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# STRONGER TOGETHER

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*Fair Work Act 2009*  
FAIR WORK COMMISSION  
s. 156 – 4 Yearly review of modern awards  
AM2016/15 – Plain Language re-drafting

## **AWU SUBMISSIONS IN REPLY CONCERNING THE PLAIN LANGUAGE EXPOSURE DRAFT FOR THE HAIR AND BEAUTY INDUSTRY AWARD 2010**

### **BACKGROUND**

1. The Australian Workers' Union (**AWU**) makes the following submissions in accordance with the Statement issued by the Fair Work Commission on 28 October 2020 in respect of the plain language exposure draft (**Exposure Draft**) of the *Hair and Beauty Industry Award 2010* (**Award**).
2. On 25 November 2020 the Australian Industry Group (**AIG**) and the Australian Business Industrial (**ABI**) and the New South Wales Business Chamber (**NSWBC**), and on 1 December 2020, the Shop Distributive and Allied Employees' Association (**SDA**) filed submissions concerning the Exposure Draft.
3. The AWU's submissions in response to those filed by AIG, ABI, NSWBC and the SDA appear below.

### **SUBMISSIONS IN REPLY TO THE AIG**

4. **Clause 2 – Definitions – 'apprentice'**: The AWU does not oppose a variation to the proposed definition of 'apprentice' to ensure trainees are not captured by this definition.
5. **Clause 2 – Definitions – 'minimum hourly rate'**: The AWU does not oppose the amended definition of 'minimum hourly rate' as proposed by the AIG.
6. **Clause 2.1 – Definitions – 'overtime rates'**: The AWU does not oppose the deletion of the text between 'Table 15' and 'Table 16'.
7. **Clause 4.1(b) – Coverage**: The AWU agrees that the opening bracket before the word 'with' should be deleted.
8. **Clause 4.2(j) – Coverage**: The AWU understands the definition in the current award and in the Exposure Draft to have the same effect.

9. **Clause 4.3(a) – Coverage:** The AWU does not oppose the replacement of clause 4.3(a) of the Exposure Draft with clause 4.5 of the Award, as proposed by the AIG.
10. **Clause 4.5(d) – Coverage:** The AWU does not oppose the amendment to clause 4.5(d) as proposed by the AIG.
11. **Clause 4.6 – Coverage:** The AWU does not oppose the amendment to clause 4.6 as proposed by the AIG.
12. **Clause 7.2 – Facilitative provisions:** The AWU does not oppose the deletion of clause 10.4 and 15.2(c)(i) from Table 1 at clause 7.2. The AWU also does not oppose the AIG’s proposed variation to the description of clause 16.1 in Table 1.
13. **Clause 10.6 – Part-time employees:** The AWU agrees that an additional cross-reference to clause 18 (apprentice, trainee and graduate rates) should be inserted into clause 10.6.
14. **Clause 11.3(a) – Casual employees:** The AWU agrees that an additional cross-reference to clause 18 (apprentice, trainee and graduate rates) should be inserted into clause 11.3(a).
15. **Clause 11.4 and 23.1 – Casual employees:** The AWU supports the content in clause 11.4 and 23.1 of the Exposure Draft because it rectifies an error in the Award.
16. A variation to clause 13.3 of the Award which occurred as a result of the Overtime for Casuals common issue proceedings (AM2017/51) has unintentionally altered the penalty rate entitlements for casual employees.
17. Prior to 20 November 2020, clause 13.3 of the Award stated<sup>1</sup>:

*For all work performed outside the hours in clause 28.2, except Sundays, a casual employee will be paid the hourly rate for a full-time employee in this award plus 50%. For Sundays, the additional loading will be 100%.*

Clause 28.2 of the Award contains a span of ordinary hours for each day of the week.

18. Clause 13.3 of the Award was varied on 20 November 2020<sup>2</sup> to read:

*When a casual employee works overtime, they must be paid the overtime rates in clause 31.2(b).*

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<sup>1</sup> See: <http://awardviewer.fwo.gov.au/award/version/MA000005?vn=82&rvn=55>

<sup>2</sup> See: <https://www.fwc.gov.au/documents/awardsandorders/html/pr723908.htm>

Clause 31.2(b) contains overtime rates for casual employees where they work in excess of 38 hours per week, or an average of 38 hours per week, and also when they work in excess of 10.5 hours per day.

