

## IN THE FAIR WORK COMMISSION

### AM2017/40 Penalty Rates – Hair and Beauty Industry Award 2010

#### WITNESS STATEMENT OF GRAHAM PHILLIP DOWNS

I, Graham Phillip Downs of [REDACTED] (WA) do solemnly and sincerely declare and state the following:

1. I am a Director of the following four entities that own and operate four Just Cuts franchises (**Salons**):

Entity	Ownership Commenced
<b>Just Cuts Belmont</b> Belmont Cuts Pty Ltd (ACN 622 460 762) as trustee of the Belmont Trust	November 2017
<b>Just Cuts Cockburn</b> Downet (WA) Pty Ltd (ACN 127165057) as trustee of the Success Trust	October 2007
<b>Just Cuts Booragoon</b> Booragoon Pty Ltd (ACN 600 981 913) as trustee of the Booragoon Family Trust	October 2014
<b>Just Cuts Karrinyup</b> KGYK Pty Ltd (ACN 162970 667) as trustee for the Karrinyup Trust	June 2013

2. In my role, I am responsible for the overall operations of the Salons. This includes satisfying franchising requirements, involvement in negotiation and renegotiation of leases, marketing, payroll, managing budgets and the financial operations of the businesses.
3. The day to day management at each Salon is undertaken by team leaders who report to me.
4. By profession I am a Chartered Accountant, Registered Tax Agent and Licensed Financial Adviser.

## **Just Cuts**

5. There are approximately 170 – 180 Just Cuts salons in Australia. Just Cuts is the largest hairdressing franchise in the Southern Hemisphere. Generally, all Just Cuts salons are franchised. It is my understanding that on occasion Just Cuts may own and operate a salon temporarily where, for example, the salon is between franchisees.
6. The Salons also sell Just Cuts hair products, including products under Just Cuts' brand name of 'Justice Professional'.
7. Just Cuts is the lessee in the case of each of the Salons. The Salons sublease from Just Cuts. I am heavily involved in the negotiation and renegotiation of the Salons' leases alongside personnel from Just Cuts.

## **The Salons**

8. The opening hours and employee numbers of the four Salons as at the time of drafting this statement are set out below. It is my understanding that all employees employed at the Salons are covered by the *Hair and Beauty Industry Award 2010 (Award)*.
9. In each of the Salons, labour constituted just under 50% of their revenue during the 2016/2017 financial year.
10. Each of the Salons operate in a shopping centre (**Shopping Centres**) in Perth, Western Australia.
11. The Salons do not take appointments from customers. Customers are serviced on a walk-in system only.

Just Cuts Belmont

- 12. Just Cuts Belmont is located in the Belmont Forum Shopping Centre.
- 13. Just Cuts Belmont's opening hours are as follows:

<b>Day</b>	<b>Opening Hours</b>
Monday	9:00am – 5:30pm
Tuesday	9:00am – 5:30pm
Wednesday	9:00am – 5:30pm
Thursday	9:00am – 9:00pm
Friday	9:00am – 5:30pm
Saturday	9:00am – 5:00pm
Sunday	11:00am – 4:00pm
Public holidays	Closed

- 14. There are six casual stylists employed by Just Cuts Belmont.

Just Cuts Cockburn

- 15. Just Cuts Cockburn is located in the Cockburn Gateway Shopping Centre.
- 16. Just Cuts Cockburn's opening hours are as follows:

<b>Day</b>	<b>Opening Hours</b>
Monday	9:00am – 5:30pm
Tuesday	9:00am – 5:30pm
Wednesday	9:00am – 5:30pm
Thursday	9:00am – 9:00pm
Friday	9:00am – 5:30pm
Saturday	9:00am – 5:00pm
Sunday	11:00am – 4:00pm
Public holidays	Closed

- 17. There are seven casual stylists employed by Just Cuts Cockburn.

