

Hon. Justice Ross AO
President of the Fair Work Commission
11 Exhibition Street
Melbourne 3000

Re AM2016/6 - 4 Yearly Review of Real Estate Award 2010.

16th May 2016

Dear Justice Ross

On behalf of The Registered Real Estate Salespersons' Association of SA, I am attaching an amended application with respect to its claims before the FWC regarding a number of amendments sought to be made to the abovementioned Award. This amended application is in substitution for the original application filed by the Association with the FWC in January 2015.

The amended application is made in accordance with the Heads of Agreement entered into between RRESSA and a number of employer stakeholders, which followed a series of conciliation conferences before Commissioner P Hampton, giving rise to his report to the Full Bench of the Commission dated the 2nd September 2015.

A copy of this letter and its attachment has been forwarded to all the other major industry stakeholders for their information.

Regards

Ralph Clarke

Agent for and on behalf of

RRESSA

Form F46 Application to vary a modern award*Fair Work Act 2009, ss.157–160*

FAIR WORK COMMISSION

AMENDED APPLICATION MAY 2016

*Commission use only***Commission Matter No.:****Applicant**

Name:	The Registered Real Estate Salespersons' Association of South Australia		
Title [if applicable]	Mr [] Mrs [] Ms [] Other [] specify:		
Address:	PO Box 612		
Suburb:	Kensington Gardens	State: SA	Postcode:
If the Applicant is a company or organisation:			
Contact person:	C/- Ralph Clarke	ABN:	
Contact details for the Applicant or contact person (if one is specified):			
Telephone:	08 - 8410 0033	Mobile:	0419806049
Fax:		Email:	clarker@bigpond.net.au

Applicant's representative (if any)

Name:	Ralph Clarke	ABN: [If applicable]
Address:	GPO Box 1005	
Suburb:	Adelaide	State: SA Postcode: 5001
Contact person:	As above	
Telephone:	08 84100033	Mobile: 0419806049
Fax:		Email: clarker@bigpond.net.au

1. What is the name of the modern award to which the application relates?*[Also include the Award ID/Code No. of the modern award.]*

Real Estate Industry Award 2010 MA000106

2. What is the industry of the employer?*[Specify industry.]*

Real Estate Industry

3. Variation(s) sought:*[Set out, or attach as a separate schedule, the variation(s) sought.]*

Refer to attachment "A" hereto.

4. **Grounds:** Refer to attachment “B” hereto.

Date: 16th May 2016

Signature: Ralph Clarke

Name: Ralph Clarke

Capacity/Position: Agent

Service requirements

The Applicant must seek directions from the Commission as to service of this application.

ATTACHMENT “A”

1. Amend existing clause 3 – “Definitions and Interpretation”

Withdrawn by RRESSA as per Heads of Agreement (HOA)

2. Amend existing clause 14 – Minimum Weekly Wages

(1) By deleting the classifications and wage amounts shown in sub clause 14.1 with respect to all adult property classifications and insert in lieu the following;

<i>Property Sales Associate – first 6 months of employment At this classification</i>	<i>\$698.40</i>
<i>Property Sales Associate – after first 6 months of employment At this classification</i>	<i>\$733.40</i>
<i>Property Sales Representative</i>	<i>\$764.90</i>
<i>Property Sales Supervisor</i>	<i>\$882.80</i>
<i>Property Management Associate</i>	<i>\$733.40</i>
<i>Property Management Representative</i>	<i>\$807.90</i>
<i>Property Management Supervisor</i>	<i>\$882.80</i>
<i>Strata/Community Title Management Associate</i>	<i>\$733.40</i>
<i>Strata/Community Title Management Representative</i>	<i>\$807.90</i>
<i>Strata/ Community Title Management Supervisor</i>	<i>\$882.90</i>

3. Amend Existing clause 15 –Payment by wages with commission, bonus or incentive payments.

Withdrawn by RRESSA refer to paragraph 5 hereof for new amendment sought.

