

Fair Work Commission
Terrace Tower, 80 William Street
East Sydney NSW 2011
By email: amod@fwc.gov.au

19 April 2016

Re: AM2014/227 AWU submissions on the Exposure Draft for the *Fitness Industry Award 2016*

Background

1. On 23 March 2016 the President, Justice Ross published a Statement directing parties to file submissions on drafting and technical issues for Group 3 exposure drafts by 14 April.
2. The Australian Workers' Union (AWU) set out the submissions below in relation to the Exposure Draft for the *Fitness Industry Award 2016* ('the Exposure Draft') as published on 18 December 2015.

Drafting and technical issues

Classifications

3. Clause 6: At this clause the following statement appears:

An employer must advise an employee in writing of their classification on commencement and of any changes to their classification

4. This clause would benefit from clarifying that changes to an employee's classification level will need to be in writing, and that this will occur at a later date, as opposed to at the commencement of employment. We suggest the following amended clause:

On commencement of employment, an employer must advise an employee in writing of their classification level to which the employee is appointed. If there are any changes to the classification level to which the employee is appointed, the employer must also advise of those changes in writing.

Ordinary hours for casual employees

5. Section 147 of the *Fair Work Act 2009* (Cth) ('the FWA') states:

A modern award must include terms specifying, or providing for the determination of, the ordinary hours of work for each classification of employee covered by the award and each type of employment permitted by the award

6. Clause 7.4(a): The employment types in this award are full-time, part-time and casual. The full-time and part-time provisions are consistent with section 147 of the FWA, however the casual employment provision does not include terms specifying the ordinary hours of work. We therefore propose the following additional words at clause 7.4(a).

and works less than 38 ordinary hours per week.

Ordinary hours of work and rostering

7. Clause 8.3 This clause states:

The ordinary hours of work for a full-time or part-time employee must not exceed 10 hours on any one day

8. The Commission has asked if overtime is payable to casual employees and whether clause 8.3 should be amended to include casual employees to which we respond in the affirmative. Overtime is payable to all employees under this award.
9. Moreover, the overtime clause at 14.1 of the Exposure Draft does not exclude casual employees – it applies to all employees. Therefore clause 8.3 must be amended and we propose the following wording:

"The ordinary hours of work ~~for a full-time or part-time employees~~ must not exceed 10 hours on any one day".

Overtime – Break between shifts

10. Clause 14.3: The Commission has asked whether the 10-hour break is between the end of overtime on one day/shift and the beginning of ordinary hours on the next day/shift.

11. Our view is that the 10-hour break is between the end of work on one shift and the beginning of ordinary hours on the next shift. We propose the following words to remove the ambiguity:

*An employee required by the employer to resume work without having a break of at least 10 hours between shifts [the end of overtime on one shift and the beginning of ordinary hours on the next shift] must be paid at the rate of **200%** of the minimum hourly rate for all time worked until they have had a break from work of at least 10 hours.*



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