

IN THE FAIR WORK COMMISSION

In the matter of: An application to vary to vary the Real Estate Award (2020)
pursuant to s157 of the Fair Work Act, 2009.

BY

Real Estate Employers Federation and Real Estate Employers Federation SA/NT

Re AM 2020/14

Response of RRESSA to REEF & REEFSA/NT application

1. RRESSA has no argument with the outline of the respondents' submission as to the effect of Covid -19 on the Real Estate Industry and the Australian economy, specifically paragraphs 1- 75 inclusive. Obviously, they are hypothetical but based on the best information available.
2. What is in dispute is whether the respondents' application is warranted given the significance as to its impact on borderline commission – only (C-O) remunerated salespersons and their ability to earn a living wage for the period May 2020 – May 2022.
3. The application as varied allows the Months May to October 2020 to be disregarded for the purposes of the annual C-O minimum income threshold (MITA). For example, if the review date was 15th August 2020 the review would allow the months of May – August 2020 to be disregarded for the purpose of calculating the MITA in August 2020. Therefore the respondents application will allow the MITA to be ignored for the 2020 review and in August 2021 the months of September and October 2020 can be disregarded for the 2021 review of the MITA, allowing a C-O salesperson's eligibility, prorated to be determined through to 2022 based on only 10 months income.
4. RRESSA refers to the following extracts of the respondents' witness statements;
 - (a) Bryan Wilcox, para 31, “ *C-O employment only available to high performers.....* ”, para 32 “ *generally reserved for a select class of real estate salespeople, who are willing to take on the risk of not having a guaranteed wage in return for potentially higher remuneration and flexible hours of work...* ”. Para 34 “ *.. often attracted to C-O because it almost invariably will attract a higher rate of commission and remuneration....* ”. Para 35 “ *....C-O employee typically receive 50 – 60% but can receive up to 85%...* ”. Par 36 “ *...C-O employment provides the more skilful agent with the opportunity to acquire (even demand) employment conditions that better suit their lifestyle and remuneration aspirations. ...* ”
 - (b) Geoff O'Reilly – HP Bowral Pty Ltd: This witness refers to two of his C- O agents, at para 8 refers to agent income for year ended 2020 as \$135 000 plus super. Agent 3 at para 9 in March 2019 had an income of \$137,000 but in March 202 his MITA was \$59,000. No information as to why the huge drop in income, e.g. went on extended annual leave, sickness leave, bushfire issues or just bad luck???

At para 10 the witness refers to the difficulty of the two agents earning \$20,000 for the months April – September 2020. Yet the company is in receipt of the JobKeeper wage subsidy and the two agents would earn at least \$19,500 for those 6 months. Any sales the two Agents make during this period in excess of \$1,500 in a fortnight would be paid to the sales agent.

- (c) Luke Richardson: Refer to paras 9 – 11 of his witness statement. This witness for the employers states that the average gross earnings of a sales agent on C-O after factoring in the worst scenario of sales in 2020/21 was that the average gross earnings of the salesperson would be \$63,888, vs MITA of \$56,062.50 p.a. This represents a reduction from an average of \$124,122 in 2018 and \$104,480 in 2019. At para 11 Mr. Richardson refers to C-O salespersons as *“Further, C-O employees are only presented with permission to work on this basis because they have demonstrated from past performance, they possess a higher than average skill and aptitude to selling real estate.”*
- (d) In reality if all the salespersons engaged as C-O salespersons fitted the employer description of being salespersons from a *“select class of real estate salespersons’ -O only available to high performers.”*, *“ typically receives 50- 60% commission or up to 85%”*. Yet the respondents claim that based on a commission share of 46.3% of the employer’s commission ex GST that these top performers of the real estate industry can only make \$63,888 in 2020/21, nearly \$8,000 p.a. above the MITA. If those employees were paid 50% of the commission share, they would receive \$68,993 or at 55% \$75,892.
5. The facts are the persons who are seen as worthy of being remunerated as above average salespersons and high performers, the MITA will not be a problem. Yes, they may earn less than the income they have earned in the past but if the rhetoric of the employers is to be believed this class of employee will meet the current MITA. Those in danger of missing on their MITA are the borderline C-O salespersons. Under normal circumstances these salespeople should be debit/ credit salespersons with a guaranteed wage rather than being subject to an award provision with no minimum hourly rate of pay.
 5. If the respondents’ members were truly worried to ensure their C-O salespersons MITA they have the answer in their own hands, to increase on a temporary basis the % share of the employers commission or to top up the difference in the income the salesperson needs to meet the MITA, after all the Australian Taxpayer has subsidised the wage of the C-O salespersons to the amount of \$19,500 for 6 months even if not one property is sold and settled in that 6 month period.
 6. In conclusion there is no justification to grant the variation sought. With respect to the requirements of s 134 there is no basis to cut wages, because that is what the employer’s application is all about. In all of the award changes to accommodate Covid - 19 the award variations have been based on extending ordinary hours of work and that employees can work in areas that they did not ordinarily work. No award has been varied to allow for a reduction in minimum award wages or penalty rates other than as described and that for every hour worked the employee had a guaranteed rate of pay and all expenses incurred on the employer’s behalf was paid by the employer.
 7. If there are redundancies, sadly they may become inevitable unless the employers adopt different strategies where they have to share the “pain” by increasing the % share for C-O salespersons or a “top up” approach to the income support of C- O salespersons. It will either be borderline C - O persons who fail the MITA or a debit/credit salesperson because they are in receipt of a guaranteed wage. RRESSA opposes the introduction of an award variation which undermines the basic requirements of s 134 of the FWA 2009 that the objective of a modern award is to maintain a relevant safety net award for low paid workers. The alternative is a “race to the bottom”!