4. Amend Existing Clause 16 – Commission only Employment

(1) Delete existing sub clause 16.2 (c) and insert in lieu the following;

“16.2 (c) the employee has been engaged as a Property Sales Representative or a Property Sales Supervisor (with any licenced real estate agent) or was an active licenced real estate agent for at least 12 consecutive months in the 3 years immediately prior to entering into a commission – only agreement.”

(2) Delete existing sub clause 16.2 (f) and insert in lieu the following;

“16.2 (f)

(a) For an employee employed on a commission – only basis after (insert date of operation), the employee can establish (with present or any past employer) that he or she has achieved the Minimum Income Threshold amount (MITA) prescribed by clause 16.3 (as maybe amended from time to time).

Provided that, the MITA will not have to be been achieved in circumstances where the employee has operated his or her own real estate business within the last 3 years.

(b) An employee who qualified to be employed on a commission – only basis under this award prior to (insert date of operation), will continue to be eligible for commission – only employment under the terms of this award as long as the employment with that employer continues.”

(3) Delete existing sub clause 16.3 - Minimum Income Threshold and insert in lieu the following;

“16.3 Minimum Income Threshold Amount (MITA)

(a) The MITA has been achieved only if the employee can establish that in any consecutive 12 month period in the 3 years immediately preceding entering into the commission – only agreement, the employee received a total gross income of at least \$57,9848.80 (including any commission or bonus payments) but excluding expense related allowances, statutory superannuation and any non monetary benefits. The minimum income threshold amount will be increased on 1st July each year by the same percentage or monetary increase(calculated as an annual amount) awarded by the Fair Work Commission in its National Wage Review decision based on the Property Sales Representative award classification.

(b) The type of documents that an employer may rely upon to establish that the MITA is satisfied, may include but be not limited to the following;

(i) Individual Payment Summary;

(ii) Pay slips; and / or

(iii) Commission statement records or other sales records.

(c) The employer must be satisfied on reasonable grounds that the employee has established that he or she has achieved the MITA within the prescribed time period.

(d) At the request of the employer, the employee will provide the employer with a statutory declaration which declares the accuracy and legitimacy of any documentation provided by the employee under sub clause (b) above.

Note: for the purpose of sub paragraph (a) above, the “total gross income” is calculated as 160% of the annualised minimum award wage for an adult Property Sales Representative prescribed in clause 14.1 of the award.”

5. Amendment to existing clause 17 – Matters relating to commission, bonus or incentive payments.

1. Amend existing sub clause 17.1 by inserting a new paragraph (c) to read as follows;

(c) “The written agreement must not contain any provision which permits the debiting from an employee’s commission/ bonus/incentive entitlement, any amount relating to;

(i) vendor authorised advertising and / or marketing expenses, how so ever described, or

(ii) An employee’s entitlement to the relevant State or Territory Long Service Leave legislation, or superannuation payments made on the employee’s behalf by the employer pursuant to clause 22 of this award.

Note: as per Heads of Agreement REEF will seek to amend clause 17.1 as per Schedule D of the HOA which RESSA will support and in addition seek the addition of (c) above.

2. Delete existing clause 17.3 and insert in lieu the following;

(a) Following cessation of employment, the employee is entitled to be credited with a portion of the commission, incentive payments or bonuses calculated in accordance with the terms of the written agreement made pursuant to clauses 15 or 16 of the award, but only in the following circumstances;

(i) Where the employee’s employment is terminated for reason of the employee’s serious misconduct, there was a legally – enforceable contract in place for the sale or lease of the property before the cessation of the employee’s employment; or

(ii) Where the employment is terminated for any other reason, there was a legally-enforceable contract for the sale or lease of the property prior to the expiration date of the exclusive agency period.

