications in clauses 11.8 to 11.10 – should be clause 8.2 instead.
9. Clause 18.1 - 18.2	<p>The ordinary hours of work clause requires amendment. Clause 18.1 of Draft Exposure Award includes application to vehicle salespersons classifications. Restriction of ordinary hours to a maximum of five days in week in Clause 18.2 is in conflict with vehicle salespersons conditions in clause 24, which allows for 1 ½ days or 3 days off per week/fortnight.</p> <p>Clause 18.1 makes clause 24 an additional provision concerning ordinary hours of work rather than excluding such employees from clause 18. Clause 24 has always operated separately. This now also means the clause 18 captures Finance and Insurance employees and Aftermarket Salespersons. These employees are still excluded from clause 20 - Overtime (refer clause 20.1).</p>

<p>10. Clause 18.5(b)</p>	<p>The maximum hours per day does not reflect any proposal put by any party. This clause should in fact be drafted as a facilitative clause as suggested by Vice President Hatcher in the 10 August 2015 hearing.</p>
<p>11. Clause 22</p>	<p>Meal and rest breaks – sub-clause (a) excludes only ‘console operators’ and no other categories of service station employees. However any exclusion will also result in the extension of up to 6 hours for meal breaks not applying to such staff as currently exists.</p> <p>The drafting of clauses 22.1 and 22.2 is problematic, as it needs to interact with clause 23.1, which deals with the special provisions applying to driveway attendants, roadhouse attendants and console operators.</p> <p>Clause 23.1(a) also contains drafting issues that may require addressing. The drafting of both clauses 22 and 23 do not reflect the position of the parties in the Report to the Full Bench dated 29 September 2015.</p>
<p>12. Clause 23.2</p>	<p>Casual rates for driveway and roadhouse attendants and console operators as expressed in terms of percentages are opposed. There has been no discussion between the parties regarding an amendment to the current hourly rates, which reflect the historical position.</p> <p>Expressing the rates as a % of the relevant hourly rate will make it harder for the employer and employee to work out the applicable rates. The rounding of the hourly rate plus percentages rounded to only 2 decimal places, will not reflect the current rates of pay (For example, the adult driveway attendant rate is shown in clause 23.2 as $\\$17.29 * 131.75\% = \\$22.779575 - \\$22.78$ rounded (current rate is $\\$22.77$); Adult Console Operator $\\$19.10 * 130.35\% = \\$24.89685 - \\$24.90$ rounded (current $\\$25.05$).</p> <p>If the percentage approach remains it will have the potential to create underpayment issues.</p>
<p>13. Clause 23.2</p>	<p>The SDA submission also correctly points out the parties concerns with the drafting of clause 23.2.</p> <p>Wage rates cannot be rounded to 2 decimal places without affecting the result either up or down – It appears most of the rates are reduced using this methodology.</p>

	Additionally, the expression of casual overtime rates in clause 23.4(c) in percentage terms does not follow the traditional and accepted way of calculating such rates
14. Clause 24.5	Minimum remuneration and calculation of wages (Vehicle salespersons) does not reflect the proposed drafting of the parties under the Report of the parties to the Full Bench, (dated 29-September 2015).
15. Schedule B	Summary of hourly rates of pay – inclusion of hourly rates - was not requested by parties. A summary was not considered to be suitable for inclusion in this Award as confirmed by Full Bench in paragraph 62 of their 13 July 2015 decision re ordinary hourly rate of pay. ¹
16. Schedule B	A number of rates in Schedule B are incorrect. (For example, the console operator rates at 20 years of age should not be included with junior rates in B.3.4 (a) & (b) and are wrongly calculated. The overtime rate in B.4.2 for a 20 year old is also in error.

The Shop Distributive & Allied Employees' Association (SDA) claims

5. This part of the reply submission addresses the s.160 Application to vary casual console operator rates of pay and the submissions filed by the SDA on 5 October 2015. The Application seeks changes to the manner of calculating the casual hourly rates of pay for Console Operators, Road House Attendants and Driveway Attendants.

s.160 Application to Vary

6. On 13 May 2016, the parties were advised by Vice President Hatcher's Chambers that the SDA had filed an Application to Vary the current casual hourly rates for Console Operators for work performed on Mondays to Fridays, Saturdays, Sundays and Public Holidays.
7. The Commission advised the parties that the Application would be listed as part of the hearings to be conducted on 23 and 24 May 2016. The parties have been afforded the opportunity to advance submissions at the hearing and the opportunity to seek further time to make further submissions should that be requested.

