



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

AM2008/86

AWARD MODERNISATION

AFEI
Australian Federation of
Employers & Industries

BEFORE THE AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

AWARD MODERNISATION

MATTERS NO. AM2008/86 – INDUSTRIES NOT OTHERWISE

ASSIGNED – LEGAL SERVICES

1. The Australian Federation of Employers and Industries (AFEI) has earlier provided written and oral submissions to the Commission concerning Award Modernisation in a wide range of matters. AFEI make the following submissions concerning the Legal Services Industry, which is included in Stage 4 of Award Modernisation.
2. AFEI submits that upon consideration of current industrial instruments that there is not a separately identifiable Legal Services Industry in Australia. The AIRC has identified several awards which largely only apply to clerical and administrative employees and with limited coverage of legal professionals.
3. The current AIRC list of relevant awards pertaining to the Legal Services Industry contains the following:
 - Victorian Legal Professionals, Clerical and Administrative Employees Award 2004;
 - Notional Agreement Preserving Clerical and Administrative Employees Legal Industry (State) Award, in New South Wales;
 - Notional Agreement Preserving Graduate-At-Law (State) Award, in New South Wales;
 - Notional Agreement Preserving Salaried Lawyers Award, in South Australia;

- Notional Agreement Preserving Barristers and Solicitors Award, in Tasmania; and
 - Notional Agreement Preserving Legal Practitioners and Apprentices-at-Law Award, in Tasmania.
4. AFEI submits that the current scope of these awards is too narrow to form a basis for a binding national instrument.
 5. In New South Wales, the Notional Agreement Preserving Clerical and Administrative Employees Legal Industry (State) Award applies only to clerical and administrative employees. The Notional Agreement Preserving Graduate-At-Law (State) Award has only very limited application to graduates of a course of study which is recognised as an academic qualification for admission by the Supreme Court of New South Wales. The award will only apply whilst such graduates are employed in legal firms and are receiving practical training to allow them to be admitted. There are currently no awards in New South Wales that apply to legal practitioners. In 1997, the Full Bench of the Industrial Relations Commission of New South Wales found that a common rule state award for solicitors could be lawfully made, however in the period since then, no award was made.
 6. The Victorian Legal Professionals, Clerical and Administrative Employees Award 2004 applies only in a limited capacity to employees able to perform work as legal practitioner if they have limited experience. Most of the classifications within this award apply to clerical assistants and law clerks.

7. The Tasmanian Notional Agreement Preserving Barristers and Solicitors Award does not apply to legal practitioners and applies only to employees engaged in a clerical or administrative capacity by barristers or solicitors. The Notional Agreement Preserving Legal Practitioners and Apprentices-at-Law Award in Tasmania is a public sector award. AFEI would oppose expanding the application of this award from the public sector into private sector organisations.

8. The Notional Agreement Preserving Salaried Lawyers Award in South Australia has only very limited application to legal professionals in that state. This award contains exemptions clauses for employees earning in excess of approximately \$50,850 or who are earning in excess of 15% above the prescribed award rates or after employees have concluded their third year level under this award. Considering the average income of legal practitioners, this award will have minimal application in to legal practitioners in South Australia. Further, the number of legal practitioners employed in South Australia is significantly less than the number employed in New South Wales, Victoria, Queensland or Western Australia. In South Australia, there are 2,164 practising solicitors and barristers. In New South Wales there are 14,551 such employees, 8,677 in Victoria, 5,317 in Queensland and 2,611 in Western Australia.¹ It would be inappropriate to make the South Australia award conditions, which apply to considerably less than 6% of Australian legal practitioners, a national standard.

¹ Australian Bureau of Statistics Cat 8667.0 Legal Services Australia 2007-08

9. AFEI submits that it is unnecessary to establish a stand-alone Legal Services award. AFEI would oppose the expansion or creation of any award with national coverage to apply to legal practitioners. It would be more appropriate for employees in this industry who are not legal practitioners and who perform work of an administrative or clerical nature to fall within the coverage of the modern Clerks – Private Sector Award 2010.

24 July 2009