



s.156 – 4 yearly review of modern awards

Hair and Beauty Industry Award 2010

AM 2014/271

# **Submission in response to the Hair and Beauty Industry Award Exposure Draft 2019**

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26 April 2019

1. The Shop Distributive and Allied Employees' Association (SDA) makes these submissions in response to the exposure draft released by the Fair Work Commission for the *Hair and Beauty Industry Award 2010*, and in accordance with the Statement and Directions issued by Justice Ross on 28 February 2019.
2. The SDA relies on its submission made in response to the previous Exposure Draft filed on 21 December 2016 and the submissions in reply filed on 1 March 2017.
3. The SDA notes that as per paragraph 6 of the Statement issued by the Full Bench on 28 February 2019,<sup>1</sup> the *Hair and Beauty Industry Award* is one of the Awards which will be included in the second tranche of the plain language drafting.
4. Paragraph 9 of the Statement provides that the plain language re-drafting of the *Hair and Beauty Industry Award 2010* will commence after the substantive issues in the *Hair and Beauty Industry Award 2010* had been decided.
5. The SDA questions the utility of this Exposure Draft given that the Award will be subject to the plain language re-drafting process. The SDA strongly submits that the Plain Language process should be applied to the *Hair and Beauty Industry Award 2010*, which is the current, *legal* document, rather than the new Exposure Draft, which we submit contains many inconsistencies with the current Award.
6. In making these submissions, the SDA has compared the Exposure Draft 2019 with the current *Hair and Beauty Industry Award 2010*. Columns 4 and 5 of the attached analysis and comparison of the Exposure Drafts serve the purpose of acknowledging the changes present in the drafts and how it impacts Award entitlements.
7. The SDA refers to and relies on paragraph 3 of their previous submission regarding the term "minimal hourly rate".

### **Overtime**

8. In responding to the note under clause 22.3 in the Exposure Draft about whether overtime is payable for work on Monday to Saturday outside of the ordinary hours in clause 13.1, the SDA submits that the Exposure Draft has omitted the provision which exists in the current Award.
9. Clause 13.3 of the Award stipulates the payment for casual employees who work outside the span of hours prescribed in clause 28.2 of the Award. The Exposure Draft does not contain this provision. The SDA submits that this provision must be retained as this represents a substantive change to the legal effect of the Award and a significant reduction in the entitlements of a casual employee.
10. In relation to overtime payable for work performed outside the spread of ordinary hours for full-time and part-time employees, the SDA submits that reference to the 'ordinary

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<sup>1</sup> [2019] FWCFB 1255.

number of hours of work' in clause 22.2 of the Exposure Draft is inconsistent with clause 13.1(a) which refers to 'ordinary hours' only. The SDA submits that the word 'number' should be removed from clause 22.2. Its inclusion could have the effect of excluding the payment of overtime to full-time and part-time employees who work outside the spread of hours outlined in 13.1.

11. The SDA submits that full-time and part-time employees are entitled to payment at overtime rates for work performed outside the spread of ordinary hours. It is a common provision in Awards and well understood that work within the spread of 'ordinary' hours are paid at the 'ordinary' rate and work outside of 'ordinary' hours are paid at the overtime rate or specified penalty.
12. The wording in the current clause 31.2(a) and the Exposure Draft clause 22.2 is somewhat ambiguous and deleting the word 'number' in 'ordinary number of hours' is necessary to clarify this. This would reflect the practical operation of the clause, as overtime applies to work done outside the span of hours, and not just outside the number of hours. It would also be consistent with terminology in clause 28.2.
13. This would also be consistent with the entitlement for casual employees who receive a penalty for work performed outside the spread of hours, as per clause 13.3 of the current Award.

#### **Penalty rates**

14. In response to the note under clause 23.1 of the Exposure Draft, the SDA submits that full-time and part-time employees who work on Saturday outside ordinary hours should be paid overtime. Though the Award is silent on the matter, the SDA submits that if the suggested changes above are adopted, this would adequately capture work performed outside the ordinary span of hours on Saturdays.

#### **Redundancy**

15. The SDA notes that in the most recent exposure draft the entirety of the redundancy provision was struck out. On the basis that the provision contained certain entitlements over and above those contained in the NES, the SDA opposes their reduction to merely the NES redundancy entitlement.

#### **Breaks**

16. The SDA maintains its position in relation to clause 15.3(a) of the Exposure Draft, as expressed in its previous submission in response to the Exposure Draft issued in 2016.
17. Altering the words from 'four hours or more' to 'between four and seven hours' is more ambiguous and could be interpreted that the entitlement no longer accrues at four hours, but after four hours. On this basis, and because the wording proposed is less clear than the Award wording at 32.2(a), the SDA submits the current Award wording should be retained.

### **Further submissions**

18. The SDA provides further comments and submissions in the table below in response to changes to the Award contained in the Exposure Draft.

**Attachment A,  
2016 Exposure Draft HBIA and 2019 Exposure Draft HBIA analysis**

<b>PROVISION</b>	<b>Exposure Draft HBIA 2016</b>	<b>Exposure Draft HBIA 2019</b>	<b>COMMENTS on 2016 Exposure Draft</b>	<b>COMMENTS on 2019 Exposure Draft</b>
Title and Commencement	<p><b>1. Title and commencement</b></p> <p>1.1 This award is the Hair and Beauty Industry Award 2016.</p> <p>1.2 This modern award, as varied, commenced operation on 1 January 2010.</p> <p>1.3 Neither the making of this award nor the operation of any transitional arrangements is intended to result in a reduction in the take-home pay of employees covered by the award. On application by or on behalf of an employee who suffers a reduction in take-home pay as a result of the making of this award or the operation of any transitional arrangements, the Fair Work Commission may make any order it considers appropriate to remedy the situation.</p> <p><b>Incorporates</b> Title and Commencement into clause 1.1 and 1.2 respectively. The</p>	<p><del>1.2 This modern award, as varied, commenced operation on 1 January 2010.</del> This modern award commenced operation on 1 January 2010. The terms of the award have been varied since that date.</p> <p>1.3 A variation to this award does not affect any right, privilege, obligation or liability that a person acquired, accrued or incurred under the award as it existed prior to that variation.</p>	The SDA submits that the draft 1.2 is in error as variations do not have retrospective application to 2010, except in very limited circumstances.	The SDA submits that the variation at clause 1.3 of the exposure draft addresses its concern as to retrospective application.

