

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 SUBMISSIONS IN SUPPORT OF 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**”).
2. The Australian Workers’ Union (“**AWU**”) is now seeking a modified form of the variation it previously identified in submissions filed on 24 February 2017.
3. The variations now being sought by the AWU are specified in:
 - a draft determination attached to these submissions; and
 - an amended version of Schedule A to the Award which is attached to these submissions with the proposed variations highlighted.
4. The AWU relies on the witness statements of Guy Stephens and Kirsten Micallef and the submissions below in support of its application.

Why the variation is *necessary* for the Award to meet the modern awards objective

5. The variations sought by the AWU can be fairly characterised as clarifying the intended operation of the classification structure in the Award for swim instructors.
6. It is generally accepted by the parties in these proceedings that the operation of the existing classification structure is problematic in terms of classifying swim instructors during the early stages of their career.

7. The Australian Swim Schools Association Ltd (“**ASSA**”) and the Australian Swimming Coaches and Teachers Association (“**ASCTA**”) are both seeking variations to confirm that a trainee swim instructor falls within the Level 1 classification in the Award. This demonstrates an acceptance from both employers and employees in the industry that the current classification structure requires amendment.
8. The AWU is not now opposed to a genuine ‘trainee’ swim instructor being classified at Level 1 in the Award. However, the AWU considers the Award should make it clear that an employee must be promoted to the Level 2 classification immediately at the point in time in which they commence being directed to teach a class without direct supervision.
9. An employee who teaches all, or part, of a swimming lesson without direct supervision is no longer a genuine ‘trainee’. Their employer has obviously deemed them competent enough to take responsibility for the provision of important teaching services to customers.
10. The evidence of Mr Stephens¹ and Ms Micallef² demonstrates it is currently relatively common for employees to remain classified at Level 1 even though their employer is directing them to undertake teaching work without direct supervision.
11. The experience of Mr Stephens and Ms Micallef has been vindicated by a recent survey conducted by the AWU via its Swim Instructors Association (“**SIA**”).³ The survey data shows nearly 40% of the 143 respondents had been required to teach a class unsupervised before they had satisfied the current pre-requisites for promotion to Level 2 in the Award.⁴
12. The existing pre-requisites for a swim instructor to be promoted to Level 2 are:
 - the attainment of a swim teacher qualification; or
 - the completion of 456 hours at Level 1.
13. The Award should be varied to clarify that an employee can also reach Level 2 when they commence being entrusted with the responsibility of teaching lessons without direct supervision.
14. The AWU’s proposal may not be controversial, particularly with the ASCTA, who have previously submitted:

¹ Witness statement of Guy Stephens dated 22 May 2018 at paragraph [8].

² Witness statement of Kirsten Micallef dated 22 May 2018 at paragraphs [8] and [9].

³ Attachment 1 to the witness statement of Guy Stephens dated 22 May 2018.

⁴ See question 14 of Attachment 1 to the witness statement of Guy Stephens dated 22 May 2018.

*Note a trainee is required to work under supervision of another qualified teacher and cannot earn any income for their employer in their own right, and requires directions as to what tasks to perform and how to perform them.*⁵

15. This evidence is reiterated by that provided from State Swim Swimming Schools⁶ and State Swim Systems⁷.
16. The AWU agrees with this material and it reiterates that an instructor who is able to earn income for their employer via teaching classes without direct supervision should not be paid at the same rate as a trainee who may have just commenced their training process.
17. Evidence filed by the ASCTA in these proceedings on behalf of State Swim Swimming Schools⁸ and State Swim Systems⁹ also states:
 - a person may learn to be a swimming teacher in 4 weeks; and
 - there is no statutory requirement for swimming teachers to have a specific qualification.
18. This evidence highlights that an alternative method of reaching the Level 2 classification is *necessary* for swim instructors because:
 - an employee may often be fully competent to teach classes unsupervised well before completing 456 hours at Level 1; and
 - an employee may often be given responsibility for teaching a swimming class before they have attained any qualification.
19. This factual background is sufficient to establish the merit of the AWU's claim and that its variations are *necessary* to ensure the Award meets the modern award objectives.

