

Fair Work Commission
Level 10, Terrace Tower, 80 William Street
East Sydney NSW2011
By email: amod@fwc.gov.au

24 February 2017

Re: AM2014/271 AWU reply submissions on drafting and technical issues in the Exposure Draft for the *Hair and Beauty Industry Award 2010*

Background

1. On 21 December 2016 the President, Justice Ross published Amended Directions directing parties to file submissions in reply to drafting and technical issues raised in Group 4 exposure drafts by 22 February 2017.
2. The following parties filed submissions on drafting and technical issues found in the Exposure Draft for the *Hair and Beauty Industry Award 2010* ('the Exposure Draft') as published on 16 November 2016:
 - Australian Workers Union (**AWU**)¹
 - Shop Distributive and Allied Employees' Association (SDA)²
 - Business SA (**BSA**)³
 - Australian Industry Group (**AIG**)⁴
3. The AWU submissions in reply appear below.

Reply submissions

Definitions – hair and beauty industry – Clause 2

4. BSA paragraph 4.1: The AWU agrees with BSA. The wording 'and/or' should be retained between subclauses (a) and (b).

Facilitative provisions for flexible working practices – clause 7.2

5. AIG paragraph 191: The AWU agrees with AIG's proposed amendment regarding clause 15.1 at this table.

¹ <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2014269-sub-awu-200117.pdf>

² <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2014271-sub-sda-211216.pdf>

³ <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2014-256andors-sub-bussa-180117.pdf>

⁴ <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2014258andors-sub-aig-180117.pdf>

6. AIG paragraph 192: We disagree that clause 24.4 should be removed from this table. This is a facilitative clause as it provides an alternative to the standard approach of taking annual leave that has accrued.
7. AIG paragraph 193: The AWU also disagree that clause 24.6 should be removed. Clause 24.1 of the Exposure Draft provides that 'annual leave is provided for in the NES.' The 'cashing out' of annual leave provided at clause 24.1 is an alternative to the taking of paid leave or the payment on termination provided at section 90 of the *Fair Work Act 2009*.

Rosters – clause 10.9(C)

8. AIG paragraph 196-200: The AWU would not oppose the word 'regular' be added to read 'regular roster', but oppose the AIG's primary position to remove the reference to clause 30 altogether. The reference ensures navigation to, and observation of the consultation requirements where changes to regular rosters are being contemplated.

Casual employment – clause 11

9. AIG paragraphs 201-203: We agree with the submissions at these paragraphs. Clause 13.3 of the current award should be reinserted.
10. AIG paragraphs 201-203: We agree the current award wording is preferable to define casual employment.
11. AIG paragraphs 206-210: We repeat our submission above at paragraph [8].

Unpaid meal breaks – all employees – clause 15.1(a)

12. AIG paragraph 211-212: The AWU do not have a strong view regarding this submission, although note the literal interpretation problem. We do not oppose the change proposed by AIG.

Paid rest breaks – part-time and casual employees

13. AIG paragraph 213: We agree with the proposal to remove duplication at this clause. However, we submit the use of the term 'rest break' is preferable to 'rest period' given the employee is wholly entitled to stop working. We suggest the following amendment:

...must receive one ~~rest period~~ rest break of 10 minutes ~~rest break~~ during the period of work.

Minimum wages – clause 16.1

14. AIG paragraphs 214-216: AIG propose to insert the words 'full-time employee' under the title 'Minimum Wages'. We oppose this change, as the table contains rates that are not limited to full-time employees.

Adult apprentices – clause 18.4(d)

15. AIG paragraphs 217-219: The AWU do not oppose the proposed changes or otherwise merging the two subclauses (c) and (d).

Apprentice conditions of employment – clause 18.5(g)

16. AIG paragraphs 220-222: We disagree with the AIG. The words 'and/or' used in the current award does not create two alternative obligations. The use of the alternate words 'and/or' reflects that in a single payment to the RTO, the employer may be reimbursing training or textbook expenses or both, depending on what was owing. The Exposure Draft wording does not change the meaning of the award. Subclause (f) of the Exposure Draft / subclause (e) of the award both state that:

All training fees charged by an RTO for prescribed courses and the cost of all prescribed textbooks...shall be reimbursed by the employer...

Managers allowance – clause 20.2(a)

17. AIG paragraphs 223-225: We agree, for clarity, the wording should be changed to 'for that week'.

Travelling time reimbursement – clause 20.3(f)(ii)

18. AIG paragraphs 230-232, BSA paragraph 4.5: The AWU is unfamiliar with this provision. Although the AIG and BSA interpretations appear logical, we query the interaction between subclauses (i) and (ii) in circumstances where the pick-up point is farther than the usual place of employment.

Transport of employee reimbursement – clause 20.3(h)(i)

19. AIG paragraphs 233-234: The AWU agrees the current award term 'and/or' correctly describes the circumstances as to when a taxi fare is paid.

Overtime – clause 22.2

20. BSA paragraph 4.6: The AWU do not understand BSA's submissions. If BSA are opposing an entitlement to overtime generally, or in regards to a span of hours, the AWU disagree. The arrangement is clearly, that hours worked outside the ordinary hours prescribed in clause 13.1 are paid at overtime rates. The AWU

understand the Commission's question relates to the use of the words 'in excess' and 'number of hours' and suggest these terms be changed as follows:

Overtime hours worked ~~in excess~~ outside of the ordinary number of hours of work prescribed in clause 13.1 are to be paid at:

Public holidays – Clause 27.3(a)

21. BSA paragraph 4.7: The AWU prefer our proposed wording at paragraph [27] of our previous 20 January 2017 Submission.

Casual adult employees other than shiftworkers – ordinary and penalty rates – Schedule A.2.1

22. AIG paragraphs 240-241: We do not agree with the proposal to change the words 'ordinary hours' to 'spread of hours' at this table. The rates are paid outside 'ordinary hours' which is the term used at clause 22.2 – overtime rates.

Junior rates – schedules A.3, A.3.1 and A.4.1

23. AIG paragraph 242-244: We agree with the AIG's proposed changes at these three paragraphs.

24. AIG paragraph 245-246: We repeat our submission above at paragraph [22].

Apprentice rates – schedules A.5.3, A.4.4, A.5.5 and A.5.7

25. AIG paragraph 247: We agree, the words 'apprentice hourly rate' can be deleted in the second column.

26. AIG paragraphs 248-248: We agree with the AIG, the rates vary for 3rd year beauty therapy and hairdressing apprentices.

27. AIG paragraphs 250-251: We agree the words 'apprentice hourly rate' can be deleted at schedules A.5.5 and A.5.7.



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