



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

MATTER NO. AM2008/4

DRAFT EXPOSURE DOCUMENTS

HOSPITALITY INDUSTRY (GENERAL) AWARD

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. In regard to specific content of the draft exposure award proposed for **Hospitality Industry (General) Award 2010** AFEI makes the following submissions. These submissions should be read in conjunction with the content in our general submissions.

Scope and Coverage

A single Modern Award

6. We note the observation of the Full Bench at paragraph 46 of the Statement released 12 September 2008 in drafting a single award for the hospitality industry.
7. As a result of making one single award, the Hospitality Industry (General) Award 2010 has aggregated the restaurant and catering industry, and accommodation industry within an award based on federal award provisions currently applying within the hotel industry.
8. It is the concern of AFEI that the exposure draft does not recognise the substantial operational differences between the restaurants, caterers and hotels, and, as currently drafted, will increase costs in these industries.

9.

Exclusions

10. AFEI continues to support the submissions of Clubs NSW and Restaurant and Catering Industry Association of Australia Inc that it is not appropriate to marry these industries into one all-encompassing award. We note that registered clubs are not currently included within the exposure draft and that this issue has been deferred from immediate consideration. Accordingly, we make no further submissions on that issue at this time.
11. We also note the exclusions contained in clause 4.5 of the exposure draft and refer to paragraph 13 and 14 of our submissions filed 1 August 2008.
12. As previously noted, we support the exclusion of accommodation providers that operate outside the hospitality sector from such a Modern Award, including the exclusion provided for residential colleges, boarding schools and orphanages.
13. However, the definition of Hospitality industry in the exposure draft includes 'boarding establishments and establishments of a like nature'. It is currently unclear which establishments this may include. As indicated previously, it is our submission that accommodation services operated for the provision of welfare (in the form of short-term crisis accommodation for example) would be more appropriately covered by a Modern Award applying to the social and community services sector.

Classification Structure

14. The exposure draft classification structure is reflective of the Federal Hospitality Industry award and, consequently incorporates multiple streams, including a food and beverage stream, guest services stream, administrative stream, stores stream, security stream, and casino gaming stream.
15. Many of these classifications are highly specific and related to narrow occupational/ industry groups. The diversity, and irrelevance of these numerous streams to the mainstream operations of cafes, restaurants, catering and accommodation indicates that it would be more practical to have separate awards with appropriate and relevant classification structures instead of an unwieldy “catch all” mega award.
16. A diverse, multistream approach within a modern award also introduces problems of new internal relativities and the inevitable bargaining issues which will arise from this grouping of classifications which have not previously been connected or related in any way.
17. The proposed classification structure includes managerial classification in respect of Hotel staff which are derived from the Federal Hospitality Award. AFEI notes that such classifications will not extend to other areas covered by the Hospitality Award 2010 and agrees with this approach noting the comments of the Minister that:

'The creation of modern awards is not intended to extend award coverage to those classes of employees, such as managerial employees, who, because of the nature or seniority of their role, have traditionally been award free'.

Part-time employment: increased inflexibility and added cost in rostering and overtime

18. We refer to our submissions filed 1 August 2008 and paragraphs 32 – 35 relating to the need for flexibility and the part-time provisions contained in clause 11 of the exposure draft.
19. In particular clause 11.3 requires that at the time of engagement the employer and the part-time employee will agree in writing, on a regular pattern of work, specifying at least the hours worked each day, which days of the week the employee will work and the actual starting and finishing times each day.
20. It is not possible in an industry with unpredictable market demand to be subject to the requirement to provide regular part time work on a routine basis. The restaurant and catering sector of the industry is characterized by unpredictable and irregular changes in business and consequently, changing workforce demands.
21. It is our submission that this provision should be amended to reflect the flexibilities needed and currently present across other sectors of the Hospitality Industry.

