

Hair and Beauty Australia

Hair and Beauty Australia (HABA) is the peak body representing the hair and beauty industry in Australia and is the only hair and beauty association registered with the Fair Work Commission. HABA is responsible for advising and assisting its members in all aspects related to the current workplace relations framework.

HABA is an employer association that has members ranging from hair and beauty salons to day spas. We now also accept members from home based and mobile salons to represent the industry as a whole. Furthermore, HABA is a national association and represents members from all states and territories across Australia. The association currently represents over 1200 small to large businesses employing over 7000 staff.

HABA provides the below submission taking into consideration the views of our members and the frustrations which we hear from business owners on a daily basis.

Industry Scope

As of 2013, the hairdressing industry employed approximately 55,900 employees which indicated a reduction from 64,400 employees in 2012¹. This indicates a reduction in almost 3.3% over a 5 year growth period. The beauty industry saw a rise in employment of 24.9% over 5 years, with approximately 20,400 employees in 2012 and 28,500 employees employed in 2013².

The hair and beauty Industry is predominantly made up of small to medium businesses with businesses employing less than 20 people^{3 4}. The hairdressing Industry estimates that 96.8% of businesses fall into this realm⁵.

ATO Benchmarking indicates that business with a turnover of more than \$400,000 in the beauty industry, would experience a total expenses/turnover rate of 82% – 90% with labour costs attributing between 28% - 37% of expenses⁶. Similarly, from the hairdressing perspective, for salons that experience an annual turnover of more than \$300,000 the total expenses/turnover is between 80% to 89% with labour/turnover attributing to 33% – 42%⁷.

Underemployment, Unemployment and Job Creation

Under the current workplace relations framework, our members have indicated that there are no structures in place to promote employment within the industry or to create jobs. This has further been hindered by the introduction of higher apprentice wage rates including adult apprentice classification and furthermore the current changes to apprenticeship conditions inclusive of the requirement to reimburse course fees and textbooks being brought onto the employer. As an industry largely made up of small businesses, this additional cost, on top of the

¹ Australian Government Job Outlook, 2012

<http://joboutlook.gov.au/occupation.aspx?search=alpha&tab=stats&cluster=&code=3911&graph=SHOWALL>

² Australian Government Job Outlook, 2012

<http://joboutlook.gov.au/occupation.aspx?search=alpha&tab=stats&cluster=&code=4511&graph=SHOWALL>

³ RAPS Hairdressing Scan 2014 <http://rapstc.com.au/wp-content/uploads/2011/12/Hairdressing-Environmental-Scan-2014.pdf>

⁴ RAPS Beauty Scan 2014 <http://rapstc.com.au/wp-content/uploads/2011/12/Beauty-Environmental-Scan-2014.pdf>

⁵ RAPS Hairdressing Scan 2014

⁶ ATO Beauty Services 2014 <https://www.ato.gov.au/Business/Small-business-benchmarks/In-detail/Benchmarks-by-industry/Health-care-and-personal-services/Beauty-services---issued-2014/>

⁷ ATO Hairdressers Benchmarks 2014 <https://www.ato.gov.au/Business/Small-business-benchmarks/In-detail/Benchmarks-by-industry/Health-care-and-personal-services/Hairdressers---issued-2014/>

current overheads has made it impractical for many businesses to employ apprentices, leading to a skill shortage within the current industry. It is our members and HABA's fear that youth unemployment rates will continue to climb unless a review of the apprenticeship system and pay rates is undertaken immediately. In the first 12 - 18 months of an apprenticeship, where no skill level exists, employers must invest heavily in transferring skills from senior employees to the apprentices. This is done in a training/work environment to aid in the development of career paths and employability in the long term which is often where many businesses view that the current cost is not viable.

We believe the higher wage rates implemented are contributing largely to underemployment and unemployment within this specific industry. Whilst the wage rates were introduced to attract more apprentices to the industry we have found that there has been a shift to the employer where the added costs has made it difficult for employers to create job positions for these individuals.

Additionally, the current workplace relation system has limited flexibility in terms of classification, particularly part time employment, and whilst there are avenues to promote flexibility, many require large documentation on behalf of both the employer and the employee and a large amount of red tape. Furthermore, it has come to our attention in many of these arrangements it is on the employer to provide that the employee is "better off overall" which in most circumstances takes into consideration financial costs. Hence the employer bears all risks in making any agreements between parties which may be questioned at a later date utilising a Fair Work Remedy.

Many awards under the current framework stipulate that all conversations regarding flexibility should be employee initiated leaving no scope for an employer to approach an employee on considering flexibility in line with the operational requirements of the business. As in most businesses there are peak on and off seasons which an employer is required to take into consideration when hiring employees and this has contributed to increasing non-permanent positions which allow this flexibility to be implemented. This indicates for employees a reduction in the chance of receiving a permanent position which may affect ability to apply for loans and a reduction in job security.

Unfair Dismissal – Balance of protecting rights of both parties

Many small businesses, particularly from our experience providing representational services for Fair Work Dispute Remedies, have found themselves facing a Fair Work Claim such as unfair dismissal. Many claims do appear to be vexatious in nature with most ex-employees hoping for compensation for what may or may not be a valid reason. In many circumstances the information provided to the employer in the response form is quite intimidating and the costs of arguing a dismissal claim passed conciliation, through the court system, can be quite costly for businesses who would be required to take time out of the business to attend court and to prepare the appropriate documentation. We have found that many unfair dismissal claims are settled in conciliation as the costs to fight a claim outweigh a simple offer of compensation to ensure this matter is finalised quickly.

