

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

27 th July 2016

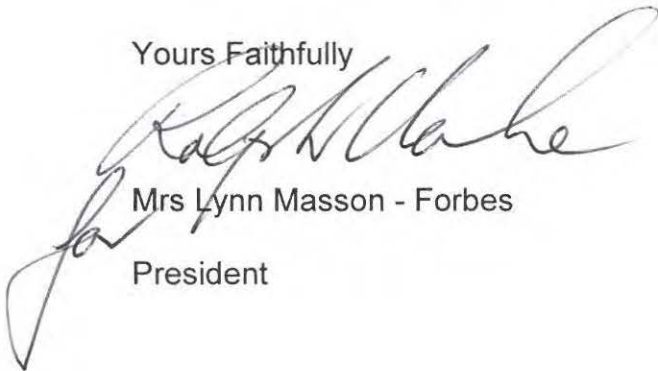
Re AM 2016/6 – 4 Year Review of Real Estate Award 2010

Dear Justice Ross

In accordance with the directions of the Full Bench dealing with the above review dated 30th May 2016, I attach a USB which contains the submission and accompanying witness statements and their attachments on behalf of RRESSA, in support of its amended application for variations to the Real Estate Award 2010.

Any enquiries concerning same should be referred to our Agent, Mr Ralph Clarke, ph 08 8410 0033 or email, clarker@bigpond.net.au.

Yours Faithfully



Mrs Lynn Masson - Forbes
President



IN THE FAIR WORK COMMISSION

IN THE MATTER OF;

4 YEARLY REVIEW OF MODERN AWARDS

REAL ESTATE AWARD 2010

AM 2016/6

SUBMISSION ON BEHALF OF REGISTERED REAL ESTATE SALESPERSONS' ASSOCIATION OF SA

1. Section 156 of the Fair Work Act, 2009 (Act) provides that the Fair Work Commission (FWC) must conduct a 4 yearly review of all modern awards as soon as practicable after the 4 th anniversary of the Act on 1st January 2010.
2. The Full Bench's decision dealing with the preliminary jurisdictional issues relating to the first, 4 yearly review of all modern awards, said in its decision of 17th March 2014 [2014] FWCFB 1788, that the following sections of the Act are relevant to the review, they being; *"s.3 (objects), s.55 (interaction with NES), Part 2-2 (the NES), S.134 (modern award objective), s.1235 (special provisions relating to modern award minimum wages); Division 3 (terms of modern awards) and 6 (general provisions relating to modern award powers) of Part 2-3, s.284 (the minimum wages objective), s.577 (performance of functions and exercise of powers of the Commission), s.578 (matters the Commission must take into account in performing functions and exercising powers) and Division 3 of PART 5-1 (conduct of matters before the Commission)".(paragraph 10).*
3. The Full Bench also drew particular attention to ss 577 and 578, which states that the FWC must perform its functions and power in a manner that is, *"fair and just"* , and take into account the *,"objects of this Act and any objects of this Act "* and act in *"equity and good conscience and the merits of the matter"*. (paras11 &12).
4. At paragraph 23 of the above decision the Full Bench states in part, that the *"Commission is obliged to ensure that modern awards, together with the NES, provide a fair and relevant minimum safety net taking into account, among other things, the need to ensure a "stable" modern award system (s.134 (1) (g))"*. The Full Bench went onto say that the party seeking to vary a modern award must advance a merit argument to support its case and that the greater the significant change sought by a party, it must be supported by a submission addressing the relevant

legislative provisions and accompanied by probative evidence demonstrating the facts to support the proposed variation.

5. Paragraphs 24 – 27 of the above Full Bench decision makes it clear that the FWC considers prima facie that the modern award under review achieved the modern objective at the time it was made. Further that the review should not proceed in isolation unencumbered by previous Commission decisions. The decision also states that, *“In conducting the review it is appropriate that the Commission take into account previous decisions relevant to any contested issue. The particular context in which those decisions were made will also need to be considered. Previous Full Bench decisions should generally be followed, in the absence of cogent reasons for doing so”*. (para 27). In RRESSA submission, these words are persuasive, in particular with respect to its claim seeking the increase in wages for all classifications under the Real Estate Award, coupled with s.3, objects of the Act, the modern award objective (s.134 (1) (a), (da), (e)) and s.284 (1) (c), (d) and (2) (b) - the minimum wage objective.
6. RRESSA claim for increases in minimum award wages
 - (a) The evidence from RRESSA demonstrates that at the time of the making of the Real Estate Award in 2009, albeit by consent that, there has never been a work value case undertaken with respect to the non clerical employees in the real estate industry, in particular of property salespersons and property managers and strata title managers.
 - (b) Until 1st January 2010 the only non clerical employees in the industry covered by any award (and a piecemeal one at that) was in SA, salespersons only, NSW, salespersons and property managers and in Queensland, salespersons and property managers. No award coverage at all for non clerical employees in WA, VIC, TAS, or either Territory.
 - (c) The evidence is that at the making of the consent modern award the wage rates for each classification was based on simply applying the highest rate of pay in each of the 3 jurisdictions which had award coverage and applying those rates across the board to all States and Territories and phased in over 5 years.
 - (d) The evidence is that at no time had any of the 3 State awards (NAPSA – from 26/3/2006) undertaken a minimum rates adjustment process whereby they had their classifications compared with work of a comparable value in other minimum rates awards vis a vis the base trades person rate.
 - (e) The National Wage Case Full Bench of the Australian Industrial Relations Commission on the 7th August 1989, [1989] AIRC 525 (Print H9100), handed

down its decision setting out the wage fixing principles of the AIRC, that remained essentially unchanged from 1989 – 2005, where thereafter, with the introduction of Work Choices from the 26TH March 2006 the principle of minimum wage adjustments ceased to apply.

At page 15 of the print under the heading “Minimum Rates Adjustments”, the Full Bench referred to its February 1989 review decision where the Commission was quoted as stating; *“The fundamental purpose of the structural efficiency principle is to modernise awards in the interests of both employees and employers and in the interests of the Australian community: such modernisation without steps being taken to ensure stability as between those awards and their relevance to industry would, on past experience, seriously reduce the effectiveness of that modernisation.”* The August 1989 Full Bench went on to state, *“The Commission went on to endorse in principle the approach proposed by the ACTU. That meant minimum rates awards would be reviewed; ,”* to ensure that classification rates and supplementary payments in an award bear a proper relationship to classification rates and supplementary payments in other minimum rates awards”.

The August 1989 Full Bench at page 18 of the print set out the minimum rates adjustment guidelines and at page 19 of the print the Full Bench states;

“Subject to what we say later in this decision, we have decided that the minimum classification rate to be established over time for a metal industry tradesperson and a building industry tradesperson should be \$356.30 p.w. with a \$50.70 p.w. supplementary payment. The minimum classification rate of \$356.30 p.w. would reflect the final effect of the structural efficiency adjustment determined by this decision. “Minimum classification rates and supplementary payments for other classifications throughout awards should be set in individual cases in relation to these rates on the basis of relative skill, responsibility and the conditions under which the particular work is normally performed. The Commission will only approve relativities in a particular award when satisfied that they are consistent with the rates and relativities fixed for comparable classifications in other awards. Before that requirement can be satisfied clear definitions will have to be established.”

The Full Bench in its August 1989 decision went on at page 19 of the print that, *“whilst they were not prepared to approve specific relativities proposed by the ACTU they considered it appropriate for relativities to be established for both minimum classification rates and supplementary payments for the following key classifications within the range as set out below:*

<i>% of the</i>	<i>Tradesperson rate</i>
<i>Metal Industry worker, grade 4</i>	<i>90 - 93</i>
<i>Metal Industry worker, grade 3</i>	<i>84 - 88</i>
<i>Metal Industry worker, grade 2</i>	<i>78 - 82</i>
<i>Metal Industry worker, grade 1</i>	<i>72 - 76</i>
<i>Storeman/ packer</i>	<i>88 - 92</i>
<i>Driver, 3-6 tonnes</i>	<i>88 - 92</i>

The Full Bench sets out at pages 18 – 19 of the print the minimum rates adjustment principle and near the end of page 19 the Full Commission states;

“We cannot overemphasise the importance of successfully applying the structural efficiency principle and the minimum rates adjustment process. These exercises provide an opportunity for the parties to display the maturity required to overcome the wage instabilities with which the community is only too familiar. It also provides the opportunity to take an essential step towards institutional reform which is a prerequisite to a more flexible system of wage fixation. As part of that future we envisage that minimum classification rates will not alter after their relative position one to another unless warranted on work value grounds.”

At page 20 of the print the Full Bench states; *“Finally, the inclusion of, and increase in supplementary payments which form part of the exercise is designed, inter alia, to assist those “employees covered by minimum rates awards who have suffered from the inequities of the present system due to the level of their award rates and their lack of substantial over award payments (Print H8200, Page 5). (my emphasis). However unions cannot expect to have supplementary payments included in awards to compensate for the lack of over award payments for some employees and conduct over award campaigns for others. To this extent the inclusion of supplementary payments is concomitant of the no extra claims commitment”*

- (f) Following the AIRC August 1989 decision the various State jurisdictions considered the decision and brought down their own wage fixing principles which included the structural efficiency and minimum rates adjustment principle, in the same or similar wording to the AIRC. The Full Bench of the NSWIRC in handing down its own State Wage Case decision adopting the AIRC minimum wage adjustment principle (35 IR 183) on 6TH March 1990, observed that as at

that date all Australian jurisdictions had adopted the minimum rates adjustment principle, (page 194).

- (g) Following the August 1989 AIRC decision the wage fixing principles enunciated by every National Wage Case Full Bench, maintained the minimum rates adjustment principle until the introduction of the Work Choices legislation in 2006. The last NWC of the AIRC pre Work Choices was given on 7th June 2005, "*Safety Net Review NWC 2005 Print PR 002005, [2005] AIRC 508.*" Principle 3 stated that the minimum rates adjustment principle remained accessible to those employees under awards who had not accessed it.
- (h) RRESSA submission is that for the current Real Estate Award to be a fair and relevant minimum safety net award, it must be able to access the minimum rates adjustment principle (MRA); it had not accessed at the time the 2010 award was made in December 2009.

Most if not all other modern safety net awards have had the benefit of access to the minimum rates adjustment principle prior to the making of their modern award. The clerical workers covered by State based common rule awards and their Federal award counterparts have accessed the MRA. A brief comparison of the minimum award rates of clerks, banking, retail shop assistants, commercial sales and vehicle industry salespersons, with the award rate for property salespersons, show a gap in weekly award wages of up to \$70 p.w., if you take the view, as RRESSA does that the property salesperson work value is at least comparable to that of the C.10 tradesperson.

Given the work value evidence of RRESSA witnesses, with respect to the work, skills and responsibilities of property salespersons and the other classifications in the award, it is a compelling argument for the FWC to exercise its powers under the Act, to remedy this inequity and create a stable, fair and just minimum rates award in accordance with the Objects of the Act, the Objects of the Modern Award and the minimum wage objective. Further pursuant to s.577 the FWC must perform and exercise its powers in a manner that is "fair and just" and takes into account equity, good conscience and the merits of the matter, (s.578).

In relation to the other classifications in the Real Estate Award the relativities relate to the work value of those classifications and defined in the award, with the classifications and work value of a comparable award, the Clerks Private Sector Award.

- (i) In so far as the economic impact on employers in this industry by the wage increase sought by RRESSA, the Associations says it should be minimal, given the potential absorption by employers of "over award" payments in the industry via

commissions, bonuses and incentive payments payable to salespersons' and to the employees in other classifications under the award.

Referring to the Statistical Report in the FWC Annual Wage Review 2015 – 16 at page 24, under the heading "Award Reliance", table 7.1, shows that in the Industry described as "Rental, hiring and real estate services", that the proportion of employees that are paid exactly the award rate and are not paid more than that rate of pay, has gone from 20.2 % in 2008 to 22.1 % in 2014.

There are no specific figures just for real estate employees, however it would fair to state that all or almost all property salespersons have an incentive payment included in their salary package, such as a share of commissions on the sale / lease of property, and other forms of incentive payments for other non clerical employees such as property managers. In addition there are general over award wages paid to employees on the basis of the need to retain or attract suitable staff.

The employers also have had the benefit of perhaps the most flexible award in Australia. For sales staff a 38 hour week worked over 7 days of the week, no penalty rates for working on weekends, or after normal business hours. The payment of overtime is almost non- existent for sales staff. Employees such as property managers have at best very limited rights for payment of call out or stand by allowances. And employers have had the benefit for the last 25 years of not having had to pay for any minimum rates adjustment wage increase for all staff other than their clerical workers.

7. Commission only salesperson MITA

The evidence in support of increasing the minimum income threshold is compelling. The current award is the only modern award that has a piece rate remuneration classification which does not guarantee any payment whatsoever no matter how hard the employee may work, or how much they may spend of their own money pursuing a sale of a property. Such a system is open to abuse and it has been abused as identified in witness statements for RRESSA and from my own experience as an industrial advocate who regularly appear before the Industrial Relations Court of SA.

The major factors in the abuse has been the almost incomprehensible language in the current award provision, which leads to all stakeholders grappling with how the minimum income threshold is determined and making mistakes. There is also the fact that the threshold is far too low and allows even moderately successful salespersons to qualify as a commission only sales person. In addition the economic circumstances of the property market may change significantly, as it did 2010 – 2012

due to the GFC where a number of employers told their staff that they could only keep their jobs if they went commission only, relying on past years of good sales to justify those salespersons going commission only in a very tight market, with tough prospects of earning even the minimum award wage.

The FWC under all of the sections of the Act, referred to at the outset of this submission has the power and the duty to protect low paid workers. If this piece rate system of employment is to continue in the industry, it must be easily understood as to how the minimum income test is to be calculated, the amount must be sufficiently high enough to better ensure that those employees have the capacity to earn significantly more than the award wage and the other award allowances, before they qualify to be employed as commission only. RRESSA application seeks to meet that objective.

8. Non Debiting of Authorised vendor advertising/ marketing expenses, superannuation and long service leave entitlements.

By way of preamble RRESSA believes that because the award states that if an employee is to be partially or wholly remunerated by commission, bonus or incentive payment, those agreements must be in writing and include certain other entitlements if relevant, (Re clauses 15.1 and 16.2 (a), 16.6,17.1 (a), (b),17.2 ,17.3 (b), 17.5 (b) & 21.1 (c)). Those written agreements and their contents form part of the award and must be in conformity with the Act. Therefore any breach of the written agreements is a breach of the award and/ or the Act and subject to prosecution before the Courts.

A number of the industry employer associations in effect argued the same in their submissions before the Full Bench of the FWC, in matter number AM2014/242, ([2014] FWCFB 9412) in response to APSA application for the continuation of registration of employment agreements for commission only property salespersons.

(Refer to submissions to Full Bench in the above matter from, REEF SA/NT at paragraphs 26 &27, and the witness statement of Mr Don Tepper at, paragraphs 5 – 13, Real Estate Institute of Victoria at paragraphs, 5, 33 & 37, REEFWA at paragraphs 26 – 36 inclusive).

The Full Bench in its decision refusing APSA application at paragraph 137 of their decision stated, *"We note that in the course of the hearing of this matter, some issues were raised concerning the question of enforceability of written agreements entered into pursuant to clauses 15 or 16 of the REI Award – in particular whether any failure to comply with such agreements constitutes a breach of the REI Award.....We expect that this issue will require further attention when the REI Award is fully reviewed in Stage 3 of the Review"*.

RRESSA view is that as the written agreements form part of the requirements of the award, any terms within that written agreement must conform to the terms of the Act itself and any breach of the terms of the employment agreement is a breach of the award and/ or the Act.

(a) With respect to the debiting of vendor authorised advertising/ marketing expenses by the employer against an employee's commission, it is unlawful on two counts;

(i) The sales agency agreement is between the vendor and the employer not the salesperson. Therefore any deduction from the employee's commission is unlawful under ss 323, 324 -326 inclusive and

(ii) If a term in an employment agreement purports to allow for such a deduction from an employee's commission it is a breach of the Act

The evidence given on this matter is incontrovertible; such deductions from commissions payable to salespersons have taken place and are continuing. The award variation sought is necessary given the need for compliance and the education of both employers and employees that such deductions are not lawful. This is best achieved by the matter being specifically addressed in the award.

(b) Employer superannuation contributions debited against employee commissions.

The evidence is that employees who earn commission on the sale or lease of a property, "enjoy" a variable over award payment, or it is their total income in the case of a commission only salesperson, which fluctuates month to month based often on external factors beyond their control. The employment agreements many of these employees sign, provide for the payment of a commission rate which incorporates in many instances the compulsory employer superannuation contribution. Many of those same agreements incorporate clauses which allow for the absorption of increases in the employer superannuation contribution. Thereby diminishing the value of the over award payment or their actual income over time.

Employees in the industry fail to see, why alone in the workforce, they are seen to be paying for the employers superannuation responsibility, as their share of the employers commission does not increase, commensurate with the increase in the Superannuation Guarantee Charge.

RRESSA amendment seeks to make the true value of the employee's share of the employer's more transparent. If the amendment is accepted the employer can either negotiate a new commission rate with their employee by adjusting the

commission rate down by the amount of the SGC they pay to the employee's super fund, or they will simply pay the SGC on top of the existing commission rate the employee receives. Either way the employee will know that the employer has paid the SGC and also has a better appreciation as to the actual value of their commission share.

- (c) Employer debiting of employee Long Service Leave payments against employee commissions.

Long Service Leave is a beneficial piece of legislation enacted in all Australian jurisdictions, to reward the service of employees after a period of service to be able to take paid leave of absence from work for up to 3 months or payment in lieu on termination of employment.

RRESSA witnesses have given evidence as to the effect that the debiting of LSL has on employees either wholly, or significantly reliant on commission payments. That is they don't take LSL, which is contrary to the intent of the LSL legislation.

In all of the employment agreements that RRESSA has seen in SA, LSL is said to be included as "wages / salary (howsoever described and paid for any purpose", or that it can be offset against commissions paid to the employee. Some of the later employment agreements that RRESSA has seen (the usual template issued by REEF SA/NT), include the words, "long service leave" in the description of "wages / salary's (howsoever described")

I refer to a recent decision of Industrial Magistrate Ardlie of the Industrial Relations Court of SA, dated 9TH June 2016 in *Parsons & Ors v Pope Nitschke Pty Ltd (as Trustees for Pope Nitschke Unit Trust) [2016] SAIRC 17*.

The Magistrate was dealing with a 2008 Collective Agreement which dealt with LSL and the employer's right to debit LSL payments against the employees' commission earnings are discussed from paragraph 61 – 73 inclusive. In particular paragraphs 71 & 72 the magistrate makes the point that LSL payments could not be regarded, "*as wages/ salary however described or wages or allowances or entitlements is beyond the meaning of wage relied upon by the respondent.....Long Service leave is about time spent by a worker in employment with the same or a related employer. The reward is for the duration of the employment*".

This decision has far reaching consequences for a number of employers who have relied on their employment agreements similarly worded to the collective agreement above. It would be in the interests of all parties for the award to be

varied as sought as it would clarify the rights of employees to be paid LSL with it not being debited against their commission.

9. Amendment to existing Clause 17.3 re entitlements on termination of employment.

The evidence from RRESSA witnesses support the amendment sought. It also has the agreement of the major employer stake holders in the Industry for self evident reasons. The amendment is in conformity with the objects of the Act, the modern award objective and the other sections of the Act, relevant to the 4 year review.

10. Amendment to sub clause 17.5 re Advance Payment of NES.

RRESSA amendment if granted by the FWC will bring the award into line with the FWC Full Bench decision in *Canavan Building Pty Ltd, [2014] FWCFB 3202 and the decision of Gray J in CFMEU v Jeld – Wen Glass Australia Pty Ltd [2012] FCA 45.*

The practice in this industry is that commission only salespersons have their annual leave and personal/ carers leave paid in advance via their share of the employer's commission. As RRESSA witnesses point out this practice distorts the whole purpose of annual leave and personal/ carers leave as commission only sales persons do not take anywhere near their annual leave or sick leave entitlement, because they do not get paid when they are absent.

