

## IN THE FAIR WORK COMMISSION

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

#### WITNESS STATEMENT OF GRAHAM THATCHER

I, Graham Thatcher of [REDACTED], QLD [REDACTED], do solemnly and sincerely declare and state the following:

1. I am the Director of the Thatcher Group (**Group**), which is a family owned business. The Group owns and operates businesses in the beauty and other industries. I have held the position of Director since March 2004.
2. The Group is a multi-site franchisee of Ella Bache. It currently owns and operates two Ella Bache salons in Queensland (**Salons**). In the past the Group has owned and operated up to five Ella Bache salons. It opened its first salon in 2004. Two of those salons were closed because they were not profitable. One of the reasons they were unprofitable was because of high labour costs and this contributed to the Group's decision to close them.
3. I am responsible for the management of all "back office" functions of the Salons, including strategic planning, financial, marketing and maintenance.
4. I also provide a consulting service to other Ella Bache franchisees providing assistance with lease negotiations and renewals, and mentoring salon owners and managers. As a result, I am very familiar with the financial and lease arrangements binding a number of Ella Bache salon owners.
5. I am also the Vice President of Hair and Beauty Australia's (**HABA**) Board of Directors. I was elected to the Board in November 2015 and was elected to the position of Vice President in November 2017.
6. In my role as Vice President, I assist the President with the ongoing operation of the organisation. I also sit on the Board's Finance Sub-Committee.

## **Ella Bache**

7. There are approximately 100 Ella Bache salons operating as franchises in Australia and approximately 50 distributors. Ella Bache also operates concessions in David Jones stores.
8. Ella Bache salons provide a broad range of beauty treatments including:
  - a) body bronzing treatments such as spray tans;
  - b) body treatments such as back detoxes, body massages, thermal mud body treatment masks etc;
  - c) eyelash and eyebrow treatments such as tinting, shaping and perms,
  - d) waxing;
  - e) facial treatments such as anti-ageing, anti-fatigue treatments and high performance facial treatments such as collagen stimulation facials;
  - f) hands and feet treatments such as exfoliation and treatment masks;
  - g) manicures and pedicures; and
  - h) 'indulgence packages' which involve a range of treatments over the course of 2 – 4+ hours.
9. Ella Bache salons also sell a range skincare, sun care and tanning products for men and women.

## **The Group's Ella Bache Salons**

10. The Group's Salons are located in the Myer Centre in the Brisbane CBD and Westfield Carindale.
11. The operating hours and employee numbers as at 8 February 2018 of each of the Salons are provided below.

### Ella Bache Salon in Brisbane CBD

12. The Brisbane CBD salon is located at Shop 202, Level 1 Myer Centre at the Queen Street Mall. It operates within a shopping centre.

13. The Brisbane CBD salon'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 – 5:30pm
Friday	9:00am – 9:00pm
Saturday	9:00am – 5:00pm
Sunday	10:00am – 4:00pm

14. The Brisbane CBD salon does not open on all public holidays. The specific public holidays on which it opens can vary from year to year. In 2017, it opened on Easter Saturday and Boxing Day.

15. The Brisbane CBD salon employs 6 employees. It is my understanding that they are all covered by the *Hair and Beauty Industry Award 2010 (Award)*. They are employed on part-time or casual basis as follows:

Type of Employment	Number
Part-time	2
Casual	4
Total	6

16. There is no enterprise agreement applying to these employees.

### Ella Bache Salon in Carindale

17. The Carindale salon is located in Westfield Carindale, corner of Creek & Old Cleveland Roads. It operates within a shopping centre.

18. The Carindale salon'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	10:00am – 4:00pm

19. The Carindale salon does not open on all public holidays. The specific public holidays on which it opens can vary from year to year. In 2017, it opened on Easter Saturday, Easter Sunday and Boxing Day.
20. The Carindale salon employs 14 employees. It is my understanding that they are all covered by the Award. They are employed on a full-time, part-time or casual basis as follows:

Type of Employment	Number
Full-time	4
Part-time	1
Casual	9
Total	14

21. There is no enterprise agreement applying to these employees.

### HABA's Claim

22. I understand that HABA has proposed a variation to the Award to reduce Sunday and public holiday penalty rates as follows:

	Current Rate	Proposed Rate
Sunday	200% of hourly rate	150% of hourly rate
Public holiday	250% of hourly rate	225% of hourly rate

23. I understand that the proposed change would apply to the Salon's award-covered full-time, part-time and casual employees.

