



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**

**DRAFT EXPOSURE DOCUMENTS  
RACING CLUBS EVENTS AWARD 2010  
RACING INDUSTRY GROUND MAINTENANCE AWARD 2010**

1. 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.
2. AFEI has reviewed the draft exposure documents for the Racing Clubs Events Award 2010 and Racing industry Ground Maintenance Award 2010 and has canvassed the views of members in relation to those documents. As a result, AFEI makes the following submissions in relation to particular clauses in the exposure documents.

**RACING CLUBS EVENTS AWARD 2010 (“the Events Award”)**

**Clause 3.1**

3. Clause 3.1 provides for definitions of terms used in the Events Award. Included in the clause is a definition for an *employee in charge of tractor plant*. It is our submission that this clause is unnecessary in this award as there is no classification or requirement for an employee under the Events Award to be in charge of a tractor plant.

## **Clause 10**

4. Clause 10 provides for types of employment which includes full-time, part-time or casual employment. AFEI submits that employment of the types of employees proposed to be covered by this are casual employees, with little incidence of full-time or part-time employment.
  
5. While we have no objection to full-time and part-time employment being included in the Events Award, we reserve our rights in relation to any application to include any provision requiring casual conversion to permanent employment in the Award, given the nature of the work the Events Award will ultimately cover and the requirement for maximum flexibility for employers, given the majority of work is structured around race meetings and is not generally available on a week to week basis.

## **Clause 12.7**

6. This clause provides for a loading of 10% to be paid to a part-time employee subject to a transitional period. It is our submission that it would be contrary to the Act and modern industrial principles to impose a loading for part-time employees in a modern award.

7. Both the Australian Industrial Relations Commission and the Industrial Relations Commission of NSW have considered in detail the provision of part-time employment in awards. Both tribunals have firmly come to the position that part-time employment does not warrant the payment of a penalty. So much is clear from the decision of the Australian Industrial Relations Commission in the "Parental Leave Case" (1989-1991) 36 IR 1 at 14 and the decision of the Industrial Relations Commission of NSW in the "State Part-Time Work Case" (1998) 78 IR 172 at 202.
8. Furthermore it is submitted that to impose a penalty by way of loading on the employment of part-time employees would be to discourage the employment of such employees, particularly employees with family responsibilities, contrary to the object of s3(l) of the *Workplace Relations Act 1996* which calls for a workplace environment supportive of employees balancing work and family responsibilities. Particular attention is directed to the decision of the Australian Industrial Relations Commission in the "Parental Leave Case" (ibid) at page 13.

### **Clause 13.2**

9. Clause 13.2 provides for a casual employee to be paid a loading of 25%. AFEI submits that for race clubs in NSW who are respondent to the Theatrical Employees (Recreation Grounds and Raceday Racing Officials – NSW/ACT) 2000 ("the NSW Recreation Grounds Award"), this results in an increase in casual loading of 5%.

10. AFEI is opposed to any increase to casual loading in the Racing Industry Awards. However, we acknowledge the Commission has adopted a standard of 25% for casual loading (refer para 20, page 5, Statement of the Full Bench [2008] AIRCFB 717). Should the Commission decide to increase the loading to 25% AFEI submits that for race clubs in NSW, appropriate transitional arrangements will be required to “cushion the impact” of the increase, particularly given the overall cost increase which will result from the Events Award if it is made in its current form. These submissions will deal with the increased costs burden as various clauses arise for consideration.
11. The following comparison of base casual hourly rates of pay between the Events Award and the Theatrical Employees (Recreation Grounds and Raceday Racing Officials – NSW/ACT) Award 2000 illustrates the increases which will be borne by employers.

<b>Current Race Day Award</b>		<b>Events Award</b>	
<b>Grade</b>	<b>\$</b>	<b>Grade</b>	<b>\$</b>
No equivalent		Introductory	14.31
Cloakroom Attendant	16.80	1	18.44
Door Attendant	16.80		
Gate Person	16.80		
General Attendant	16.80		
Parking Attendant (Not handling Cash)	16.80		
Utility Person	16.80		
Catching Pen Attendant	17.40	1	18.44
Kennel Attendant	17.40	1	18.44
Parade Official	17.40	1	18.44
Ticket Examiner	17.40	1	18.44
Ticket Taker	17.40	1	18.44
Turnstile Attendant (Not handling Cash)	17.40	1	18.44
Usher	17.40	1	18.44