I refer to the Parsons and Ors case referred to above, in particular to the findings of the Magistrate at paragraphs 50 – 60 inclusive. His Honour found that at the time any of the applicants took annual leave they only received part payment, although looked at globally the amount of advance payment for annual leave was equal to or greater than their minimum entitlement, there was therefore underpayment.

However the point is the operation of that particular collective agreement contravened the NES at the date annual leave was taken. It is also relevant to see that one of the applicants', Mr Smart was not paid personal leave whilst he was recovering from a hip operation and that another applicant Mr Papini, evidence was that he "never really took any leave", whether it was annual leave or personal leave.

The above case demonstrates RRESSA complaint about the current award clause, not only does it not conform to the NES, it acts as a positive disincentive for employees to utilise their 4 weeks annual leave and to take personal leave as and when required. It is contrary to public policy for employees to be in effect, incentivised not to access their leave entitlements. It undermines the very reason the legislature has provided for the minimum standards expressed in the NES of the Act.

11. Amendments to Clause 18.6 Mobile Phones Allowance.

The proposed amendment clarifies an employee's entitlement under the award and is supported by the major employer stakeholders in the Industry. RRESSA seeks its adoption by the Full Bench.

FILED BY:

Ralph Clarke

Agent for RRESSA

Epworth Building

Level 3, Room 301

33 Pirie Street

Adelaide 5000

Ph 08 8410 0033

IN THE FAIR WORK COMMISSION

Title of Matter: Four yearly review of modern awards

Section: s.156 - 4 yearly review of modern awards

Subject: Real Estate Industry Award 2010 - Additional transitional provisions –
**Submissions by the Real Estate Employers' Federation of South
Australia and the Northern Territory (REEF SA/NT)**

Matter Number: AM2014/242

Hearing Details: The matter is listed for Hearing before a **Full Bench at 10:00 am
Wednesday, 19 November 2014**, Fair Work Commission 11 Exhibition
Street Melbourne

APSA's draft order

1. The Australian Property Services Association (APSA) has filed a draft order to vary Schedule E of the Real Estate Industry Award 2010 (Award) to provide for the registration of a written agreement between an employer and a commission-only (pieceworker) employee, which agreement sets out the basis upon which the entitlement to commission will be calculated (Written Agreement).
2. The Written Agreement will be registered with a newly formed entity called the Australian Property Sector Registry (APSR) which will be operated by APSA and registration will attract a fee not exceeding \$77.00. APSA does not attempt to justify the figure of \$77.00.
3. The employer is responsible to register the Written Agreement and to pay the registration fee.
4. Any variation of the Written Agreement that applies to the calculation of commission will also be registered with APSR by the employer together with a fee not exceeding \$20.00. APSA does not attempt to justify the figure of \$20.00.
5. Each year the registration fees will be indexed.

Differences between current Schedule E and APSA's proposed Schedule E

6. Some significant changes in the proposed Schedule E from the current Schedule E include:
 - (a) That all states and territories are included in the proposed Schedule E, whereas currently only the states of NSW, QLD and SA need to register certain agreements and SA, unlike NSW & QLD, does not have to register property

management. In view of Section 154 of the Fair Work Act (state-based difference terms) this is a logical proposed change; and

- (b) Under the proposed Schedule E a national entity to register agreements is to be established, namely the Australian Property Sector Registry (APSR), whereas currently registration is with existing employee and employer associations in NSW, QLD and SA. This is not a logical change and is unnecessary because employer and employee associations are already established; and
- (c) APSR, according to the proposed Schedule E, a national entity to register agreements is to be operated solely by APSA, whereas currently registration is with the existing employee and employer associations in NSW, QLD and SA. This proposed change lacks equity because it locks out the employer associations to have equal right in operating APSR; and
- (d) Under the proposed Schedule E no employer association is to receive registration of agreements, whereas currently registration is with existing employee and employer associations in NSW, QLD and SA. This proposed change lacks equity because it locks out the employer associations and only APSA can peruse the Written Agreement.

Current Schedule E by consent

- 7. *Schedule E of the Real Estate Industry Award 2010 was a consent transitional provision and as such was part of an agreed package between the unions and the employers. Therefore, in being an agreed package the current Schedule E cannot be relied upon by APSA as a precedent in any respect, except that registration is a historical fact. (refer to Mr Tepper's witness statement item 4 re consent)*

REEF SA/NT supports REEFWA & REIV

- 8. In relation to the legislative framework for varying a modern award during the review period REEF SA/NT supports the submissions of the Real Estate Employers' Federation of Western Australia (REEFWA) and the Real Estate Institute of Victoria (REIV) which were provided for the 24/10/14 conciliation conference before Commissioner Roe, on the assumption that the submissions to be provided by REEFWA & REIV for the Full Bench hearing on 19/11/14 will be along similar lines.

The operation and detail of APSR

9. Mr French from APSA in his witness statement in items 19 through 24 explains the operation of the Queensland Property Industry Registry (QPIR) and then in item 27 states that the proposed National Registry could be modelled on the QPIR. Transferring a state based registration model to a national registration system may not be as simple as it sounds. It would require the operation details to be comprehensively prescribed in Schedule E including the inclusion of all the employer associations having an equal say in the operation APSR. APSA should not be the sole operator of APSR.
10. APSA's proposed draft order does not state whether APSR is to be incorporated; have a constitution; and a management committee. APSA's proposed draft order does not state what financials are to be kept so that APSR will be financially accountable and who will be allowed to view APSR's financials so that APSR is kept accountable. APSA's proposed draft order does not state what happens to any surplus. Mr French's witness statement in item 26 suggests that the QPIR has no surplus but that does not mean APSR will not end up with a surplus. There appears to be no evidence as to how the QPIR is financially accountable.
11. Previous registrations in NSW and SA were a simple affair as it only involved the union and the employer association in each of the states with each state having its own relatively simple registration procedure. A separate entity did have to be created as the 2 employer associations and the 2 unions were already legally constituted and accountable. APSA's proposal for a national system brings with it many complexities and many unanswered questions.

Possible flaws in APSA's draft order

12. Clauses 16.2 (a) and 16.6 in the Award prescribes that an employee to be commission-only must have (inter alia) entered into a Written Agreement. Clause E.3.5 in APSA's draft order for Schedule E states such a Written Agreement may only operate once it has been registered. Assuming that APSA's draft order for Schedule E is accepted by the Full Bench as being either an ancillary or a machinery term to Clauses 16.2 (a) and 16.6 in the Award then it is difficult to see how an ancillary or a machinery term can stop the operation of Clauses 16.2 (a) and 16.6 in the Award from working. An incidental term is supposed to be *essential* for the purpose of making a particular term operate in a practical way. Clause E.3.5 in APSA's draft order for

Schedule E not only does not make Clause 16.2 (a) in the Award operate in a practical way it stops it from operating altogether if the Written Agreement is not registered.

13. Clause 16.2 (a) in the Award prescribes that an employee to be commission-only must have (inter alia) entered into a Written Agreement. Clause E.3.6 in APSA's draft order for Schedule E states a person cannot be commission-only until a Written Agreement is registered. Assuming that APSA's draft order for Schedule E is accepted by the Full Bench as being either an ancillary or a machinery term to Clause 16.2 (a) in the Award then it is difficult to see how an ancillary or a machinery term can stop the operation of Clause 16.2 (a) in the Award from working. An incidental term is supposed to be *essential* for the purpose of making a particular term operate in a practical way. Clause E.3.6 in APSA's draft order for Schedule E not only does not make Clause 16.2 (a) in the Award operate in a practical way it stops it from operating altogether if the Written Agreement is not registered. In any event the pre-ambule in clause 16.2 in the Award already states that someone may only be commission-only if (inter alia) there is a Written Agreement so it is entirely unnecessary to say it again in the draft order.
14. Clauses E.3.8 and E.3.9 in APSA's draft order for Schedule E refer to 'APSA' when maybe they should refer to 'APSR'. This may just be a 'typo'.

The solution and the enforcement process is already in the Award and the Act

15. It can be easily demonstrated that a real estate salesperson's commission arrangements are probably the most if not the most complicated form of remuneration of any industry. There are sound grounds why the parties to this Award had no difficulty in agreeing to insert into the Award that commission arrangements must be in writing and not left to a handshake or a verbal agreement. The Award stating that commission arrangements must be in writing is a genuine incidental matter and if it is, it is hard to imagine that one could have another incidental matter (i.e. registration of Written Agreements) about an already incidental matter, i.e. agreements must be in writing – that seems rather convoluted and not supported by the legislative framework. *(refer to Mr Tepper's witness statement items 5-10 re commission debit/credit system being complicated)*
16. Clauses 16.2 (a) and 16.6 of the Award states that a Written Agreement must set out the basis upon which the entitlement to commission will be calculated. If there is no Written Agreement and someone is working as a commission-only (pieceworker) employee then that is a breach of the Award and there is already enforcement legislation in place for a civil penalty for breaching the Award and a legislative enforcer, namely the Fair Work Ombudsman. This is more than adequate provision to

safeguard the operation of Clauses 16.2 (a) and 16.6 of the Award. A civil penalty for breaching the Award for not having a Written Agreement would be a greater deterrent than having to register agreements. REEF SA/NT does not know of one employer or employee (as the wording of 16.2 (a) in the Award suggests there is as much onus on the employee as the employer to have a Written Agreement) that has been prosecuted for not having a Written Agreement. This is not to say that there has not possibly been such a prosecution but had there been one, word would spread very quickly through the "real estate grape vine". (*refer to Mr Tepper's witness statement item 11-13 regarding prosecutions/claims*)

17. If APSA is suggesting that the registration of Written Agreements will encourage employers to do a Written Agreement or will reduce disputation then the registration of Written Agreements is only reinforcing what Clauses 16.2 (a) and 16.6 already prescribes and that is the employer and the employee must have a Written Agreement. If an employer is going to ignore Clauses 16.2 (a) and 16.6 of the Award and only do a handshake or verbal agreement about a complicated form of remuneration then the registration of Written Agreements is hardly going to motivate that type of employer to do a Written Agreement. The correct course in such circumstances is a prosecution for a breach of the Award and not to create a bureaucratic nightmare and another layer of regulation and additional costs for employers for a national system of registration of Written Agreements.
18. If an employer does not wish to seek assistance from one of the state REEF's (REEF NSW has constitutional coverage of ACT and REEF SA/NT has constitutional coverage of NT) or from a lawyer or for TAS from their Chamber (as TAS does not have a 'REEF') or from a Real Estate Institute to do an employment agreement for a commission-only salesperson then that is their choice and risk. Also if an employer chooses to ignore Clauses 16.2 (a) and 16.6 of the Award and does not have a Written Agreement then that is that employer's risk for being prosecuted for a breach of the Award. It is enough for the Award to say that there must be a Written Agreement and then the legislation provides for an enforcement procedure if the Award is breached.

Modern awards objective

19. Section 134 (f), the modern awards objective, reads:

134 The modern awards objective

What is the modern awards objective?

- (1) *FWC must ensure that modern awards, together with the National Employment Standards, provide a fair and relevant minimum safety net of terms and conditions, taking into account:*
- (f) *the likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden;*

20. Section 138 reads as follows:

138 Achieving the modern awards objective

A modern award may include terms that it is permitted to include, and must include terms that it is required to include, only to the extent necessary to achieve the modern awards objective and (to the extent applicable) the minimum wages objective.

21. In terms of section 134 (f), the registration of Written Agreements is an unnecessary regulatory burden on employers and an unnecessary increase in employment costs when the Award already prescribes that the employer and the employee must have a Written Agreement.
22. In terms of Section 138 the registration of Written Agreements is not achieving the modern awards objective because under section 134 (f) registration will increase the regulatory burden and employment costs on employers. Commission is only regulated by the Award (except for the 35% safety net) to the extent that there must be a Written Agreement. Any commission in excess of the 35% safety net is discretionary by the employer. The proposed Schedule E obliges the employer to register a Written Agreement of commission that the employee is not entitled to under the Award unless it is offered at the discretion of the employer and accepted by the employee. Discretionary commission is always invariably offered.
23. Discretionary commission in the real estate industry is normally confidential between the employer and the employee, so a third party entity, namely APSR, which is not party to the Award, should not become privy to such information and information that is discretionary and not regulated by the Award. The real estate unions, via a national registry, should not become privy to all states and territories discretionary commission arrangements in an extremely competitive environment. In addition the unions will become privy to thousands of commission arrangements where membership of the

union is not involved. (refer to Mr Tepper's witness statement items 14 and 15 re confidentiality)

24. Respectfully, the Fair Work Commission under the Fair Work Act may not have the power to create in the Award an entity, namely APSR, which is not party to the Award, to receive the registration of Written Agreements. The current Schedule E in the Award does not create a new entity.
25. The Award has a minimum safety net for wages and a minimum safety net of 35% commission for pieceworkers. Any commission in excess of the safety net of 35% commission for piece workers as already stated is discretionary by the employer and the employee is only entitled to such commission if it is offered by the employer and accepted by the employee. The employer associations conceded the importance of discretionary commission arrangements to be in writing and that has been in the Award since it was made in 2010 and not only for pieceworkers but also for waged salespersons and property managers
26. The common practice is for such discretionary commission to be offered. However, the Award does not regulate such commission and the structure purely depends on the employer's discretionary offer and any negotiation that takes place between the employer and the employee. Registration of discretion commission which is not regulated by the Award is an unwarranted regulatory burden on employers and an unwarranted increase in employment costs. It is entirely sufficient that the Award already prescribes that discretionary commission must be in writing and that a lack of a Written Agreement can attract a prosecution for a breach of the Award. . (refer to Mr Tepper's witness statement items 16 to 18 for offering discretionary common commission rates)
27. If the union wants to reduce disputation it would do better to concentrate on the prosecution for a breach of the Award as a deterrent for a lack of a Written Agreement, rather than trying to create a national bureaucratic nightmare for registration. Registration is an extra layer of regulation when the first layer of regulation of enforcing an award breach is entirely sufficient.

Qualifying to become commission-only (pieceworker) under the Award

28. Under the Award there are several conditions that an employee must qualify in before the employee may be remunerated as a pieceworker. The only justification (i.e. if it is considered an incidental or machinery term) for registration would be the filing of a *completed template* with the relevant unions and employer associations *demonstrating that the qualifying conditions for commission-only have been met* in accordance with

16.2 of the Award and in particular that the *minimum income threshold test* (MITT) has been passed. A *completed template* similar to Attachment E of Mr. French's witness statement and cited as a proposed Schedule D by Mr French could be contemplated and would declare that the qualifying conditions for commission-only have been met and that the parties have entered into a Written Agreement. No national entity would have to be created and no extra staff hired but filing would merely be with the relevant unions and the relevant employer association in each state and territory. This would require a simple variation of clause 16 and a template schedule similar to Attachment E of Mr. French's witness statement and cited by Mr French as a proposed Schedule D. However, if this is considered as a compromise, it still has the problem that such a template is only declaring what the Award already says must happen in the first place.

29. Although Slater and Gordon's submissions on behalf of APSA state that Attachment E was as a result of discussions between APSA and a number of representative bodies of employers in the real estate industry, REEF SA/NT was not one of them; and if Schedule D was ever to be considered as an legislative allowable compromise then REEF SA/NT would reserve its position on Schedule D until discussions had taken place with APSA on its contents.

Merits of APSA's application for registration

30. Item 10 of Slater and Gordon's submissions on behalf of APSA states, "The real estate industry has garnered a reputation for laxity in regulatory observance." If this is so then the registration of agreements will not be a miracle cure. The cure is more in the authorities and the union seeking out prosecutions for a breach of the award or legislation.
31. Item 12 of Slater and Gordon's submissions on behalf of APSA states that a benefit of registration is assistance to employers and employees arising from scrutiny prior to formal registration. This is shutting the gate after the horse has bolted. The timing of assistance should come in the making of the agreement and if an employer choses not to seek assistance in making a Written Agreement then that is their risk.
32. Item 12 of Slater and Gordon's submissions on behalf of APSA states that a benefit of registration is a considerable history of registration" This is not a merit argument.
33. Item 12 of Slater and Gordon's submissions on behalf of APSA states that a benefit of registration is convenient access to lost or mislaid agreements. This is not a merit argument. Lost and mislaid agreements probably occur in every other industry and they are not required to register and the real estate industry is not special in this regard.

IN THE FAIR WORK COMMISSION

Title of Matter: Four yearly review of modern awards

Section: s.156 - 4 yearly review of modern awards

Subject: Real Estate Industry Award 2010 - Additional transitional provisions – **Witness Statement of Donovan Paul Tepper** of the Real Estate Employers' Federation of South Australia and the Northern Territory (REEF SA/NT)

Matter Number: AM2014/242

Hearing Details: The matter is listed for Hearing before a **Full Bench at 10:00 am Wednesday, 19 November 2014**, Fair Work Commission 11 Exhibition Street Melbourne

WITNESS STATEMENT OF DONOVAN PAUL TEPPER

I, Donovan Paul Tepper, CEO of the Real Estate Employers' Federation of South Australia and the Northern Territory, make the following statement:

1. I have been involved in industrial relations since 1986. Prior to that I was a police prosecutor for about 19 years in the criminal Magistrates' Courts. I have advised real estate employers in industrial relations and human resources management since about 1996.
2. From 1986 to about 2001 I was either employed by the South Australian Chamber of Commerce & Industry (Business SA) or employed by 2 large food manufacturing companies in Adelaide as their Human Resources Manager, namely Tip Top Bakeries and Dairy Vale. From 2001 until the present I have been contracted to the Real Estate Employers' Federation (REEF SA/NT) as their CEO.
3. The intention of this statement is to address some matters in REEF SA/NT's submissions that may need to have some supportive evidence.

Statement re a consent award re item 7 in REEF SA/NT's submissions

4. It is a fact that there was agreement between the unions and the employers back in 2009 to continue registration in the modern award for agreements for the transitional 5-year period for SA, NSW & QLD which continued the concept from the SA, NSW & QLD NAPSA's. In fact the whole of the draft award was put before AIRC as a consent award. Consent matters may contain all sorts of compromises, reasons and motivations of individual parties which are not present in this matter and as such it is submitted that registration as it currently stands in the

34. In APSA's submissions provided to FWC of 13/10/2014 the proposed Schedule E stated registration for every employee that came within the ambit of clauses 15 or 16 of the award, namely waged salespersons, commission- only salespersons and property managers. In APSA's submissions provided to FWC on 07/11/2014 the proposed Schedule E now only states registration for commission-only salespersons. If in APSA's view it is meritorious to have a Written Agreement registered then it must still be meritorious for waged salespersons and property managers and yet APSA is no longer proceeding with these classifications.

Conclusion

35. The Full Bench is respectfully urged not to grant APSA's application for creating a new entity, APSR, for the registration of Written Agreements on the grounds as advanced in these submissions.
36. In the event that the Full Bench is against REEF SA/NT on item 35 then at the very most all that needs to be registered is a document akin to Attachment E of Mr. French's witness statement and cited as a proposed Schedule D and not the registration of a Written Agreement. (See items 28 and 29 above)
37. In the event that the Full Bench is against us on either item 35 and 36 then in the alternative Schedule E needs to be severely amended so that is clear how APSR is to be structured and how it will be financially accountable as employers should not have to pay in excess of what it will cost to reasonably operate APSR.

If the Full Bench pleases.

Real Estate Industry Award 2010 should not be used as a precedent and the Australian Property Services Association (APSA) needs to base its application for the registration of written agreements solely on merit and the legislative framework.

