



AM2020/14

s.157 Fair Work Act 2009

**Application to vary the Real Estate
Industry Award 2020**

Submission by the Real Estate Employers Federation of WA

4 June 2020

Contents

Outline of Applciation.....	2
Background	3
Impact of COVID-19 on Businesses and Employees	3
Support for the Application.....	7



Real Estate Employers Federation of WA Inc (ABN 78 459 592 610)

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Outline of Application

1. The Real Estate Employers Federation of Western Australia Inc. (**REEFWA**) is a not for profit employer association representing real estate employers based in WA whose charter is to act as an organisation of employers to:
 - a) promote, protect, preserve and represent by a lawful means the industrial interest of members; and
 - b) provide advice, guidance and assistance to any members who shall be involved in an industrial relations matter or dispute or otherwise require such assistance.
2. REEFWA supports the application by the Real Estate Employers' Federation and Real Estate Employers' Federation of South Australia and the Northern Territory, which inserts a new Schedule I.1(iv) of the *Real Estate Industry Award 2020* (**Award**) as follows:

Pursuant to this clause, where an annual review is undertaken after 1 May 2020, the months of May, June, July, August, September and October 2020 (the COVID-19 months) may be disregarded in the calculation of the MITA for the preceding 12-month period under review if the work in that month has been impacted by COVID-19. The MITA will be adjusted accordingly in proportion to the number of months disregarded, provided that, where the commission-only employee's review date falls part way through any COVID-19 month, that month may only be disregarded where the review is due after the 14th of the month.
3. The application is necessary to provide the real estate industry both the employers and employees with a level of certainty in relation to the commission only remuneration scheme as a result of the impacts of the COVID-19 pandemic.
4. The proposal allows the Minimum Income Threshold Amount (**MITA**) to be adjusted in proportion to the number of months disregarded, provided that, where the commission-only employee's review date falls part way through any COVID-19 month, that month may only be disregarded where the review is due after the 14th of the month.
5. The proposed variation to vary clause 16.7(h) of the Award will provide flexibility to the annual gross income review of the commission-only employees, for the purposes of the MIRA) for the period ending 1 April 2021.

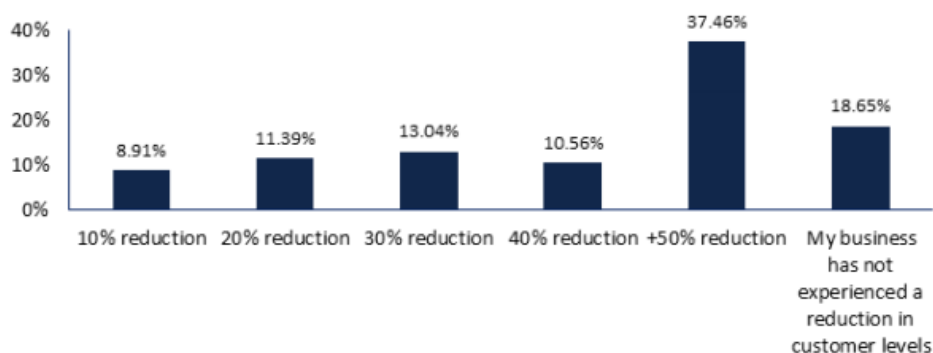
Background

6. In responding to the public health concerns arising from the COVID-19 pandemic the Commonwealth and State Government have implemented a range of restrictions on businesses, and the broader community, that has impacted the operation of all WA employers and in particular the real estate industry.
7. As at 1 May 2020, the restrictions currently applicable within WA included:
 - a) restrictions on international, interstate and intrastate travel;
 - b) social distancing measures requiring people to remain 1.5m away from others with a minimum of 4m² per person;
 - c) restrictions on the number for indoor and outdoor gatherings to a maximum of 10 people;
 - d) closure and restrictions on the operation of a range of industries, including:
 - i. cafés, restaurants, food courts and licenced establishments, which are limited to take away and home delivery services;
 - ii. restrictions on home opens and display homes within the real estate industry, which were prohibited from 30 March 2020 to 27 April 2020, and are currently restricted to 10 people subject to other social distancing measures;
 - iii. closure of beauty and personal care services, including beauty therapy, tanning centres, nail salons and tattoo parlours;
 - iv. closure of entertainment venues, including cinemas, casinos, nightclubs, concert venues, sporting arenas, amusement parks and play centres;
 - v. closure of leisure and recreation premises, including health clubs, fitness centres, and sporting based activities;
 - e) a requirement that people stay at home except for specified reasons. This includes limiting shopping to essential supplies.
8. Whilst the WA Government has announced some easing of restrictions effective from both 18 May 2020 and 29 May 2020, we are still a long way from returning to business as usual.

