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Sent: Monday, 30 May 2016 10:14 AM

To: Chambers - Clancy DP

Cc: 'Louise Hogg'; 'Roushan Walsh'; Karen Van Gorp; 'hmtconsulting@optusnet.com.au'; Moloney, Michaela; 'dwilkinson@myadvantage.com.au'; 'Aaron Jones Valledor'; 'liza.isho@afei.org.au'; 'paula.thomson@afei.org.au'

Subject: AM2014/227 - Fitness Industry Award 2010 [MID-MIDDOCS.FID2216856]

Dear Associate

Please find **attached** the report back from the interested parties in this matter to Deputy President Clancy. This sets out a summary of the parties' positions on each issue identified as we understand it.

We note that this summary has been compiled as a result of telephone and email discussions and the parties may wish to make further submissions on these points at the hearing this afternoon.

Regards
John

The logo for K&L GATES, featuring the text "K&L GATES" in white, bold, sans-serif font on a dark grey rectangular background.

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**REPORT TO FAIR WORK
COMMISSION
SUMMARY OF POSITIONS**

This table is a summary of the positions of the interested parties as of their discussions between 24
May and 27 May 2016.

Fitness Industry Award 2010

FA reserves its position in respect of those items which it has not addressed below.

ITEM	PARTY PROPOSING VARIATION	DOCUMENT	CLAUSE (exposure draft)	CLAUSE (current award)	SUMMARY OF ISSUE	POSITIONS OF PARTIES
1.	GA	Sub-12/11/2015 Para 9-10	3	3	Coverage Seeks to vary clause to include “gymnastic services, activities or classes” in the definition of the fitness industry.	No opposition from AA, ABI&NSWBC, AFEI, AWU, BusSA or TA.
2.	TA	Sub-11Feb15 Attachment pages 1-2	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.	No opposition from AA, ABI&NSWBC, AFEI, AWU, BusSA, FA or GA.
3.	AWU	Sub-19Apr16 Para 4	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.	No opposition from AA, ABI&NSWBC, AFEI, BusSA, GA or TA. See proposed wording attached.

ITEM	PARTY PROPOSING VARIATION	DOCUMENT	CLAUSE (exposure draft)	CLAUSE (current award)	SUMMARY OF ISSUE	POSITIONS OF PARTIES
4.	SA & ASCTA	Sub-26Feb15 Page 1	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'.	This does not appear to be pressed by SA & ASCTA.
5.	AA	Sub-07Mar16 Para A.1-A.2	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.	No opposition from ABI&NSWBC, AWU, BusSA, FA, GA or TA. AFEI does not oppose in respect of leading hands/supervisors but otherwise has concerns regarding the proposed wording See proposed wording attached.
6.	AWU	Sub-19Apr16 Paras 5-6	7.4(a)	13.1	Casual employees Propose to add: " <i>and works less than 38 ordinary hours per week</i> ".	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.

ITEM	PARTY PROPOSING VARIATION	DOCUMENT	CLAUSE (exposure draft)	CLAUSE (current award)	SUMMARY OF ISSUE	POSITIONS OF PARTIES
7.	ABI&NSWBC	Sub-14Apr16 Para 8-.81	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.	No opposition from AA, AFEI, AWU, BusSA, GA or TA. See proposed wording attached. Refer to FA's submissions dated 26 May 2016 at 2.9.
8.	AA	Sub-07Mar16 Para B.1	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.	No opposition from ABI&NSWBC, AFEI, AWU, BusSA, GA or TA.
9.	FWO	Corro-02Mar15 Para 17	7.4(b)(ii), 18.3	13.3, 26.3(e)	Casual employees Rates payable to casuals on public holidays are unclear.	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. FA's position is set out at 2.8 of its submissions dated 26 May 2016
9A.	GA	Sub-12/11/2015 Para 18-19	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.	No opposition from AA, ABI&NSWBC, AFEI, AWU , BusSA or TA.

ITEM	PARTY PROPOSING VARIATION	DOCUMENT	CLAUSE (exposure draft)	CLAUSE (current award)	SUMMARY OF ISSUE	POSITIONS OF PARTIES
10. 11.			8	24	Ordinary hours of work and rostering: application of overtime provisions to casuals	<p>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</p> <p>This remains an area of dispute on which it is unlikely the parties will come to agreement.</p>
12.	BusSA	Sub-02Mar15 Page 6	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.	BusSA has withdrawn its proposal.
13.			14.3	26.2	Overtime – Break between shifts <i>Parties are asked to clarify whether the 10 hour break is between the end of overtime on one day/shift and the beginning of ordinary hours on the next day/shift</i>	<p>AA, ABI&NSWBC, AWU, BusSA, FA, GA and TA support the proposal of AA in its submissions dated 16 May 2016.</p> <p>AFEI may wish to make submission.</p> <p>See proposed wording attached (note ABI&NSWBC have proposed slightly varied wording that has not been considered by the parties).</p>

