



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

AM2008/4
AWARD MODERNISATION

AFEI
Australian Federation of
Employers & Industries

BEFORE THE AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

AWARD MODERNISATION

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CATERING INDUSTRY, LIQUOR AND ACCOMMODATION

INDUSTRY, RESTAURANTS (INCLUDING CLUBS)

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.

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7. AFEI acknowledges that the Hospitality Industry is listed as a priority industry for the purposes of award modernisation.

COVERAGE OF MODERN AWARDS IN THE HOSPITALITY INDUSTRY

8. AFEI notes the comments of the Full Bench in its Award Modernisation Decision of 20 June 2008 at paragraph 34:

We have decided to include the hospitality sector, constituted by the federal industries of catering, liquor and accommodation and restaurants on the priority list. This industry, at this stage, will also include the licensed club industry.

9. AFEI supports the concept of multiple Modern Awards for the Hospitality Industry which appropriately reflect the different sectors of the industry.

10. We submit there are good reasons to separate restaurant and catering and clubs from an all-encompassing hospitality award and support the submissions of Clubs NSW and the Restaurant and Catering Association of NSW to that effect.
11. The separation of unique sectors into separate Modern Awards instead of one all-encompassing Modern Award is both logical and consistent with the objects of Award Modernisation contained within the Workplace Relations Act. We believe such an approach is necessary to satisfy section 576A (2)(a) which requires that modern Awards '*must be simple to understand and easy to apply, and must reduce the regulatory burden on business*'.
12. AFEI further notes that these sectors are currently covered by separate NAPSA's that operate independently to other areas of the hospitality sector across most, if not all states. Careful consideration should be given to areas of award coverage that have been historically delineated and unless there is good reason for merging particular streams well established industry lines should be preserved.

Accommodation

13. It is the submission of AFEI that a Modern Award in the Hospitality Sector applying to accommodation should have application to businesses whose principal purpose is to provide accommodation (on a commercial basis). For example; motor inns, motels, private hotels, serviced apartments, resorts, time share facilities, health or recreation farms, guest houses, caravan parks ski lodges, holiday flats/units.

14. It would be inappropriate to include other accommodation services that operate outside the hospitality sector in such an award. For example; short-term crisis accommodation, refuges and other accommodation services operated by charitable or not for profit organisations (whose principal purpose is the provision of welfare in the form of accommodation) would be more appropriately covered by a Modern Award applying to the community services sector.

Racing Industry & Recreation Grounds Sector

15. All race clubs engage hospitality employees for race meetings. The major race clubs in NSW also operate function or convention centres and so have a pool of catering employees who may work on race days but also as part of the function/convention centre. For example the Australian Jockey Club operates a convention centre which has 14 function rooms. The convention centre is used for large exhibitions, trade shows, car and product launches and weddings.
16. AFEI proposes a Racing/Recreation Grounds Hospitality Award be made that would cover any employees who are currently covered by the Liquor Industries – Racecourses Showgrounds etc. – Casuals Award 1998 (AP787006).

17. The Liquor Industries – Racecourses Showgrounds etc. – Casuals Award 1998 helpfully provides a definition of the industry to which it applies at Clause 9:

“The award relates to the industry of persons employed as casual bar attendants, cashiers and other casual employees in the classifications prescribed on racecourses, recreation grounds, sports grounds, showgrounds, picnic grounds and any other ground where liquor is permitted to be sold under the licensing laws of any state.”

18. It is relevant to note that the sector includes recreations grounds, sports grounds etc that are licensed to serve alcohol.

19. Significantly this Award applies in the following states:

- Victoria;
- Tasmania;
- Queensland; and
- New South Wales (excluding the County of Yancowinna).

20. A Racing/Recreation Grounds Hospitality Award is appropriate as it would not only cover casual bar staff engaged on event days but could also cover catering employees engaged at function centres operated by race clubs.

Race Clubs and the Proposed Club Industry Modern Award

21. The race clubs represented by AFEI are strongly opposed to their inclusion in a Club Industry Award. The Oxford English Dictionary includes in the definitions of "club" the following:

"15.a. An association of persons (admittance into which is usually guarded by ballot), formed mainly for social purposes, and having a building (or part of one) appropriated to the exclusive use of the members, and always open to them as a place of resort, or, in some cases, of temporary residence; the club may be political, literary, military, etc. according to the aims and occupations of its members, but its main feature is to provide a place of resort, social intercourse, and entertainment."

