

From: Chambers - Bissett C <Chambers.Bissett.c@fwc.gov.au>

Sent: Friday, 4 October 2019 4:22 PM

To: tedk@mtaq.com.au; sue-anne@sda.org.au; ron.ballucci@mtawa.com.au;
Paris.Lettau@amwu.org.au; MSheehan@mtaofsa.com.au; Hamish.Harrington@aigroup.com.au;
bchesterman@vacc.com.au

Subject: AM2014/93 - Vehicle Manufacturing Repair Services and Retail Award 2010

Importance: High

Dear Parties,

The Commissioner is in receipt of recent correspondence with respect to the exposure draft (ED) for the Vehicle Manufacturing Repair Services and Retail Award 2010. Again, the Commissioner apologises for the confusion that occurred with respect to finalisation of this matter.

In respect of the correspondence the Commissioner understands that the casual overtime issue has been resolved.

Thus, it appears, leaves the following substantive issues outstanding (the other changes have been picked up and there appears to be no issue in terms of the changes sought):

1. There is an issue between the rates in the award and the exposure draft in relation to clause 24.3 (casual rates for driveway attendants etc). The unions are content for the Commission to determine this issue although the MTO want the Award rates to prevail.

The Commissioner notes that the clause/table in the ED was developed following consultation with the parties. It was agreed to by the parties around April/May 2018 following the provision of a proposal by the Commission on 23 April 2018 and was included in the exposure draft issued published on 27 June 2018. Those rates in the ED were updated to reflect the 2017-18 Annual Wage Review. Given the issues identified in the correspondence to the parties in April 2018 the discrepancies now identified are to be expected.

Given the lack of any opposition to the proposal in 2018 the Commissioner was of the view (not disputed) that the issue was now resolved. At the time the matter was resolved it did require some minor "tweaking" to ensure that the percentages remained aligned. Any attempt to have the table in the ED reflect the current rates will result in the percentages being different for different classifications where it had been understood by the Commission that the maintenance of the percentages was the important outcome.

The Commissioner would seek further information from MTO on how it considers this matter should be addressed.

2. Amendments to the current Award

The VACC have sought that two "contested package variations" in relation to:

- i. Maximum ordinary hours, twelve hour shifts and shifts in excess of 10 hours; and
- ii. Minimum remuneration and calculation of wages for salespersons

Should be included in the current Award.

The decision to adopt the changes sought can be found at [2016] FWCFB 4418. In that decision however the Full Bench was referencing changes to the ED. See, for example, [59] “Consequently clause 18.5...of the exposure draft will be modified...” Given all other matters in that section related to variations to the ED the decision in terms of the remuneration calculation for salespersons would be preferable to the ED as well.

The Commissioner is not clear on how these variations could be applied to the existing award as there has not been a final decision varying the Award to reflect the ED.

Whilst this is not a matter that apparently requires resolution prior to publishing the ED any comments would be welcome.

Any views of the parties on either of these matters is requested by **4.00pm Thursday 10 October 2019**.

A copy of this email will be published to the website.

Kind regards

GEMMA CUTRI

Associate to Commissioner Bissett

Fair Work Commission

Tel: +61 3 8656 4530

Fax: +61 3 9655 0401

chambers.bissett.c@fwc.gov.au

11 Exhibition Street, Melbourne Victoria 3000

GPO Box 1994, Melbourne Victoria 3001

www.fwc.gov.au

The Fair Work Commission acknowledges that our business is conducted on the traditional lands of Aboriginal and Torres Strait Islander peoples. We acknowledge their continuing connection to country and pay our respects to their Elders, past, present and emerging.