PROVISION	Exposure Draft HBIA 2016	Exposure Draft HBIA 2019	COMMENTS on 2016 Exposure Draft	COMMENTS on 2019 Exposure Draft
	<p><b>addition</b> at 1.2 of the words “as varied”.</p> <p>1.3 <b>incorporates</b> 2.4 from the Award (savings provision).</p>			
Definitions	<p>At clause 2</p> <p>Change at 2(a)and(b) with the deletion of “and/” from the respective definitions.</p> <p>The sentence at standard rate stating “Where an allowance is provided for on an hourly basis, a reference to standard rate means 1/38<sup>th</sup> of the weekly wage referred to above.” Has been deleted.</p>	<p>Definition of <b>hair and beauty industry</b> has been moved to ‘Coverage’.</p> <p>References to Fair Work Act changed to ‘Act’ – NES means the National Employment Standards as contained in sections 59 to 131 of the Act<del>Fair Work Act 2009</del> (Cth)</p>	The SDA does not oppose the pure draft changes as noted.	The SDA notes that the definition of hair and beauty industry has been moved from this clause to ‘coverage’, on the basis that this change is purely for format and does not affect any rights under the Award the SDA does not oppose this change.
NES	<p><b>A new clause.</b></p> <p>3.1 <b>incorporates</b> clause 6 of the current Award.</p>	<b>NES provision is the same as the 2016 draft.</b>	The SDA does not oppose the pure draft changes as noted.	The SDA does not oppose the draft provision.

PROVISION	Exposure Draft HBIA 2016	Exposure Draft HBIA 2019	COMMENTS on 2016 Exposure Draft	COMMENTS on 2019 Exposure Draft
	<p><b>New 3.2</b> which states that where reference is made to the NES the NES definition applies.</p> <p>3.3 <b>incorporates</b> clause 5 of the current Award. Small change with comma after apply <b>inserted</b>.</p>			
Coverage	<p><b>Splits</b> the old 4.1 into 4.1 and 4.2.</p> <p>4.1 the reference in the current Award to clause 17 has been <b>replaced</b> with clause 12 – Classifications.</p>	Definition of hair and beauty industry has been <b>moved to 4.2</b> from Definitions.	The SDA does not oppose the pure draft changes as noted.	The SDA does not oppose the draft provision.
Effect of Variations made by the FWC	<b>New clause 5</b> stipulates variations by FWC does not affect a right, privilege, obligation or liability acquired under the Award prior to the variation.	<b>Provision is the same as the 2016 draft.</b>	The SDA does not oppose the pure draft changes as noted.	The SDA does not oppose the draft provision.
Award Flexibility	At clause 6  6.1 Notwithstanding any other provision of this award, an employer and an individual employee may agree to vary the	At clause 6 – Current Award provision cl 7 has substituted previous provision 6.1 <b>Despite anything else in this award</b> , an employer and an individual employee may agree to vary the application of the terms of this award	The SDA does not oppose the pure draft changes as noted.	The SDA notes that the changes noted have already been

PROVISION	Exposure Draft HBIA 2016	Exposure Draft HBIA 2019	COMMENTS on 2016 Exposure Draft	COMMENTS on 2019 Exposure Draft
	<p>application of certain terms of this award to meet the genuine individual needs of the employer and the individual employee. The terms the employer and the individual employee may agree to vary the application of, are those concerning...</p> <p>6.3 The agreement between the employer and the individual employee must:(a) be confined to a variation in the application of one or more of the terms listed in clause 6.1; and (b) result in the employee being better off overall at the time the agreement is made than the employee would have been if no individual flexibility agreement had been agreed to.</p>	<p>relating to any of the following in order to meet the genuine needs of both the employee and the employer...</p> <p>6.2 in 2016 Exposure draft has been separated into 6.2 and 6.3.</p> <p>6.4 is generally equivalent to 6.7 in 2016 draft.</p> <p>6.5 An agreement must result in the employee being better off overall at the time the agreement is <b>made than if the agreement had not been made.</b> <b>Wording altered from 6.3(b) in 2016 draft.</b></p> <p>6.9 in 2016 draft <b>Deleted.</b></p>		<p>incorporated into the Award (7.1).</p> <p>It notes, however, that 'notwithstanding' has a clearer legal meaning than 'Despite anything else', which is contrary to the current Award provision.</p>
Requests for flexible working arrangements		Clause 6A New clause. Award clause 32A included.		The SDA does not oppose the draft changes.
Facilitative provisions for	<p><b>New clause at 7</b></p> <p>Allows standard approach to be deviated from by agreement</p>	7.2 table <b>amended to include clause 22.5 Time off instead of payment for overtime</b>	The SDA does not oppose the pure draft changes as noted.	The SDA notes that the inclusion of 'time off instead of payment for overtime' mirrors

PROVISION	Exposure Draft HBIA 2016	Exposure Draft HBIA 2019	COMMENTS on 2016 Exposure Draft	COMMENTS on 2019 Exposure Draft
flexible working practices	<p>between an employer and employee either an individual or the majority of the employees in the enterprise or part of the enterprise concerned. Covers:</p> <p>13.2 Maximum hours on a day</p> <p>14.1(d) Notification of rosters – changing rosters</p> <p>14.2(f) Agreement to be rostered on Sundays</p> <p>15.1 Meal breaks</p> <p>24.4 Agreement to take annual leave in advance</p> <p>24.6 Agreement to cash out annual leave</p> <p>27.2 Substitution of public holidays</p>			provisions present in, among others, the <i>General Retail Industry Award 2010</i> . On this basis it does not oppose its inclusion.
Types of employment	<p><b>Renamed</b> types of employment rather than categories of employment.</p> <p>8.1 <b>mirrors</b> 10.1 in the current Award. <b>Changes</b> bullet points to (a) – (c)</p>	Clause 8	The SDA does not oppose the pure draft changes as noted.	The SDA does not oppose the draft provision.

