



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

AM2009/10 – RESTAURANT INDUSTRY AWARD 2010

AWARD MODERNISATION

**AFEI**  
Australian Federation of  
Employers & Industries

**BEFORE THE AUSTRALIAN INDUSTRIAL RELATIONS  
COMMISSION**

**AM2009/10 – Restaurant and Catering Industry**

**Submission Concerning Exposure Draft Restaurant  
Industry Award 2010**

1. The Australian Federation of Employers and Industries (AFEI) make the following submissions concerning the Exposure Draft Restaurant Industry 2010 (the Exposure Draft).

**Coverage provisions**

2. The coverage provisions contained at clause 4 of the Exposure Draft distinguishes between employers providing catering services provided by a restaurant and catering employers operating independently of a restaurant with the later employers excluded from coverage by the Exposure Draft.
3. AFEI submits the distinction between the two types of catering employers is unnecessary and inappropriate. Catering work performed by both types of employers is essentially the same. The proposed distinction in a modern award coverage would significantly disadvantage catering services not linked to a restaurant, who would be covered by the more expensive penalty rates found in the Hospitality Industry (General) Award 2010, and consequently subject to significant cost increases.
4. AFEI submits that that the modern Restaurant Industry Award should cover all catering businesses.

## **Part-time overtime provisions**

5. AFEI have significant concerns regarding the administrative burden placed on employers by sub-clauses 12.3 and 12.4 of the exposure draft restricting part-time work before attracting overtime penalty rates pursuant to clause 12.7.
6. The interaction between the aforementioned sub-clauses and the overtime provisions at clause 33 of the exposure draft would require written agreement between employers and employees on each occasion that a variation to the hours of work occurred.
7. AFEI submits that the nature of the industry and its susceptibility to customer demand would make such arrangements difficult for employers and that a more practical solution would be enable part-time employees to work the equivalent of full-time hours before attracting overtime penalty rates.
8. Such provisions are prevalent within the industry with current awards containing provisions that allow more flexibility in respect of part-time hours than the terms proposed in the exposure draft:
  - Restaurant Employees (State) Award [NAPSA - NSW];
  - Caterers Employees (State) Award [NAPSA – NSW];
  - Cafés and Restaurants (South Australia) Award;
  - Liquor & Accommodation Industry – Restaurants – Victoria – Award 1998;
  - Catering (Victoria) Award 1995;
  - Restaurant, Tearoom and Catering Award 1979 (WA).

9. AFEI refers the Commission to paragraph 53 of the Ministerial Award Modernisation request, which provides:

*“The Commission should ensure that the hours of work and associated overtime penalty arrangements in the retail, pharmacy and any other similar industries the Commission views as relevant do not operate to discourage employers from:*

- offering additional hours of work to part-time employees; and*
- employing part-time employees rather than casual employees”.*

10. AFEI submits that that the restaurant and catering industry should be regarded as a “similar industry” to the retail and pharmacy industries, as it is also subject to variable and at times unpredictable consumer demand.
11. AFEI submits that Clause 12.3, 12.4 and 12.7 should not be included in the modern award.

### **Classification Structure**

12. AFEI submits that the classification structure contained in Schedule B of the exposure draft does not accurately account for the realities of the restaurant industry. Generally, an employee working in a restaurant may receive on the job training, and not a formal training course accredited within the Australian Qualifications Framework. Accordingly, classifying an employee should be wholly based upon the nature of the tasks performed. AFEI supports the inclusion of the classification structure contained in clause 3 of the Restaurants &c., Employees (State) Award [NAPSA – NSW].

## **Transitional Arrangements**

13. AFEI supports the inclusion of the transitional provisions contained within Schedule A of the exposure draft.

**21 October 2009**