

SUMMARY OF SUBMISSIONS

This table is a summary of submissions lodged for this award on or before 5.00pm on 22 July 2016 and has been updated to reflect the summary of the parties agreed positions filed on [30 May 2016](#), the Report to the Full Bench dated [3 June 2016](#) and hearing held on 6 June 2016 ([Transcript](#)).

Fitness Industry Award 2010

ITEM	PARTY	DOCUMENT	CLAUSE (exposure draft)	CLAUSE (current award)	SUMMARY OF ISSUE	THEIR REFERENCE	NOTES
1.	GA	Sub-12/11/2015	3	3	Coverage Seeks to vary clause to include “gymnastic services, activities or classes” in the definition of the fitness industry.	Para 9-10	Clause to be varied to include “gymnastic services, activities or classes” in the definition of the fitness industry, see Report to Full Bench . No opposition from AA, ABI&NSWBC, AFEI, AWU, BusSA or TA, see Summary of Positions .
	AA	Sub – 16May16			Does not oppose proposed amendments.	Para 1.3	
2.	TA	Sub-11Feb15	3	4, 13.5	Coverage Coverage of tennis coaches should be more explicit. Also propose inclusion of tennis coaches in Schedules in various classification levels.	Attachment pages 1-2	Clause to be varied as per submissions regarding tennis coaches filed by Tennis Australia on 11 February 2015, see Report to Full Bench .
	FA	Sub-02Mar15			The variations proposed by	Para 3	

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	AA	Sub – 16May16			Tennis Australia not opposed. The variations proposed by Tennis Australia not opposed.	Para 1.1	No opposition from AA, ABI&NSWBC, AFEI, AWU, BusSA, FA or GA, see Summary of Positions .
3.	AWU	Sub-19Apr16	6	16	Classifications Amend clause to require changes to employee’s classification level to be in writing, and that changes will occur at a later date, not commencement of employment.	Para 4	Clause to be varied, see Report to Full Bench for proposed wording.
	BusSA	Reply sub – 6May16			Disagrees with AWU proposal, but agrees the current wording is too broad. Prepared to collaborate in redrafting clause.	Paras 6.0 and 6.10	No opposition from AA, ABI&NSWBC, AFEI, BusSA, GA or TA, see Summary of Positions .
	AA	Sub – 16May16			Does not oppose AWU’s proposed amendment.	Para 2.1	
4.	SA & ASCTA	Sub-26Feb15	7.1	10.1	Types of employment A reference to ‘weekly seasonal or fixed term employment’ should be included with facilitative provisions being incorporated within context of clauses 11 and 12 (current award). Would provide for employees engaged for swim school ‘terms’.	Page 1	This does not appear to be pressed by SA & ASCTA, see Summary of Positions .

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5.	AA	Sub-07Mar16	7.3(a)(iii), 11.1	12.1(c), 18	Part-time employees and allowances Tension between clauses 7.3(a)(iii) and 11.1 may cause confusion. Opening sentence in 11.1 should be qualified to enable pro rated payment of all allowances relating to work and wages on an <u>hourly basis</u> for other than full-time employees.	Para A.1-A.2	Proposal to enable pro-rate payment of allowances relating to work and wages on an hourly basis for other than full-time employees generally agreed, see Report to Full Bench .	
	BusSA	Reply sub – 6May16				Agrees with submissions of AA	Para 6.2	No opposition from ABI&NSWBC, AWU, BusSA, FA, GA or TA, see Summary of Positions . AFEI does not oppose in respect of leading hands/supervisors but otherwise has concerns regarding the proposed wording See proposed wording attached
	ABI&NSWBC	Reply sub – 6May2016				Agrees with submissions of AA	Para 8.5	
	FA	Sub-26May16				Agrees with submissions of AA	Para 2.10	

