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Your ref: [AM2014/227](#)
[AM2014/245](#)

Dear Award Modernisation Team

**4 yearly review of modern awards – Award stage – sub-group 3A
Comments in respect of revised Exposure Draft etc.**

We write on behalf of Tennis Australia and refer to the Directions made by Deputy President Clancy in respect of the above matters on 14 December 2016.

In response to Direction 1 of each of those Directions, we enclose comments in relation to the *Sporting Organisations Award 2010 (SOA)* and the *Fitness Industry Award 2010 (FIA)*.

Yours sincerely



Michaela Moloney
Partner

IN THE FAIR WORK COMMISSION
4 YEARLY REVIEW OF MODERN AWARDS
AWARD STAGE – SUB-GROUP 3A

Matter No.: *AM2014/227 – Fitness Industry Award 2010*
AM2014/245 – Sporting Organisations Award 2010

COMMENTS REGARDING SUB-GROUP 3A
FITNESS INDUSTRY AWARD AND SPORTING ORGANISATIONS AWARD
FURTHER REVISED SUMMARY OF SUBMISSIONS AND REVISED EXPOSURE DRAFT

The following comments are made on behalf of Tennis Australia in response to Direction 1 of the Directions of Deputy President Clancy published on 14 December 2016 in the above matters:

SPORTING ORGANISATIONS AWARD – AM2014/245

1. Subsequent to the Further Revised Summary of Submissions in this matter, Tennis Australia has made submissions in this matter on 8 August 2016.
2. **Item 3** – Tennis Australia opposed the AWU's proposed variation to limit a casual's hours by including wording to the following effect "and works less than 38 hours per week". Tennis Australia's position is that casual employees should be able work in excess of 38 hours should they wish to do so.
3. **New Item** – Further, Tennis Australia notes that there is a difference in legal effect in clauses 8 and 13 of the Revised Exposure Draft as compared to Clause 22 and 24 of the SOA.

Difference in legal effect of SOA and Revised Exposure Draft

Effect of clauses 22 and 24 of the SOA

4. Clause 22.1 in the SOA provides for ordinary hours of work for **full-time** and **part-time** clerical and administrative employees. In particular, it provides that "*The ordinary hours of work for **full-time** employees will be determined by the employer*

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and will be an average of 38 hours per week i.e. Monday to Sunday inclusive, between the hours of 6.00 am and 6.00 pm on one of the following bases..."

5. Clause 22.1(b) provides that, for **part-time employees** "*Subject to clause 22.1(a)(i) the ordinary hours of work and days on which part-time work is to be performed will be specified in writing by the employer to the employee before the part-time employee begins employment*".
6. The SOA does not impose limitations on the ordinary hours for casual clerical and administrative employees.
7. By specifying full-time and part-time employees in this way, the legal effect of clause 22.1 is that the restriction on the span of ordinary hours – between 6.00 am and 6.00 pm – does not apply to casual employees.
8. Clause 24.1 provides that overtime for clerical and administrative staff will be compensated at specified rates. It does not provide for a definition of overtime, however it is to be inferred that overtime is those hours outside of the restrictions on ordinary hours. As the restrictions on ordinary hours do not apply to casual employees, casual employees are not entitled to overtime when working outside of those restrictions under the SOA.

Effect of clauses 8 and 13 of the Revised Exposure Draft

9. Clause 8.1 of the Revised Exposure Draft provides for restrictions on ordinary hours of work for clerical and administrative employees. Clause 8.1(a) provides that "*Ordinary hours are worked between 6.00 am and 6.00 pm, Monday to Sunday*".
10. By failing to specify full-time and part-time employees, the legal effect of this clause is that the restriction on the span of ordinary hours would apply to **all** employees, including **casual** employees.
11. Clause 13.2(a) provides that overtime work is work performed outside of ordinary hours as defined by clause 8. Because the effect of clause 8.1(a) is that the span of hours applies to casual employees, under the Revised Exposure Draft casual employees would be entitled to overtime when working outside of that span.

Difference in legal effect between SOA and Revised Exposure Draft

12. The effect of clause 22 of the SOA is that the span of hours only applies to full-time and part-time employees.
13. The different effect of clause 8 of the Revised Exposure Draft is that the span of hours applies to all employees, including casual employees.
14. This has the consequential effect that, per clause 24 of the SOA, casual employees are not entitled to overtime when working outside the span of hours, whereas under clause 13 of the Revised Exposure Draft, casual employees would be entitled to overtime.

FITNESS INDUSTRY AWARD – AM2014/227

In respect of the further revised Summary of submissions published 22 July 2015 and the revised Exposure Draft published 29 July 2016 in respect of the FIA:

15. **Item 6** – Tennis Australia on behalf of its tennis coach members, opposes the AWU's proposal.
16. **Item 10** – Tennis Australia's position, on behalf of its tennis coach members, is that clause 8.1 of the Revised Exposure Draft has a different legal effect from clause 24.1 of the FIA.
17. **Item 11** – Tennis Australia's position, on behalf of its tennis coach members, is that overtime is not currently payable to casual employees.
18. Tennis Australia, on behalf of its tennis coach members, adopts the Comments of Gymnastics Australia dated 10 January 2017 in respect of the different legal effect of clause 8 of the revised Exposure Draft and clause 24 of the FIA.

10 January 2017

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Lawyers for Tennis Australia