



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

AM2008/8

AWARD MODERNISATION

**AFEI**  
Australian Federation of  
Employers & Industries

# **BEFORE THE AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION**

## **AWARD MODERNISATION**

### **MATTER NO. AM2008/8 – RACING INDUSTRY**

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. The Australian Federation of Employers and Industries (AFEI) represents the major racing clubs in NSW both in the thoroughbred and harness racing industries. AFEI also represents a number of smaller race clubs and regional race clubs as well as the majority of recreation grounds in NSW.
6. AFEI acknowledges that the Racing Industry is listed as a priority industry for the purposes of award modernisation. The following submission is the view of the race clubs in NSW in relation to the appropriate awards which should operate in relation to the Racing Industry, who they should cover and the appropriate conditions of employment.

#### **WHAT IS THE RACING INDUSTRY?**

7. In the decision of the Full Bench on 20 June 2008, the Commission listed a number of awards to be considered for the purposes of developing a Racing Industry Award. These submissions will deal with those awards as well as propose further awards which should be considered in the context of a Racing Industry Award. Further, it is our submission that any Racing Industry Award cover both Thoroughbred Racing and Harness Racing.
8. AFEI does not represent any employers in greyhound racing, however, we would not oppose greyhound racing being included in the Racing Industry in general.

9. Employees of the Racing Industry can be broadly categorised into four sectors:
  - General Racing;
  - Hospitality;
  - Administration; and
  - Race Day/Events.
  
10. A fifth sector, being the on and off course betting sector has also been identified. The Full Bench in its decision of 20 June 2008 expressed the view that this stream may appropriately be dealt with as a separate industry. AFEI is not opposed to this view. To that extent it may be appropriate for the *Clerks' (Racing Industry – Betting) Award 1978 (AN160077)* to be removed from the list of awards to be considered for the purposes of the Racing Industry. AFEI reserves its rights in relation to any on and off course betting industry award.
  
11. There are also a number of enterprise awards listed in Attachment B of the decision of the Full Bench of 20 June 2008. AFEI submits that while these instruments reflect the types of employees which should be covered by the awards proposed below, they are not appropriate in a consideration of the terms and conditions which should form part of the awards.

12. The race clubs represented by AFEI propose that the following awards be made to cover the four streams listed above:
- a Racing Industry Award to cover General Racing;
  - a Recreation Grounds Award to cover those employees who are employed on race days;
  - a Racing/Recreation Grounds Hospitality Award to cover catering and bar staff engaged by race clubs; and
  - coverage of clerical employees employed in the administration of racing including race clubs in the Private Sector Clerical Occupation Award.
13. The following represents our submission as to coverage of these proposed awards. Particular features of the Racing Industry and appropriate conditions of employment will then be dealt with.

#### **RACING INDUSTRY AWARD**

14. This Award would cover any employee employed in or in connection with the Racing Industry who are currently covered by the following industrial instruments:
- Horse Training Industry Award 1998 (AP783476);
  - Cultural and Recreational Services Industry Sector Minimum Wage Order – Victoria – 1997 (AP774566);
  - Entertainment and Broadcasting Industry (Recreation Grounds etc – Victoria) Award 2000 (to the extent that it covers Raceday Racing Officials and Barrier Attendants) (AP780960);
  - Municipal Employees' (Sporting Grounds – Western Australia) Award 2000 (AP807139);

- Entertainment Industry - Recreation Grounds Queensland Award 2000 (to the extent that it covers Raceday Racing Officials and Barrier Attendants) (AP780966);
- Sports Ground Maintenance and Venue Presentation (Victoria) Award 2001 (AP812760);
- Theatrical Employees (Recreation Grounds and Raceday Racing Officials – NSW and ACT) Award 2000 (to the extent that it covers Raceday Racing Officials and Barrier Attendants) (AP799620);
- Theatrical Employees (Recreation Grounds, Etc) South Australia Award 2000 (to the extent that it covers Raceday Racing Officials and Barrier Attendants) (AP799048);
- Farriers (State) Award (AN120206);
- Greyhound Racing Authority (NSW) Award (AN120238);
- Race Clubs Employees (State) Award (AN120450);
- Strappers and Stable Hands (State) Award (AN120516);
- Theatrical Employees Recreation and Leisure Industry (State) Award 2000 (AN120573);
- Theatrical Employees' Redundancy (State) Award (AN120574);
- Metropolitan Race Clubs Maintenance Employees' Award – Brisbane and Ipswich 2003 (AN140172);
- Racecourse and Showground Employees Award – Brisbane 2003 (AN140252);
- Racecourse Employees Award – Southern Division (Eastern District) – 2003 (AN140253);
- Racing Industry Employees' Occupational Superannuation Award – State 2003 (AN140254);
- Sports Ground Employees' Award – Southern Division (Eastern District) 2002 (AN140276);
- Trotting Club Employees' Award – State 2002 (AN140306);
- Race-Course Groundspersons Award (AN150124).