Statement re commission arrangements being complicated re item 15 in REEF SA/NT's submissions

5. While employed by Business SA I was responsible for a portfolio of both manufacturing and service industries and so became familiar with remuneration structures of many industries.
6. In 1996 while at Business SA, the real estate industry was added to my portfolio of industries. One of the first matters that I had to become familiar with as a priority was the manner in which real estate salespersons were remunerated – I refer to 'salespersons' as opposed to 'agents' as the word 'agent' I normally use for the employer because if you say 'agent' the next question is, "Do you mean the employee or the employer?"
7. Despite my previous experience in industrial relations and human resources management it took me many months to fully understand what the industry refers to as the *debit/credit system of commission*. I receive phone all the time with questions like, "The salesperson has left and is \$10,000 in debit – can I claim that back?", or ""The salesperson has left and is \$5,000 in debit do I still have to pay his/her accrued annual leave?" or "Can I debit such and such?" The debit/credit system of commission payment appears to be self-perpetuated in that when a salesperson becomes a real estate employer they simply copy the way they were remunerated when they were a salesperson without fully comprehending the finer details of the debit/credit system.
8. With the debit/credit system a salesperson's gross commission is set off with various debits to become their net commission or commission payable. To demonstrate the complexity of the debit/credit system any of the following issues can arise:
 - (a) What will be debited to the salesperson's commission statement/account? What should happen if a proposed debit is not listed in the employment agreement? An employment agreement can list upwards of a dozen or more different types of debits including wages, allowances, advertising, promoting the salesperson's personal profile, cash advances, client gifts, personal assistant labour costs etc.
 - (b) Whether or not superannuation is included in the salesperson's gross commission.
 - (c) Whether or not annual leave and sick leave are included is a commission-only salesperson's commission? It is noted that *Canavan* will be dealt with as part of Group 3, although I have advised my membership to change their system of annual/sick leave payment to salespersons on commission-only but this only adds another complication

to the debit/credit system and necessitates an addendum to the employment agreement.

- (d) When does a salesperson become entitled to their gross commission, is it when the contract of sale is signed or is it at settlement which could be months later?
- (e) What happens to a salesperson's gross commission if the settlement takes place after he/she has left their employment?
- (f) There is also the issue of commission splits, that is what is the salesperson's entitlement if they only list a property and someone else sells it or visa versa, or the salesperson only sources a lead or only manages the file after the contract has been signed?
- (g) How are the employer's and the employee's gross and net commissions going to be defined?
- (h) Will the salesperson's gross commission be a flat rate or a sliding scale?
- (i) What happens to the salesperson's commission statement/account after termination of employment if there are outstanding settlements?
- (j) What happens to the salesperson's commission share if the employer is not paid by the vendor?
- (k) What happens to a salesperson's listing and any listing commission if the property is not sold before the salesperson leaves their employment?
- (l) What happens to a referral fee promised to the salesperson (e.g. a rental referral)? Is it paid as a discrete amount or is it added as a credit to the salesperson's debit/credit commission statement/account?
- (m) When it comes time for the salesperson's debit/credit commission statement/account to be reconciled (normally monthly but can be fortnightly or after each settlement) there are three possible calculations:
 - (i) First, what happens if the commission statement/account is in debit? – particularly with a commission-only salesperson if they have had a settlement during the commission statement/account period because their safety net is 35%.
 - (ii) Second, what is the calculation if super is included in the salesperson's gross commission?
 - (iii) Third, what is the calculation if super is not included in the salesperson's gross commission?
- (n) What happens if the salesperson and the employer agree on salary sacrifice for all or part of commission, which happens not unfrequently?

9. It can be seen from the above that in real estate a commission debit/credit system can become a complicated business. If all this is not reduced to a written agreement then it makes a dispute very difficult to settle because it becomes, "I said" – "He/she said".
10. And so these are the reasons why REEF SA/NT so readily agreed that there must be a written agreement but now the union wants to take that one step further and set up a national system of registration for written agreements.

Statement re prosecutions/claims re item 16 in REEF SA/NT's submissions

11. Over about the last 18 months approximately 15 claims for underpayment totaling about \$614,000.00 have been made against real estate employers in South Australia – the lowest claim being about \$5,000.00 and the highest about \$140,000.00. These are only the ones I know about because not all real estate employers come to REEF SA/NT for assistance when they receive a summons.
12. Probably about 80% did not have a written agreement and nearly all the claims concerned a dispute about commission and in particular being on commission-only in breach of the Real Estate Industry Award. An employer incurs a potential liability of about \$45,000.00 per annum if the employee is on commission-only when they should not be, so claims in the range of \$50K to \$80K are not uncommon.
13. Interestingly though not one employer in all these claims was prosecuted for breaching the Real Estate Industry Award for either not having a written agreement or for the salesperson being on commission-only when they should not have been. Further to that I have never heard of a real estate employer being prosecuted for breaching the award for not having a written agreement in accordance with the award or for having a salesperson on commission-only when the employee did not qualify under the award for commission-only. I am not saying there has not been such a prosecution – it's just that I have never heard of one and things like this normally travel the national real estate "grapevine". The point being a prosecution for a breach of the award would, in my opinion, serve as a greater motivator for others to do written agreements than having to register agreements would. And the machinery for a prosecution is already in place whereas a new entity would have to be created for registration which in turn would create an additional unnecessary regulatory burden for employers and additional costs.

Statement re confidentiality re item 23 in REEF SA/NT's submissions

14. When employers in SA or NT want an employment agreement they send me a completed questionnaire. In all the hundreds of agreements that I have done over the years I can only

remember one occasion where the employer crossed out from the questionnaire that they did not want a confidentiality clause in the agreement and when I queried it the employer then wanted the clause inserted. Employers quite often impress on me the confidentiality of their arrangements with salespersons. Commission arrangements vary considerably from office to office and frequently within the same office. Most employers in my experience are quite particular about their salespersons keeping their commission arrangements to themselves and guard as best they can against their competitors knowing.

15. I have lost count of the number of employers complaining that the union will become privy to commission arrangements in a registered agreement. Time and time again I have been asked by employers why do they have to register the agreement and because it is asked so often I have become rather cryptic in my reply, "Because it's in the award."

Statement re offering discretionary commission rates re items 25 and 26 in REEF SA/NT's submissions

16. A *waged* salesperson's gross commission rate is generally in the range of 40% to 45% and can either include superannuation or super is paid on top. The closer the rate gets to 45% the more likely it is to include super. Some agents who want to give a 45% package will reduce the 45% by the 9.5% super, which is 41.096%, and with super packaged in, it is 45%. I have seen a waged salesperson's commission rate as high as 55% which is very rare and as low as 20% which is also rare unless there are no debits, then 20% would be about right.
17. A *commission-only* salesperson's gross commission rate generally starts in the vicinity of 50% and can range through to 70% and most times includes super. Because *commission-only* salespersons nearly always receive more gross commission and fewer debits than a *waged* salesperson it is a common occurrence for a salesperson to request to go onto commission-only – obviously because the potential is there to earn a lot more money. The safety net of 35% for a commission-only salesperson for most of the time is not an issue because they receive far more than 35% - Since the 2007 pay scale for commission-only I have never done an employment agreement where a commission-only salesperson receives only the safety net.
18. I would estimate from 18 years' experience that more commission than the 35% safety net is offered to commission-only salespersons in 99% of cases. As to how much is offered is covered in item 17.

Don Tepper
CEO
Real Estate Employers' Federation SA/NT
14/11/2014

IN THE FAIR WORK COMMISSION

MATTER: AM2014/242

S.156 – 4 YEARLY REVIEW OF MODERN AWARDS

Real Estate Industry Award 2010

Outline of Submissions of the Real Estate Institute of Victoria¹

Overview

1. The issue for the Fair Work Commission (**FWC**) to determine is whether the proposed order attached to the submissions of the Australian Property Services Association (**APSA**) dated 5 November 2014 (**Proposed Order**) is capable of being included in the *Real Estate Industry Award 2010* (**Award**).
2. For the reasons developed in this submission, the Proposed Order is incapable of being included in the Award because the Proposed Order:
 - a) is not a term "about" a matter listed in s139 of the *Fair Work Act 2009* (Cth) (**FW Act**) which may be included by the FWC in a modern award;
 - b) is not essential (s142(1)(b));
 - c) is not a machinery term (s142(2));
 - d) is not necessary to achieve the modern awards objective and the minimum wage objective (s138).

¹ For convenience, these submissions incorporate and replace the submissions lodged by the Real Estate Institute of Victoria on 13 October 2014

Background

3. On 4 December 2009, the Australian Industrial Relations Commission (**AIRC**) made the Award, pursuant to Part 10A of the *Workplace Relations Act 1996* (Cth) (**WR Act**).² The Award commenced on 1 January 2010.³
4. For some states, including Victoria, it was the first time that real estate agents and property managers were covered by an industrial award.
5. The Award provides a minimum weekly wage for relevant work classifications. Clauses 15.1 and 16 deal with commission payments, relevantly in the following terms:

15.1 Where the employer and the employee agree that, in addition to the minimum weekly wage, the employee will be entitled to a portion of the commission paid to the employer, then any method of calculation or any formula for calculating the amount of commission that will be payable to the employee must be evidenced in a written agreement between the employer and the employee.”

...

16.1 Subject to clause 16.2, an employee engaged in a property sales classification may agree with the employer to be paid on a commission-only basis. Such an employee is considered a pieceworker, and is referred to in this award (and within the real estate industry) as a commission-only employee.

16.2 A person may only be a commission-only employee when all of the following conditions have been satisfied:

- (a) the employee has agreed in writing with the employer to be remunerated on a commission-only basis and has entered into a written agreement (commission-only agreement) with the employer that sets out the basis upon which the entitlement to commission will be calculated;”

6. Clauses 16.2(f) and 16.3 of the Award provide further safeguards for commission-only employees, to ensure they will receive at least a minimum income threshold.

² After its repeal on 1 July 2009, Part 10A was continued in force by item 2 of Schedule 5 of the Fair Work (Transitional Provisions and Consequential Amendments) Act 2009 (Cth) (**Trans Act**).

³ Clause 2.1 REI Award

7. Schedule E to the Award then provides for a system of registration with external bodies, of the written agreements referred to in clauses 15.1 and 16.2(a), upon the payment of a registration fee. Schedule E to the Award is set out in the attached **Appendix**. The provisions of Schedule E only apply in Queensland, New South Wales and South Australia.
8. Schedule E to the Award contains State-based difference terms, as defined in s154(1) of the FW Act. Such terms were permissible as part of the award modernisation process, but not now. Schedule E cannot survive as a state-based difference term beyond 5 years.⁴ Schedule E on its own terms (cl. E.4) provides that it operates until 31 December 2014.⁵
9. APSA is a federally-registered employee association capable of representing the industrial interests of real estate employees in Queensland and New South Wales. Under the registration system prescribed in Schedule E, it receives substantial revenue, as do the participating employer associations.
10. Obviously cognisant that Schedule E cannot survive as a state-based differences term (s154), APSA now asks the Commission, as part of the 4 yearly review of Modern Awards, to vary Schedule E effectively to expand the registration system to all real estate employers and employees nationally.

The Proposed Order

11. On the terms set out in the Proposed Order, the Schedule E agreement registration system would be varied and expanded as follows:
 - a) it would create a national registration system;
 - b) the registration system would apply to employees described in clause 16.1 of the Award, that is, employees engaged in property sales classifications;
 - c) the registration system would apply to 'commission-only' arrangements described in clause 16.2(a) of the Award;

⁴ Section 154(2) of the FW Act.

⁵ Schedule E to the Award effectively self-terminates on 31 December 2014 (clause E.4).

- d) employers would be required to lodge all written agreements made in accordance with clause 16(2)(a) with the registry, namely, the Australian Property Sector Registry (**Registry**);
- e) APSA would operate the Registry;
- f) an administrative fee of up to \$77 (indexed) per written agreement would apply, payable to the Registry;
- g) an administrative fee of \$20 (indexed) would apply for any variation to those agreements;
- h) a written agreement under clause 16(2)(a) would have no operative effect unless and until it has been registered with the Registry; and
- i) an employer is prohibited from engaging an employee as a 'commission only employee' until the agreement is registered with the Registry.

The Modern Award Review

- 12. The modern awards objective in s134(1) of the FW Act is to achieve a '*fair and relevant minimum safety net of terms and conditions*', taking into account specific matters listed therein.
- 13. Subdivisions B, C and D of Division 3 of Part 2-3 of the FW Act, deal respectively with terms that 'may', 'must' and 'must not' be included in modern awards.
- 14. The Proposed Order falls to be considered under Subdivision B, being terms which "may" be included in modern awards.
- 15. Section 139(1) of the FW Act provides that a modern award may include terms about a list of matters, including minimum wages, type of employment, overtime rates, penalty rates, allowances, leave and leave loading and dispute settlement.
- 16. In addition to terms which are about these matters, s142 of the FW Act provides for the inclusion in modern awards of "incidental terms" and "machinery terms".

17. Finally, pursuant to s138 of the FW Act, a modern award may only include terms to the extent "necessary" to achieve a "fair and relevant minimum safety net". In *SDAEA v NRA (No 2)*,⁶ Tracey J accepted that there is a distinction to be drawn between terms which are "necessary", and terms which may be "desirable", whilst recognising that reasonable minds may differ about where the line is drawn in any particular case.⁷ In that case, Tracey J was dealing with a different provision of the FW Act, but the reasoning would apply equally to s138 of the FW Act.⁸
18. The status quo with respect to Schedule E of the Award is that it will cease to operate on 31 December 2014. Therefore, the onus is on the moving party, APSA, to persuade the Commission to vary and expand requirements to register commission-only agreements.
19. In that respect, the observations of the Full Bench in the *4 Yearly Review of Modern Awards: Preliminary Jurisdictional Issues*⁹ (**Review Decision**) are apposite:

"The Commission is obliged to ensure that modern awards, together with the NES, provide a fair and relevant minimum safety net taking into account, among other things, the need to ensure a 'stable' modern award system (s134(1)(g)). The need for a 'stable' modern award system suggests that a party seeking to vary a modern award in the context of the Review must advance a merit argument in support of the proposed variation. The extent of such an argument will depend on the circumstances. We agree with ABI's submission that some proposed changes may be self evident and can be determined with little formality. However, where a significant change is proposed it must be supported by a submission which addresses the relevant legislative provisions and be accompanied by probative evidence properly directed to demonstrating the facts supporting the proposed variation."¹⁰

Commission
only case

20. Having regard to the manner in which the Commission used the term in the passage above (in contradistinction to changes which are "self-evident"), the Proposed Order constitutes a "*significant change*" to the Award. In particular:

⁶ (2012) 205 FCR 227

⁷ *Ibid* at [46]

⁸ *Review Decision* at [39]

⁹ [2014] FWCFB 1788.

¹⁰ *Review Decision* at [23].

- a) to continue Schedule E in any form beyond 31 December 2014 would constitute a departure from the status quo (and hence, a “change”);
- b) the Proposed Order seeks significant change by expanding nationally a registration system in NSW, Queensland and South Australia, which system is itself derived from a limited consent position adopted in the award modernisation process to reflect state-based differences existing at that time;
- c) the Proposed Order seeks significant change by introducing for the first time in three States and two Territories, a registration and fee payment system which has never previously existed in any form in those jurisdictions; and
- d) the impact of this expansion would be significant as it would introduce, for the first time in these jurisdictions, significant administrative burdens on employers, as well as financial burdens on both employers and/or employees (who incur the cost of the registration fee).

Is APSA’s proposed order “about” a matter in s139 of the FW Act?

- 21. In the award modernisation process, APSA had submitted that the legislative basis for Schedule E was s 142 of the FW Act (which permits the inclusion of incidental and machinery terms).¹¹ Now, APSA submits that the Proposed Order is “about” a matter in s139(1)(a), namely, an ‘incentive-based payment’ or “piece rates”.
- 22. It may be accepted that a commission-only remuneration arrangement meets the description in s 139(1)(a) of an ‘incentive-based payment’.
- 23. The Proposed Order does not contain terms about such payments. If anything is “about” incentive based payment or bonus it is the written agreements themselves, which prescribe the details of the commission payments. The Proposed Order is about a system of registering written agreements. It is not ‘about’ a matter in s139 of the FW Act.

¹¹ *“Real Estate Unions’ Submissions to the Australian Industrial Relations Commission: Proposed Real Estate Industry Award 2010”, page 13.*

24. APSA's submission on this point does not go beyond bare assertion. There is no attempt to grapple with the distinction between:

- a) a term that itself prescribes a commission payment or some qualification or limitation about the *payments* – which would be “about” incentive based payments;
- b) a term that prescribes a system of registering agreements – which is not “about” incentive-based payments, but may be of an incidental, ancillary or machinery character.

25. The *Macquarie Dictionary (Revised Third Edition)* relevantly defines ‘about’ as:

“1. of; concerning; in regard to;...”

26. The word ‘about’ in this context draws a connection between one subject (the power of the Commission to include as a term in in a modern award) and another subject (the subject matter that a term in a modern award may concern).

27. The word connotes a direct connection. The High Court in *Shell* considered that the expression “as to” might call for a *more* direct connection than “about”.¹² This is relied upon by APSA at paragraph 3 of its outline. But this does not take the matter very far. Subsequent decisions of the High Court in *Alcan*¹³ and *Electrolux*¹⁴ saw little in the distinction between “as to” and “about”. Further, in *Electrolux*, Gleeson CJ made the following observation:

“The dispute in *Portus* was held not to be “with respect to a matter pertaining to the relations of employers and employees”. The words “with respect to” are no narrower than the word “about”. The use of the preposition “about” does not widen the scope of the expression “matters pertaining to the [employment] relationship” beyond that identified in *Portus* and *Alcan*. And the introduction into industrial legislation of the concept of certified agreements does not create a new context in which it can be said, with any

¹² *Re The Amalgamated Metal Workers Union of Australia; Ex parte: The Shell Company of Australia Ltd* (1992) 174 CLR 345 at 354 (Mason CJ, Deane, Toohey and Gaudron JJ).

¹³ *Re Alcan Australia Limited and Others; Ex Parte Federation of Industrial, Manufacturing and Engineering Employees* (1994) 181 CLR 96 at 105.

¹⁴ *Electrolux Home Products v AWU* (2004) 221 CLR 309 - Gleeson CJ at 323, McHugh J at 346, Gummow, Hayne and Heydon JJ at 370-371, Callinan J at 392 and 398.

degree of conviction, that the expression takes on a new and different meaning.”¹⁵

28. Ultimately, the extent of connection required by the word “about” will depend on the context in which the word appears.¹⁶
29. There are two contextual aspects that inform the meaning of the word ‘about’ as requiring a direct connection with the subject matter.
30. First, the provisions under consideration here substantially mirror s 89A of the WR Act (which dealt with allowable award matters).¹⁷ Section 89A was a limit on the AIRC’s power.¹⁸ Section 139 operates in effectively the same way – a clause may not be included in a modern award if it is not “about” a matter in s 139. If s139 is a limitation on the FWC’s power, then there must be a real connection between the subject matter of a proposed clause and a matter listed in s139. The connector ‘about’:

“...cannot be used to broaden the scope of the power itself, but only to provide the means to carry it into effect.”¹⁹

31. Secondly, ‘about’ must also be read having regard to s142(1). Without s142(1) permitting the inclusion of incidental or machinery terms into an award, then the word ‘about’ would likely be read as being a connector which would allow such terms to be included in the award. However, s142(1) sets out the statutory test that such terms must meet before they can be included by the FWC in a modern award. In that context, ‘about’ should be construed more narrowly, requiring a direct connection between the proposed clause and the subject matter in s139. Otherwise, s 142 would be superfluous and the additional requirements specified in it would be by-passed.

¹⁵ *Electrolux Home Products v AWU* (2004) 221 CLR 309 at 325.

¹⁶ *Workers’ Compensation Board of Queensland v Technical Products Pty Ltd* (1988) 165 CLR 642; *J & G Knowles and Associates Pty Ltd v Commr of Taxation* (2000) 96 FCR 402 at 410; *Australian Communications Network Pty Ltd v Australian Competition and Consumer Commn* (2005) 146 FCR 413 at 420; *Travellex Ltd v Commr of Taxation* (2010) 84 ALJR 683 at 688 (French CJ and Hayne J).

¹⁷ See the observations of the Full Bench of the FWC in *Re Modern Awards Review 2012 – Apprentices, Trainees and Juniors* (2013) 236 IR 1 at 35.

