

HMT Consulting

A Division of Plato Enterprises
ABN: 46 099 461 962

The Associate to Mr Deputy President Clancy
Fair Work Commission
11 Exhibition Street
Melbourne Victoria 3000
Email: chambers.clancy.dp@fwc.gov.au

16th May, 2016.

Dear Associate,

RE: Response to the Exposure Draft - , relating to the 4 Yearly Review of the Group 3 & 4 Modern Awards (AM 2014/217, and others).

I write in response to the matters raised by various parties before Deputy President Clancy on 10th May in relation to the s.156, 4 yearly review of the *'Fitness Industry Award 210'*, (AM 2014/227).

The following details my Client's response to matters currently before the Fair Work Commission in relation to this particular award:

RE: AM2014/227 AUSSIE AQUATICS reply submissions on drafting and technical issues in the Exposure Draft for the *'Fitness Industry Award 2016'*.

Overview:

Acting upon the directions to parties issued by President Ross, Aussie Aquatics, (*formerly t/as Swim Australia*), set out its submissions on the 'Exposure Draft published on 18th December, 2015, and forwarded by letter on 8th March.

By 6th May, when the *'submissions in reply'* where to be lodged, the majority of points touched upon by Aussie Aquatics had either not been commented on , or if they had, were covered only in very general terms. Further, several parties had not forwarded *'reply submissions'* within a timeframe that enabled this organisation to make informed comment at the conference before Deputy President Clancy at 10am on Tuesday, 10th May.

To assist with identifying common ground between interested parties, Aussie Aquatics wishes to record its position on both submissions on the Exposure Draft for the *'Fitness*

Industry Award 2016 and foreshadowed variations identified by various parties prior to and after the release of the Exposure Draft on 18th December 2015.

1. Matters raised on behalf of Tennis Australia & Gymnastics Australia:

- 1.1 Aussie Aquatics does not oppose any amendments to the current award foreshadowed by *Tennis Australia* prior to the 18th December 2015;
- 1.2 Aussie Aquatics supports the submission and foreshadowed variation submitted to the Commission on 14th April, relating to '*Annual Leave Close-down*';
- 1.3 Aussie Aquatics do not oppose any amendments to the current award foreshadowed on behalf of *Gymnastics Australia*, in any of the proceedings leading up to the hearing of 10th May 2016.

2. Reply submissions on drafting and technical issues:

- 2.1 In relation to the AWU submission on clause 6, we do not oppose the wording put forward by the Union in its submission dated 19th April.
- 2.2 We acknowledge and agree that the Union is correct in regard to the requirements of section 147 of the Fair Work Act;
 - 2.2.1 however, we do not concede that section 147 automatically opens up an entitlement to overtime to casuals engaged under the provisions of the current award;
 - 2.2.2 An examination of the precursor awards to the 2010 Modern Award does not support the contention that casual employees had overtime entitlements in lock-step with their weekly engaged workmates;
 - 2.2.3 Aussie Aquatics on behalf of Swim School operators it represents is strongly of the view that casuals engaged under clause 7.4 (c) (ii) of the draft 2015 award, for work lasting not more than 50 minutes in the pool during a swim lesson, should not receive overtime or other penalties prescribed in relation to the application of clauses 8.4, 11.2 (b), 14.1 or 14.3 of the draft award; as to do otherwise would be a significant change to the conditions applying of a large section of the workforce engaged as genuine casuals to perform as Swim Teachers, Coaches and their assistants. The cost impost would jeopardise the availability of professional water safety tuition to the general public.
- 2.3 In regard to the wording of 14.3 (Break between shifts), whilst not supporting directly the AWU's primary position on the issue we seek to respond in the following manner:
 - a. Aussie Aquatics view the operation of sub-clause 14.4 as being about employee fatigue and the occupational health and safety, and public risk matters that potentially flow from excessive and unreasonable patterns of work. We do not see it as a debate about accessing penalty premiums;
 - b. The measure of '*ten consecutive hours free from work obligations*' must, we contend, logically be measured from the time of cessation of work in one work period and the commencement of work in the next, regardless of the nature of the work involved, (overtime, rostered or not, or ordinary hours rostered);


c. The concept of 'excessive and unreasonable', within the operational environment of the *Fitness Industry* needs to be contextualised, particularly in relation to casuals engaged under 7.4 (c) (ii).

2.4 We submit that the operation of sub-clause 14.4 should be limited to circumstances wherein the employee has worked for a period in excess of three consecutive hours, in the first instance, prior to any additional premium being applied to work commencing without a ten consecutive hour break.

2.5 In relation to all other matters canvassed for or by any other party, Aussie Aquatics reserves its position, where such matters fall outside of the contents of our submission of 8th March.

For and on behalf of Aussie Aquatics (formerly t/as *Swim Australia*).

Yours faithfully,



Michael Taylor
Principal Consultant.

C.C Mr Ross Gage (to be noted)