PROVISION	Exposure Draft HBIA 2016	Exposure Draft HBIA 2019	COMMENTS on 2016 Exposure Draft	COMMENTS on 2019 Exposure Draft
	<p>8.2 <b>mirrors</b> 10.2 of the current Award. <b>Deletion</b> of “in particular”.</p> <p>8.3 <b>changes</b> 12.10, <b>splitting</b> it into (a)-(c), with a slight change at 8.3(c) stating “by written agreement with the employer” rather than “by agreement with the employer and recorded in writing”.</p>			
Full time employees	9 (full time employees) <b>changes</b> 11, with minor simplification by the <b>deletion</b> of “is an employee who...”	Full time Employees at 9.	The SDA does not oppose the pure draft changes as noted.	The SDA does not oppose the draft provision.
Part-time employees	<p>10 <b>mirrors</b> 12 for part-time employees.</p> <p>10.1 has <b>deleted</b> “is an employee who” from the current 12.1.</p> <p>10.2 <b>mirrors</b> 12.2 although it replaces bullet points with letters (a) – (f).</p> <p>10.3-10.7 <b>mirror</b> 12.3-12.7.</p> <p>The current Award’s clause 12.7 is <b>split</b>, the first part of which is</p>	Part-time employees at 10.	As noted, the SDA has reservations about the use of the term “minimum hourly rate” as at the draft 10.7.	SDA maintain their position.

PROVISION	Exposure Draft HBIA 2016	Exposure Draft HBIA 2019	COMMENTS on 2016 Exposure Draft	COMMENTS on 2019 Exposure Draft
	<p><b>mirrored</b> at 10.7 the second part <b>renumbered</b> at 10.8.</p> <p>10.7 <b>replaces</b> the reference to “1/38<sup>th</sup> of the weekly rate prescribed for the class of work performed” with “at the minimum hourly rate prescribed for the class of work performed.”</p> <p>10.9 <b>changes</b> the current Award’s 12.8 adding 10.9(c) regarding stipulating the consultation requirements must be adhered to.</p> <p>10.10 is the <b>equivalent</b> of 12.9 re Award Entitlements though it splits the current Award clause into two parts (a) and (b). The reference in the draft 10.10(b) to clause 10 <b>differs</b> from the current Award’s 12.9 which merely refers to “this clause”.</p>			
Casual employees	<p>11 (casual employment) is the <b>equivalent</b> of 13 in the current Award.</p> <p>11.1 <b>deletes</b> “as such” and adds “and paid as a casual employee”. Replaces “both the</p>	<p>Casual employees at 11. <b>11.5(g) has been Deleted-</b> Overtime rates. In the 2016 draft, Overtime Rates was listed as not applying to casuals. Deletion of it in 2019 draft suggests that it does apply to Casuals.</p>	<p>The SDA notes that the draft 11.4 errs in its reference to clause 23 as that clause does not incorporate the protections contained in the current</p>	<p>The SDA notes the changes, reflecting the Commission’s decision that overtime applies to casuals. On this basis it</p>

PROVISION	Exposure Draft HBIA 2016	Exposure Draft HBIA 2019	COMMENTS on 2016 Exposure Draft	COMMENTS on 2019 Exposure Draft
	<p>hourly rate for a full time employee” with “the minimum hourly rate for the appropriate classification”, and “an additional 25% of the ordinary hourly rate” with “a loading of 25% of the minimum hourly rate.”</p> <p>The current Award’s 13.2 has been <b>included</b> into the draft 11.2, <b>splitting</b> it into (a) and (b). It also adds “employee will be paid” at the initial sentence before the colon.</p> <p>13.3 is <b>renumbered</b> 11.4 and refers to clause 23 penalty rates. It <b>deletes</b> the specific penalty rates described in the current Award, in favour of the reference.</p> <p>13.4 in the current Award is <b>renumbered</b> in the draft as 11.5</p> <p>13.4 is <b>changes</b> 11.3, letters (a)-(l) replace bullet points. The order is re-arranged with new additions at (j)-(l).</p> <p>13.5 is <b>mirrored</b> at 11.6.</p>		<p>Award’s reference to 28.2. Specifically:</p> <ul style="list-style-type: none"> <li>- By referring to 28.2, the current Award gives penalties for all hours outside the spread of hours therein; and</li> <li>- 28.2(b) prescribes continuous hours. The provision as given in the exposure draft would allow for split shifts without the payment of overtime.</li> </ul> <p>The reference at the draft 11.5(b) to clause 14 is in error. The reference should specify 14.1, as 14.2 does apply to casuals. This is a change to the legal affect to the current Award as clause 30 is not specified in the current Award for exclusion and 14.2 is the draft equivalent.</p> <p>For ease of understanding the draft 11.3 should be renumbered as 11.2, so that it</p>	<p>does not oppose the changes as noted.</p>

PROVISION	Exposure Draft HBIA 2016	Exposure Draft HBIA 2019	COMMENTS on 2016 Exposure Draft	COMMENTS on 2019 Exposure Draft
	13.6 is <b>renumbered</b> as 11.3.		<p>immediately follows 11.1. This is a logical flow of the conditions for casuals.</p> <p>The SDA submits that “minimum” be deleted at the draft 11.2(b) for clarity, in line with our comments regarding the minimum hourly rate at paragraph 3 of our submissions.</p>	
Right to request casual conversion		<b>New clause at 11.7</b> , in line with Award 13.7.		The SDA does not oppose the draft changes.
Classifications	<p>At 12.</p> <p>12.1 refers to clause 12.4 rather than schedule B as in the current 16.1.</p> <p>The current Award’s 16.1 has been <b>split</b> into 12.1 and 12.2.</p> <p>16.2 is <b>mirrored</b> in 12.3.</p> <p>The classification definitions at the new 12.4 <b>mirrors</b> those in schedule B of the current Award.</p>	Classifications at 12.	The SDA does not oppose the pure draft changes as noted.	The SDA does not oppose the draft changes.

