

10 October 2019

Commissioner Bissett  
Fair Work Commission  
11 Exhibition Street  
Melbourne VIC 3000

**Ms Gemma Cutri**  
Associate to Commissioner Bissett  
**Chambers.Bissett.c@fwc.gov.au**

Dear Commissioner

**Vehicle, Repair, Services and Retail Award Exposure Draft (VRSR Award Exposure Draft)**

I refer to correspondence from your Associate, Ms Gemma Cutri on Friday, 4 October 2019 regarding some outstanding issues with the VRSR Award Exposure Draft. The correspondence refers to three award issues.

**1. Overtime for general casuals**

This matter has been resolved as the AMWU did not proceed with their claim before a Full Bench (AM 2017/51). The Motor Trades Organisations have subsequently had discussions with the AMWU, SDA and the AiGroup to clarify the wording in the VRSR Award Exposure Draft to make it clear when overtime is paid for general casuals under **clause 6.6** of the Exposure Draft. The amended wording in **clause 6.6** set out in **Annexure 1** replicates the wording in **clause 24.3** which covers casual driveway attendants, roadhouse attendants, console operators, or roadhouse attendants engaged primarily to cook other than takeaway meals.

The Motor Trades Organisations have also made a minor amendment to **clause 24.3** to include an additional **sub clause 24.3 (c)** as follows:

*'A casual employee must be engaged and paid for at least 2 consecutive hours of work on each occasion they are required to attend work.'*

This subclause is currently set out in **sub clause 6.6.(c)** which applies to general casuals employed under the award and should also apply to fuel retailing casuals. An amendment to **clause 24.3** as explained above is set out in **Annexure 1**. In discussions with other parties It is our understanding that the AMWU, SDA and AiGroup do not oppose this wording.

## **2. Diversity between the rate in the award and the exposure draft in relation to clause 24.3 (casual rates for Driveway Attendants)**

Whilst the Motor Trades Organisations agree that the percentages in the three streams of casual rates in clause 24.3 were previously agreed by the parties, the Exposure Draft rates reflect the award rates prior to the handing down of the 2019 annual wage review because the Exposure Draft was published prior to 1 July 2019 (on 13 February 2019).

All the Motor Trades Organisations are seeking is to have the rates in the 13 February 2019 Exposure Draft amended to reflect the current rates in the award (including updating the summary of Hourly Rates in Schedule B).

If there is a need to adjust any rates following the issuing of the new VRSR award in 2020 that arises from the next annual wage increase, it can be dealt with at that time by the parties. Any change to the existing award rates in this clause would cause unnecessary and undesirable calculation and payment issues to employers in this sector of the industry if they occurred prior to the 2020 annual wage review.

## **3. Agreed variations accepted by the Full Bench - 16 August 2016 decision**

The Motor Trades Organisations understands that the Exposure Draft reflects the changes agreed to by the parties and approved by the Full Bench in the 16 August 2016 decision, [(2016) FWC FB 4418].

In our letter to the Commission dated 10 May 2019, the Motor Trades Organisations were seeking a variation to the VMRSR Award to incorporate the agreed matters accepted by the Full Bench as set out in this letter to remove uncertainty/confusion regarding the correct application of these provisions, pending the issuing of a new Vehicle, Repair, Services and Retail Award.

While it is agreed that the Full Bench decision referred to approved changes to the Exposure Draft, it was anticipated that the review process would have been completed by now and the agreed and approved changes would be in place. The Motor Trades Organisations have been briefing members on the agreed changes, particularly changes to vehicle salespersons remuneration.

As the new award is unlikely to be finalised before the first quarter of 2020, the Motor Trades Organisations were hopeful that these matters could be incorporated in the existing VMRSR Award to give our members time to transition to the new remuneration arrangements before the new award is handed down. The Motor Trades Organisations could file a draft determination to give effect to the variations if this was an acceptable approach by the Commission.

Yours sincerely



WJ Chesterman  
Industrial Relations Manager

cc: Paris Lettau, AMWU; Sue-Anne Burnley, SDA, Hamish Harrington, AiGroup; Michael Sheehan, MTA SA

## Annexure 1

**Amendments to the VRSR award Exposure Draft, in addition to the agreed amendments by the parties as forwarded to the Commission by AMWU on 29 May 2019:**

**1. Overtime for general casuals in clause 6.6.**

Given that the overtime provisions for casuals as contained in **clause 6.6** has now been agreed, the following further amendments are proposed to reflect that agreement and to provide further clarity in the application of such overtime provisions:

**2. Amend clause 6.6** by inserting a new 'note' at the end of sub-clause (d) – Casual loading, as follows:

*'Note: The loadings for overtime in (d) (i) applies for any hours worked in excess of 10 hours on any day or an average of 38 hours per week.'*

**3. Delete the reference** to 'by the hour' in the preamble of clause 24.3 – Casual rates, and amend to read as follows:

*'A casual employed as a driveway attendant, roadhouse attendant, console operator, or roadhouse attendant engaged primarily to cook other than takeaway meals will be paid in accordance with the casual rates prescribed below.'*

- Insert a new sub-clause 24.3 (c) as follows:

*'A casual employee must be engaged and paid for at least 2 consecutive hours of work on each occasion they are required to attend work.'*