



Motor Trades Organisations

9 December 2019

**Tranche 2 Exposure Drafts
Vehicle Repair, Services and Retail
Award AM 2014 /93
-and-
[2019] FWCFB AM 2019/17**

The Vehicle Repair, Services and Retail Award

The Motor Trades Organisations make the following submissions in response to submissions filed by other parties in relation to the Vehicle Repair, Services and Retail Exposure Draft ('VRSR Exposure Draft').

1. Australian Business Industrial and the NSW Business Chamber Ltd submissions

The Motor Trades Organisations support the submissions made in paragraphs 54 and 55 regarding:

- changes made to the Summary of Hourly Rates of Pay tables in Schedule B.3 (a) and B3.6 (b) and changes, and
- changes to Schedule B.7.1 and B.7.2 regarding changes to the casual Sunday penalty rates.

2. AiGroup submissions

- (a) The Motor Trades Organisations have had discussions with the AiGroup regarding proposed changes to the vehicle repair, services and retail exposure draft set out in the '**VEHICLE AWARD**' section on pages 34 to 38 of their submissions.
- (b) The Motor Trades Organisations do not oppose the changes which relate to clarifying clauses and correcting some anomalies in the latest exposure draft.

3. AMWU submissions

The submissions filed by the Union cover two issues.

(1) Clause 22.3 – maximum ordinary hours per day

The AMWU is seeking a substantive change to clarify the intent of **clause 22.3** of the VRSR Exposure Draft by seeking a variation to **clause 22.4**. The Motor Trades Organisations oppose the change sought by the AWMU for the reasons outlined in Section 4 of this submission.

Clause 22.3 currently states:

'Employees may be required to work up to a maximum of 10 ordinary hours per day'.

- (a) The AMWU'S explanation for seeking a change to this clause is based on a concern that:

"The current wording clause 22.3 may lack sufficient clarity as to intent and may be misinterpreted to allow a practice whereby the number of ordinary hours a full time employee works are varied day to day without notice".¹

The AMWU says a misinterpretation is possible because **clause 22.3** does not appear to place an explicit condition on the application of a requirement for an employee to work up to a maximum of 10 ordinary hours per day.²

- (b) The AMWU say that the lack of this explicit condition could result in a situation where an employee working a 5 day working week, Monday to Friday, comprising 7.6 hours each day

¹ AMWU Submission - paragraphs [1-3]

² AMWU Submission - paragraph [4]

could be required by an employer to work an additional 2.4 hours ordinary hours, without notice on any day (i.e. a Thursday) and not be paid overtime for that day.

However, it was possible that an employer could without notice decide not to require an employee to work a full 7.6 hours and leave early on the Friday by 2.4 hours which therefore meant that the employee would not work in excess of 38 hours and not be paid overtime.³

- (c) To rectify the potential outcome set out above to the operation of the **clause 22.3**, the AMWU is seeking a variation to **clause 22.4** by adding the additional sentence highlighted below:

'The commencing time of any permanent employee's daily hours once fixed may vary from day to day but not by more than 2 hours. A permanent employee's daily hours once fixed may vary with at least 7 days' notice'.⁴

The AMWU submit that **clause 22.3** is intended to allow an employer to implement a work cycle in which an employee may be required to work up to a maximum of 10 ordinary hours per day but is not intended to allow an employee to vary the number of ordinary hours worked day to day without notice up to a maximum of 10 ordinary hours.⁵

- (d) The Union relies on **sections 134 (da) and (g)** of the modern award objectives as the justification for seeking a variation to a clause.