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6.	AWU	Sub-19Apr16	7.4(a)	13.1	Casual employees Propose to add: “ <i>and works less than 38 ordinary hours per week</i> ”.	Paras 5-6	The positions of the parties remain as set out in the Summary of Submissions published 20 May 2016, save that BusSA has withdrawn its support for the AWU's proposal. This remains an area of dispute on which it is unlikely the parties will come to agreement, see Summary of Positions .
	GA	Reply sub – 5May16			AWU proposed variation would be substantive. If award does not meet requirements in s.147 of Act, party proposes to insert wording similar to that in s.20(2)(b)(ii) of Act.	Paras 5-7	
	AWU	Reply sub – 5May16			Proposal will assist in rectifying the inconsistency identified in clauses 8.3 and 14.1.	Para 13(c)	
	BusSA	Reply sub – 6May16			Agrees with AWU submission.	Para 6.3 and 6.11	
	ABI&NSWBC	Reply sub – 6May2016			Opposes AWU proposal as the ED is consistent with s.147 of the Act given the operation of clauses 7.4(b), 8.1 and 8.2. Variation is unnecessary.	Para 8.1	
	AA	Sub – 16May16			Supports amendment proposed by GA. Does not agree with AWU that s.147 of Act automatically provides entitlement to overtime to casuals.	Paras 1.3 and 2.2	

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7.	ABI&NSWBC	Sub-14Apr16	7.4(b)(i)	13.2	Casual employees – Casual loading Insertion of clause reference to clause 10 of ED is appropriate. Or, insert definition of minimum hourly rate in Schedule G.	Para 8-.81	‘Minimum hourly rate’ to be inserted into Schedule G, see Report to Full Bench No opposition from AA, AFEI, AWU, BusSA, GA or TA. See proposed wording . Refer to FA's submissions dated 26 May 2016 at 2.9.
	GA	Reply sub – 5May16			Support ABI proposal to insert minimum hourly rate definition.	Paras 12-13	
	AWU	Reply sub – 5May16			Not opposed to either of ABI’s proposals. Notes that reference to ‘minimum hourly rate’ at cl.9.1(b) does not account for public holiday loading of 250% when an employee works through their meal break on a public holiday.	Para 4	
	BusSA	Reply sub – 6May16			Agree with ABI&NSWBC	Para 6.4	
	AA	Sub – 16May16			Does not oppose amendments proposed by GA.	Para 1.3	

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8.	AA	Sub-07Mar16	7.4	13	Casual employees Suggests words “in accordance with Schedule B – Summary of Hourly Rates of Pay (B.2) Casual employees” be added to clause.	Para B.1	Clause to be varied after the words “for the work being performed”, see Report to Full Bench No opposition from ABI&NSWBC, AFEI, AWU, BusSA, GA or TA, see Summary of Positions .
	ABI&NSWBC	Reply sub – 6May2016			Does not oppose proposed amendment, though not strictly necessary as current drafting does not create ambiguity.	Para 8.2	
9.	FWO	Corro-02Mar15	7.4(b)(ii), 18.3	13.3, 26.3(e)	Casual employees Rates payable to casuals on public holidays are unclear.	Para 17	Parties do not see an ambiguity, save for if overtime is worked by a casual on a public holiday. To the extent this related to casual entitlement to overtime, this remains an area of dispute on which it is unlikely the parties will come to agreement, see Summary of Positions . FA's position is set
	FA	Sub-26May16			Wording not ambiguous as casuals don't receive overtime – agrees with submission of AA	Para 2.1-2.9	

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							out at 2.8 of its submissions dated 26 May 2016
9A	GA	Sub-12/11/2015	7.4(c)(ii)	13.5	Casual employment Seeks to vary clause with the effect that casual employees classified at Level 5 may be engaged for a minimum period of one hour's work.	Para 18-19	Clause to be varied with the effect that casual employees classified at Level 5 may be engaged for a minimum of one hour's work, see Report to Full Bench No opposition from AA, ABI&NSWBC, AFEI, AWU , BusSA or TA, see Summary of Positions .
	AA	Sub – 16May16			Does not oppose proposed amendments.	Para 1.3	
10.	AA	Sub-07Mar16	8.1	24.1	Ordinary hours of work and rostering: application of overtime provisions to casuals Clause deviates from current award which appears to limit the hours that do not apply to casuals. New wording has universal application.	Para C-C.3	The positions of the parties remain as set out in the Summary of Submissions published 20 May 2016, save that FA's position is set out at 2.1-2.7 and 2.9 of its submissions dated 26 May 2016 . This remains an area
	AWU	Reply sub – 5May16			Agrees wording has universal application, consistent with the current award. Does not accept AA's argument regarding	Paras 5–8	