For the purpose of this sub clause, “exclusive agency” means the period for which the employer has the exclusive right to sell or lease a property under the executed and valid agency agreement that was in effect at the time the employee’s employment ceased. For the avoidance of doubt, there will be no entitlement under this clause where the property for sale or lease has been listed other than on an exclusive agency basis.

(b) Unless the written agreement made under clause 15 or 16 of this award specifies otherwise, the portion of the commission, incentive payments or bonuses referred

to in sub clause 17.3(a) must be the same as that with which the employee would have been entitled to be credited if their employment had continued.

(c) Any entitlement to commission, incentive payments or bonuses calculated under this sub clause only arises once the employer is paid commission by the client in respect of the sale, lease of the property to which the legally - enforceable contract relates and the commission payment is cleared into the employer's bank account.

3. *Amend sub clause 17.5 by deleting entirely paragraphs (a) and (b) and renumbering existing paragraphs (c) and (d) as paragraphs (a) and (b) respectively.*

6. Amendments to existing clause 18 –Allowances

As per the Heads of Agreement (HOA) REESA withdraws its amendments with respect to this clause in support of REEF's proposed amendments to Clause 18 - refer to Schedules F and G of the HOA

7. Amendments to existing Clause 20 “Stand By and call out”.

Withdrawn by REESA in accordance with HOA.

8. Amendments to existing clause 23 – Ordinary hours of work and rostering.

Withdrawn by REESA in accordance with HOA.

9. Amendments to existing clause 24 – Overtime

Withdrawn by RRESSA in accordance with HOA

10. Amendments to existing clause 25 –Annual Leave.

Amend sub clause 25.3 by deleting the words “Subject to clause 17.5,” and capitalize the word “payment”.

11. Such other amendments as maybe agreed by the parties to the Heads of Agreement, (HOA) to being put forward to the Fair Work Commission, (FWC) or those that may arise from a decision of the FWC with respect to a “common issue”.

Refer to Paragraph “G” of the HOA.

ATTACHMENT “B”

GROUND AND REASONS

1. Amendments to Clause 3

Withdrawn by RRESSA

2. Amendments to Clause 14.1

- (a) RRESSA seeks to increase the minimum award rates of pay with respect to all classifications in the award on work value grounds. The Property Sales Representative current rate of pay under values the work of these sales persons and was undervalued at the date of the making of the consent award in 2009. The application seeks to have sales representatives paid at the same award rate of pay that applies to the general office staff employed in the Real Estate Industry.

The application seeks to have the sales representative paid the same minimum award rate of pay as that which is paid for a level 2 clerk, 1ST year of service under the Clerks Private Sector Award 2010. The rate of pay claimed (\$764.90 p.w.) is equal to the tradespersons rate under the Manufacturing and Associated Industries Award.

- (b) Prior to the making of the Modern Real Estate Award in 2010, the great majority of employees and employers in the Industry were covered by NAPSA State Awards in South Australia, New South Wales and Queensland. All other State and Territories were award free, except in so far as there were Commission- only employees in those States and Territories, where the conditions relating to the employment of Commission – only employees was covered by a August 2007 ruling of the then AFPC.

In addition to the above coverage the industry made use of Australian Workplace Agreements and Collective Agreements as provided for by the now replaced Workplace Relations Act, 1996.

- (c) The Real Estate (SA) Award – later to become a NAPSA following Work Choices, March 2006 provided a minimum wage equivalent to the State Minimum Adult Award wage from the 1st January 2001. (South Australia at that time had no minimum award wage for award free employees). Prior to the 1st January 2001 the then State Award had not received the benefit of State Wage Decisions, (mirroring the then National Wage Case decisions of the AIRC) with respect to safety net adjustments for the period 1994 -1998.

The consent agreement to increase the minimum award wage in 2001 picked up the lost safety net adjustments and the structural efficiency payments under the 1989 National Wage Principles. However the award (which only covered real estate salespersons) never underwent the minimum rates adjustment process under

the State Wage fixing principles of the time, where the salesperson's rate of pay was determined relative to the metal tradesperson award rate of pay.