4. Motor Trades Organisations reply submissions

The modern award objectives

- (a) The Motor Trades Organisations submit that the AMWU cannot be selective in picking two of the modern award objectives to support a variation of this clause. The modern award objective 134(1)(d) also refers to "*the need to promote flexible modern work practices and the efficient and productive performance of work*".
- (b) It can equally be argued that the imposition of a 7 day period of notice will have a counter-productive effect on the ability of both the employer and employees to have the flexibility to vary ordinary hours of work which might be in their mutual best interests.
- (c) The proposed variation to **clause 22.4** would effectively remove any flexibility to allow an employer to amend ordinary hours of work to meet particular operational circumstances and the personal needs of employees. The current wording of the clause allows both employers and employees to make changes where extenuating circumstances can require a change at short notice.

Background – clause 22.3

- (d) The existing VMRSR Award prescribes in **clause 37.4** that '*in the implementation of the work cycles in clause 37.2, 12 hours will be the maximum number of ordinary hours per day*',
- (e) The current **clause 22.3** was re-inserted in the Vehicle Repair, Services and Retail Award Exposure Draft on 4 March 2016 following agreement between the major parties.⁶ The 10 ordinary hour limit provision and other provisions governing the working of 12 hour shifts in the current exposure draft award was finalised as a result of a Full Bench decision on 16 August 2016.⁷

³ AMWU Submission – paragraph [9]

⁴ AMWU Submission – paragraph [15]

⁵ AMWU Submission – paragraphs [12] and [13]

⁶ 4 March 2016 VRSR exposure draft – numbered as clause 18.3 in this exposure draft

⁷ [2016] FWCFB at paragraphs [54-59]

- (f) Prior to the introduction of the Vehicle Manufacturing, Repair, Services and Retail Award 2010, the 10 hour maximum ordinary hours restriction was included in **Clause 18 (c)(i) – Hours of Work** of the predecessor award, the Federal Vehicle Industry, Repair, Services and Retail Award 2002. The provision had been in this award since the introduction of the 38 hour week in 1988/89.
- (g) **Clause 22.4** which allows a variation of commencing time of an employee's ordinary hours of up to 2 hours has also existed in its current form in the predecessor award since 1988/89.
- (h) For the AMWU to suggest that the retention of the 10 hour limit for the working of ordinary hours without a notice period in a modern Vehicle Repair, Services and Retail Award will now result in '*major unintended consequential change*' is difficult to understand given the history of the provision as set out above.
- (i) The change sought by the AWMU to **clause 22.4** would completely change the application of the clause and amount to a substantial change to the existing provisions and is opposed by the Motor Trades Organisations.

Motor Trades Organisations interpretation of Clause 22.3

- (j) **Clause 22.2 – Ordinary Hours of Work** in the VRSR Exposure Draft provides a number of options on how the 38 ordinary hours of work in a week or the average of 38 ordinary hours over a greater period can be rostered.
- (k) The clause also prescribes that 10 hours is the maximum number of ordinary hours that an employee can be rostered for in a day – subject to **clause 22.5** which allows for hours in excess of 10 hours to be worked.
- (l) The introduction of a daily maximum ordinary hours limit of 10 hours was agreed by the parties during the current 4 year review of this award as part of an agreed package of changes. A daily maximum of 10 hours is currently applicable to casual Roadhouse and Service Station staff and the AMWU has recently agreed that a 10 ordinary hour limit will also apply to other casual employees under the Award.
- (m) Under **clause 22.4** the employer has the right to fix the daily hours of work of a permanent employee and also the ability to vary the commencing time of such daily hours by up to 2 hours from day to day in a week. The variation up to 2 hours allows for greater flexibility in the operation of ordinary hours both from an employer and an employee perspective, both in terms of shift change times and in shift lengths.

5. AMWU submission: clause 24.2 (a) – definition of overtime

- (a) The additional words in **clause 24.2 (a)** of '*... and calculated on a daily basis*' as proposed by the AWMU, is not opposed.
- (b) The Motor Trades Organisations support the general principle that each day's work stands alone and that overtime in this award is generally calculated on a daily basis and applies where any time is worked outside of the ordinary hours of work and shifts in excess of 10 hours as prescribed in **clauses 22**.

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 -and-
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