<b>Current Race Day Award Grade</b>	<b>\$</b>	<b>Events Award Grade</b>	<b>\$</b>
Assistant Starter	17.40	3	19.87
Cloakroom Attendant (Handling Cash)	17.40	2	19.18
Assistant Judge (Greyhound Fixtures)	18.20	2	19.18
Crowd Controller	18.20	2	19.18
Jockey Room Attendant	18.20	2	19.18
Parking Attendant (Handling Cash)	18.20	2	19.18
Programme Seller	18.20	2	19.18
Raceday Office Assistants	18.20	2	19.18
Scratching Board Attendant	18.20	2	19.18
Teleprint Semaphore Board Operator	18.20	2	19.18
Ticket/Token Seller	18.20	2	19.18
Timekeepers (Greyhound Fixtures)	18.20	2	19.18
Turnstile Attendant (Handling Cash)	18.20	2	19.18
Assistant Clerk of Scales	18.80	3	19.87
Banker	18.80	3	19.87
Hare Driver	18.80	3	19.87
Identification Official	18.80	3	19.87
Kennel Supervisor	18.80	3	19.87
Raceday Office Asst Handling accept etc	18.80	3	19.87
Raceday Vet Asst	18.80	3	19.87
Starters (Greyhounds)	18.80	3	19.87
Ticket Seller Operating Computer Terminal With Advance Bookings Facilities	18.80	3	19.87
Supervisor 1 to 9	18.80	3	19.87
Barrier Attendants (Other than Metro)	18.80	4	20.97
Barrier Attendant (Metro)	19.60	4	20.97
Betting Supervisor (Greyhounds)	19.60	4	20.97

Current Race Day Award		Events Award	
Grade	\$	Grade	\$
Mobile Barrier Driver	19.60	4	20.97
Stewards Patrol	19.60	4	20.97
Video Camera Op Supervisor 10 or more	19.60	4	20.97
Clerk of Course	23.20	4	20.97

12. With one exception, being Clerk of Course, the rates in the Events Award increase the base rate of pay for casual employees by up to 14%.

**Clause 13.3(a)**

13. Clause 13.3(a) provides for a penalty to be paid to a casual employee, in addition to the 25% loading, as follows:

*“(i) between the hours of 7.00pm and midnight, an amount of 0.25% of the standard rate per hour or any part of an hour*

*“(ii) between the hours of midnight and 7.00am, an amount of 0.35% of the standard rate”*

14. It is unclear whether the penalties prescribed in this clause are intended to represent 25% and 35% respectively. If this is the case, the resulting penalty will place an unnecessary cost burden on employers who conduct race meetings during the evening. This will particularly impact upon harness and greyhound racing, and to a limited extent, thoroughbred racing.

15. There is no good reason to impose this penalty on race clubs without any evidence as to why it is necessary. The cost imposition of this penalty will be extreme. For example, a comparison of the rates of pay for key classifications in both the *Theatrical Employees (Recreation Grounds and Raceday Racing Officials – NSW/ACT) 2000* and the *Liquor Industries - Racecourses Showgrounds etc Casuals – Award 1998* and the exposure draft highlights the additional cost of this penalty, particularly when coupled with the increased casual loading. This comparison shows:

<b>Classification</b>	<b>Current Rate</b>	<b>Proposed Rate</b>	<b>Penalty</b>	<b>New Rate</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
Ticket Seller	18.20	19.18	4.20	23.38
Bar Attendant	19.81	19.18	4.20	23.38

16. In both cases the penalty results in an increase due to the introduction of a new penalty. For employers such as harness race clubs and greyhound race clubs this increase is significant given the majority of their race meetings are held during the evening (refer to the affidavit of Christopher Bolenski). The penalty also impacts upon race clubs such as the Australian Jockey Club, the Sydney Turf Club and others who hold functions during the evening. The penalty results in an enormous cost burden which is not currently borne by employers.

17. The current rates in the Theatrical Employees (Recreation Grounds and Raceday Racing Officials Award – NSW/ACT) 2000 have been set with the parties and the Commission fully aware of the need to employ persons after 7.00pm. The proposed penalty should not be included in a modern award for the racing industry. There has been no good reason given for the introduction now of such a penalty and it is entirely inappropriate in an industry which has a high incidence of events at night.

