

4<sup>th</sup> April, 2020

Justice Ian Ross  
President, Fair Work Commission  
Level 4, 11 Exhibition Street  
Melbourne.  
Victoria. 3000.

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Dear Justice Ross,

**Re: AM2020/12 – Variation of Awards on Initiative of the Commission**

I write for, and on behalf of, my client the Australian Swim Schools Association (ASSA). In accordance with the Statement (2020), FWC FB 1760, issued on 1<sup>st</sup> April 2020, in relation to the Fair Work Commission's proposal to vary various awards by inserting a new Schedule X "Additional measures during COVID-19 pandemic". The Association seeks to make the following submissions and observations.

**Submissions:**

1. The ASSA is the only peak Industry Body in Australia representing operators of Swim Schools, with currently over 300 members operating 400 sites throughout the Commonwealth.
  - 1.1 Members employ approximately 10,000 staff nationally;
    - 1.1.1 Approximately 80 percent (80%) of employees are engaged as "regular" casuals, (engaged on one or more shifts per week);
    - 1.1.2 Weekly employees are either engaged as salaried, fulltime weekly, permanent part-time or fixed term seasonal, (with contracts coinciding with the academic calendar in their home State or Territory);
    - 1.1.3 The overwhelming majority of swim schools are small to medium sized businesses employing fewer than forty-nine (49) staff;  
It is estimated that fewer than fifteen percent (15%) of the workforce are covered by Enterprise Agreements made under the provisions of the Fair Work Act 2009;
  - 1.2 The primary Modern Award covering employees in the Swim School Sector is the "Fitness Industry Award 2010".
  - 1.3 The Swim School Sector has been severely impacted by the series of government imposed operating restrictions that took affect between 13<sup>th</sup> March and 25<sup>th</sup> March [referenced in paragraphs 11-17 of the 1<sup>st</sup> April Statement of the Commission].
    - 1.3.1 In effect, the Sector has been in lock-down since 25<sup>th</sup> March;
    - 1.3.2 The current circumstances applying to Swim Schools parallel those outlined at paragraph 33 of the 1<sup>st</sup> April Statement of the Commission,

*“There has been a decrease in labour demand due to government restrictions .....affected by a decrease in labour demand due to households reducing their spending.....”*

1.3.3 Swim Schools provide services to two clearly identified groups at risk during the pandemic:

- the young (toddlers to teenagers) and the elderly, many with underlying health conditions or undergoing rehabilitation programs;

1.3.3.1 with water safety and rehabilitation being delivered commonly in an indoor aquatic environment entailing close proximity;

1.3.3.2 It therefore follows that Swim School operations will likely not be returning to the previous levels until the pandemic has abated;

1.3.3.3 A view expressed, but not necessarily the official position of the Association, is that the impact of the pandemic will continue to restrict operations for many months, as opposed to “weeks”.

2. Within the context of the sector’s recent experience referred to, the ASSA:

2.1 Supports the proposition that the provisional views expressed by the full Bench in the 1<sup>st</sup> April Statement that the variations are both permitted by and consistent with, the Modern Awards’ objective of the Act – Sections 134, 136 and 139;

2.2 Notes that the provisional view of the Full Bench does not preclude organisations applying for further amendments impacting individual Modern Awards;

2.3 The ASSA seeks consideration of two amendments to the contents of the proposed Schedule (largely due to the circumstances referred to in 1.3 above);

2.3.1 That due to the evolving scale and impact both in social and economic terms of the current health crisis, the quantum of the “*Unpaid pandemic leave*” should be increased to a maximum of twenty (20) days per individual employee.

2.3.1.1 It is submitted that as the period of the pandemic extends, individuals are more likely than not to find themselves in circumstances requiring multi periods of “self-isolation”; therefore the ten (10) days under consideration, (albeit consistent in quantum with other forms of ‘leave’ already regulated), may be shown to be manifestly insufficient to achieve the outcome required;

2.3.1.2 The proposed duration of ten (10) days *unpaid leave* for the purpose of ‘self-isolation’ is not consistent with current medical practice regulatory requirements.

2.3.2 In a similar vein, an expiry date of 30/9/2020 would be more appropriate in the circumstances, in order to give all parties reasonable opportunity to gauge the impact of the variation over six months of the pandemic instead of three.

If the Commission pleases.

Yours faithfully,



Michael Taylor.

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