

**STRONGER
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IN THE FAIR WORK COMMISSION

Matter No: AM2014/227
Section 156 – Fair Work Act 2009 – 4 yearly
review of modern awards – Fitness Industry Award

SUBMISSIONS OF THE AUSTRALIAN WORKERS' UNION (AWU)

Response by The Australian Workers' Union to proposed
classification definitions relating to swimming coaches submitted
by the ASSA, together with its proposal for amendments to the
classification structure for swimming coaches.

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Background

1. These additional submissions of The Australian Workers' Union (**AWU**) are made pursuant to the Directions in AM2014/227 issued on 7 February 2017 in regards to the *Fitness Industry Award 2010* (**'Fitness Award'**).
2. The AWU was directed to file written submissions and any evidence pertaining to its response to the proposed Classification definitions relating to swimming coaches submitted by the ASSA together with its proposal for amendments to the classification structure for swimming coaches, on or before 24 February 2017.
3. In accordance with these directions, the AWU relies on witness statement of Michael O'Connor.

Proposal of the Australian Swim Schools Association (ASSA)

4. The ASSA seeks to vary the definitions contained in schedule B (Classification Structure and Definitions) in particular B.1 Level 1 B.1.1(a) of the Fitness Award by including a definition of "Trainee Swim Teacher". The ASSA seeks to include the words "*and assisting with swimming and water safety teaching*". At the moment there is no provision for Trainee Swim Teacher in the Fitness Award. The current award classification structure and definitions are as follows:

B.1 Level 1

B.1.1 An employee at this level works under direct supervision with specific instructions and procedures and after appropriate in-house training. Duties may include any or all of the following:

(a) general counter duties including reception, taking bookings, members and membership enquiries, sale of products, activities organising and customer liaison;

(b) general tidying/cleaning of immediate work area;

(c) undertaking structured training/learning in the following areas:

(i) clerical assistant duties including switchboard operation, reception, information services, taking bookings;

(ii) providing general assistance to employees of a higher grade, not including cooking or direct service to customers;

(iii) cleaning, tidying and setting up of kitchen, food preparation and customer service areas, including cleaning of equipment, crockery and general utensils;

(iv) assembly and preparation of ingredients for cooking;

(v) handling pantry items and linen;

(vi) setting and/or wiping down tables, removing food plates, emptying ashtrays and picking up glasses;

(vii) general cleaning, gardening and labouring tasks; and

(viii) door duties, attending a cloakroom or car park not involving the handling of cash.

B.2 Level 2

B.2.1 An employee at this level has completed 456 hours training at Level 1 so as to enable the employee to perform work within the scope of this level or has a swim teacher or coach qualification.

B.2.2 An employee at this level:

(a) performs work above and beyond the skills of an employee at Level 1 and to the level of their training; and

(b) works from instructions or procedures and under direct supervision either individually or in a team environment, and is primarily engaged in one or more of the following duties:

(i) assisting with classes and directing activities in a centre;

(ii) attending to equipment and displays, e.g. pool attendant;

(iii) providing customer advice, sales and services;

(iv) operating a switchboard and/or telephone paging system;

(v) clerical duties, involving intermediate keyboard skills with instructions;

(vi) program/ticket selling and general sales involving receipt of monies and giving change, including operation of cash registers, use of electronic swipe input devices;

(vii) laundry and/or cleaning duties involving the use of cleaning equipment and/or chemicals;

(viii) maintaining general presentation of grounds;

(ix) door duties, attending a cloak room or car park;

(x) serving from a snack bar, buffet or meal counter;

(xi) supplying, dispensing or mixing of liquor, including cleaning of bar area and equipment, preparing the bar for service, taking orders and serving drinks;

(xii) non-cook duties in a kitchen;

(xiii) beginner swimming and water safety teacher, being a holder of any current qualification with the following competencies:

SRC AQU 003B Respond to an aquatic emergency using basic water rescue techniques;

SRC AQU 008B Apply the principles of movement in water to aquatic activities;

SRC AQU 010B Instruct water safety and survival skills;

SRC AQU 009B Instruct the strokes of swimming; and

SRC CRO 007B Operate in accordance with accepted instructional practises, styles and legal and ethical responsibilities.

(xiv) coaching beginner swimmers (including mini and junior squads), being a holder of a current Australian Swimming Coaches and Teachers Association (ASCTA) "Junior Squad and Assistant Coach" qualification or equivalent.

B.3 Level 3

B.3.1 An employee at this level works under general supervision which requires operation within defined areas of responsibility with adherence to established guidelines and procedures and who is employed to carry out work associated with the centre's operations.