15. It is our submission that the coverage of these industrial instruments reflect the traditional understanding of the Racing Industry. This then leaves three further types of employees which AFEI proposes be dealt with as follows.

### **RECREATION GROUNDS AWARD**

16. This award would cover any employee employed in or in connection with recreation grounds (excluding maintenance employees) who are covered by the following industrial instruments (excluding race day racing officials and barrier attendants):

- Theatrical Employees (Recreation Grounds and Raceday Racing Officials – NSW and ACT) Award 2000;
- Entertainment Industry (Recreation Grounds Queensland) Award 2000;
- Entertainment and Broadcasting Industry – Recreation Grounds – Western Australia Award 2000;
- Entertainment and Broadcasting Industry Recreation Grounds etc – Victoria Award 2000; and
- Theatrical Employees (Recreation Grounds, etc) South Australia Award 2000.

17. A useful coverage definition of recreations grounds for the purposes of the Award would be:

*"This award relates to the industry of persons employed in the classifications prescribed on racecourses, recreation grounds, sports grounds, showgrounds, and picnic grounds." (See Liquor Industries – Racecourses Showgrounds etc. – Casuals Award 1998).*

18. These employees are engaged by race clubs to attend race meetings and to perform a variety of functions ranging from ticket sellers to parking attendants. These employees are typically engaged for race meetings only. Most race meetings are conducted on a Saturday or in the case of harness racing, in the evening. Employment in these occupations is event driven and therefore the current industrial instruments which apply to them are casual only awards.
19. All of these awards apply not only to employees engaged for race meetings but also to other sporting fixtures conducted by sportsgrounds or for agricultural shows such as the Sydney Royal Easter Show. For example, the Theatrical Employees (Recreation Grounds and Raceday Racing Officials – NSW and ACT) Award 2000 covers employees engaged by race clubs, football and other sporting clubs, sports grounds and agricultural and horticultural associations. The commonality between all of these employers is that they are event driven. Sporting fixtures are generally held on weekends, agricultural shows are regionally conducted on an annual basis.
20. The types of employees employed by these employers are (with the exception of racing officials who are covered by the same awards) the same. For example, a ticket seller/turnstile attendant could be employed at a cricket match at the Sydney Cricket Ground, at a race meeting conducted by the Australian Jockey Club or at the Sydney Royal Easter Show. Similarly a cloak room attendant and a parking attendant could be employed at any event conducted by any of the employers. The same can be said for the majority of employees covered by these awards.

21. Indeed, it is common for these employees to move from event to event, being employed by different employers but performing the same functions at the same rates of pay (with the exception of any enterprise agreements which might apply at any particular venue). An employee may conceivably work at multiple venues in one week performing the same work.
22. The ability of these employees to move from venue to venue establishes a sufficient nexus to warrant in our submission a Recreation Grounds Award which covers those employees who are engaged in the type of work currently covered by the five awards mentioned above, excluding race day racing officials and barrier attendants. A specific award such as this would capably deal with the peculiarities of the industry such as the event driven nature of the industry which requires a flexible casual workforce which provides for common conditions and rates of pay for employees who move across venues.

#### **RACING/RECREATION GROUNDS HOSPITALITY AWARD**

23. 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.
24. 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.

25. Our proposal for a Racing/Recreation Grounds Hospitality Award would cover any employee employed in or in connection with the Racing Industry who are currently covered by the following industrial instrument:

- Liquor Industries – Racecourses Showgrounds etc. – Casuals Award 1998 (AP787006).

26. 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.”*

27. It is relevant to note that the industry includes recreations grounds, sports grounds etc.

28. Significantly this Award applies in the following states:

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

29. It is unclear as to the application of the Licensed Clubs (Victoria) Award 1998 (AP787060) which is listed in Attachment B to the decision of the Full Bench on 20 June 2008, however, we note that there is a proposed Club Industry Award to be considered in the context of the award modernisation process.

30. 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."*

31. 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."*

32. 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..."*

33. 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.
34. 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."*

35. 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 predominant income source in that industry is from 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%).
36. 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.
37. A Racing/Recreation Grounds Hospitality Award is appropriate as it will cover not only casual bar staff engaged on race days but also catering employees engaged in the operation of function centres operated by race clubs.

#### **PRIVATE SECTOR CLERICAL OCCUPATION**

38. The administration of the Racing Industry is diverse. All race clubs employ clerical employees to carry out the day to day functions of the club (such as payroll, membership, customer service, marketing, accounts and personal assistants). In other words, part of the system of office administration.
39. There are also clerical employees who are employed on race days in the racing office. Depending on the size of the race club many of the clerical employees who are employed on a race day are also employed in that capacity in general administration on non-race days, although some employees may also be casual.

