



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

AM2008/5

AWARD MODERNISATION

AFEI
Australian Federation of
Employers & Industries

**BEFORE THE AUSTRALIAN INDUSTRIAL RELATIONS
COMMISSION**

AWARD MODERNISATION

**MATTER NO. AM2008/5 – METAL AND ASSOCIATED INDUSTRIES,
GLUE AND GELATINE, RUBBER PLASTICS AND CABLEMAKING,
VEHICLE MANUFACTURING**

**DRAFT EXPOSURE DOCUMENTS
MANUFACTURING AND ASSOCIATED INDUSTRIES AND
OCCUPATIONS AWARD 2010**

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 refers and relies on its submission concerning this matter dated 1 August 2008. AFEI does not support the expansion of coverage of the Metal, Engineering and associated Industries Award (Federal) 1998 (the Federal Metals Award), and including its expansion to include the rubber, plastics and cabling industries, and the glue and gelatine industries, as is proposed in the exposure draft. We note also that the Commission has excluded coverage of vehicle manufacturing although no reasons have been advanced for the inclusion of certain industries unrelated to the Metal Industry, and the exclusion of an industry where there has been a long history of union claims for inclusion in the metal industry award and/or comparability with the metal award.

6. As indicated also in our earlier submission, AFEI does not support the proposed award as an occupational award. We note also that the exposure draft proposes occupational coverage, as indicated in clause 4.3, and in particular paragraphs (g) to (m) which appears to have potential to extend the award coverage to occupational categories in other industries where those industries may have specifically declined to extend award coverage to such occupational groups. Paragraph 4.3(h), for example, referring to 'the supervisor/trainer/coordinator field' would appear to extend award coverage not only to industries such as rubber and plastics, where such coverage does not currently exist, but potentially to any industry which does not seek to provide such award coverage.

7. In regard to other content of the draft exposure award AFEI makes the following submissions in relation to particular clauses.

Clause 8 Facilitative Provisions

8. AFEI supports the Final Submission of ACCI, dated 10 October 2008, concerning priority awards, and agrees with ACCI that Clause 8 is complicated, repetitive, and unnecessary in addition to the model flexibility clause.

Clause 9 Consultation

9. We draw to the Commission's attention that the obligations concerning consultation, as proposed in the exposure draft, which appear to be based on the Notional Agreement Preserving the Metal, Engineering and Associated Industries (State) Award (NSW Metals NAPSA) do not currently apply to small employers (less than 15 employees) currently covered by that NAPSA. The proposed obligation, moreover, does not currently apply to employers respondent to the Rubber, Plastics and Cablemaking Industry General – Award 1998 (the Federal Rubber Award), and generally do not apply to small employers covered by the NSW NAPSA which, it is proposed, are to be replaced with the modern award based on the exposure draft.

Clause 11. Dispute Resolution Training Leave

10. The proposed extension of Dispute Resolution Training Leave, based on the current Federal Metals Award, to employers and industries not covered by that award, will result in a significant and unjustified cost impact for many employers. The current provision for such paid leave in the Federal Metals Award is exceptional, and does not apply to most, if not all of the Federal Awards and NAPSAs potentially impacted by the exposure draft.

Clause 14. Casuals

11. Although the proposed Casual loading of 25% is consistent with the Federal Metals Award, the proposal will potentially result in a cost impact for many employers, particularly employers covered by NSW NAPSAs, which more typically provide a loading of 15% plus a 1/12th component for annual leave.

Clause 23.3 Redundancy pay – employees of a small employer

12. AFEI supports the submission of ACCI, that the introduction of redundancy pay for small employers is potentially a significant and unjustified additional cost. Many small employers in NSW, who are currently covered by the numerous NAPSAs impacted by the exposure draft, are currently exempt from redundancy payments.

Clause 24. Classifications and adult minimum wages

13. Although the Commission had indicated that the modern award is not intended to apply to Engineers and Scientists, these occupations are included in the exposure draft classification structure at 24.1 (a) and in the definitions in Schedule A (A.2).
14. Although the Classification structure in 24.1 appears based on the current Federal Metals Award, we are unable to identify any counterpart or comparable structure in any other Federal Award or NAPSA (other than the NSW Metals NAPSA) impacted by the exposure draft. As indicated earlier, there is potential to extend award coverage to classifications currently not included in other industry awards.
15. The exposure draft provides a procedure for classifying employees (24.3 (b)) based on the Federal Metal Award, ie the National Metal and Engineering Competency Standards. This provision is, in our view, peculiar to the metal industry, and similar procedures are not typically found in other industry Federal Awards and NAPSAs impacted by the exposure draft. There is potential not only to impose further costs obligations on employers in relation to employees not subject to metal industry awards, there is serious doubt that the competency standards specified in the exposure draft are applicable to employees in other industries. As metal industry specific arrangement, they are not compatible with an award with more general application and do not meet any criteria of simple and easy to apply.

Clause 25. Apprentice minimum wages

16. The exposure draft contains a scale of wage rates for Apprentices based on the current Federal Metals Award. This pay scale, however, does not currently apply to the NSW NAPSA's and consequently will result in additional cost, as it will in other industries also such as Jewellers and Watchmakers who are currently covered by the Notional Agreement Preserving the Jewellers and Watchmakers (NSW) State Award (the NSW Jewellers NAPSA).

Clause 32. Allowances and Special Rates

17. The exposure draft contains a formula for allowances and special rates based on a percentage of the C10 rate which have potential for further increases in costs.

Clause 36. Ordinary hours and Clause 37. Special provisions for shiftworkers

18. Although the weekend penalty rates for day workers and shift workers appear to be based on the Federal Metals Award, the application of these rates to other industries has potential for significant cost increases. The Federal Rubber Award, for example, provides a Sunday penalty rate of 1.75 times ordinary rates. The NSW Jewellers NAPSA provides a Saturday penalty rate of 1.25 times and a Sunday penalty rate of 1.5 times.