



DECISION

Fair Work Act 2009
s.185—Enterprise agreement

Paul Sadler Swimland Pty Ltd
(AG2017/1820)

PAUL SADLER SWIMLAND SINGLE ENTERPRISE AGREEMENT 2017

Health and welfare services

COMMISSIONER LEE

MELBOURNE, 16 JUNE 2017

Application for approval of the Paul Sadler Swimland Single Enterprise Agreement 2017.

[1] An application has been made for approval of an enterprise agreement known as the *Paul Sadler Swimland Single Enterprise Agreement 2017* (the Agreement). The application was made pursuant to s.185 of the *Fair Work Act 2009* (the Act). It has been made by Paul Sadler Swimland Pty Ltd. The Agreement is a single enterprise agreement.

[2] I am satisfied that each of the requirements of ss.186, 187 and 188 as are relevant to this application for approval have been met.

The Australian Worker's Union being a bargaining representative for the Agreement, has given notice under s.183 of the Act that it wants the Agreement to cover it. In accordance with s.201(2) I note that the Agreement covers the organisation.

[3] The Agreement is approved and, in accordance with s.54 of the Act, will operate from 23 June 2017. The nominal expiry date of the Agreement is 30 June 2020.



COMMISSIONER

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**PAUL SADLER SWIMLAND
SINGLE ENTERPRISE AGREEMENT 2017**

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1. Title

This Agreement will be known as the Paul Sadler Swimland Single Enterprise Agreement 2017.

2. Definitions

2.1 In this Agreement, unless the context requires otherwise:

- (a) the singular includes the plural and vice versa;
- (b) a gender includes the other genders;
- (c) headings are used for convenience only and do not affect the interpretation of this Agreement;
- (d) if something is to be done on a day which is not a Business Day then that thing must be done on the next Business Day;
- (e) "person" includes a natural person and any body or entity, whether incorporated or not;
- (f) "day" means a 24 hour calendar day, "week" means 7 consecutive days, "month" means calendar month, "fortnightly" means two consecutive weeks, and "year" means 52 consecutive weeks;
- (g) "in writing" includes any communication sent by letter, text message, facsimile transmission or email;
- (h) "including" and similar expressions are not words of limitation
- (i) a reference to all or any part of a statute, rule, regulation or ordinance (statute) includes that statute as amended, consolidated, re-enacted or replaced from time to time.

2.2 The following terms will be read in this Agreement as having the following meaning:

- (a) The Act means the Fair Work Act 2009 (Cth).
- (b) Actual rate means the rate at which an employee is actually paid by their Employer (regardless of the minimum rate under this enterprise agreement), for ordinary hours worked as defined by clause 16.2 between Monday and Friday.
- (c) Agreement means this Paul Sadler Swimland – Single Enterprise Agreement 2017.
- (d) CPI means the All Groups CPI calculated to the March Quarter of the relevant year.
- (e) Minimum hourly rate means the minimum rate an employee is entitled to per hour pursuant to clauses 18 and 19.
- (f) NES means the National Employment Standards provided for by Part 2-2 of the Act.

- (g) State Long Service Leave Legislation means:
 - (i) in respect of employees in Victoria, the *Long Service Leave Act 1992 (Vic)*;
 - (ii) in respect of employees in Queensland, the *Industrial Relations Act 1999 (Qld)*.
- (h) **Superannuation Legislation** means the Superannuation Guarantee Charge Act 1992 (Cth), the Superannuation Industry (Supervision) Act 1993 (Cth) and the Superannuation (Resolution of Complaints) Act 1993 (Cth).
- (i) **Term** means one of four periods in a 12 month period, of 10 to 12 weeks each, in which the Employer provides swim teaching, coaching or other swim services.

3. Coverage

3.1 This agreement shall cover:

- (a) the Employers listed in clause 3.2 below; and
- (b) Employees of the Employers who are covered by the classifications in Schedule 1.

3.2 The Employers covered by this Agreement are the following:

- (a) Paul Sadler Swimland Bacchus Marsh Pty Ltd (ABN: 28 107 344 158);
- (b) Paul Sadler Swimland Bendigo Pty Ltd (ABN: 19 156 258 457);
- (c) Paul Sadler Swimland Bendigo New17 Pty Ltd (ABN: 68 594 840 646);
- (d) Paul Sadler Swimland Braybrook Pty Ltd (ABN: 11 235 113 487);
- (e) Paul Sadler Swimland Carrum Downs Pty Ltd (ABN: 24 034 852 148);
- (f) Paul Sadler Swimland Essendon Pty Ltd (ABN: 770 982 067 36);
- (g) Paul Sadler Swimland Hoppers Crossing Pty Ltd (ABN: 35 441 134 746);
- (h) Paul Sadler Swimland Laverton Pty Ltd (ABN: 56 587 590 568);
- (i) Paul Sadler Swimland Melton Pty Ltd (ABN: 96 959 313 027);
- (j) Paul Sadler Swimland Narre Warren Pty Ltd (ABN: 79 598 489 146);
- (k) Paul Sadler Swimland Parkwood Green Pty Ltd (ABN: 43 165 902 139);
- (l) USAust Management Services Pty Ltd (trading as – Paul Sadler Swimland Rowville) (ABN: 96 101 332 389);
- (m) Paul Sadler Swimland Ringwood Pty Ltd (ABN: 51681 456 456);
- (n) Paul Sadler Swimland Taylors Lakes Pty Ltd (ABN: 48 285 078 806); and

- (o) Paul Sadler Swimland Riverside Gardens Pty Ltd (Trading as Paul Sadler Townsville) (ABN: 889 941 403 432),

(each an **Employer** and collectively the **Employers**).