⁵ ASTCA submission dated 9 March 2017 on page 2 of 3.

⁶ Statement from a director of State Swim Swimming Schools which has the name redacted but is dated 6 March 2018. This is attached to the ASCTA submission dated 7 March 2018.

⁷ Statement from a representative of State Swim Systems which has the name redacted but is dated 6 March 2018. This is attached to the ASCTA submission dated 7 March 2018.

⁸ Statement from a director of State Swim Swimming Schools which has the name redacted but is dated 6 March 2018. This is attached to the ASCTA submission dated 7 March 2018.

⁹ Statement from a representative of State Swim Systems which has the name redacted but is dated 6 March 2018. This is attached to the ASCTA submission dated 7 March 2018.

Variations sought

20. The variations sought by the AWU resolve employer concerns about existing ambiguity regarding the classification of a 'trainee' swim instructor.
21. This is achieved by inserting reference to a person learning to be a swim teacher in the Level 1 classification definition but doing so in a manner which ensures an employee who has duties which include teaching classes without direct supervision is no longer a Level 1 employee.
22. The AWU's proposed variations to the Level 2 classification ensure an employee will progress to Level 2 when they start getting entrusted with the responsibility of teaching classes without direct supervision.
23. This is achieved through the insertion of another means of reaching Level 2 in Schedule A.2.1 and corresponding references to teaching without direct supervision in the list of duties in Schedule A.2.2(b).
24. The competencies listed in Schedule A.2.2(b)(xiii) have also been updated to reflect the required units of competency for the SISSS00112 – Swimming and Water Safety Teacher skill set found on the training.gov.au website.¹⁰

Modern Awards Objective – application to the AWU's claim

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

25. The monetary impact of an employee moving from the Level 1 classification in the Award to the Level 2 classification is \$0.65 per hour for a casual employee, \$0.52 per hour for a permanent employee and \$20 per week for a full-time employee.
26. Given employees paid at the Level 1 or Level 2 Award rates would meet the generally accepted definition of a "low paid" employee, the approval of the variations sought by the AWU will assist affected low paid employees to meet their living expenses.

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

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

¹⁰ See <https://training.gov.au/Training/Details/SISSS00112#>

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

28. This is a neutral factor.

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

29. Clarifying the classification rules for swim instructors during the early stages of their career will provide employers with additional certainty to plan their operations which in turn can generate efficiency and productivity improvements.

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

30. The claim is directed at clarifying the operation of the classification structure in the Award as opposed to varying overtime, penalty or shift rates.

Equal remuneration – s 134(1)(e)

31. This is a neutral factor.

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

32. Any increase to current employment costs arising from this claim will be minimal and would arguably constitute a correction.

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

33. Given all parties in these proceedings accept the current classification arrangements for swim instructors are ambiguous, the granting of the AWU's claim will assist in making the Award simpler and easier to understand.

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

34. The AWU's claim will create a fairer classification scheme for swim instructors in Australia but will not have broader impacts on the national economy.

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 A.1.1(c)(viii) and insert: “; and”.

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

- (ix) swimming and/or 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 A.2.1 and insert:

A.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) has a swim teacher or coach qualification; or
- (c) has 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] Delete Schedule A.2.2(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:

- SISCAQU002* Perform basic water rescues
- SISCAQU008* Instruct water familiarisation, buoyancy and mobility skills
- SISCAQU009* Instruct water safety and survival skills
- SISCAQU010* Instruct swimming strokes

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

DEPUTY PRESIDENT

Schedule A—Classification Structure and Definitions

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

A.1 Level 1

A.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/or 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.

A.2 Level 2

A.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) has a swim teacher or coach qualification; or

- (c) has 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.

A.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;
 - (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

- (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.

A.3 Level 3

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

A.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.

A.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.

A.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 A.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.

A.4 Level 3A

[B.4 varied by [PR999528](#); substituted by [PR515150](#), [PR531302](#) from 16Nov12]

A.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]

A.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.

