

## NATIONAL OFFICE

Level 1, 16-20 Good Street, Granville NSW 2142  
T: 02 8005 3333 E: members@nat.awu.net.au W: www.awu.net.au  
Daniel Walton National and NSW Secretary



# STRONGER TOGETHER

ABN 28 853 022 982

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

### **AWU FURTHER 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 further reply submissions in accordance with the amended directions issued by the President, Justice Ross, on 3 March 2021, concerning the plain language exposure draft ("**Exposure Draft**") for the *Hair and Beauty Award 2010* ("**Award**").
2. The AWU's further reply submissions below respond to matters raised in submissions filed by the Australian Industry Group ("**AIG**") on 19 March 2021.

#### **REPLY TO AIG SUBMISSIONS**

3. Item 30 - clause 14.1 of the Exposure Draft: The concern previously raised by the AWU about the need for the Exposure Draft to specify that work outside the span of ordinary hours by casual employees triggers penalty rate payments is being resolved by the Casual Overtime Full Bench.<sup>1</sup>
4. Item 33 - clause 15.1(b) to (f) of the Exposure Draft: Contrary to AIG's submissions, there is nothing in clause 30 or clause 13 of the Award which indicates casual employees are excluded from the conditions in clause 30 – Rostering principles. Clause 29 – Notification of rosters has several provisions which limit its operation to permanent or full-time employees and clause 29 is specifically listed as a provision that does not apply to casual employees in clause 13.4.
5. In contrast, no provision in clause 30 is expressed by reference to permanent or full-time employees and clause 30 is omitted from the list of provisions that don't apply to casuals in clause 13.4 of the Award.

---

<sup>1</sup> See *4 yearly review of modern awards – Overtime for casuals* [2021] FWCFB 1121.

6. Therefore, the Exposure Draft should not be varied in the manner proposed by AIG because the variation is justified only by an incorrect interpretation of the Award.
7. Item 38 – clause 17.2 of the Exposure Draft: In response to paragraph [24] of AIG’s submission, the AWU accepts limiting the payment of junior rates to employees in the Level 1 and 2 classifications would be consistent with the outcome for the *General Retail Industry Award 2020*<sup>2</sup> and does not oppose that approach being adopted in the Exposure Draft.
8. Item 40 – clause 18.3 of the Exposure Draft: Discussions between the AWU, SDA and AIG are continuing in relation to whether an appropriate definition for a “pre-apprentice” can be agreed. The AWU understands an additional two weeks will be sought for submissions on this issue to enable these discussions to conclude.
9. Item 47 – clause 20.10(b) of the Exposure Draft: The AWU opposes the variation suggested in paragraph [31] of AIG’s submissions. The AWU supports the wording in clause 20.10(b) of the Exposure Draft which reflects a simple modernisation of the language and is consistent with the approach adopted in clause 19.8(b) of the *Pharmacy Industry Award 2020* and clause 19.8(b) of the *General Retail Industry Award 2020*.
10. Item 50 – clause 22.2 and 22.5 of the Exposure Draft: The AWU understands these matters are being resolved by the Casual Overtime Full Bench.
11. The AWU agrees with AIG’s submission at paragraph [37] to the effect that a part-time employee can only agree to work ordinary hours within the span prescribed in clause 14.4 of the Exposure Draft and that overtime rates are payable for any hours in addition to the agreed hours. Therefore, overtime rates will necessarily apply when a part-time employee works outside the span of ordinary hours.
12. Item 59 – clause 24.3 of the Exposure Draft: The AWU has not encountered any issues with the operation of clause 33.3 of the Award and does not oppose this provision being replicated in the Exposure Draft. The AWU considers this to be a simpler and preferable approach to that proposed by AIG in paragraph [54] of its submissions.

#### **ADDITIONAL ISSUE – CONDITION OMITTED FROM EXPOSURE DRAFT**

13. Clause 12.9 – Award entitlements appears in the part-time clause of the Award and does not appear to have been included in the Exposure Draft. The AWU submits this provision assists in clarifying the entitlements of part-time employees and should be included in the Exposure Draft.

---

<sup>2</sup> 4 yearly review of modern awards – Award Stage – General Retail Industry Award 2020 [2020] FWCFB 6301.