



**APAN**  
**AESTHETICS PRACTITIONERS**  
**ADVISORY NETWORK PTY LTD**  
ACN 136 987 169 ABN 25 136 987 169

Ph: 07 5593 0360  
Fax: 07 5593 0367  
Email: [info@apanetwork.com](mailto:info@apanetwork.com)  
Web: [www.apanetwork.com](http://www.apanetwork.com)  
PO Box 5448  
Q Super Centre Qld 4218  
Australia

# REVIEW OF THE FAIR WORK ACT

## SUBMISSION OF THE AESTHETICS PRACTITIONERS ADVISORY NETWORK

## **INTRODUCTION**

In reviewing the needs of the Beauty, Spa and Aesthetics industry this submission will not consider all aspects of the *Fair Work Act 2009*, but rather just those that are most relevant to the Beauty industry as presented in the *Hair and Beauty Industry Award 2010* – MA000005.

When first outlining the initial award process, the government was adamant that no employee would be worse off and no employer would face higher costs. While we recognise that the Act has met some of its objectives, overall, the *Fair Work Act 2009* and modern awards system has substantially reduced productivity and inhibited flexibility for Australian employees and businesses in the Australian beauty therapy and spa industry.

We welcome this review process and view it as a valuable opportunity to articulate how we believe the current *Fair Work Act 2009* has impacted the beauty industry and to put forward our recommendations on behalf of our industry.

We trust that you will give our submission full consideration of the concerns raised by our industry sector.

## **AESTHETICS PRACTITIONERS ADVISORY NETWORK (APAN)**

APAN is a membership-based standards body established since May 2009 to support the beauty, spa and aesthetics industry in all areas of standards, business and legislative compliance.

APAN currently interacts with 6500 beauty and aesthetics businesses Australia-wide and provides membership services to support their productivity and growth. Part of APAN's activities is to also conduct surveys to ascertain industry concerns and needs.

Prior to this submission we appealed to the industry to put forward their concerns and recommendations. The information in this submission is a direct reflection of the outcome of this survey and includes information we have also gathered throughout our own consultative process with businesses and their staff.

## **THE AUSTRALIAN BEAUTY INDUSTRY**

The Australian Beauty industry consists of small to medium size businesses that make up part of the 96% of Australian businesses.

The current statistics do not separate beauty and spa therapies from hairdressing. As presented in the IBIS World report Q9526 released in September 2011, the industry performance of Hair and Beauty Salons in Australia during the past five years through 2011-12 has been flat, and revenue has only managed to achieve an average growth rate of merely 0.9% per annum, totaling \$3.79 billion this year.

According to DEEWR's projection we can expect an average increase in employment of beauty therapists of 35% by 2015. Meanwhile staff turnaround

has now reached 30%, as staff leave in pursuit of better job security, often in other industries.

In 2008 the hair and beauty sector employed over 84,000 people. Approximately 45% worked part time and the median age of employees in the beauty sector was 30 years.

Since the introduction of *Fair Work Act 2009* the number of employees has fallen by 10,200 – from 84,000 in 2008 to 73,800 in 2011, a decrease of 12.14%.

We attribute these statistics to business closures being at an epidemic rate, as well as job instability due to the difficult financial times. From APAN's records alone 2580 beauty businesses have ceased to operate since June 2009 and the number is continuing to grow on a weekly basis.

## **INDUSTRY CONCERNS AND RECOMMENDATIONS**

Being practitioners in a service industry many business owners are not human resources experts, industrial relations specialists or legal professionals to interpret the legislation when it comes to wages. They are also often time-poor and under pressure to continue running their business as a priority. They seek a simplification of the Award so that it can allow them to be able to better comply with its requirements. Below are a list of their key concerns and recommendations:

1. **Mapping qualifications against salaries** – several expressed concerns that matching the right wage level in the Award against their staff's qualification levels was not clear, and particularly with trainees and apprentices.

**Recommendation: Part IV: Section 17** in the Award outlines the Minimum Wage Classification Levels however the **Qualification Levels** that map up against wages are located at the back of the document in section **D5 Minimum Wages**. We propose that all wage tables be included together at the beginning of the document for ease of reference and mapping.