- (d) It is RESSA's understanding, that neither in Queensland nor New South Wales did their State Awards, come NAPSA's have the benefit of a minimum rates adjustment in line with the relevant State Tribunal's wage fixing Principles that followed the AIRC 1989 and 1991 National Wage Fixing Principles. In Queensland and New South Wales the awards covered all persons working in the Real Estate Industry, other than clerks.
- (e) Prior to the making of the Real Estate Award 2010, real estate salespersons and property managers and the like in WA, Vic, Tas, and the Territories were award free. From March 2006 they were covered by the Federal Minimum Wage under Work Choices and in August 2007 if the employee was paid as a commission only salesperson they became bound by the AFPC determination from that time until 1st January 2010.
- (f) Therefore the 2010 Award, unlike every other modern award has not had the benefit of the minimum rates adjustment principle in determining their award rates of pay vis a vis the metal tradespersons award rate. Hence RESSA's application to base the Property Salesperson as the benchmark against the metal tradesperson rate of pay.
- (g) Clerical and administrative employees working in the Real Estate Industry have had the benefit since the early 1990's of having had their then, State and Federal Awards, benchmarked against the metal tradesperson's rate. In a number of arbitrated decisions by both the relevant State and Federal Industrial Tribunals, the level 2 clerk under the now Clerks Private Sector Modern Award has been found to be equivalent in work value to that of the base metal tradespersons award.
- (h) The basis for the payment of wages under the 2010 Real Estate Award had no work value component and is therefore unfair to low paid workers under the award, for whom the award is their actual wage.

The rates of pay struck by consent in 2009 by the stakeholders, provided simply that in the case of Real Estate Salesperson's the highest rate of award wages was that contained in the NSW NAPSA and with respect to the property managers etc classifications, the highest award rate for them was in the Queensland NAPSA. The highest wage rate prevailed, although none of them had been subject to a minimum rates adjustment as per the 1989 and 1991 Wages fixing principles of the AIRC.

In respect of all 3 State Awards (and NAPSA's) none of them have been subject to a work value case in their history.

- (i) Property sales representatives throughout Australia handle the sale, lease and/ or purchase of real property that in the overwhelming majority of cases will constitute the biggest investment that Australians and their family will ever possess. The skills, ethical and legal requirements that sales representatives have to meet, warrant them being paid at least on par with the recognized

tradesperson's award rate of pay, which is that paid at level 2/ 1 st year rate under the Clerks Private Sector Award.

(j) Whilst many property sales representatives, in addition to being paid the minimum award rate of pay, receive commission or incentive payments, the payment of these "over award payments" are not mandatory and vary considerably between the many thousands of employers in the industry and between Capital Cities and rural and regional centres. The Fair Work Commission is required under the Fair Work Act, 2009 (Act) to have regard to low paid workers and "to provide a fair and relevant minimum safety net of terms and conditions...."

(k) RRESSA has sought increased rates of pay for all other classifications in the award, based on comparing skills and responsibilities of those non salespersons under the award with similar, or like skills and responsibilities exercised by clerical and administrative employees under the Private Sector Clerical Award, 2010. On the foregoing analysis RRESSA seeks the following relativity with the Property Salesperson vis a vis the Clerks Award – shown below in ().

- i. Property Sales Associate – first 6 months - 91.31% (level 1, 1st year)
- ii. Property Sales Associate – after 6 months – 95.88% (level 1, 2nd year)
- iii. Property Salesperson - 100% (level 2, 1st year)
- iv. Property Sales Supervisor - 115.41% (level 5)
- v. Property Management Associate – 95.88 % (level 1, year 2)
- vi. Property Management Representative -105.62% (level 3)
- vii. Property Management Supervisor – 115.41 % (level 5)
- viii Strata/ Community Title Management Associate – 95.88% (level 1, year 2)
- ix Strata/ Community Title Management Representative – 105.62% (level 3)
- x Strata/ Community Title Management Supervisor – 115.41% (level 5)

(l) RRESSA application is in accordance with ss, 3(b), 134 (1) (a), (e), 156 (3), (3) & 284 of the Act.

