

IN THE FAIR WORK COMMISSION

MATTER: AM2017/51 - 4 YEARLY REVIEW OF MODERN AWARDS AWARD STAGE- SUB-GROUP 3A

SUBMISSIONS OF ASCTA IN RELATION TO CASUAL ENTITLEMENT TO OVERTIME - *FITNESS INDUSTRY AWARD 2010*

The following are the submissions of the Australian Swimming Coaches and Teachers Association ('**ASCTA**') on casual employee's entitlement to overtime rates under the *Fitness Industry Award 2010* ('**Award**')

Primary Submissions

1. ASCTA supports the general submissions made by Tennis Australia and Gymnastics Australia, both dated 20 January 2017 relevant to casual employees' entitlement to overtime rates under the Award.
2. ASCTA opposes the Australian Workers Union submissions in relation to the introduction of 'ordinary hours' for casual employees.
3. ASCTA opposes the proposed variations to clause 8 and 14 as drafted in the exposure draft of the *Fitness Industry Award 2015* ('**Exposure Draft**').
4. Specifically, ASCTA oppose:
 - a. clause 8.1, in so far as it can be read to provide a span of hours in which casuals can work 'ordinary hours';
 - b. clause 8.2, in so far as it can be read to provide that casuals can work up to an average of 38 hours per week as 'ordinary hours'; and
 - c. clause 14, in so far as it can be interpreted to read that casual employees have an entitlement to overtime rates under the Award.
5. ASCTA supports the submissions of Tennis Australia and Gymnastics Australia in so far as they submit that the drafting of clauses 8.1, 8.2 and 14 of the Exposure Draft has the effect that casual employees would be subject to limitations around the ordinary hours that a casual employee might work.
6. ASCTA also considers that such drafting has the unintended consequence of providing an entitlement to overtime rates for casual employees, where currently no such entitlement is clear. ASCTA considers that the current drafting of the Exposure Draft in this respect will

have adverse consequences for the swimming industry, which relies heavily upon its casual workforce to meet the commercial reality of having widespread hours of operation.

7. Relevant to clauses 8.1 and 8.2 of the Exposure Draft, ASCTA supports the submission by Tennis Australia and Gymnastics Australia, that the clauses should be amended to read as follows:

“8.1 *Ordinary hours for a full-time employee may be worked over any five days of the week, between the hours of ...*

8.2 *Ordinary hours of work for a full-time employee must not exceed an average of 38 hours per week over a period of four weeks.”*

8. ASCTA further supports the submission of Tennis Australia and Gymnastics Australia that clause 14.1(a) should be deleted in its current form and replaced with the following wording:

“Overtime work is any work performed outside of ordinary hours, on any day or shift, as defined by clause 8 – Ordinary hours of work and rostering.”

Submission in the alternative

9. In the alternative to ASCTA’s submissions above, and where the Fair Work Commission forms the final view that casual employees should be entitled to overtime rates in particular circumstances under the Award, ASCTA submission would be that clause 14 of the Exposure Draft be amended (only in those circumstances) such that it provides casual employees with an entitlement to overtime rates where, and only where, a employee exceeds an average of 38 hours per week over a period four weeks. To be clear, ASCTA does not support any submission that has the effect of providing casual employees with an entitlement to overtime where they work outside a span of hours set down by the Award.

Filed on behalf of the Australian Swimming
Coaches and Teachers Association

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