B.3.2 An employee at this level is able to fulfil a role at Level 1 and 2 where relevant and supervises Level 1 and 2 employees where requested.

B.3.3 An employee at this level may also be:

(a) an intermediate swimming and water safety teacher, being a holder of any current qualification with the competencies detailed in clause B.2.2(b)(xiii) above, who has:

(i) performed 12 hours per year of recognised workshops and 250 hours of swimming and water safety teaching and who holds a second recognised instructing qualification, or

(ii) delivered 350 hours of swimming and water safety teaching; or

(b) a coach of beginner swimmers (including mini and junior squads), being a holder of a current ASCTA "Bronze Licence for Coaching" or equivalent.

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

B.4 Level 3A

B.4.1 An employee at this level performs the duties of a Level 3 and who:

(a) holds an Fitness Industry AQF Certificate Level III qualifications relevant to the classification in which they are employed or equivalent; and

(b) utilises the skills and knowledge derived from the Fitness Industry AQF Certificate Level III competencies relevant to the work undertaken at this level.

B.4.2 Any dispute concerning an employee's entitlement to be paid at Level 3A 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 derived from the Fitness Industry Certificate III competencies, and that these are relevant to the work the employee is doing.

B.5 Level 4

B.5.1 An employee at this level works under limited supervision and guidance and is required to exercise initiative and judgment in the performance of their duties and who is employed to carry out work associated with the centre's operations.

B.5.2 An employee at this level receives broad instructions and their work is checked intermittently.

B.5.3 An employee at this level may also be:

(a) an experienced swimming and water safety teacher, being a holder of any current qualification with the competencies detailed in clause B.2.2(b)(xiii) above, who has:

(i) performed 12 hours per year of recognised workshops and 500 hours of swimming and water safety teaching and who holds a third recognised teaching qualification, or

(ii) delivered 700 hours of swimming and water safety teaching; or

(b) a coach of beginner swimmers (including mini and junior squads), being a holder of a current ASCTA "Bronze Licence for Coaching" or equivalent, who has:

(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

(ii) delivered 700 hours of coaching beginners.

(c) a senior pool lifeguard, being a holder of industry-recognized pool lifeguard qualifications 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.

B.6 Level 4A

B.6.1 An employee at this level performs the duties of a Level 4:

(a) holds an Fitness Industry AQF Certificate Level IV qualifications relevant to the classification in which they are employed or equivalent;

(b) utilises the skills and knowledge derived from the Fitness Industry AQF Certificate Level IV competencies relevant to the work undertaken at this level.

B.6.2 Any dispute concerning an employee's entitlement to be paid at Level 4A 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 derived from the AQF Certificate Level IV competencies, and that these are relevant to the work the employee is doing.

B.7 Level 5

B.7.1 An employee at this level:

(a) holds a Fitness Industry AQF Diploma level or equivalent;

(b) utilises the skills and knowledge derived from the Fitness Industry AQF Diploma Level relevant to the work undertaken at this level;

(c) is employed to carry out work associated with the classification of Fitness Trainer or Fitness Specialist; and

(d) has demonstrated an ability to train or develop programs for special groups.

B.7.2 An employee at this level exercises high levels of initiative and judgment with broad instruction in the performance of their duties. An employee at this level would be able to supervise Level 4 employees where requested.

B.8 Level 6

B.8.1 An employee at this level has duties which include but are not limited to:

(a) supervision of front desk, including customer liaison and rostering of front office staff;

(b) supervision, training and co-ordination (including rostering) of employees within their respective work area to ensure delivery of service;

(c) those of a trade qualified person in a single trade stream and the giving of trade directions to Level 1 to 5 employees;

(d) supervision of floor staff; or

(e) overseeing the day to day activities and operations of the business.

B.9 Level 7

B.9.1 An employee at this level is engaged in supervising, training and coordinating employees, is responsible for the maintenance of service and operational standards and exercises substantial responsibility and independent initiative and judgment with a requisite knowledge of their specific field and of the employer's business.

B.9.2 An employee at this level has:

(a) worked or studied in a relevant field and/or has specialist knowledge, qualifications and experience;

(b) formal trade or technical qualifications relevant to the employer in more than one trade or technical field, which are required by the employer to perform the job; or

(c) specialist post-trade qualifications which are required by the employer to perform the job and organisation or industry specific knowledge sufficient for them to give advice and/or guidance to their organisation and/or clients in relation to specific areas of their responsibility.

B.9.3 Indicative duties at this level are:

(a) general supervision of catering or retail functions;

(b) centre administration involving supervision of staff and systems and co-ordinating events; or

(c) development of in-house training programs for instructors and co-ordinators.