PROVISION	Exposure Draft HBIA 2016	Exposure Draft HBIA 2019	COMMENTS on 2016 Exposure Draft	COMMENTS on 2019 Exposure Draft
Hours of Work	<p>At 13.</p> <p>Part 3 – <b>renamed</b> “Hours of Work” instead of “Ordinary Hours of Work” at the current part 5.</p> <p>Clause 13 renamed “Ordinary hours of work” instead of “Hours of work” at the current 28.</p> <p>The current Award’s 28.1 is <b>incorporated</b> at the draft 13.3.</p> <p>The draft 13.1(a) and (b) <b>incorporate</b> the current 28.2(a) and (b) respectively. The word inclusive is <b>deleted</b> after Monday to Friday.</p> <p>28.3 <b>changes</b> 13.2. With a split between (a) and (b)(i) and (ii). The words “up to a maximum” in the current 28.3(a) have been <b>replaced</b> with “a maximum”. The wording to (a) and (b) have also been <b>slightly changed</b>, with no practical difference. Change of wording from “by mutual agreement in writing” to “may agree in writing.”</p>	At clause 13.	The SDA submits for the retention of “by mutual agreement” in 13.2, for the sake of clarity, as this is the existing provision.	The SDA maintain their position as noted in its previous submissions. For clarity, the SDA submits that the words “by mutual agreement in writing” or “mutually agree in writing” be retained for clarity, as per 28.3 of the Award.

PROVISION	Exposure Draft HBIA 2016	Exposure Draft HBIA 2019	COMMENTS on 2016 Exposure Draft	COMMENTS on 2019 Exposure Draft
Rostering	<p>At 14.</p> <p>14 renamed Rostering.</p> <p>14.1 renamed notification of rosters.</p> <p>Clause 14.1 <b>mirrors</b> the current 29 although it uses letters (a) – (e).</p> <p>Change at 14.1(c) stating “full-time and part-time employees” rather than “permanent employees” in the current 29.3.</p> <p>Addition of (f) which ensures consultation provisions are complied with.</p>	At 14.	Draft 14.1(f) should be amended to state “Where the employer proposes to change an employee’s roster under clause 14.1 the employer must <b>also</b> comply with consultation requirements outlined in clause 30.” <i>Emphasis added for clarity.</i>	The SDA maintains their position.
Rostering Principles	<p>At 14.2.</p> <p><b>Mirrors</b> current Award equivalent.</p> <p>30.1 <b>incorporated</b> at 14.2(a).</p> <p>Current 30.2 <b>split</b> into 14.2(b) and (c), without change to meaning.</p>	At 14.2.	The SDA does not oppose the pure draft changes as noted.	The SDA does not oppose the draft changes as noted.

PROVISION	Exposure Draft HBIA 2016	Exposure Draft HBIA 2019	COMMENTS on 2016 Exposure Draft	COMMENTS on 2019 Exposure Draft
	<p>14.2(d) <b>mirrors</b> 30.3. Renumbered to 14.2(a) to (f).</p> <p>14.2(d)(ii) deletes “This requirement does not” in favour of “Clause 14.2(d)(i) will not”.</p>			
Breaks	<p>At 15.</p> <p><b>Mirrors</b> the current Award, with some changing in formatting and wording.</p> <p>15.1 <b>incorporates</b> the current 32.3, though <b>splitting</b> it into (a)-(c).</p> <p>Slight <b>rewording</b> of rest breaks at 9 hours or more.</p> <p>15.2 <b>changes</b> 32.1, <b>splitting</b> it into (a)-(b). Deletes the word “all” at the beginning of 15.2(a). Renamed “Paid rest breaks – full time employees”.</p> <p>15.3 <b>changes</b> 32.2 with some slight change to wording at 15.3(a) with the deletion of “All” at the beginning of the sentence and the insertion of “between four and seven hours” rather</p>	At 15.	The SDA submits that the change as at the draft 15.3 (a) changes the legal meaning of the Award. The SDA opposes the changes as noted.	The SDA maintains their position. By changing the words from ‘four hours or more’ to ‘between four and seven hours’ the draft changes the meaning and the nature of the entitlement. It seems that the entitlement no longer accrues at four hours, but after four hours. On this basis, and because the wording proposed is not clearer than the present wording, the SDA maintains its opposition to the changes as noted.

PROVISION	Exposure Draft HBIA 2016	Exposure Draft HBIA 2019	COMMENTS on 2016 Exposure Draft	COMMENTS on 2019 Exposure Draft
	<p>than “of four hours or more but no more than seven hours”. 15.3(c)and(d) are taken from the current 32.2 though <b>split</b>, with slight rewording.</p>			
Breaks Between Shifts	<p>At 15.4. <b>Mirrors</b> the current Award. <b>Replaces</b> “break” with “period”.</p>	At 15.4.	The SDA opposes the change and submits for the retention of the word “break”.	The SDA maintains their position.
Minimum Wage	<p>At 16. <b>Mirrors</b> current Award. An addition of a sentence at 16.1 stating “An employer must pay adult employees the following minimum wages for ordinary hours worked by the employee:” <b>Addition</b> of minimum hourly rates. Classification clauses <b>incorporated</b> as above at 12.1-12.2.</p>	At 16.	<p>The SDA opposes the change. Tradespeople should be paid the trade rate regardless of age. Furthermore, the addition of “adult” to the clause is unneeded as an employer can choose to pay full rate to a junior. The use of the word “minimum” is inappropriate, as for example in the case of an employee working a Saturday, or at other times that attract overtime or penalty rates. A reference needs to be made to the appropriate classification.</p>	The SDA maintain their position.