¹⁸ *Re Award Simplification Decision; Re The Hospitality Industry – Accommodation, Hotels, Resorts and Gaming Award 1995* (1997) 75 IR 272 at 277 (**Re Award Simplification Decision**).

¹⁹ *Ibid*, at 277.

Is the proposed order “incidental” and “essential”?

32. Section 142(1) of the FW Act provides “only a relatively narrow basis for the inclusion of award terms”²⁰. The Full Bench in *Re Apprentices* observed of s142(1):

“It is not in itself an additional power for the inclusion of any terms that cannot be appropriately linked back to a term that is permitted by s139(1). The use of the word “essential” suggests that the term needs to be “absolutely indispensable or necessary” for the permitted term to operate in a practical way. The wording of the section suggests that it provides a more limited power to include terms than that of its earlier counterpart in s89A(6).”²¹

33. Clause 16.2(a) may be properly characterised as an incidental provision. The clause requires the reduction into writing of agreements between employers and employees employed on a ‘commission-only’ basis, to facilitate compliance with the minimum requirements set out in the REI Award.²²

34. Therefore, the Proposed Order is, in effect, incidental to an incidental term. That does not come within s142(1), as the term must be incidental to a term that falls within s139.

35. Even if the Proposed Order could be characterised as being incidental in the sense described in s142(1), APSA has not demonstrated that it is essential (in the sense of being “absolutely indispensable or necessary”) for the practical operation of the Award.

36. There is simply no evidence of widespread non-compliance with the award safety net wage; let alone any evidence that that the Proposed Order would address such non-compliance with the minimum provisions.

37. Clause 16.2 provides for the safety net protections for commission-only arrangements. Section 535 of the FW Act imposes (under pain of civil penalty for breach) the obligation on an employer to make and keep for 7

²⁰ *Re Modern Awards Review 2012 – Apprentices, Trainees and Juniors* (2013) 236 IR 1 at 35.

²¹ *Ibid*, at 35.

²² This approach is consistent with comments made by the Full Bench of the AIRC in the *Re Award Simplification Decision* in relation to a similar clause in the *Accommodation, Hotels, Resorts and Gaming Award 1995*.

years records about pay arrangements. The record-keeping requirements, as prescribed in the regulations, make it clear that the employer must make and keep records about the rate and the gross and net amounts paid. Indeed, regulation 3.33 provides:

- “(3) If the employee is entitled to be paid:
- (a) an incentive-based payment; or
 - (b) a bonus; or
 - (c) a loading; or
 - (d) a penalty rate; or
 - (e) another monetary allowance or separately identifiable entitlement;
- the record must set out details of the payment, bonus, loading, rate, allowance or entitlement.”

These records must be made available for inspection by an employee or former employee (Reg 3.42). They must be made available for inspection by a workplace inspector (FW Act Part 5-2 Sub-Division 3D). Civil penalties apply for a failure to comply with these provisions.

38. Why is it essential for the practical operation of the safety net protections in clause 16.2 of the Award to have a national system of registering common law contracts which provide commission-only remuneration?
39. Further, APSA has put nothing forward to explain why the *particular* registration system proposed is essential for the practical operation of the Award. Why is it essential to have a system whereby APSA operates the registry, and presumably earns the very substantial revenue that comes from it?

Is the Proposed Order a “machinery term”?

40. APSA asserts that the Proposed Order is a machinery term.
41. It appears that the phrase ‘machinery terms’ has been derived from the following observations of Merkel J in *Electrolux* (at first instance) as to s170LI of the WR Act:

“...that the agreement be characterised as one that is about *matters* pertaining to the relationship. If a term of the agreement does not pertain to that relationship it does not follow that the agreement is not about matters pertaining to the relationship. For example, the term may be ancillary or incidental to, or a machinery

provision relating to, a matter pertaining to the employment relationship."²³

42. In *Ballantyne*, Vice President Ross (as His Honour then was) quoted the passage and noted that it recognised a distinction between a term which was 'about' matters pertaining to the employment relationship (the pertaining term) and terms not strictly about such a thing, but which were necessary for the effective operation of the pertaining term.²⁴ Both could be included in a certified agreement, as being "about matters pertaining to the relationship".
43. It is not entirely clear why s142 deals with "machinery terms" separately from "incidental terms".
44. It may be intended to mean terms that go to the basic machinery of the award as an instrument. The specific examples cited in s142(2) are terms going to formal matters such as title, date and table of contents. Anything that has anything substantive to do, in terms of imposing obligations, is to be regarded as 'incidental' in s142(1) and must meet the 'essential' requirement. The Proposed Order is more than mere machinery in the s142(2) sense.

Is the proposed order necessary to achieve the modern award objective and the minimum wage objective?

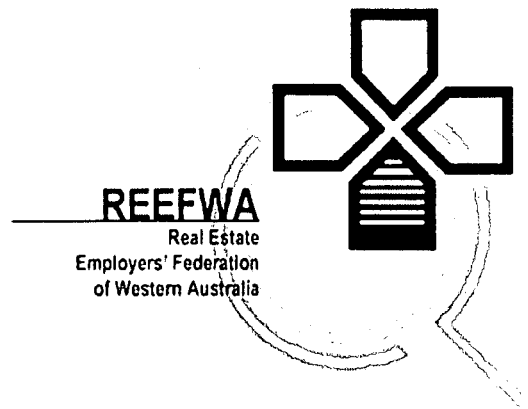
45. Further, and in any event, s138 requires that ultimately any term must still be *necessary* to achieve the modern award objective and the minimum wage objective.
46. As stated above in relation to s142(1), APSA has failed to put any evidence forward (let alone any cogent evidence) to warrant a finding that the Proposed Order is necessary to achieve the modern award objective and the minimum wage objective.

Conclusion

47. For the reasons outlined above, the Commission should decline to vary the Award to include the Proposed Order.

²³ *Electrolux v AWU* (2001) 51 AILR 4 at [50].

²⁴ *KL Ballantyne NUW (Laverton Site) Agreement 2004* (2004) 145 IR 1 at paragraphs [35]-[39] and [47].



S.156 – Four Yearly Review of Modern awards

Submissions in respect to Transitional Provisions of Modern award

IN FAIR WORK COMMISSION

FWA Matter No.: AM2014/242

Award: Real Estate Industry Award 2010 (MA 000 106)

1. The following submissions are provided on behalf of the Real Estate Employers' Federation of Western Australia (REEFWA).
2. These submissions are in addition to the submissions filed on 13th October 2014
3. REEFWA is an organisation of employers in the real estate industry in Western Australia whose members are covered by this modern award. Members of REEFWA are granted reciprocal membership of the Chamber of Commerce and Industry, Western Australia, a registered organisation of employers.
4. Schedule E of the award contains provisions relating to the registration of agreements required by clauses 15.1 or 16.2(a) with external bodies, upon the payment of an applicable fee and are applicable only to employers in New South Wales, Queensland and South Australia.
5. The Australian Property Services Association (APSA), in its submissions have included a proposed Schedule E of the award as a schedule to their draft order.
6. REEFWA vehemently objects to the variation of the award proposed by APSA.

Legislative Framework

7. The *Fair Work Act 2009* compels the Fair Work Commission to conduct a four yearly review of modern awards and relevantly for our purposes, in that review may make one or more determinations varying modern awards.¹
8. S.134 of the *Fair Work Act 2009*, sets out the objective for modern awards, being to “provide a fair and relevant minimum safety net of terms and conditions” and requires the Commission, when deciding what are fair and relevant safety net of conditions, to take into account certain factors specified in s.134(1).
9. Terms in a modern award may only be included in the award to the extent necessary to achieve the modern awards objective.²
10. Subdivision D of Division 3 of Part 2-3 of the *Fair Work Act 2009*, outlines the terms that must not be included in modern awards none of which is relevant for the purposes of these submissions.
11. Subdivision C of Division 3 of Part 2-3 of the *Fair Work Act 2009*, outlines the terms that must be included in modern awards being;
 - (a) Coverage terms³
 - (b) Flexibility terms⁴
 - (c) Dispute Settlement terms⁵
 - (d) Terms setting out ordinary hours of work⁶
 - (e) Terms setting the base and full rate of pay for pieceworkers⁷
 - (f) Terms providing for the automatic variation of allowances⁸
 - (g) Terms regarding superannuation contributions⁹
12. Subdivision B of Division 3 of Part 2-3 of the *Fair Work Act 2009* outlines the terms that may be included in modern awards being;
 - (a) General terms about
 - (i) minimum wages
 - (ii) types of employment
 - (iii) arrangements for when work is performed
 - (iv) overtime rates

¹ S.156 of the *Fair Work Act 2009*

² S.138 of the *Fair Work Act 2009*

³ S.143 of the *Fair Work Act 2009*

⁴ S.144 of the *Fair Work Act 2009*

⁵ S.146 of the *Fair Work Act 2009*

⁶ S.147 of the *Fair Work Act 2009*

⁷ S.148 of the *Fair Work Act 2009*

⁸ S.149 of the *Fair Work Act 2009*

⁹ S.149A-D of the *Fair Work Act 2009*

- (v) penalty rates for shift workers, weekend/public holiday work and unsocial, irregular or unpredictable hours
 - (vi) annualised wage arrangements that;
 - Have regard to the specific patterns of work in the industry
 - Provide alternatives to the separate payment of cash entitlements
 - Include safeguards to ensure employees are not disadvantaged
 - (vii) allowances
 - (viii) leave, leave loadings and leave arrangements
 - (ix) superannuation
 - (x) consultation, representation and dispute settlement¹⁰
- (b) Outworker terms¹¹
 - (c) Industry Specific redundancy schemes¹²
 - (d) Incidental or machinery terms¹³

13. Incidental terms are those which are;

- (a) *“incidental to a term that is permitted or required to be in the modern award;”* and
- (b) *“essential for the purpose of making a particular term operate in a practical way”.*¹⁴

14. REEFWA respectfully submits that the definition of an incidental term as outlined above requires that the incidental term must be “incidental” to a term of the award that is either permitted by virtue of s.139(1) or required by virtue of Subdivision C to be in the modern award.

15. Therefore, for the award to be varied to include the provisions of Schedule E, these provisions must be directly about the list of matters in s.139(1) to the extent necessary to achieve a fair and minimum safety net or be incidental to the list of matters that may be permitted or terms that must be permitted in the award.

¹⁰ S.139(1) of the *Fair Work Act 2009*

¹¹ S.140 of the *Fair Work Act 2009*

¹² S.141 of the *Fair Work Act 2009*

¹³ S.142 of the *Fair Work Act 2009*

¹⁴ S.142(1) of the *Fair Work Act 2009*

The inclusion of the provisions of Schedule E

16. REEFWA respectfully submits that the extension and expansion of the transitional provisions contained in Schedule E do not fall under any of the terms required in a modern award.
17. The APSA have submitted that the terms in proposed Schedule E are about “*minimum wages including incentive-based payments, piece rates and bonuses*”¹⁵
18. The provisions of the proposed Schedule E firstly require Employers to register written agreements and secondly outline the registration process including the particularisation of the fee that is payable.
19. These provisions do not prescribe what the minimum wage, payment, piece rate or bonus is nor how they are calculated.
20. In addition, without clauses in the award that do prescribe what the minimum wage, payment, piece rate or bonus is, such as clauses 15 and 16 of the award, Schedule E would have no effect.
21. Therefore, in REEFWA’s view the provisions contained in the proposed Schedule E are not terms about any of the matters listed in s.139(1).
22. Therefore, the only legislative basis for the inclusion of the provisions of Schedule E would be s.142(1), making these provisions ‘incidental terms’.
23. REEFWA respectfully submits that the definition of an incidental term as contained in s.142(1) requires that the incidental term must be “incidental” to a term of the award that is either permitted by virtue of s.139(1) or required by virtue of Subdivision C to be in the modern award.
24. In addition, for a term to be an incidental term it must firstly be incidental to a term in the award and secondly be essential to the operation of the term.
25. The only clauses of the modern award to which it is arguable that the provisions of Schedule E are incidental to are Clauses 15 and 16.2(a).
26. Clause 15 states;
 - 15.1 *Where the employer and the employee agree that, in addition to the minimum weekly wage, the employee will be entitled to a portion of the commission paid to the employer, then any method of calculation or any formula for calculating the amount of commission that will be payable to the employee must be evidenced in a written agreement between the employer and the employee.*
 - 15.2 *Where it has been agreed between the employer and the employee that the employee will be entitled to a bonus or an incentive payment (as opposed to commission under Clause 15.1) particulars of the bonus or incentive payment entitlement must be evidenced in a written agreement between the employer and the employee.*

¹⁵ “Outline of Submissions of the Australian Property Services Association (“APSA”) paragraph 2

27. Sub-clause 16.2(a) states;

16.2 *Minimum Requirements for Commission-Only Employment*

A person may only be a commission-only employee when all of the following conditions have been satisfied:

(a) *the employee has agreed in writing with the employer to be remunerated on a commission-only basis and has entered into a written agreement (commission-only agreement) with the employer that sets out the basis upon which the entitlement to commission will be calculated;*

28. REEFWA concedes that it is arguable that the provisions contained in Schedule E are capable of being regarded as incidental to the requirements set out in clauses 15 and 16.2(a).

29. However, REEFWA submits that the provisions contained in Section E are not incidental terms because they are not “*essential for the purpose of making a particular term operate in a practical way*”

30. Employers in the real estate industry (as in fact are all National System employers) are required to create and maintain for seven years employment records in relation to each of their employees.¹⁶

31. The records that are required to be maintained include the written agreement as contemplated by clauses 15 and 16.2(a) pursuant to regulation 3.32 of the *Fair Work Regulations*.

32. In addition, regulation 3.33 require employers to maintain records specifying the rate of pay, the gross and net amounts paid and details of any incentive based payment, bonus, allowance, loading or penalty rate.

33. Pursuant to regulation 3.31, these records must be legible, in English and readily accessible to a workplace inspector.

34. Finally, s.71 of the *Fair Work Act 2009* requires employers to produce on demand records or documents contemplated by s.535 and outlined in Division 3, Part 3-6 of the *Fair Work Regulations*.

35. Should employers fail to keep and maintain these records and/or fail to honour the written agreements, there are civil penalties that can apply for this failure and/or breach.

36. Given the above, REEFWA questions why clauses 15 and 16.2(a) cannot operate in a practical way.

37. REEFWA submits that APSA have not led any evidence that the experience in Western Australia has not suggested or shown that a registration system, as outlined in Schedule E, is required for these clauses to operate practically.

38. Therefore, it is arguable that there is no need for a central registration system, run by APSA here in Western Australia and so REEFWA questions the value and the necessity of the registration system outlined in Schedule E and submits that Schedule E is not essential to make clauses 15 and 16.2(a) operate in a practical way.

¹⁶ S.535 of the *Fair Work Act 2009*

The status quo

39. REEFWA respectfully submits that the status quo in regards to the transitional provisions contained in Schedule E is that these provisions will cease to have effect on 31 December 2014.

40. In its statement of 17 March 2014, this Full Bench observed

“The Commission is obliged to ensure that modern awards, together with the NES, provide a fair and relevant minimum safety net taking into account, among other things, the need to ensure a ‘stable’ modern award system (s.134(1)(g)). The need for a ‘stable’ modern award system suggests that a party seeking to vary a modern award in the context of the Review must advance a merit argument in support of the proposed variation. The extent of such an argument will depend on the circumstances. We agree with ABI’s submission that some proposed changes may be self evident and can be determined with little formality. However, where a significant change is proposed it must be supported by a submission which addresses the relevant legislative provisions and be accompanied by probative evidence properly directed to demonstrating the facts supporting the proposed variation.”

41. REEFWA respectfully submits that varying the award to include the proposed Schedule E, which extends those provisions to all States and Territories in Australia, is a proposal that involves significant change and is not a change that is self-evident. This submission is based upon;

(a) The variation would be a departure from the status quo outlined above

(b) The variation would introduce for the first time in Western Australia, two other states and two territories, a requirement to register (and pay a fee) to central register written agreements entered into by REEFWA members and their employees. This system has never been in existence in Western Australia.

42. Therefore, it is submitted that the onus is on APSA to demonstrate that the proposed change, supported by probative evidence, addresses the legislative provisions outlined above (ie the transitional provisions are terms relating directly to one or more of the list of matters contained in S.139(1) or are incidental terms to a term that is permitted or required to be included.

43. In REEFWA’s view, APSA have not discharged this onus. They have not produced any evidence of widespread disputation, problems or litigation in Western Australia associated with the lack of a register of written agreements. In fact, there is evidence to the contrary.

44. There is also no evidence produced by APSA that the registration of written agreements will enhance the prevention or resolution of disputes, problems or litigation in Western Australia such that it is necessary for a system of registration of agreements to be introduced.

45. At its highest, REEFWA submits that the evidence that has been produced is that registration of agreements has worked well in Queensland, South Australia and New South Wales and the inference is made that as a result, it will do so in the rest of Australia as well. REEFWA do not agree with this and submit that even if the evidence is accepted, there is no evidence that the inference they make is correct.

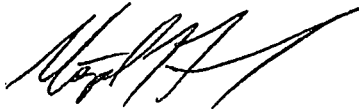
An Agreed Position

46. The APSA, in its outline of submissions, refers to a series of discussions that took place between APSA and a number of employer representative bodies in the real estate industry in Australia.

47. APSA then submits that its proposed Schedule E was prepared based on these discussions.
48. REEFWA wish to go on the record to state that they were not party to any of these discussions that occurred after the conference presided by Commissioner Roe and do not support the inclusion of the proposed Schedule E.

Conclusion

49. In light of the above, REEFWA respectfully submits that the proposal of the APSA to vary the award to include the proposed Schedule E is not supported by the legislative provisions contained in the Act and therefore the Commission should allow the status quo to remain, allowing Schedule E to expire on 31 December 2014.
50. However, in the alternative, if the Commission was minded that registration of agreements was necessary, REEFWA submits that the same outcomes as outlined by APSA could be achieved in regards to award compliance if registration was made with an independent or government body for a minimal administration fee.



Filed on behalf of the Real Estate Employers' Federation of WA by
Stephen Farrell
Principal Employee Relations Consultant
Chamber of Commerce and Industry of WA
14 November 2014

Australian Industrial Relations Commission

You are here: [AustLII](#) >> [Databases](#) >> [Australian Industrial Relations Commission](#) >> [1989](#) >> [1989] AIRC 525

[\[Database Search\]](#) [\[Name Search\]](#) [\[Recent Decisions\]](#) [\[Noteup\]](#) [\[Context\]](#) [\[No Context\]](#) [\[Help\]](#)

Industrial Relations Commission Decision 530/1989 [1989] AIRC 525; (7 August 1989)

Industrial Relations Commission Decision 530/1989;

Dec 530/89 M Print H9100

AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

[Industrial Relations Act 1988](#)

Conciliation and Arbitration Act 1904

NATIONAL WAGE CASE AUGUST 1989

s.59 applications for variation

The Clothing and Allied Trades Union of Australia

(C Nos 21376, 21377 and 21378 of 1988)

DRY CLEANING INDUSTRY INTERIM AWARD 1980(1)

(ODN C No. 02815 of 1980)

CLOTHING TRADES AWARD 1982(2)

(ODN

C No. 00696 of 1980)

DRY CLEANING INDUSTRY AWARD, 1966(3)

(ODN C No. 01074 of

1962)

The Association of Professional Engineers, Australia

(C No. 31751 of 1988)

METAL INDUSTRY AWARD 1971 - PART III -
PROFESSIONAL ENGINEERS(4)

(ODN C No. 01741 of 1971)

JUSTICE MADDERN, PRESIDENT

JUSTICE LUDEKE

DEPUTY PRESIDENT KEOGH

JUSTICE PETERSON

COMMISSIONER JOHNSON

COMMISSIONER NOLAN

COMMISSIONER LAING

MELBOURNE, 7 AUGUST 1989

REASONS FOR DECISION

This National Wage Case decision is the latest in a series in which the Commission has sought to provide a framework to encourage the parties, through a combination of restraint and sustained effort, to improve efficiency and productivity.

