

**IN THE FAIR WORK COMMISSION  
MATTER NO: AM2014/227.**

**Fair Work Act 2009**

**Section 156 – 4 yearly review of modern awards**

**Fitness Industry Award 2010**

**Submission on behalf of Australian Swim Schools Association Ltd.  
Lodged by HMT Consulting.**

**CONTACT DETAILS:**

**Lodged by Michael Taylor – Principal Consultant.**

**Address: P.O Box 1324, Mooloolaba, Qld, 4557.**

**Telephone: (07) 54444341.**

**Email: [hmtconsulting@optusnet.com.au](mailto:hmtconsulting@optusnet.com.au)**

**INTRODUCTION:**

1. These submissions are made on behalf of the Australian Swim Schools Association Ltd (ASSA), whose member organisations have previously been represented in these proceedings under the banner of 'Aussie Aquatics'.
2. On 14<sup>th</sup> December, 2016, Deputy President Clancy issued directions in regard to technical and drafting claims relating to the revised Exposure draft published on 29<sup>th</sup> July 2016 in respect of the *Fitness Industry Award 2010*.
3. Further to the directions set down by the Deputy President we provide the following submissions in regard to Direction 1. (i).
4. **Technical and drafting issues**

<b><u>CLAUSE NO. &amp; TITLE.</u></b>	<b><u>COMMENT.</u></b>
<b>PART 1 – Application and operation.</b>	
1. Title and commencement.	No comment.
2. The National Employment Standards and this award.	No comment.
3. Coverage.	Sub-clause 3.4 should be replaced with the following: “This award does not cover an employee who is employed by the employer to provide administrative and other operational support outside of fitness centres, group fitness organisations, weight loss/control centres, aquatic centres, indoor sports centres, golf driving ranges, dance centres, martial arts centres, recreational camps, tennis clubs and centres.”
4. Award flexibility.	No comment.
5. Facilitative provisions.	No comment.
<b>PART 2 – Types of Employment and Classifications.</b>	
6. Classifications.	Support the changes made to sub-clause 6.2, including substitution of “on” for “of” in (b).
7. Types of employment.	No comment.
<b>PART 3 – Hours of Work.</b>	
8. Ordinary hours of work and rostering.	Sub-clause 8.3 should be incorporated as it appears in this draft (without reference to casuals).
9. Breaks.	No comment.
<b>PART 4 – Wages and Allowances.</b>	
10. Minimum wages.	No comment.
11. Allowances.	Sub-clause 11.1 to have added prior to the first full stop: “, provided that employees engaged under sub-clause 7.3 (as part-time), shall be paid all

	allowances on a pro-rata, hourly, basis.” Please refer to submissions below.
12. Superannuation.	No comment.
<b>PART 5 – Penalties and Overtime.</b>	
13. Penalty rates.	No comment.
14. Overtime.	Support incorporation of the new sub-paragraphs (a) & (b) as they now appear in the draft, in lieu of the original drafting, in sub-clause 14.3 No comment in regard to the balance of clause 14.
<b>PART 6 – Leave, Public Holidays and Other NES Entitlements.</b>	
15. Annual leave.	Support clause 15 in its entirety as redrafted.
16. Personal/carer’s leave and compassionate leave.	No comment.
17. Community service leave.	No comment.
18. Public holidays.	No comment.
19. Termination of employment.	No comment.
20. Redundancy.	No comment.
<b>PART 7 – Consultation and Dispute Resolution.</b>	
21. Consultation.	No comment.
22. Dispute resolution.	No comment.
<b>Schedule A – Classification Definitions.</b>	<p>The exposure draft replicates the current contents of the Schedule B of the 2010 award, together with <u>some, but not all</u>, amendments put forward to the Commission in March &amp; May 2016 by parties, in response to the draft published on 18<sup>th</sup> December 2015.</p> <p>All underscored amendments in the exposure draft are supported; concurrently the following additional changes are sought (refer to submissions below):</p> <p>A.1.1 (a) add the following: “.... And assisting with swimming and water safety teaching;” further, add: (x) “swimming and water safety teaching”.</p> <p>A.2.1 (delete) and replace with the following:</p> <p>“An employee at this level has qualified as a swimming and water safety teacher (which can include specialist qualifications relating to the likes of babies and toddlers, learners with disability, and towards competitive swimming), or swimming coach, or a pool plant operator, or has completed 456 hours within the scope of Level 1.”</p>

A.2.2 (b) at (ii) add the words “pool plant operating”;  
Further:

Delete (xiii) and substitute the following words:

“(xiii) teaching swimming and water safety, being the holder of a current qualification (with the relevant industry Competencies), coaching ‘junior’ squad level swimmers, being the holder of a current recognised swimming coaching qualification.”