<b>PROVISION</b>	<b>Exposure Draft HBIA 2016</b>	<b>Exposure Draft HBIA 2019</b>	<b>COMMENTS on 2016 Exposure Draft</b>	<b>COMMENTS on 2019 Exposure Draft</b>
Supported Wage	At 16.2.  Adds description of relevant employees.	At 16.2.	The SDA opposes the changes as noted as it could adversely impact disabled employees not on a supported wage.	The SDA maintains their position.
National Training Wage	At 16.3.  Adds description of relevant employees.	At 16.3.	The SDA does not oppose the pure draft changes as noted.	The SDA notes and maintains its previous position.
Junior Rates	At 17. <b>Addition</b> of the words “adult” and “minimum”.	At 17.	The SDA opposes the change as per its comments regarding Minimum Wage above.  In particular, it opposes the reference to “adult” as currently an employer may pay a junior employee at 100% if they so choose. Furthermore, the reference to “minimum” creates ambiguity as to penalty rates.	The SDA maintains their position.
Apprentices and Trainees	At 18.  <b>Mirrors</b> current Award.  The references are to Level 3 rate instead of “standard rate”.	At 18.	The SDA notes the change at 18.4(b).  In response to the Commission’s note at 18.8 the SDA responds in the affirmative and provides the	The SDA maintains their position.

PROVISION	Exposure Draft HBIA 2016	Exposure Draft HBIA 2019	COMMENTS on 2016 Exposure Draft	COMMENTS on 2019 Exposure Draft
	<p><b>Replaces</b> “commenced” with “who started their apprenticeship before”.</p> <p>18.4(b) replaces the reference to minimum weekly wage to minimum wage or rate.</p> <p><b>Replacement</b> at 18.4(c) of the word twelve in favour of the number 12.</p> <p>Some splitting at 18.4(d) and 18.5(d) (19.4 and 19.5 being the respective equivalents).</p> <p>School based apprentices <b>incorporated</b> at 18.6 (from clause 20 in the current Award).</p> <p>18.7 has the <b>addition</b> of a heading “Hairdressing trainees and graduates”.</p> <p>18.8 has the <b>addition</b> of a heading “Beauty therapy graduates”.</p>		<p>below draft definitions for consideration:</p> <p>-A Hairdressing Trainee is a person undertaking an accredited training program by delivery means other than an apprenticeship with the aim of achieving a Certificate 111 in Hairdressing.</p> <p>-A Hairdressing Graduate is a person who has undertaken an accredited training program by delivery means other than an apprenticeship and who has as a result of such undertaking achieved a Certificate 111 in Hairdressing.</p> <p>-A Beauty Therapy Graduate is a person who has undertaken an accredited training program by delivery means other than as an apprenticeship and who has as a result of such undertaking achieved a Diploma in Beauty Therapy.</p>	

PROVISION	Exposure Draft HBIA 2016	Exposure Draft HBIA 2019	COMMENTS on 2016 Exposure Draft	COMMENTS on 2019 Exposure Draft
			NOTE: these people are not covered by the training wage award.	
Payment of Wages	At 19.  19.1 and 19.2 <b>splits</b> the current clause 25.  An <b>addition</b> of a Note specifying the regulations.	At 19.  19.1 Clause structure modified from 2016 draft.  <b>19.2 included-</b> Payment on termination of employment. Award clause 25.2.	The SDA notes that it has a substantive claim regarding payment of wages before the Full Bench in regards to a consent position agreed to by all parties.	The SDA notes the change as at exposure draft 2019 clause 19.2. On the basis that it reflects changes in other Awards, including the <i>General Retail Industry Award 2010</i> it does not oppose the changes as noted.
Allowances	At 20.  Addition of 20.1 stating that employers must pay the allowances entitled under the clause.	At 20.	The SDA does not oppose the pure draft changes as noted.	The SDA does not oppose the draft provision.
Manager's Allowance	At 20.1.  <b>Changes</b> the current Award, though replacing 5% of the	At 20.2(a).	The SDA does not oppose the pure draft changes as noted.	The SDA does not oppose the draft provision.

PROVISION	Exposure Draft HBIA 2016	Exposure Draft HBIA 2019	COMMENTS on 2016 Exposure Draft	COMMENTS on 2019 Exposure Draft
	standard rate for the flat amount of \$39.17 per week.			
First Aid Allowance	At 20.2.  <b>Splits</b> the current Award into (a) and (b), with slight rewording. Gives flat amount of \$10.18 per week rather than 1.3% of the standard rate.	At 20.2(b).	The SDA does not oppose the pure draft changes as noted.	The SDA does not oppose the draft provision.
Broken Hill Allowance	At 20.2(c).  <b>Changes</b> the current 22 by <b>inserting</b> the amount of \$33.53 in lieu of 4.28% of the standard rate. Slight rewording.	At 20.2(c).	The SDA does not oppose the pure draft changes as noted.	The SDA does not oppose the draft provision.
Meal Allowance	At 20.3(a)(i)-(iii).  Slight re-wording.  <b>Splits</b> 21.2(a) into 20.3(a)(i)and(ii).	At 20.3(a)	The SDA submits that the draft 20.3(a)(i) reads with some difficulty. The SDA proposes the following wording:  “When an employee is required to work more than one hour of overtime after the employee’s ordinary time of ending work, without being given 24 hours’ notice, they will be either provided with a meal	The SDA maintains their position.

PROVISION	Exposure Draft HBIA 2016	Exposure Draft HBIA 2019	COMMENTS on 2016 Exposure Draft	COMMENTS on 2019 Exposure Draft
			or paid a meal allowance of \$17.85.”	
Transport Allowance	At 20.3(b).  <b>Rearranges</b> the words of the sentence, so the latter part comes first.  Changes “request” to “ask”.  <b>Mirrors</b> the current Award.	At 20.2(b).	The SDA submits for the retention of the word “requests” rather than the word “asks”.	The SDA maintains their position.
Tool Allowance	At 20.3(c).  Uses (i) and (ii) rather than (a) and (b).  Slight rewording at (ii) so that the latter part of the sentence now comes first.	At 20.2(c).	The SDA does not oppose the pure draft changes as noted.	The SDA does not oppose the draft provision.
Special clothing	At 20.3(d).  <b>Mirrors</b> the current Award.  <b>Splits</b> the current 21.3 into (i) and (ii).	At 20.2(d).	The SDA does not oppose the pure draft changes as noted.	The SDA do not oppose the draft provision.

