

AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

Workplace Relations Act 1996

s.576E - Procedure for carrying out award modernisation process

AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

(AM 2008/35)

AM2008/35: AWARD MODERNISATION – ENTERTAINMENT AND BROADCASTING INDUSTRY
(OTHER THAN RACING)

PRE-DRAFTING CONSULTATIONS

SUBMISSIONS OF AUSTRALIAN ATHLETES' ALLIANCE INC. (AAA)

1. These submissions are provided by the AAA in response to the decision of the Full Bench of Australian Industrial Relations Commission to consider including professional sportspeople in a new modern award, and in anticipation of the pre-drafting consultations in relation to stage 3 of the award modernisation process pursuant to the Minister's Award Modernisation request under s.576C(1) of the *Workplace Relations Act 1996* (**the WR Act**).¹ These submissions are filed in accordance with the Award Modernisation Timetable.

About the AAA

2. The AAA was established in 2007 and has the following members:
 - Australian Cricketers' Association Inc. (**ACA**);
 - Australian Football League Players' Association Inc. (**AFLPA**);
 - Australian Netball Players' Association Inc. (**ANPA**);
 - Australian Swimmers' Association Inc. (**ASA**);

¹ Consolidated Award Modernisation Request dated 18 December 2008

- Australian Professional Footballers' Association Inc. (**PFA**);
- Rugby League Players' Association Ltd (**RLPA**); and
- The Rugby Union Players' Association Inc. (**RUPA**).

3. The AAA's mission is:

- a. to present a respected, influential and united voice on behalf of Australia's professional athletes on matters of common concern;
- b. to support and advance the interests and collective representation of professional athletes;
- c. to foster the highest standards of citizenship among professional athletes;
- d. to enhance the value the community, business, sport and government attaches to the work of professional athletes on and off the field by maximising the contribution professional athletes make to society; and
- e. to act as a highly effective peak body for member athletes' associations.

4. A large proportion of elite athletes are represented by the AAA and its members, particularly in team sports. Member organisations have largely full membership of the elite male and female athletes within their respective sports.

Summary of Submission

5. The AAA submits that the AIRC should as part of the award modernisation process make a modern award specifically applying to professional sportspeople.
6. The AAA believes that the specific circumstances applying to professional athletes make it appropriate for a discrete modern award to be enacted, distinct from a modern award applying to other employees in the sports industry (such as administrative staff).

Consistency with Ministerial Request and Relevant Legislation

7. The AAA notes the submissions on behalf of sporting organisations opposing the application of a modern award to professional athletes.

8. The AAA disputes those submissions and submits that the creation of such a modern award is justified and is consistent with the requirements of and policy underlying Part 10A of the WR Act, the *Fair Work Act 2009* (**FW Act**) and the Award Modernisation Request.
9. In particular, the AAA refers to paragraph 1 of the Award Modernisation Request, which states that “The aim of the award modernisation process is to create a *comprehensive* set of modern awards” (emphasis added). Further, the AAA notes that although the Award Modernisation Request states that the creation of modern awards is not intended to extend award coverage to employees (such as managerial employees) who have traditionally been award free, it also states (at paragraph 2(a)):

“This does not preclude the extension of modern award coverage to new industries or new occupations where the work performed by employees in those industries or occupations is of a similar nature to work that has historically been regulated by awards (including State awards) in Australia”.

10. The AAA submits that the existence of the Australian Rugby League Players Award 2000 (**Rugby League Award**), National Basketball League Players Award 2005 (**NBL Award**) and South Australian NAPSA (Sportspeople, Coaches, Umpires and Associated Support Staff Interim Award) (**SA NAPSA**) demonstrates a history of award coverage of professional sportspeople in Australia and that, consistent with the principle referred to in paragraph 7 above, it is appropriate for the AIRC to extend award coverage to those professional sportspeople not already covered by these awards or the SA NAPSA. Those employees not already covered under the award system all perform work in similar occupations and in similar industries to those who are covered.
11. Further, the AAA submits that even if the Rugby League Award and the NBL Award are properly considered to be “enterprise awards” (which the AAA does

- not concede), paragraph 2(e) of the Award Modernisation Request makes it clear that this does not preclude the creation of a modern award applying to professional sportspeople.
12. The AAA notes that under s. 134 of the FW Act, Fair Work Australia will be required to “ensure that modern awards, together with the National Employment Standards, provide a fair and relevant minimum safety net of terms and conditions”, taking into account a number of factors. The AAA submits that a modern award for professional sports people would form an essential element of establishing this safety net, so far as those employees are concerned.
 13. The AAA acknowledges that while many members of most of its member associations will be treated as high income employees under s 47(2) of the FW Act, it also emphasises that many members of its member associations (as well as professional athletes in other sports) receive very little by way of remuneration, allowances or other employment benefits.
 14. Further, the AAA notes that professional athletes are highly skilled employees, yet in many instances their ability to negotiate fair and reasonable terms and conditions of employment with their employers is limited. An important aspect of the sports industry is that many employees have limited or no effective choice of employer within their occupation. This is because many national sporting associations hold an effective monopoly on employment of individuals to represent Australia at an international level, while individual state associations and sporting clubs and franchises collaborate through their national leagues and associations in a manner which is not seen in other industries.
 15. The AAA emphasises the high level of skill, great time commitment, limited bargaining power and unfavourable terms and conditions experienced by many professional athletes in support of its submission that the creation of a modern award dedicated to professional athletes is an important component of the

establishment of an appropriate safety net through the award modernisation process.