A3.3 delete and substitute the following:

An employee at this level may also be:

“(a) a swimming and water safety teacher being a holder of any current qualification with the relevant Industry Competencies, who has:

(i) attended five hours per year of professional development (as recognised by a national industry body) and 350 hours of teaching at Level 2, or

(ii) who holds a second recognised swimming and water safety teaching qualification and delivered 350 hours of swimming and water safety teaching; or

(b) coaching swimmers being a holder of a current recognised swimming coaching qualification.

(c) a pool lifeguard who has been appointed to the position of pool lifeguard by the employer and has completed a nationally-recognized Lifeguarding qualification.

Any dispute concerning an employee’s entitlement to be paid at Level 3 as a swimming teacher or swimming coach may be referred to the Fair Work Commission for determination. The Fair Work Commission may require an employee to demonstrate to its satisfaction that the employee utilises skills and knowledge required at this level.”

A.5.3 delete and substitute the following:

“An employee at this level may also be:

(a) a swimming and water safety teacher, being a holder of any current qualification with the

	<p>Industry Competencies:</p> <ul style="list-style-type: none"> <li>(i) attended five hours per year of professional development (as recognised by a national industry body) and performed 500 hours of swimming teaching at level 3, or</li> <li>(ii) who holds a third recognised swimming and water safety teaching qualification and performed 500 hours of swimming teaching at level 3 ; or</li> </ul> <p>(b) a swimming coach being a holder of a current recognised swimming coaching qualification, who has:</p> <ul style="list-style-type: none"> <li>(i) performed 12 hours per year of recognised workshops and 500 hours of coaching beginners and attended a recognised seminar/conference within the past 12 months, or</li> <li>(ii) delivered 700 hours of coaching to swimmers.</li> </ul> <p>(c) a senior pool lifeguard, being a holder of industry-recognized pool lifeguard qualifications as detailed in 3.3 (c) and who has been appointed by the employer to lead a team comprised of qualified pool lifeguards, and/or persons undertaking a nationally-recognized course of Lifeguarding to become pool lifeguards.</p> <p>Any dispute concerning an employee’s entitlement to be paid at Level 4 as a swimming teacher or swimming coach may be referred to the Fair Work Commission for determination. The Fair Work Commission may require an employee to demonstrate to its satisfaction that the employee utilises skills and knowledge required at this level.”</p>
<p><b>Schedule B – Summary of Hourly Rates of Pay.</b></p>	<p>Schedule B2.1, in the absence of further changes to clause 8, should not contain ‘overtime rates’ relating to Casual employees.</p>
<p><b>Schedule C – Summary of Monetary Allowances.</b></p>	<p>Consistent with views expressed in relation to clause 11, C.1 <u>may</u> require redrafting to facilitate payments of less than a “week” or a “day”, to accommodate part-time employment.</p>

<b>Schedule D – Supported Wage System.</b>	No comment.
<b>Schedule E – National Training Wage.</b>	No comment.
<b>Schedule F – 2016 Part-day Public Holidays.</b>	Is this provision now redundant?
<b>Schedule G – Definitions.</b>	Incorporate an additional definition –‘centres’ in the following terms: “for the purposes of the Classification Definitions appearing in Schedule A – <b>centres</b> ’ shall mean locations, organisations or activities, as listed in sub-clause 3.2 under the definition of <b>fitness industry.</b> ”

5. On 8<sup>th</sup> March, 2016, correspondence was forwarded on behalf of Aussie Aquatics to the Office of the President of the Commission, detailing responses to the Exposure draft published on 18<sup>th</sup> December 2015. Subsequently Aussie Aquatics/ASSA has been active participants in proceedings before the Commission and in regular dialogue with other interested parties. Consistent with the comments recorded at point 4, above, the following matters are still to be resolved:
- Coverage (in regard to the wording of sub-clause 3.4 of the Exposure draft);
  - Allowances and who they are paid to casual and part-time employees (sub-clauses 7.3, 11.1 & Schedule C);
  - Classification Definitions (as they relate to Swim Teachers & Coaches, and their assistants and other employees of Swim Schools) (Schedule A & Schedule G).
6. All other matters raised in the 8th March correspondence have been dealt with directly or indirectly in the Exposure draft.