**Clause 13.3(b)**

18. Clause 13.3(b) provides for a penalty of 25% of the hourly minimum wage for casual employees. AFEI submits that this is a new penalty being imposed on race clubs and is inappropriate, given the high incidence of race meetings (the core business of race clubs) being held on Saturdays (refer to the affidavits of Matthew Wilson and Colin Lloyd).

19. A comparison of key classifications highlights the additional cost burden this penalty will create for employers:

<b>Classification</b>	<b>Current Rate</b>	<b>Proposed Rate</b>	<b>Penalty</b>	<b>New Rate</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
Ticket Seller	18.20	19.18	3.83	23.01
Bar Attendant	19.81	19.18	3.83	23.01

20. This comparison shows that employers will be paying up to an additional \$4.81 **per hour** for key employees on race meetings held on a Saturday (refer evidence).

**Clause 13.3(d)**

21. Clause 13.3(c) provides for an additional penalty to be paid to a casual employee of 150% of the hourly minimum wage for work performed on a public holiday. This is an increase to current penalty rates for public holidays for race clubs in NSW. The result is illustrated in the following comparison of key classifications:

<b>Classification</b>	<b>Current Rate</b>	<b>Proposed Rate</b>	<b>Penalty</b>	<b>New Rate</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
Ticket Seller	36.40	19.18	23.01	42.19
Bar Attendant	33.59	19.18	23.01	42.19

22. The result is an increase of between \$8.60 and \$5.79 **per hour**. There is a race meeting held on every public holiday in NSW. For some clubs, such as the Australian Jockey Club major race meetings are held on public holidays. On these days, the Australian Jockey Club will employ in excess of 1000 casual employees who will work at least an eight hour day. The effect of this increase compounds the already increasing cost burden which will be imposed by the Events Award.

### **Clauses 16 and 17.2 – Classifications and Minimum Wages**

23. Clauses 16 and 17.2 provide for a new classification structure with minimum weekly rates of pay. While we have no objection to the classification structure and the minimum rates of pay, AFEI submits that the Commission should recognise that this results in an increase to base rates of pay which exacerbates the increase to the casual loading for these employees. We therefore submit that appropriate transitional provisions be included in the Award to allow for the new structure and attached rates of pay to be adjusted.

### **Clause 22 – Ordinary Hours of Work and Rostering**

24. Clause 22 deals with ordinary hours of work for all employees, full-time, part-time and casual. Of particular concern is the requirement for full-time employees to accrue 0.4 of one hour for each day worked *“to allow for one paid rostered day off in each cycle”* (clause 22.1) unless the employer and the majority of affected employees agree that the one day off per cycle is not practicable (clause 22.3).
25. There is no reason why, after decades of negotiated agreements and arbitrated cases through structural efficiency and the reduction of standard hours, for modern awards to regress back to a situation where minimal flexibility is provided to employers thus preventing them from conducting their business in an efficient and economically sustainable manner.
26. In the *Meat Industry Case 1989* (Print H9525) Munro J, Polites DP and Baird C held:

*“The form of implementation of standard hours is a condition of employment to be established on the facts in each case. In the absence of countervailing factors adduced by the party having carriage of the matter, a provision giving maximum flexibility in implementation will ordinarily be adopted. In this case, among the matters which we take particularly into account are the cost impact of the form of implementation sought, the availability of offsets and the prevalence of the form of implementation sought in the industry.”*

27. Since that decision tribunals have adopted the approach that maximum flexibility is to be afforded unless good reason exists to restrict that flexibility. There is no good reason to impose such a restrictive model for full-time employment in the Events Award.
28. Sub-clause 22.2 requires the agreement of the majority of affected employees to alter commencing and finishing times. In an industry which is event driven, such a provision is unduly restrictive and should not form part of a modern award for the racing industry.
29. Sub-clause 22.4 provides for a minimum engagement of four hours. This is a significant increase in the minimum engagement for race day employees. For example, in the NSW Recreation Grounds Award the following applies:

*“The minimum engagement for employees under this Award shall be three and a half (3½) hours to be worked consecutively, with the exception of engagements at trials, training sessions and staff meetings which shall be two (2) hours.”*

30. It is inappropriate for the Commission to impose such an increase to minimum engagements without any evidence of the practical implications for employers. Furthermore, the minimum engagement provisions of two hours for trials, training sessions and staff meetings should form part of a modern award for the Racing Industry.

