

IN THE FAIR WORK COMMISSION

IN THE MATTER OF: Application by Real Estate Employers'

Federation (152N) & Real Estate Employers'

**Federation of South Australia and the Northern
Territory (007S)**

**Section: s.157 – FWC may vary etc. modern awards if
necessary to achieve modern awards objective**

Subject: Real Estate Industry Award 2020

Matter No.: AM2020/14

SUBMISSIONS FOR THE APPLICANTS

1. These are the submissions in support of the Application made by the Real Estate Employers' Federation (**REEF**) and the Real Estate Employers' Federation of South Australia and the Northern Territory (**REEFSANT**).
2. These submissions are filed in accordance with the direction of the Fair Work Commission (the **Commission**) made on 9 June 2020.

3. The Registered Real Estate Salespersons' Association of SA (the Association) has filed:
 - (a) a statement/submission by Mr R Clarke, representative for the Association (the Submission);
 - (b) an unsigned witness statement of Mr D Finch (the Finch Statement); and
 - (c) various print outs of websites relating to the pricing of houses (the Pricing Material).
4. The Submission should not be taken as evidence in the proceedings. It is, by its character, a submission being argumentative in nature. It provides no factual evidence to assist the Commission in this matter.
5. The unsigned Finch Statement should not be received as evidence in these proceedings as it is not relevant to the matter. In the alternative if it is received it should be given no weight in the matter.
6. The Finch Statement concerns factual assertions about something that is said to have occurred around 2011; an underpayment claim that was settled on a confidential basis.
7. It has nothing to do with the operation of the MITA or commission-only employees as they operate:
 - (a) under the Real Estate Industry Award 2020 (the Award) in its current form;
or
 - (b) in the context of the COVID-19 pandemic (the Pandemic).
8. It is not entirely clear that the Association oppose the Application in this matter (refer paragraph 3 of the Submission).
9. The Association concedes the impact of the Pandemic generally and on the Real Estate Industry as advanced by the Applicants.

10. Given the loose nature of the Pricing Materials filed it is questionable how reliable they are. This said, they do not in any event challenge the Application and the basis upon which it is advanced (in particular the Applicants submissions on section 134 of the Fair Work Act 2009).
11. In the Submission the Association asserts that "...most at risk of not meeting the MITA are those who are borderline average performers."
12. This assertion is not supported by any evidence and misconstrues the basis upon which the Application is advanced.
13. The Application is not seeking to change the MITA calculation simply for commission-only employees who have tried their best and failed but rather change the MITA calculation in circumstances where the Pandemic has prevented or materially hindered the commission-only employees from working as usual (and likely not working at all) despite their best efforts.
14. In this sense the Application operates to protect a commission-only employee who is ready willing and able to perform their role but is otherwise prevented or materially hindered from doing so because of the Pandemic from potentially being disqualified from working as a commission-only employee for unique reasons outside of their control and the control of their employer; the Pandemic.
15. The Application seeks to remedy this entirely unfair inequity only.
16. It does not seek to reduce the MITA for a commission-only employee who is ready willing and able to perform their role but is simply not good enough (a "borderline average performer") to make sufficient sales to meet the MITA.
17. The Association has offered nothing to challenge the evidence and submissions of the Applicants in this matter.

18. For the reasons set out in the Applicants submissions filed on 4 June 2020 the Commission can comfortably find that the variation to the Award is required so that the Award meets the modern awards objective (ss 157 and 134).

19. The Application should be granted and the Award varied accordingly.

For the Applicants



Nigel Ward
CEO + Director
Australian Business Lawyers & Advisors Pty
Limited
(02) 9458 7286
nigel.ward@ablawyers.com.au

David Collits
Associate
Australian Business Lawyers & Advisors Pty
Limited
02 9458 7355
David.Collits@ablawyers.com.au