ITEM	PARTY PROPOSING VARIATION	DOCUMENT	CLAUSE (exposure draft)	CLAUSE (current award)	SUMMARY OF ISSUE	POSITIONS OF PARTIES
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.	Proposal amended to provide for only one period per year. No opposition from AA, ABI&NSWBC, AFEI, AWU BusSA or TA. See proposed amended wording attached.
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.	No opposition from AA, ABI&NSWBC, AFEI, AWU, BusSA or GA.
16A.	SA & ASCTA	Sub-26Feb15 Page 1	Schedule A	Schedule B	Classification definitions Classifications relating to Swim Teachers, Coaches and Support Staff engaged in swim schools should be amended.	No opposition from AA, ABI&NSWBC, AFEI, AWU, BusSA, GA or TA. BusSA's previously notified objection is withdrawn.

ITEM	PARTY PROPOSING VARIATION	DOCUMENT	CLAUSE (exposure draft)	CLAUSE (current award)	SUMMARY OF ISSUE	POSITIONS OF PARTIES
	AA	Sub-07Mar16 Para D-D.3			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 clarify the cross-over points between Levels 1, 2 and 3. Proposed Schedule A in submission.	
16B.	GA	Sub-12/11/2015 Paras 11-17	Schedule A	Schedule B	Seeks to vary classifications to better reflect the nature of work performed by gymnastics coaches.	No opposition from AA, ABI&NSWBC, AFEI, AWU, BusSA or TA.

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
Act	<i>Fair Work Act 2009</i>

Attachment - Proposed Wording

Item 3 – Classifications

"An employer must advise an employee in writing of their classification:

- (a) on commencement of employment; and
- (b) on any subsequent changes to their classification."

Item 5 – Part-time employees and allowances

- (a) A new subclause in the following terms be incorporated in the 2015 award draft:

"Employees engaged, other than on a full-time basis under sub-clause 7.2 be paid pro rata the wage related allowances detailed in paragraph (a) Leading hands and supervisors."

- (b) That 11.2 (b) **Broken shift allowance**, be amended to read as follows:

"An employee, other than a casual engaged under sub-clause 7.4 (c) (ii), working a rostered broken shift must be paid per day \$12.24 extra and for excess fares and expense related allowance of \$1.89 per day."

Item 7 – Casual employees – Casual loading

Insert into Schedule G new definition:

*"**minimum hourly rate** means the minimum hourly rate prescribed in clause 10 – Minimum wages"*

Item 13 – Overtime – Break between shifts

"14.3 Break between shifts

14.3.1 Subject to clause 14.3.1 an employee is entitled to a minimum 10 hour break between shifts. An employee required by the employer to resume work without having a break of at least 10 consecutive hours between ~~rostered~~ shifts (including overtime worked on either shift), must be paid at the rate of **200%** of the minimum hourly rate for all time worked until they have had a break from work of at least 10 hours;

14.3.2 The rate of 200% required in 14.3.2, shall not apply to an employee who has worked three consecutive hours or less prior to the commencement of a break between shifts."

Alternate wording proposed by ABI&NSWBC

"14.3 Break between shifts

(a) An employee is entitled to a minimum 10 hour break between shifts. An employee required by the employer to resume work without having a break of at least 10 consecutive hours between ~~rostered~~ shifts (including overtime worked on

either shift), must be paid at the rate of 200% of the minimum hourly rate for all time worked until they have had a break from work of at least 10 hours.

(b) An employee is not entitled to be paid at the rate of 200% in accordance with clause 14.3(a) if they worked 3 consecutive hours or less prior to the commencement of a break between shifts."

Item 14 – Annual leave – close down

15.X

- (a) *An employer may close down (or reduce to a nucleus) an enterprise or part of it for the purpose of allowing annual leave to the employees concerned or a majority of them, provided that:*
- (i) *the employer gives the employees at least one month's notice of its intention to close down;*
 - (ii) *in the case of any employee employed after notice has been given, notice must be given to that employee on the date they are offered employment.*
- (b) *No more than ~~two~~ one close downs can occur in one 12 month period.*
- (c) *Where an employee has been given notice pursuant to clause 15.X(a)(i) or (ii) above and the employee has:*
- (i) *accrued sufficient annual leave to cover the full period of closing, the employee must take paid annual leave for the full period of the close down;*
 - (ii) *insufficient accrued annual leave to cover the full period of closing, the employee must take paid annual leave to the full amount accrued and leave without pay for the remaining period of the close down; or*
 - (iii) *no accrued annual leave, the employee must take leave without pay for the full period of the close down.*
- (d) *Public holidays that fall within the period of close down will not count as a day of annual leave or leave without pay. Employees will be paid for any absence on such days in accordance with the NES.*