



18th October 2017

Vice President Hatcher

Fair Work Commission

80 William Street

East Sydney NSW 2011

Dear Vice President,

Re: Clerks – Private Sector Award 2010 – Plain Language Redrafting – AM 2016/15

I refer to the above matter and to the conference of 15 September 2017.

The Clerks Private Sector Award 2010 and the Vehicle Manufacturing Repair Services and Retail Award 2010 are two major awards that apply in the automotive industry.

MTA organisations have not had any direct involvement in the plain language re-drafting of the Clerks – Private Sector Award 2010 to date opting instead to leave that to other major interested parties. However, we have attempted to keep abreast of the proceedings and to be informed of the changes that may occur in this process.

The reason for these brief submissions is primarily to try and clarify a matter that appears to have caused some confusion as a result of the re-drafting of the award. The issue in question is in relation to clause 23.3 – Sunday, in the re-drafted award. In paragraphs 531 – 542 of the transcript of the 15 September 2017, Ms Bhatt of AIG refers to clause 23.3 which deals with the payment of 'ordinary hours' on a Sunday - in relation to employees other than shift workers - and the impact on clause 24.4 (c) - Payment for working overtime. In para 531, Ms Bhatt refers to the corresponding current award clause 27.2 – Payment for working Saturday and Sunday, and indicates that: *'So we read that to mean ordinary hours and overtime. And then it says: an employee required to work on a Sunday is entitled to not less than four hours' pay. So it's again a concern that the exposure draft gives rise to two entitlements to a minimum of four hours if they work ordinary hours and overtime on a Sunday.'* Further in para 537, Mr Cooney from the ASU suggests an alteration to draft clause 23.3 (b) and there are additional comments from Ms Bhatt in subsequent paragraphs which further confuses the issue.



With respect, it is our view that clause 23.3 (a) and (b) have been incorrectly re-drafted. Ordinary hours (for non-shift workers) are only allowed Monday to Friday from 7am to 7 pm and from 7am to 12-30 pm Saturday (see clause 25.1 (b) current award). The only exception is where an employee works in association with other classes of employees who work their ordinary hours outside the spread of these hours under another modern award which applies to the majority of the employees in the workplace – as also prescribed in clause 25.1(b).

All work performed on a Sunday by non-shift workers is therefore overtime as it is outside the spread of ordinary hours allowed under the Award (subject to the above exception).

Clause 27.2 of the current award deals with Payment for work on a Saturday and on a Sunday. Subclause (a) prescribes that hours worked within the spread of ordinary hours on a Saturday (ie) 7am – 12-30 pm, is payable at the rate of time and a quarter. Subclauses (b) and (c) deal with the payment for work performed on a Sunday which is overtime (as detailed above) – and is payable at the rate of double time with a minimum of four hours applicable at such rates, provided the employee is available for work for 4 hours.

In our view, Clause 23.3 of the re-drafted award should be amended to reflect the current provisions of the Award. Alternatively, 23.3 can be re-drafted to state: *'All work done on a Sunday is overtime and is payable in accordance with clause 24.4.'*

Yours Sincerely

A handwritten signature in black ink, appearing to read 'M Sheehan', is written over a horizontal line. The signature is fluid and cursive.

Michael Sheehan, Senior Workplace Relations Adviser, MTA-SA