A.5 Level 4

[B.5 substituted by [PR531302](#) from 16Nov12]

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

A.6 Level 4A

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

- A.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]

A.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.

A.7 Level 5

[B.7 substituted by [PR531302](#) from 16Nov12]

A.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.

A.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.

A.8 Level 6

[B.8 substituted by [PR531302](#) from 16Nov12]

A.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.

A.9 Level 7

[B.9 inserted by [PR531302](#) from 16Nov12]

A.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.

A.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.

A.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]

A.10 Employees classified under the provisions of A.2.2(a), A.2.2(b), A.3.3, A.4.1, A.5.3, A.6.1, A.7.1, A.8.1, A.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.

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

1. I have been a swimming instructor at Paul Sadler Swimland Essendon since June 2012.
2. I was employed as a trainee swimming instructor until early 2013. I have been a swimming instructor since.
3. I was one of the first members and delegates for the Swim Instructors Association (SIA)/AWU at Paul Sadler Swimland Essendon when I joined in December 2016. I am now the organiser for the SIA and have been since September 2017.

Process for becoming a swim teacher

4. From my experience, there are two main channels a person will follow when entering the industry:
 - (i) A person will apply for a position as a trainee and then, whilst employed as a trainee, they will undertake in-house training and external training courses including:
 - a. ASTA Swim Australia teacher certificate of completion or AustSWIM teaching licence;
 - b. Attaining Working with Children Check if over 18; and
 - c. Basic CPR.

Once they have completed these external courses/requirements and their internal requirements, they are qualified as a teacher.

- (ii) A person will complete an ASCTA or AustSWIM (or equivalent) course and other above training courses, then apply for a job with a swim school. In some instances, this has included 'shadowing' sometimes paid, sometimes unpaid.

The problem with the current classification structure

5. When starting out as a swimming instructor, I followed the first channel described above.
6. During my time training I was asked to take part of, or all of, a class under the direct supervision of a teacher in the water in the same class as me. In my workplace these roles are distinguished whereby a teacher and trainee wear rash-vests with their respective titles on the back.
7. However, I was also asked at times to teach classes for a whole shift as the main teacher responsible for the class.
8. At that point I was more than capable of teaching as I had been training for approximately 6 months. However, because I had not attained a formal qualification and had not been employed for more than 456 hours, I would potentially have still been classified at Level 1 under the award even though I was performing the same teaching work as other instructors. This situation was not uncommon and particularly occurred on occasions where we may have been a teacher short on a particular shift.
9. This is the problem that the AWU through the SIA is trying to address as part of the award review. An instructor who has the skills and experience to be entrusted with being responsible for teaching a class should not be paid at the Level 1 rate in the award.
10. To use my practical example above, the person wearing the trainee rash-vest can be paid at the Level 1 rate but the person wearing the teacher rash-vest would have to be paid at least at the Level 2 rate. Given certain needs by the business, the person normally wearing the trainee rash-vest may be given a teacher rash-vest and instructed by their employer to teach a shift, but still be paid at the Level 1 rate. It is this practice we are trying to stop with this case.
11. I think the wording in the award needs to refer to teaching all, or part, of a class because an employee may be asked to teach an entire class, or they may be asked to take a certain swimmer aside and teach them.

12. In either situation the employee is performing a valuable teaching role which their employer can charge for. They are not being trained – they are delivering a service on behalf of their employer. An employee who is capable of performing teaching work without direct supervision should not be paid at the Level 1 rate.
13. It is also important to include reference to a trainee being someone who is still undertaking structured training and only assists with teaching a class under the direct supervision of another instructor.
14. The reference to direct supervision is important because the common practice at every swimming school I have observed or spoken to members from, is to have anywhere from five to twelve classes with one teacher per class at any given time. Further to the teacher, there would be a supervisor of some description: Deck Supervisor, Teacher in Charge, Lifeguard etc.
15. By definition the supervisors are overseeing all classes and the teachers. But this type of general supervision is totally different to the direct supervision a person being trained to become a teacher receives during their training process.
16. These supervisors oversee all the lessons in the centres with one supervisor to five/six classes, from my experience. The responsibilities of that supervisor may extend beyond simply overseeing six classes and, in my experience, there would be two supervisors overseeing twelve classes, handling customer service, pursuing payment follow-ups, supporting individual swimmers who may be unsettled in classes (I have experienced swimmers running out of the centre), provide feedback to the teachers and managing the logistics of children moving from one class to the next as they reach the next level.

