



SUBMISSION ON BEHALF OF THE AUSTRALIAN FEDERATION OF  
EMPLOYERS AND INDUSTRIES (AFEI)

AM2008/14

AWARD MODERNISATION

**AFEI**  
Australian Federation of  
Employers & Industries

**BEFORE THE AUSTRALIAN INDUSTRIAL RELATIONS  
COMMISSION**

**AM2008/14 – AGRICULTURE GROUP**

1. The Australian Federation of Employers and Industries (AFEI), formed in 1904, is one of the oldest and most respected independent business advisory organisations in Australia. AFEI has been a peak council for employers in NSW and has consistently represented employers in matters of industrial regulation since its inception.
2. With over 3,500 members and over 60 affiliated industry associations, our main role is to represent, advise, and assist employers in all areas of workplace and industrial relations and human resources. Our membership extends across employers of all sizes and a wide diversity of industries.
3. AFEI provides advice and information on employment law and workplace regulation, human resources management, occupational health and safety and workers compensation. We have been the lead employer party in running almost every major test case in the New South Wales jurisdiction.
4. AFEI is a key participant in developing employer policy at national and state (NSW) levels and is actively involved in all major workplace relations issues affecting Australian businesses.

5. AFEI has a membership across a broad range of agricultural industries. The awards/NAPSA's in which AFEI has a particular interest are:

- Farriers (State)
- Breeding and Raising of Pigs, &c (State)
- Cotton Growing Employees (State)
- Fish and Fish Marketing (State)
- Horticultural Industry (State)
- Mushroom Industry Employees (State)
- Oyster Farms, &c (State)
- Pastoral Employees (State)
- Poultry Farm Employees (State)
- Rural Traineeship (State) Award
- Dairy Industry Employees (State)
- Poultry Industry – Preparation (State)
- Poultry Industry Livestock (State)
- Sugar Field Workers (State)
- Wine Industry Consolidated (State)
- Nurseries Employees (State)
- Pastoral Industry Award
- Wine Industry (Consolidated) Award

6. The Pastoral Award is the dominant award in New South Wales for the agriculture industry. Employers which are not covered by the federal award are captured by a counterpart state award (now NAPSA) known as the Pastoral Industry (State) Award. The State Award, however, was not subject to the award simplification changes made to its Federal counterpart. This has meant that while the New South Wales Award remains relevantly the same as the Federal Awards in terms of allowable award matters, it has retained the non-allowable award matters removed from the Federal Award.

7. This position is the result of a decision of the Full Bench of the Industrial Relations Commission of New South Wales reported in (2000) 104 IR 168 in which AFEI (then Employers First) unsuccessfully supported an application to remove the Federal non-allowable matters from the State Award.
8. AFEI supports the Federal Pastoral Industry Award as providing the basis for an award applying to agriculture more generally. The particular advantage of the Pastoral Award is its flexible working hours provisions. The regime of working within a particular spread of hours on particular days does not work in this industry.
9. AFEI (then Employers First) has maintained the position that having regard to the nature of rural industries that work should be able to be performed in ordinary time on any day of the week. For example, AFEI (then Employers First) successfully argued for the ability to work over any seven days of the week in the *Fruit Growing Industry Award and Others*; unreported decision of Fisher P, Cahill V-P, Cullen J and Buckley CC; 23 August 1991.
10. In accepting AFEI's evidence and submission the Full Bench decision considers the nature of industry as follows:

“There is no doubt, having regard to the evidence, that, at harvest time in this industry, work is required to be performed and is, in fact, performed on Saturdays and Sundays. The more general pattern seems to be that the itinerant workforce works on Monday to Friday, with local labour being used at weekends. However, that is

by no means the invariable rule. Mr Hall's evidence, for example, is to the effect that, during the cherry season, pickers generally work from Saturday to Thursday, while in the stone fruit season "pickers and packers are required to work on any day of the week depending on the maturity of the fruit and the demands of the marketplace".

11. Both employer witnesses emphasised that it is essential to have flexibility to working times for the labour force, including the ability to require employees to work at weekends. The product, of course, was perishable and had to be handled with care. There was a need to pick at the optimum ripening time. It was also important to reach the appropriate markets in good condition. In this regard the Monday market was the largest and most lucrative and it was therefore important for growers to service it in a timely manner with fruit in top condition.
12. Another aspect of the evidence concerned the increase, in recent years, of the range of fruit being grown and marketed, particularly exotic, tropical fruits such as carimboldas, jacketfruit, lychees, starfruit, tangelos, rambutans, persimmons and custard apples. There were now approximately 500 growers of these fruits in New South Wales. In the case of at least some of these varieties, the time of harvest was of critical importance, with delays resulting in over maturity and consequential deterioration in quality of the product.

13. In these proceedings, we are called upon to review this industry in the context of the various principles to which reference has earlier been made.
14. The evidence is overwhelming that the industry is one where, at particular times of the year, must work necessarily be carried out on each of the seven days of the week.
15. AFEI submits that any hours provision in any agricultural award that the AIRC may create should also take account of the requirement for work to be performed on any seven days of the week.
16. There are areas of the industry in NSW subject to separate award coverage such as wineries, poultry farms and mushroom growing.
17. The Wine Industry (Consolidated) Award (now NAPSA) should be maintained as a separate award for that industry rather than be covered by a general Agricultural award because it covers all aspects of work in the wine industry already in a way which suits the industry. It does not only deal with growing the grapes but the production of the wine, its bottling and packaging, and the sale of the wine. This range of tasks or functions is reflected in the classifications contained in the award its coverage does not extend to employees growing grapes for other than the manufacture of wine and such employees would be appropriately covered by any general Agricultural Award that the AIRC may create.

18. Poultry employers have no objection to being covered by an award in similar terms to the Pastoral Industry Award. There are conditions in the awards that currently apply to them that they would prefer to continue. These conditions include: flexible part-time arrangements which enable additional hours to be worked at ordinary time rates; the disease control measures in clause 5 of the Poultry Industry Livestock NSW NAPSA; and the classification structure which covers relevant industry classifications which may not currently be adequately dealt with in the Pastoral Award (e.g. farm transporters, rural trades people and farm maintenance workers). AFEI would support the inclusion of such classifications in a general Agricultural Award.
  
19. We support the position of the Mushroom Growers Association regarding a modern award for that industry.

### **Conclusion**

20. AFEI supports the creation of a modern Agricultural Award based on the existing Pastoral Award, in particular its hours of work provisions. It would also be appropriate for the AIRC to consider the inclusion of additional classifications, such as those contained in the Poultry Industry Livestock NSW NAPSA as it would mean that poultry industry employers and others could continue to have their employees covered by a single award suitable to the industry. The wine industry should be covered by a separate modern award