

Vice President Hatcher

Fair Work Commission

Level 10, Terrace Towers

80 William Street

East Sydney NSW 2011

6TH December 2016

Re 4 Year Review - Real Estate Award 2010 –AM 2016/ 6

Dear Vice President

I write to the members of the Full Bench that heard the final submissions of the parties with respect to the abovementioned matter, which concluded on the 23rd November 2016.

The Full Bench will recall that at the close of proceedings on the 22nd November you as presiding member floated some views of the Bench in relation to commission –only salespersons and invited the parties to comment on those views during the proceedings on the 23rd November 2016. Mr Warren appearing for REEF tendered a document that was handed to the Bench on the 23rd November after having been circulated to other parties appearing at the hearing.

RRESSA, represented by myself said at PN 2543, “While we’re on that document, sir, I can advise that REISA (sic) is generally supportive. We do have, and I’ve raised with Mr Paterson, just some wording changes we might like to and there may be some others later but the principle, no problems, just a bit of wording, I think.”

Your honour may also recall that Mr Tracey appearing for REIV, at PN 2519 had some drafting issues with the document put forward by REEF and sought time to address those concerns after the hearing concluded. The Full Bench granted Mr Tracey a further 14 days to prepare his response and later also extending the same 14 days to REEF SA/NT to address this issue and others given Ms Bisbal was unable for personal reasons to make submissions in person at the hearing. Your Honour also forecast that after handing down the decision of the Full Bench on the various matters before it, that an exposure draft would be issued for the parties to comment on.

Out of an abundance of caution, lest at the exposure draft award stage RRESSA's views on the REEF document as attached to this letter, may be thought by some parties as being "out of time", I tender to the Full Bench and all parties a copy of RRESSA's response to REEF's document within the same 14 day period as Mr Tracey and Ms Bisbal.

In explaining RRESSA's rationale in its proposed wording, we say this;

1. RRESSA believes that as far as possible award clauses, which set the legal minima of the conditions of employment of employees and their employer, that the award should state what the obligations of the employee/ employer are, rather than be rhetorical in nature. Hence the changes in the wording of the document put forward by RRESSA; and

2. The Full bench's view that if a commission only employee for a 12 month period earned less in commission than the award minimum wage that the salesperson could no longer be remunerated on a commission – only basis but be employed on the award wage and allowances etc, is in principle agreed to by RRESSA. However, on reflection we believe that as the Full bench has stated as an objective that an average commission – only salesperson should receive not less than 115% of the minimum award rate for a property salesperson, that 115% should be the benchmark as to whether that salesperson should continue to be remunerated on a commission – only basis.

3. RRESSA makes the above submission taking into account the following factors;

The real estate award wage for a salesperson is \$713.20 p.w. or \$37,086.40 p.a.

The Federal Minimum Wage is \$672.70 p.w. or \$34,980.40 p.a. (38 hour week), a difference of \$2,106.00 p.a. vis a vis the Real Estate Property salesperson.

If a commission – only salesperson has to revert to become a waged employee on a dr/ cr system, when their commission payments for that 12 month period is LESS than the award minimum wage of \$37,086.40, it means, after taking into account the 100% costs of running their own motor vehicle for 12 months and the 100% the cost of their mobile phone plan , that sales person would be earning less than an award free employee ,who is entitled, for a 38 week, to be paid a minimum of \$34,980 .40 p.a. and be reimbursed for any costs associated with his/ her employment incurred on their employer's behalf.

Hence, RRESSA submission that commission – only salespersons' should not continue to be so remunerated unless they earn at least 115% of the minimum award wage.

Copies of this letter have been emailed to all parties present at the hearings 21 -23rd November 2016.

Regards

Ralph Clarke, Agent for RRESSA

RRESSA - DRAFT RESPONSE RE COMMISSION ONLY

9.7 Commission - only employment

9.7 (a) The objective of Commission – Only employment

(i) 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 earns less than 115% of the annualised 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 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.

(iii) In circumstances prescribed in (ii) above, the written agreement relating to commission – only employment will cease, whilst not affecting the employee's on - going service with the employer. 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 on, or before the date of the cessation of their employment on a commission –only basis.

(iv) For all hours worked by an employee, following the date of the cessation of their commission – only remuneration basis, 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 this award.