B.10 Employees classified under the provisions of B.2.2(a), B.2.2(b), B.3.3, B.4.1, B.5.3, B.6.1, B.7.1, B.8.1, B.9.2 will hold, at all times, the relevant accreditations required by both

this award's classification descriptors and state and territory legislation permitting work with children (e.g. Child Protection Police Checks). In the event of any employee losing, having suspended, or being refused such accreditation, they will advise their employer(s) within 14 days of such loss, refusal or suspension.

5. The ASSA seeks to vary the definitions contained in B.1 Level 1 B.1.1(a), of the current classification structure which provides the following:
 - (a) *general counter duties including reception, taking bookings, members and membership enquiries, sale of products, activities organising and customer liaison;*
6. ASSA proposes to vary the clause to read as follows:

general counter duties including reception, taking bookings, members and membership enquiries, sale of products, activities organising and customer liaison and assisting with swimming and water safety teaching;
7. The B.1 Level 1 classification is an entry-level classification, which covers employees who do not work directly with customers. This is noted in the definition in B.1.1(c) (ii) which states: *providing general assistance to employees of a higher grade, not including cooking or direct service to customers*".
8. ASSA proposal would have the effect of having "Trainee Swim Teachers" providing a direct service to customers, that is " in the pool working directly with swimmers". This is clearly demonstrated in the witness statement of Michael O'Connor in paragraphs 12 and 13 of his statement.
9. A trainee, during the training period is expected to assist, teach and train within the confines of a swimming lesson, by having direct contact with customers, (swimmers) and providing input into the operation of swimming lessons.
10. The trainee undertakes this type of hands on in the pool training in addition to theory and examination prior to achieving accreditation.
11. The proposed ASSA change to include a new subclause B.1.1 (c) (x) by adding the words "*and swimming and water safety teaching*". Should be rejected for the same reason.
12. An employee who is required to assist with swimming and water safety teaching is clearly required to work directly with customers.
13. The AWU agrees with the ASSA that the insertion of a "trainee swim teacher", definition needs to be included in the classification structure. However we disagree that it should be included in the classification structure at level 1.

The appropriate classification – AWU proposal

- 14. The AWU is seeking the insertion of “trainee swim teacher” at level 2 of the classification structure.
- 15. In addition The AWU is seeking to introduce a new level 2A into the classification structure to cover qualified swimming and water safety teachers.
- 16. The current minimum wages contained in the Award as of 22nd August 2016 are as follows:

Classification level	Minimum weekly wage	Minimum hourly wage
	\$	\$
Level 1	672.70	17.70
Level 2	692.10	18.21
Level 3	743.30	19.56
Level 3A	783.30	20.61
Level 4	815.40	21.46
Level 4A	854.60	22.49
Level 5	900.70	23.70
Level 6	892.90	23.50
Level 7	927.70	24.41

- 17. The AWU submits the appropriate level 2A rate of pay should be \$717.70 per week or \$18.89 per hour. This is based on our understanding that level 2 currently equates approximately to 93% of the standard rate, and the proposed rate of \$18.89 sits at 96.5% of the standard rate.
- 18. The introduction of a new level 2A, at the above rate will have minimal financial impact on employers.
- 19. If the Commission agrees with the submissions of the AWU and the qualified “swim teachers” becomes a level 2A, it would move the current minimum hourly rate from \$18.21 per hour to \$19.56 per hour, this again would have minimal economic impact on employers.
- 20. ASSA also seeks to vary Level 3 classification, in particular B.3.3 by deleting the words “250 hours of swimming and water safety teaching and who holds a second recognised instructing qualification” and replacing it with the words and “350 hours of teaching at level 2 or”. The AWU strongly opposes this change as this would not only disadvantage those employees currently employed at level 3, but would also make it more difficult for employees to progress through the classification structure.

Form of variation proposed

The AWU propose the wording set out below in red to bring effect to our above submissions. The wording provided is marked up to the Exposure Draft for the Fitness Award.

Schedule A – Classification Definitions

...

A.2 Level 2

A.2.1 An employee at this level has completed 456 hours training at Level 1 so as to enable the employee to perform work within the scope of this level or is undertaking training to become ~~or has~~ a swim teacher or coach ~~qualification~~.

...

A.3 Level 2A

A.3.1 An employee at this Level is able to fulfill a role at Level 1 and 2. In addition an employee at this Level is required to hold one of the following qualifications:

- (i) beginner swimming and water safety teacher, being a holder of any current qualification with the following competencies:

SRC AQU 003B Respond to an aquatic emergency using basic water rescue techniques;

SRC AQU 008B Apply the principles of movement in water to aquatic activities;

SRC AQU 010B Instruct water safety and survival skills;

SRC AQU 009B Instruct the strokes of swimming; and

SRC CRO 007B Operate in accordance with accepted instructional practises, styles and legal and ethical responsibilities.

