

AM2010/212

**APPLICATION TO VARY THE
REAL ESTATE INDUSTRY AWARD 2010**

**Submission of the Australian Industry Group
and Elders Limited**



11 October 2010

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APPLICATION TO VARY THE REAL ESTATE INDUSTRY
AWARD 2010

1. This application is made by the Australian Industry Group and its member company Elders Limited.
2. Elders Limited is an ASX 200 company that incorporates:
 - Elders' traditional rural services businesses, conducted through over 380 points of presence throughout rural and regional Australia and New Zealand;
 - APRA licensed banking and insurance operations - Rural Bank and Elders Insurance;
 - Hardwood plantation management and timber processing, through Elders Forestry; and
 - Futuris Automotive – one of Australia's largest automotive component suppliers.
3. Elders has approximately 4,600 employees.
4. Elders is the oldest real estate agent network in Australia, established in 1839 and is recognised as a dominant rural real estate agent network throughout Australia. In recent years, the real estate agent network has expanded to nearly 400 offices operating in all capital cities and major regional centres across the country. In addition to its Australian operations, Elders has an extensive network of real estate agents operating internationally and it has established affiliated real estate agencies operating in New Zealand, USA and other countries.

5. Ai Group and Elders support the application by the Real Estate Employers' Federation of NSW (REEFNSW) to vary the *Real Estate Industry Award 2010* (Real Estate Modern Award) to delete sub-clause 4.2. Real estate salespersons and property managers / consultants employed in real estate agencies are appropriately covered under the Real Estate Industry Award. Sub-clause 4.2 creates uncertainty.
6. Elders Ltd is listed as a respondent to the pre-modern *Clerical and Salaried Staffs' (Agribusiness) Award 1999* (Agribusiness Award). This award has a broad scope and covers a wide range of classifications.
7. In the Stage 2 Award Modernisation proceedings relating to the Financial Services industries, the financial services employees covered by the Agribusiness Award were considered by the Tribunal. The Agribusiness Employers Federation sought a separate modern award for the Agribusiness Industry but this was rejected by the Australian Industrial Relations Commission (AIRC) as highlighted by the following extract from the Tribunal's decision of 3 April 2009 ([2009] AIRCFB 345):

"[133] We publish the Banking, Finance and Insurance Award 2010. The exposure draft published in January 2009 attracted comment from various parties. Some parties reiterated their opposition to their coverage under a broad industry award and, in the alternative, submitted that changes were necessary to properly cater for the needs and achieve the objects of award modernisation. Other parties commented on particular terms of the exposure draft.

[134] The ASU requested that the health insurance industry be split from the coverage of the award. The Agribusiness Employers Federation submitted that the agribusiness industry should be

separate. We have decided not to accede to these requests. In our view the industry is capable of being covered by a single set of safety net provisions and making a single modern award best achieves the objects of award modernisation.

[140] There have also been some changes to the classification definitions to make the references to managerial employees clearer and to cover a broader range of employees in the agribusiness industry. We have not expanded or contracted the number of salary levels in response to requests by unions and employers respectively. We do not think that it is necessary to broaden the exemption in the consolidated request in relation to employers covered by enterprise awards or enterprise NAPSAs.

8. In the *Banking, Finance and Insurance Award 2010* (Banking and Finance Modern Award), the “**banking, finance and insurance industry**” is defined as:

“...the industries of banking, lending, loaning, providing credit, investment, finance, superannuation, all forms of insurance, credit unions, building societies, financial intermediaries, trustee creditors and agencies, money market dealers, credit or charge card institutions, wool broking, agribusiness and services to the above industries such as broking, trading, debt recovery, financial consulting, valuation, money changing, data processing, transaction accounts, telephone enquires and transaction processing.” (Emphasis added)

9. The Banking and Finance Modern Award does not include classifications for property salespersons and property managers / consultants. In Ai Group and Elder’s view, property salespersons and property managers / consultants in

Elders' real estate offices in metropolitan, regional and rural locations are covered under the Real Estate Modern Award.

10. The Real Estate Modern Award covers employers in Australia engaged in the real estate industry in respect to their employees engaged in classifications specified in the award. The term “**real estate industry**” is defined in the award as:

“...the provision of services associated with sales, acquisitions, leasing and/or management of residential, commercial, retail, industrial, recreational, hotel, retirement and any other leasehold or real property and/or businesses. Such services include:

- *real estate agency;*
- *business and hotel broking;*
- *strata and community title management (or similar service however described);*
- *stock and station agency;*
- *buyers agency; and*
- *real estate valuation.*

11. The classifications in the Real Estate Modern Award cover: Property Sales Associates, Property Sales Representatives, Property Sales Supervisors, Property Management Associates, Property Management Representatives, Property Management Supervisors, Strata/Community Title Management Associates, Strata/Community Title Management Representatives, and Strata/Community Title Management Supervisors. All of these classifications are defined in Schedule B of the Award.

12. The inclusion of sub-clause 4.2 in the Real Estate Modern Award creates uncertainty and could potentially lead to arguments that the *Banking, Finance and Insurance Award 2010* covers employees involved in property sales

and/or property management in rural real estate businesses. The conditions in the *Banking, Finance and Insurance Award 2010* and completely unsuited to the salary and employment conditions in place within real estate businesses. In contrast, the Real Estate Modern Award contains salaries and conditions which are designed for the real estate industry, including real estate agencies operating in metropolitan, regional and rural areas.

13. Ai Group and Elders urge the Tribunal to vary the award as sought by REEFNSW.