### The Nature of the Beauty Industry

24. ~~The Salons operate in a very competitive market. I consider that this competition has increased over recent years.~~
25. Ella Bache provides a very broad range of beauty services. There are many businesses that provide some but not all of the services that the Salons offer (**Specialist Competitors**). These include laser clinics, 'brow bars', 'make up

bars', nail salons etc. I consider that there has been a growth of such businesses in the last five – six years.

26. There are 26 businesses operating in the Carindale shopping centre which I consider to be the Salon's competitors and 14 competitors in the Myer Centre. ~~They generate a considerable amount of competition for the Salons.~~
27. All of the Salons' competitors referred to in the above paragraph are open on Sundays. This is one of the primary reasons for the Brisbane CBD salon opening on Sundays, notwithstanding that it is only profitable during peak periods (i.e. summer (especially Christmas trading) and Easter trading). For example, over the last four Sundays, on average the Brisbane CBD salon has faced a loss of approximately \$420 each Sunday.
28. The Salons and their competitors rely on repeat appointments from their clients. One of the KPIs for the Salons' therapists is the number of re-bookings they obtain.
29. Repeat business arises because of the nature of the services that the Salons provide. For example, clients will typically seek certain types of treatments every few weeks or months. This includes waxing, manicures/pedicures, body bronzing etc.
30. The level of competition that the Salons face, and the fact that their competitors operate within close physical proximity to the Salons, means that customers are very readily able to access the same services elsewhere if the Salons are not open on Sundays and public holidays. I am aware of this occurring when the Brisbane CBD salon previously did not operate on a Sunday.
31. It is particularly damaging to the Salons' business if they lose clients on an ongoing basis, who thereafter continue to visit the Salons' competitors. In those circumstances, the loss of revenue for a Salon is not limited to a single instance.
32. ~~In my experience, once a client starts to visit a competitor in relation to their routine treatments instead of the Salons, it is extremely difficult to regain their business.~~

## **The Demand for Ella Bache's Services on Sundays and Public Holidays**

33. The Salons' clients can make an appointment or walk-in. The majority of clients make an appointment ahead of time.
34. The availability of appointments and the ability of the Salons to provide the service sought to a walk-in client depends on various factors including the number of staff rostered on at a particular time.
35. I am aware that from time-to-time, the Salons are unable to provide the services sought by walk-in clients and therefore they are turned away. As I have earlier explained, because of the steep competition facing the Salons, this affects the Salons' client base and revenue on an ongoing basis.
36. Over time, I have found that the demand for services on public holidays has increased. Whilst previously the Group's salons did not open on any public holidays, there is now a clear expectation from clients that they remain open on certain public holidays such as Boxing Day and Easter Saturday ~~because the shopping centres they operate in are open~~. Clients regularly ask the Salons for appointments on those days.
37. Because of this client expectation and because many of the Salons' competitors open on public holidays, I consider that the Salons can no longer remain closed on all public holidays.
38. ~~I have also found that over time, there has been an increasing trend towards Sunday trading in the beauty industry. I consider that this is because shopping centres increasingly require lessees to remain open on Sundays and because of increased customer expectation that businesses remain open on Sundays.~~

## **The Cost of Operating on Sundays and Public Holidays**

39. The Salons' largest operating costs are wages and rent. Overall, wages (including superannuation) represent 40 – 50% of the Salons' revenue and 60 – 65% of the Salons' total costs.

40. On Sundays, wages constitute a greater proportion of the Salons' revenue. For example, over the last four Sundays, wages have represented 84% of the Myer CBD salon's revenue and 61% of the Carindale salon's revenue.
41. The Salons' cost structure is greater than standalone street-front salons because they operate in shopping centres and therefore incur higher rental costs.
42. Typically, there are three employees rostered to work on a Sunday at the Brisbane CBD salon and five – six employees rostered to work on a Sunday at the Carindale salon.
43. The number of employees rostered to work on a Sunday and the specific employees who are rostered depends on various factors including:
  - a) Labour costs;
  - b) Staff availability (e.g. some employees request to work on Sundays because of their caring responsibilities or study commitments);
  - c) An appropriate skills mix, because not all employees can necessarily provide all of the services offered at the Salons; and
  - d) An expectation of how busy the Salons will be, based on prior experience.
44. In relation to the skills mix referred to above; at all times at least one or two employees who can together perform every treatment offered by the Salon are rostered to work. This is because, in order to remain competitive, the Salons must be able to provide any treatment that a client seeks at all times within trading hours.
45. Not all employees employed by the Salons are equally efficient and productive. Some possess greater skills and experience. Their engagement is therefore more profitable to the Salons.
46. The Salons are not able to roster only their most efficient and productive employees on Sundays for reasons including staff availability. This means that despite the high labour costs incurred by the Salons on Sundays, they are not necessarily receiving the highest possible return on the services being provided.