Impact of COVID-19 on Businesses and Employees

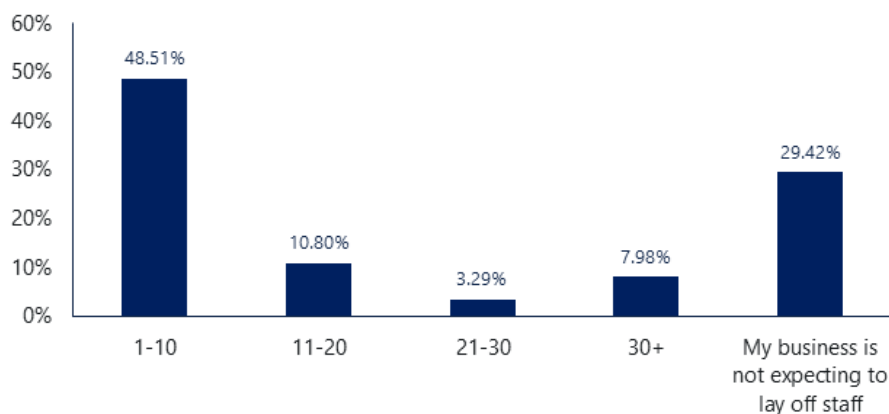
- The Chamber of Commerce and Industry of Western Australia (**CCIWA**) has conducted an extensive survey of the WA business community to identify the impacts of COVID-19 involving approximately 900 businesses.¹
- The results identify that over 80 per cent of WA businesses are experiencing reduced consumer spending, with 61 per cent of all employers reporting reduced revenue of 30 per cent or more. Businesses in the retail, accommodation, real estate, and arts and recreation sectors have suffered the biggest reduction in consumer spending.

TO WHAT EXTENT HAS YOUR BUSINESS EXPERIENCED A REDUCTION IN CUSTOMER LEVELS OVER THE PAST 3 WEEKS?



- To help counter the economic and trading changes arising from COVID-19, approximately 84 per cent of businesses are intending to adapt or change their operations. This frequently necessitate changes to the way their staff work.
- Despite attempts to adapt, 71 per cent of employers expect to lay off staff.

IF YOUR BUSINESS EXPECTS TO LAY OFF STAFF IN THE COMING WEEKS AND MONTHS, HOW MANY EMPLOYEES DO YOU EXPECT WILL BE IMPACTED?



¹ CCIWA (2020) *COVID-19 Business Impact Survey: Snapshot*.

13. The above findings are reflected in the Australian Bureau of Statistics (ABS) survey on the business impacts of COVID-19² which identified that 72 per cent of Australian businesses reported reduced revenue as a result of COVID-19.
14. As shown below, businesses are being impacted by both reduced demand and government restrictions:³

Anticipated adverse business impacts due to COVID-19, by industry division^{(a)(b)}

	Reduced demand for goods or services	Supply chain uncertainty	Staff shortages	Reduced cash flow	Reduced access to credit or additional funds	Reduced ability to pay operating expenses	Government restrictions	Uncertain financial markets
	%	%	%	%	%	%	%	%
All Businesses	69	41	15	72	24	41	53	44
Mining	38	33	31	38	17	17	52	51
Manufacturing	82	59	9	75	33	57	53	65
Electricity, Gas, Water and Waste Services	44	32	24	40	8	18	43	32
Construction	73	58	8	77	31	35	39	42
Wholesale Trade	81	66	34	69	27	46	66	56
Retail Trade	61	59	27	62	16	41	47	42
Accommodation and Food Services	84	48	17	88	38	70	84	41
Transport, Postal and Warehousing	69	37	10	69	27	46	42	20
Information Media and Telecommunications	78	35	1	67	33	34	36	35
Financial and Insurance Services	41	18	8	45	18	19	37	62
Rental, Hiring and Real Estate Services	66	25	32	63	25	37	46	47
Professional, Scientific and Technical Services	62	23	2	65	16	31	40	47
Administrative and Support Services	80	34	20	81	12	61	74	46
Education and Training	79	17	21	88	25	57	79	30
Health Care and Social Assistance	57	33	32	68	16	23	73	27
Arts and Recreation Services	83	18	27	84	24	71	94	34
Other Services	73	43	5	86	30	48	61	52

(a) Proportions are of all businesses.

(b) Businesses could select more than one option.

15. It is noted that the “Rental, Hiring and Real Estate Services” reported a reduced demand for goods or services of 66%.
16. The Governor of the Reserve Bank of Australia has further identified that:

One very obvious consequence of the efforts needed to contain the virus is that many normal activities are restricted or not permitted. This means that, for as long as these restrictions are in place, we don't have the jobs and incomes that come from these activities. On top of this, there is a high level of uncertainty about the future, which means that many households and businesses are holding back their spending and investment.

The result of both the restrictions and the uncertainty is that over the first half of 2020 we are likely to experience the biggest contraction in national output and income that we have witnessed since the 1930s.

Putting precise numbers on the magnitude of this contraction is difficult, but our current thinking is along the following lines:

² Australian Bureau of Statistics (7 April 2020) [Business Indicators, Business Impacts of COVID-19, May 2020](#).

³ Australian Bureau of Statistics (7 April 2020) [Business Indicators, Business Impacts of COVID-19, April 2020](#).

