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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

7th June, 2016.

Dear Associate,

**RE: The 4 Yearly Review of the Fitness Industry Award 2010 (AM 2014/227)
[MA000094].**

I write in response to the 'Report To The Full Bench' issued by the Deputy President on 3rd June 2016, and posted on the website on the morning of the 6th.

I was unavailable to participate in the report back proceedings yesterday morning, and therefore take this opportunity to clarify a point for the record, in regard to Item 16 in Attachment 'A'. The Deputy President stated in the report that:

"I note no proposed wording is included in Swim Australia and ASCTA submissions of 26 February 2015."

On 8th March, I wrote to President Ross' office detailing *Aussie Aquatics* position on various aspects of the exposure draft (a copy of the correspondence is attached), including the changes sought in the contents of the classification structure definitions in **Schedule 'A'**. The correspondence was posted shortly thereafter on the web-site.

In my letter of 16th May to the Deputy President, I re-affirmed my Client's position in regard to other matters, by reference to my letter of 8th March to His Honour.

Subsequent to discussions of the interested parties, during May, I understood that all opposition to the changes proposed by '*Aussie Aquatics*' had been withdrawn.

In my absence yesterday, I understand that this matter was drawn to the attention of the Full Bench.

I would very much appreciate it if you could bring this to the Deputy President's attention.

Yours faithfully,



Michael Taylor
Principal Consultant.

Attach.

C.C Mr Ross Gage (to be noted)

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The Associate to His Honour President Ross
Fair Work Commission
11 Exhibition Street
Melbourne Victoria 3000
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8th March, 2016.

Dear Associate,

RE: Response to the Exposure Draft - , relating to the 4 Yearly Review of the Group 3 & 4 Modern Awards (AM 2014/217, and others).

The following responses to the ‘*Exposure Draft - Fitness Industry Award 2015*’, published on 18th December 2015, are put forward on behalf of ‘*Aussie Aquatics*’, (formerly *t/as Swim Australia*), and associated swim school operators around Australia.

Amendments sought to the draft are coloured **green**.

Submissions:

A. 1 We contend that there is a conflict between 7.3 (a) (iii) & 11.1, which has potential to cause confusion and uncertainty for employers of part-time staff. This is particularly the case as conflicting views have previously been provided by the Office of the Fair Work Ombudsman, in regard to the validity of paying a lesser figure than those published as “*per week*” or “*per day*” to non-fulltime (including casual) employees, under the current award provisions.

This tension has been carried across to the Exposure Draft:

7.3 Part-time employees

(a) A part-time employee is an employee who:

(iii) “*receives, on a pro rata basis, equivalent pay and conditions to those of full-time employees who do the same kind of work.*”

11. Allowances

11.1 “*Employers must pay to an employee the allowances the employee is entitled to under this clause*”.

A.2 We submit that the opening sentence in clause 11.1 needs to be qualified to facilitate proportional payments of all allowances relating to 'work/wages', on an hourly basis for other than fulltime employees.

B. 7. Types of employment

7.4 Casual employees

(b) Casual loading

(i) *“For each ordinary hour worked on Monday to Friday, a casual employee must be paid:*

(ii) *the minimum hourly rate; and*

a loading of 25% of the minimum hourly rate, for the work being performed.

(iii) *For each ordinary hour worked on Saturday, Sunday or a public holiday, a casual employee must be paid:*

- *the minimum hourly rate; and*
- *a loading of 30% of the minimum hourly rate, for the work being performed.”*

(c) Minimum engagement

(ii) *“....., a casual employee who is classified as a Level 2, 3, 3A, 4 or 4A instructor or trainer or as a student undertaking practical work involvement may be engaged for a minimum period of one hour’s work at the appropriate rate or be paid per engagement for a minimum of one hour’s work at the appropriate rate.”*

B.1 To give surety to the intention, it is submitted, that the words '*in accordance with Schedule B – Summary of Hourly Rates of Pay (B.2) Casual employees*', be added.

C. Application of overtime provisions –

Clause 8 Ordinary hours of work and rostering

In the 2010 Award, clause 24.1 reads :

“The ordinary hours of work for a full-time employee must not exceed an average of 38 hours per weekSuch hours may be worked over any 5 days of the week, between the hours of.....”

Whereas the proposed 8.1 reads *“Ordinary hours may be worked over any five days of the week....”*

C.1 We contend that, currently the hours limitation detailed in 24.1 do not apply to ‘casuals’; whereas the new wording has universal application. This concern is heightened by reference to the concurrent change made to the ‘**Overtime**’, provision in 14.1 **Definition of overtime** –

“(a) *Overtime is all timeworked by an employee:*

(i) *Outside the spread of hours prescribed in clause 8.1; or”*

Whereas the current 26.1 (**Overtime rates**) refers to “*All time worked by an employee outside the spread of hours prescribed in clause 24.1.*”

C.2 These changes increase the likelihood of overtime applying to the rostering of casuals, as currently the application of clause 26.1 would see overtime casuals arising when:

- a. Hours “*in excess of an average of 38 per week over a period of four weeks*” and or;
- b. Hours “*in excess of 10 on any day*”, are worked .

C.3 It is both fair and reasonable that staff engaged as casual Swim Teachers, Coaches and their assistants be rostered without recourse to overtime rates for early starts or late finishes on weekends as they are already compensated by the payment of the additional casual loading of 30% under the current clause 13.3 (proposed 7(b) (ii)).

C.4 Further, on a related matter; in the wording of 14.2 (**Overtime rates**), again reference is made to overtime in terms of percentages of “*the minimum hourly rate*”. In line with our previous comments on clause 7.4, the new drafting would give surety to the intention, it is submitted, if the words ‘*in accordance with Schedule B – Summary of Hourly Rates of Pay (B.2) Casual employees*’, be added in the form of a new (further) paragraph (d), in the following terms: “*Where a casual employee works overtime the employer must pay overtime rates in accordance with Schedule B – Summary of Hourly Rates of Pay (B.2) Casual employees.*”

D. **Schedule A –Classification Definitions**

D.1 The Exposure draft replicates the current wording of Schedule B – ‘*Classification Structure and Definitions*’.

D.2 During 2014-15 a review of the competencies relating to the ‘*Sport and Community Recreation Training Package*’ was undertaken,(see Attachment ‘A’), which gave rise to significant changes in the content and designation of the competencies referred to in Schedule B of the current award, in regard to Level 2, Swimming and Water Safety Teachers.

D.2.1 Given the duration of the period between reviews, of Modern Awards, it is apparent that there is a high likelihood that the development and ongoing reviews of standards in the Fitness Sector will see the Award reduced in its effectiveness as a consequence of discarded/ redundant references appearing as classification descriptors.

D.2.2 Subsequent to a wide-ranging dialogue within the Swim School Sector and with consultation to other interested parties *Aussie Aquatics* wishes to put forward an amended Schedule ‘B’ in order to:

- a. Remove redundant references to elements of the relevant training package; indeed remove references to specific competencies generally, and instead, rely upon more accurate descriptions of the tasks involved and relevant industry experience required of each classification level;
- b. Remove ‘corporate branding’ of training products;
- c. Redraft some aspects of the current wording to clarify the cross-over points between levels 1, 2 & 3, without seeking to change the relativities between existing rates.

D.3 With regard to the above, we seek to replace the contents of **Schedule A**, generally, with the following:

B.1 Level 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, customer liaison and assisting with swimming and water safety teaching;
- (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;
 - (ix) swimming and water safety teaching.

B.2 Level 2

B.2.1 An employee at this level has a 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.

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, **pool plant operating**
 - (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) **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.**

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) **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.

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

- (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
 - (ii) who holds a third recognised swimming and water safety teaching qualification and performed 500 hours of swimming teaching at level 3 ; or
- (b) a swimming coach being a holder of a current recognised swimming coaching qualification, 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 to swimmers.
- (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.

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.

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 this classification structure 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.

D.4 It is respectfully submitted that all of the outcomes sought are consistent with the objectives of the Four Yearly Review process, and if adopted, would lead to greater certainty through easier application of the award contents to the appropriate classification of employees engaged as Swim Teachers and Coaches.

For and on behalf of Aussie Aquatics (formerly t/as *Swim Australia*)

Yours faithfully,



Michael Taylor
Principal Consultant.

Attach.

Changes to competencies relevant to Swim Teachers & associated staff
Engaged under the classifications contained in the *Fitness Industry Award 2010*.

N.B: SRC was the old competencies from the '*Sport and Community Recreation Training Package*'. SISC is the new '*Sport, Fitness and Recreation Training Package*'. The AQU codings stand for aquatics and the final letter is the version A=1 B = 2 and so on.

Swimming and Water Safety Teacher

- SISCAQU202A – Perform basic water rescues (**replaces SRCAQU003B**)
- SISCAQU308A – Instruct water familiarisation (**replaces SRCAQU009B + incorporates SRCAQU008A**)
- SISCAQU309A – Instruct clients in water safety & survival skills (**replaces SRCAQU010B + incorporates SRCAQU008A**)
- SISCAQU310A – Instruct swimming strokes (**replaces SRCAQU011B + incorporates SRCAQU008A**)
- SISCCRO302A – Apply legal and ethical instructional skills (**replaces SRCCRO007B**)

Baby & Toddlers

- SISCAQU311A – Foster the development of infants and toddlers in an aquatic environment (**replaces SRCAQU012B**)

Disabilities

- SISCAQU312A – Assist participants with a disability during aquatic activities (**replaces SRCAQU014B**)

Competitive Swimming

- SISSW301A – Teach the competitive strokes of swimming (**Based on SRSSW005A but not equivalent. Incorporates outcomes from SRSSW001A Apply the principles of movement in water SRSSW002A Operate in accord with accepted aquatics industry health and safety practices and SRSSW003A Operate in accord with the legal responsibilities and risk management principles of the aquatics industry**)
- SISSCGP201A – Apply legal and ethical coaching practices (**Based on but not equivalent to SRSCGP001A**)

Pool Lifeguard

- HLTF301B – Apply first aid
- PUAEME001B – Provide emergency care (**new unit added**)
- PUAEME003C – Administer oxygen in an emergency situation (**replaces SRXEMR003A**)
- SISCAQU202A – Perform basic water rescues (**replaces SRCAQU003B**)
- SISCAQU306A – Supervise clients at an aquatic facility or environment (**replaces SRCAQU006B**)
- SISCAQU307A – Perform advanced water rescues (**replaces SRCAQU007B**)

Aquatic Technical Operator

- SISCAQU201A – Monitor pool water quality (**replaces SRCAQU001B**)
- SISCAQU303A – Operate aquatic facility plant and equipment (**replaces SRCAQU002B**)
- SISCAQU304A – Maintain pool water quality (**replaces SRCAQU004B**)
- SISCAQU305A – Implement aquatic facility plant and equipment maintenance program (**replaces SRCAQU005B**)
- SISCAQU417A – Operate self-contained breathing apparatus in an aquatic facility (WA only)
- SISXEMR201A – Respond to emergency situations (**replaces SRXEMR001A**)
- SISXRSK301A – Undertake risk analysis of activities (**based on but not equivalent to SRXRIK001A. Incorporates knowledge and application of OHS required to conduct risk assessments**)