The first decision, that of March 1987,(5) laid down wage fixing principles the key to which was the restructuring and efficiency principle. The proper application of that principle required a positive approach by trade unions, their members and by employer organisations, their members and

(1)Print E6068 [D033]; (1981) 257 CAR 534

(2)Print G0207 [C037]

(3)Print C1539 [D008]; (1974) 162 CAR 904 [title change Print E6052

[D008 V052]; (1981) 256 CAR 810]

(4)Print C1744 [M042]; (1974) 163 CAR 388

(5)Print G6800

for
future developments.

In its August 1988 decision,(6) the Commission decided not to continue that principle in its then form: some parties had exhausted its usefulness and others were less than successful in applying it. However, in so deciding, the Commission took the view that it was essential that any new wage system should build on the steps already taken to encourage greater productivity and efficiency. It said:

"Attention must now be directed towards the more fundamental, institutionalised elements that operate to reduce the potential for increased productivity and efficiency."

and

"to sustain real improvement in productivity and efficiency, we must take steps to ensure that work classifications and functions and the basic work patterns and arrangements in an industry meet the competitive requirements of that industry."

That decision provided the structural efficiency principle as the central element in a new system of wage fixation. The object was to give incentive and scope to the parties to examine and modernise their awards so as to better meet the competitive requirements of industry.

The Commission sat again in February, March and April 1989 to receive detailed reports on individual award reviews and to consider any matters of general principle that might need to be resolved. The February 1989 Review decision(7) should be read in conjunction with the August 1988 decision and this decision.

In the course of the February 1989 Review the Commission made it clear that structural efficiency exercises should canvass a broad agenda. It also endorsed in principle the proposal of the Australian Council of Trade Unions (ACTU) which it had argued would provide "a national framework or blueprint" which would involve restructuring all awards of the Commission to provide "consistent, coherent award structures, based on training and skills acquired, and which bear clear and appropriate work value relationships one to another". However, the Commission did not endorse the particular award relationships proposed by the ACTU. The Commission decided to sit again on 6 June 1989 "to determine whether any wage adjustment should be made having regard to the progress of award restructuring, the tax changes that have been announced, the state of the economy and the extent to which unions are prepared to make the necessary commitments".

In the current proceedings, therefore, there are two main issues:

- . first, the quantum, timing and basis of any wage increase to be made available for effective structural efficiency exercises; and
- . second, how the approach endorsed in principle by the Commission for ensuring stable relationships between awards and their relevance to industry is best translated into practice.

(6) **Print**

H4000

(7)Print H8200

NATIONAL WAGE CASE AUGUST 1989

3

In addition, other issues concerning the effective implementation and future direction of the principles, raised in the February Review, need to be addressed.

STRUCTURAL ADJUSTMENT CLAIMS

The ACTU claimed increases of \$10.00 per week for workers at the basic skills/trainee entry level; \$12.50 per week at the semi-skilled worker level; and \$15.00 per week or 3%, whichever is the higher, at the tradesman level and above. It submitted that such increases should be available on individual award variation,

consistent with the structural efficiency principle, in the first half of 1989/90. It sought further increases of the same order to be available in the second half of 1989/90 and paid no less than 6 months and no more than 7 months after the first increases. It also sought the provision of a mechanism whereby higher increases might be achieved on a limited basis to meet special circumstances.

These claims were consistent with an agreement between the ACTU and the Commonwealth, reached on 7 April 1989, and were supported by the Commonwealth in these proceedings. They were also supported by the Governments of Victoria, Western Australia, South Australia, Tasmania, the Australian Capital Territory and by the Metal Trades Industry Association of Australia (MTIA), the Australian Federation of Construction Contractors, the Master Builders' - Construction and Housing Association Australia Inc., the Plumbing Employers Industrial Secretariat and the Fire Sprinkler Contractors' Association of Australia.

The Confederation of Australian Industry (CAI) opposed the ACTU claims and argued that the maximum increase in award rates "should be in the region of two and a half to 3 per cent, but certainly not exceeding 3 per cent". It submitted that such a figure was in line with the trend rate in productivity growth and was the maximum sustainable increase, consistent with moderating inflation, which would not further damage Australia's international competitiveness. CAI argued further that the increase should be in a percentage form; be established as a maximum for each award; be available in at least two instalments; and should not precede implementation of the results of individual structural efficiency exercises.

The Australian Mines and Metals Association (Inc.) (AMMA) and the Governments of New South Wales and the Northern Territory supported the thrust of the CAI submissions in relation to the appropriate amount of wage adjustment. In addition New South Wales argued that if improvements did not turn out to be as effective as originally claimed the second instalment should be deferred, reduced or negated and further, that if unions fail to co-operate, the first instalment should be rescinded.

The Business Council of Australia (BCA) did not oppose wage increases on the completion of structural efficiency exercises. However, it did not propose a specific order of increase or a maximum increase. It argued rather that negotiations should be on an enterprise basis and that the parties "should themselves determine the magnitude of increases, the nature, strength and directness of linkages between wage rises and performance improvement and the timing of increases". It saw the ultimate objective as being the reduction of the gap between Australian and overseas "wage inflation" and the need, consistent with that objective, for "smaller wage rises or wage rises which flow through more slowly or a combination of both".

4

NATIONAL WAGE CASE AUGUST 1989

The Queensland Government submitted that wage adjustments at this time would not be consistent with economic requirements. However, it accepted that an increase could be approved if the Commission was satisfied that significant progress had been made towards restructuring a particular award and that any initial increase should be commensurate with the assessed value of the resultant productivity increase. Any subsequent increase or increases would depend on the completion of negotiations in satisfaction of the structural efficiency principle.

The Australian Chamber of Commerce also opposed the ACTU claim and submitted that the maximum wage increase allowable in view of the economic situation was 2% for the year 1989/90.

The National Farmers' Federation (NFF) submitted that the economic evidence provided no justification for awarding wage increases during the year 1989/90. As to the period beyond June 1990, it proposed that the Commission should further review the state of the national economy in May 1990. The Australian Wool Selling Brokers Employers Federation supported and endorsed

the thrust of the NFF's submission.

STRUCTURAL EFFICIENCY ADJUSTMENT

This case was conducted against an economic background that should concern all Australians. As the Commonwealth put it:

"On the economic front Australia's external imbalances remain serious and wages policy must continue to play a key part in addressing them. The current account deficit and associated external debt remain pre-eminent economic problems. Growth in demand has been much stronger than expected, resulting in inflationary pressures, a delay in expected improvements to the current account deficit and increases in Australia's external debt. Controlling demand pressures and getting the medium term adjustment process back onto track are central objectives of government policy.

They will require among other things reducing inflationary pressures, improving our international competitiveness, and raising productivity while avoiding a wages explosion and recession. This in turn calls for continuing nominal wage restraint as part of an integrated package of accord policies including concerted action to improve labour market flexibility and productivity on a sustained basis."(8)

This view of the state of the economy has much in common with the conditions discussed by the Commonwealth during the National Wage Case which led to the decision of 10 March 1987. The Commission then noted:

"In these proceedings the Commonwealth expressed succinctly the economic predicament Australia faces. It said:

'Correction of the imbalances that have developed in Australia's external accounts is necessary. If this is not done, the economy runs the risk of becoming enmeshed in a vicious circle of exchange rate depreciation, mounting inflation and deepening external imbalances.

-

(8)transcript, p.161

NATIONAL WAGE CASE AUGUST 1989

5

This would result in an erosion in overseas and domestic confidence in the economy's future, seriously undermining private investment, economic activity and employment. The current account deficit would eventually be reduced, but at a cost of a deep recession in the economy.'"(9)

At that time all parties to the proceedings accepted that Australia's economic performance had to be improved. It was the decision of 10 March 1987 that provided the restructuring and efficiency principle which was designed to accelerate the contribution that parties to awards could make to improve Australia's economic performance.

The period both immediately before and after that decision has seen substantial real wage restraint; an improvement in the relative labour costs and inflation rates as between Australia and its international competitors; reduced industrial disputation; a very substantial rise in employment; high capacity utilisation; a high level of profits; a high level of investment; and rapid growth.

In spite of the improvements in the domestic economy the comments quoted above from the March 1987 National Wage Case decision seem even more appropriate today than they were then. That this is so is of great concern. There is no doubt that labour market reform and, in particular, award wage restraint have over recent years contributed positively to the rapid growth in many sectors of the economy. That contribution has clearly not been matched in other areas because fundamental imbalances have continued and, in terms of external markets, have worsened.

Micro-economic adjustments and wage reform in particular are medium to longer term options which cannot be expected to provide a substitute for alternative macro-economic policy options. Nevertheless it is also apparent that continued efficiencies and improvements in labour flexibility as well as ongoing wage restraint will remain necessary. The structural efficiency principle will maintain the process started in 1987 but it is clearly not the only answer to Australia's international economic difficulties.

Given the excessive level of imports, a fall-off in the level of export growth, the deterioration in the current account, a serious and continual deterioration in the balance of payments, the level of international debt, high interest rates, and renewed concerns about inflation, there are substantial economic grounds for rejecting any notion of wage increases at the present time.

There are however many interrelated elements involved in the work environment and economic considerations cannot be taken in isolation. Indeed to do so could bring about a perverse situation which may compound rather than reduce the economic difficulties.

Ultimately the test is not the pursuit of what is perfect in the abstract, but what is the best outcome which is workable and sustainable immediately and over the medium and longer term. Further, there are both economic and non-economic considerations which point to an alternative conclusion. These include:

- . the movement in prices and in particular the erosion of the real value of wages;

(9)Print G6800, p.32

6 NATIONAL WAGE CASE AUGUST 1989

- . the effect on employees of high interest rates;
- . the level of capacity utilisation and company profits;
- . the tight labour market as reflected in employment and unemployment statistics, labour shortages, and overtime and vacancy data;
- . the attitudes of governments and private employers in increasing management and executive salaries, and overaward payments in current economic circumstances;
- . the agreement between the ACTU and the Commonwealth;
- . support for that agreement by a number of state governments;
- . the attitude of some large employer organisations and their membership covering a substantial number of individual employers in a number of industries;
- . the expectations created by the agreement of the ACTU and the Commonwealth, and the support of state governments, the ACT and some major employers for that agreement;
- . the current level of industrial disputes;
- . the fact that commercial considerations, attitudes to comparative wage justice, the structure of trade union and employer organisations and the structure of awards remain fundamentally unchanged from the periods of earlier wage breakouts; and
- . the importance of attaining the objectives of the structural efficiency principle.

These are factors that we record as matters that must bear on our decision. In varying degrees they were recognised by the parties but, in their essentials, they were summarised by MTIA in describing the basic reasons for

its proposed agreement with the Metal Trades Federation of Unions (MTFU). MTIA said:

"Firstly, the metal and engineering industry has an earnest, indeed it could be said to be, a passionate desire to become internationally competitive. If we do not, the manufacturing industry in this country faces a bleak future.

Secondly, an essential element in the quest for competitiveness is labour market reform. There is unanimity that the operation of our labour market is a substantial hindrance to improved efficiency and productivity.

Thirdly, given the institutional framework we operate in, which includes a powerful and influential trade union movement which has achieved an agreement with the Federal Government on wage outcomes in 1989/90, and given the explosive pressures on wages caused by labour shortages, cuts in real wages over the last six years and current high interest rates, MTIA accepts the reality that we are not going to achieve the reforms that we so desperately need at a neutral cost in the short term.

NATIONAL WAGE CASE AUGUST 1989

7

Fourthly, given what we have been able to achieve in our agreement on award restructuring, MTIA members, those who have to pay the wage increases, have overwhelmingly endorsed the agreement.

And, fifthly, MTIA disagrees with the view expressed by some organisations that there is no risk of a wages explosion. We see it as a very real probability, a probability we have no desire to test. But we do not have to test it. Here, we have an opportunity to manage the wages outcome and at the same time, commence to implement our program of workplace reform."

MTIA represents employers covered by over 350 federal awards, 82 New South Wales State awards, 29 Victorian State awards, 72 Queensland State awards and 41 South Australian State awards.

In light of all the factors we have referred to we have come to the conclusion that we must reject the submissions of those who argued that there are no grounds to justify wages increases during the year 1989/90.

To achieve the goals sought, the structural efficiency principle must increase flexibility by changing employment conditions, work patterns, employee mobility, education and training. These cannot be achieved without some cost to employers and it is unrealistic to suggest otherwise in the current environment.

We also reject the view of the BCA that no ceiling should be imposed: to accept such a proposal would be to risk economically unsustainable wage increases. Furthermore, we do not accept that the 3% ceiling advocated by CAI is practicable in light of the countervailing factors we have mentioned.

The ACTU and the Commonwealth contended that the increases proposed, properly applied, would not exceed the objective of a 6.5% increase in average weekly earnings in 1989/90. On the other hand, CAI, BCA and NFF, on the basis of differing estimates, contended that the effect would be much higher. The main area of difference between the ACTU and these organisations lay in their individual estimates of the effect of wage increases still flowing through the system. On the basis of the material and analysis put to us, we have concluded that the employer organisations have overestimated those effects.

In all these circumstances we are satisfied that the proposal put by the ACTU and the Commonwealth is capable of being limited to the level of increase in average weekly earnings which is contemplated. We have decided to adopt this proposal for the purposes of the structural efficiency adjustment.

Consequently it is our decision that an adjustment in rates of pay will be allowable for completion of successful exercises under the structural efficiency principle. Such an adjustment will

comprise:

(i) a first increase of \$10.00 per week for workers at the basic skills/trainee level; \$12.50 per week at the semi-skilled worker level; and \$15.00 per week or 3%, whichever is the higher, at the tradesman or equivalent level and above; and

(ii) a second increase of the same order as the first increase, to be paid not less than 6 months after the first increase.

8

NATIONAL WAGE CASE AUGUST 1989

A number of factors are relevant to the likely labour cost impact of this decision. These include:

. dates of operation of award variations;

. the extent to which translation arrangements from the old to new classification structures and their timing result in actual wage increases;

. the extent to which any increases over and above the structural efficiency adjustment are allowed;

. the extent of wages drift; and

. productivity improvements induced as a consequence of the structural efficiency principle.

Our view on each of these matters is as follows.

We have decided that the first increase should be accessible from the date of this decision. However, the actual date of operation for an award will be the date on which that award is varied following examination by the Commission of the proposals for restructuring and the giving of commitments. The second increase will not be automatic but subject to application.

This is consistent with the submission of the Commonwealth that the taxation and social wage measures being implemented as part of the ACTU/Commonwealth Agreement would "allow a much needed breathing space for the development of genuine award restructuring initiatives, thereby consolidating the new directions in wage fixing laid down by the Commission".(10)

We expect that many structural efficiency exercises will involve new classification structures. In those cases the parties to particular awards will need to apply specific procedures governing the translation of workers from the old to the new structure. This in turn demands that the new classification structure levels be clearly defined. In this connection we note that the MTIA/MTFU Agreement provides for a trial of the new classification structure before award changes are made. This is a sensible procedure and we consider that it should be adopted by other award parties, particularly where an award covers a substantial number of individual employers and establishments.

It is our intention that the translation of workers to new classification structures in the various awards should occur with little cost impact apart from that resulting from the structural efficiency adjustment. In this connection the ACTU stated:

". . . any award wage increases in terms of movement from the old to the new classification would be subject to absorption, subject to receipt of the restructuring adjustment as an actual rate increase".(11)

When the structural efficiency exercise involves reducing the number of award classifications by broadbanding and multi-skilling, it is important that the intent of the broadbanding and multi-skilling be effectively implemented. Hence workers should not be placed in a classification unless they have the training and experience necessary to perform the full range of the functions comprehended by the new classification and are actually required to perform those functions. Consequently the parties should ensure that sufficient time is provided for immediate training needs and, where necessary, on the job experience before finalising the translation of existing employees to

classification structure.
In moving to the new classifications the parties should consider stepped wage increases up to the new classification levels.

Furthermore, we believe that the second instalment of the structural efficiency adjustment should only be available if the Commission is satisfied that the principle has been properly implemented and will continue to be implemented effectively. In this regard, our comments concerning the need for a wider agenda in the special case decisions dealing with the Telecom/APTU Award 1986(12) and the Aircraft Industry (Domestic Airlines) Award 1980(13) should be noted.

The conclusions of this Full Bench in relation to the operation of the other wage fixing principles and special cases should mean that increases from these sources are also limited.

We have particular concern about wages drift which has increased in recent months. While annual growth in award rates remains below 5%, average weekly earnings growth is currently running at just under 7%. The reason for this is not readily discernible but compositional changes in the workforce, the growth in managerial and executive salaries and the granting of overaward payments by employers would all have contributed. Too many employers still persist with their own form of market adjustment of wages based on area rates surveys. Such surveys and the actions that invariably follow them are a recipe for wage breakouts. They have been instrumental in encouraging employers to participate in a type of area wages ranking system with an in-built and continuing escalation effect which has aptly been described as a spiral of nonsense. This practice is contrary to both the spirit and purpose of the wage fixation principles and encourages workers to break the commitments to those principles made by their unions on their behalf.

Compositional change in the workforce is unremarkable and desirable in a dynamic and growing community. However, over-fast growth in managerial and executive salaries and overaward payments inconsistent with the wage fixation principles inhibit attempts to maintain wage restraint. Simple commonsense, apart from equity, dictates that employers should not attempt to apply two sets of rules within their workforce. The nature of the structural efficiency principle and its potential to induce productivity improvement, its requirement for positive, co-operative effort by both employer and worker and the workers' unions, and the trade union movement's commitment to the wage fixation system demands that employers also scrupulously comply with the principles.

Providing the implementation of the award changes proceed in accordance with this decision, we consider the decision will not adversely affect the economy in the short term and will in time, assist in achieving improved economic performance. The major success in the economy in the past 5 years has been the creation of over a million new jobs. While this is expected to stabilise as a consequence of current policies, no immediate or significant increases in unemployment are anticipated as a direct result of this decision. We anticipate that the results will also be consistent with a reduction in inflation in the medium to longer term.

A final comment must be made on structural efficiency adjustment. Notwithstanding our affirmation in the February 1989 Review decision that there was no limitation imposed on the agenda available for structural efficiency exercises, we are concerned that conditions of employment have not been included in negotiations as a matter of course. Indeed, it was asserted by some employers that in a number of cases, restrictions had been placed on the restructuring agenda.

It will be recalled that in the August 1988 decision the Commission said that

"The measures to be considered should include but not be limited to:

- . establishing skill-related career paths which provide an incentive for workers to continue to participate in skill formation;
 - . eliminating impediments to multi-skilling and broadening the range of tasks which a worker may be required to perform;
 - . creating appropriate relativities between different categories of workers within the award and at enterprise level;
- and
- . ensuring that working patterns and arrangements enhance flexibility and the efficiency of the industry."

In relation to the last measure in particular we are of the view that many awards have scope for a less prescriptive approach and, without limiting the opportunities for innovation, the following are some of the measures which are appropriate for consideration:

- . averaging penalty rates and expressing them as flat amounts;
- . compensating overtime with time off;
- . flexibility in the arrangement of hours of work, for example:
 - wider daily span of ordinary hours
 - shift work, including 12 hour shifts
 - ordinary hours to be worked on any day of the week
 - job sharing;
- . introducing greater flexibility in the taking of annual leave by agreement between employer and employee;
- . rationalising the taking of annual leave to maximise production;
- . reviewing the incidence of, and terms and conditions for, part-time employment and casual employment;
- . reducing options for payment of wages other than by electronic funds transfer;
- . extending options as to the period for which wages must be paid to include fortnightly and monthly payment;
- . changes in manning consistent with improved work methods and the application of new technology and changes in award provisions which restrict the right of employers to manage their own business unless they are seeking from the employees something which is unjust or unreasonable;
- . reviewing sick leave provisions with the aim of avoiding misuse; and
- . developing appropriate consultative procedures to deal with the day to day matters of concern to employers and workers.