### Just Cuts Booragoon

18. Just Cuts Booragoon is located in the Garden City Shopping Centre.
19. Just Cuts Booragoon's opening hours are as follows:

Day	Opening Hours
Monday	8:30am – 5:30pm
Tuesday	8:30am – 5:30pm
Wednesday	8:30am – 5:30pm
Thursday	8:30am – 9:00pm
Friday	8:30am – 5:30pm
Saturday	8:30am – 5:00pm
Sunday	11:00am – 4:00pm
Public holidays	Closed

20. There are six casual stylists employed by Just Cuts Booragoon.

### Just Cuts Karrinyup

21. Just Cuts Karrinyup is located in the Karrinyup Shopping Centre.
22. Just Cuts Karrinyup's opening hours are as follows:

Day	Opening Hours
Monday	9:00am – 5:30pm
Tuesday	9:00am – 5:30pm
Wednesday	9:00am – 5:30pm
Thursday	9:00am – 9:00pm
Friday	9:00am – 5:30pm
Saturday	9:00am – 5:00pm
Sunday	11:00am – 4:00pm
Public holidays	Closed

23. There are seven casual stylists employed by Just Cuts Karrinyup.

### **The Nature of the Hairdressing Industry**

24. ~~I consider that the hairdressing industry is very competitive and that competition has increased during the time that I have owned Just Cuts salons.~~
25. I have observed that over time, the proportion of retail shops as compared to services in the Shopping Centres has changed. The proportion of retail shops has declined and the proportion of services (including hairdressers, beauty services

and food outlets) has increased. As a result, there is a greater number of competitors of the Salons in the Shopping Centres than there was in the past.

26. In the 10 years that I have owned Just Cuts Cockburn, I have observed a direct correlation between the increased number of other hairdressing salons in the Cockburn Gateway Shopping Centre and a reduction in Just Cuts Cockburn's profits.

### **Trading on Sundays**

27. At least two stylists are rostered to work on Sundays at the Salons. For reasons associated with safety and security, the Salons do not roster only one employee to work at a time despite my concerns about labour costs on Sundays. Where a Salon is particularly busy, three stylists are rostered to work on Sundays.
28. The trading hours of the Salons on Sundays are shorter than the trading hours of the respective Shopping Centres. This is because it is not cost effective to expand the Salons' trading hours and roster employees to work at times when customer demand is lower than it is during the hours of 11:00am – 4:00pm.
29. Despite this, over the course of a Sunday, there are peaks and troughs in customer demand. Certain times of the day are busier than others. For example, the Salons are generally visited by fewer customers between 11:00am – 12:00pm and 3:00pm – 4:00pm than the middle of the day.
30. Because the Salons do not take appointments, customers often have to wait before they can be serviced. Whilst the waiting times vary from Salon to Salon, Sunday to Sunday and within the course of a given Sunday; the waiting time on Sundays often exceeds one hour. These waiting times are of concern, particularly considering that some of the Salons' competitors sometimes trade on Sundays.
31. The Salons regularly roster additional employees on Monday – Friday in order to ensure the convenience of customers by minimising waiting times.
32. Rostering only 2 – 3 employees on Sundays results in certain inefficiencies. For example, every time the phone rings or a customer/potential customer arrives at the front desk, a stylist attends to the customer even if they are attending to another

customer's hair at the time. It therefore takes the stylist longer to finish working on that customer's hair, which extends waiting times for other customers.

33. Despite this, I consider that the Sunday penalty rate is too high to roster an additional employee (or additional employees) because there is a risk that they will not be productively engaged throughout the duration of their shift. I consider that it is not cost effective to roster an employee to work where they are not gainfully employed throughout their shift on Sundays because of the 200% penalty rate.
34. Because all the Salons' stylists are casual employees, it is my understanding that they must be engaged for at least three hours at a time. Within a period of three hours, the Salons can go from being very busy to very quiet, depending on the number of customers that visit the Salon. This makes rostering an additional employee on a Sunday even more costly.
35. ~~I consider that the Salons' customers have come to rely upon and expect the Salons to be open on Sundays. This is particularly the case because they have been trading on Sundays for some time.~~
36. ~~I am concerned that if the Salons did not open on Sundays, they would receive complaints from customers and/or that the Salons' customers would go to one of its competitors. I am particularly concerned that loyal customers might cease to attend the Salons on an ongoing basis.~~
37. Accordingly, the Salons open on Sundays so that they provide customers with the convenience of being able to access Just Cuts' services on Sundays.
38. Employees are not made to work on Sundays. They are only rostered to work on Sundays if they agree to.
39. The Salons have not experienced any difficulty finding employees who are willing to work on Sundays. Some of the Salons' employees only work on weekends ~~because, for instance, they have caring responsibilities for children who are looked after by another family member on the weekend.~~
40. When determining the roster for a Sunday, preference is given to employees who are efficient. An inefficient hairdresser, who takes longer to cut hair than other employees, is very costly for a Salon on a Sunday because of the 200% penalty

rate. In order for the Salons' operations to be cost effective on Sundays, the Salons' first preference is to roster its most efficient employees, who are capable of bringing in a return that is greater than the Salons' less efficient or inefficient employees.