Need for Balance

16. The AAA notes that certain sports (particularly some women's sports) are funded more on a development than a commercial basis. The AAA believes that the terms and conditions under a modern award applying to professional sportspeople should be determined having regard to the risk that if the relevant benefits are overly burdensome on particular sports organisations, there may be a reduction in paid employment opportunities for athletes due to the election by sports organisations to reduce the number of elite competitions or to revert to voluntary arrangements.
17. The AAA believes, however, that a modern award can be made in terms that will balance the need to limit this risk to an acceptable level while still providing for appropriate modern award protections.

Scope of proposed modern award

18. The AAA notes that the draft modern award submitted by the Media Entertainment Arts Alliance ("MEAA") proposes to cover professional athletes as part of an overall award for employees in the sports industry, with many common provisions for both sports people and other employees, such as administrative staff.
19. This is consistent with the Award Modernisation Request, however the AAA notes that the Award Modernisation Request provides (at paragraph 4):

"the Commission is to create modern awards primarily along industry lines, but may also create modern awards along occupational awards as it considers appropriate."

20. As stated above, the AAA submits that the circumstances of professional athletes are so different from most other employees in the sports industry as to justify the creation of a separate award along occupational lines. For example, while many administrative employees work in an office environment and have their core hours work determined by reference to ordinary business hours, for professional sports people, locations and hours of work may be determined by factors such as the requirements and locations for training and participating in competitions and (in many circumstances) to provide for the demands of outside employment commitments.
21. Given these substantial differences, the AAA submits that the creation of a single award for all employees in sport would make for a more complex framework than necessary, given the need to make exceptions and create specific rules for professional athletes in many areas.
22. The AAA proposes that a discrete modern award should apply to and be confined to employees employed in a role the primary purpose of which is to participate and/or be available for participation as a player in national and/or international sporting competition.
23. The AAA notes that there is difficulty in determining a classification structure that would be suitable across all professional sports and that the level of commercial revenue generated as a result of playing activities varies greatly between sports. For these reasons the AAA's present view is that a modern award for professional sportspeople should not contain terms specifying minimum wages. The AAA is, however, continuing to consult with its members and wishes to reserve its rights to make future submissions as to proposed terms concerning classifications and minimum wages (whether generally or in relation to particular sports).
24. The AAA does, however, believe that there are a number of matters which are common to professional sportspeople in sport generally and therefore proposes

that, in addition to the matters which the FW Act will require to be included in modern awards, the following matters should be included in a discrete modern award:

Submission	
1.	Employees need to be categorised as full time, part time or casual.
2.	<p>As many casual and part time employees do not earn sufficient income from their employment as professional athletes, they need to maintain alternative employment.</p> <p>Accordingly, a modern award should include provisions applicable to part time and casual employees which ensure that, as far as practicable, training and playing commitments are scheduled at a time that enables players to maintain alternative employment.</p>
3.	<p>Given the limited career period applicable to almost all professional athletes, it is important that they are given time to develop skills and/or education to prepare them for a career after retiring from sport.</p> <p>Accordingly a modern award should provide that all professional athletes will have at least one day off per week to pursue outside work, education or training.</p>
4.	There are a number of allowances applicable to professional sportspeople which should be provided for under a modern award. These include reimbursement of expenses concerning travel and medical treatment related to employment.
5.	The large amount of time spent away from home by professional athletes justifies an entitlement to additional leave beyond the minimum requirements of the National Employment Standards.
6.	<p>Most superannuation schemes do not make provision for professional athletes to receive a death or disability benefit in connection with death or injury suffered in the course of their employment.</p> <p>There are, however, superannuation schemes in place in a number of sports which make provision for such a benefit. A modern award should require a superannuation fund offering such a benefit to be the default superannuation fund applying to the relevant employees, provided that such a fund is commercially available.</p>
7.	A modern award for professional sports people should include appropriate consultation, representation and dispute resolution clauses.

	There is a particular need for such clauses to provide for the role of player associations as representatives of employees and for such associations to be consulted in relation to proposed changes to proposed terms and conditions of employment or the introduction or amendment of policies (such as anti-gambling and anti-doping codes) which will directly affect their members.
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25. The AAA wishes to reserve its ability to make further submissions as to the proposed content of a modern award following further consultation with its members.

Conclusion

26. The AAA submits that for the reasons provided in these submissions, it would be undesirable to include professional sportspeople in a single award along with administrative, coaching and other staff in the sports industry and it is therefore appropriate for a discrete award to be created along occupational lines created covering the matters described in the table at paragraph 24 above.

27. The AAA would be more than happy to offer further advice to the AIRC or make submissions as requested. This can be done via Laura Sigal whom is the Executive of AAA and has the authority to speak on behalf of all the sports.