

**IN THE FAIR WORK COMMISSION**

**FOUR YEARLY REVIEW OF MODERN AWARDS**

**REAL ESTATE INDUSTRY AWARD 2010**

**AM2016/6**

**SUBMISSIONS BY REEF SA/NT IN REPLY TO REEF'S DOCUMENT RE COMMISSION-  
ONLY FOLLOWING THE FULL BENCH HEARING**

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1. The Real Estate Employers' Federation of South Australia and the Northern Territory (**REEF SA/NT**) is a registered employer association under the Fair Work (Registered Organisations) Act 2009. REEF SA/NT represents approximately 300 employer members across SA and NT.
2. REEF SA/NT makes this submission following from the Full Bench hearing of the final submissions by the parties which concluded on 23 November 2016.
3. The submission is in respond to the document tendered by REEF in relation to commission-only salespersons.
4. REEF SA/NT supports the draft clause proposed by REEF for commission-only salespersons, however, for clarification we recommend some amendments to the wording of the draft clause. **Appendix 1** of this document outlines REEF SA/NT's submissions (*Red text indicates new text recommended by REEF SA/NT. Strikethrough text indicates text that is to be deleted*).

Arvin Bisbal  
Chief Executive Officer  
7 December 2016

## APPENDIX 1

### 9.7 Commission-only employment

#### 9.7 (a) ~~The objective of Commission-only employment~~ **must cease under certain circumstances**

- (i) ~~Commission-only employment as provided for under this clause is designed to recognise the unique nature of Australia's real estate industry, and its practices and procedures. This includes making available remuneration on a commission-only basis to those employees who meet the eligibility requirements under this clause. This remuneration arrangement has been designed, accepted and proven over time to maintain an appropriate safety net for commission-only employees.~~

~~The objective of this clause is to provide a mechanism by which a salesperson of at least average ability should be able to achieve remuneration of 115% or more of the annualised minimum wage that an employee working in the same classification under this award would be entitled to be paid if that employee was not employed on a commission-only basis.~~

- (ii) Where a commission-only employee **at the end of any 12 consecutive month period** earns a commission payable rate (pre-tax) that is less than the wage rate prescribed for the employee's award classification in a consecutive 12 month period (excluding any periods of leave without pay or unauthorised absences), the employee will no longer be eligible and will no longer be employed on a commission-only basis for the following **consecutive 12** month period.

~~In this clause the term "consecutive 12 month period" means the 12 month period commencing on the date upon which an employee was engaged on a commission-only basis or on the anniversary of the commencement date.~~

**The first consecutive 12 month period commences as from the operative date of this clause for employees already on commission-only and for other employees from the date the employee starts on commission-only. For avoidance of doubt, a consecutive 12 month period excludes any periods of leave without pay or unauthorised absences but includes periods for any type of payable leave.**

- (iii) In circumstances prescribed in **paragraph (ii)** above, the written agreement relating to commission-only employment will cease **and no longer be valid**. Provided that the employee will be eligible to receive commission in accordance with the employee's written commission-only agreement for any property for which there is a legally enforceable contract in place for the sale of a property before the date employment on a commission-only basis ceased.
- (iv) For all hours worked by an employee following the ending of commission-only employment **in accordance with this clause**, the employee concerned will be entitled to receive all applicable wages, allowances and loadings under this award. Further, the employee will be entitled to receive commission in accordance with any subsequent written agreement entered into in accordance with clause 9.1(a) of the this Award.
- (v) **An employee who must revert to the award minimums under this clause will not be eligible for commission-only again until at least 12 consecutive months has expired and the conditions under this award for being on commission-only have been met.**