In addition, we consider that the following matters should be placed on the agenda for the better administration of awards:

- . updating and/or rationalising the list of award respondents; and
- . rationalising the number of awards covering any one employing body.

Proposals for changes of this nature should not be approached in a negative cost-cutting manner and should as far as possible be introduced by agreement.

MINIMUM RATES ADJUSTMENTS

In its February 1989 Review decision, the Commission stated:

"The fundamental purpose of the structural efficiency principle is to modernise awards in the interests of both employees and employers and in the interests of the Australian community: such modernisation without steps being taken to ensure stability as between those awards and their relevance to industry would, on past experience, seriously reduce the effectiveness of that modernisation."

The Commission went on to endorse in principle the approach proposed by the ACTU. That meant minimum rates awards would be reviewed:

"to ensure that classification rates and supplementary payments in an award bear a proper relationship to classification rates and supplementary payments in other minimum rates awards".

In these proceedings, the ACTU sought specific endorsement of the following classification rates and supplementary payments:

Supplementary Classification	Minimum classification	
	rate	rate
\$	\$	
Building industry tradesperson	356.30	50.70
Metal industry tradesperson	356.30	50.70
Metal industry worker, grade 4	341.90	48.80
Metal industry worker, grade 3	320.50	45.80
Metal industry worker, grade 2	302.90	43.10
Metal industry worker, grade 1	285.00	40.60
Storeperson	325.50	46.50
Driver, 3-6 tonnes	325.50	46.50
Filing clerk - 1st year	337.00	38.00
28.00		
- 2nd year	337.00	38.00
- 3rd year		
337.00	48.00	
General clerk - 1st year	354.40	30.60
- 2nd year		
354.40	40.60	
- 3rd year	354.40	50.60

The Commission was informed that these rates and the relationships they bear to each other had been endorsed collectively by the trade union movement after long deliberation; they were also supported by the agreement made by the ACTU and the Commonwealth. It was argued that they would provide a firm base for sustainable relationships across federal awards and thus provide a stable base for wage fixation.

The resolution of the issues in this part of the case was not made any easier by the reluctance of the various employer organisations to fully debate the major issues raised by the February 1989 Review decision. Employers generally took the view that no substantial problem existed, but alternatively, if any problem did exist, there were other ways of dealing with it.

The employers argued that the cost of implementing the decision would be substantial and, indeed, prohibitive given the current economic situation. CAI tendered the results of a survey it had conducted to show that a significant proportion of workers either received no overaward payments or were paid relatively small overawards. CAI argued that this survey showed that ACTU estimates based on broad Australian Bureau of Statistics figures understated the incidence of such workers. MTIA also tendered the results of a survey of 200 members to show a similar result.

We do not intend to analyse those surveys in this decision. Suffice to say that, while they might be open to criticism for their methodology, we acknowledge

that the results are consistent with a broad view that there are a substantial number of workers who receive very little or no overaward

payments. We also accept that this is a significant element in assessing the possible cost impact of these adjustments which were approved in principle in the Commission's decision in the February 1989 Review.

The employers submitted that proper relationships could not be established between awards until new classification structures and definitions were established. They also argued that the Commission should not adopt what were said to be the unilateral, arbitrary assessments put forward by the ACTU as to appropriate relativities between the classifications in key awards.

Finally, the employers submitted that, notwithstanding trade union commitment on absorption of these adjustments where applicable, both the nature and practices of industrial relations in industry and past experience meant that the prospect of actual absorption had to be doubtful.

Without firm guidance on appropriate relativities, individual structural efficiency exercises could create situations which would not only continue but possibly worsen the very position that is required to be rectified. For this reason we reject the proposition that the question of relativities should be left completely until the details of structural efficiency exercises are completed.

Subject to what we say later in this decision, we have decided that the minimum classification rate to be established over time for a metal industry tradesperson and a building industry tradesperson should be \$356.30 per week with a \$50.70 per week supplementary payment. The minimum classification rate of \$356.30 per week would reflect the final effect of the structural efficiency adjustment determined by this decision.

Minimum classification rates and supplementary payments for other classifications throughout awards should be set in individual cases in relation to these rates on the basis of relative skill, responsibility and the conditions under which the particular work is normally performed. The Commission will only approve relativities in a particular award when satisfied that they are consistent with the rates and relativities fixed for comparable classifications in other awards. Before that requirement can be satisfied clear definitions will have to be established.

We are not prepared to approve specific wage relativities proposed by the ACTU on behalf of the trade union movement. Nevertheless, we consider it

NATIONAL WAGE CASE AUGUST 1989

13

appropriate for relativities to be established for both minimum classification rates and supplementary payments for the following key classifications within the ranges set out below:

% of the	tradesperson rate
Metal industry worker, grade 4	90-93
Metal industry worker, grade 3	84-88
Metal industry worker, grade 2	78-82
Metal industry worker, grade 1	72-76
Storeman/packer	88-92
Driver, 3-6 tonnes	88-92

In some cases, existing minimum classification rates will already contain an element of overaward payment which should more properly be included as part of the supplementary payment. This will require appropriate adjustment. Similarly, existing minimum classification rates may contain amounts for disabilities and these should be separately expressed.

It will be noted that with the exception of the clerical classifications, we have indicated a range of relativities between the key tradespersons and the other classifications which were the subject of debate. The material available on clerical rates was inadequate to permit the establishment of a similar range of relativities. Furthermore, the ACTU proposed relativities for a number of other

classifications in a range of industries, but these too were accompanied by insufficient material to permit any conclusions.

In light of this decision it will no longer be necessary to conduct surveys in relation to overaward payments in individual award areas.

To achieve a proper and lasting reform of awards it is essential that the structural efficiency exercise and the proper fixation of minimum award rates be treated as a package. We are also conscious of the fact that:

(i) the minimum rates adjustment exercise can in itself cause a significant cost impact if the positive co-operation of both

workers and employers so necessary to underwrite the exercise is found to be lacking; and

(ii) the minimum rates adjustment exercise could detract from the benefits to be obtained from the structural efficiency principle if priority is not given to that principle.

In making these observations, we are not overlooking the commitments that the ACTU has been authorised to give on behalf of the trade union movement.

However, bearing in mind the statutory injunction of [s.90](#) of the [Industrial Relations Act 1988](#) and the importance to the community of success in this endeavour, we determine that the minimum classification rate and supplementary payment exercise shall be applied in accordance with the following guidelines:

(i) the appropriate adjustments in any award will be applied in not less than four instalments which will become payable at six monthly intervals;

(ii) in appropriate cases longer phasing in arrangements may be approved or awarded and/or parties may agree that part of a supplementary payment should be based on service. In this connection the ACTU stated: "It is recognised by the ACTU that in some industries an amount of between \$8.00 to \$10.00 supplementary payment might be appropriately paid after three months service";

14 NATIONAL WAGE CASE AUGUST 1989

(iii) the first instalment of these adjustments will not be available in any award prior to 1 January 1990 or three months after the variation of the particular award to implement the first stage structural efficiency adjustment, whichever is the later;

(iv) the second and subsequent instalments of these adjustments will not be automatic and applications to vary the relevant awards will be necessary;

(v) consistent with the commitments given by the ACTU in these proceedings, individual unions will be required to accept absorption of these adjustments to the extent of equivalent overaward payments;

(vi) supplementary payments will not be prescribed in the wages clauses of awards but in separate clauses; and

(vii) where the existing minimum classification rate in an award exceeds the minimum rate for that classification assessed in accordance with this decision, the excess amount is to be prescribed in a separate clause: that amount will not be subject to adjustment.

The Commission will conduct a review of the progress of both structural efficiency and minimum rates adjustment exercises in May 1990.

On the submissions we heard in this case, there must be concern about the concept of absorption. We emphasise that absorption requires discipline on the part of both employers and unions and, in the May 1990 Review, the Commission will make detailed inquiry of both employer and union parties in order to check actual practice.

We cannot overemphasise the importance of successfully applying

the structural efficiency principle and the minimum rates adjustment process. These exercises provide an opportunity for the parties to display the maturity required to overcome the wage instabilities with which the community is only too familiar. It also provides the opportunity to take an essential step towards institutional reform which is a prerequisite to a more flexible system of wage fixation. As part of that future we envisage that minimum classification rates will not alter their relative position one to another

unless warranted on work value grounds. On the other hand it is our expectation that supplementary payments might vary as between industries, industry sectors, individual employers or on a geographic or some other basis.

Finally, the inclusion of, and increase in, supplementary payments which form part of the exercise is designed, inter alia, to assist those "employees covered by minimum rates awards who have suffered from the inequities of the present system due to the level of their award rates and their lack of substantial overaward payments".(14) However, the unions cannot expect to have supplementary payments included in awards to compensate for the lack of overaward payments for some employees and conduct overaward campaigns for others. To this extent the inclusion of supplementary payments in awards is a concomitant of the no extra claims commitment.

As was stated in the February 1989 Review decision, the alternative to the parties not seizing these opportunities and making them work is:

"the Commission may be left with little choice but to resort to strict prescription of minimum rates only".

(14)Print H8200, p.5

NATIONAL
WAGE CASE AUGUST 1989 15
PAID RATES AWARDS

For a considerable period of time, the complex issue of paid rates awards and their interaction with minimum rates awards has been an ongoing problem. The complexity has arisen not merely because paid rates awards have been adjusted from time to time on the basis of market movements while, generally speaking, minimum rates awards have not. Although this has changed somewhat with the granting in recent times of supplementary payments there are

other problems. For example, the timing of the review of paid rates awards; the market that is relevant to that review; and the appropriate position in that market. Moreover, changes in paid rates award prescriptions invariably have an immediate impact on the market used as the reference point, a market that may and normally includes both other paid rates and minimum rates awards.

Again, problems of relativities have arisen where a particular paid rates award has been adjusted and this has affected workers in other areas, and other groups of workers in the same industry, industry sector or employing body.

The issue was discussed, albeit briefly, in the February 1989 Review and in its decision of 25 May 1989 the Commission, while drawing no final conclusions, commented that "On recent experience there are grounds for doubting the wisdom of attempting to maintain paid rates awards in the private sector".

In the current proceedings only brief submissions were put on this subject and these for the most part could be categorised mainly as expressions of interest by some parties for the retention of paid rates awards rather than a debate as to their efficacy and means of overcoming the problems they create.

In view of this a Full Bench will be constituted in due course for the purpose of hearing further argument about the future of paid rates awards. In those proceedings, parties will be expected to address, inter alia, the following matters:

(i) whether any new paid rates awards should be made;

(ii) whether the parties to existing paid rates awards, both in the

private and public sectors, should be required within a given period to apply for cancellation of their existing paid rates awards and their replacement with agreements certified under s.115 of the Act;

(iii) the basis on which rates of pay in paid rates awards or s.115 agreements should be assessed;

(iv) whether paid rates awards or s.115 agreements should only be approved where they cover all workers in an establishment conducted by a single employer; and

(v) whether paid rates awards or s.115 agreements within an industry or industry sector should only be reviewed collectively so as to ensure proper attention is given to internal relativities.

Pending the outcome of the foreshadowed Full Bench proceedings we have determined in relation to paid rates awards that:

. except in special cases, the Commission will not make new paid rates awards;

16 NATIONAL WAGE CASE AUGUST 1989

. it is no longer appropriate to apply the decision in the General Motors-Holden's Limited and Ford Australia Ltd Case, of awarding:

"an increase to restore to the rates under the awards the relationship which they had when established vis-a-vis rates actually paid for similar work in industries located near the establishments of these two companies."(15)

. rates in paid rates awards should not be fixed at a level which would affect the rates for other workers;

. paid rates awards or agreements should contain clear classification definitions;

. statutory declarations will be required from all parties involved to the effect that the integrity of those awards or agreements will be preserved;

. if breached, paid rates awards should be discontinued and appropriate minimum rates should be prescribed;

. no increase at the base rate which is greater than the structural efficiency adjustment will be allowed in a paid rates award; and

. subject to special cases, no special adjustment may be approved of the creation of a proper career structure through structural efficiency.

An agreement which adopts paid rates, and in respect of which the parties seek certification under s.115 of the Act, will be subject to the foregoing requirements.

SPECIAL CASES

Both the ACTU and the Commonwealth contended that increases beyond those generally available for structural efficiency may be approved in special cases, provided that the cases are processed through a special case mechanism and provided there is negligible cost or it can be demonstrated that it should be approved on public interest grounds.

It was generally accepted that applications said to fall into the category of special cases must be dealt with at the same time as, and in the context of, the application of the structural efficiency principle.

We have decided that all special cases should be tested against other relevant principles at the same time as the structural efficiency principle is being applied. We consider also that where a special case is claimed, it should be the subject of an application for reference pursuant to s.107 of the Act. It will then be a matter for the President to decide whether it should be dealt with by a Full Bench.

We recognise that there might be some workplaces where the objectives of the structural efficiency principle have already been achieved and there is no scope for further efficiency improvements. We would expect such instances to be rare. However, any such instances may be processed as special cases.

REQUIREMENTS FOR SUCCESS

Having regard to the material before us, in particular the evidence of increases still passing through the system, the amount proposed as a result of

(15)Print E7273; (1981) 260 CAR 3

NATIONAL WAGE CASE AUGUST 1989

17

these proceedings, and the increase in disposable incomes made available by the recent cuts in income tax, there are additional important requirements if the package is to achieve its aims.

First, to achieve the result expected, wage increases must be carefully phased-in in accordance with this decision.

Second, wages drift will need to return to lower levels. This can be achieved if employers actively support the consistent application of the principles. These principles provide that movements in wages and salaries and improvements in conditions - whether they occur in the public or private sector, whether they be award or overaward, whether they result from consent or arbitration - must fall within the limits established by this decision. We have already alluded to the difficulties created by employers applying differing rules to different people.

Further, it is fundamental to success that the unions make and keep the following commitments:

- . commitment to new award structures including the reform of awards into base rates and supplementary payments;
- . commitment to acceptance of the broad award framework and the relationships established;
- . acceptance of classification change and new job specifications;
- . preparedness to undertake training associated with a wider range of duties; and
- . absorption of increases arising out of the minimum rates adjustment.

A no extra claims commitment from each union will also be required before the benefits of this decision are available.

We note that the ACTU stated that the unions were prepared to absorb increases other than the structural efficiency adjustment. We are satisfied that the ACTU accepts that if these commitments are not met, the wages package cannot be sustained and the drive to reform the system will founder.

Further, if any union, or a group or class of its members, refuses to give the necessary commitments or indicates by its conduct that it is not prepared to work within the framework of the principles, then that union or a group or class of its members should not receive any benefits from this package.

There is also a need for consistency in approach on the part of all tribunals, Commonwealth and State. As noted in the February 1989 Review decision:

"In many instances, employees in the same industry or enterprise may be bound by a mixture of federal and State awards and experience has shown that care must be taken to ensure that appropriate relativities are maintained in decisions of the relevant tribunals."

and further,

"In order to guard against industrial disputation and inappropriate wage outcomes, this Commission will utilise the co-operative powers available to it under Part VII of the Act and will continue to pursue the objective of achieving a consistent approach."

18 NATIONAL WAGE CASE AUGUST 1989

INCENTIVE SCHEMES

In the 1989 Review a number of parties "raised the issue of treatment of profit sharing, performance based systems of pay and payment by results schemes in awards". In that decision the Commission said:

"Our initial reaction is that such schemes can only operate in minimum rates awards without supplementary payments. However, the issue was not extensively debated in these proceedings and we therefore are not prepared to make a final determination without giving the parties the opportunity of addressing it in more detail."(16)

Debate in these proceedings again fell short of the detail which is necessary to make a final determination. Nevertheless, we are of the opinion that current payment by results schemes should continue to be part of the award structure and:

- . it is essential that workers covered by such a scheme be subject to the protection of prescribed minimum rates plus supplementary payments for the work involved;
- . additional payments derived from payment by results schemes should be absorbed into supplementary payments; and
- . supplementary payments should not be used for the calculation of payment by results (although the re-expression of an existing base rate in an award as a minimum classification rate and a supplementary payment should not have the effect of prejudicing employees subject to existing incentive schemes).

THE PRINCIPLES

During the proceedings, the relationship between the structural efficiency principle and the other wage fixing principles was debated. In light of that debate, we have decided that:

- (i) structural efficiency exercises should incorporate all past work value considerations;
- (ii) any extensions of existing awards to include new classifications should form part of the structural efficiency exercises;
- (iii) claims based on anomalies and/or inequities will continue to be treated as special cases;
- (iv) there is no separate role for the operation of a supplementary payments principle; and
- (v) claims for new allowances will be dealt with in accordance with the relevant portion of the allowances principle but, consistent with this decision, existing work-related allowances may be increased by up to 3% at the time of each instalment of the structural efficiency adjustment.

As a consequence of this decision, the existing principles require amendment. Those amended principles are set out in Appendix A to this decision.

(16)Print H8200, p.9

1989 NATIONAL WAGE CASE AUGUST
19

NO EXTRA CLAIMS COMMITMENT

As noted earlier, each union will be required to give a no extra claims commitment before the benefits of this decision are available. That commitment

shall be inserted into the award concerned
in the following terms:

"It is a term of this award (arising from the decision of the Australian
Industrial Relations
Commission in the National Wage Case of 7 August
1989 the terms of which are set out in Print H9100) that the union(s)

undertake(s), for the duration of the principles determined by that
decision, not to pursue any extra claims, award or
overaward, except
when consistent with those principles."

The commitment will continue to operate until the principles
as amended
in this decision are reviewed. Upon application, that Review will commence in
September 1990.

20

NATIONAL WAGE CASE AUGUST 1989

APPENDIX A

THE PRINCIPLES

These principles have been developed with the aim of providing, for
their period
of operation, a clear framework under which all concerned -
employers, workers and their unions, governments and tribunals - can

co-operate to ensure that labour costs are monitored; that measures to meet
the competitive requirements of industry and to provide
workers with access to
more varied, fulfilling and better paid jobs are positively examined; and that
lower paid workers are protected.

The principles provide that movements in wages and salaries and
improvements in conditions - whether they occur in the
public or private
sector, whether they be award or overaward and whether they result from
consent or arbitration - must fall within
the level allowable in accordance
with the National Wage Case decision of 7 August 1989.

In considering whether wages and
salaries or conditions should be
awarded or changed for any reason either by consent or arbitration, the
Commission will guard
against contrived arrangements which would circumvent
these principles and their aims.

COMMITMENT

Any claims for improvements
in pay and conditions must be processed in
accordance with these principles. No adjustments will be approved by the
Commission
unless a union concerned in an award gives a commitment that it
will not pursue any extra claims, award or overaward, except in
compliance
with these principles.

When this no extra claims commitment is given, it shall be inserted in
the award concerned
in the following terms:

"It is a term of this award (arising from the decision of the Australian
Industrial Relations
Commission in the National Wage Case of 7 August
1989 the terms of which are set out in Print H9100) that the union(s)

undertake(s), for the duration of the principles determined by that
decision, not to pursue any extra claims, award or
overaward, except
when consistent with those principles."

WAGE ADJUSTMENTS

1. Structural Efficiency Adjustment

There will be allowable under these principles:

- (i) a first increase of \$10.00 per week for workers at the basic
skills/trainee level; \$12.50 per week at the semi-skilled worker
level; and \$15.00 per week or 3%, whichever
is the higher, at the
tradesman or equivalent level and above;
- (ii) a second increase of the same order as
in (i) above to be paid not
less than 6 months after the first increase;
- (iii) the first increase will be accessible
from 7 August 1989 but the
actual date of operation for an award will be the date on which
that award is

varied in accordance with the National Wage Case decision of 7 August 1989; and

(iv) the second increase will not be automatic, but subject to application.

