

HMT Consulting

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The Associate to, His Honour Justice Ross, AO,
President, Fair Work Commission
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20th March, 2016.

Dear Associate,

RE: Response to the Exposure Draft – ‘Fitness Industry Award 20XX (AM 2014/227)’.

The following responses to the ‘*Exposure Draft - Fitness Industry Award 20XX*’, republished on 1st March 2019, are put forward on behalf of the ‘*Australian Swim Schools Association*’ (ASSA).

Submissions:

1. It is acknowledged that issues relating to application, or otherwise, of the overtime provisions to casual employees are the ongoing subject of the review process in AM2017/51, and therefore these sections of the *Exposure Draft* do not require additional comment at this point;

1.1 However, it is submitted that the current wording of clause 7.4 (b) (**Casual loading**), has the potential for misunderstanding and therefore misapplication. My Client feels that the opening sub-paragraphs (i) & (ii) referring to “...a casual employee must be paid in accordance with Schedule B (B.2) Casual employees” may, reasonably be construed as requiring additional consideration by reference to the dot points:

- “The minimum hourly rate; and
- a loading of XX% of the minimum hourly rate.”

In short, we feel that there is potential for ‘double counting’;

1.1.1 It is respectively submitted that redrafting of the clause 7.4 (b), effectively decoupling the reference to the schedule and the explanation of how the rates in the schedule have been established, has merit.

1.2 Further, in view of the addition of the final sentence in clause 11.1 - “Employees engaged other than on a full-time basis under clause 7.2 – Full-time employees shall be paid pro rata the wage related allowances detailed in paragraph (a) “Leading hands and supervisors”. That Schedule C – **(Summary of Monetary Allowances)** (C.1), be amended by adding a further column detailing the ‘hourly’ rates applicable to the three categories of Leading hands and supervisors allowances;

- 1.2.1 It is contended that this minimalist redrafting, would make the document more 'user friendly';
- 1.3 Clause 7.4, sub-clause (c) (**Minimum engagement**) (sub-paragraph (ii)), currently reflects the wording contained in clause 13.5 of the 2010 Modern Award:
 - 1.3.1 As a consequence of the amendments made in regard to [2018] FWCB3914, PR608870, the wording of the '**Classification Definitions**' (**Schedule A**) relating to levels 1 & 2 have been modified;
 - 1.3.2 The ASSA believes that the phrase "as a student" in (ii) should be replaced by "as a trainee";
 - 1.3.3 The word "student" does not appear in the Schedule A in the Exposure Draft, whereas "training" is used at a multiplicity of points, therefore a consistency of language is to be encouraged through the substitution of "trainee" for the single use of the term 'student';
 - 1.3.4 "Student" can reasonably be applied to an individual undertaking a vocational placement (unpaid internship), whereas 'trainee' implies an award-regulated employer/employee relationship.
2. It is respectfully submitted that all of the amendments sought are consistent with the objectives of the Four Yearly Review process, and if adopted, would lead to greater certainty through easier application of the award contents overall.

For and on behalf of the 'Australian Swim Schools Association'.

Yours faithfully,



Michael Taylor
Principal Consultant.