19. It can be seen, therefore, that prior to 20 November 2020, clause 13.3 prescribed a penalty rate of 50% for casual employees when they perform work outside the span of ordinary hours in clause 28.2 (a higher rate was paid for Sundays). Clause 13.3 has now been amended to effectively just cross-reference the overtime rates in clause 31.2(b).
20. The problems with the re-drafting of clause 13.3 were raised by AIG in a submission to the Overtime for Casuals Full Bench dated 2 October 2020<sup>3</sup>. The AWU supported the AIG's submissions on this issue in a submission dated 16 October 2020.
21. **Clause 11.5 – Casual employees:** The AWU agrees that there is currently an error concerning the reference to clause 22.2, and submits that the reference should be to clause 22.4 – payment of overtime for casual employees.
22. **Clause 12.2 – Apprentices:** The AWU disagrees with the AIG's submission that clause 12.2 should be deleted given it does not impose any additional substantive obligation.
23. **Clause 12.3 – Apprentices:** The AWU does not oppose the AIG's submission that clause 12.3 of the Exposure Draft be replaced by clause 19.5(a) of the Award.
24. **Clause 12.6(c) – Apprentices:** The AWU does not oppose the inclusion of 19.5(f) into the Exposure Draft. In the experience of the AWU, employers paying fees directly to a registered training organisation is not uncommon.
25. **Clause 12.7 – Apprentices:** The AWU does not oppose the AIG's proposed addition of the word 'excess' before 'reasonable' in clause 12.7.
26. **Clause 12.7(d)(ii) – Apprentices:** The AWU does not oppose the insertion of ('where necessary') after 'accommodation'; consistent with the wording of clause 19.5(c) of the Award.
27. **Clause 13.2 – Classifications:** The AWU does not support the AIG's proposed addition of the words 'as determined by the employer' to clause 13.2. As submitted by the SDA at [13], an ordinary reading of clause 13.2 makes clear that it is the employer who determines the classification of an employee based upon an assessment of the employee's competencies; inherent to this assessment is a determination of what the 'principal functions of the employment' are. The AIG's proposed amendment is, therefore, unnecessary.

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<sup>3</sup> See here at [152] to [155]: <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am201751-sub-aig-021020.pdf>

28. **Clause 14.1 – Ordinary hours of work and rostering:** The AWU does not oppose the AIG’s proposed amendment to clause 11.
29. **Clause 15.1– Roster notification:** The AWU does not support the AIG’s proposed amendment to the heading of clause 15.1. Clause 15.1 of the Exposure Draft reflects clause 30 of the Award. Relevantly, clause 30 is omitted from the list of provisions which do not apply to casual employees. The AIG’s proposal amounts to a substantive change to the Award.
30. **Clause 15.1(f)(i) – Consecutive days off:** The AWU does not support the deletion of clause 15.1(f)(i), as proposed by the AIG. Clause 15.1(f)(i) enhances the clarity of the clause, making it expressly clear that it is the obligation of the employer not to roster employees to work ordinary hours on more than 5 days per week.
31. **Clause 15.2 – Note:** The AWU agrees that the correct cross-reference is clause 32 – dispute resolution.
32. **Clause 15.3(d) – Rosters for part-time employees:** The AWU does not oppose the insertion of a reference to clause 10.4 into clause 15.3(d).
33. **Clause 15.3 – Note:** The AWU agrees that the correct cross-reference is clause 32 – dispute resolution.
34. **Clause 17.2 – Junior rates:** The AWU maintains the position as advanced at [12] – [18] of its submissions dated 25 November 2020; junior rates should be confined to employees who fall within the Level 1 classification, or at a minimum, Level 1 and 2.
35. **Clause 18 – Apprentice, trainee and graduate rates:** The AWU maintains its support for the removal of the rates applying to apprentices commencing prior to 1 January 2014.
36. **Clause 18.4 – minimum rates of adult apprentices:** The AWU does not oppose the AIG’s proposed amendments to clause 18.4.
37. **Clause 20.9(a)(ii) – Travelling time reimbursement:** The AWU does not oppose the AIG’s proposed amendment to clause 20.9(a)(ii).
38. **Clause 20.10(b) – Transport of an employee reimbursement:** The AWU accepts that clause 21.8 Award currently confines the transport of employee reimbursement to the cost of taxi fares. We note, however, that the adoption of the term ‘commercial passenger vehicle’ in the Exposure Draft is warranted, given the increased use of other transport operators (e.g. Uber). The inclusion of the word ‘reasonably’ in clause 20.10(b) will operate to prevent employees from the more expensive commercial passenger vehicle options, as envisioned by the AIG, such as hire cars.