4. Period of Operation

- 4.1 This Agreement will come into operation 7 days after it is approved by the Fair Work Commission.
- 4.2 The nominal expiry date of the Agreement will be 30 June 2020.
- 4.3 The benefits provided by clause 18.1 and 19 of this Agreement in relation to increases from 30 April 2017 will apply retrospectively and have effect as of 30 April 2017.

5. National Employment Standards

- 5.1 To the extent that this Agreement provides for an entitlement less than the NES, the NES shall prevail.
- 5.2 Where the Agreement is silent with respect to an entitlement under the NES, the NES shall prevail.

6. Flexibility

- 6.1 An Employer and Employee covered by this enterprise agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the agreement if:
 - (a) the agreement deals with one or more of the following matters:
 - (i) the taking of annual leave;
 - (ii) the taking of Rostered Days Off;
 - (b) the arrangement meets the genuine needs of the employer and employee in relation to 1 or more of the matters mentioned in paragraph (a); and
 - (c) the arrangement is genuinely agreed to by the employer and employee.
- 6.2 The employer must ensure that the terms of the individual flexibility arrangement:
 - (a) are about permitted matters under section 172 of the Act; and
 - (b) are not unlawful terms under section 194 of the Act; and
 - (c) result in the employee being better off overall than the employee would be if no arrangement was made.
- 6.3 The Employer must ensure that the individual flexibility arrangement:
 - (a) is in writing; and
 - (b) includes the name of the Employer and employee; and

- (c) is signed by the Employer and employee and if the employee is under 18 years of age, signed by a parent or guardian of the employee; and
 - (d) include details of:
 - (i) the terms of the enterprise agreement that will be varied by the arrangement; and
 - (ii) how the arrangement will vary the effect of the terms; and
 - (iii) how the employee will be better off overall in relation to the terms and conditions of his or her employment as a result of the arrangement; and
 - (e) states the day on which the arrangement commences.
- 6.4 The Employer must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.
- 6.5 The Employer or employee may terminate the individual flexibility arrangement:
- (a) by giving no more than 28 days written notice to the other party to the arrangement; or
 - (b) if the Employer and employee agree in writing—at any time.

7. Engagement

Upon engaging an employee, an Employer shall provide the employee with a letter of appointment setting out:

- (a) the classification in which they are primarily employed under the Classification Structure set out in Schedule 1;
- (b) a position description, including the requirements of that role;
- (c) the employee's type of employment under clause 8; and
- (d) the employee's location.

8. Types of employment

An employee may be engaged on any of the following bases:

- (a) Full-time;
- (b) Part-time; or
- (c) Casual.

9. Full-time employees

A full-time employee is an employee who is engaged to work an average of 38 ordinary hours per week.

10. Part-time employees

- 10.1 A part-time employee is an employee who is engaged to work an agreed minimum number of hours per week less than 38 ordinary hours.
- 10.2 A part-time employee's minimum number of hours and regular pattern of work:
- (a) in respect of the employee's first Term, will be agreed in writing at the commencement of their employment;
 - (b) will be determined in writing at the Employer's discretion at the commencement of each subsequent Term, following consultation in accordance with clause 33.2, save that the hours determined must be no more than a variation of 5 hours from the minimum number of hours set at the beginning of the previous Term, unless otherwise agreed in writing between the employee and the Employer; and
 - (c) may be varied during a Term if agreed in writing between the employee and the Employer.
- 10.3 A part-time employee shall receive the same benefits as those applying to a full-time employee on a pro rata basis.

11. Casual employees

- 11.1 A casual employee is an employee who is engaged and paid as such.
- 11.2 In addition to the minimum hourly rate set out at clause 18.1, a casual employee shall be paid a loading of 25% of that rate for all ordinary hours worked.
- 11.3 This loading shall be in lieu of any entitlements under clauses 26, 27.1, 31 and 32.
- 11.4 Where a casual employee is entitled to a loading under clauses 19 and 21, that will be in substitution for, and not in addition to, the casual loading in clause 11.2

12. Part-time employees may be engaged to work for only 50 weeks per year

- 12.1 Part-time employees may be engaged to work for only 50 weeks in every calendar year.
- 12.2 The Employer may stand down without pay such an employee for up to 2 weeks per year, during a period between Terms in which the Employer's business is closed down or reduced to a nucleus. The period between Terms in which an employee is not paid shall be agreed between the Employer and employee. In the absence of agreement, the Employer may reasonably determine which weeks shall be unpaid. Such periods of stand down will be considered continuous service for the purposes of calculating entitlements under this Agreement and the NES.
- 12.3 An employee who is engaged to work for only 50 weeks per year may elect in writing to enter into an arrangement in which they are:
- (a) paid at the rate of $\frac{12.5}{13}$ of their actual rate of pay for all hours worked and all leave taken (averaged over a period of 13 weeks);

- (b) taken to be on annual leave during the period of stand down provided for at clause 12.2; and
- (c) if the employment ends during the Term, there will be a reconciliation to account for any hours in which they have been paid in advance. Such a reconciliation will be added or deducted from their final pay.

13. Location

- 13.1 An employee may agree with their Employer that the employee work at a location of an Employer other than their location on a temporary or permanent basis.
- 13.2 Where an employee agrees to temporarily work at an alternative location, the Employer will reimburse the employee for:
 - (a) excess mileage over and above their ordinary travel to their primary location, at a rate of \$0.90 per kilometre; and
 - (b) excess fares over and above their ordinary travel to work, subject to satisfactory evidence of such excess fares.

14. Employee obligations

- 14.1 In addition to carrying out the duties of their classification, the employee acknowledges and undertakes that they will:
 - (a) During working hours, devote the whole of their time, attention and abilities in carrying out their duties.
 - (b) Not at any time or for any reason, use or disclose to any person any confidential information or trade secrets of the Employer except so far as may be reasonably necessary to enable the employee to fulfil their obligations under this Agreement.
 - (c) Use their best endeavours to promote, develop and extend the employer's business interests and reputation and not do anything to its detriment.
 - (d) Conduct themselves in a professional manner in all dealings with customers, other staff members and principals of the Employer
 - (e) Not wear Company supplied clothing or footwear outside the Centre, unless directed to do so by a duly authorised representative of the Company's Management Team.
 - (f) Not enter the Employer's premises or work if they are under the influence of alcohol or any drug that impairs the person's work performance or creates an unsafe working environment, including drugs prescribed by a medical practitioner.
 - (g) Participate fully in any formal performance appraisal programme that shall be conducted by the Employer. The Employee's performance will be reviewed on an ongoing basis against clearly defined and agreed performance objectives.
 - (h) Perform all duties as directed, consistent with their training experience and classification.

- 14.2 Employees may be required to carry out cleaning duties and some maintenance of equipment. These duties will be incidental to his/her main function and will be performed within the limits of the employee's skills, competence and training.
- 14.3 All employees shall hold, at all times, the relevant accreditations required by State or Territory legislation permitting them to work with children, (eg: Working With Children Cards), and or, those accreditations required to perform the duties of their classification within the business of the Employer. In the event of an employee losing, having suspended or being declined such accreditation, they must advise the Employer immediately and will immediately be suspended without pay while the matter is determined, which may result in termination of the employment.

15. Qualifications

- 15.1 In order to be employed as Swim Teacher/Coach at Levels 2, 3 and 4, employees must at their own expense:
- (a) obtain the initial qualifications required to teach swimming, being a Teacher of Swimming Certificate from Swim Australia, AustSwim or equivalent;
 - (b) obtain and maintain the relevant Working with Children Check for the State in which they are employed; and
 - (c) obtain their initial CPR qualification.
- 15.2 An Employer must pay for, or reimburse the employee for, the following:
- (a) Additional qualifications if such qualifications are required by the Employer;
 - (b) Training (including time spent training) to obtain such additional qualifications required by the Employer;
 - (c) First Aid Certificates, if not already held by the employee and where the Employer requires the employee to perform first aid duties;
 - (d) Renewals of the initial qualifications required to teach swimming, perform CPR or additional qualifications required by the Employer.

16. Ordinary hours of work

- 16.1 The ordinary hours of work for an employee must not exceed an average of 38 hours per week over a period of two weeks.
- 16.2 The ordinary hours of work for an employee may be worked over any five days of the week, between the hours of:
- (a) 5.00am to 10.00pm, Monday to Friday;
 - (b) 6.00am to 6.00pm, Saturday and Sunday.

- 16.3 The ordinary hours of work for an employee must not exceed 10 hours on any one day.
- 16.4 The ordinary hours of work for a part-time employee shall be those hours determined or varied in accordance with clause 10.2, save that time attending a pre-shift or post-shift feedback or packing up after a shift shall also be considered ordinary hours.

17. Rostering and breaks

- 17.1 Rosters for a Term must be set by the Employer no later than 7 days prior to the commencement of the Term.

- 17.2 The roster during a Term may be changed in accordance with clause 10.2(c).

17.3 *Minimum engagement*

- (a) An employee may not be engaged for a shift of less than 2 hours.
- (b) An employee will be paid the following loadings for each hour worked when working shifts of the following lengths:
 - (i) no less than 2 hours but less than 2.5 hours, 25% of the employee's actual rate;
 - (ii) no less than 2.5 hours but less than 3 hours, 15% of the employee's actual rate.

17.4 *Broken shifts*

An employee may be rostered to work a broken shift on any day provided that:

- (a) the shift is not broken into more than two parts;
- (b) the total length of the shift is not less than three hours, exclusive of unpaid meal breaks;
- (c) the span of hours from the start of the first part of the shift to the end of the second part of the shift is not more than 12 hours; and
- (d) the employee is paid an allowance in accordance with clause 23.

17.5 *Breaks*

- (a) An employee who works more than four hours must be given a paid rest break of 15 minutes no earlier than one hour after commencing work.
- (b) An employee who works more than five hours must be given an unpaid meal break of no less than 30 and no more than 60 minutes (as directed by the Employer), no earlier than two hours after commencing work.
- (c) An employee who works more than six hours must be given an additional paid rest break of 15 minutes.
- (d) There must be at least 30 minutes between any two breaks under this clause 17.5.

18. Wages

- 18.1 Subject to clauses 19, 20 and 20, an employee must be paid for all ordinary hours worked between Monday and Friday as prescribed by clause 16.2 at the minimum hourly rates for their classification set out in the first column of item 1 of Schedule 2, or the employee's actual rate, whichever is higher.
- 18.2 On the following dates, the minimum hourly rates (as set out in the other columns of Item 1 of Schedule 2) and actual rates for all employees will increase by 2.5% or CPI, whichever is greater, on:
- (a) 1 July 2017;
 - (b) 1 July 2018; and
 - (c) 1 July 2019.
- 18.3 Wages must be paid fortnightly by electronic funds transfer into the bank or financial institution nominated by the employee.

19. Penalty rates

- 19.1 An employee must be paid for all hours worked on a Saturday or Sunday at whichever is the higher of:
- (a) the relevant minimum hourly rate for their classification, subject to clause 20 below, plus a loading of:
 - (i) 25% for time worked on a Saturday (as set out in Item 2 of Schedule 2); or
 - (ii) 50% for time worked on a Sunday (as set out in Item 2 of Schedule 2); or
 - (b) the employee's actual rate plus a loading of:
 - (i) 10% for time worked on a Saturday; or
 - (ii) 20% for time worked on a Sunday.
- 19.2 All time worked by an employee on a public holiday must be paid at the rate of 250% of the employee's minimum hourly rate for their classification.

20. Youth rates

- 20.1 Subject to clause 20.2, the minimum hourly rate for an employee aged less than 20 under clauses 18.1 and 19.1(a) is the following percentages of the adult minimum hourly rate for their classification set out in Schedule 2:

Age	Percentage of adult rate
16 years of age	55%
17 years of age	65%

18 years of age	75%
19 years of age	85%
20 years of age	100%

- 20.2 An employee engaged as a Swim Teacher/Coach and who has delivered 600 hours or more of swim teaching or coaching will be entitled to the adult minimum hourly rate for their classification set out in Schedule 2.

21. Overtime

- 21.1 All time worked by an employee in excess of that employee's ordinary hours of work as defined by clause 16 is deemed to be overtime.

- 21.2 Overtime worked between Monday and Saturday must be paid at the rate of:

- (a) 150% of the employee's actual rate for the first two hours worked; and
- (b) 200% of the employee's actual rate for all subsequent hours.

- 21.3 Overtime worked on a Sunday must be paid at the rate of 200% of the employee's actual rate.

21.4 *Time off instead of payment for overtime*

- (a) An employee and Employer may agree in writing to the employee taking time off instead of being paid for a particular amount of overtime that has been worked by the employee.
- (b) Any amount of overtime that has been worked by an employee in a particular pay period and that is to be taken as time off instead of the employee being paid for it must be the subject of a separate agreement.
- (c) An agreement must state each of the following:
 - (i) the number of overtime hours to which it applies and when those hours were worked;
 - (ii) that the Employer and employee agree that the employee may take time off instead of being paid for the overtime;
 - (iii) that, if the employee requests at any time, the Employer must pay the employee, for overtime covered by the agreement but not taken as time off, at the overtime rate applicable to the overtime when worked;
 - (iv) that any payment mentioned in subparagraph (iii) must be made in the next pay period following the request.
- (d) The period of time off that an employee is entitled to take is the same as the number of overtime hours worked.
- (e) Time off must be taken:
 - (i) within the period of 6 months after the overtime is worked; and

- (ii) at a time or times within that period of 6 months agreed by the employee and Employer.
- (f) If the employee requests at any time, to be paid for overtime covered by an agreement under this clause 21.4 but not taken as time off, the Employer must pay the employee for the overtime, in the next pay period following the request, at the overtime rate applicable to the overtime when worked.
- (g) If time off for overtime that has been worked is not taken within the period of 6 months mentioned in paragraph (e), the Employer must pay the employee for the overtime, in the next pay period following those 6 months, at the overtime rate applicable to the overtime when worked.
- (h) The Employer must keep a copy of any agreement under clause 21.4 as an employee record.
- (i) An employer must not exert undue influence or undue pressure on an employee in relation to a decision by the employee to make, or not make, an agreement to take time off instead of payment for overtime.
- (j) An employee may, under section 65 of the Act, request to take time off, at a time or times specified in the request or to be subsequently agreed by the employer and the employee, instead of being paid for overtime worked by the employee. If the Employer agrees to the request then clause 21.4 will apply, including the requirement for separate written agreements under paragraph (b) for overtime that has been worked.
- (k) If, on the termination of the employee's employment, time off for overtime worked by the employee to which clause 21.4 applies has not been taken, the Employer must pay the employee for the overtime at the overtime rate applicable to the overtime when worked.

22. Superannuation

- 22.1 An Employer must make superannuation contributions into a complying superannuation fund nominated by the employee, to the extent it is obliged to do so and at the minimum amount required in accordance with the Superannuation Legislation.
- 22.2 Where no such fund is nominated by the employee, contributions will be made into the Australian Super superannuation fund.
- 22.3 An employee may make additional contributions by way of salary sacrifice to their relevant superannuation fund subject to the Superannuation Legislation.

23. Allowances

- 23.1 An employee acting in the position of Deck Supervisor must be paid an hourly allowance as set out in item 3 of Schedule 2.
- 23.2 For the purposes of clause 22.1 and item 3 of Schedule 2:
 - (a) a Deck 2 Supervisor is responsible for customer engagement and leading the Customer Service Team. The Deck 2 Supervisor is required to build relationships with the parents and provide all forms of communication to them

including but not limited to swimmer progress, addressing issues or concerns and answering general questions. The Deck 2 Supervisor is also responsible for overseeing customer assessments, conducting first lesson 'red carpet' tours and working closely with the customer service team to ensure alignment with the overall Swimland customer engagement strategy; and

