



SUBMISSION ON BEHALF OF THE AUSTRALIAN FEDERATION OF
EMPLOYERS AND INDUSTRIES (AFEI)

AM2008/78 – FITNESS INDUSTRY AWARD 2010

AWARD MODERNISATION

AFEI
Australian Federation of
Employers & Industries

**BEFORE THE AUSTRALIAN INDUSTRIAL RELATIONS
COMMISSION
AWARD MODERNISATION**

**MATTER NO. AM 2008/78 – SUBMISSION CONCERNING
EXPOSURE DRAFT FITNESS INDUSTRY AWARD 2010**

1. The Australian Federation of Employers and Industries (AFEI) has earlier provided written and oral submissions to the Commission concerning AM 2008/78. AFEI make the following submissions concerning the Exposure Draft Fitness Industry Award 2010 (the Exposure Draft).

2. The Exposure Draft covers industries in which the nature of employment regularly requires short and broken engagements, particularly for fitness instructors. Clause 18.4 of the Exposure Draft provides for a Broken Shift Allowance for employees working a rostered broken shift. The part-time clause of the Exposure Draft (clause 12) requires that employees be engaged for a minimum of three consecutive hours on any shift. Therefore, the Exposure Draft allows for broken shifts, but for part-time employees each part of a shift must be at least 3 hours in duration. This restriction in engaging part-time employees on broken shifts will restrict the flexibility needed in the industry and create significant cost increases for employers.

3. AFEI submits that the Exposure Draft should provide the flexibility needed for part-time employees and allow for broken shifts with a total daily engagement of three hours. We propose that the Exposure Draft be amended to reflect the Notional Agreement Preserving Health, Fitness & Indoor Sports Centres (State) Award in New South Wales in its treatment of broken shifts, and insert the following subclause in Clause 12:

"A part-time employee can be required to work more than one shift on any day. Provided that the total shifts on any day shall not be less than three hours in duration and there shall not be more than two such shifts per day with a span of 12 hours from the start of the first shift to the end of the second such shift, exclusive of any breaks".

4. The engagement of part-time employees and need for flexibility in their engagement is integral to the efficient operation of the Fitness Industry. The Exposure Draft in clause 12.6 requires that all time worked in excess of the agreed part-time hours will be paid at overtime rates. This clause does not correspond with the part-time overtime provisions in the current awards that apply widely across the Fitness Industry.
5. Currently, the following awards allow for part-time employees to work up to the full-time maximum daily or weekly hours before being entitled to payment at overtime rates:
 - Notional Agreement Preserving Health, Fitness & Indoor Sports Centres (State) Award (New South Wales);

- Notional Agreement Preserving Health, Recreation & Fitness Award (South Australia); and
 - Notional Agreement Preserving Health & Fitness Centres Award (Tasmania).
6. Further, the below awards allow for part-time employees to work up to 34 hours and 32 hours per week, respectively, before becoming entitled to overtime payments:
- Notional Agreement Preserving Health Attendants Award 1979 (Western Australia); and
 - Notional Agreement Preserving Health & Fitness Centres, Swim Schools & Indoor Sports Award – State 2005 (Queensland).
7. AFEI submits that the Exposure Draft be amended to reflect these above instruments and allow for part-time employees to work up to full-time equivalent hours before becoming entitled to overtime payments, thus ensuring the flexibility needed in this industry.
8. Alternatively, we submit that the Commission may see fit to amend the Exposure Draft to reflect the industrial instruments operating in Western Australia and Queensland, allowing for up to 34 hours to be worked per week by part-time employees without payment of overtime.

9. We submit that the Exposure Draft be amended to allow for greater flexibility in the engagement of part-time employees and to better reflect the current entitlements from the major awards in the industry. The imposition of overtime penalties for any time worked in excess of the agreed hours of part-time employees will lead to significant cost increases for employers in the Fitness Industry.

16 October 2009