PROVISION	Exposure Draft HBIA 2016	Exposure Draft HBIA 2019	COMMENTS on 2016 Exposure Draft	COMMENTS on 2019 Exposure Draft
Excess Travelling Costs	At 20.3(e). <b>Mirrors</b> the current Award.	At 20.2(e).	The SDA does not oppose the pure draft changes as noted.	The SDA does not oppose the draft provision.
Travelling Time Reimbursement	At 20.3(f). Replaces words “reaching and returning” with “travelling to and from”.  20.3(f)(iii) <b>replaces</b> the words ordinary time rate with minimum hourly rate. Replaces time and a half with 150%.	At 20.2(f).	In line with the comments above at paragraph 3 of our submissions, the word “minimum” at 20.3(f)(iii) should be deleted, as this could be misconstrued as to mean level 1 rather than the employee’s rate. For clarity, the reference should be to hourly rate or employee’s appropriate hourly rate so that penalty hours or overtime rates should be protected.	The SDA maintains their position.
Transfer of employee reimbursement	At 20.3(g). <b>Mirrors</b> the current Award.	At 20.2(g).	The SDA does not oppose the pure draft changes as noted.	The SDA does not oppose the draft provision.
Transport of employee reimbursement	At 20.3(h). Replaces “commences” with “starts”.  Some re-arrangement, splitting 21.8(a) into (i) (with bullet points), (ii) and (iii).	At 20.2(h).	The SDA does not oppose the pure draft changes as noted.	The SDA does not oppose the draft provision.

PROVISION	Exposure Draft HBIA 2016	Exposure Draft HBIA 2019	COMMENTS on 2016 Exposure Draft	COMMENTS on 2019 Exposure Draft
	<p>At 20.3(h)(ii) change from “This will not apply” to “Clause 20.3(h)(i) will not apply”.</p> <p>20.3(h)(iii) has changed the wording to “An employee may always elect to provide their own transport”.</p>			
Adjustment of expense related allowances	The current 19.10 is incorporated at B.2.2	At B.1.2.	The SDA does not oppose the pure draft changes as noted.	The SDA does not oppose the draft provision.
Superannuation	<p>At 21.</p> <p><b>Mirrors</b> the current Award.</p>	At 21.	The SDA does not oppose the pure draft changes as noted.	The SDA does not oppose the draft provision.
Overtime	<p>At 22.</p> <p>22 renamed Overtime.</p> <p>22.1(a) <b>simplifies</b> 31.1(a), <b>deletes</b> “in accordance with the provisions of this clause.”</p> <p>22.1(b) <b>mirrors</b> 31.1(b).</p> <p>22.2 <b>changes</b> 31.2(a), though it <b>splits</b> that clause into (a) and (b), and <b>replaces</b> time and a half and double time with 150% and 200% respectively. Replaces “thereafter” with “after three hours”. The references to</p>	<p>At 22.</p> <p><b>22.2</b> Slight wording structure changes.</p> <p>22.2 Overtime rates—full-time and part-time employees</p> <p>Full-time and part-time employees who work overtime hours <del>Overtime hours worked</del> in excess of the ordinary number of hours of work prescribed in clause 13.1 are to be paid at:</p> <p>(a) 150% of the minimum hourly rate for the first 3 hours; and</p> <p>(b) 200% of the minimum hourly rate after 3 hours.</p> <p><b>Inclusion of 22.3</b></p> <p>22.3 Overtime rates—casual employees</p>	<p>As noted in its comments above, particularly in relation to travel time, the SDA submits for the removal of the reference at 22.2 to “minimum hourly rate” to be replaced with the “appropriate hourly rate” for the respective employee.</p> <p>In response to the note at 22.2 the SDA submits a response in the affirmative. Overtime applies to all hours outside of the ordinary hours in 13.1,</p>	The SDA has made submissions above.

PROVISION	Exposure Draft HBIA 2016	Exposure Draft HBIA 2019	COMMENTS on 2016 Exposure Draft	COMMENTS on 2019 Exposure Draft
	<p>penalty rates are moved to 23 as provided below.  <b>22.3 mirrors</b> 31.2(d). Replaces double time with 200%.  <b>22.4 mirrors</b> 31.3.</p>	<p>(a) Clause 22.3 applies to casual employees who work in excess of:            (i) 38 hours per week or, where the casual employee works in accordance with a roster, in excess of 38 hours per week averaged over the course of the roster cycle; or            (ii) 10.5 hours per day.            (b) Casual employees who work in excess of the hours in clause 22.3(a) are to be paid at:            (i) 175% (inclusive of casual loading) of the minimum hourly rate of pay for the first three hours; and            (ii) 225% (inclusive of casual loading) of the minimum hourly rate of pay after three hours.</p> <p><b>22.5 a renamed and substituted clause-</b>            In line with the Award.</p>	<p>whilst the relevant penalties apply to all hours within the span as at 23 of the exposure draft.</p>	
<p>Penalty Rates</p> <p>Saturday work</p>	<p>At 23.</p> <p>23.1(a) is the <b>equivalent</b> of 31.2(b). Changes the wording by applying <b>133%</b> pay for full time and part-time and casuals.</p> <p>23.1(b) is a new provision that gives casuals 150% pay if working on Saturdays outside of 7am to 6pm.</p>	<p>At 23.</p>	<p>In line with comments above concerning the introduction of the term “minimum hourly rate”, the SDA opposes the changes. Particularly, as it lends itself to misinterpretation as to the correct classification for each employee.</p> <p>Furthermore, the SDA opposes the new 23.1(b) as it lends itself open to ambiguity,</p>	<p>The SDA maintains their position.</p>