2. **Penalty Rates** – there is an overwhelming concern that penalty rates which often brings the hourly rates to \$30-\$40 are prohibitive and unrealistic for most beauty businesses. Due to poor financial performance many businesses are obligated to extend their trading hours to include full weekend. Being penalised to pay heavy loadings is perceived as prohibitive for struggling businesses.

**Recommendation:** We support the 2<sup>nd</sup> Recommendation REDUCED PENALTY RATES APPLIABLE TO EVENINGS, WEEKENDS AND PUBLIC HOLIDAYS as proposed by the submission from Queensland Tourism Industry Council.

**3. Award Flexibility** – another area of concern is the flexibility provision. While in theory a great idea, some were fearful of failing to meet the “Better Off Overall” test which has resulted in reducing flexibility at the enterprise level. The central issue relating to this also lies in the Award provision. The Fair Work Act 2009, Section 3(f) has failed the beauty industry in “*achieving productivity and fairness through an emphasis on enterprise-level collective bargaining underpinned by simple good faith bargaining obligations and clear rules governing industrial action’ businesses.*” The replacement of the previous no-disadvantage test with a Better Off Overall test had resulted in reduced flexibility at the enterprise level.

**Recommendation:** We support Recommendation 3, as presented by the Queensland Tourism Industry Council’s submission to improve productivity by allowing more flexible enterprise agreements and individual flexibility agreements.

**4. Unfair dismissal** – this was another area of concern. When dealing with unfair dismissals and establishing procedures that are flexible, informal and quick, this was considered only possible if the business agrees to a *financial settlement* for the sake of expediency, regardless of the merits of the claim.

**Recommendation:** We also hold the same position as Hair & Beauty Australia under Section 1 which stated: The presumption of guilt on the employer at the outset of any claim made by an employee places an unfair burden on small businesses and creates an inequitable workplace relations system that does not follow the principles of *Natural Justice*. As strict rules of evidence do not apply in Fair Work Australia, Commissioners have the prerogative of taking an inquisitorial approach to the evidence provided by parties to the grievance. It would be more appropriate in the absence of evidence, testimonial or otherwise, for the Commission to engage this approach rather than presume guilt on behalf of the employer.

We support that s361 of the Act should be rescinded in order to maintain the objectives of the Act to “provide workplace relations laws that are fair to working Australians, are flexible for businesses, promote productivity and economic growth for Australia’s future economic prosperity and take into account Australia’s International labour obligations.”

**5. Obtaining information from Fair Work** – there were several concerns about discrepancies when accessing information verbally from Fair Work Info-line as these were noted to not be consistent. This is causing several businesses conflict with their staff as often the advice received from Fair Work was very different than the ones obtained by an employee who was “checking up on what the boss had told her”.

**Recommendation:** Provision should be made for written recommendations to be also made available when requested to avoid such challenges. Further, that these

written recommendations be recognised by Fair Work as their position in all future dealings.

**6. Equal pay rate regardless of skill sets** – great concerns were expressed when employer were required to pay the full Award wage to a new employee who presented with a certain “qualification” deficits, with a lack of training in certain areas, thus necessitating the employer to deliver this training.

**Recommendation:** If additional training is required in order to skill the employee in procedures needed to be performed, this period of training should be classified as “traineeship” and wages should reflect this accordingly. Training that is product-specific or for the purpose of orientation to the business’s methodologies would not qualify as “traineeship”.

**7. Misleading definition of small business** – The *Fair Work Act 2009* Section 3(g) to “acknowledge the special circumstances of small and medium-sized business” is causing confusion within the beauty industry.

The definition of small business in the *Fair Work Act 2009* is misleading, as it assumes small business to be able to meet other obligations that are imposed on larger businesses.

**Recommendation:** We recommend the definition should be increased to companies with less than 25 equivalent full time employees. By counting part-time and casual staff as the equivalent of full-time permanent staff, the definition of “small business” in the legislation is misleading as it captures the beauty industry in an unfair dismissal regime which serves larger businesses and makes small businesses applicable to a regime, which they do not have the capacity to respond effectively. We support the Queensland Tourism Industry Council’s recommendation for the revising of the definition of small business up to 25 employees or less and revise the unfair dismissal cap up to businesses with more than 25 employees.

Thank you to the Review Panel for the opportunity to present our concerns and welcome any advances to the above concerns.