3. Amendment to clause 15

WITHDRAWN BY RESSA IN FAVOUR OF AMENDMENT PROPOSED TO
CLAUSE 17.1 – PARAGRAPH 5.

4. Amendment Clause 16

- (a) RRESSA believes the current provision in the award with respect to the employment of commission only sales staff fails to provide an adequate safety net for low income earners.
- (b) Clause 16.4 of the existing award excludes commission only sales staff from a host of award entitlements enjoyed by all other employees in Australia. They are not entitled to be paid overtime, whatever the number of hours they work or the time of the day or night including on weekends and public holidays, no guarantee of payment for any hour of work performed (the only employees in Australia to have no such right) or be paid the award allowances e.g. vehicle allowance whilst using it on employer business. Indeed because commission only employees do have an award (albeit of limited benefit to them) they are less protected than a trolley collector, (without award coverage) working for a sub contractor of a supermarket, where those employees are at least guaranteed the Federal Minimum Wage under the Act!
- (c) The genesis of the current award provision goes back to a decision of the then Australian Fair Pay Commission in 2007 on the 3rd August 2007. Prior to Work Choices in 2006, commission only sales staffs were governed by State Awards, in Queensland, New South Wales and South Australia. In the other States and Territories there was no award regulation at all of any real estate sales staff and many were engaged as commission only employees.

With the introduction of Work Choices and the introduction of a minimum wage covering all employees employed by constitutional corporations, employers who had employed commission only employees found they could no longer do so without paying the Federal Minimum Wage. The industry went to the AFPC in 2007 to seek a ruling that commission only sales staff were piece workers and should be employed not on a guaranteed minimum wage but only on the sales they achieved.

The AFPC in their decision on 3rd August 2007 agreed to the employment of sales staff on a commission only basis with no guarantee of payment for any hours worked subject to certain minimum conditions which were similar in all material respects to the current award provisions.

At page 14 of the AFPC they said, commission only employment would only be offered to *“employees with sufficient experience and who are able to demonstrate that they will receive adequate remuneration under commission only arrangements should have access to piece rates.* Later at page 18 of their decision the Commissioners said, *“Therefore in addition to the wage guarantee by the WR Act, the new piece rate Pay Scale will only be available as an option for employees who have demonstrated sufficient experience and track record to earn commissions in excess of the otherwise applicable basic periodic rates of pay.”*

- (d) The experience RRESSA has had over the last 5.5 years has shown that commission only employment is being offered to sales staffs that do not have a

track record of sales success, particularly during the real estate market downturn during 2011 – 2013, owing to the difficulties of home buyers securing finance. Employers were telling sales staff being paid the minimum wage that unless they agreed to commission only employment they would be dismissed.

- (e) Given the lack of protection of commission only sales staff under the existing award and the very low threshold level that sales staff need to achieve eligibility to become commission only sales staff, RRESSA is seeking a significant increase in that threshold level. To ensure only those sales staff with a proven track record of sales and are capable of earning a living well in excess of the minimum wage can be offered employment as commission only.

The current minimum income threshold to be eligible to be employed as a commission only sales person is to be able to show that based on any one single 12 month period in the previous 5 years of working as a salesperson, that that person brought in by way of gross commission to his/her then employer an amount, that if the commission only rate being offered was applied to it, would at least equal the minimum award wage x 110% if they used their own motor vehicle for work. That current figure is \$39,839.80 per annum. Whereas an employee paid the minimum award wage, currently \$ 696.50 p.w. plus a minimum car allowance of \$187.91 p.w. (e.g. based on a vehicle less than 5 years old and having an engine capacity of 1601 – 2600 cc, paid for 48 weeks of the year) would be entitled to be paid \$45,238.