- (b) a Deck 1 Supervisor is responsible for leading the shift. The Deck 1 Supervisor oversees teacher/trainee development, safety and presentation, class structure, product quality, any pre-brief communications to team members and provides management with an overview of the shift upon its completion.
- 23.3 An employee who works a broken shift must be paid an allowance as set out in item 3 of Schedule 2 for that shift.
- 23.4 An employee who is rostered by an Employer to be on first aid duty at a particular time, other than an employee as acting in the position of Deck Supervisor, must be paid an allowance as set out in item 3 of Schedule 2 for that day.
- 23.5 An employee who is required to work in excess of 10 aggregate hours on one day must:
- (a) be given an additional unpaid meal break of 30 minutes; or
 - (b) be must be paid an allowance as set out in item 3 of Schedule 2 for that day.
- 23.6 An employee who is required by their Employer to travel from one place of work to another must be reimbursed by the Employer all fares necessarily incurred by the employee. All time occupied in such travel is deemed to be working time and the employee must be paid at the appropriate rate.
- 23.7 On the following dates, the allowances set out at clauses 23.1, 23.3, 23.4 and 23.5(b) will increase by 2.5% or CPI, whichever is greater, on:
- (a) 1 July 2017;
 - (b) 1 July 2018; and
 - (c) 1 July 2019.

24. Uniforms

- 24.1 All employees shall be issued, at the cost of the employer, with a uniform at commencement of employment. Their uniform shall be the following:
- (a) Polo Shirt (2);
 - (b) Shorts (1), or Bathers (1) (for swim teacher/coach only);
 - (c) Rash Vest (1);
 - (d) Jacket (1) where required by the Employer;
 - (e) Safety PPE where required by the Employer.

- 24.2 The uniform or equipment shall be replaced on fair wear and tear basis.
- 24.3 Footwear will be not be provided by the Employer, but an employee's footwear will be replaced if damaged due to a work related event.

25. Expenses

- 25.1 An Employer will reimburse an employee for reasonable business expenses, subject to the employee promptly providing receipts for any expenditure in relation to which reimbursement is sought, together with an explanation of the expenditure.
- 25.2 Such reasonable business expenses will be reimbursed within 30 days of the Employee complying with the above.

26. Annual leave and close down periods

- 26.1 For each year of service with an Employer, an employee other than a casual employee is entitled to five weeks of paid annual leave. Such leave must be taken in accordance with clauses 26.3 and 26.4.
- 26.2 Annual leave will accrue progressively during a year of service on a pro-rata basis according to the employee's ordinary hours of work.

26.3 Close down periods

- (a) Subject to any agreement made under clause 26.4, an Employer may direct an employee to take annual leave, during a period between Terms in which the Employer's business is closed down or reduced to a nucleus, for up to 4 periods per year.
- (b) If an employee has made an agreement under clause 26.4 to take a period of annual leave during a Term, the Employer may stand them down that employee without pay for an equivalent period of time during a period referred to in clause 26.3(a).

26.4 Annual leave during a Term

An employee may, by agreement with the Employer, take annual leave during a Term.

26.5 Annual leave in advance

- (a) An Employer and employee may agree in writing to the employee taking a period of paid annual leave before the employee has accrued an entitlement to the leave.
- (b) An agreement must:
- (i) state the amount of leave to be taken in advance and the date on which leave is to commence; and
 - (ii) be signed by the Employer and employee and, if the employee is under 18 years of age, by the employee's parent or guardian.

- (c) The Employer must keep a copy of any agreement under this clause 26.5 as an employee record.
- (d) If, on the termination of the employee's employment, the employee has not accrued an entitlement to all of a period of paid annual leave already taken in accordance with an agreement under this clause 26.5, the Employer may deduct from any money due to the employee on termination an amount equal to the amount that was paid to the employee in respect of any part of the period of annual leave taken in advance to which an entitlement has not been accrued.

26.6 *Cashing out of annual leave*

- (a) Paid annual leave must not be cashed out except in accordance with an agreement under this clause 26.6.
- (b) Each cashing out of a particular amount of paid annual leave must be the subject of a separate agreement under this clause 26.6.
- (c) An employer and an employee may agree in writing to the cashing out of a particular amount of accrued paid annual leave by the employee.
- (d) An agreement under this clause 26.6 must state:
 - (i) the amount of leave to be cashed out and the payment to be made to the employee for it; and
 - (ii) the date on which the payment is to be made.
- (e) An agreement under this clause 26.6 must be signed by the employer and employee and, if the employee is under 18 years of age, by the employee's parent or guardian.
- (f) The payment must not be less than the amount that would have been payable had the employee taken the leave at the time the payment is made.
- (g) An agreement must not result in the employee's remaining accrued entitlement to paid annual leave being less than 4 weeks.
- (h) The maximum amount of accrued paid annual leave that may be cashed out in any period of 12 months is 2 weeks.
- (i) The employer must keep a copy of any agreement under this clause 26.6 as an employee record.

27. Personal leave

- 27.1 For each year of service with an Employer, an employee other than a casual employee, is entitled to 10 days of paid personal/carer's leave in accordance with the NES.
- 27.2 Personal leave will accrue progressively during a year of service on a pro-rata basis according to the employee's ordinary hours of work.
- 27.3 Employees shall be entitled to unpaid personal/carers leave as provided for in the NES.
- 27.4 An employee must, as soon as reasonably practicable, notify the Employer of the employee's inability to attend for duty and as far as practicable, state the estimated duration of the absence.
- 27.5 Subject to clause 27.6, an employee who has given his or her employer notice of the taking of leave must, if required by the Employer, give the Employer a medical certificate stating that the leave is taken for the reason set out in the NES.
- 27.6 Despite clause 27.5, an employee may take up to 3 single days of personal leave per year without being required to provide a medical certificate.

