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Your ref: AM2014/227  
AM2014/245

Dear Award Modernisation Team

**4 yearly review of modern awards – Award stage – sub-group 3A  
Submissions in respect of claims still being pursued**

We write on behalf of Tennis Australia and Gymnastics Australia and refer to the Directions made by Deputy President Clancy in respect of the above matters on 14 December 2016, and the submissions of the AWU dated 27 January 2017.

In response to Direction 4 of each of the Directions, we enclose submissions in reply to those claims being pursued by the AWU in respect of the *Fitness Industry Award 2010* and the *Sporting Organisations Award 2010*.

As a preliminary matter, we note that the AWU has made a fresh claim in respect of overtime entitlements for coaching employees covered by the *Sporting Organisations Award 2010*. Tennis Australia and Gymnastics Australia object to this variation being sought at this late stage and submit that it ought to be dismissed.

Yours sincerely



**Michaela Moloney**  
Partner

**IN THE FAIR WORK COMMISSION  
4 YEARLY REVIEW OF MODERN AWARDS  
AWARD STAGE – SUB-GROUP 3A**

**Matter No.: AM2014/227 – *Fitness Industry Award 2010*  
AM2014/245 – *Sporting Organisations Award 2010***

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**SUBMISSIONS IN REPLY IN RESPECT OF  
FITNESS INDUSTRY AWARD AND SPORTING ORGANISATIONS AWARD**

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The following submissions are made on behalf of Tennis Australia and Gymnastics Australia in reply to the submissions of the AWU dated 27 January 2017, in accordance with Direction 4 of the Directions of Deputy President Clancy published on 14 December 2016, as extended by the correspondence from the Commission dated 25 January 2017.

**SUMMARY**

**Background**

1. The AWU in these proceedings has proposed variations that would place restrictions on the ordinary hours of casual employees covered by the *Fitness Industry Award 2010 (FIA)* and the *Sporting Organisations Award 2010 (SOA)* (collectively, **the Awards**).
2. Further, the Exposure Drafts of these awards published on 18 December 2015 introduced further restrictions on the ordinary hours of casual employees covered by the Awards. The Revised Exposure Drafts published on 29 July 2016 retained these restrictions.
3. In response to the AWU's proposed amendments and the Exposure Drafts, Tennis Australia, Gymnastics Australia and others have identified that currently under the Awards the following employees are not subject to limitations on their ordinary hours of work:
  - (a) casual employees covered by the FIA; and

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- (b) casual clerical and administrative employees covered by the SOA.<sup>1</sup>
4. Accordingly, such employees are not entitled to overtime payments for working outside of those limitations on ordinary hours of work. Tennis Australia and Gymnastics Australia have submitted that to the extent the overtime provisions of the Awards do not expressly exclude casuals, these are ambiguous and ought to be clarified to make clear that overtime does not apply to casual employees.
5. While not admitting the ambiguities identified by Tennis Australia and Gymnastics Australia, the AWU submits that the Commission ought to clarify the purported entitlement to overtime for casuals.<sup>2</sup>
6. The AWU proposes variations to the ordinary hours and overtime provisions of the FIA and the SOA which it says are necessary to:
- (a) clarify the purported entitlement to overtime for casual employees;<sup>3</sup>
  - (b) satisfy s 147 of the *Fair Work Act 2009* (**FW Act**);<sup>4</sup>
  - (c) avoid excluding s 62 of the FW Act;<sup>5</sup> and
  - (d) meet the modern awards objective in s 134(1) of the FW Act.<sup>6</sup>
7. The Commission made a clear determination when it made the FIA and SOA that unlike full-time and part-time employees, casual employees would not be subject to restrictions on their ordinary hours. To impose restrictions on the ordinary hours of casual employees and provide for overtime rates for casual employees is to substantially vary the Awards.

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<sup>1</sup> Comments of Tennis Australia dated 10 January 2017 (**TA Comments**) at [4]-[14]; Comments of Gymnastics Australia dated 10 January 2017 (**GA Comments**) at [7]-[19].

<sup>2</sup> AWU Submissions at [13].

<sup>3</sup> AWU Submissions at [13].

<sup>4</sup> AWU Submissions at [15].

<sup>5</sup> AWU Submissions at [24] and [27].

<sup>6</sup> AWU Submissions at [51].