Qualifications v Experience

17. With regard to the swim teacher qualification prescribed in level 2 of the award, the vast majority of swimming instructors attain their qualification from AustSWIM (70%) and ASCTA (30%).
18. Once they have attained their qualification some teachers will go on to get more qualifications, however, the majority tend to stick with just the one qualification.
19. Due to the nature of the job, there is absolutely no training course that can compare to real world experience teaching. A teacher who has taught 700

hours, is going to be much more competent as a teacher, than a teacher who has taught 100 hours even if they have more qualifications.

20. Furthermore, it has been my experience that the current training courses, at best provide an introduction to working in the industry and pale in comparison to teaching experience.
21. Therefore, it is entirely probable that a trainee who has not attained a qualification, would be capable of teaching a class before they have trained for 456 hours.
22. In practice, this means there is the potential for the exploitation of a trainee swim teacher who is asked to teach a class, or even part of a class, and not receive the level 2 wage, right up to when they complete 456 hours of 'training'.
23. The classification structure in the award will work in a fairer way for swimming instructors if an additional avenue of reaching Level 2 is included – this being the point when an employer feels comfortable to give the instructor responsibility for teaching a class. An employee given that level of teaching responsibility has clearly moved beyond the status of a trainee and should be paid accordingly.

AWU/SIA survey

24. The AWU/SIA recently conducted a survey which 143 swimming instructors from across the industry responded to. The part of the survey report which is relevant to this case is ATTACHMENT 1 to this statement.
25. As can be seen in the data, 37.76% of swimming instructors have at some point been instructed to deliver a lesson before they were qualified or had been trained for 456 hours and therefore not considered a Level 2.
26. Furthermore 88.81% of instructors believe that equivalent time spent in on-the-job training, is more valuable than the current training programs being offered.
27. This data is supportive of the AWU/SIA's proposal to allow for a path to becoming a Level 2 teacher when an employer deems an employee capable of delivering a lesson, through the action of requiring them to teach a lesson.

SIGNED:



