

**From:** Chesterman, Bill [mailto:bchesterman@vacc.com.au]

**Sent:** Tuesday, 31 May 2016 12:03 PM

**To:** Chambers - Hatcher VP; AMOD

**Subject:** Vehicle Manufacturing, Repair, Services and Retail Award 2010: Vehicle salespersons remuneration and calculation of wage rates clause 24.5

Please find attached correspondence relating to clause 24.5 and a proposal to amend the existing clause in the Exposure draft. The proposed variation is supported by the Motor Trades Organisations, The AMWU Vehicle Division and the Shop Distributive and Allied workers Union. The proposed variation is not opposed by Australian Business Lawyers(SDA). I have forwarded the letter and attachments to the other parties and indicated that they can confirm their approach to the proposed variation.

Yours sincerely

Bill Chesterman

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31 May 2016

Vice President Hatcher  
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Dear Vice President,

**S.156 – 4 yearly review of modern awards**

**MATTER NO: AM2014/93 – Clause 24.5 Minimum remuneration and calculation of wage rates for Vehicle Salespersons**

At the hearing on 23 May 2016 Mr JD Forbes, Counsel representing the Motor Trades Organisations asked for seven days for the parties to review the wording of the clause 24.5.

The opportunity to review the clause was sought because the proposed wording of clause 24.5 in the Exposure Draft of 22 April 2016 departed in a number of respects from the proposed variation put forward as an agreed position by the Motor Trades Organisations, the AMWU Vehicle Division and the Shop Distributive and Allied Workers Unions (the **SDA**) in the “REPORT TO THE FULL BENCH” on 29 September 2015.<sup>1</sup>

The Motor Trades Organisations, the AMWU Vehicle Division and the SDA had originally agreed to the wording of a proposed variation to clause 38.5 in the previous Exposure Draft of 2 November 2015 to cover vehicle salespersons’ remuneration in the Report. The variation was not opposed by Australian Business Lawyers (**ABL**). The AiGroup and AFEI opposed the proposed variation.

The Motor Trades Organisations believe the current wording of clause 24.5 in the 22 April 2016 Exposure Draft is unclear and does not reflect the agreed position of most parties as set out in the “REPORT TO THE FULL BENCH”.

Since the hearing on 23 May 2016 the Motor Trades Organisations have consulted with the AMWU Vehicle Division, the SDA, the Ai Group and ABL regarding a proposed variation to clause 24.5. A revised variation has been drafted and forwarded to the parties, (Attachment 1).

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<sup>1</sup> **REPORT TO THE FULL BENCH** - 29 September 2015; Variation 3 – pages 5 to 8

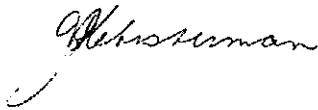
Using the Agreed position reached by most parties at 29 September 2015 as the platform, the Motor Trades Organisations proposed some minor adjustments to address the following:

1. The AMWU Vehicle Division has raised the position of casual employees. This is a legitimate issue which was overlooked and should be addressed.
2. The clause has been amended to clarify when penalties are payable in substitution for or additional to the minimum hourly rate; and
3. On reflection, the wording of the agreed subparagraphs (b) and (c) in Variation 3<sup>2</sup> of the Report to the Full Bench is a little ambiguous and has been simplified and clarified into a single paragraph which clearly states that commission can be used to offset any entitlement in respect of hours exceeding 38.

The proposed variation at Attachment 1 has the support of the Motor Trades Organisations, AMWU Vehicle Division and the SDA. ABL do not oppose the revised wording. The AiGroup has not indicated whether they support or oppose the proposal. All parties have been asked to confirm their position in relation to the attached proposal to the Full Bench.

The Motor Trades Organisations are willing to provide any further clarification or explanation to the Full Bench should that be necessary.

Yours faithfully



Bill Chesterman  
Industrial Relations Manager  
VACC

For and on behalf of MTA NSW, South Australia and Western Australia  
cc  
AMWU Vehicle Division, Shop Distributive and Allied Workers Union,  
AiGroup, Australian Business Lawyers.

## ATTACHMENT 1

### Vehicle Salespersons

Numbering as per most recent exposure draft

#### 24.5 Remuneration

- (a) A vehicle salesperson will be entitled to be paid the applicable minimum hourly rate under clauses 11.2 or derived under 11.6 and any applicable casual loading for all hours required by the employer to be worked up to and exceeding 38 hours per week ("*minimum remuneration*"). Where applicable:
  - i. any penalties payable under clauses 24.3(a) (**Payment for work on days off**) and 24.3(b) (**Payment for work on public holidays**) or in the case of casual employees clauses 24.2(c) and (d) will apply instead of the minimum hourly rate; and
  - ii. any penalties payable under clause 24.3(c) (**Payment for work on a Sunday**) will be paid in addition to the minimum hourly rate, other than casual employees.
- (b) An employer's obligation to pay a vehicle salesperson in respect of hours required to be worked in excess of 38 in any week may be met by the payment to the employee of any commission negotiated under clause 24.4.
- (c) An employer will at least every three months ensure compliance with clause 24.5(a) above and make any necessary additional payments within 21 days after the last day of the relevant month.