8. It is to be assumed that *prima facie* the Awards achieved the modern awards objective at the time they were made.<sup>7</sup> The AWU bears the onus of demonstrating that such variations are necessary, not merely desirable, to achieve the modern awards objective, pursuant s 138 of the FW Act.<sup>8</sup>

#### Variations to the Awards supported by AWU

9. The AWU has proposed the following variations:

- (a) introducing a limitation of 38 hours per week for casual employees in each of the Awards, by varying:

- (i) clause 7.4(a) of the FIA Exposure Draft and 6.5(a) of the SOA Exposure Draft as follows:

*A casual employee is an employee engaged and paid as such and works less than 38 ordinary hours per week.*<sup>9</sup>

- (ii) clause 8.2 of the FIA Exposure Draft as follows:

*Ordinary hours of work must not exceed an average of 38 hours per week over a period of four weeks. For casual employees, ordinary hours of work must not exceed 38 hours per week.*<sup>10</sup>

- (b) introducing a limitation of 10 hours per day for casual employees in each of the Awards, by varying clause 8.3 of the FIA Exposure Draft as follows:

*The ordinary hours of work ~~for a full-time or part-time employee~~ must not exceed 10 hours on any one day.*

- (c) introducing a limitation of 11 hours per day for casual clerical and administrative employees covered by the SOA, by varying clause 8.1(d) of the SOA Exposure Draft as follows:

*Ordinary hours of work for a[n] ~~full-time~~ employee must not exceed 11 hours on any one day.*

10. The AWU has also made a brand new claim in the AWU Submissions in which it seeks to introduce an entitlement to overtime for coaching staff covered by the SOA

<sup>7</sup> 4 Yearly Review of Modern Awards: Preliminary Jurisdictional Issues [2014] FWCFB 1788 (**Issues Decision**) at [24].

<sup>8</sup> Issues Decision at [39].

<sup>9</sup> AWU Submissions at [21].

<sup>10</sup> AWU Submissions at [23].

by deleting clause 13.1 of the SOA Exposure Draft (which currently excludes such staff).

11. AWU also appears to support the variations introduced by the Exposure Drafts to the Awards. In particular, they appear to support the imposition of the following limitations on ordinary hours of casual employees:
  - (a) a limitation on working more than five days per week; and
  - (b) limitations on the span of hours which may be worked.<sup>11</sup>

As identified by Tennis Australia and Gymnastics Australia, the above limitations do not currently apply to casual employees.

### **Orders sought regarding the proposed variations**

#### ***Sporting Organisations Award***

12. In respect of the SOA, Tennis Australia and Gymnastics Australia seek that the Commission clarify the position regarding ordinary hours and overtime rates.
13. The AWU's proposal to extend overtime rates to coaches is a fresh claim that has been made at extremely late notice. It was not raised at hearing or in their Comments dated 10 January 2017. In these circumstances Tennis Australia and Gymnastics Australia submit that the Commission cannot be satisfied that this variation is necessary to achieve the modern awards objective.

#### ***Fitness Industry Award***

14. In respect of the FIA, Tennis Australia and Gymnastics Australia seek that the Commission:
  - (a) clarify that the restrictions on ordinary hours and overtime rates do not apply to casual employees under the Awards;
  - (b) decline to make the variations proposed by the AWU; and
  - (c) as set out in each of their submissions dated 20 January 2017, amend the Revised Exposure Drafts of the Awards so as to revert to the position that the

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<sup>11</sup> FIA Exposure Draft at 8.1.

employment of casual employees is not restricted by limitations on ordinary hours or overtime rates.

15. In the alternative, if the Commission determines to make variations imposing restrictions on overtime rates on casual employees, Tennis Australia and Gymnastics Australia submit that these should be as non-restrictive as possible. In particular:
- (a) to the extent the Commission determines to impose a limitation of 38 hours per week, this should be able to be averaged over 4 weeks in the same way as full-time and part-time employees;
  - (b) to the extent the Commission determines to impose limitations on ordinary hours for casual employees, such limitations should not extend to preventing casual coaches covered by the FIA from working over 5 days per week;
  - (c) to the extent the Commission determines to impose overtime rates on casual employment under the Awards, it should be in substitution for and not as well as the casual loading.

## **SPORTING ORGANISATIONS AWARD 2010**

### ***Proposed variation to ordinary hours***

16. In respect of the SOA, Tennis Australia submits that casual employees should not be precluded from working in excess of 38 hours should they wish to do so from time to time, provided that such additional hours are reasonable, having regard to the factors set out at section 62 of the FW Act.
17. Otherwise, Tennis Australia seeks the Commission's clarification with respect to the proper operation of clauses 8.1 (a) and 13.2(a) of the revised exposure draft Sporting Organisations Award 2015.

