



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

AM2008/87

AWARD MODERNISATION

AFEI
Australian Federation of
Employers & Industries

BEFORE THE AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

AWARD MODERNISATION - MATTER NO. AM 2008/87

REAL ESTATE INDUSTRY

1. The Australian Federation of Employers and Industries (AFEI) makes the following submission in respect of the *real estate industry* which is currently being considered during stage 4 of award modernisation
2. AFEI's membership interests include businesses covered by the NSW Real Estate Industry (State) Award NAPSA, Real Estate Industry Clerical and Administrative Employees (State) Award NAPSA and the NSW Real Estate Industry Training Wage (State) Award NAPSA.

The Scope and content of an Award applying to the Real Estate Industry

3. AFEI supports the making of a single modern award to cover the real estate industry.
4. Such a modern award would replace several NAPSAs including:
 - Real Estate Industry (State) Award (NSW NAPSA)
 - Real Estate Industry (Clerical and Administrative Employees) (State) Award (NSW NAPSA)
 - Real Estate Award (SA NAPSA)
 - Estate Agents Award (Tas NAPSA)
 - Property Management Award Queensland State 2005 (QLD NAPSA)
 - Property Sales Award Queensland State 2005 (QLD NAPSA)
5. Real estate sales personnel and property managers in the remaining states and territories (VIC, WA, ACT and NT) are currently award free. The clerical employees in these areas are covered by general clerical award coverage.

6. ABS statistics (Cat No. 8663.0) show that in at the end of June 2003 there were 10,001 real estate services businesses operating within Australia and that they are predominantly small employers - 39% with 4 or fewer persons employed, 34.1% had 5-9 persons and 20.6% had 10-19 persons. Only 0.6% of businesses had employment of 50 or more persons.
7. A modern industry award that provides for coverage for all salespersons, property managers and property administration employees should be made to reduce the regulatory burden on employers in the industry.

Clerical/Property Administration Employees

8. AFEI submits that there are clear and convincing reasons why property administration employees should be covered by a real estate industry award and not a general occupational award. These reasons include:
 - To reduce the regulatory burden of multiple awards covering in most cases comparatively small enterprises of fewer than 10 employees;
 - Appropriate classification structure taking into account the industry specific work performed by such employees;
 - Recognition that the real estate industry provides a career path for clerical/administrative employees into the sales or property management functions
 - Clerical employees make up around a quarter of the workforce in a real estate agency.

9. Of the four states that have real estate specific NAPSAs, two provide for conditions of employment for property administration staff that are specific to the real estate industry. These are the:
- NSW Real Estate Industry Clerical and Administrative Employees (State Award) NAPSA and the
 - Tasmanian Estate Agents Award NAPSA
10. We note that the NSW Real Estate Industry (Clerical and Administrative) Employees (State) Award was made in recognition that the provisions of the NSW Clerical and Administrative (State) Award were no longer appropriate for an industry which operates over seven days of the week. The decision to create a safety net that provided flexibility in the real estate industry was determined in December 2001 by Commissioner Neal at first instance and upheld on appeal by a Full Bench of the NSW Industrial Relations Commission.¹
11. AFEI submits that clerical and administrative staff in a real estate agency should be covered by the industry award and the conditions should reflect the flexibility required in a seven day operating environment.

Commission

12. A modern award for the real estate industry should include a commission payment structure for real estate sales employees.
13. A Commission only sales structure should be in the terms of the current safety net applying to real estate agents/sales employees which is provided for by the Real Estate Agents' (Commission Only) Australian Pay and Classification Scale created by the Australian Fair Pay Commission in October 2007.

27 July 2009

¹ Real Estate Industry (Clerical and Administrative Employees) (State) Award, Re [2003] NSWIRComm 149