



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

AM2009/10

AWARD MODERNISATION

AFEI
Australian Federation of
Employers & Industries

**BEFORE THE AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
AWARD MODERNISATION**

AM 2009/10 - RESTAURANT AND CATERING INDUSTRY

1. The Australian Federation of Employers and Industries (AFEI) makes the following submissions concerning the Restaurant and Catering Industry, which is included in Stage 4 of Award Modernisation.
2. AFEI supports the reconsideration of the Restaurant and Catering sector of the Hospitality industry and we reiterate our position that a stand alone Modern Award should be established for this sector in recognition of the significant operational differences that exist in contrast to the broader hospitality industry. Our previous submissions filed on 1 August 2008 and 10 October 2008 supported the creation of multiple Modern Awards to service the Hospitality Industry as an accurate reflection of the manner in which the industry is currently regulated and the inherent differences between sectors of the industry.
3. AFEI relies on its previous submissions which outlined the Restaurant and Catering sector of the hospitality industry as being characterised by the unpredictable and irregular nature of demand, and as such, a higher degree of flexibility is necessary than that found the current Hospitality Industry (General) Award 2010.

4. Examples of the flexibilities necessary to operate within this industry are found in the current applicable NSW NAPSA's (the Restaurant Employees & c., (State) Award and the Catering Employees (State) Award). Such measures include the ability to alter rosters easily and to average the hours of part time employees over a four week period.
5. Further, we rely on our previous submissions outlining that the nature of the industry precludes 'fixed' rostering arrangements, and AFEI submits that a Modern Award created for this sector should contain provisions accommodating the unpredictable nature of the demand for service.
6. In addition, we reiterate our opposition with reference to overtime penalty rates applying to part time employees for any hours in excess of their mutual agreed hours. We submit that such a provision ignores the operational requirements of the industry and may have the effect of increasing casualisation within the workforce as businesses find it more cost effective to engage casual employees rather than paying excessive overtime penalty rates to part time employees for additional hours.
7. AFEI submits that employment within this sector is undertaken with the knowledge that it operates seven days per week at hours predominately outside of the standard '9am to 5pm' span. Arguments pertaining to the increasing or introduction of additional penalty rates as compensation for unsociable hours are not relevant. The Commission is aware of the employment opportunities for those employees attracted to the flexibility associated with the industry operating at varying hours. This is an industry which is characterised by high levels of casual employment with a high proportion of workers under the age of 25 years.

8. AFEI submits that a Modern Award for this sector of the hospitality industry must recognise the need for flexibility and acknowledge that employers within the sector do not have the capacity to significantly alter their hours and methods of operation in order to accommodate any reduction in flexibility or increases to penalty rates as a consequence of modern award provisions. AFEI refers to our previous submissions regarding the degree of flexibility necessary to ensure the industry remains viable.

24 July 2009