PROVISION	Exposure Draft HBIA 2016	Exposure Draft HBIA 2019	COMMENTS on 2016 Exposure Draft	COMMENTS on 2019 Exposure Draft
			<p>particularly in relation to overtime.</p> <p>The SDA submits for the retention of the term “loading” for clarity and in view of its long standing in the industry.</p> <p>In response to the note at 23.1, and in line with its response to the note above at 22.2, the SDA submits that the correct rate of pay for a full-time or part-time employee on a Saturday outside ordinary hours is the relevant overtime rate.</p>	
<p>Penalty Rates</p> <p>Sunday Work</p>	<p>At 23.2.</p> <p><b>Mirrors</b> the current Award, but clarifies giving the Sunday rate as 200% (in lieu of 100% “loading”).</p>	<p>At 23.2.</p>	<p>In line with comments above concerning the introduction of the term “minimum hourly rate”, the SDA opposes the changes. Particularly, as it lends itself to misinterpretation as to the correct classification for each employee.</p> <p>The SDA submits for the retention of the term “loading” for clarity and in view of its long standing in the industry.</p>	<p>The SDA maintains their position.</p>

<b>PROVISION</b>	<b>Exposure Draft HBIA 2016</b>	<b>Exposure Draft HBIA 2019</b>	<b>COMMENTS on 2016 Exposure Draft</b>	<b>COMMENTS on 2019 Exposure Draft</b>
<p>Leave and Public Holidays</p> <p>Annual Leave</p>	<p>At 24.</p> <p>24.1 Per the NES <b>mirrors</b> 33.1.</p> <p>24.2 <b>mirrors</b> 33.2 re shiftworkers.</p> <p>24.3 <b>mirrors</b> 33.3.</p> <p>24.4 is the <b>equivalent</b> of 33.4 re annual leave in advance.</p> <p>24.5 <b>mirrors</b> 33.5.</p> <p>24.6 <b>mirrors</b> 33.6.</p> <p>24.7 <b>mirrors</b> 33.7.</p> <p>24.8 <b>mirrors</b> 33.8.</p> <p>24.9 <b>mirrors</b> 33.9.</p>	<p>Annual leave at 24.</p> <p>24.9(a) <b>Deleted.</b></p>	<p>The SDA does not oppose the pure draft changes as noted.</p>	<p>The SDA does not oppose the draft provision.</p>
<p>Personal/Carer's Leave and Compassionate Leave</p>	<p>At 25.</p> <p><b>Mirrors</b> the current Award.</p>	<p>At 25.</p>	<p>The SDA does not oppose the pure draft changes as noted.</p>	<p>The SDA does not oppose the draft provision.</p>
<p>Parental Leave and related entitlements</p>	<p>At 26.</p> <p><b>New clause.</b></p> <p>Per the NES.</p>	<p>At 26.</p>	<p>The SDA does not oppose the pure draft changes as noted.</p>	<p>The SDA does not oppose the draft provision.</p>

PROVISION	Exposure Draft HBIA 2016	Exposure Draft HBIA 2019	COMMENTS on 2016 Exposure Draft	COMMENTS on 2019 Exposure Draft
Public Holidays	<p>At 27.</p> <p>27.1 <b>mirrors</b> 35.1.</p> <p>27.2 <b>mirrors</b> 35.2.</p> <p>27.3 <b>mirrors</b> the second sentence of 35.2, splitting the clause into (a) – (c).</p> <p>27.4 <b>changes</b> 35.3 (it gives 200% instead of double time and a half).</p> <p>27.5 is a <b>new clause</b> detailing rights for part-day public holidays at schedule H.</p>	At 27.	<p>In line with comments above concerning the introduction of the term “minimum hourly rate”, the SDA opposes the changes. Particularly, as it lends itself to misinterpretation as to the correct classification for each employee.</p> <p>The SDA submits for the retention of the term “loading” for clarity and in view of its long standing in the industry.</p> <p>The SDA opposes in particular the change at 27.4 as the current Award gives double time and a half as payment for work on a public holiday. The change would reduce the entitlement to merely double time.</p>	The SDA maintains their position,
Community Service Leave	<p>At 28.</p> <p>Per the NES.</p>	<p>At 28.</p> <p>Per the NES.</p>	The SDA does not oppose the pure draft changes as noted.	The SDA does not oppose the draft provision.
Leave to deal with family and domestic violence	New clause.	New clause at 28A. Mirrors clause 37 of the Award.		The SDA does not oppose the draft provision.

<b>PROVISION</b>	<b>Exposure Draft HBIA 2016</b>	<b>Exposure Draft HBIA 2019</b>	<b>COMMENTS on 2016 Exposure Draft</b>	<b>COMMENTS on 2019 Exposure Draft</b>
<p>Consultation and Dispute Resolution</p> <p>Consultation about major workplace change</p>	<p>At 29.</p> <p>29.1 <b>mirrors</b> 8.1(a).</p> <p>29.2 <b>mirrors</b> 8.1(b).</p>	At 29. Mirrors clause 8 of the Award.	The SDA does not oppose the pure draft changes as noted.	The SDA does not oppose the draft provision.
Consultation about changes to rosters or hours of work	<p>At 30.</p> <p><b>Mirrors</b> the current Award.</p>	At 29A. Mirrors clause 8A of the Award.	The SDA does not oppose the pure draft changes as noted.	The SDA does not oppose the draft provision.
Dispute Resolution	<p>At 31.</p> <p>31.2 adds a reference to the NES.</p> <p><b>Mirrors</b> the current Award.</p>	At 30. Mirrors clause 9 of the Award.	The SDA does not oppose the pure draft changes as noted.	The SDA does not oppose the draft provision.
Termination of Employment	<p>At 32.</p> <p>32.1 and 32.2 <b>mirrors</b> the current Award at 14.1 and 14.2 respectively.</p>	At 31. Mirrors clause 14 of the Award.	The SDA does not oppose the pure draft changes as noted.	The SDA does not oppose the draft provision.
Redundancy	<p>At 33.</p> <p><b>Mirrors</b> the current Award, per the NES.</p>	At 32. Struck out, provisions structure is subject to further consideration by the Plain Full Bench.	The SDA does not oppose the pure draft changes as noted.	The SDA notes that in the most recent exposure draft the entirety of the redundancy provision