22. The Macquarie Dictionary includes amongst its definitions the following:

"6. a group of persons organised for a social, literary, sporting, political, or other purpose, regulated by rules agreed by its members."

23. In *Cameron v Hogan* (1934) 51 CLR 358 the High Court said of voluntary associations (at 370-1):

"They are for the most part bodies of persons who have combined to further some common end or interest, which is social, sporting, political, scientific, religious, artistic or humanitarian in character, or otherwise stands apart from private gain and material advantage. Such associations are established upon a consensual basis..."

24. The common theme of these definitions is association by agreement of the members. Race clubs are not for the use of members only. The main purpose of race clubs is to conduct race meetings which are open to members of the general public. There is a membership element to the race clubs but this is far outweighed by its operation of a racecourse for the use of the general public and the Racing Industry in general.

25. A distinction can also be made between a hospitality club and a horse racing club. The Australian Bureau of Statistics has released a report of the results of the 2004-2005 Clubs (Hospitality) Survey (ABS 8687.0). The scope of the survey *"included significant employing and non-employing organisations in Australia that generated income predominantly from the provision of hospitality services (drinking facilities, gambling, meals and other hospitality services) to members. As such, clubs whose main activity was the provision of sporting services were not included within the scope of this industry."*

26. Horse and Dog Racing Survey information is contained within Sporting and Physical Recreation Services data in an ABS 2004-2005 Report (ABS 8686.0). This report reflects that the predominance in that industry is TAB distributions (44.3%) and training fees (13.6%). By contrast, the predominant source of income for hospitality clubs is gambling (58.4%) and the sale of liquor and beverages (21.7%). Not only are the proportions markedly different but the environment in which the revenues are obtained are significantly diverse

27. These reports illustrate the differences between hospitality clubs and racing clubs. It would be inappropriate for the Commission to include race clubs in a Club Industry Award.

CONDITIONS UNIQUE TO HOSPITALITY

28. AFEI reserves its position in relation to specific provisions which should be contained in Modern Awards within the Hospitality Sector, however, we do make the following observations.

Unique Hours and Appropriate Penalties

29. Across all areas of hospitality, business is conducted across seven days of the week, and over a span of hours that is largely outside the span of "ordinary hours" in other industries.
30. Employees enter the industry with the full knowledge that it operates over a seven day week where working hours will be outside the usual 9 to 5 span of hours available in other industries. Indeed, many employees enter the industry because such hours provide flexibility needed to suit their lifestyle and assist in balancing other commitments (i.e. study, family).

31. Modern Award provisions should recognize the flexibility and unique working hours of the industry. Award provisions should not be onerous for employers or impose unnecessary and restrictive penalties on businesses. This would reduce flexibilities and opportunities for both employers and employees and disadvantage employers by increasing costs for business to meet service levels.

FLEXIBILITIES

32. Hospitality is very much demand focused where employee numbers often fluctuate to meet service demand. Again, emphasizing the need for high levels of flexibility within Modern Awards. The provisions of a Modern award should be designed specifically to accommodate this requirement.
33. The need for flexibility to meet demand has traditionally resulted in high numbers of casual staff being engaged in the industry. If the hours of work for part time employees were to provide greater flexibility this would encourage the use of more permanent staff in the industry.
34. Examples of existing provisions that allow flexibility include:
 - Provisions enabling hours to be averaged over a period of time instead of cumbersome requirements to work a rigid hours schedule each week with inflexible start and finish times. This would increase flexibility to meet service demands generally, with no monetary disadvantage to the employee.

- Flexible rostering arrangements and non restrictive provisions facilitating changes to rosters
 - Provisions enabling part time employees to work additional hours to meet periods of high demand without imposing inappropriate penalties on employers. For example, the ability to agree to working hours up to a full time equivalent at ordinary rates, or the ability to work beyond finishing time and receive casual rates of pay for such time worked as in the case of part time employees currently in the NSW Restaurant Employees NAPSA.
 - Employers and employees being able to reach time in lieu agreements for additional hours worked.
35. For many businesses operating within sectors of the Hospitality Industry driven by customer demand (particularly those smaller businesses operating in the areas of restaurant and catering and accommodation) such flexibilities are crucial to survival.

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