22. By way of example, both NAPSAs applying to Restaurants and Caterers in NSW provide minimum and maximum number of hours with the ability to average hours over 4 weeks for part time employees. The start and finish times are as per the roster which can be altered with 7 days notice at no additional cost to the employer.
23. The operation and interaction of clauses 11.3 and 11.4 with clause 29.2 of the exposure draft is unclear. Clause 29.2 indicates that the roster for part-time staff can be altered by mutual consent at any time or with seven days' notice, however, clause 11 indicates that a part-time employee has a regular pattern of work with fixed start and finish times that can be changed by agreement in writing. This inconsistency requires further clarification.
24. It is our submission that there should be no requirement to put in place what is in effect an arrangement for a permanent roster, where any change to this roster must be agreed in advance and documented this agreement each time a rostering change takes place. Such a provision is unworkable in this industry and provides additional burdens on employers and employees.
25. Proposed Clause 11.7 of the exposure draft indicates that all time worked in excess of the hours as mutually arranged with a part time employee will be overtime and paid for at overtime penalty rates.

26. We oppose the payment of overtime for all time worked in excess of the hours mutually arranged. Part time employees and their employers should have the option to offer and accept additional work up to 38 hours without any excessive penalty. We submit that part time overtime payment should be on the same basis as payment for full time employees.
27. If the final modern award includes payments for additional hours worked by part-time employees; this will present a significant additional cost for employers currently operating catering and/or restaurant businesses in NSW.
28. For instance, under the NSW Caterers NAPSA, a part-time employee can currently work any hours in addition to their rostered hours with the payment of casual loadings in addition to their ordinary rate of pay (this equates to an additional 28.333%, compared with an additional 50% and 100% under the proposed Modern Award). This penalty (and subsequent cost increase) is the same as in the Restaurant Employees NAPSA.

Example of Cost Increase

A part-time employee engaged as a Grade 2 Food & Beverage Attendant in NSW working for a catering company works a roster of 20 hours per week (5 shifts of 4hrs). The employee is asked to perform an additional 5 hours on one day and an additional 2 hours on three days.

Under the NAPSA, the employee's additional hours would be paid as follows:

*Additional 11hrs @ \$14.94 * 20% (casual loading) + 1/12th = \$213.64*

Total additional cost: \$213.64

Under the proposed Modern award, the employee's additional hours would be paid as follows:

11 additional hours

5 hours on one day=2 hours@ time and half + 3 hours @ double time

*(15.34*1.5*2)+(15.34*2*3)= 46.02+92.04 =138.06*

2 hours on 3 days=6 hours @ time and half:

*\$15.34 (\$583/38) * 6 * 1.5 * = 138.06*

Total additional cost: \$276.12

29. The increase in the cost of offering 11 additional hours to one part-time employee in the above circumstance is \$62.48 for the week or an increase of 29% in wages cost. Even where the basic rate of pay in the NAPSAs is increased to \$15.34 (the rate proposed in the exposure draft), the cost increase from the higher penalty is 26%.

30. Consequently, the overtime provisions in the exposure draft substantially increase costs for employers in NSW in these sectors when offering employees additional hours of work. Such increases are likely to discourage employers from offering additional hours to part time employees, as it would be less costly to employ a casual employee to offset periods of demand. If this occurs it is likely to disadvantage part time employees who will have an avenue of potential additional income removed.

Weekend Penalty Rates

31. Clause 31 provides for the following penalty rates for employees other than casuals who work on weekends:

- Saturday Work: time and a quarter
- Sunday Work: time and three quarters

32. The proposed penalty for Saturday work reflects the industry standard of time and half, however, the Sunday loading under the proposed modern award is 75%. This is an increase of 25% when compared to 50% under the NSW Restaurant and Catering NAPSAs.

33. This increase will result in increased costs for employers in these industries who trade on Sundays.

Example:

For a grade 2 food and beverage attendant performing 8 hours work on a Sunday, the cost difference between the current NSW NAPSAs and the exposure draft is as follows.