PROVISION	Exposure Draft HBIA 2016	Exposure Draft HBIA 2019	COMMENTS on 2016 Exposure Draft	COMMENTS on 2019 Exposure Draft
				was struck out. On the basis that the provision contained certain entitlements over and above those contained in the NES, the SDA opposes their reduction to merely the NES redundancy entitlement.
Transfer to lower paid job on redundancy	<p>At 34.</p> <p>Slight change joining the two sentences in the current Award my stating “and the employer may”</p> <p><b>Mirrors</b> the current Award at 15.2.</p>	At 33. Struck out, provisions structure is subject to further consideration by the Plain Full Bench.	The SDA does not oppose the pure draft changes as noted.	The SDA notes that in the most recent exposure draft the entirety of the redundancy provision was struck out. On the basis that the provision contained certain entitlements over and above those contained in the NES, the SDA opposes their reduction to merely the NES redundancy entitlement.
Employee leaving during redundancy notice period	<p>At 35.</p> <p><b>Mirrors</b> the current Award. Title makes it more explicit. Change</p>	At 34. Struck out, provisions structure is subject to further consideration by the Plain Full Bench.	The SDA does not oppose the pure draft changes as noted.	The SDA notes that in the most recent exposure draft the entirety of the redundancy provision was struck out. On the

PROVISION	Exposure Draft HBIA 2016	Exposure Draft HBIA 2019	COMMENTS on 2016 Exposure Draft	COMMENTS on 2019 Exposure Draft
	from reference to “this clause” to “clause 33”.			basis that the provision contained certain entitlements over and above those contained in the NES, the SDA opposes their reduction to merely the NES redundancy entitlement.
Job Search Entitlement  For notice of termination of employment	At 36.1.  <b>Mirrors</b> the current Award at 14.3.	At 35.1 Struck out, provisions structure is subject to further consideration by the Plain Full Bench.	The SDA does not oppose the pure draft changes as noted.	The SDA notes that in the most recent exposure draft the entirety of the redundancy provision was struck out. On the basis that the provision contained certain entitlements over and above those contained in the NES, the SDA opposes their reduction to merely the NES redundancy entitlement.
Job Search Entitlement  Redundancy	At 36.2.  <b>Mirrors</b> the current Award, but <b>deletes</b> 15.4(c).	At 35.2 Struck out, provisions structure is subject to further consideration by the Plain Full Bench.	The SDA does not oppose the pure draft changes as noted.	The SDA notes that in the most recent exposure draft the entirety of the redundancy provision was struck out. On the basis that the provision

PROVISION	Exposure Draft HBIA 2016	Exposure Draft HBIA 2019	COMMENTS on 2016 Exposure Draft	COMMENTS on 2019 Exposure Draft
				contained certain entitlements over and above those contained in the NES, the SDA opposes their reduction to merely the NES redundancy entitlement.
Summary of Hourly Rates of Pay	At Schedule A, replacing the current Transitional Provisions.	At Schedule A.	The SDA does not oppose the inclusion of summary hourly rates of pay tables.	The SDA does not oppose the draft provision.
Summary of Monetary Allowances	At Schedule B, replacing the current Classifications (incorporated as noted above).	At Schedule B.	The SDA does not oppose the pure draft changes as noted.	The SDA does not oppose the draft provision.
Supported Wage System	At Schedule C. <b>Mirrors</b> the current Award.	At Schedule C.	The SDA does not oppose the pure draft changes as noted.	The SDA does not oppose the draft provision.
National Training Wage	At Schedule D. <b>Mirrors</b> the current Award.  References at D.3.1, D.3.2. D.5.1 is to clause D7 rather than to Appendix D1.  D3.3 <b>replaces</b> D.3.3 is the current Award and <b>removes</b> reference to “any training program which applies to the	At Schedule D.	The SDA does not oppose the pure draft changes as noted.	The SDA does not oppose the draft provision.

PROVISION	Exposure Draft HBIA 2016	Exposure Draft HBIA 2019	COMMENTS on 2016 Exposure Draft	COMMENTS on 2019 Exposure Draft
	<p>same occupation and achieves essentially the same training outcome as an existing apprenticeship in an award as at 25 June 1997.” It breaks the clause into (a)-(c). With (b) and (c) being new additions (qualifications not identified in training packages and qualifications in training packages which are not identified as appropriate for a traineeship, respectively).</p> <p>D.7 is the <b>equivalent</b> of Appendix D.1, the formatting has changed so the AQF certificate levels read horizontally rather than vertically. Further at Electricity Supply Industry and Electrotechnology the Roman numeral III is repeated within the parenthesis to emphasise it applies in WA only. Transport and Logistics Wage Level A renamed Transport and Distribution.</p>			

<b>PROVISION</b>	<b>Exposure Draft HBIA 2016</b>	<b>Exposure Draft HBIA 2019</b>	<b>COMMENTS on 2016 Exposure Draft</b>	<b>COMMENTS on 2019 Exposure Draft</b>
	Transport and Logistics Wage Level B now refers to levels I and II.			
School Based Apprentices	At Schedule E. <b>Mirrors</b> the current Award.	Schedule E.	The SDA does not oppose the pure draft changes as noted.	The SDA does not oppose the draft provision.
Part Day Public Holidays	At Schedule H. <b>Mirrors</b> the current Award.	At Schedule H.	The SDA does not oppose the pure draft changes as noted.	The SDA does not oppose the draft provision.
Agreement to Take Annual Leave in Advance  (example of Agreement)	At Schedule G.	At Schedule F.	The SDA does not oppose the pure draft changes as noted.	The SDA does not oppose the draft provision.
Agreement to Cash Out Annual leave	At Schedule G.	At schedule G.	The SDA does not oppose the pure draft changes as noted.	The SDA does not oppose the draft provision.