

Australian Industry Group

4 YEARLY REVIEW OF MODERN AWARDS

Reply Submission

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

9 December 2020



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

1. This 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 28 October 2020. It is filed on behalf of the Australian Industry Group, Hair and Beauty Australia and the Australian Hair Council.
2. The submission responds to submissions filed by the Australian Workers Union (**AWU**); Shop, Distributive and Allied Employees Association (**SDA**), Australian Business Industrial and the NSW Business Chamber (**ABI**).

Response to the SDA's Submissions

Clause 2 of the Exposure Draft – Definitions – standard rate

3. The proposed changes are not necessary given the approach taken in Schedule B of the Exposure Draft.

Clause 3.4 of the Exposure Draft – The NES and this award

4. Clause 3.4 of the Exposure Draft reflects the approach taken by the Commission across the awards system. A departure from that approach is not warranted in the context of the Exposure Draft.

Clause 9 of the Exposure Draft – Full-time employees

5. In response to the SDA's submissions about a purported lack of clarity as to how clause 9 and clause 22.2 interact, we refer to paragraph 65 of our November 2020 submission. The change there proposed will ensure that the Exposure Draft is internally consistent and consistent with the Award.

Clause 10.3(a) of the Exposure Draft – Part-time employees

6. We oppose the amendment sought by the SDA, which would amount to a significant substantive change to the Award.

Clause 11.5 of the Exposure Draft – Casual employees

7. We agree with the proposed change.

Clause 12.5 of the Exposure Draft – Apprentices

8. We do not oppose the change proposed.

Clause 13.2 of the Exposure Draft – Classifications

9. Ai Group opposes the SDA's submissions. We refer to paragraphs 41 – 44 of our submission of November 2020.

Clause 14.4 of the Exposure Draft – Span of hours

10. We agree with the SDA's submission.

Clause 17.2 of the Exposure Draft – Junior rates

11. We oppose the SDA's proposal. It would amount to a significant substantive change to the Award for which no basis has been made out. Further, it is not appropriate that a proposal of this nature is dealt with through this redrafting process.

Clause 17.5 of the Exposure Draft – Special clothing allowance

12. We do not oppose the SDA's proposed amendment.

Clause 20.4 of the Exposure Draft – Broken Hill allowance

13. The proposed change is not necessary. We draw the union's attention to Schedule B of the Exposure Draft.

Clause 20.9(a) of the Exposure Draft – Travelling time reimbursement

14. The change proposed is opposed. It would result in a substantive change to the Award. We refer to clause 13.4 of the Award which makes clear that the travelling time reimbursement entitlement does not apply to casual employees.

Clause 24.4(b) of the Exposure Draft – Temporary close down

15. We oppose the proposed deletion of clause 24.4(b) of the Exposure Draft. Contrary to the union's submission, it reflects clause 33.5 of the Award.

Response to the AWU's Submissions

Clauses 11.4 and 14 of the Exposure Draft – Casual employees

16. We oppose the changes proposed by the AWU. The span of hours prescribed by the Award does not apply to casual employees. This is clear from clause 13.4 of the Award. Accordingly, clause 14.4 of the Exposure Draft should not apply to casual employees either.

Clause 14.4 of the Exposure Draft – Span of hours

17. We agree with the AWU's submission.

Clause 17.2 of the Exposure Draft – Junior rates

18. We oppose the AWU's submissions and proposed changes. They would amount to significant substantive changes to the Award. It is not appropriate that a proposal of this nature is dealt with through this redrafting process.

Clause 18 of the Exposure Draft – Apprentice rates

19. We do not oppose the deletion of apprentice rates concerning apprenticeships that started before 1 January 2014.

Clause 18.3 of the Exposure Draft – Pre-apprentices

20. The definition proposed by the AWU should be the subject of discussion between the parties. We have some preliminary concerns with the terms in which the definition has been framed, including the proposal that the rates prescribed for pre-apprentices can be paid for up to a maximum of two weeks. The basis for that limitation is not clear.

Clause 20.8 of the Exposure Draft – Tool allowance

21. We do not oppose the proposed variation.

Clauses 22.2 and 22.5 of the Exposure Draft – Overtime

22. We oppose the AWU's submissions. The Award does not require the payment of overtime rates to full-time or part-time employees if they work outside the spread of hours or if they work more than 10.5 ordinary hours in a day.
23. Clause 31.2(a) of the Award entitles permanent employees to overtime rates if they work in excess of the number of ordinary hours prescribed by clause 28.2. This is clearly a reference to the cap of an average of 38 ordinary hours prescribed by clause 28.2, not the spread of hours.
24. Further, there is no provision of the Award that requires the payment of overtime rates for time worked in excess of the maximum daily hours prescribed by clause 28.3. for permanent employees.

Clause 22.5 of the Exposure Draft – Note

25. We agree that the note does not reflect the approach adopted in Table 16 in relation to Sunday and public holiday penalty rates. We suggest that the note should be converted to a footnote to the Monday – Saturday rates in Table 16.

Clause 24.6(f) of the Exposure Draft – Cashing out of annual leave

26. Given our concerns with clause 24.3 of the Exposure Draft, we do not support the change proposed by the AWU. The final sentence should be deleted.

Response to ABI's Submissions

Clause 4.2(e) of the Exposure Draft – Coverage

27. We do not oppose the change proposed.

Clause 13.2 of the Exposure Draft – Classifications

28. We agree with ABI that clause 13.2 of the Exposure Draft is deficient, however that deficiency should in our submission be resolved in the manner proposed at paragraphs 41 – 44 of our November 2020 submission.