¹ [2015] FWCFB award stage –drafting & technical issues – ordinary hourly rate of pay

8. The Motor Trades Organisations wish to make some preliminary submissions on the SDA claim but envisage that they will seek to avail themselves of the right to make further submissions after the proceedings on 23 and 24 May 2016.
9. By way of background, on 25 March 2015 the SDA filed submissions on the award issues it wanted to progress through the award stage of the four-year review. In those submissions the SDA sought an increase in casual loadings for driveway attendants, roadhouse attendants and console operators, including an amendment to the existing formula used to calculate such casual hourly rates on the basis that the formula had been '*problematic in the past and present*'. The submission sought an increase in the existing formula used to calculate the Monday to Friday rates from the current percentage rate of 31.7% to 37.5%.
10. The SDA was also seeking an increase in the percentage for weekend and public holiday loadings for casual console operators and roadhouse attendants primarily engaged to cook other than take away meals from 70.47 to 71.9%.
11. The Motor Trades Organisations filed a reply submission on 13 May 2015 in which they opposed the increase in the percentage formula used to adjust these casual hourly rates for weekday, weekend and public holiday work for all fuel retailing classifications. The Motor Trades Organisations relied on a Full Bench decision of the then Australian Industrial Relations Commission, which heard and determined a similar Application filed by the SDA in 1998.
12. The 1998 Application sought either an increase in the casual rates of pay for the same classifications covered by the 25 March 2015 submission or an increase in the percentages paid to these casual employees. The SDA based its claim on an alleged "inequity" existing in the casual rates of pay. The Application was one of two applications filed by the SDA, each of which was determined by a Full Bench of the Australian Industrial Relations Commission. The Full Bench handed down a decision in June 2000 dismissing both SDA claims.²
13. At the Full Bench hearing on 10 August 2015³ the SDA advised the Full Bench that it would not be proceeding with its claim to increase the formula (from 31.7% to 37.5%) used to calculate the casual hourly rate for casual driveway attendants, road house attendants and console operators working in a fuel retailing outlet on Monday to Friday shifts
14. However, the SDA advised the parties that it would continue to pursue its claim in relation to the Monday to Friday and Weekend and Public Holiday rates in respect to casual console operators/ roadhouse attendants as contained in Clause 36 of the current award.

² Full Bench AIRC – rates of pay for driveway attendants, roadhouse attendants and console operators V0019 710/00 Print S7227

³ Vehicle Manufacturing, Repair, Services and Retail award 2010 - AM 2014/ 93

15. The basis of the SDA claim is the assertion that an anomaly arose when the casual console operator rate was introduced in 1994 into the then Federal Vehicle Industry Repair Services and Retail Award.
16. Vice President Hatcher advised the parties that the SDA should have a period of five weeks to discuss its amended claim with the parties and report back to the Full Bench.⁴
17. On 29 September 2015 in a document titled **“PARTIES REPORT TO THE FULL BENCH”**, the parties responded to a number of items raised at the proceedings on 10 August 2015, which required clarification.
18. At paragraph 44, the Full Bench was advised that the SDA and the Motor Trades Organisations had been unable to reach agreement on the SDA’s new claim. The report went on to state at paragraph 45 that *“the MTAs and the VACC do not believe that there is an anomaly, inequity or error as the variation under question in the decision of Deputy President Watson, Print L2350 was made by consent and the Traditional formula was used ”*.
19. The Motor Trades Organisations continue to rely on our previous submissions as filed on 13 May 2015. What the SDA is proposing is that the traditionally accepted formula used to calculate casual console operator/roadhouse attendant rates in the Award should partly reflect a lower level rate (Level 1) and the other part of the formula reflect the actual classification (Level 4).
20. The Motor Trades Organisations have referred to this issue in paragraphs 51-56 of our 13 May 2015 submissions. A minor referencing amendment is sought in relation to our submissions of 13 May 2015 *by amending the reference to ‘paragraph 36’ in paragraph 53 to ‘paragraph 46’*.
21. The SDA has failed to present any evidence which would justify an alteration to the existing arrangements set by the Award modernisation Full Bench in September 2009.
22. We refer to the SDA amended application and to the table of proposed casual rates as contained in Item 3 of the application. The overtime rates at the 20 year rate and under, all appear to be less than the current overtime rates in the Award.
23. The current overtime column rates at the 20 year rate and under are :
 - \$14-21, \$10-66; \$8-88; \$7-11; and \$6-75, as compared to:
 - \$13-46; \$10-10; \$8-41; \$6-73; \$6-39 in the application.

While it appears to be an oversight, we raise the issue for the SDA to address.

⁴ AM2014/93 10 August 2015 hearing at PN338