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					payment of overtime for casuals on weekends. Casual employees are worse off on weekends and public holidays, and are precluded from favourable penalty rates afforded to full time and part time employees.		of dispute on which it is unlikely the parties will come to agreement, see Summary of Positions .
	ABI&NSWBC	Reply sub – 6May2016			Agrees with AA’s submissions However submits that proposed amendment to cl.14.2 not strictly necessary as the current drafting does not give rise to ambiguity.	Para 8.3	
	FA	Sub-26May16			Wording not ambiguous as casuals don’t receive overtime – agrees with submission of AA and ABI&NSWBC.	Para 2.1-2.9	
11.	GA	Sub-14Apr16	8.3	24.2	Ordinary hours of work and rostering <i>If overtime is payable to casual employees, should clause 8.3 be amended to include casuals</i> Unclear whether casuals are entitled to overtime when working outside ordinary hours and ED should be amended to clarify this.	Para 1-2	The positions of the parties remain as set out in the Summary of Submissions published 20 May 2016, save that FA's position is set out at 2.1-2.7 and 2.9 of its submissions dated 26 May 2016 . This remains an area

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	ABI&NSWBC	Sub-14Apr16			Party submits casual employees are not entitled to overtime if they work in excess of ten hours on any one day.	Para 8.2	of dispute on which it is unlikely the parties will come to agreement, see see Summary of Positions .
	BusSA	Sub-15Apr16			Party submits casual employees are not entitled to overtime and only full-time and part-time employees are.	Para 6.2.1	
	AWU	Sub-19Apr16			Party submits casuals are to be paid overtime. Clause 14.1 does not exclude casuals and applies to all employees. Proposed wording for clause 8.3 in submission.	Para 7-9	
	GA	Reply sub – 5May16			AWU has not provided support for its assertions and fails to address Award’s intent to exclude casuals from ordinary hours of work. Variation to hours of work clause would be a substantial change.	Paras 2-4	
	AWU	Reply sub – 5May16			Opposes submissions of ABI and and BusSA, noting inconsistency between clauses 8.3 and 14.1. Proposes words ‘for a full-time or part-time employee’ be removed. Rejects GA’s argument that casual employees not governed by ordinary hours, consistent with s62(1) of the Act.	Paras 9–14	

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	BusSA	Reply sub – 6May16			Agrees with GA, disagrees with AWU. Rely on their earlier submission.	Paras 6.5, 6.6 and 6.12	
	ABI&NSWBC	Reply sub – 6May2016			Opposes AWU's proposed amendment. Rely on para. 8.2 of submissions of 15 April 2016. Agrees with submissions of BusSA and GA.	Para 8.4	
	AFEI	Reply sub – 9May2016			Agrees with BusSA and AiG that extending the clause to casual employees would involve a substantial change.	Para 32	
	AA	Sub – 16May16			Does not oppose amendment proposed by GA.	Para 1.3	
	FA	Sub-26May16			Wording not ambiguous as casuals don't receive overtime – agrees with submission of AA, ABI&NSWBC and BusSA.	Para 2.1-2.9	
12.	BusSA	Sub 02Mar15	11.2(b)	18.4	Broken shift allowance The term 'excess fares' is used but not defined and no explanation of the application of the allowance is provided.	Page 6	BusSA has withdrawn its proposal, see see Summary of Positions .
13.	GA	Sub-14Apr16	14.3	26.2	Overtime – Break between shifts <i>Parties are asked to clarify whether the 10 hour break is</i>	Para 9-16	Clause to be varied, see Report to Full Bench for wording.

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					<i>between the end of overtime on one day/shift and the beginning of ordinary hours on the next day/shift</i> Party submits appropriate for employees in gymnastics clubs as unpredictable length of gymnastics competitions means that instructors may be required to work unrostered overtime.		AA, ABI&NSWBC, AWU, BusSA, FA, GA and TA support the proposal of AA in its submissions dated 16 May 2016, see see Summary of Positions .
	BusSA	Sub-15Apr16			Whilst a shift is not defined in the fitness industry, it is commonly seen as a regular system of work.	Para 6.2.2	AFEI may wish to make submission.
	AWU	Sub-19Apr16			10 hour break is between the end of work one shift and the beginning of ordinary hours on the next shift. Proposed clause amendment in submission.	Para 10-11	See proposed wording in attachment (note ABI&NSWBC have proposed slightly varied wording that has not been considered by the parties).
	GA	Reply sub – 5May16			AWU’s submission does not account for the word “rostered” in current Award and proposed variation would result in further ambiguity. Party adopts BusSA’s submissions	Paras 8-11	
	AWU	Reply sub – 5May16			Rejects BSA and GA reasoning about operation of ‘rostered’. Proper construction is a 10 hour break between the end of overtime on one shift and the	Paras 15–21	

