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

4th August, 2016.

Dear Associate,

RE: Response to the Amended Exposure Draft, *Fitness Industry Award 2015* - , [AM 2014/227].

I write relation to the amended Exposure Draft of the '*Fitness Industry Award 2015*' published on 29th July.

I take this opportunity to raise several areas of concern to my Client, the Australian Swim Schools Association (ASSA), in the knowledge that the award review is listed for Conference of interested parties on 8th August. Further, that these matters arise from not the drafting of the recently published document, but from the content of the original 2010 Award. Whilst we concede that the review process is well advanced, we are not aware of these matters having been canvassed by any party previously. Therefore some benefit potentially arises in doing so at this juncture.

The points are as follows:

Clause 3 (**Coverage**) (4 of the 2010 Award) – this reads in part - 3.1 “*This industry award covers employers throughout Australia engaged in the fitness industry and their employees in the classifications in this and to the exclusion of any other modern award.*”

3.2 “*The **fitness industry** means the operation or provision of:*

(a) *fitness centres;*

(b)

(c) *etc*, through to (n).

3.4 *“This award does not cover an employee who is employed by the employer to provide administrative and other operational support outside of fitness centres.”*

The point of concern here is that the descriptors contained in Schedule ‘A’ at levels 1,2,3, 6 & 7, relate in part to functions reasonably falling within the activity of providing **“administrative and other operational support”**. These classifications, and the 2010 award generally, are universally used in the *Swim School Sector* to engage support and managerial staff.

On behalf of the ASSA, I would contend that the current (2010) and proposed (2015 Exposure Draft) wording suggests that organisations such as aquatic centres, indoor sports centres, and providers of “*aquatic services or classes*” referred to in the definition of **‘fitness industry’**, fall outside the coverage of the current/proposed awards.

It is our submission that the qualification “*outside of fitness centres*” be removed, or in the alternative, expanded to cover the full range of activities that are listed (b) – (k) in the definition of **‘Fitness Industry’**. In doing so, the wording would reflect the custom and practice in the Industry generally, and specifically in regard to Swim School Operators and their workforce.

Clause 19.3 (**Job search entitlement**) (14.3 of the 2010 Award) provides:

“Where an employer has given notice of termination to an employee, an employee must be allowed up to one day’s time off without loss of pay for the purpose of seeking other employment.”

The Swim School Sector has a history of employing long-term casuals (described in some quarters as “*permanent casuals*”).

The point of concern here is does sub-clause 19.3 (14.3) relate to casual employees? If not, is it therefore appropriate that an exemption is written in or, in the alternative, if it is intended to apply to casuals, that the provision be reworded to confirm this?

The third, and final matter relates to the wording of clause 18.3 (**Payment for working on a public holiday**) (26.3 (c) of the 2010 Award), reads as follows:

“A full-time or part-time employee must be paid at the rate of 250% of the minimum hourly rate for all hours worked on a public holiday. An employee required to work on a public holiday must be engaged or paid for at least four hours’ work at the rate of 250% of the minimum hourly rate.”

It appears that the words underscored serve no useful purpose, they simply replicate the intention of the first sentence. Would the provision best be ended at ‘*work*’. The wording in the 2010 Award, whilst not identical, suffers from the same issue of repetition.

The Association has concerns with other aspects of the draft in relation to Schedule 'A'; these have been raised in other correspondence.

Yours faithfully,



Michael Taylor
Principal Consultant.

C.C Mr Ross Gage (to be noted)

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