GUY STEPHENS

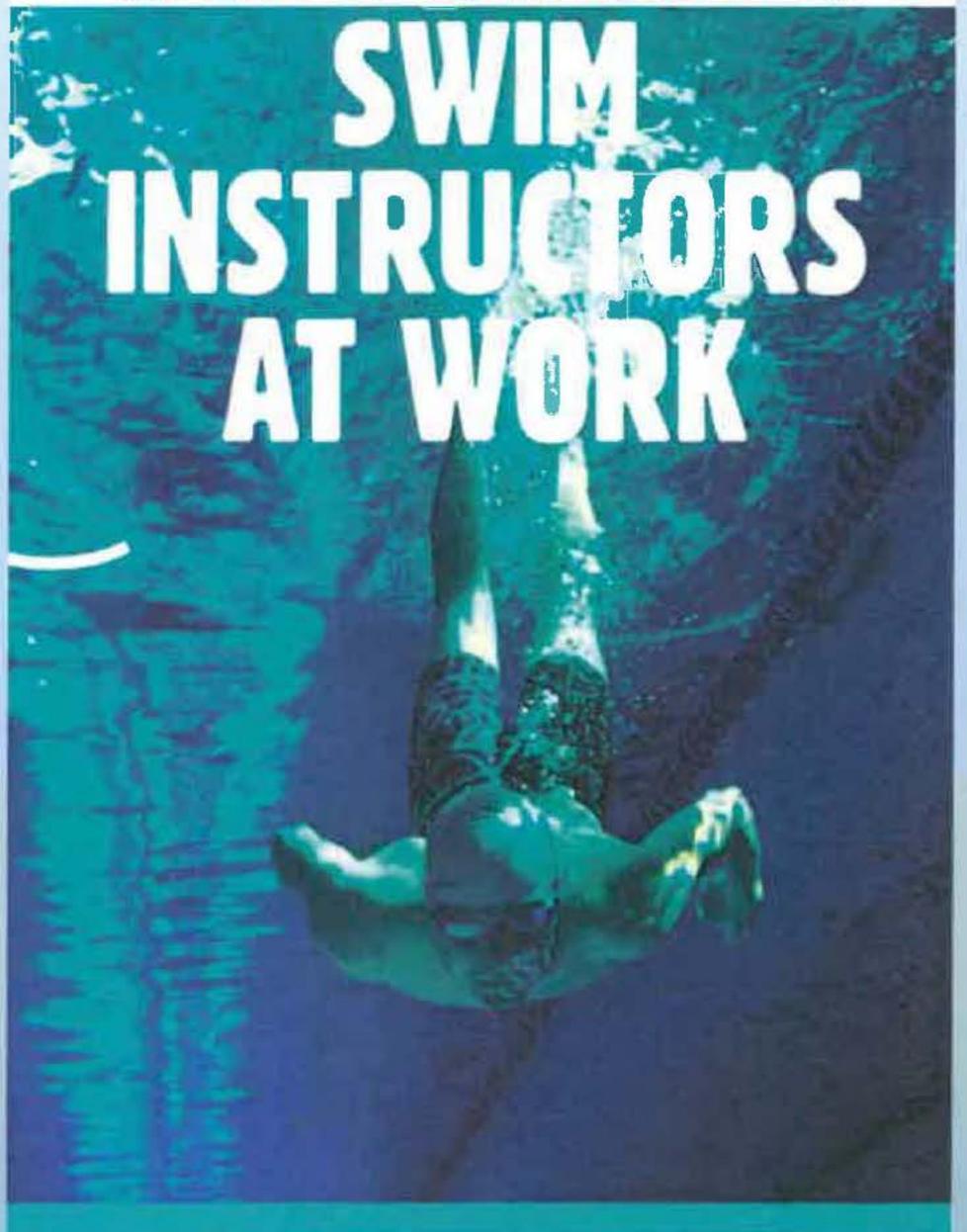
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Swim Instructor Survey Results



SUPPORTING

SWIM INSTRUCTORS AT WORK





Swim Instructors' Association Survey Data

Aim:

The aim of this survey is to extract some substantive data about the swimming industry, from the position of the swimming instructors, in order to aid the SIA in most accurately representing the best interests of these employees.

Method:

This survey was conducted using the online software 'Survey Monkey' and was available to be completed by all swimming instructors. The survey was distributed via Facebook, Messenger and email. It was open for completion from the 15th May to the 21st May. The survey was separated into 28 questions and the data collected was for the purpose of exploring the issues and concerns held by swimming instructors, as well as the aspects of their work they find the most enjoyable.

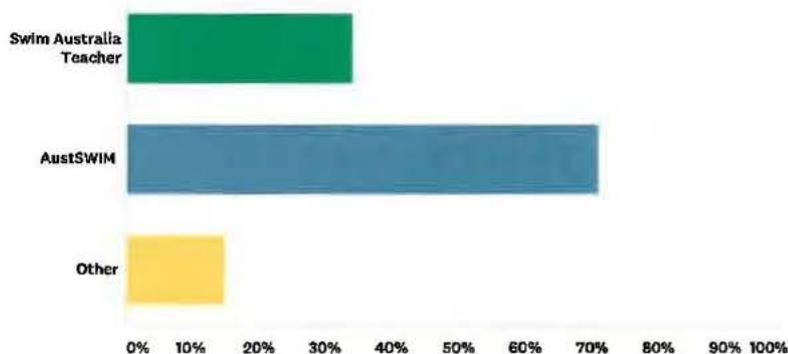
Results:

The questions particularly relevant to the AWU/SIA's submissions are as follows:

SIA - Swim Instructor Census

Q6 Which of the following qualifications do you currently hold?

