

Australian Industry Group

# 4 YEARLY REVIEW OF MODERN AWARDS

## **Further Reply Submission**

Plain Language Re-Drafting –  
*Hair and Beauty Industry Award 2010*  
(AM2016/15)

**6 April 2021**

**4 YEARLY REVIEW OF MODERN AWARDS**  
**AM2016/15 PLAIN LANGUAGE RE-DRAFTING**  
**– HAIR AND BEAUTY INDUSTRY AWARD 2010**

1. This further reply submission relates to the exposure draft (**Exposure Draft**) of the *Hair and Beauty Industry Award 2010* (**Award**), which was published by the Fair Work Commission (**Commission**) on 21 January 2021. It is filed on behalf of the Australian Industry Group, Hair and Beauty Australia and the Australian Hair Council.
2. The submission responds to the submissions filed by the Shop, Distributive and Allied Employees' Association (**SDA**) and the Australian Workers' Union (**AWU**). The references to 'items' relate to the summary of submissions published by the Commission on 21 January 2021.

**Response to the SDA**

**Items 15, 49 and 50**

3. The SDA refers to a '*consensus*' reached between Ai Group, the SDA and AWU about certain matters arising from the above items. The position reached between the parties is set out in our submissions of 19 March 2021 at paragraphs 4, 33 and 34 – 38 (noting that the specific changes proposed at paragraphs 35 and 38 have not been discussed by the parties, however in our submission they reflect the in-principle position reached between us).
4. In relation to the SDA's submissions at paragraph 8, we refer to paragraph 39 of our submission of 19 March 2021.

## Item 16

5. The SDA's position in relation to item 16 defies logic. The union does not appear to contend that an employer and part-time employee must reach agreement upon engagement of all hours of work, including both ordinary hours and overtime; yet they contend that the word '*ordinary*' should not be included in clause 10.3 on the basis that it is not found in the comparable extant Award provision.
6. The insertion of '*ordinary*' in the Exposure Draft clarifies the operation of the clause. It operates in tandem with clause 10.7 of the Exposure Draft, which states that any time worked outside a part-time employee's agreed hours (as varied) constitute overtime. There is no logical reason why the word '*ordinary*' should be deleted. Consistency with the drafting of the *General Retail Industry Award 2020* is not of itself a sensible basis for amending the Exposure Draft in this regard.

## Items 20, 50, 54 and 55

7. We withdraw our submission of 19 March 2021 at paragraph 40(b). We confirm that we agree with the proposal set out in the SDA's submission at paragraph 23 of their submission.
8. We oppose the proposal of the SDA at paragraph 26. We intend to address this matter in a submission that will be filed shortly in AM2017/51 Overtime for Casuals. If this issue is not referred to the Full Bench presiding over that matter, as requested by the unions, we will seek an opportunity to file further submissions opposing the unions' position in the context of the matter here before the Commission.

## Item 28

9. We refer to paragraphs 7 – 10 of our submission of 19 March 2021.

### **Item 30**

10. We strongly oppose the change proposed by the SDA. As we have previously submitted, the spread of hours prescribed by the Award does not apply to casual employees. The proposed change would result in a significant substantive change to the Award. Casual employees are, however, entitled to the payment of a penalty for work performed outside the spread of hours.

### **Item 32**

11. We remain opposed to the position advanced by the SDA. In our submission, neither clause 29 nor 30 of the Award apply to casual employees and therefore, the corresponding Exposure Draft provisions should not apply either.
12. Clause 32.1(b)(i) does not advance the SDA's contentions. It simply enables circumstances in which a casual employee's ordinary hours are averaged to be taken into account, when calculating their overtime entitlements. The clause contemplates that a casual employee may work in accordance with a roster, but it does not create an Award-derived obligation to create a roster for casual employees or to apply clause 30 to them.

### **Item 56**

13. Ai Group continues to rely on its earlier submissions in relation to this issue. The purpose of the proposed amendments is to make clear that an employer and employee *can* agree in writing that the employee will work on a day that is their rostered day off (i.e. to make clear that the arrangement is permitted by the instrument, rather than one that is merely contemplated by it).

## **Response to the AWU**

### **Overtime Issues**

14. We intend to file a submission responding to the material filed by the AWU in AM2017/51 Overtime for Casuals. If the Full Bench as presently constituted proposes to also deal with the same issue, or to deal with it instead of the Full

Bench constituted to deal with the aforementioned matter, we will seek an opportunity to file a further submission in this matter.

### **Other Matters – Pre-Apprentice**

15. Discussions between the parties regarding a potential definition of a ‘pre-apprentice’ are ongoing. The issue has given rise to complex issues that intersect with state-based training requirements and regulations.
16. We respectfully seek a further period of two weeks to continue our discussions with the unions about this matter and to report back to the Commission by 4pm on 20 April 2021. We are hopeful that by that stage, the parties will be in a position to advance a joint position in relation to the matter.
17. We understand that the proposed course of action is agreed by the SDA and AWU.

### **Additional Matter – Hairdressing Trainee**

18. We refer to paragraphs 56 – 57 of our submission of 19 March 2021.
19. Discussions between the parties regarding a potential definition of a ‘hairdressing trainee’ are ongoing. The issue has given rise to complex issues that intersect with training requirements and regulations.
20. We respectfully seek a further period of two weeks to continue our discussions with the unions about this matter and to report back to the Commission by 4pm on 20 April 2021. We are hopeful that by that stage, the parties will be in a position to advance a joint position in relation to the matter.
21. We understand that the proposed course of action is agreed by the SDA and AWU.