HABA would like to see a vetting process implemented in the commission which would require an employee to provide some information and evidence regarding the claim and ensure all relevant information is outlined. We have seen many applications come through where the criterion is not completely filled out. Furthermore, upon receiving the employer's response it may be beneficial for Fair Work to be able to vet the information and evidence provided and ascertain whether or not the application should proceed to a conciliation or is a vexatious claim, particularly for those with a jurisdictional objection. This would ensure a better screening process is in place, reduce the number of applications which are vexatious and furthermore reduce the time and resources required by the commission to prepare conciliation meetings.

We have also found that many employers are now reluctant to terminate an employee who is unproductive for fear of being taken through a Fair Work Remedy even when they have the appropriate processes in place to make a termination evident. The fact that employees can easily access unfair dismissal and the fact that conciliation is often scheduled prior to a response form being filed has led to a shift in balance of powers with employers often commenting that they feel they are unable to terminate an individual who does not show

productivity in the business. This has led to increased costs of running a business and in some circumstances a reluctance to hire individuals in a more permanent capacity.

The current workplace legislation, particularly awards and the *Fair Work Act 2009* has many ambiguous terms regarding performance management and termination of staff. This is particularly evident as many employers are unsure of the number of warnings which need to be attributed before a termination is seen to be "reasonable". Whilst we understand that a set figure may not be able to be provided as every circumstance is different, it would be practicable to have more structured guidelines on these aspects to ensure all workplace participants are aware of expectations. For example under the previous Work Choices legislation there were guidelines on the number of warning letters to be provided regarding a specific incidence. The workplace framework should provide some guideline which takes into consideration length of service and how to determine the "reasonableness" of a termination taking place.

Fair Work Ombudsman and Fair Work Commission

Whilst Fair Work is often marketed as a non-bias party aimed at promoting information and aiding in dispute resolution, a number of members have reported that Fair Work views tend to be skewed towards employees and they do not promote a non-bias nature. In some circumstances it has been reported that Fair Work has attributed guilt towards the employer before proceedings making it often difficult to argue points in an effective manner. As such, many employers do not feel they are able to turn to Fair Work for aid in the dispute resolution process and are immediately deemed a "bad employer" regardless of if the employer has made a genuine mistake.

Upon the use of the Fair Work Ombudsman hotline, it appears that in many circumstances conflicting information is provided to individuals based on the experience and knowledge of the advisor. It is important that the Fair Work Ombudsman provide reference numbers and ownership of advice which is provided as we have found many businesses rely on this information and whilst information is subject to human error there have been circumstances of underpayment which is the result of Fair Work providing inaccurate information.

Small Business Productivity

With the increase in remedies that employees can seek, in many circumstances employers are required to now take into consideration personal circumstances, empathise with the situation at the cost of the business. For example, in many circumstances employers are required to consider external circumstances in an employee's personal life which may attribute to their behaviour or lack of productivity in the workplace. Should this be an employee who has been with the business in excess of 6 months or 12 months (large or small business respectively), many employers feel disempowered to performance manage these individuals for fear of retribution or potential discrimination.

In today's increasingly technological society many employees have access to information regarding the workplace framework. Whilst as an association we promote the dissemination of information, our concern is many employees are now utilising their knowledge as a way of leveraging employers to agree to their terms and conditions. Many employers in our association now report that employees are threatening Fair Work Action against them if they do not agree to the employee's terms and conditions. Many employers are now fearful of Fair Work and do not feel that they have the authority or the right to question any requests made by the employee.

Award and Safety Nets

One of the biggest concerns regarding the Award Review Process is that many awards are often grouped or categories together despite being very different industries. This is especially relevant when reviews are placed as "common matters" which blanket many or all industries. Our concern is that viewing all industries as "equal" provides no consideration for the actual effects changes have in relation to the industries themselves or the business the decisions apply to. Consideration should be taken in regards to each individual industry to

minimise the negative impact on both employees, businesses and the industry as a whole when a decision is handed down. It cannot be assumed that all industries and awards have the same challenges or requirements. Again we refer to the apprentice changes handed down this year and in 2012. Within our industry, the Hair and Beauty sector is unable to charge high fees to cover increasing business costs unlike other trade industries who are able to charge a larger call out fees and labour charges. HABA has found that any members who have attempted to pass on costs to the consumers, such as weekend or public holiday surcharges, have been met with negativity from consumers and loss of business.

In terms of Long Service Leave, the *Fair Work Act 2009* currently provides all conditions regarding leave however Long Service Leave is still on a state legislative framework. This causes more red tape for any business which operates nationally as they are required to take into consideration multiple Acts to determine Long Service Leave. We would like to see a national framework regarding Long Service Leave which would harmonise the leave process in line with the Safety Net under the National Employment Standards.

Penalty Rates

Whilst we are aware that most aspects regarding Penalty rates will be passed onto the Fair Work Commission in the Modern Award Review process, we would like to comment on the fact that many of the penalty rates are quite high and we no longer operate in a society where it is uncommon for employees to work on weekends. Our industry specifically is unique as such; where we are a trade qualification labour force operating in a retail environment, often 7 days a week and nights. To meet consumer demand for our services businesses are required to roster staff on varied shifts including weekends as part of their ordinary hours of work. The current penalty rates have proven to be a financial liability to small businesses and where businesses may be able to employ more people on these busier times, businesses find that the penalty rates make it impracticable for us to employ additional individuals as the costs often do not cover the revenue generated on these days. To think that a Saturday, Sunday or Public Holidays are worth 133% - 250% more than a weekday pay rate in a trade/retail environment is outdated and again stopping employment opportunities.

We thank you for taking the time to review and consider our submission. We would love to be a part of any further consultation processes regarding this review and look forward to reading the draft review the commission will be release in July.

Kind Regards,

Christina Arciuli

**Chief Executive Officer
Hair and Beauty Australia**