RRESSA's amended clause would mean that threshold to be eligible to become commission only would be 160% of the maximum rate payable under the property salespersons classification in clause 14.1, or $\$696.50 \times 160\% \times 52 \text{ weeks} = \$57,878.80 \text{ p.a.}$

In addition the amendment provides additional protections for the employee, they only qualify for commission only if they can show they would have met the minimum income threshold in any single 12 month period in the 3 years, (unlike the existing award provision of 5 years) immediately prior to their entering into a commission only agreement

- (f) The wording in the current award clause 16 is confusing to all parties including the Fair Work Ombudsman who had a meeting with Industry stakeholders in November 2013 to try and come to a common interpretation of what the award clause means. If the enforcer of award minima with all its resources had difficulty in understanding the current clause 16 what hope for the thousands of employers and employees in the industry? The proposed amendment takes away that confusion and makes it simpler and fairer for all concerned in determining a person's eligibility to be paid as a commission only salesperson.
- (g) RRESSA amendments seek to retain the commission only option, as it has been a feature of the industry for many years and some employees prefer it believing they can attract a higher commission rate than being paid a weekly wage with a lower commission rate. However RRESSA believes that given the lack of award protection to commission only employees, only those persons with a proven track

record of success in selling properties should be exposed to the inherent risks of being a commission only employee.

5. Amendment to clause 17

Sub clause 17.1

- (a) Many commission agreements to date contain provisions which allow employers to debit from a salesperson's commission any unpaid vendor authorized advertising or marketing expenses. The vendor will enter into a sales agency agreement between themselves and the employer, (not the sales representative, although he/ she may execute the agreement on the employer's behalf) and amongst its terms there is usually a provision whereby the vendor agrees to pay the agent for any advertising or marketing expenses incurred on their behalf up to a certain limit.

RRESSA has found on many occasions when a vendor, who has failed to sell their property, will refuse to pay the agent for any outstanding marketing costs and the employer often chooses not to chase the vendor for the unpaid monies owed. The employer will then debit the sales person's commission with the costs not paid by the vendor. This is an iniquitous imposition on the sales person as they have no legal right to pursue the defaulting vendor, and is in RRESSA's view a breach of ss324 -326 of the Act.

- (b) RRESSA also seeks to prevent employment agreements allowing the debiting from the employee's portion of the employer's commission amounts paid to them for statutory entitlements such as Long Service Leave and Superannuation. The Real Estate Industry has a long history of debit/ credit of sales persons' commissions. In effect the employer may offer an employee in addition to a weekly wage, 45 – 50 % share of a vendor's commission paid to the employer, ex GST. The employment agreement will then provide that the employer can debit from the employee's share of commission, the full cost of any wages in whatever form, allowances, such as vehicle allowance, annual leave, superannuation paid on the employee's behalf etc.

It is a method of remuneration going back 100 years or more and is unique in Australia. No other major industry RRESSA is aware of, has such an antediluvian approach to the setting of wage rates actually paid to employees. It is largely a "smoke and mirrors" approach, where salespersons' in their mind think they are getting 45 -50% of the commission whereas, after one takes into account all the debits, the real value of the commission may only be between 10 – 15%, if that!

Notwithstanding RRESSA principled position on this debit/ credit system it recognises that so long as the employee is paid each week their minimum award wage and allowances and they are paid for annual leave etc, those debits shown on the salespersons' commission statements at the end of each month is transparent.

However with Long Service Leave that is not the case. LSL is only paid when an employee has reached certain milestones in years of service with the one

employer, in SA, 7 years for pro rata payment on termination and 10 years before be able to access 13 weeks paid leave or payment in lieu. Where the debiting of a person's weekly wage is transparent, the debiting of a statutory entitlement when in fact in the thousands of employment agreements sighted by RRESSA over the years, there is no quantification of what the LSL component is within the commission offer of 45 - 50%. Indeed since many sales staff do not stay long enough in employment with the one employer to qualify for LSL, the employee commission share between those who leave before qualifying for LSL and those that don't, are exactly the same.