### ***Proposed variations regarding coaches***

18. In respect of the SOA, the AWU submits that the exclusion of coaches from the overtime provisions was an oversight of the Commission in the award modernisation process.<sup>12</sup>

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<sup>12</sup> AWU Submissions at [48].

19. This claim has not been advanced by the AWU at any point prior to its submissions of 27 January 2017.
20. The AWU has led no evidence in respect of the exclusion of coaches from the entitlement to overtime rates. Parties to these proceedings, and other sporting organisations which have not been involved in these proceedings to date, have had no opportunity to lead evidence regarding the merits of this exclusion.
21. The AWU has not provided any substantive submission or evidence that this amendment is necessary to achieve the modern awards objective. In those circumstances this claim ought to be dismissed.

## **FITNESS INDUSTRY AWARD 2010**

### **Purported entitlement of casual employees to overtime**

22. In respect of the entitlement to overtime, the AWU has submitted that:
  - (a) casual employees ought to receive compensation for working overtime in the same circumstances in which it is afforded to part-time and full-time employees;<sup>13</sup>
  - (b) the award modernisation proceedings and relevant pre-reform awards do not suggest that the ordinary hour provisions do not apply to casual employees;<sup>14</sup>
  - (c) the imposition of a limitation of 38 ordinary hours is necessary to avoid excluding s 62 of the FW Act, in breach of s 55;<sup>15</sup>
  - (d) the imposition of restrictions on ordinary hours is necessary to meet s 147 of the FW Act;
  - (e) not providing overtime rates to casual employees is contrary to the modern awards objective, in particular:
    - (i) the need to take into account the relative living standards and needs of the low paid;

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<sup>13</sup> AWU Submissions at [9]-[11].

<sup>14</sup> AWU Submissions at [42] and [44].

<sup>15</sup> AWU Submissions at [24] and [27].

- (ii) the need to provide additional remuneration for employees working overtime and on weekends and public holidays;<sup>16</sup> and
- (iii) there will be no increase to actual employment costs as it considers that the ordinary hours and overtime already apply to casual employees.

***Distinction between casual and other employees***

23. The AWU submits that, in the absence of a rationale to the contrary, casual employees ought to receive overtime in the same circumstances in which part-time and full-time employees receive overtime. Tennis Australia and Gymnastics Australia refer to and rely on the TA Comments and GA Comments, which demonstrate that the current position in the FIA is that casual employees do not have restrictions on their ordinary hours and are not entitled to overtime rates. Accordingly, the AWU bears the onus of demonstrating that it is necessary for casual employees to receive overtime rates.<sup>17</sup>
24. In this regard, the AWU relies heavily on the decision of a Full Bench of the Commission in the 2012 Transitional Review of Modern Awards (**SCHCDS Decision**)<sup>18</sup> in respect of the *Social, Community, Home Care and Disability Services Industry Award 2010 (SCHCDS Award)*.
25. Consideration of the proceedings leading to that decision reveal the circumstances in which that decision was made were significantly different from the present circumstances. In particular, the SCHCDS Award provided for ordinary hours that clearly applied to all employees, including casual employees.<sup>19</sup> This is in contrast to the FIA, which clearly limits the restrictions on ordinary hours to full-time and part-time employees.<sup>20</sup>
26. In the SCHCDS Decision, little evidence was led that the imposition of overtime penalty rates for casual employees covered by the SCHCDS Award would represent

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<sup>16</sup> AWU Submissions at [51].

<sup>17</sup> Issues decision at [39].

<sup>18</sup> *Australian Municipal, Administrative, Clerical and Services Union* [2014] FWCFB 379, quoted in the AWU Submissions at [10].

<sup>19</sup> *Social, Community, Home Care and Disability Services Industry Award 2010* [MA000100] as at 24 December 2009 at clause 21.

