

From: Ralph Clarke <clarker@bigpond.net.au>

Sent: Tuesday, 21 April 2020 5:03 PM

To: Chambers - Hatcher VP <Chambers.Hatcher.VP@fwc.gov.au>

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Subject: Re AM 2020/14 Application to vary Real Estate Award - Commission -Only Salespersons'

Dear Mr Vice President

I attach a covering letter and also RRESSA's response to the application made by the employer organisations to the Real Estate Award.

Regards

Ralph Clarke

Agent for RRESSA
Ph 08 8410 0033

Vice President Hatcher

Fair Work Commission

Exhibition Street

Melbourne 3000

By Email

21st April 2020

Re AM2020/ 14 Application to vary Real Estate Award - Commission – Only Salespersons'

Dear Mr Vice President

I refer to the telephone directions hearing on the above matter on Thursday 16th April 2020.

RRESSA has had discussions with the employer association lodging the application and regrettably no agreement could be reached . I therefore, on behalf of RRESSA submit the attached document to be filed by the Commission in answer to the said application and our grounds for seeking the temporary safety net for commission – only salespersons and also for those sales staff paid on the debit/ credit system widely used in this industry.

Regards

Ralph Clarke

Agent for RRESSA

ph 08 8410 0033

Amendments to REEF application to vary Award re Commission – Only Salespersons.

1. Agree to extension of annual review of existing Commission-Only salespersons to 1st October 2021 subject to following;
2. Amend the award to provide as follows;
 - (a) No salesperson employed as at the date of the order or subsequent to that date and who is not already remunerated on a C-O basis, shall not be employed as a C-O salesperson until on, or after the 1st October 2021, subject to the qualifications required under the award at that date.
 - (b) No salesperson, either employed as a waged salesperson or on a commission – only basis shall have any payments made to them pursuant to the Coronavirus Economic Response Package Omnibus (Measures No.2) Act 2020 – No.38, 2020., debited against the employee’s agreed share of the employer’s commission with respect to the sale or lease of real property.
 - (c) A salesperson remunerated on a C-O basis as at the date of this order until the 1st October 2021, shall be paid not less than the minimum wage pursuant to clause 14 of this award, where the employee as at the date of either the 1st October 2021 or an earlier date, (on a pro rata basis) should the employee’s employment cease prior to 1st October 2021, has earned less income than the award minimum wage, annualised.

3. Grounds for seeking these variations

(a) RRESSA understands the reasons the employer associations have sought their proposed variations and accepts that the Real Estate Industry has been significantly disadvantaged by the actions of all governments in restricting the industry’s ability to carry out their usual functions in the performance of their work. RRESSA is prepared to agree that to audit the sales income of commission – only salespersons for the purpose of the award, there is a need to push out the date for reconciling the actual earnings of those employee’s vis a vis the MITA. However;

(b) The award is a safety net award; it is designed to afford protection to employees who are reliant on the award for their livelihood. Commission – Only salespersons are unique in the modern awards of the FWC in that they are not guaranteed a rate of pay for hours worked or reimbursement for expenses incurred in performing their duties. They have no award protections for the number of hours worked, or hours in a day or span of hours worked. Commission – Only employees are permitted to work under this regime on the basis that they are above average performers in earning an income by their share of the employer’s commission which will enable them to earn not less than 125% of the award wage for a salesperson.

RRESSA amendments seek to protect C-O salespersons who under the employer associations variation would remain as a commission – only employee for more than 12 months in an uncertain real estate market. Even if the restrictions placed on the industry are lifted by the end of September 2020, it will take months before the C-O salespersons will receive any commission given the time it takes to appraise a property, win over a vendor, advertise the property, execute a sales contract and await the usual 30 day settlement period. It is likely that once all restrictions are removed and the economy resets itself, it will take some time for the market to regain sufficient confidence to see sales resume to the level of 2019.

Given these considerations RRESSA submits that the proposed amendments will allow the sales person to at least recoup the cost of running their motor vehicle and to give them some resources to eke out a living.

(c) It is only fair and just that commission only salespersons and waged salespersons start from an equitable basis when the industry restrictions are lifted and there are no further Job Keeper payments to subsidise wages. Bluntly put, the employer is incentivised under the employer associations variation to dismiss waged employees rather than commission – only employees, as they are under no obligation to pay commission – only staff a minimum wage and allowances. RRESSA understands that when the industry restrictions are lifted it will take time for the real estate markets to return to what might be seen as “normal”. Employers may well be faced in having to decide which sales persons they should keep in employment to adjust to the new realities. Those judgements should not be so influenced by the fact that one class of employee has such a cost advantage over another class of employee, performing the same work that that factor becomes the overriding consideration.

There will be many employers in different industries which have been closed or severely affected by government decisions that when they reset their business, not all of their employees maybe rehired at the time of reopening. Staff numbers maybe far less than previously employed in those industries, e.g. hospitality, hotel accommodation, airlines, clerical workers, etc. In those industries there are not the same incentives for an employer to choose one class of worker over another class, performing the same work because one class is not guaranteed an hourly rate of pay for the work performed!!

(d) The grounds for seeking a clause that restricts the employment of commission – only sales staff between the date of the order and the 1st October 2021, is to ensure that the plight of commission -only sales staff is not exacerbated with an influx of additional commission - only sales staff at a time when the real estate industry is experiencing major disruption to the selling and leasing of real property. It is not in society's best interest nor that of the C-O sales person that such employees, with so few protections with respect to earning a living is swelled in numbers at such an inopportune economic time. This would be a temporary measure only and would expire on the 1st October 2021.

4. Proposed amendments and the FWA 2009

RRESSA believes its amendments are in conformity with the objects of the Act, s, 3 (a) & (b) The Modern Award Objective, s 134 (a),(da) &(e) and The Minimum Wage Objective, s 284 (1) (b),(c) & (d) for the reasons set out in point 3 (a) -(d) inclusive.

Ralph Clarke

Agent for RRESSA

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