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Dear Award Modernisation Team

**AM2014/227: 4 yearly review of the *Fitness Industry Award 2010*  
Submissions in reply regarding Exposure Draft**

We refer to the exposure draft of the proposed *Fitness Industry Award 2015* published on 18 December 2015 (**Exposure Draft**) and the submissions made by interested parties on or before 14 April 2016.

We enclose submissions in reply to those submissions in accordance with the Amended Directions of His Honour, President Ross J on 22 March 2016. These directions require each interested party to file comprehensive written submissions in reply to the technical and drafting issues related to the exposure drafts in Group 3.

We would be pleased to provide the Commission with any further information that it requires in considering these submissions.

Yours sincerely



**Michaela Moloney**  
Partner

## IN THE FAIR WORK COMMISSION

Matter No.: AM204/227

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### SUBMISSIONS IN REPLY TO TECHNICAL AND DRAFTING ISSUES RELATED TO GROUP 3 EXPOSURE DRAFT MODERN AWARDS

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#### Submissions in Reply

1. Gymnastics Australia makes these submissions in reply to the submissions made by the following interested parties:
  - (a) Aussie Aquatics;
  - (b) Australian Business Industry and the NSW Business Chamber (**ABI**);
  - (c) Business SA;
  - (d) The Australian Workers' Union (**AWU**).

#### Ordinary hours of work and overtime provisions

2. The exposure draft of the Fitness Industry Award 2015 (**Exposure Draft**) sought clarification as to whether the ordinary hours of work clause at 8.3 should be amended to include casuals.
3. The AWU submission at [8] claims that "*Overtime is payable to all employees under this award*". The AWU has not provided support for this assertion, and its submissions fail to address the Award's clear intent to exclude casuals from the ordinary hours of work clause.
4. We refer to and repeat Gymnastics Australia's submissions dated 14 April 2016 in respect of this issue at [3] to [12]. Gymnastics Australia notes the submissions of ABI at [8.2] and Business SA at [6.2.1], and reiterates Business SA's submission that any variation to vary the hours of work clause to include casual employees would be a substantial change.

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### **Specification of ordinary hours for casual employees**

5. The AWU submission at [5] to [6] proposes that clause 7.4(a) of the exposure draft be amended to include a term specifying the ordinary hours of work for a casual employee.
6. We refer to and repeat Gymnastics Australia's submissions dated 14 April 2016 at [10] and [11] that casual employees have not previously been subject to a limit of 38 hours per week on their ordinary hours, and submit that this claim by the AWU represents a substantive variation.
7. In the event that the Commission determines that the Award does not meet the requirements of section 147 of the *Fair Work Act 2009 (Act)*, Gymnastics Australia proposes inserting the following sentence at the end of clause 7.4(a), which adopts similar wording to section 20(2)(b)(ii) of the Act:

*"The ordinary hours of work for a casual employee are the employee's usual weekly hours of work."*

### **10 hour break between shifts**

8. The Exposure Draft sought the parties' comments as to the operation of the 10-hour break between shifts.
9. The AWU has submitted at [11] that this break is between the end of work on one shift and the beginning of ordinary hours on the next shift. The AWU submission fails to account for the presence of the word "rostered" in the current Award, and indeed the text of the proposed amendment does not reflect that their proposed amendment would delete this word.
10. We refer to and adopt the submission of Business SA at [6.2.2] that, were the break to begin from the conclusion of un-rostered, ad hoc overtime (which would be the effect of the AWU's proposal), this would result in unmanageable staff shortages. Such unmanageable shortages would be likely to occur in the operation of gymnastics clubs and in particular the conduct of gymnastics competitions.
11. We also note that the effect of the AWU's proposed variation would result in further ambiguity. On its face, the proposed variation would limit the entitlement so that a 10

hour break between two shifts would not apply when the employee only worked ordinary time on the first shift (rather than overtime).

**Minimum hourly rate**

12. ABI has proposed at [8] that either:
  - (a) clause 7.4 of the Exposure Draft be amended to refer to clause 10 – Minimum Wages; or
  - (b) a definition of "minimum hourly rate" be inserted into Schedule G.
13. Based on the use of the term "minimum hourly rate" throughout the Exposure Draft, Gymnastics Australia would support the insertion of a definition of minimum hourly rate along the lines proposed by ABI.

5 May 2016

  
**K&L Gates**  
**Lawyers for Gymnastics Australia**