40. In addition to general clerical employees the Australian Jockey Club also engages clerical employees to manage the Australian Stud Book ("the ASB") (jointly owned by the AJC and the Victorian Racing Club) and the Australian Prices Network ("the APN") (jointly owned by Sydney and Melbourne Metropolitan Clubs). Both the ASB and APN are particular to the Australian Jockey Club.
41. Outside of race clubs there is the administration of racing in general which employs clerical employees. Such organisations would include the Australian Racing Board, Racing NSW and similar organisations in other states.
42. With the exception of certain race day clerical employees already covered by the awards listed below, coverage by the Private Sector Clerical Occupation Award is appropriate for clerical employees employed by race clubs. AFEI relies on its submission filed in relation to the Private Sector Clerical Occupation Award in AM2008/7.
43. It should be noted there are also some clerical positions which fall under the following awards which are particular to race days:
  - Theatrical Employees (Recreation Grounds and Raceday Racing Officials – NSW and ACT) Award 2000;
  - Entertainment Industry (Recreation Grounds Queensland) Award 2000;
  - Entertainment and Broadcasting Industry – Recreation Grounds – Western Australia Award 2000;
  - Entertainment and Broadcasting Industry Recreation Grounds etc – Victoria Award 2000; and
  - Theatrical Employees (Recreation Grounds, etc) South Australia Award 2000.

44. Those awards include the following classifications:
- Clerk of Scales and Assistant Clerk of Scales;
  - Clerk of the Course; and
  - Change Clerks.
45. It is submitted that those clerical employees currently covered by the above be excluded from the proposed Clerical Occupation Award as they will already adequately be covered by a Racing Industry Award.

### **FEATURES OF THE RACING INDUSTRY**

46. The cornerstone of the Racing Industry are the race meetings which are held at the various race clubs, both harness racing and thoroughbred racing. The majority of races are primarily held on Saturdays for thoroughbred racing and in the evening for harness racing. Barrier trials are also held during the week although not on a daily basis.
47. Given the primary function of race clubs is to conduct race meetings, it is imperative that any award that applies to these employers and their employees properly reflect the following features of the industry:
- Saturday is an ordinary day of work;
  - Evening races are a common feature of the Racing Industry. There should be sufficient ordinary daily hours to enable employees to be employed by those clubs to cover evening race meetings. Hospitality functions which are a feature of race meetings, particularly at metropolitan clubs, generally continue after the last race. Any award that applies to hospitality employees should therefore not be restrictive in its hours of work provisions.

- Race clubs who provide facilities for trainers and trainers themselves engage in early morning track work. An award needs to recognise that early morning trackwork is a common feature of the industry and hours of work provisions should reflect this;
- The industry is event driven. There is a need for any award to recognise the need for a casual workforce with an appropriate casual loading;
- There are many employees employed in race clubs who are primarily engaged in a particular occupation who then perform another function on a race day. For example, a trackhand engaged to perform trackhand duties on non-race days may also perform work as a barrier attendant on a race day. It is important then that an award recognise a need to engage employees on salaried basis to avoid classification/rates of pay disputes and enables them to perform a variety of functions.
- Race clubs have enjoyed industrial harmony in recent years. A new award should not create any new demarcation disputes, nor should it re-open previous demarcation arrangements;
- Race meetings are subject to conditions which may be beyond the employers control, such as weather conditions etc. Given the level of employment generated by race meetings it is important that appropriate consideration be given to postponement/cancellation provisions;

- While most employees are engaged by the major metropolitan clubs, the majority of race meetings are held at provincial clubs which do not generate the revenue or patronage of metropolitan clubs. Consideration should be given to regional rates of pay which recognises the differences between the metropolitan race clubs and the provincial race clubs.

48. The following are initial observations in relation to some appropriate conditions for modern awards which apply to the Racing Industry.

### **Hours of Work**

49. As referred to earlier the Racing Industry operates from early morning to evening and includes Saturday as an ordinary racing day. We understand that races are also held on a Sunday in Victoria. An hours of work provision in any award that applies to the Racing Industry needs to recognise this and provide maximum flexibility to allow the industry to operate.

50. For example, the Horse Training Industry does not currently have an hours of work provision other than a 40 hour week. The Theatrical Employees (Recreation Grounds and Raceday Racing Officials – NSW & ACT) Award provides only for minimum daily engagements and has no span of hours. It is our submission that this approach to hours of work should be adopted in any modern award for the Racing Industry.

**Weekend Rates**

51. It is our submission that a modern award which applies to the Racing Industry should not apply a penalty to an ordinary working day. For example, race meetings are generally held on Saturday, therefore Saturday is an ordinary day in the Racing Industry. Any modern award should impose a penalty on an employer for operating on a normal working day.
  
52. AFEI reserves its rights to provide further submissions in relation to conditions of employment as a draft award is developed. It is envisaged that discussions will be held between employers and unions as to the content of modern awards which apply to the Racing Industry. We look forward to participating in those discussions.

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