Under the NAPSAs, a grade two food and beverage attendant would be paid as follows:

$$\begin{aligned} & \$14.94 * 1.5 * 8 \\ & = \mathbf{\$179.28} \end{aligned}$$

Under the Modern award, such an employee would be paid as follows:

$$\begin{aligned} & \$15.34 * 1.75 * 8 \\ & = \mathbf{214.76} \end{aligned}$$

The Sunday loading under the modern award, therefore, represents a wages cost increase of \$35.48 or 20% in this circumstance for this employer in respect of a single employee working on a Sunday.

Penalties for work after 7pm

34. Clauses 31 and 32 of the exposure draft provide that employees including casuals would be entitled to an additional penalty for all hours worked between 7.00pm and midnight, Monday to Friday of 0.25% of the standard rate (currently \$637.60). This would equate to \$1.59 for any hour or part hour worked after 7pm. These rates are expressed as a percentage of the standard rate of pay and would therefore increase as the weekly rate of pay increased.

35. This amount equates to an additional loading of for each hour worked between 7pm and midnight of:

11.1% of introductory rate

10.78% of Level 1 rate

10.37% of Level 2 rate

10.01% of Level 3 rate

9.48% of Level 4 rate

8.89% of Level 5 rate

8.66% of Level 6 rate

36. This provision is opposed. It mandates a payment which originated in the hotel industry, for reasons specific to that industry, across a diversity of industries which include accommodation in motels, guest houses, and the restaurant and catering industry whose normal hours of operation ordinarily extend into the evening. Costs to these industries will be unreasonably and substantially increased. We submit that there is no basis for such an extension. Industries in this sector not traditionally bound by such provisions should not have their costs increased for without reason.

Annualised salary

37. As indicated in our general matters submission AFEI supports the inclusion of annualised salary provisions and notes that Hospitality is among those exposure drafts that include such a provision.

38. Annualised salary arrangements permitted by section 576J(f) are intended to facilitate flexibility in awards. They should not place an additional burden on employers in respect of record keeping.
39. Clause 26.6 of the exposure draft has been adopted from the Hospitality Industry Federal Award and in our submission provides unnecessary record keeping requirements that are onerous to employers and conflict with the intention of creating flexibility and alleviating the administrative burden by paying higher all inclusive salaries to employees

Allowances

40. It is our submission that allowances should be in a form that are easy to understand and have practical application to the situations in which they are payable. Allowances should reflect the actual cost in the context concerned and Modern Awards should contain appropriate adjustment mechanisms.
41. In the Hospitality exposure draft all allowances are expressed (or intended to be expressed as indicated in the notation) as a percentage of the standard rate. This means that each time wages are adjusted there will be an automatic adjustment to all allowances.
42. AFEI is concerned that such an adjustment may not necessarily reflect appropriate movements across all allowances.

43. Expense related allowances have historically been adjusted to reflect movements in the relevant CPI figure as a cost indicator for that particular allowance. This has been the case at the NSW level and in federal awards when safety net (and Wages and Allowances) adjustments are made.
44. Common examples of expense related allowances include meal allowance, clothing allowances and travel allowances.
45. AFEI submits that there is no good reason for the Commission to deviate from established methods and principles for adjusting expense related allowances. The Commission should exercise caution if changing existing mechanisms for adjusting expense related allowances especially where future wage fixing criteria is uncertain and it is unclear that providing a flow on effect would result in accurate adjustments to such allowances.
46. The First Aid allowance contained in the exposure draft provides for a weekly allowance for employees. In our submission it should also provide for a daily allowance or at least an ability to pro-rata the weekly amount to a daily allowance. This would enable employees to act as first aid officers on a daily or shift basis. Current provisions seem to contemplate only weekly employees being paid such an allowance.

47. It is important for the issues raised in this submission be addressed to ensure that a Modern Award applying across all sectors within the hospitality industry does not reduce existing flexibilities and disadvantage employers by increasing costs for business to meet service levels. This would ultimately result in decreased opportunities for employees.

48. 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 that will increase cost and threaten the survival of small businesses operating within the industry.