

REAL ESTATE EMPLOYERS' FEDERATION (REEF)

Submission concerning the revised exposure draft of the Real Estate Industry Award 2015

Matter No. 2016/6

26 February 2018

1. INTRODUCTION

- 1.1 The Real Estate Employers' Federation (REEF) is a registered association of employers under the *Fair Work (Registered Organisations) Act 2009*.
- 1.2 In its statement dated 17 January 2018, the Commission requested that any further submission in relation to the terms of the fourth exposure draft award (the "**Exposure Draft**") or the draft determination, be filed by 28 February 2018.
- 1.3 REEF has identified a number of minor structural matters that it believes might be appropriately amended prior to the final form of the Exposure Draft being settled.

2. CLAUSE 9.7(a) and 9.7 (b) OF THE EXPOSURE DRAFT

- 2.1 Clause 9.7(a) in the Exposure Draft provides a reference to "***a property sales classification***". Given the new award will see the introduction of a broad-band classification structure replacing the current occupational-titled structure, REEF considers it would be appropriate that the first sentence in clause 9.7(a) be amended to read:

*"An employee engaged **in property sales or commercial, industrial or retail leasing as a Real Estate Employee Level 2 or higher** (other than a casual employee) may agree with the employer to be paid on a commission-only basis.*

2.2 Similarly, clause 9.7(b) refers to the phrase “*property sales classification*”. In the context of this clause, REEF believes the phrase should be replaced with the word “*role*” so that the clause reads:

*“The objective of commission-only employment arrangements is to provide a mechanism by which a salesperson who meets the requirements set out below should achieve remuneration of 125% or more of the annualised minimum wage that an employee working in the same **role** under this award would be entitled to be paid.”*

3. CLAUSE 9.7(e) OF THE EXPOSURE DRAFT

Clause 13.5 of the Exposure Draft concerning “**Annual Leave Loading**” provides that a commission-only employee is not entitled to be paid an annual leave loading during a period of annual leave.

Clause 9.7(e) of the Exposure Draft contains a list of 6 award clauses to which commission-only employees are exempt. It is noted that “annual leave loading” is not contained in this list despite the exemption contained in clause 13.5. REEF believes that for purposes of clarity it should be.

REEF therefore proposes that a new sub-clause (vii) should be added to clause 9.7(e) as follows:

(vii) clause 13.5 – Annual leave loading.

This will make clear that annual leave loading is not payable to employees engaged on a commission-only basis.

4. CLAUSE 12.3(a) OF THE EXPOSURE DRAFT

Similar to the issue raised in paragraph 2 of this submission, clause 12.3(a) of the Exposure Draft deals with the matter of “**Stand-by and call-out**” arrangements for employees engaged under either a property management or strata and community title management classification. Again there is reference in this clause to the old occupational-titled classification structure. REEF contends that clause 12.3(a) should be amended to read:

*“If the employer requires an employee **working in a property management or strata and community title management role** to be on stand-by and/or to be called out outside of ordinary hours of work, the employer and employee must agree in writing on a method of payment for due compensation for the employee being on stand-by and/or call-out.”*

5. SCHEDULE G – DEFINITIONS & CLAUSE 9(f)(iii)

As part of its review of the *Real Estate Industry Award 2010*, the Fair Work Commission decided to amend the minimum commission-only rate so that commission-only employees were entitled to receive “**31.5% of the employer’s gross commission**”¹ (our emphasis).

This amendment to the provision from the 2010 award eliminates the need for a definition of the term “*employer’s net commission*”. REEF notes however, that this term remains in the list of defined terms within Schedule G of the Exposure Draft.

REEF submits that the definition of the term “*employer’s net commission*” should be removed from the list of Definitions in Schedule G of the Exposure Draft as it no longer has application in the context of the 2015 Award.

A consequential amendment is also necessary within clause 9(f)(iii) (see second dot point). REEF contends that the reference to “*employer’s net commission*” in this sentence should be amended to read “**employer’s gross commission**”.

REEF thanks the Commission for its consideration of this submission.

¹ [2017] FWCFB 3543 at paragraphs 102 and 131(f)