<sup>20</sup> TA Comments at [4]-[14]; GA Comments at [7]-[19].



a significant cost issue for employers.<sup>21</sup> In contrast, Gymnastics Australia and Tennis Australia have each led evidence that there may be substantial costs to their member clubs if overtime rates for casual employees were imposed on them.<sup>22</sup> In contrast to the SCHCDS Decision, in which little rationale was provided for that award to "*contain a bias in favour of casual employment*", the evidence of Gymnastics Australia and Tennis Australia is that the nature of employment as a coach makes casual arrangements more appropriate.<sup>23</sup>

27. Further, we note that the Full Bench in the SCHCDS Decision took into account the fact that almost identical provisions in the *Aged Care Award 2010* had been varied by consent in 2010 so as to provide overtime for casual employees.<sup>24</sup> Those provisions are not in the same terms as those found in the FIA.
28. In respect of the FIA, the Commission has accepted that there is a rationale for differentiating between casual employees and others. This is clear from the fact that the 30% loading applies to casual employees' work on weekends, instead of the higher rates provided for full-time and part-time employees.<sup>25</sup>
29. In the circumstances, the reasoning in the SCHCDS Decision ought to be confined to the particular facts of that application and the SCHCDS Award.
30. In the alternative, if the Commission were minded to adopt the reasoning in the SCHCDS Decision, we note the Full Bench's finding at [44] that:

*In all the circumstances, we think a conservative approach is called for. We have decided to vary the SCHCDS Award to provide for a regime for overtime penalty rates which operates **in substitution for the payment of the casual loading** [emphasis added].*

31. As such, if the Commission determined that overtime ought to be payable to casual employees, it ought to be in substitution for the payment of the casual loading.

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<sup>21</sup> SCHADS Decision at [40].

<sup>22</sup> Witness Statement of Steven Marquis at [24]; Witness Statement of Brooke Irvine at [34]- [36].

<sup>23</sup> Witness Statement of Steven Marquis at [16]; Witness Statement of Brooke Irvine at [33].

<sup>24</sup> PR995161; Transcript of SCHCDS Decision proceedings (10 December 2013) at PN109-PN111.

<sup>25</sup> FIA at clauses 13.3 and 26.3.

**Pre-reform awards**

32. The AWU refers to two pre-reform awards that were considered by the Australian Industrial Relations Commission in the award modernisation process for the FIA, being the notional agreements preserving the *Health and Fitness Centres, Swim Schools and Indoor Sports Award – State 2005*<sup>26</sup> (**QLD NAPSA**) and the *Health Fitness and Indoor Sports Centres (State) Award*<sup>27</sup> (**NSW NAPSA**).<sup>28</sup>
33. Tennis Australia and Gymnastics Australia note that the *Fitness Industry (Victoria) Interim Award 2000*<sup>29</sup> (**VIC NAPSA**) was also a relevant NAPSA considered by the Commission. In particular, the VIC NAPSA provided at clause 12.2.4 that the overtime provisions of the VIC NAPSA did not apply to casual employees.
34. To the extent that the pre-reform awards are relevant to the 4 yearly review of modern awards, the VIC NAPSA demonstrates that the approach taken in making the FIA was not without precedent.

**The FIA does not currently exclude the NES**

35. The AWU has submitted that by not restricting ordinary hours to 38 hours, the FIA excludes s 62 of the FW Act, a provision of the National Employment Standards (**NES**). If so, this would amount to a breach of s 55 of the FW Act.
36. This submission misunderstands the effect of s 62 of the FW Act. The section relevantly provides that:

(1) *An employer must not request or require an employee to work more than the following number of hours in a week unless the additional hours are reasonable:*

...

(b) *for an employee who is not a full-time employee—the lesser of:*

(i) *38 hours; and*

(ii) *the employee's ordinary hours of work in a week.*

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<sup>26</sup> AN140142.

<sup>27</sup> AN120240.

<sup>28</sup> AWU Submissions at [31].

<sup>29</sup> AP811317CRV.

37. Section 62(1) does not provide an entitlement for ordinary hours to be less than 38 hours per week. Instead, it provides that an employer may not request or require an employee to work more than the lesser of 38 hours or their ordinary hours, unless the request or requirement is reasonable.
38. Section 62(3) does not provide that employees must be paid overtime rates when they work in excess of their ordinary hours. Instead, it sets out at s 62(3)(d) that any overtime payments will be taken into account in determining whether additional hours are reasonable.
39. Accordingly, the protection in s 62 of the FW Act is that employees cannot be required to work in excess of 38 hours (or their ordinary hours) unless the requirement is reasonable. This protection is not excluded if the ordinary hours of casual employees under the FIA are permitted to be more than 38 hours in a week.