28. Other types of leave

- 28.1 Employees are entitled to long service leave in accordance with the relevant State Long Service Leave Legislation.
- 28.2 Other types of leave not set out in this Agreement are as provided under the NES.

29. Public holidays

- 29.1 An employee is entitled to be absent from their employment on a day or part-day that is a public holiday in the place where the employee is based for work purposes in accordance with the NES.
- 29.2 An employee who would ordinarily be rostered to work on a public holiday shall be paid at their actual rate of pay for the hours they would ordinarily work but for which they are absent pursuant to clause 29.1.
- 29.3 An employee who works on a public holiday will be paid for the hours worked in accordance with clause 19.2 in lieu of any payment for that time provided under clause 29.2.

30. Disciplinary procedures

- 30.1 The procedures for investigating and dealing with issues of under-performance and misconduct will be applied in an even-handed, fair and transparent way.
- 30.2 The disciplinary process will give employees every opportunity to respond to allegations against them, to be given a reasonable opportunity to have a support person present to assist when responding to allegations, and to understand and meet the required standards of job performance and personal behaviour.

31. Termination of employment

- 31.1 In order to terminate the employment of an employee, the Employer must give to the employee the following notice:

Employee's period of continuous service with the Employer at the end of the day notice is given	Period of notice
Not more than 1 year	1 week
More than 1 year but not more than 3 years	2 weeks
More than 3 years but not more than 5 years	3 weeks
More than 5 years	4 weeks

- 31.2 In addition to the above notice employees over 45 years of age at the time of the giving of the notice with not less than two years' service, are entitled to an additional week's notice.
- 31.3 Payment in lieu of the notice must be made if the appropriate notice period is not given by the Employer. Employment may be terminated by giving part of the period of notice specified and payment in lieu of the balance.
- 31.4 If an employee fails to give the required notice the Employer may withhold from any monies due to the employee on termination under this agreement, an amount not exceeding the amount the employee would have been paid under this Agreement in respect of the period of notice required by the clause less any period of notice actually given by this employee.
- 31.5 "Week's pay" for the purpose of termination and redundancy will be calculated on the basis of the employee's actual earnings, including regularly rostered overtime, any allowances, loadings, regularly paid penalties, and any other amounts payable under the employee's contract of employment and this Agreement.
- 31.6 The period of notice in this clause does not apply:
- (a) in the case of dismissal for serious and wilful misconduct;
 - (b) to casual employees.

31.7 For the purposes of this clause, service will be calculated in the same manner as used to calculate leave.

31.8 Employees must return all employer property at the termination of their employment.

32. Redundancy

32.1 An employee may be entitled to redundancy pay in accordance with the NES.

32.2 An Employer who has made a definite decision to terminate an employee by reason of redundancy must consult with the employee in accordance with clause 33.1.

33. Consultation and consultative committee

33.1 Consultation regarding major workplace change

- (a) Where an Employer has made a definite decision to introduce major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, the employer must notify the employees who may be affected by the proposed changes and their representatives, if any.
- (b) **Significant effects** include termination of employment; major changes in the composition, operation or size of the employer's workforce or in the skills required; the elimination or diminution of job opportunities, promotion opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of employees to other work or locations; and the restructuring of jobs. Provided that where this Agreement makes provision for alteration of any of these matters an alteration is deemed not to have significant effect.
- (c) The Employer must discuss with the employees affected and their representatives, if any, the introduction of the changes referred to in this clause, the effects the changes are likely to have on employees and measures to avert or mitigate the adverse effects of such changes on employees and must give prompt consideration to matters raised by the employees and/or their representatives in relation to the changes.
- (d) The discussions must commence as early as practicable after a definite decision has been made by the Employer to make the changes referred to under this clause 33.1, but prior to the implementation of any such change.
- (e) For the purposes of such discussion, the Employer must provide in writing to the employees concerned and their representatives, if any, all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on employees and any other matters likely to affect employees provided that no Employer is required to disclose confidential information the disclosure of which would be contrary to the Employer's interests.

33.2 Consultation about changes to rosters or hours of work

- (a) Where an Employer proposes to change an employee's regular roster or ordinary hours of work, the employer must consult with the employee or

employees affected and their representatives, if any, about the proposed change.

- (b) The Employer must:
- (i) provide to the employee or employees affected and their representatives, if any, information about the proposed change (for example, information about the nature of the change to the employee's regular roster or ordinary hours of work and when that change is proposed to commence);
 - (ii) invite the employee or employees affected and their representatives, if any, to give their views about the impact of the proposed change (including any impact in relation to their family or caring responsibilities); and
 - (iii) give consideration to any views about the impact of the proposed change that are given by the employee or employees concerned and/or their representatives.

33.3 Consultative committee

- (a) At each location, employees may establish a local consultative committee to discuss and confer about any issues that may arise from time to time.
- (b) This consultative committee may include an agreed number of elected representatives of the workforce and appropriate management representatives.
- (c) Once established, this consultative committee will meet on a regular basis as agreed between the Employer and employee representatives from time to time.

34. Dispute resolution procedure

34.1 This procedure shall be followed to resolve disputes relating to:

- (a) a matter arising under the agreement; or
- (b) the National Employment Standards.