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					beginning of ordinary hours on next shift, or a 200% loading is applicable. Relies on previously proposed clause amendment.		
	BusSA	Reply sub – 6May16			Agrees with GA, disagrees with AWU. The clause clearly states the break operates between ‘rostered shirts’ – nothing in the clause suggests the 10 hour break begins at the end of overtime.	Paras 6.7, 6.8 and 6.13	
	ABI&NSWBC	Reply sub – 6May2016			Opposes AWU submissions, agrees with BusSA and GA.	Para 8.6	
	AA	Sub – 16May16			10 consecutive hours must be measured from time of cessation of work in one work period and commencement of work in next, regardless of nature of work involved. Operation of clause should be limited to circumstances wherein the employee has worked for a period in excess of 3 consecutive hours, in first instance, prior to any additional premium being applied to work commencing without a 10 consecutive hour break.	Paras 2.3 and 2.4	
14.	GA	Sub-14Apr16	<i>Proposed new clause 15.X</i>	<i>New clause</i>	Annual leave – close down Propose insertion of the annual leave close-down provision.	Para 1-22	Clause to be varied, see Report to Full Bench for proposed

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	ABI&NSWBC	Reply sub – 6May2016			Supports GA's proposal	Para 8.7	wording.
	AA	Sub – 16May16			Support GA's submissions and proposed variation	Para 1.3	Proposal amended to provide for only one period per year. No opposition from AA, ABI&NSWBC, AFEI, AWU BusSA or TA, see see Summary of Positions . See proposed amended wording .

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15.	TA	Sub-11Feb15	Schedule A	B.1.1(e), B.2.2(b), B.4.1, B.6.1, B.7.1	Classification definitions Award should be more explicit in specifying coverage for tennis coaches. They also propose additional text in the classifications schedule to include tennis coaching in a number of classification levels.	Attachment pages 1-2	Clause to be varied as per TA's submission filed on 11 February 2015, see Report to Full Bench No opposition from AA, ABI&NSWBC, AFEI, AWU, BusSA or GA, see see Summary of Positions .
	FA	Sub-02Mar15			The variations proposed by Tennis Australia not opposed.	Para 3	
	AA	Sub – 16May16			Does not oppose TA's proposed amendments	Para 1.1	
16A.	SA & ASCTA	Sub-26Feb15	Schedule A	Schedule B	Classification definitions Classifications relating to Swim Teachers, Coaches and Support Staff engaged in swim schools should be amended.	Page 1	Clause should be amended but no proposed wording is included in SA and ASCTA submission, see Report to Full Bench . Proposed wording is in AA submission of 7 March 2016, see Transcript [PN848]-[PN860]. No opposition from AA, ABI&NSWBC,
	AA	Sub – 16May16			Does not oppose GA's proposed amendments	Para 1.3	
	AA	Sub-07Mar16			Party proposes to remove redundant references to elements of relevant training package, remove references to specific competencies and rely upon more accurate descriptions. Proposes to remove corporate branding of training products and redraft some aspects of the current wording to	Para D-D.3	

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					clarify the cross-over points between Levels 1, 2 and 3. Proposed Schedule A in submission.		AFEI, AWU, BusSA, GA or TA, see Summary of Positions .
	BusSA	Reply sub – 6May16			Disagrees with proposed additions of AA. Proposal would result in substantive change.	Paras 6.9 and 6.14	BusSA's previously notified objection is withdrawn, see Summary of Positions .
	ABI&NSWBC	Reply sub – 6May2016			Does not oppose AA's proposed amendment.	Para 8.8	
16B.	GA	Sub-12/11/2015			Seeks to vary classifications to better reflect the nature of work performed by gymnastics coaches.	Paras 11-17	No opposition from AA, ABI&NSWBC, AFEI, AWU, BusSA or TA, see see Summary of Positions .

List of abbreviations (in alphabetical order)

AA	Aussie Aquatics
ABI&NSWBC	Australian Business Industrial & New South Wales Business Chamber
AWU	The Australian Workers' Union
BusSA	Business South Australia
ED	Exposure draft
FA	Fitness Australia
FWO	Fair Work Ombudsman
GA	Gymnastics Australia
SA & ASCTA	Swim Australia and Australian Swimming Coaches and Teachers Association

TA Tennis Australia