Answered: 141 Skipped: 2



ANSWER CHOICES	RESPONSES	
Swim Australia Teacher	34.04%	48
AustSWIM	70.92%	100
Other	14.89%	21
Total Respondents: 141		

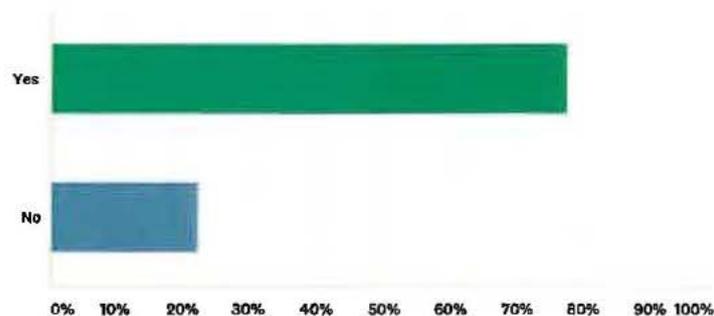
Note: It is possible to hold one or more of these qualifications and therefore it is possible to give more than one answer to this question, thus the percentages in the table above do not total 100%. For example, the data should be interpreted as: 'of the 141 responses, 34.04% possess a Swim Australia Teacher Certificate.'



SIA - Swim Instructor Census

Q13 Were you aware that under the Fitness Industry Award (the legal agreement that determines the minimum working conditions for swim instructors) an Employer cannot direct a Swimming Instructor to deliver swimming lessons, except under direct supervision, unless they either: a) Hold a recognised qualification (AustSWIM etc), or b) Have completed 456 hours of training

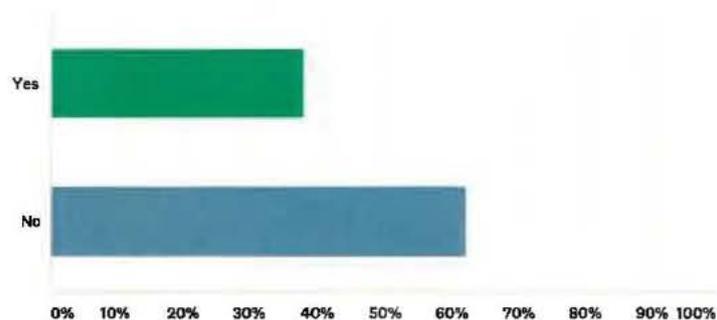
Answers: 143 Skipped: 0



ANSWER CHOICES	RESPONSES	
Yes	77.62%	111
No	22.38%	32
TOTAL		143

Q14 Have you ever been asked to deliver swimming lessons unsupervised prior to holding a recognised qualification AND before completing 456 hours of training? NOTE: You should answer YES if you were EVER required to teach WITHOUT meeting either of these requirements.

Answers: 143 Skipped: 0



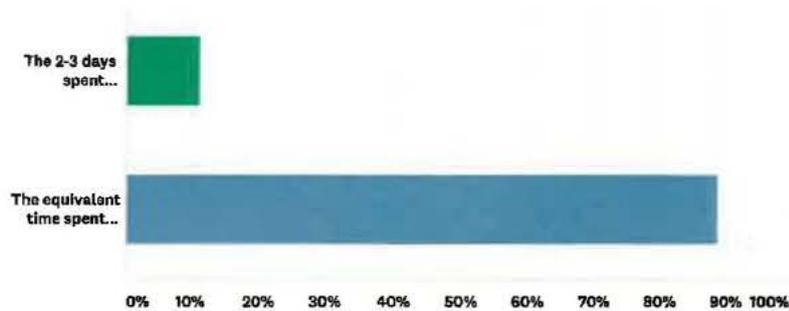
ANSWER CHOICES	RESPONSES	
Yes	37.76%	54
No	62.24%	89
TOTAL		143



SIA - Swim Instructor Census

Q15 In terms of developing your skills as a Swimming Instructor what would you say assisted you more?