- (ii) coaching beginner swimmers (including mini and junior squads), being a holder of a current Australian Swimming Coaches and Teachers Association (ASCTA) “Junior Squad and Assistant Coach” qualification or equivalent.

Conclusion and modern awards objective

21. Section 134 of the *Fair Work Act 2009* requires the Commission to ensure modern awards, in conjunction with the National Employment Standards, provide a fair and relevant safety net of employment conditions taking into account a list of identified factors.
22. The AWU cannot identify any significant impact on productivity, employment costs or regulatory burden.
23. The AWU's proposed variation is necessary to address an oversight during the award modernisation process and ensure the Fitness Award is fair and relevant for swim instructors.

END

**Australian Workers' Union
23 February 2017**

FAIR WORK COMMISSION

Fair Work Act 2009

S.156- 4 yearly review of modern awards

IN THE MATTER AM2014/227

4 yearly review of modern awards - Fitness Industry Award

WITNESS STATEMENT OF MICHAEL O'CONNOR

I Michael O'Connor of [REDACTED] State of Victoria say as follows:

BACKGROUND

1. I am employed by Paul Sadler Swimland Essendon Pty Ltd as a swimming teacher and deck supervisor. I was employed by the company in 2008 and continue to work for the business currently.
2. This statement specifically relates to swim teachers and trainees who covered by the Fitness Industry Award.
3. I have completed the Paul Sadler Swimland training program and hold all relevant checks and qualifications needed for the position of swimming teacher and deck supervisor (duty manager). My qualifications include:
 - a. Swim Australia
 - b. CPR, Level 2 first aid
 - c. Working with children check.
4. In my employment with Paul Sadler Swimland Pty Ltd I have been extensively involved in the training and the development of new teachers and trainees.

PLACE OF WORK:

5. Paul Sadler Swimland franchisers employ over 600 staff at 13 locations throughout Australia and are the largest 'learn to swim' company in Australia.
6. My wages and conditions are currently covered by the *Paul Sadler Swimland Enterprise Agreement 2013*, which has a nominal expiry date of 1 July 2015. I am aware that the other businesses within the Paul Sadler group have agreements that have the same conditions of employment.

7. Employees of Paul Sadler Swimland are currently trying to negotiate a new agreement. Paul Sadler Swimland has indicated to the bargaining representatives that they are seeking a multi business agreement.
8. Although the current agreement is a standalone agreement, the relevant award for the BOOT is the Fitness Industry Award.

TRAINEES / TRAINING

9. Based on my knowledge of the industry, it's expected that all trainees will complete an extensive training program prior to becoming qualified as a swimming teacher, this includes:
 - a. Theoretical Training
 - b. Theory Examination
 - c. Taking parts of class during operations
 - d. Taking full classes during operations
10. Training to become a fully qualified swim teacher takes between 3-9 months.
11. A trainee, during the training period is expected to assist, teach and train within the confines of a swimming lesson, by having direct contact with customers, (swimmers) and providing input into the operation of swimming lessons.
12. This 'trainee contact' is in addition to the theory and examination required and tested outside of lessons. This is part of the process in a trainee moving towards achieving accredited qualifications to enable them to become a fully qualified swimming teacher.
13. Clearly this type of training requires a trainee to be in direct contact with customers and as a result the issue of which classification in the Fitness Industry Award a 'Trainee' should be covered by becomes an issue.
14. I believe that if trainees are in direct contact with customers but not yet holding the specific qualified accreditation, they certainly should be classified above the level 1 classification contained in the Fitness Industry Award.
15. I have read the submissions of the ASSA in relation to this issue, and cannot agree with their proposition to include a "Trainee Swim Teacher" at level one of the Award, for the reasons I have included above.
16. The proposition put forward by the Australian Worker' Union in response to the ASSA submissions I believe would be the most appropriate action. That is "Trainee Swim Teachers", who have direct contact with customers (swimmers) be included in level 2 of the classification structure and a new level 2A classification be inserted in to the Award to cover qualified swimming teachers.

17. It also should be noted that current qualified swim teachers can move within the current classification structure by holding accredited qualifications and gaining experience as a swimming teacher/ coach. A proposal by employers to amend the requirements needed to reach level 3 and 4, places a further burden on employees to reach a higher classification level.

MICHAEL O'CONNOR