



Motor Trades Organisations

Submissions - 28 February 2020

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

Draft Vehicle Repair, Services and Retail Award 2020

Clause 26.4 - minimum break between shifts

The Motor Trades Organisations have become aware of an issue with respect to Clause 26 - Breaks in the Vehicle, Repair, Services and Retail Award 2020 issued by the Fair Work Commission on 14 February 2020 [MA00089 PR 716697]. The issue relates to the following clause:

Clause 26.4 - Minimum breaks between shifts

- (a) *When overtime work, including work on a rostered day off or work on a Sunday or a public holiday is necessary, it will wherever reasonably practicable be arranged so that an employee works not more than 14 hours in any period of 24 consecutive hours and so that each employee may have at least 10 consecutive hours off duty in each such 24 consecutive hours.*
- (b) *Subject to the exceptions referred to in clauses 24.8 and 24.9, on the completion of a period of work an employee is required to have a period of 10 consecutive hours off duty from their ordinary working time without loss of pay until recommencing work.*
- (c) *If on the direction of the employer such an employee resumes or continues work without having had 10 consecutive hours off duty, the employee must be paid at 200% of the minimum hourly rate until released from duty. The employee will then be entitled to be absent for 10 consecutive hours off duty without loss of pay for any ordinary working time occurring during such absence.*

Under the current Vehicle Manufacturing, Repair, Services and Retail Award 2010 (VMRSR Award) an identical clause is currently set out in **clause 28 – Overtime rates** under sub clause 28.6 titled '**Rest period before recommencing work**'.

As the sub clause relates specifically to a rest period after an employee has worked overtime the Motor Trades Organisations consider that the clause should be retained under the general heading of Overtime in Clause 24 in the new award, not under the new **sub clause 26.4**.

The relocation of this sub clause was never the subject of discussions between the parties during the award review phase of the 4 year review. Research reveals that this clause was relocated and renamed in the first exposure draft of the VMRSR Award issued by the Commission on 15 October 2014. The sub clause was originally included as sub clause 11.4 of the VMRSR Award in the Commission document titled "*EXPOSURE DRAFT Vehicle Manufacturing, Repair, Services and Retail Award 2014*".

The preamble to the first exposure draft stated:

'This exposure draft has been prepared by staff of the Fair Work Commission based on the Vehicle Manufacturing, Repair, Services and Retail Award 2010 (the Vehicle award) as at 15 October 2014. This exposure draft does not seek to amend any entitlements under the Vehicle award but has been prepared to address some of the structural issues identified in modern awards'.

The problem with the relocation of the existing **sub clause 28.6** in the VMRSR Award to **sub clause 26.4** in the new award is that the current exclusion provisions which are prescribed in the preamble to **clause 28** of the VMRSR Award are not replicated in **clause 26**.

Clause 28 – Overtime in the VMRSR Award currently provides the following exclusions from the operation of the clause:

'28.1 This clause will not apply to:

- (a) a person principally employed to perform vehicle sales related duties;*
- (b) casual employees covered by clause 36—Casual rates for driveway attendants, roadhouse attendants and console operators or clause 41—Casual employees; or*
- (c) employees working at fuel retailing establishments.'*

The relocation of the clause will result in more than a structural change to the application of clause 26.4. It does not carry over the existing exclusions.

As this change would affect entitlements the Motor Trades Organisations are seeking a return to the status quo with respect to this clause. If the Commission is agreeable of this change the clause could be renumbered as a new **sub clause 24.12** in the new Award. If sub clause 26.4 was moved back to the overtime clause, **sub clause 24.11** – *'Breaks during and after overtime'* would need to be retitled *'overtime crib breaks'* and amended to read:

'An employee is entitled to overtime crib breaks in accordance with clause 26.3.'

This matter should have been picked up during proceedings to finalise the new award. Unfortunately, the original change in the October 2015 Exposure Draft was not marked as a tracked change and as it was missed by the parties the clause continued to be included in the meal breaks clause in successive exposure drafts. However, we respectfully submit that the proposed amendment relates to structural change rather than a substantive amendment. The Motor Trades Organisations have discussed this issue with Ai Group who were also aware of this problem and will also be filing a submission.



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