Further, unless the employment agreements are carefully drafted, (many aren't being in a number cases drawn up by the principals of the business themselves, or copied from previous employment agreements drawn up by their employer associations but not tailored to the individual employee) it can and does create very complex legal questions as to whether the debiting of the long service leave payment is authorized or not by the employee in writing, pursuant to ss 324 of the Act. It creates the position that a salesperson who leaves employment and is in debit in so far as his commission statement is concerned receives his/ her full LSL entitlement, whereas the salesperson who is in credit with respect to his/ her commission on ceasing employment has their LSL payment debited against their commission, which leads to confusion and angst amongst those sales staff who have been successful in their sales.

In so far as the debiting of a salespersons' superannuation payments are concerned, again the employee cannot see the transparency or fairness in what to them looks like they are paying for the employer's obligation to pay the SGC.

From REESA's own viewing of the thousands of employment agreement in this industry over the years, the 45 – 50 % employee share of the employer's gross commission ex GST has remained constant since the SGC became an award obligation in the 1990's, when it was 3% of gross earnings and it is now 9.5%.

The salesperson has progressively lost more of their "variable over award payment" each time the SGC has increased, and hundreds of current employment agreements known to RRESSA show that the employment agreements have written into them the authority to allow the further debiting of a salesperson's commission share as the SGC rises to 12 % over the coming years, however the employee's share of the commission remains static.

RRESSA's amendment would stop this practice of debiting the salesperson's commission entitlements re superannuation payments and makes the system more transparent. If the employer does not wish to pay more they can seek to reduce the salesperson share of commission by the amount of superannuation involved. That would involve negotiations with their employees, and provide the employee with the opportunity to agree to the proposal and understand the true value of their commission share, or allow them to simply seek a better deal elsewhere with another employer.

Sub clause 17.3

The existing clause deals with the rights sales staff have with respect to properties sold by them at the date of their ceasing employment with their employer, but not settled at the date of their ceasing employment.

The amendment seeks to provide similar protection for those sales staff that upon leaving their employment and has to leave their unsold listings of properties for sale or lease with their employer. The employer normally has the right to claim the former employee's listings as their property; however on the sale of those properties the sales person who obtained the listing receives no reward for their effort.

RRESSA's amendment provides that an employee's listing once sold and settled by the employer, that the original salesperson who obtained the listing is entitled to be paid a listing only sales commission as provided for in their commission agreement. This provides equity to the employee who has done the "hard yards of prospecting" the client (which may involve soliciting potential clients, doing property appraisals, comparison valuations and presentations to the client) for the employer, whilst still giving a reward to the employer or another sales person employed by them, who actually sells the property by the payment of a "selling" commission to that person.

The amendment as drafted provides that the listing (s) left with the former employer only apply to those sales agency agreements where the listed property is subject to an exclusive agency period with the former employer and applies for that period only. In addition it provides that where an employee is dismissed for serious misconduct, the listings part of the clause would not apply to that dismissed employee, although their right for payment for properties sold but not settled at the date of ceasing employment would still apply as provided for under the existing award clause.

6. Amendments to Clause 18

WITH DRAWN BY RRESSA IN FAVOUR OF EMPLOYER CLAUSE AS PER HEADS OF AGREEMENT

7. Amendments to Clause 20

WITHDRAWN BY RRESSA AS PER HEADS OF AGREEMENT

8. Amendments to clause 23

WITHDRAWN BY RRESSA AS PER HEADS OF AGREEMENT

9. Amendments to Clause 24

WITHDRAWN BY RRESSA AS PER HEADS OF AGREEMENT.

10. Amendment to Clause 25

A consequential amendment further to the amendments stated above with respect to clause 17.5.

11. For such other grounds as the Commission deems fair and just.

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