47. It is my understanding that after the Award came into operation, there was a transitional period during which the penalty rates payable on a Sunday increased proportionally each year until 1 July 2014.
48. In 2014, because of the further increase to the Sunday penalty rate, a 10% surcharge was introduced at the Carindale salon for its services on Sundays.
49. There was considerable backlash from clients at the time, who were not prepared to pay a premium for the salon's services on a Sunday. ~~I am aware of instances in which clients were abusive towards staff when they were informed of the surcharge and advised that they would not be returning. I am also aware that clients took to social media to express their frustration, anger and disappointment at the change. The Carindale salon also received emails of a similar nature.~~
50. Because of the reaction from clients at that time, the Group has not attempted to implement another Sunday or public holiday surcharge since.
51. As a result of my experience in assisting Ella Bache franchisees with their lease arrangements, I am aware that the vast majority of shopping centres who enter into lease arrangements with Ella Bache salons include core trading hours in their contracts, which compel tenants to remain open during those times. In my experience, the majority of such lease arrangements require the tenant to open on Sundays. It is very unusual for a shopping centre to not include that requirement. Some also require the tenant to trade on public holidays.
52. Of all of the Ella Bache salon owners that I have assisted with their lease arrangements, none have granted them exclusivity as a term of their lease. That is, in no instance has the lessor agreed that the shopping centre will not lease shop space to another business that is a competitor of the Ella Bache salon. More generally, I am not aware of any shopping centre ever agreeing to such a term of a lease.

### **The Salons' Pricing Structure**

53. The prices charged to clients for the services provided at the Salons are determined by the Group, having regard to the retail price recommended by Ella



Bache, the Salons' costs and the prices charged by competitors. Determining a pricing structure for the Salons' services involves finely balancing these competing considerations.

54. The Salons, and Ella Bache more generally, seek to position themselves in the market as providing high quality services at competitive prices. It is because of those high quality services that the Salons are able to justify pricing its services at slightly above the retail price recommended by Ella Bache.
55. The competition facing the Salons places considerable limitations on the extent to which the Group is able to increase its prices. The Salons' traditional competitors generally offer the same services for prices that are similar to the Salons' prices. Specialist Competitors, however, provide their services at a cheaper price. I have observed that as the number of these Specialist Competitors has increased, as a result of the competition amongst themselves, prices have been driven down to levels that the Salons simply cannot match because of their cost base. I am also aware that the rental expenses associated with leasing a 'kiosk' in a shopping centre, in which many Specialist Competitors operate, is much lower than leasing a shop space like ones in which the Salons operate.
56. As I have explained earlier in my statement, because of this competition, customers are readily able to access alternate services if they consider that the Salons' services are over-priced.

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

57. Currently, the bare minimum number of employees are rostered to work at the Salons on Sundays for the bare minimum number of hours. This is because, due to the high penalty rates, rostering employees who are not productively engaged throughout their shift has a serious financial impact on the Salons.
58. For example, instead of rostering employees to work all day on a Sunday (10:00am – 4:00pm), employees are rostered to work either 11:00am – 4:00pm or 10:00am – 3:00pm. It is my understanding that under the Award, if an

employee works five hours or less, they do not have to be given a meal break. Employees are therefore rostered in this way on a Sunday as a cost-minimising measure.

59. If HABA's claim was granted, the lower labour costs would enable the Salons to roster employees for the entire shift on a Sunday. It would also enable the Salons to extend their trading hours to 9:00am – 5:00pm, consistent with the shopping centres' trading hours. The main reason that the Salons currently only open 10:00am – 4:00pm on Sundays is the labour costs faced by the Group.
60. If HABA's claim was granted, it would also enable the Salons to roster additional employees to work on Sundays.
61. The minimal number of employees currently rostered to work on Sundays means that the Salons generally have limited capacity to service walk-in clients. It also means that the Salons are often unable to provide clients with 'add-on' services or up-sell additional services (which the Salons' therapists are encouraged to do). This further impacts the Salons' profits.
62. Lower Sunday penalty rates would allow the Salons to build their capacity to service additional clients and provide additional services. There would also be greater scope to bear the risk of rostering additional employees who might not be fully utilised throughout the shift because the cost of labour would be lower. Currently, the Group is not prepared to bear that risk because of the high penalty rates which is why, as I explained earlier, only the bare minimum number of employees are rostered on.



Graham Thatcher

Date: 23/2/18 .