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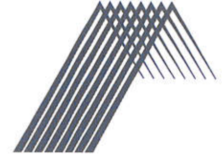

REAL ESTATE EMPLOYERS' FEDERATION (REEF)

Submission concerning sub-clause 16.3(a)(iii) of the Real Estate Industry Award 2010

Matter No. 2016/6

23 November 2018

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1. **REEF** makes this submission in response to the Directions issued by the Full Bench on **12 November 2018**. The submission addresses **Direction No. 1** only.

2. The matter which is the subject of Direction No. 1, arises out of the proceedings before the Full Bench in Sydney on Monday 12 November together with correspondence filed by the Registered Real Estate Salespersons' Association (**RRESA**) with the Fair Work Commission dated 30 July 2018. RRESA has sought a variation to sub-clause 16.3(a)(iii) to remove ambiguity and/or uncertainty in its meaning. The sub-clause prescribes one of the criteria which qualifies a real estate salesperson to be employed on a "commission-only" basis.

3. **REEF** agrees with RRESA that the sub-clause should be amended to more precisely reflect the proper meaning of the sub-clause as intended by the parties to the making of the award. RRESA put forward a revised set of words for the Full Bench's consideration during the 22 November proceedings to address the perceived problem. **REEF** supported RRESA with its proposed variation.

4. One part of the proposed variation was to change the phrase *"or was an active licensed real estate agent...."* to *"has operated his or her own real estate business...".* The reason for this variation was outlined to the Full Bench during the proceedings and is not repeated here.

5. However, Deputy President Asbury identified a problem with the variation proposed by RRESA, insofar as it failed to properly exclude the application of the sub-clause to owners of a 'non-sales' real estate business. As the Deputy President correctly observed, if left unqualified, the proposed expression *"...has operated his or her own real estate business...",* could have the unintended consequence of allowing the owner of a real estate agency that did not sell real property or businesses, to be employed on a commission-only basis following the sale of the business.

6. The Full Bench gave the parties 14 days to file a revised variation to address the problem raised by the Deputy President. **REEF** and RRESA agree that a suitable way to address the issue, is to insert a new sub-clause which more properly defines, for the purposes of this clause, the meaning of the term "real estate business".

7. **REEF** has had the opportunity to consider the letter from RRESA to the Vice President dated 22 November 2018 which details its revised proposed variation to clause 16.3(a)(iii).

8. **REEF** fully supports RRESA's proposed variation to sub-clause 16.3(a)(iii) and as set out in paragraphs 1 and 2 of RRESA's letter.

9. **REEF** does, however, propose a slightly modified variation in defining the term "real estate business" as set out in paragraph 3 of RRESA's letter.

10. **REEF** proposes that the new sub-clause 16.3(b), should read:

> ***"For the purpose of this clause 16.3, the "real estate business" must have been one which was involved in the sale of real property or businesses".***

11. The only real change to RRESA's version is to remove the phrase *"the words,"* which appear before the word *"must"*. The phrase is unnecessary and, in **REEF**'s view, makes the sentence awkward in its construction. Other than this very modest alteration, **REEF** supports RRESA's submission that the Full Bench should vary clause 16.3 for the purpose of removing any ambiguity and uncertainty around the operation of the clause.

12. **REEF** thanks the Full Bench for its consideration of this matter.

GREG PATERSON
REEF