34.2 This procedure shall not apply to a dispute relating to termination of employment.

Step 1: Employee shall meet and confer with their site manager

Step 2: If unresolved, the employee shall meet with Swimland's Operations Manager or HR Manager

- 34.3 **Step 3:** If unresolved, either party may refer the matter to the Fair Work Commission for conciliation and arbitration within 21 days following the end of Step 2. If the dispute is not referred to the Fair Work Commission within 21 days the process deemed to be resolved.
- 34.4 Whilst the parties are in dispute under this procedure the status quo antes prior to the dispute shall apply.
- 34.5 If the Fair Work Commission arbitrates the dispute, it may also use the powers that are available to it under the Act. A decision that the Fair Work Commission makes when arbitrating a dispute is a decision for the purpose of Division 3 of Part 5.1 of the Act. Therefore, an appeal may be made against the decision.
- 34.6 While the parties are trying to resolve the dispute using the procedures in this term:
- (a) an employee must continue to perform his or her work as he or she would normally unless he or she has a reasonable concern about an imminent risk to his or her health and safety; and
 - (b) an employee must comply with a direction given by the employer to perform other available work at the same workplace, or at another workplace unless:
 - (i) the work is not safe; or
 - (ii) applicable occupational health and safety legislation would not permit the work to be performed; or
 - (iii) the work is not appropriate for the employee to perform; or
 - (iv) there are other reasonable grounds for the employee to refuse to comply with the direction.
- 34.7 The parties to the dispute agree to be bound by a decision made by the Fair Work Commission in accordance with this clause.
- 34.8 An employee who is party to the dispute may appoint a representative for the purposes of the procedures in this clause 34.

35. Transitional arrangements

- 35.1 On the date that this Agreement comes into operation pursuant to clause 4.1, any employee who is engaged by an Employer as a "seasonal part-time employee" shall be treated as, and subject to all the benefits of, an ongoing part-time employee under this Agreement.
- 35.2 Any such employee who is engaged by their Employer as described in clause 35.1 above may, prior to the expiration of the term of their employment contract, elect that their employment:
- (a) terminate under their employment contract in accordance with their employment contract; or
 - (b) continue as ongoing employment in accordance with the terms of this Agreement.

SIGNED for and on behalf of the Employers by their authorised bargaining representative

Signature: Wayne Pollock
Name and Title: WAYNE POLLOCK, CEO PAUL SADLER SWIMLANI PTY LTD
Address: 5/202 FERNTREE GULLY RD, NOTTING HILL

Explanation for Authority to Sign Agreement

BARGAINING REPRESENTATIVE FOR THE EMPLOYERS.

SIGNED for and on behalf of the Employees by their authorised bargaining representative

Signature: Ben Davis
Name and Title: BEN DAVIS
Victorian Branch Secretary
The Australian Workers' Union
685 Spencer St, West Melbourne VIC 3003
Address: _____

Explanation for Authority to Sign Agreement

BARGAINING REP IS THE AWU/SIA
I AM BRANCH SECRETARY

Schedule 1 - Classifications

Where indicative tasks are set out below, these are an indicative guide only and should not be regarded as an exhaustive list.

Swim Australia Ltd. shall determine the equivalency of qualifications and recognition of workshops.

Level 1

Support Staff

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:

- (c) General counter duties including reception, taking bookings, members and membership enquiries, sale of products, activities organising and customer liaison;
- (d) General tidying/cleaning of immediate work area;
- (e) Undertaking structured training/learning in the following areas:
- (f) Clerical assistant duties including but not limited to switchboard operation, reception, information services and taking bookings.

Trainee Swim Teacher/Coach

An employee at this level works with an employee at Level 2 or above, observing and practicing teaching skills under direct supervision with specific instructions and procedures.

The period of training may take up to nine (9) months, however, shall not exceed 456 hours, to reach the competence required to be a teacher.

Duties may include any or all of the following:

- (a) Observing competent teachers conduct or demonstrate lessons defined by lesson plans with the learn to swim program;
- (b) Undertaking structured training/learning in teaching to swim;
- (c) Performing teaching tasks under the observation and guidance of a competent teacher.

Level 2

An employee at this level has :

- completed four hundred and fifty six (456) hours as a Level 1 employee, so as to enable the employee to perform work within the scope of this level; or
- has a swim teacher or coach qualification.

Employees at this level perform work above and beyond the skills of an employee at Level 1, and may perform some or all of the indicative duties listed below.

Support Staff

Duties may include any or all of the following:

- (a) attending to equipment and displays;
- (b) providing customer advice, sales and services;
- (c) operating a switchboard and/or telephone paging systems;
- (d) clerical duties, involving intermediate keyboard skills with instructions;
- (e) program/ticket selling and general sales involving receipt of monies and giving change, including operation of cash registers, use of electronic point of sale machines;
- (f) laundry and/or cleaning duties involving the use of cleaning equipment and/or chemicals;
- (g) maintain general presentation of grounds;
- (h) assisting with the training of Support Staff Level 1.

Swim Teacher/Coach

Duties may include any or all of the following:

- (a) Beginner swimming teacher, being a holder of any current qualification with the following competencies:
 - (i) *SRC AQU 003B Respond to an aquatic emergency using basic water rescue techniques;*
 - (ii) *SRC AQU 008B Apply the principles of movement in water to aquatic activities;*
 - (iii) *SRC AQU 010B Instruct water safety and survival skills;*
 - (iv) *SRC AQU 009B Instruct the strokes of swimming; and*
 - (v) *SRC CRO 007B Operate in accordance with accepted instructional practises, styles and legal and ethical responsibilities.*
- (b) Coaching beginners (includes mini and junior squads), being a holder of a current Swim Australia Ltd 'Teacher of Competitive Swimming' qualification or equivalent.