***The proposed variations are not necessary to meet the requirements of s 147***

40. The AWU has submitted that by not restricting the daily and weekly hours of casual employees, the FIA fails to meet the requirements of s 147 of the FW Act.
41. As noted by the AWU in its submissions dated 19 April 2016, section 147 of the FW Act provides:

*A modern award must include terms specifying, or providing for the determination of, the ordinary hours of work for each classification of employee covered by the award and each type of employment permitted by the award.*

42. In the event that the Commission determines that the FIA does not currently meet the requirements of section 147 of the FW Act, Gymnastics Australia submits that the AWU's proposed variation is unnecessary to meet that requirement.
43. The use of "ordinary hours" in section 147 of the FW Act is not directed at placing limitations on when ordinary hours may be worked so as to give rise to an entitlement to overtime. Rather, it is directed at determining an employee's entitlements under the FW Act (see the legislative Note to this clause), such as entitlements to:
- (a) refuse to work unreasonable additional hours (s 62);
  - (b) an appropriate "safe job" for pregnant employees (s 81);
  - (c) accrual and payment of annual leave (ss 87 and 90);

- (d) accrual and payment of personal leave (*ss 96 and 99*);
- (e) redundancy pay (*s 119*).

44. Accordingly, if the Commission determines that it is necessary to vary the FIA so as to meet section 147 of the FW Act, Gymnastics Australia submits that variation ought:

- (a) only be to the extent necessary to achieve the above objects of section 147;
- (b) make it clear that working outside of those hours does not entitle the casual employee to overtime rates.

45. If the Commission determines that it is necessary to impose limitations on the ordinary hours that may be worked, these limitations should vary the FIA as little as possible and be limited to the maximum of 38 hours per week initially proposed by the AWU. In particular, there is no basis for these limitations to impose a maximum number of 10 hours per day or limitation of 5 days per week. Further, the limitation of 38 hours per week must be able to be averaged over 4 weeks, as is the case for full-time and part-time.

#### **Modern awards objective**

46. Any proposed variations to the FIA must be necessary to achieve the modern awards objective (*s 138(1)* of the FW Act). The modern awards objective is to "*ensure that modern awards, together with the National Employment Standards, provide a fair and minimum safety net of terms and conditions*" taking into account the factors listed in *s 134(1)* of the FW Act.

47. Tennis Australia and Gymnastics Australia have led evidence of the need for flexible working practices, the impact on business of these changes, and how this will affect the employment of casual employees.

48. In contrast, the AWU has provided no evidence of the impact regarding the living standards of the low paid or how the proposed variations will allegedly increase social inclusion.

49. Tennis Australia and Gymnastics Australia submit that on balance, the variations proposed by the AWU and arising from the Exposure Draft ought not be made.

### ***Living standards of the low paid***

50. The AWU argues that the living standards and needs of the low-paid (s 134(1)(a)) mean that "*the impact [of] reducing their entitlements to overtime is significant*".<sup>30</sup> This argument:
- (a) rests on the assumption that casuals are currently entitled to overtime in the FIA, which does not appear to be the case; and
  - (b) is unsupported by any evidence of the living standards and needs of the low paid in this industry.

### ***Social inclusion***

51. The AWU submits that the proposed variations will promote social inclusion through increased workforce participation (s 134(1)(c)) on the basis that the alternative to paying overtime rates is to increase the amount of employees at the workplace.<sup>31</sup>
52. The evidence of Tennis Australia and Gymnastics Australia is that the work of casual employees covered by the FIA fluctuates due to peak periods of work during competitions and tournaments.<sup>32</sup> It is during these periods that casual employees are most likely to work outside of 38 hours per week, over 5 days per week or over 10 hours in a day.
53. Tennis Australia has led evidence that it is difficult for tennis clubs to recruit additional skilled coaching staff in order to meet these peak periods.<sup>33</sup> The position is similar for gymnastics in that it is difficult for gymnastics clubs to recruit and train additional coaching staff. The AWU has led no evidence to support its supposition that clubs would simply be able to recruit additional staff during these periods.
54. Contrary to the AWU's submission the proposed variation to restrict casual employment to 5 days per week will reduce social inclusion. It has been established that clubs rely on casual employees due to industrial factors such as the demographics of coaches and the demand for tennis and gymnastics coaching

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<sup>30</sup> AWU Submissions at [60].

<sup>31</sup> AWU Submissions at [63].

<sup>32</sup> Witness Statement of Steven Marquis at [18]; Witness Statement of Brooke Irvine at [36].