39. **Clause 20.10(b)(ii) - Transport of an employee reimbursement:** The AWU does not oppose the amendment to clause 20.10(b)(ii) as proposed by the AIG.
40. **Clause 22.2 – Overtime rates for full-time employees:** The AWU does not oppose the amendment to clause 22.2 as proposed by the AIG.
41. **Clause 22.5 – Overtime rates on a rostered day off:** The AWU does not oppose the amendment to clause 22.5 as proposed by the AIG.
42. **Clause 23.2(a) – Rostered days off:** The AWU opposes the AIG’s proposed amendment to clause 23.2(a). The words ‘clause 23.1 applies if’ ensure that it is simple and easy to understand when the entitlement to a 200% penalty rate for working on a rostered day off applies.
43. **Clause 24.2 – Additional annual leave for shift-workers:** The AWU opposes the AIG’s submission that clause 24.2 should be deleted (in addition to clause 22.3(b)(ii) and 24.7(a), which also relate to shift workers). The AWU submits that this is a substantive change to the award, which the AIG should advance under an award variation application.
44. The AWU does not oppose the AIG’s submission that the words ‘seven day’ be inserted before ‘shift worker’ in clause 24.2.
45. **Clause 24.3 – Annual leave loading:** The AWU notes the potential confusion arising from the wording of 24.3(a) and 24.3(b) of the Exposure Draft. The AWU submits that the Exposure Draft should revert the comparatively simpler wording of clause 33.3 of the Award.
46. **Clause 24.6(f) – Cashing out of annual leave:** The AWU does not oppose the amendment to clause 24.6(f) as proposed by the AIG, and notes that the correct cross-reference appears to be to clause 24.3 – annual leave loading.
47. **Clause 29.2 – public holiday substitution:** The AWU submits the issue raised by AIG should be resolved by reverting to the wording in the Award.
48. **Clause 29.3(a) – public holiday penalty rates:** The AWU does not oppose the AIG’s proposed amendment to clause 29.3(a); excepting that the AWU believes the correct cross reference to include is to clause 29.3(b).
49. **Clause 34.1(c) – Redundancy – transfer to lower paid duties:** The AWU agrees that the correct cross-reference is to 34.1(b)(ii).
50. **Clause 34.3(c) – redundancy – job search entitlement:** The AWU agrees that the correct cross-reference is to 34.3(c).
51. **Clause B.5.3 and clause B.5.4 – summary of hourly rates – Apprentices:** The AWU agrees with the AIG’s submission that ‘and beauty therapy’ be deleted from the heading of clause B.5.3 and clause B.5.4.

52. The AWU notes that two additional tables of rates for beauty therapist apprentices must be included in the Exposure Draft (for beauty therapy apprenticeships commenced before and after 1 January 2014).
53. **Clause B.5.6 – summary of hourly rates – pre-apprentices:** The AWU notes that the rates contained in the final column of B.5.6 are incorrect and should be amended to reflect the correct rates of pay.

#### **SUBMISSIONS IN REPLY TO ABI & NSWBC**

54. **Clause 4 – coverage:** The AWU does not oppose the separation of ‘facial or body waxing’ from ‘face or head massaging’ at 4.2(e), as proposed by ABI and NSWBC.
55. **Clause 13 – classifications:** The AWU opposes ABI and NSWBC’s submission. We refer to our above submissions in reply to the AIG in respect of clause 13.2 at [27].

#### **SUBMISSIONS IN REPLY TO THE SDA**

56. The AWU supports the submissions of the SDA.
57. However, in relation to [17], the AWU notes that the Award specifically precludes casual employees from an entitlement to a travelling time reimbursement (per clause 13.4 of the Award).
58. In addition, with respect to [18], the AWU notes that subclause 24.4(b) reflects clause 33.5 of the Award.