### **Clause 23 – Breaks**

31. The proposed provisions for crib breaks, meal breaks and tea breaks are unduly burdensome for employers. For example, under the proposed Events Award, an employee engaged for a minimum of five and one half hours, commencing at 10.00am and finishing at 3.30pm would be entitled to the following breaks:
- (i) crib period of 15 minutes (paid);
  - (ii) meal break of no less than 30 minutes (unclear whether paid or unpaid);
  - (iii) morning tea break of 10 minutes; and
  - (iv) afternoon tea break of 10 minutes.
32. All up, that employee engaged for a six hour shift would actually only work for 4 hours and 25 minutes.

33. It is our submission that the Breaks clause in the Events Award should be replaced with the current clause 19 of the NSW Recreation Grounds Award.

**RACING INDUSTRY GROUNDS MAINTENANCE AWARD 2010  
("the Grounds Award")**

**Clause 10.2(e) – Part-Time Employment**

34. This clause introduces into the Modern Award a loading of 10% to be paid to part-time employees. AFEI is strongly opposed to such a loading and we rely on our submissions outlined above in reference to clause 12.7 of the Events Award.

**Clause 13 – Classifications**

35. The proposed classification structure introduces two levels of management employees at sub-clauses 13.5 and 13.6. AFEI is strongly opposed to the introduction these classifications into the Award. Under the Ministerial Request, it is clearly stated at point 2 that:

*"The creation of modern awards is not intended to:*

- (a) extend award coverage to those employees, such as managerial employees, who, because of the nature or seniority of their role, have traditionally been award free...."*

36. There has been no good reason given to extend the coverage of the modern award to managerial employees and it is entirely inappropriate for the Commission to do so through this process.

**Clause 19 – Ordinary Hours of Work and Rostering and Clause 21 – Overtime and Penalty Rates**

37. This clause provides for the implementation of the 38 hour week by way of accruing 0.4 of one hour for each day worked to allow a paid rostered day off per cycle. In relation to this issue, this clause is in similar terms to clause 22 of the Events Award. AFEI is strongly opposed to an hours of work clause in these terms and we rely on our submissions outlined above in relation to Clause 22 of the Events Award.
38. Clause 19 also provides for ordinary hours of work between the hours of 6.30am and 6.30pm. AFEI is strongly opposed to this spread of hours. As illustrated by the affidavits filed by the Australian Jockey Club and the Sydney Turf Club, employees are engaged at those clubs from at least 4.00am for early morning track work purposes.
39. These employees are engaged at those times to suit the trainers who engage in track work at those times and are a common feature of the racing industry. A modern award for the racing industry should not impose restrictive overtime penalties on hours which are a feature of the industry.

40. Furthermore, in the Race Club Employees (State) Award, the spread of hours were extended by the Full Bench of the Industrial Relations Commission of NSW as part of the reduction of standard hours from 40 to 38 in 1999 (unreported decision in transcript; Wright J, President, Glynn J and McLeay C; 25 March 1999). It is inappropriate for the Australian Industrial Relations Commission to wind back the clock in relation to hours of work, particularly for early morning trackwork as well as in relation to the following areas:
- ordinary hours to be worked until 11.00pm (with a loading of 15%) where the employer conducts a greyhound or harness racing fixture on an evening); and
  - ordinary hours to be worked on a Saturday (with a loading of 25%) and Sunday (with a loading of 75%) where the employer conducts a fixture (as defined).
41. These hours are specifically included as ordinary hours to suit the hours of work in which the racing industry operates. A modern award should facilitate these hours not restrict an employers ability to operate at those times.
42. In relation to weekend work, the exposure document provides for weekend work to be performed as overtime only and cannot form part of ordinary hours of work (refer clauses 21.4(a) and (b)). In an industry which is heavily geared towards weekend work, AFEI submits that the modern award should provide for hours worked on Saturday and Sunday to be part of ordinary hours, with appropriate penalty rates.

**Clause 20 – Breaks**

43. Clause of the Grounds Award is in similar terms to clause 23 of the Events Award. Again, we submit that the proposed provisions for crib breaks, meal breaks and tea breaks are unduly burdensome for employers. We rely on our submissions outlined above in relation to clause 23 – Breaks of the Events Award.
44. AFEI has filed three affidavits which support our submissions. AFEI also refiles the draft awards for the Racing Industry which were filed with the Commission on 19 August 2008 which are consistent with these submissions. It is our view that the Commission should adopt these draft awards to form the basis of any modern awards made for the Racing Industry as they have been developed in consultation with key employers in the industry and are appropriate.

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**10 October 2008**

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