Level 3

An Employee at this level works under general supervision which requires operation within defined areas of responsibility with adherence to established guidelines and procedures.

An Employee at this level is able to fulfil a role at level 1 and 2 where relevant and supervise Level 1 & 2 Employees where requested, and may perform some or all of the indicative duties listed below.

Support Staff

Duties may include any or all of the following:

- (a) Assists with training and supervision of Support Staff Levels 1 and 2;
- (b) Playroom attending;
- (c) Membership product or services sales and or marketing;
- (d) Activities organising;
- (e) Promotional activities; and
- (f) Other duties as directed within the scope of their knowledge and experience at this level.

Swim Teacher/Coach

Duties may include any or all of the following:

- (a) an intermediate swimming teacher, being a holder of any current qualification with the competencies detailed in Level 2 has delivered 350 hours of swimming teaching; or
- (b) a coach of beginner swimmers (including mini and junior squads), being a holder of a current Swim Australia Ltd. 'Bronze Licence for Coaching' or equivalent.

Level 3.1

An employee who has worked as a receptionist for 450 hours or more at Level 3 at an Employer shall be classified at Level 3.1.

Level 4

An employee at this level works under limited supervision and guidance and is required to exercise initiative and judgement in the performance of their duties.

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

They shall have aggregate qualifications required of Level 2 and 3 employees.

Swim Teacher/Coach

Duties may include any or all of the following:

- (a) Experienced Teacher, being a holder of any current qualification with the competencies detailed in Level 2, above; or
- (b) Coaching beginners (includes mini and junior squads); being the holder of a current Swim Australia Ltd, 'Bronze Licence for Coaching' or equivalent.

Swim Teachers and Coaches at Level 4 shall be classified at the following pay points based on the amount of hours they have spent teaching, including when the employee is acting as a Deck Supervisor, as follows:

- **4.0** – 700 hours of swim teaching or coaching experience
- **4.1** – 1150 hours of swim teaching or coaching experience
- **4.2** – 1600 hours of swim teaching or coaching experience
- **4.3** – 2050 hours of swim teaching or coaching experience

Level 5 - ~~Manager~~/Assistant Manager

An employee at this level shall be responsible to executive management for the day to day running of a swim school.

They may hold formal qualifications at AQF4 or above, in fields relevant to the Employer's operations.

Their day to day activities shall include:

- (a) responsibility of staff training and development;
- (b) oversight and implementation of employment policies and procedures;
- (c) office and systems administration;
- (d) financial control;
- (e) ensuring compliance with appropriate statutory codes and regulations.

Schedule 2 – Wages

On 1 July of 2017, 2018 and 2019, each of the rates below increases by 2.5% (as set out in the tables) *or* CPI, whichever is greater.

Item 1 – Hourly rate Monday to Friday

Classification	30 April '17	1 Jul '17	1 Jul '18	1 Jul '19
Level 1	\$19.47	\$19.96	\$20.46	\$20.97
Level 2	\$20.03	\$20.53	\$21.04	\$21.57
Level 3	\$21.52	\$22.06	\$22.61	\$23.17
Level 3.1	\$22.02	\$22.57	\$23.13	\$23.71
Level 4.0	\$23.61	\$24.20	\$24.81	\$25.43
Level 4.1	\$24.16	\$24.76	\$25.38	\$26.02
Level 4.2	\$24.68	\$25.30	\$25.93	\$26.58
Level 4.3	\$25.19	\$25.82	\$26.47	\$27.13
Level 5	\$26.07	\$26.72	\$27.39	\$28.07

Item 2 – Hourly rates Saturday and Sunday

Classification	Saturday				Sunday			
	30 April '17	1 Jul '17	1 Jul '18	1 Jul '19	30 April '17	1 Jul '17	1 Jul '18	1 Jul '19
Level 1	\$24.34	\$24.95	\$25.57	\$26.21	\$29.21	\$29.94	\$30.68	\$31.45
Level 2	\$25.04	\$25.66	\$26.31	\$26.96	\$30.05	\$30.80	\$31.57	\$32.36
Level 3	\$26.90	\$27.57	\$28.26	\$28.97	\$32.28	\$33.09	\$33.91	\$34.76
Level 3.1	\$27.53	\$28.21	\$28.92	\$29.64	\$33.03	\$33.86	\$34.70	\$35.57
Level 4.0	\$29.51	\$30.25	\$31.01	\$31.78	\$35.42	\$36.30	\$37.21	\$38.14
Level 4.1	\$30.20	\$30.96	\$31.73	\$32.52	\$36.24	\$37.15	\$38.07	\$39.03
Level 4.2	\$30.85	\$31.62	\$32.41	\$33.22	\$37.02	\$37.95	\$38.89	\$39.87
Level 4.3	\$31.49	\$32.27	\$33.08	\$33.91	\$37.79	\$38.73	\$39.70	\$40.69
Level 5	\$32.59	\$33.40	\$34.24	\$35.09	\$39.11	\$40.08	\$41.08	\$42.11

Item 3 – Allowances

Classification	30 April '17	1 Jul '17	1 Jul '18	1 Jul '19
Deck 2 (per hour)	\$2.00	\$2.05	\$2.10	\$2.15
Deck 1 (per hour)	\$2.70	\$2.77	\$2.84	\$2.91

Broken shift (per shift)	\$12.64	\$12.96	\$13.28	\$13.61
First aid (per day)	\$2.38	\$2.44	\$2.50	\$2.56
Meal allowance (per day)	\$23.00	\$23.58	\$24.16	\$24.77