- *National output is likely to fall by around 10 per cent over the first half of 2020, with most of this decline taking place in the June quarter.*
- *Total hours worked in Australia are likely to decline by around 20 per cent over the first half of this year.*
- *The unemployment rate is likely to be around 10 per cent by June, although I am hopeful that it might be lower than this if businesses are able to retain their employees on lower hours. The unemployment rate would have been much higher than this without the government's JobKeeper wage subsidy.⁴*

17. The Commonwealth Treasury has predicted that without the JobKeeper payments the national “unemployment rate would be 5 percentage points higher and would peak at around 15 per cent”.⁵

State of the Economy

18. Further to the information provided in paragraphs 9 to 17 of this submission, REEFWA relies upon the analysis of the impact of COVID-19 on the global and Australian economy provided in the explanatory memorandum to the *Coronavirus Economic Response Package Omnibus (Measures No. 2) Bill 2020 (Cth)*.⁶ The explanatory memorandum identifies that:

- a) The COVID-19 pandemic has affected almost all countries around the world, with more than 190 countries reporting infections.
- b) The virus, along with the increasing health measures to slow its spread, will have significant economic implications.
- c) The international economic outlook has worsened as the Coronavirus has spread.
- d) A range of economic indicators are showing that the Chinese economy has been severely impacted. A survey measure of activity in the manufacturing sector had its largest fall in its history in February 2020. China also had record falls for industrial production, retail sales and fixed asset investment over January and February 2020, with trade for this period also significantly affected.
- e) Given China’s interconnectedness with the world, and its key role in supply chains, this decline will have flow-on economic impacts for the world. This has been magnified as more countries impose restrictions to slow the spread of COVID -19.
- f) The global nature of the shock is evident in financial markets with stock markets recording substantial falls.

⁴ Reserve Bank of Australia (21 April 2020) [An Economic and Financial Update -Speech by Philip Lowe](#) .

⁵ Hon Josh Frydenberg (14 April 2020) Media Statement - [Jobkeeper payment supporting millions of jobs](#).

⁶ [Coronavirus Economic Response Package Omnibus \(Measures No. 2\) Bill 2020 – Explanatory Memorandum](#)

- g) Oil prices have fallen by around 65 per cent compared to early January 2020, which will negatively affect Liquefied Natural Gas export prices.
- h) There remains considerable uncertainty around the economic implications of COVID-19 for the June quarter and beyond, but the economic shock is expected to be significant. The global spread of COVID-19 and the resulting economic impact will flow through to demand for Australia's exports, and the availability of inputs into domestic production and imported consumption goods.

19. It is clear that COVID-19, and respective government responses to control it, are having a significant impact on the WA and national economy.

Impact on employers' capacity to maintain employment

20. As identified in this submission, both the State and Federal Governments have introduced measures to minimise the spread of COVID-19 which have significantly affected the ability of many employers to continue normal operations.

21. As shown in the table below, CCIWA's Covid-19 Business Impact Survey has identified that 43 per cent of WA based real estate services have suffered a 50 per cent reduction or more in customer levels.

To what extent has your business experienced a reduction in customer levels over the past 3 weeks?						
Industry	10% reduction	20% reduction	30% reduction	40% reduction	+50% reduction	My business has not experienced a reduction in customer levels
Accommodation & Food Services	4%	4%	0%	4%	88%	0%
Education & Training	0%	17%	11%	6%	61%	6%
Information Media & Telecommunications	9%	0%	18%	0%	64%	9%
Real Estate Services	0%	14%	43%	0%	43%	0%
Utilities Services	13%	25%	0%	13%	50%	0%
Transport, Postal & Warehousing	15%	0%	8%	31%	38%	8%
Retail Trade	3%	18%	23%	18%	33%	5%
Agriculture, Forestry & Fishing	0%	4%	16%	12%	40%	28%
Professional, Scientific & Technical Services	12%	12%	12%	4%	42%	19%
Health Care & Social Assistance	13%	7%	3%	30%	27%	20%
Construction	16%	16%	12%	12%	24%	18%
Manufacturing	9%	12%	15%	10%	27%	27%
Wholesale Trade	14%	14%	0%	29%	14%	29%
Mining	6%	9%	18%	12%	18%	38%
Financial & Insurance Services	21%	14%	14%	0%	21%	29%
Total*	9%	11%	13%	11%	37%	19%

22. These rates of reduction in customer numbers are unsustainable and directly impact the ability of employers in these sectors to maintain the employment of their staff.

23. The JobKeeper payments are intended to enable employers to continue to employ their staff by providing a wage subsidy. However, in an environment where businesses must rapidly adapt their operations to changing circumstances, the relationship between employers and employees needs to be more flexible particularly for commission-only employees to enable employers to continue to employ their staff.

Support for the Application

24. This application seeks to provide an appropriate framework to continue employing commission-only employees.
25. The variation will facilitate that the MITA be adjusted accordingly in proportion to the number of months disregarded, provided that, where the commission-only employee's review date falls part way through any COVID-19 month, that month may only be disregarded where the review is due after the 14th of the month.
26. Without the variation being accepted there is a real prospect that commission-only employees will lose their employment as a result of not being able to reach the MITA requirements which would only have occurred due to the severe economic impacts of COVID-19.