<sup>33</sup> Witness Statement of Steven Marquis at [22].

services.<sup>34</sup> It has also been established that it is common for such employees to work across more than 5 days per week due to the needs of students and athletes for coaching and the employees' own rostering requirements.<sup>35</sup> Accordingly, the proposed variation may have the effect of discouraging clubs from offering shifts to casual employees for more than 5 days of the week even if such employees wish to work those shifts.

***Flexible work practices and the need to encourage collective bargaining***

55. The modern awards objective requires the Commission to take into account:
- (a) the need to encourage collective bargaining (s 134(1)(b)); and
  - (b) the need to promote flexible modern work practices (s 134(1)(d)).
56. The AWU submits that any need of the employers covered by the FIA to flexible work practices can be achieved through collective bargaining.<sup>36</sup> Tennis Australia and Gymnastics Australia submit that the AWU Submission fails to appropriately balance the two factors.
57. The Submissions of Tennis Australia and Gymnastics Australia each dated 20 January 2017 demonstrate the need for employers covered by the FIA to operate flexibly to:
- (a) meet the needs of students and athletes;
  - (b) operate effectively during peak periods of employment; and
  - (c) provide flexible rosters that fit into the lives of casual employees and the industrial demand for coaching over more than 5 days of the week.
58. It is inappropriate to encourage collective bargaining through severely limiting the capacity for employers and employees to agree to flexible working practices.

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<sup>34</sup> Witness Statement of Steven Marquis at [16]; Witness Statement of Brooke Irvine at [31]-[33].

<sup>35</sup> Witness Statement of Steven Marquis at [19] and [21]; Witness Statement of Brooke Irvine at [33]-[35].

<sup>36</sup> AWU Submissions at [61]-[62] and [64].

***Providing additional remuneration***

59. The AWU submits that the proposed variations are necessary in light of the need to provide additional remuneration for certain work, including overtime, unsociable hours, weekends, shifts etc (s 134(1)(da)).
60. Tennis Australia and Gymnastics Australia submit that in respect of casual employees, this factor is outweighed by the other factors that the Commission must consider in the modern awards objective.
61. In respect of the FIA, Tennis Australia and Gymnastics Australia note that casual employees working on weekends and public holidays currently receive a 30% loading as opposed to the higher loadings received by part-time and full-time employees. It is submitted that this factor is sufficiently met by this increased loading.

***The proposed variations will have a substantial impact on business***

62. The AWU submits that the proposed variations will not have a substantial effect on business (s 134(1)(f)).<sup>37</sup>
63. This submission rests on the premise that the FIA does not currently provide for overtime. Tennis Australia and Gymnastics Australia reject this assertion on the basis that the FIA evinces a clear intention that the restrictions on ordinary hours do not apply to casual employees.
64. Tennis Australia and Gymnastics Australia refer to and repeat each of their Submissions in Support dated 20 January 2017. These submissions clearly set out the impact on business which will arise if the proposed variations are made, including:
- (a) reduced productivity by restricting the classes that may be run;
  - (b) increased employment costs by providing an entitlement to overtime which has not previously existed;
  - (c) placing a greater regulatory burden on small employers which may have to implement more complex rostering systems; and

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<sup>37</sup> AWU Submissions at [69]-[70].

- (d) reduced opportunities for the community to access tennis and gymnastics facilities.

65. These impacts on business are a strong reason to refuse the proposed variations.

***The need to ensure a simple and easy to understand modern award system***

66. The AWU submits that the proposed submissions will ensure a simple and easy to understand modern award system (s 134(1)(g)) by providing internal consistency within the FIA.<sup>38</sup>

67. Tennis Australia and Gymnastics Australia likewise submit that the variations proposed in each of their submissions dated 20 January 2017, which are in direct opposition to these variations, will also achieve a simple and easy to understand modern awards system.<sup>39</sup>

68. This is accordingly a neutral consideration.

***Neutral factors***

69. Tennis Australia and Gymnastics Australia submit that the following are neutral factors:

- (a) the principle of equal remuneration for work of equal or comparable value (s 134(1)(e)); and
- (b) the likely impact of any exercise of modern award powers on employment growth, inflation and the sustainability, performance and competitiveness of the national economy (s 134(1)(h)).

7 February 2017

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<sup>38</sup> AWU Submissions at [72].

<sup>39</sup> Submissions of Tennis Australia dated 20 January 2017 at [27]-[30]; Submissions of Gymnastics Australia dated 20 January 2017 at [37]-[40].