41. The efficiency of individual employees is also important in circumstances where the Salons are only rostering 2 – 3 employees to work on Sundays and there are often long waiting times as a result. If one of those 2 – 3 employees is inefficient, that increases waiting times further.
42. Just Cuts determines the services provided by its franchisees. The primary service is a 'Style Cuts cut', which has a core price of \$31. Franchisees do not have the discretion to charge any other price for a Style Cuts cut. The core price is mandatory.
43. The exception to that rule is the special prices charged for certain categories of customers, such as senior citizens and children. In those instances, Just Cuts sets a narrow range within which the franchisees must charge. Accordingly, franchisees have slightly more discretion as to how much is charged in relation to such services.
44. For those services, the Salons charge a price that falls approximately at the middle of the range set by Just Cuts. On Sundays, however, the Salons charge the full price (i.e. \$31) for all cuts because of the higher labour costs incurred on Sundays. The Salons have received a number of complaints from customers about this.
45. There are also various additional services that are offered such as shampoos and 'Blow Waves'. The core price of a Blow Wave is \$55 - \$75, depending upon the length of the customer's hair.
46. A Blow Wave can take up to an hour. At some of the Salons, Blow Waves are not offered on Sundays because of the period of time they take to complete. The relevant Salons determined that offering Blow Waves was an inefficient use of the Salons' resources having regard to the time taken to complete a Blow Wave and the return that the Salon receives on that time. Further, the relevant Salons had observed that by offering Blow Waves on Sundays, because only 2 – 3 stylists were rostered to work at a time, the waiting time of other customers increased as a result. For example, the provision of one Blow Wave could result in a waiting time for other customers of an hour or more.

47. One of the Salons has received a complaint from a customer who wanted a Blow Wave on a Sunday but was told that the Salon could not provide that service on that day.
48. It is my understanding that in Western Australia, shops cannot be made to open on Sundays by lessors.
49. The lease agreement between Just Cuts and the relevant lessors in relation to each of the Salons do not include Sundays or public holidays as part of their core hours. Because the Salons nonetheless open on Sundays, Just Cuts (and as a result, the Salons) are required to pay an additional amount in rent and outgoing expenses in relation to their Sunday trading hours.
50. The specific practices of the Shopping Centres vary in this regard. The additional amounts are either charged as an hourly amount depending on the specific number of hours that the Salons open on Sundays or alternatively they are charged as an extra amount for the day, regardless of their specific trading hours.
51. It is my understanding that trading on a Sunday in Western Australia used to be prohibited, but that prohibition has since been lifted. It is my understanding that, nonetheless, a shopping centre cannot require the Salons to open on Sundays.

**Hair and Beauty Australia’s Claim**

52. I understand that Hair and Beauty Australia has proposed a variation to the Award to reduce Sunday and public holiday penalty rates as follows:

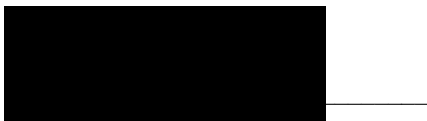
	<b>Current Rate</b>	<b>Proposed Rate</b>
Sunday	200% of hourly rate	150% of hourly rate
Public holiday	250% of hourly rate	225% of hourly rate

53. I understand that the proposed variation would be relevant to the Salons’ Award-covered full-time, part-time and casual employees.



## **The Potential Impact of a Reduction to the Sunday Penalty Rate**

54. If the Sunday penalty rate was reduced to 150%, an additional stylist or stylists would be rostered to work at some Salons on busy Sundays and/or trading hours would be extended. This would have the benefit of improving customer service by reducing waiting times.
55. A lower penalty rate would allow me the take the financial risk associated with rostering an additional employee (or additional employees) and/or extending trading hours with the aim of developing the Salons' business on Sundays further.
56. I would also review the Salons' pricing structure on Sundays and reconsider whether to continue charging the full price on Sundays for all Just Cuts cuts.



Graham Downs

Date: