

Fair Work Act 2009
FAIR WORK COMMISSION

s. 156 - 4 yearly review of modern awards

AM2017/52

**4 YEARLY REVIEW OF MODERN AWARDS – FITNESS INDUSTRY
AWARD 2010 – SUBSTANTIVE ISSUES**

**AWU OUTLINE OF REPLY SUBMISSIONS CONCERNING VARIATIONS TO THE
CLASSIFICATION STRUCTURE FOR SWIM INSTRUCTORS**

Background

1. On 23 April 2018, Deputy President Sams issued directions for the filing of material regarding outstanding claims to vary the classification definitions for the swim industry in the *Fitness Industry Award 2010* (“**Award**”). The due date for the filing of reply material was subsequently extended to 11 June 2018.
2. The following is an outline of The Australian Workers’ Union’s (“**AWU**”) reply submissions. The AWU also relies on the reply witness statement of Guy Stephens dated 12 June 2018.

Update – consent position between AWU, ASSA and ASTCA – AWU claim

3. The AWU, the Australian Swim Schools Association Ltd (“**ASSA**”) and the Australian Swimming Coaches and Teachers Association (“**ASCTA**”) have now reached a consent position to resolve the AWU’s claim regarding the distinction between a Level 1 and Level 2 swim instructor.
4. The agreed amendments are reflected in the following attached documents:
 - ATTACHMENT 1: a draft determination; and
 - ATTACHMENT 2: an amended version of Schedule B to the *Fitness Industry Award 2010* (“**the Award**”) with the agreed changes highlighted.

Remaining issues – AWU position

5. Subject to the Commission having any concerns with the consent position identified above, the remaining issues to be determined in these proceedings

are the claims by ASSA and ASCTA to amend the Level 3 and Level 4 classification descriptions appearing in Schedule B of the Award.

6. The claims from ASSA concern¹:
 - swimming and water safety teachers;
 - swimming coaches; and
 - pool lifeguards.
7. ASCTA's claims are confined to swimming and water safety teachers aside from a minor wording change concerning swimming coaches.²

Swimming and water safety teachers – ASSA and ASCTA claims

8. The AWU opposes the substantive variations sought by ASSA and the ASCTA to the Level 3 and Level 4 classification descriptions for swimming and water safety teachers. The reasons for this opposition are outlined below.

Swimming coaches – ASSA claims

9. In relation to swimming coaches, the AWU does not oppose ASSA's claim for the current references to the "ASCTA 'Bronze Licence for Coaching'" to be replaced with a general reference to "a current recognised swimming coaching qualification" in the Level 3 and 4 classification descriptions.
10. However, the AWU is concerned ASSA's proposal to remove the current Award's references to a coach of "beginner swimmers" may broaden the scope of the current Level 3 and 4 classifications and potentially include coaches of competitive swimmers.
11. The AWU is not convinced the Level 3 and 4 classifications would be appropriate for an employee who is coaching semi-professional or professional swimmers and considers that the current references to "beginner swimmers" should be retained.

Lifeguards – ASSA claims

12. The changes proposed by ASSA to the Level 3 and 4 classification descriptions for lifeguards appear confined to the reordering of the current terms – the AWU does not oppose these changes on that basis.

¹ The latest variations sought are identified in ASSA's submission dated 18 May 2018.

² The variations sought are attached to ASCTA's submission dated 10 January 2017.

Swimming and water safety teachers

The changes sought by ASSA and ASCTA and the AWU's position

13. Whilst the proposed wording for the variations proposed by ASSA and ASCTA to the Level 3 and 4 classification descriptions for swimming and water safety teachers differs, their effect is the same – it becomes more difficult for a swimming and water safety teacher to reach the Level 3 and Level 4 classifications in the Award.

Level 3

14. Under the current Award, an instructor is classified at Level 3 if they have:

- competed 12 hours per year of recognised workshops, 250 hours of swimming and water safety teaching and hold a second recognised instructing qualification (“**Level 3 – First Progression Stream**”); or
- delivered 350 hours of swimming and water safety teaching (“**Level 3 – Second Progression Stream**”).

15. ASSA's proposed variations would:

- reduce the amount of professional development hours required for the Level 3 - First Progression Stream from 12 hours per year to 5 hours per year;
- increase the amount of teaching hours required for the Level 3 – First Progression Stream from 250 hours to 350 hours;
- amend the current references to a total amount of teaching hours in both streams to a prescribed number of teaching hours “at Level 2”. This change is also sought by ASCTA; and
- move the reference to a second instructing qualification from the Level 3 – First Progression Stream to the Level 3 – Second Progression Stream.

16. The AWU **opposes** these changes.

Level 4

17. Under the current Award, an instructor is classified at Level 4 if they have:

- completed 12 hours per year of recognised workshops, 500 hours of swimming and water safety teaching and hold a third recognised teaching qualification (“**Level 4 – First Progression Stream**”) or
- delivered 700 hours of swimming and water safety teaching (“**Level 4 - Second Progression Stream**”).

18. ASSA and ASCTA seek variations which would:

- increase the required number of teaching hours for the Level 4 – First Progression Stream from a total of 500 hours to 500 hours “at Level 3” – the effect of this being that the 250 or 350 hours spent teaching classes in the Level 2 classification would not be included in the calculation of 500 teaching hours for access to Level 4; and
- increase the required number of teaching hours for the Level 4 – Second Progression Stream from a total of 700 hours to 700 hours “at Level 3” - the effect of this being that the 250 or 350 hours spent teaching classes in the Level 2 classification would not be included in the calculation of 700 teaching hours for access to Level 4.

19. The AWU **opposes** these changes.

Change in terminology – “performed” to “attended”

20. ASSA and ASCTA propose that the current references to an employee having “performed” workshops be amended to “attended” in the Level 3 and 4 classification descriptions. ASCTA also propose this change for Level 4 swimming coaches.

21. The AWU **does not oppose** these changes.

Reasons for the AWU’s opposition

Work value case

22. The contested variations sought by ASSA and ASCTA to the Level 3 and 4 classification descriptions for swimming and water safety teachers would have the effect of changing the current criteria for determining if an affected employee falls within Level 3 or Level 4 of the Award.

23. The variations would inevitably result in some employees who currently meet the Level 3 or Level 4 classification descriptions falling to a lower classification

level because they will not have completed the prescribed number of teaching hours.

24. The changes will also make it harder for existing Level 1 or Level 2 employees to progress into the Level 3 or Level 4 classifications in the future.

25. For those reasons, the changes would constitute a variation to modern award minimum wages. This means the variations can only be made by the Fair Work Commission if they are justified by work value reasons.³

26. The recent Full Bench Decision in *4 yearly review of modern awards – Education Group*⁴ confirms that a variation to an existing classification structure in an award which will result in an increase or decrease to an existing minimum award rate of pay triggers the requirement for a work value case.⁵

27. “Work value reasons” are defined in s 156(4) of the *Fair Work Act 2009* (“**FW Act**”) as:

...reasons justifying the amount that employees should be paid for doing a particular kind of work, being reasons related to any of the following:

- (a) the nature of the work;*
- (b) the level of skill or responsibility involved in doing the work;*
- (c) the conditions under which the work is done.*

28. ASSA and ASCTA have not presented anywhere near the level of evidence which is necessary to establish a work value case. Specifically, the minimal evidence presented by ASSA and ASCTA has focused upon operational requirements for employers as opposed to the nature of the particular work performed by swim instructors.

29. The evidence presented in this case suggests the duties performed by a swimming and water safety teacher will generally be the same regardless of their classification level. This is presumably why the current structure rewards experience as a teacher, or additional qualifications, as opposed to any additional duties or responsibilities.

³ Section 156(3) of the *Fair Work Act 2009* (Cth).

⁴ [2018] FWCFB 797.

⁵ See paragraphs [225] to [232].

30. Additional duties or responsibilities for an instructor are only likely to arise if they are placed in the type of supervisory role described in the witness statement of Guy Stephens dated 22 May 2018.⁶
31. In these circumstances, there is no jurisdiction for the Commission to make the variations sought by ASSA and ASCTA because they have not presented a case which can establish work value reasons for the changes.

Merit reasons

32. The AWU is not aware of any practical problems with the application of Levels 3 and 4 in the Award for swimming and water safety teachers.
33. The terms of the changes proposed by ASSA and ASCTA appear arbitrary – no evidence has been presented to establish why, for example, a swim instructor should have to perform an extra 250 or 350 hours of teaching to reach the Level 4 classification.
34. Further, no evidence has been presented to explain why a swim instructor should no longer be able to reach the Level 3 classification after they have delivered 350 hours of teaching.
35. ASSA's claim would prevent an instructor automatically progressing under the Level 3 – Second Progression Stream unless they have obtained a second qualification. Little or no explanation is provided regarding why an extra qualification threshold should be added or even what that second qualification might be.
36. In *4 yearly review of modern awards: Preliminary jurisdictional issues*⁷ a Full Bench of the Commission stated the following concerning significant variations sought during the 4-yearly review process:

...where a significant change is proposed it must be supported by a submission which addresses the relevant legislative provisions and be accompanied by probative evidence properly directed to demonstrating the facts supporting the proposed variation. In conducting the Review the Commission will also have regard to the historical context applicable to each modern award and will take into account previous decisions relevant to any contested issue. The particular context in which those decisions were made will also need to be considered. Previous Full Bench decisions should generally be followed, in the absence of cogent reasons for not doing so. The Commission will proceed on the basis that prima facie the

⁶ Paragraphs [14] to [16].

⁷ [2014] FWCFB 1788 at [60](3).

modern award being reviewed achieved the modern awards objective at the time that it was made.

37. The AWU does not accept that ASSA and ASCTA have satisfied the requirements set down by the Full Bench for a variation of this nature - they have failed to present sufficient probative evidence or submissions to justify the extensive changes they are pursuing to the existing classification structure.

Modern awards objectives – ASSA and ASCTA claims

Relative living standards and the needs of the low paid s 134(1)(a)

38. A commonly used reference point for determining whether an employee is low-paid is whether they are paid at or below the C10 rate in the *Manufacturing and Associated Industries and Occupations Award 2010*⁸ (“**Manufacturing Award**”).
39. The C10 rate in the Manufacturing Award is the same as the Level 3A rate in the Award. This means swim instructors classified at Level 3 and below under the Award would be likely to meet the definition of a “low-paid employee”.
40. The variations sought by ASSA and ASCTA would have the cumulative effect of keeping swim instructors classified at Levels 2 and 3 for longer periods of time. This is a significant detriment for employees who are already low-paid.
41. Further, the prevalence of part-time and casual employment in this industry⁹ increases the likelihood of swim instructors already being low-paid even if they are classified above Level 3. This arises because part-time and casual employees will generally earn less than comparable full-time employees.
42. The variations sought by ASSA and ASCTA will only exacerbate the financial pressure on a group of employees that is already low-paid.

The need to encourage collective bargaining – s 134(1)(b)

43. This is a neutral factor. The claim is unlikely to have a significant effect on collective bargaining.

The promotion of social inclusion through increased workforce participation – s 134(1)(c)

⁸ See *Application by United Voice for low-paid authorisation* [2014] FWC 6441 at [28].

⁹ Reply witness statement of Guy Stephens at paragraph [5].

44. This is a neutral factor.

Promoting flexible modern work practices and the efficient and productive performance of work – s 134(1)(d)

45. The variations sought by ASSA and ASCTA will not improve work practices or result in greater efficiency and productivity – the changes will simply result in employees being paid at lower classification levels for lengthier periods of time.

46. It is arguable that the changes sought by ASSA will encourage employees to undertake additional training.

47. However, the evidence presented by the AWU suggests that employees generally consider on-the-job training to be most beneficial¹⁰ and that some employees will not realistically be in a position to undertake additional external training.¹¹

Providing additional remuneration for various types of work arrangements – s 134(1)(da)

48. This is a neutral factor.

Equal remuneration – s 134(1)(e)

49. This is a neutral factor.

Impact on productivity, employment costs and the regulatory burden – s 134(1)(f)

50. The variations sought by ASSA and ASCTA will not improve productivity – the same work will be performed by swim instructors whether the changes are made or not.

51. The variations will result in a decrease to employment costs but ASSA and ASCTA have not presented evidence to demonstrate:

- whether a reduction to employment costs is justified for this industry; and
- the extent of the savings i.e. how many employers and employees will be affected by the changes and to what extent.

¹⁰ Reply witness statement of Guy Stephens at paragraph [9].

¹¹ Reply witness statement of Guy Stephens at paragraph [7].

52. The Commission should not make variations of this nature unless it has an informed understanding about their financial impact on employers and employees.

Ensuring a simple, easy to understand and stable award system that avoids overlap – s 134(1)(f)

53. The changes sought by ASSA and ASCTA do not make the Award simpler or easier to understand.

54. The changes undermine a stable award system because they involve significant modifications to the existing Award in circumstances whereby it has not been established that the variations are *necessary*.

55. The changes fall squarely into the category of being desirable for the proponents but not *necessary* to ensure the modern awards objectives are being met.

Impact on employment growth, inflation and the sustainability, performance and competitiveness of the national economy – s 134(1)(g)

56. The variations are unlikely to have a significant impact on the national economy.

57. However, ASSA and ASCTA have not presented sufficient evidence about the economic impact of their proposed variations for any definitive conclusions to be reached.



STEPHEN CRAWFORD
SENIOR NATIONAL LEGAL OFFICER

12 June 2018

“ATTACHMENT 1”

DRAFT DETERMINATION

Fair Work Act 2009

s.156 - 4 yearly review of modern awards

4 yearly review of modern awards – Fitness Industry Award 2010
(AM2017/52)

FITNESS INDUSTRY AWARD 2010
(ODN AM2008/78) [MA000094]

Health and welfare services

DEPUTY PRESIDENT SAMS

SYDNEY, DD/MM 2018

4 yearly review of modern awards – Fitness Industry Award 2010 – substantive variations

A. Further to the decision and reasons for decision <<decision reference>> in <<file_no.>>, it is determined pursuant to section 156(2)(b)(i) of the *Fair Work Act 2009*, the *Fitness Industry Award 2010* is varied as follows:

[1] Delete the full stop at the end of Schedule B.1.1(c)(viii) and insert: “; and”.

[2] Insert the following as a new Schedule B.1.1(c)(ix):

(ix) swimming and water safety teaching. To avoid doubt, an employee is classified at Level 2 or above if their duties include being responsible for the provision of any part of swimming and water safety teaching without being directly supervised as part of structured training/learning.

[3] Delete Schedule B.2.1 and insert:

B.2.1 An employee at this level has:

- (a) completed 456 hours training at Level 1 so as to enable the employee to perform work within the scope of this level;
- (b) a swim and water safety teacher or coach qualification; or
- (c) duties which include being responsible for the provision of any part of swimming and water safety teaching without being directly supervised as part of structured training/learning.

[4] Insert the following words at the end of Schedule B.2.2(b)(ii): “- including basic pool plant duties (e.g. water quality testing) unless this work is performed by an employee at a higher classification level;”.

[5] Delete Schedule B.2.2(b)(xiii) and insert:

(xiii) beginner swimming and water safety teacher, being a person who provides any part of swimming and water safety teaching without being directly supervised as part of structured training/learning or the holder of any current qualification with the following competencies:

| | |
|-------------------|--|
| <i>SISCAQU002</i> | Perform basic water rescues |
| <i>SISCAQU008</i> | Instruct water familiarisation, buoyancy and mobility skills |
| <i>SISCAQU009</i> | Instruct water safety and survival skills |
| <i>SISCAQU010</i> | Instruct swimming strokes |

These competencies reflect the Australian Skills Quality Authority’s (ASQA) approved skill set for a Swimming and Water Safety Teacher. Any amendments to these competencies made by ASQA will apply for the purposes of interpreting this award.

[6] Delete Schedule B.2.2(b)(xiv) and insert:

(xiv) coaching ‘junior’ squad level swimmers, being the holder of a current recognised swimming coaching qualification.

[7] Insert the following as a new Schedule B.11:

B.11 Any dispute concerning the correct classification for a swimming and water safety teacher or swimming coach will be referred to the Fair Work Commission for determination.

B. The variations will take effect on [INSERT DATE].

DEPUTY PRESIDENT

“ATTACHMENT 2”

Schedule B —Classification Structure and Definitions

[Sched B varied by [PR999528](#), [PR515150](#), [PR531302](#), [PR542214](#)]

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;
 - (viii) door duties, attending a cloakroom or car park not involving the handling of cash; and
 - (ix) swimming and water safety teaching. To avoid doubt, an employee is classified at Level 2 or above if their duties include being responsible for the provision of any part of swimming and water safety teaching without being directly supervised as part of structured training/learning.

B.2 Level 2

B.2.1 An employee at this level has:

- (a) completed 456 hours training at Level 1 so as to enable the employee to perform work within the scope of this level;
- (b) a swim and water safety teacher or coach qualification; or
- (c) duties which include being responsible for the provision of any part of swimming and water safety teaching without being directly supervised as part of structured training/learning.

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/or 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 – including basic pool plant duties (e.g. water quality testing) unless this work is performed by an employee at a higher classification level;
 - (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;

[B.2.2(b)(xiii) substituted by [PR999528](#) ppc 01Aug10]

- (xiii) beginner swimming and water safety teacher, being a person who provides any part of swimming and water safety teaching without being directly supervised as part of structured training/learning or the holder of any current qualification with the following competencies:

SISCAQU002 Perform basic water rescues

SISCAQU008 Instruct water familiarisation, buoyancy and mobility skills

SISCAQU009 Instruct water safety and survival skills

SISCAQU010 Instruct swimming strokes

These competencies reflect the Australian Skills Quality Authority's (ASQA) approved skill set for a Swimming and Water Safety Teacher. Any amendments to these competencies made by ASQA will apply for the purposes of interpreting this award.

(xiv) coaching 'junior' squad level swimmers, being the holder of a current recognised swimming coaching qualification.

B.3 Level 3

[B.3 varied by [PR999528](#); substituted by [PR515150](#), [PR531302](#) from 16Nov12]

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 (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 varied by [PR999528](#); substituted by [PR515150](#), [PR531302](#) from 16Nov12]

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 substituted by [PR542214](#) ppc 04Dec13]

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 substituted by [PR531302](#) from 16Nov12]

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 (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-recognised course of Lifeguarding to become pool lifeguards.

B.6 Level 4A

[B.6 substituted by [PR531302](#) from 16Nov12]

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 substituted by [PR542214](#) ppc 04Dec13]

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 substituted by [PR531302](#) from 16Nov12]

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 substituted by [PR531302](#) from 16Nov12]

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 inserted by [PR531302](#) from 16Nov12]

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 inserted by [PR531302](#) from 16Nov12]

B.10 Employees classified under the provisions of 0, 0, 0, 0, 0, 0, 0, 0, 0 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.

B.11 Any dispute concerning the correct classification for a swimming and water safety teacher or swimming coach will be referred to the Fair Work Commission for determination.

Fair Work Act 2009

FAIR WORK COMMISSION

s. 156 - 4 yearly review of modern awards

AM2017/52

*4 YEARLY REVIEW OF MODERN AWARDS- FITNESS
INDUSTRY AWARD 2010- SUBSTANTIVE ISSUES*

WITNESS STATEMENT OF GUY STEPHENS

I, Guy Stephens, c/- 685 Spencer Street, West Melbourne in Victoria, Union
Organiser, STATE as follows:

Background - ASSA and ASCTA claims – Level 3 and 4

1. I make this statement in response to the claims made by ASSA and ASCTA to amend the Award classification structure at levels 3 and 4 for swim instructors.
2. I strongly oppose the claims to increase the requirement placed on swimming instructors to progress through the level classifications. The provisions currently in the Award are sufficient.
3. The effect of the proposed changes to an employee would essentially be an increase in the difficulty to progress through the level system, without any real connection to their abilities or performance as a swimming instructor, when compared with the current Award requirements.

Level 3

4. The pivotal difference between a level 2 and level 3 swimming instructor is the experience they have gained from their teaching. Giving a swimming instructor real life experience teaching at level 2 provides them with invaluable knowledge, which can be used to deliver a higher quality lesson to children.
5. With regard to the hours of real teaching experience required to satisfactorily reach level 3, I see no reason to move away from the 250/350 hours currently in the Award. From my

experience, due to the high prevalence of part-time and casual work in this industry, 350 hours can mean anywhere from 9-12 months of teaching at level 2. This duration allows for suitable development of knowledge and skill to warrant the progression of an instructor to move from level 2 to level 3 in the Award.

6. The proposition by ASSA to include a requirement for either 5 hours of professional development per year, or a second accreditation would unfairly burden the swimming instructors in moving to level 3 for two reasons.
7. First, it is important to consider that the large proportion of swimming instructors teach part-time or casually with many instructors being either students or ‘stay-at-home’ mums and dads looking to maintain their family income. These employees will not likely seek out a second accreditation or involve themselves in ‘professional development (as recognised by a national industry body)’¹ as they may not be able to afford it, or it may not be considered as being necessary for them.
8. I would acknowledge that it is sometimes the case where an employer will organise and at times pay for, professional developments and/or additional qualifications. However, this should not be taken as given for the whole industry and it is likely this additional burden will be borne, for the most part, by the employee.
9. Secondly, there is no doubt in my mind that the experienced I gained through on the job learning has played the most significant role in my development as a swimming instructor. Referring to the SIA census data attached to my previous witness statement, 88% of responses suggested that the equivalent on the job experience is more valuable to the quality of teaching from swimming instructors, than the training received when undertaking their qualification.
10. The combination of these two factors would suggest that swimming instructors will be burdened with greater requirements to reach level 3, without an increase to their development or to the quality of lesson that may be expected by a level 3 teacher.

¹ ASSA submission A.3.3(a)(i)

Level 4

11. At level 4, ASSA and ASCTA's claim would again increase the burden on the employee in meeting the requirements to progress to this level. The addition of the words 'at level 3' to *A.5.3(a)(ii)* have the practical effect of increasing the requirement of teaching hours to reach level 4 from 700 hours to 1050 hours. Whilst it is clear, the more hours one spends teaching, the more the quality of their lessons improves, there is no reason why the burden of reaching level 4 should be increased by 350 hours.
12. The current Award recognises that 700 hours allows for the development and experience required to warrant a teacher reaching level 4 and this is consistent with my experience in the industry.
13. There does not appear to be a proposal by ASSA to add any value to the wages at level 4, to match the increased experience of instructors reaching 1050 hours. Furthermore, given the time taken for a swimming instructor to reach 700 hours (up to 456 hours as trainee at level 1, plus 700 hours teaching which, in total, can amount to 3 years) there is no benefit in moving away from the current Award requirements.

Additional point

14. The addition of the words 'at level 3' to *A.5.3(a)(ii)* is reciprocated at *A.3.3(a)(ii)* of the ASSA and ASCTA claims with the addition of the words 'at level 2'.
15. It is my belief that there is no practical effect of this change to level 3, as the requirement in the current Award is to have 'delivered 350 hours of swimming and water safety teaching'.²
16. Swimming and water safety teaching can only be carried out at level 2 before an employee reaches level 3. The current Award more than adequately captures the requirements for

² FIA A.3.3(a)(ii)

progression beyond level 2 and should not be changed to place greater burden on swimming instructors.

SIGNED:

A handwritten signature in blue ink, appearing to read 'G. Stephens', with a long horizontal flourish extending to the right.

GUY STEPHENS

DATE: 12.6.18