Answered: 143 Skipped: 0

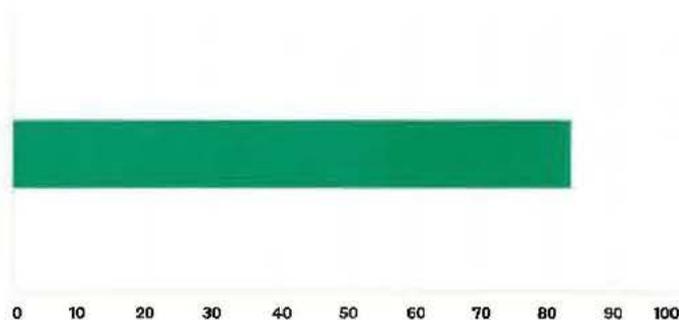


ANSWER CHOICES	RESPONSES	
The 2-3 days spent undertaking the qualification	11.19%	16
The equivalent time spent learning on the job	88.81%	127
TOTAL		143

SIA - Swim Instructor Census

Q20 Swimming Instructors wages are too low and there needs to be an increase across the board to the wages for swimming instructors.

Answered: 145 Skipped: 0



ANSWER CHOICES	AVERAGE NUMBER	TOTAL NUMBER	RESPONSES
	84	12,143	145
Total Respondents: 145			

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 KIRSTEN MICALLEF

I, Kirsten Micallef, c/- 685 Spencer Street, West Melbourne in Victoria, Swim Instructor, STATE as follows:

Background

1. I started teaching swimming as a university student back in the 1980s.
2. My career has included the following roles:
 - 1991-1996: PE teaching swimming in school environment;
 - February 1998: Paul Sadler Swimland (PSS) as a trainee;
 - January 1999: PSSBM Assistant Manager;
 - January 2002: PSSE Manager;
 - September 2003: PSS stepped down (baby); and
 - Approximately July 2004 – current: Swordy Tot Coordinator.
3. My roles over the years have included:
 - ST coordinator;
 - Deck supervisor mid 1998-current;
 - Mentor/Assessor teacher 1998-current; and
 - Leadership Team 2004-2016.
4. I was part of the founding group for the Swim Instructors Association (SIA) and have been a contact point for staff with questions and concerns.
5. I have been heavily involved in the AWU's efforts with SIA including presenting at meetings and being the face of its media campaign.

Trainees

6. Based on my knowledge as a swimming instructor, swim school manager and department coordinator for more than 20 years, it is the expectation of all trainees to complete an extensive training program to move into the position of a swimming teacher.

7. It is suitable to suggest there is a need for training to be incorporated into the Award. However, there needs to be a removal of the hard 456-hour barrier to Level 2, in order to avoid the probability of a 'trainee' being exploited and required to teach classes, without being paid a Level 2 rate.
8. From my personal experience, swimming instructors who are training have been required to deliver all or parts of a lesson. Whilst these 'trainees' had capably performed the role of a swimming instructor (thanks to extensive in-house training), they were not paid as a Level 2 swimming instructor, rather still as a Level 1 trainee.
9. To the best of my knowledge, this is a practice that occurred repeatedly across Paul Sadler Swimland sites. When instructors are put through an internal training program, this loophole could be exploited and there could be an incentive for employers to keep swimming instructor 'trainees' at Level 1 even though they are teaching all or part of a class without direct supervision.
10. The proposal sought by the AWU allows for structured training/learning to be undertaken at Level 1 but also addresses the point of a 'trainee' who has progressed beyond training to assisting and positively contributing to the quality of a lesson.
11. I think structured training is important for the development of a successful swimming instructor. Once instructors have reached a level of competence where they are deemed capable of teaching a class there needs to be a pathway for them to progress to Level 2 straight away.
12. If an employer provides an employee with duties beyond training within a structured training program, this should be seen objectively, as deeming them capable of providing a lesson or part of a lesson and thereby to be considered a Level 2 employee.
13. In my opinion and from my experience, this structure will allow for requisite training to become a competent swimming instructor, and at the same time, ensure swimming instructors are not exploited.

SIGNED:

KIRSTEN MICALLEF

DATE: 22 May 2018