NATIONAL WAGE CASE AUGUST 1989

21

2. Minimum Rates Adjustment

Minimum rates adjustments allowable in the National Wage Case decision of 7 August 1989 shall be in accordance with the following:

(i) the appropriate adjustments in any award will be applied in not less than 4 instalments which will become payable at 6 monthly intervals;

(ii) in appropriate cases longer phasing-in arrangements may be approved or awarded and/or parties may agree that part of a supplementary payment should be based on service;

(iii) the first instalment of these adjustments will not be available in any award prior to 1 January 1990 or 3 months after the variation of the particular award to implement the first stage structural efficiency adjustment, whichever is the later;

(iv) the second and subsequent instalments of these adjustments will not be automatic and applications to vary the relevant awards will be necessary;

and

(v) acceptance of absorption of these adjustments to the extent of equivalent overaward payments is a prerequisite to their being applied in any award.

3. Special Cases

Any claim for increases in wages and salaries or improvements in conditions which exceed the maximum increases allowable under the National Wage Case decision of 7 August 1989 will be processed as a special case before a Full Bench of the Commission. Such cases should be considered in accordance with the structural efficiency and other relevant principles.

STRUCTURAL EFFICIENCY

Structural efficiency adjustments allowable under the National Wage Case decision of 7 August 1989 will be justified in accordance with this principle if the Commission is satisfied that the parties to an award have co-operated positively in a fundamental review of that award and are implementing measures to improve the efficiency of industry and provide workers with access to more varied, fulfilling and better paid jobs. The measures to be considered should include but not be limited to:

. establishing skill-related career paths which provide an incentive for workers to continue to participate in skill formation;

. eliminating impediments to multi-skilling and broadening the range of tasks which a worker may be required to perform;

. creating appropriate relativities between different categories of workers within the award and at enterprise level;

. ensuring that working patterns and arrangements enhance flexibility and the efficiency of the industry;

. including properly fixed minimum rates for classifications in awards, related appropriately to one another, with any amounts in excess of these properly fixed minimum rates being expressed as supplementary payments;

22

NATIONAL WAGE CASE AUGUST 1989

. updating and/or rationalising the list of respondents to awards;
and

. addressing any cases where award provisions discriminate against sections of the workforce.

Structural efficiency exercises should incorporate all past work value considerations.

WORK VALUE CHANGES

(a) Changes in work value may arise from changes in the nature of the work, skill and responsibility required or the conditions under which work is performed. Changes in work by themselves may not lead to a change in wage rates.

The strict test for an alteration in wage rates is that the change in the nature of the work should constitute such a significant net addition to work requirements as to warrant the creation of a new classification.

These are the only circumstances in which rates may be altered on the ground of work value and the altered rates may be applied only to employees whose work has changed in accordance with this principle.

However, rather than create a new classification it may be more appropriate in the circumstances of a particular case to fix a new rate for an existing classification or to provide for an allowance which is payable in addition to the existing rate for the classification. In such cases the same strict test must be applied.

(b) Where new or changed work justifying a higher rate is performed only from time to time by persons covered by a particular classification or where it is performed only by some of the persons covered by the classification, such new or changed work should be compensated by a special allowance which is payable only when the new or changed work is performed by a particular employee and not by increasing the rate for the classification as a whole.

(c) The time from which work value changes should be measured is the last work value adjustment in the award under consideration but in no case earlier than 1 January 1978. Care should be exercised to ensure that changes which were taken into account in any previous work value adjustments or in a structural efficiency exercise are not included in any work evaluation under this principle.

(d) Where a significant net alteration to work value has been established in accordance with this principle, an assessment will have to be made as to how that alteration should be measured in money terms. Such assessment should normally be based on the previous work requirements, the wage previously fixed for the work and the nature and extent of the change in work. However, where appropriate, comparisons may also be made with other wages and work requirements within the award or to wage increases for changed work requirements in the same classification in other awards provided the same changes have occurred.

(e) The expression "the conditions under which the work is performed" relates to the environment in which the work is done.

(f) The Commission should guard against contrived classifications and over-classification of jobs.

(g) Any changes in the nature of the work, skill and responsibility required or the conditions under which the work is performed, taken into account in assessing an increase under any other principle, shall not be taken into account in any claim under this principle.

ALLOWANCES

(a) Existing Allowances

(i) Existing allowances which constitute a reimbursement of expenses incurred may be adjusted from time to time where appropriate to reflect the relevant change in the level of such

expenses.

(ii) Existing allowances which relate to work or conditions which have not changed may be adjusted from time to time to reflect national wage increases, except where a flat money amount has been awarded, provided that shift allowances expressed in awards as money amounts may be adjusted for flat money amount national wage increases.

(iii) Existing allowances for which an increase is claimed because of changes in the work or conditions will be determined in accordance with the relevant provisions of the work value changes principle.

(b) New Allowances

(i) New allowances to compensate for the reimbursement of expenses incurred may be awarded where appropriate having regard to such expenses.

(ii) No new allowances shall be created unless changes in work have occurred or new work or conditions have arisen: where changes have occurred or new work and conditions have arisen, the question of a new allowance, if any, shall be determined in accordance with the relevant principle.

The relevant principle in this context may be work value changes or first awards and extensions to existing awards principle.

(c) Service Increments

(i) Existing service increments may be adjusted in the manner prescribed in (a)(ii) of this principle.

(ii) New service increments may only be allowed to compensate for changes in the work and/or conditions and will be determined in accordance with the relevant provisions of the work value changes principle.

SUPERANNUATION

(a) Agreements may be certified or consent awards made providing for employer contributions to approved superannuation schemes for employees covered by such agreements or consent awards provided those agreements or consent awards:

(i) operate from a date determined or approved by the Commission; and

(ii) do not involve the equivalent of a wage increase in excess of 3% of ordinary time earnings of employees.

24 NATIONAL WAGE CASE AUGUST 1989

(b) Where, following a claim for employer contributions to approved superannuation schemes for employees, the parties are unable to negotiate an agreement consistent with this principle, and conciliation proceedings before the Commission have also failed to achieve such an agreement, the Commission shall, subject to the provisions of the Act, arbitrate on that claim.

(c) The Commission will not grant retrospective operation for any matters determined in accordance with this principle.

(d) For the purposes of this principle, approved superannuation scheme means a scheme approved in accordance with the Commonwealth Operational Standards for Occupational Superannuation Funds.

STANDARD HOURS

(a) In dealing with claims for a reduction in standard hours to 38 per week, the cost impact of the shorter week should be minimised. Accordingly, the Commission should satisfy itself that as much as possible of the required cost offset is achieved by changes in work practices.

(b) Claims for reduction in standard weekly hours below 38, even with full

cost offsets, will not be allowed.

(c) Changes in work practices designed to minimise the cost of introducing shorter hours will not be a consideration for claims under any other principle.

CONDITIONS OF EMPLOYMENT

Except for the flow-on of test case provisions, applications for changes in conditions other than those provided elsewhere in the principles will be considered in the light of their cost implications both directly and through flow-on and must be processed in national wage case proceedings or before a specially constituted Full Bench.

ANOMALIES AND INEQUITIES

(a) Anomalies

(i) In the resolution of anomalies, the overriding concept is that the Commission must be satisfied that any claim under this principle will not be a vehicle for general improvements in pay and

conditions and that the circumstances warranting the improvement are of a special and isolated nature.

(ii) Decisions which are inconsistent with the principles of the Commission applicable at the relevant time should not be followed.

(iii) The doctrines of comparative wage justice and maintenance of relativities should not be relied upon to establish an anomaly because there is nothing rare or special in such situations and

because resort to these concepts would destroy the overriding concept of this principle.

(b) Inequities

(i) The resolution of inequities existing where employees performing similar work are paid dissimilar rates of pay without good reason, shall be processed through the Anomalies Conference and not otherwise, and shall be subject to all the following conditions:

NATIONAL WAGE CASE AUGUST 1989

25

(1) The work in issue is similar to the other class or classes of work by reference to the nature of the work, the level of skill and responsibility involved and the conditions under which the work is performed.

(2) The classes of work being compared are truly like with like as to all relevant matters and there is no good reason for dissimilar rates of pay.

(3) In addition to similarity of work, there exists some other significant factor which makes the situation inequitable. An historical or geographical nexus between the similar classes of work may not of itself be such a factor.

(4) The rate of pay fixed for the class or classes of work being compared with the work in issue is a reasonable and proper rate of pay for the work and is not vitiated by any reason

such as an increase obtained for reasons inconsistent with the principles of the Commission applicable at the relevant time.

(5) Rates of pay in minimum rates awards are not to be compared with those in paid rates awards.

(ii) In dealing with inequities, the following overriding considerations shall apply:

(1) The pay increase sought must be justified on the merits.

(2) There must be no likelihood of flow-on.

(3) The economic cost must be negligible.

(4) The increase must be a once-only matter.

(c) Procedure

Any claim made on the grounds of this principle shall be processed as a special case.

PAID RATES AWARDS

(a) Except in special cases, the Commission will not make new paid rates awards.

(b) In the making of a first paid rates award the conditions as provided in the first awards and extensions to existing awards principle must be complied with.

(c) Rates in paid rates awards should not be fixed at a level which would affect the rates for other workers.

(d) In assessing an adjustment in rates of pay in a paid rates award it is inappropriate to apply the General Motors-Holden's Limited and Ford Australia Ltd Case approach of:

"awarding an increase to restore to the rates under the awards the relationship which they had when established vis-a-vis rates actually paid for similar work in industries located near the establishments of these two companies".(17)

(17)Print E7273; (1981) 260 CAR 3

26 NATIONAL
WAGE CASE AUGUST 1989

(e) Subject to special cases, no special adjustment will be approved for paid rates awards which cannot be justified on the basis of the creation of a proper career structure through structural efficiency.

(f) In paid rates awards no increase at the base rate which is greater than the structural efficiency adjustment will be approved.

(g) The rates of pay prescribed by a new paid rates award must be expressed in terms of properly fixed minimum classification rates plus supplementary payments.

(h) Paid rates awards should contain clear classification definitions.

(i) Statutory declarations will be required from all parties to paid rates awards to the effect that the integrity of those awards will be preserved.

(j) If a paid rates award fails to maintain itself as a true paid rates award that award should be discontinued and replaced by a minimum rates award.

FIRST AWARDS AND EXTENSIONS TO EXISTING AWARDS

(a) In the making of a first award, the long established principles shall apply i.e. prima facie the main consideration is the existing rates and conditions.

(b) In the extension of an existing award to new work or to award-free work the rates applicable to such work will be assessed by reference to the value of work already covered by the award.

(c) In awards regulating the employment of workers previously covered by a state award or determination, existing rates and conditions prima facie will be the proper award rates and conditions.

(d) Where a first award is made it shall contain a minimum rate for each classification of employee covered by it. Where the total rate determined for each classification in accordance with (a) and (c) of this principle exceeds the appropriate minimum rate for that classification, the excess amount shall be prescribed as a supplementary payment. For the purposes of this paragraph, the appropriate minimum

rate will be assessed by comparison with similar classifications in other minimum rates awards.

ECONOMIC INCAPACITY

Any respondent or group of respondents to an award may apply to reduce and/or postpone the application of any increase in labour costs determined

under the principles on the ground of very serious or extreme economic adversity. The merit of such application shall be determined in the light of the particular circumstances of each case and any material relating thereto shall be rigorously tested.

BY THE COMMISSION:

PRESIDENT

NATIONAL WAGE CASE AUGUST 1989

27

Appearances:

I.
Watson for The Clothing and Allied Trades Union of Australia with L. Ayres for the Australian Council of Trade Unions and with P. Tighe for the Electrical Trades Union of Australia.

S. Green with L. Stephens for The Association of Professional Engineers, Australia and the Australian Council of Professional Associations.

G. Giudice of counsel with F. Parry and E.H. Callander for the Confederation of Australian Industry, the Textile, Clothing and Footwear Council of Australia, the Confederation of A.C.T. Industry, the Clothing Industries Division of the Queensland Confederation of Industry Limited, The Victorian Employers Federation, respondent members of the Tasmanian Confederation of Industries, the Chamber of Manufactures of New South Wales, the Australian

Confederation of Apparel Manufactures - N.S.W. (Division of the Chamber of Manufactures of New South Wales), the Chamber of Commerce and Industry of South Australia Incorporated, the Confederation of Western Australian Industry, the South Australian Employers Federation, the Australian Institute of Dry Cleaning - N.S.W., the Australian Institute of Dry Cleaning - Queensland and with G.R. Sapwell for The Australian Chamber of Manufactures and with R. Whiffin and J. Forbes for the Australian Mines and Metals Association (Inc).

R.P. Boland with M.K. Scott for the Metal Trades Industry Association of Australia and the Engineering Employers Association, South Australia.

B. Yates with L. Tacy for the Minister of State for Industrial Relations on behalf of the Commonwealth (intervening).

E. Porter for Her Majesty the Queen in right of the State of Queensland (intervening).

J. Fernan of counsel with S. Litchfield for Her Majesty the Queen in right of the State of New South Wales (intervening).

I. Silk with J. McCabe for Her Majesty the Queen in right of the State of Victoria (intervening).

G. Bull for Her Majesty the Queen in right of the State of Western Australia (intervening).

J. Woodrow with D.J. McCallum for the Government of the Australian Capital Territory (intervening).

M. Gallant for Her Majesty the Queen in right of the State of South Australia (intervening).

J. McCabe for Her Majesty the Queen in right of the State of Tasmania (intervening).

N. McHattie with M. Jones for the Government of the Northern Territory (intervening).

C. Murphy with B. Davis for the Australian Chamber of Commerce (intervening).

M. Angwin for the Business Council of Australia (intervening).

B.H.B. Dann for Australia and New Zealand Banking Group Limited, National Australia Bank Limited, Westpac Banking Corporation, Bank of New Zealand, Banque Nationale de Paris, Australian Bank Limited, Bank of Queensland Limited, Rural and Industries Bank of Western Australia, S.B.T. Bank (previously Savings Bank of Tasmania), State Bank of South Australia, State Bank of Victoria, Tasmania Bank, Cardlink Services Limited, Deutsche Bank Australia Limited, Mitsubishi Bank Limited, Primary Industry Bank of Australia and Standard Chartered Australia Bank (intervening).

G.
Carmody with P. Trenwith and L. Metzner for the National Farmers' Federation (intervening).

G. Gerard for the Australian Coal Association (intervening).

B.D. Purvis for the Australian Wool Selling Brokers Employers Federation (intervening).

S. Clancy
and K. Lovell for the Australian Federation of Construction Contractors (intervening).

G. Harrison for The Amalgamated Metal Workers' Union, the Association of Draughting, Supervisory and Technical Employees, the Australasian Society of Engineers, the Electrical Trades Union of Australia, The Federated Ironworkers' Association of Australia, The Federated Miscellaneous Workers Union of Australia, The Federated Engine Drivers' and Firemen's Association of Australasia and The National Union of Storeworkers, Packers, Rubber and Allied Workers (intervening).

D.G. Coleman and R. Hughes for Qantas Airways Limited (intervening).

**
end of text **

*** End of Text ***

AustLII:

[Copyright Policy](#)
|
[Disclaimers](#)
|
[Privacy Policy](#)
|
[Feedback](#)

URL: <http://www.austlii.edu.au/au/cases/cth/AIRC/1989/525.html>

South Australian Industrial Relations Court

You are here: [AustLII](#) >> [Databases](#) >> [South Australian Industrial Relations Court](#) >> [2016](#) >> [\[2016\] SAIRC 17](#)

[\[Database Search\]](#) [\[Name Search\]](#) [\[Recent Decisions\]](#) [\[Noteup\]](#) [\[Download\]](#) [\[Help\]](#)

Parsons & Ors v Pope Nitschke Pty Ltd (as Trustees for Pope Nitschke Unit Trust) [2016] SAIRC 17 (9 June 2016)

Last Updated: 23 June 2016

Parsons & Ors v Pope Nitschke Pty Ltd (as Trustees for Pope Nitschke Unit Trust) [\[2016\] SAIRC 17](#)

INDUSTRIAL RELATIONS COURT (SA)

PARSONS, Sharon
SMART, David
PAPINI, Ans

v

POPE NITSCHKE PTY LTD (as Trustees for POPE NITSCHKE UNIT TRUST)

JURISDICTION: Monetary Claim

FILE NO/S: 8075, 8754 and 8755 of 2014

HEARING DATE: 22 March 2016

JUDGMENT OF: Industrial Magistrate M Ardlie

DELIVERED ON: 9 June 2016

CATCHWORDS:

*Applicants all employed as commission only real estate salespersons - Claims made for annual leave, personal carer's leave and long service leave - Applicants employment governed by terms of a Collective Agreement - Debited from commission before distribution were amounts specified as superannuation, annual leave and long service leave - **Held:** Applicants' claims for annual leave, personal carer's leave were not made out - Claims dismissed - No entitlement to deduct amounts specified as long service leave - Applicants were entitled to be paid such amounts as commission - Applicants entitled to be paid long service leave payments - Proceedings to be adjourned to enable calculations to be carried out - Pope Nitschke First National Employee Collective Agreement 2008, [Fair Work \(Transitional Provisions and Consequential Amendments\) Act 2009](#), [Fair Work Act 2009](#) (Cth), [s 17 Workplace Relations Act](#), [Long Service Leave Act 1987](#), Ss 95-107 [Fair Work Act 2009](#) (National Employment Standards)*

CFMEU v Jeld-Wen Glass Australia Pty Ltd [\[2012\] FCA 45](#)

Canavan Building Pty Ltd [\[2014\] FWCFB 3202](#)

Ray v Radano [\[1967\] AR\(NSW\) 471](#)

Poletti v Ecob (no 2) [\(1989\) 31 IR 321](#)

James Turner Roofing Pty Ltd v Peters [\[2003\] WASCA 28](#)

Ardino v Count Financial Group Pty Ltd [\(1994\) 57 IR 89](#)

REPRESENTATION:

Applicants: Mr A Knox

Respondent: Mr A Manos

Solicitors:

Applicant: Cognisage Australia Industrial Relations

Respondent: Crawford Legal

Introduction

1. The original summons issued on 24 November 2014 claimed on behalf of the applicants, annual leave, personal leave and long service leave.
2. The respondent became registered on 7 December 2005 with a named start date of 24 January 2006. The Court finds that the respondent commenced as an employer in February 2006.
3. On 13 February 2008 the Pope Nitschke First National Employee Collective Agreement ("2008 CA") came into effect. It applied to the parties herein.
4. In the original summons the applicants in par 1 admitted that the parties were bound by the 2008 CA.
5. The 2008 CA by a determination made in the Fair Work Commission (FWC) by Commissioner Hampton was terminated on and from 7 December 2014.
6. All three applicants were called to give evidence.

The hearing

7. David Smart (“Mr Smart”) stated that he had been a real estate commission salesman since 1978. His commission was 55% and remained so until the end of 2015.
8. He was aware that the 2008 CA commenced at the beginning of 2008. His commission rate remained the same.
9. He said he usually took annual leave in the middle of the year to play golf and also took leave over the Christmas and New Year period.
10. Mr Smart agreed that the amount of \$13,579.07 had been paid to him for long service leave. This amount had been debited against commission and paid in June 2014. The amount paid to him was expressed to be a total of 20.8 weeks multiplied by the award wage of \$652.84 thereby giving the total of \$13,579.07.
11. The debit of this amount resulted in a zero balance. Until he earned more commissions he was not paid anything.
12. Mr Smart had a hip operation in 2015. He was off work from 12 October until 29 November 2015. He said for this period he was paid annual leave which was debited from his commissions and an extension of leave was taken as leave without pay as he did not have enough accrued annual leave.
13. During the course of his evidence Mr Smart referred to a bundle of documents which were subsequently tendered.^[1]
14. One of the documents in the bundle of documents tendered was marked at the top “Respondents Discovery Document 5”. Whilst he accepted he was paid the amount of commission and long service leave that appeared under the heading “Taxable Income” he did not accept he was paid the amount referred to as annual leave namely \$18,048.85. He did however accept that if it was paid to him it was taxable income and that the actual amount was in fact the same figure that was debited from his commission account.^[2]
15. Sharon Parsons (“Ms Parsons”) was a commission salesperson when the respondent commenced operations. She started on 50% commission then went to 55%. She remained on 55% when the 2008 CA came into effect.
16. Ms Parsons was referred to a document in a bundle of documents subsequently tendered.^[3] The document referred to was a payslip for the pay period 11 February 2009 to 25 June 2015. In that document taxable income was said to be a total of \$549,076.77 made up of \$41,537.42 annual leave, \$496,554.56 commission and \$10,984.79 long service leave.
17. Ms Parsons maintained that she did not receive the amount of \$41,537.42 for annual leave. She agreed that the amount of \$10,984.79 was debited from her account for long service leave.
18. She went through the respondent’s documents and prepared a spread sheet of all the annual leave that was debited. According to her this totalled the sum of \$41,249.64.
19. Her position was that upon termination of her employment she was paid long service leave that had been debited from her commissions. She maintained that no annual leave was paid.
20. Ms Parsons identified an Australian workplace agreement^[4] that she signed in February 2003.
21. When cross-examined Ms Parsons was referred to a document being part of Exhibit A3 which was entitled “Staff Commission Statement - all details”. She agreed her commission rate was 55%. In the document shown to her the rate was referred to as 50.450%. She said that the differential came about as the reduction down from 55% was earmarked for superannuation.
22. She accepted that the statement shown to her showed commission amounts in the right hand side column. There were debits from these amounts and one of the debits was expressed to be annual leave. She continued to maintain that she had not been paid annual leave.
23. She was referred to two payslips subsequently tendered.^[5] One payslip was for the pay period 10 February 2010, the other for 10 March 2010. Ms Parsons had discovered these payslips.
24. In conjunction with the two payslips Ms Parsons was referred to the Staff Commission Statement being part of Exhibit A3. She had some difficulty comprehending the payments actually made to her but in the end agreed that a payment of \$2,686.83^[6] was made into her bank account. This was an after tax amount made up of commission payment and an annual leave payment.^[7]
25. The end result of the detailed cross-examination of Ms Parsons established that gross commission for selling property came into an account, debits including an amount expressed to be for annual leave were made and then payment was made into Ms Parsons account. The amount paid comprised commissions due and a separate amount for annual leave which was really a pre-payment for annual leave.
26. Ans Papini (“Mr Papini”) was referred to documents in a bundle of documents subsequently tendered.^[8]
27. Mr Papini advised that he became a commission only salesperson in the first 12 months of his engagement as a real estate salesperson. At some stage he negotiated a commission rate of 50% which he said occurred after the 2008 CA came into effect.
28. He maintained that he had not taken nor been paid at any stage his long service leave entitlements.
29. He was referred to a leave request form being a document in the bundle of documents comprising Exhibit A4. He said it was the only leave request form he ever filled out. He maintained he never really took any leave save and except for some days over Christmas and New Year.
30. He resigned from his employment on 14 May 2013.
31. Mr Papini^[9] said he chose to draw a wage each fortnight rather than take all of the commissions due to him. In his view he was self-funding his holidays, sick leave and the like.
32. He was also a 10% shareholder in the business. He was paid out his share in 2012 prior to him leaving the business.
33. He acknowledged the letter from the respondent of 12 September 2015 addressed to him which sets out the respondent’s calculations of his long service leave entitlements. He said nothing had been paid to him as these proceedings were then pending.
34. When cross-examined Mr Papini was referred to a document in Exhibit A4 which related to the pay period 14 January 2009 to 29 August 2014. He did not dispute that the amounts referred to were in fact paid to him. He said because the amounts were deducted from commissions then paid to him the respondent had not fulfilled its obligation to him.^[10]
35. He agreed his commission was 50%. He maintained he was not familiar with the 2008 CA but was aware of its existence.
36. He agreed that there was a period when his commission balance fell into arrears but the respondent still made regular payments. He said his commission balance returned to positive in 2013.

Consideration

37. The parties accept that the 2008 CA was in operation from 13 February 2008. It remained in operation until 7 December 2014 as has been referred to above. The 2008 CA was preserved by the Transitional Act.^[11] Despite this many of the provisions of the 2008 CA were impacted by the minimum standards of the *Fair Work Act 2009* (Cth) (“FWA 2009”). Provisions of the 2008 CA are of no effect to the extent that they are detrimental to an employee compared to the National Employment Standards (NES) and other minimum standards of the FWA 2009.
38. The 2008 CA stated that the commission was inclusive of superannuation.^[12] The applicants make no claim for superannuation.
39. The 2008 CA provided for commission only employees. The amount of commission was to be at least 35% of the employer’s net commission for selling a property. All three applicants were on a commission rate in excess of 35%. Mr Smart 55%, Ms Parsons 55% and Mr Papini 50%.
40. The 2008 CA set out a formula as regards the employer’s net commission.^[13] As regards commission only salespersons the employers net commission means the employer’s gross commission from the sales transaction less any conjunction agents fees, GST and 10% of the remaining amount after conjunction agents fees and GST have been subtracted (or a lesser amount). These three items were expressed to be the only items that may be deducted from the employer’s gross commission.
41. The 2008 CA^[14] refers to the interaction between commission payments and other payments. The commission offered was inclusive of superannuation. An example explained what was meant by inclusive of superannuation. If a salesperson had a package of 55% a certain percentage of that 55% was taken to represent the employer’s superannuation contribution. The balance was expressed to be the salesperson’s actual

commission rate.

42. The 2008 CA on the topic of annual leave and paid personal carers leave as regards commission only salespersons provided:^[15]

“If you are guaranteed a basic piece rate of pay (commission only) for your work performed then your actual commission rate is a loaded rate in that 11.54% of your actual commission rate represents the employers advanced payment for annual leave and paid personal carers leave. This means when you take annual leave or you have accrued annual leave when your employment ends or when you take paid personal carers leave, you have already been paid in advance for such leave. However, when you actually take such leave (or have accrued annual leave when your employment ends) the employer must make up any difference if what you have been paid in advance for such leave is less than the amount as calculated in accordance with the piece rate formula prescribed in the Regulations. If your commission is a package for the purposes of superannuation and/or is a loaded rate for the purposes of advanced payment for annual leave and personal carers leave, then the employer has offered you a higher rate of commission than would have otherwise have been the case had your commission not been a package or loaded rate.”

It is to be noted that there is no mention of long service leave payments.

43. The reference to regulations when calculating basic periodic rate of pay is a reference to reg 7.7A of the *Workplace Relations Regulations 2006*. The same formula applied in the Transitional Regulations which superseded the *Workplace Relations Regulations*.

44. The 2008 CA^[16] enabled long service leave to be cashed out in certain circumstances. The basic rate of pay was to be calculated the same as annual leave payments. In 2008 s 17 of the *Workplace Relations Act 1996* provided that awards and workplace agreements prevailed over State and Territory laws to the extent of any inconsistency. This meant provisions of the 2008 CA prevailed over inconsistent provisions contained in the South Australian *Long Service Leave Act*.^[17]

45. Clause 17 of the 2008 CA referred to long service leave and provided:

“17.1 You will receive the following entitlement to long service leave: Whatever is specified in the applicable State legislation with the following modifications:

(a) We may agree in writing (signed and dated) for you to cash out long service leave including for pro rata leave once you have seven complete years of service

(b) If you take or cash out long service leave you will be paid at your basic rate of pay. Long service leave will not be payable on commissions/ incentives/bonuses. Cashing out long service leave means you lose the entitlement to take long service leave and you receive the cash in lieu. A commission only salespersons basic rate of pay will be calculated as the same as for annual leave.”

46. All of the applicants commenced working with the respondent as and from 6 February 2006. The onus is upon the applicants to prove the claims made. No evidence was advanced concerning any outstanding leave entitlements with previous employers leading up to 6 February 2006.

47. From 6 February 2006 to 13 February 2008 when the 2008 CA came into effect what did the applicants say on the topic of annual leave? Ms Parsons adduced no evidence. Mr Smart said he took leave in the middle of the year to play golf and took further leave over the Christmas New Year period. There was no evidence forthcoming as regards leave accumulated but not taken. Mr Parini said he never really took any leave. He acknowledged that he had put in one leave request form which appeared in the bundle of documents marked Exhibit A4. He said he did take some days leave over the Christmas New Year period.

48. No claim is made for annual leave from 13 February 2008 to 31 December 2009. The claims made, as set out in the calculations the applicants provided to the Court, are confined to annual leave from 1 January 2010. From that date the 2008 CA, whilst preserved by the Transitional Act, operated subject to various minimum conditions contained in the *Real Estate Industry Award 2010* (“the Modern Award”) and the various conditions of the National Employment Standard (“NES”).

49. As I understand the basis for the claims made by the applicants for annual leave they are underpinned by the decisions of *CFMEU v JeldWen Glass Australia Pty Ltd*^[18] (“*Jeld-Wen*”) per Gray J and *Canavan Building Pty Ltd*^[19] (“*Canavan*”) a decision of the full bench of the FWC.

50. *Canavan* involved an application for approval of the *Canavan Building Pty Ltd Enterprise Agreement 2013*. The full bench referred to the decision of Justice Gray in *Jeld-Wen*. The full bench could not approve the Enterprise Agreement as it was not satisfied for the purpose of s 186(2)(c) of the FWA 2009 that the terms of the agreement do not contravene s 55 of the FWA 2009. Section 55 deals with the interaction between NES and Enterprise Agreements.

51. The full bench in *Canavan* said:

“Because the agreement provides for payment for annual leave on a progressive basis in advance rather than when annual leave is taken, and also provides for increases in rates of pay during the life of the agreement, it permits annual leave to be paid for, at least in part, at an earlier and lower rate of pay rather than the rate of pay applicable at the time that leave is taken.”^[20]

52. The respondent notes that the decision in *Canavan* is not binding on this Court. The respondent contends that when viewed as a whole the effect of Schedule 2 S2.8(b)(iii) is that there may be occasions when the clause is detrimental (annual leave is taken and has been prepaid) and other occasions when it is not (when the person actually takes leave and the employer makes up any difference given that payments in advance are less than the amount as calculated in accordance with the piece rate formula prescribed in the regulations).

53. When annual leave is taken and has been prepaid Schedule 2 S2.8(b)(iii) in the current scheme of legislation has no effect. The provisions of the NES apply. When payments are made at the time of taking leave the clause does have effect.^[21]

54. The respondent concedes that the applicants were not paid in full at the time annual leave was taken. Partial payments only were made. However when looked at globally each applicant was paid more than their entitlements. The formula in the 2008 CA was 11.54%. The commission rate is a loaded rate. 11.54% represents the employer’s advanced payment for annual leave and paid personal/carer’s leave.

55. The respondent referred to and relied upon calculations contained in Appendix B to its written outline of submissions. If 11.54% is applied to the total commission payments made to the applicants over the period 2009 to 2014 the applicants were each paid in full for all of their annual leave. The tender documents of the applicants^[22] reveal the amounts which were debited from commissions and labelled annual leave as being consistent with the respondent’s figures in Appendix B. The Court finds that these amounts were in fact paid to the applicants. The amounts were prepaid annual leave payments.

56. Appendix B also refers to personal leave. Personal leave contained in the NES^[23] requires notice to be given as well as evidence provided to underpin the taking of such leave. Whilst such leave accrues progressively during a year of service and accumulates from year to year^[24] it is not payable upon termination.

57. No evidence was adduced from Ms Parsons as regards any entitlement to personal/carer’s leave. Mr Papini’s evidence was that he never really took any leave. No evidence was forthcoming from him that he took any days of personal/carer’s leave. Mr Smart told the Court that he took as annual leave a period of time in 2015 when he underwent hip surgery. The respondent indicated to the Court that it will re-credit such leave taken and categorise it as personal leave. Leaving aside Mr Smart the applicants have not proved any entitlement to be paid personal/carer’s leave.

58. The respondent relies upon a right to “set off” any amounts the Court might find owing to the applicants against amounts already paid. Reference

was made to a number of cases including: *Ray v Radano*^[25] (“*Radano*”), *Poletti v Ecob (no 2)*^[26] (“*Poletti*”) and *James Turner Roofing Pty Ltd v Peters*^[27] (“*James Turner Roofing*”). In *Poletti* the principles espoused by Sheldon J in *Radano* were applied.

“If no more appears than (a) work was done; (b) the work was covered by an award; (c) a wage was paid; then the whole of that wage can be set off against the award entitlement for the work whether it arises as ordinary time, over time, weekend penalty rates or any other monetary right under the award.”

In *Poletti* a payment appropriated for annual leave could not be used to satisfy a different type of obligation. More specifically the employee was overpaid annual leave. The excess could not be appropriated for a different item and could not be set off against another obligation.

59. The payments made herein were pursuant to the 2008 CA. The 2008 CA refers to the “actual commission rate being a loaded rate in that 11.54% of your actual commission rate represents the employer’s advanced payment for annual leave and paid personal/carer’s leave”. This amount is specifically allocated and applying the principles in *Poletti* and other cases can be offset against any amounts claimed for the leave.
60. With the introduction of the NES the obligation was to make payments of annual leave at the time of the taking of the leave. However the figures produced and accepted by the Court show that the applicants suffered no financial detriment. The amounts, although prepaid, exceed the payments claimed by the applicants.
61. The 2008 CA provided for its own system of payment for employees as regards long service leave. These provisions prevailed over the state legislation. Clause 17 of the 2008 CA provided that when commission only employees took long service leave, or agreed to have it cashed out it was to be paid at the employees basic rate of pay, and that rate was to be calculated by the same method as for annual leave.
62. Schedule 2 S2.8(b)(iii) of the 2008 CA refers to the calculation being in accordance with the piece rate formula prescribed in the *Workplace Relations Regulations 2006* in particular reg 7.7 A. Whilst repealed the formulae in reg 3.01 of the transitional regulations is the same.
63. Long service leave was to be paid at an hourly rate of pay which was calculated by dividing the total amount of earnings in the 12 months prior to the time of calculation divided by the total hours worked during the 12 months. Once the basic periodic rate of pay is calculated then the number of years of service is then applied, the formula being 1.3 weeks for each completed year of service. The 2008 CA does not expressly state the hours of a full-time employee. Assuming it is 38 hours, then 38 multiplied by the hourly rate gives a weekly amount of earnings.
64. The respondent in its written outline of submissions makes reference to the figures set out in Appendix C. There are differences in the approaches taken by the applicants and the respondent. One error on the part of the applicants seems to be that the earnings for the financial year are used to calculate the amounts, when it should be earnings in the twelve months immediately prior to the calculation.
65. Appendix C makes reference to amounts already debited against commissions earned. The respondent contends that the amounts due to the applicants by way of long service leave payments are to be offset against commissions earned since the long service leave payments became due. This it contends is what the 2008 CA provided for.
66. The respondent relied upon Schedule 2 S2.4 of the 2008 CA. It contended that the effect of Schedule 2 S2.4(a) and (h) of Schedule 2 of the 2008 CA permitted any payments made for long service leave to be debited against any future commission payments. Schedule S2.4(a) and (h) state:

“DEBITS FROM YOUR SHARE OF COMMISSION

Any of the following debits, providing they are relevant, may be debited by the employer from your commission

(a) wages/salary (however described) and paid for any purpose

...

(h) if any wages or allowances or entitlements are ever found during or after your employment to be payable then such wages or allowances or entitlements will be totally off settable against your incentives earned for the entire period of your employment.”

67. The respondent in its written outline stated that the payment provided to the employee during the period of leave is in the form of a salary or wage. It must be paid in cash. The objective of long service leave, at a conceptual level, is to pay the employee the same that he or she would have earned had personal services been provided. It is a recognition of prior service. In all material respects it is the same as the salary or wage paid to an employee during a period worked.
68. The respondent referred to *Ardino v Count Financial Group Pty Ltd*^[28] (“*Ardino*”) where Wilcox J considered the meaning of the word “wage”. Recourse was had to the dictionary meaning. Wage was “*that which is paid for work or services*” and “*a payment to a person for service rendered*”.
69. Consideration of the interaction between Schedule 2 S2.4 and S2.8 is required. The principles of construction of an industrial instrument include the avoidance of a strict literal interpretation with clauses being viewed broadly and in context. Also ordinary or well understood words should be given their ordinary or usual meaning. Schedule 2 S2.8 refers to the interaction between commission payments and other payments. Each of the applicants was paid an agreed percentage of the employer’s net commission. The employer’s net commission is defined in Schedule 2 S2.2 and has been set out above. Schedule 2 S2.8 details what is deducted or included in the applicants’ agreed percentage. The agreed percentage is inclusive of superannuation so a percentage is deducted for superannuation. Also annual leave and paid personal/carer’s leave is included in the agreed percentage as that percentage is a loaded rate. The minimum payable was 35% in the 2008 CA. All of the applicants exceeded the minimum. It follows that amounts payable for annual leave are deducted from the loaded commission. What remains is the commission payable to the applicants. It is to be noted that there is no mention of long service leave payments in Schedule 2 S2.8.
70. Schedule 2 S2.4 refers to debits from commission. The clause details a comprehensive list of debits. There is no mention of long service leave payments.
71. The contention that long service leave payments should be regarded as wages/salary however described, or wages or allowances or entitlements, is beyond the meaning of wage relied upon by the respondent. Wage is described as something paid for work or services or for service rendered. Long service leave is about time spent by a worker in employment with the same or a related employer. The reward is for the duration of the employment.
72. In Schedule 2 S2.4(h) the wording namely “*if any wages or allowances or entitlements are ever found during or after your employment...*” could not relate to long service leave payments. Such entitlements are legislated and indeed are referred to in the 2008 CA at cl 17. Schedule 2 S2.4(h) viewed broadly and in context could not incorporate long service leave payments. The author of the very complicated 2008 CA made no reference to long service leave payments in Schedule 2 S2.4 and also Schedule 2 S2.8. The approach contended for by the respondent, namely that long service leave payments should be considered to be wages/salaries (however described), involves a concept of wages or salaries beyond the meaning of the word “wage” as discussed and considered by Wilcox J in *Ardino* referred to above. The Court does not accept the respondent’s contention.
73. The debiting of amounts from commission and earmarked as long service leave payments should not have occurred.

SUMMARY - CONCLUSION

74. The claims made by the applicants for annual leave/personal carer’s leave are not made out and are dismissed. The applicants are entitled to be paid their long service leave payments calculated in accordance with the 2008 CA and as legislated for by the LSL Act 1987.
75. The amounts debited from commissions and paid over as long service leave should have been paid to the applicants as commissions. The result is no payments have been made for long service leave.

76. The parties are to carry out their calculations of long service leave payments.
77. The proceedings are to be adjourned to a date to be fixed to enable the calculations to be carried out.
78. Both parties have liberty to apply.

PUBLICATION OF THESE REASONS

It is the practice of this Court to publish its reasons for decision in full on the Internet. If any party or person contends that these reasons for decision should not be published in full the party or person must make an application within seven days of the delivery of these reasons. The application shall be by an Application for Directions with a supporting affidavit and should be addressed to the presiding member(s). If no such application is lodged within the time specified these reasons will be published in accordance with the Court's usual practice.

[\[1\]](#) Exhibit A2.

[\[2\]](#) Tr 54.

[\[3\]](#) Exhibit A3.

[\[4\]](#) Exhibit R1.

[\[5\]](#) Exhibit R2.

[\[6\]](#) Pay period 10 February 2010.

[\[7\]](#) Tr 75-86 inclusive.

[\[8\]](#) Exhibit A4.

[\[9\]](#) Tr 104.

[\[10\]](#) Tr 110.

[\[11\]](#) [Fair Work \(Transitional Provisions and Consequential Amendments\) Act 2009](#).

[\[12\]](#) Schedule 2 S2.8a.

[\[13\]](#) Cl S2.2.

[\[14\]](#) Cl S2.8

[\[15\]](#) Cl 2.8(b)(iii)

[\[16\]](#) Cl 17.1a

[\[17\]](#) [Long Service Leave Act 1987](#) ("LSL Act 1987").

[\[18\]](#) [\[2012\] FCA 45](#).

[\[19\]](#) [\[2014\] FWCFB 3202](#).

[\[20\]](#) Par 38.

[\[21\]](#) See generally ss 55 and 56 *FWA 2009*.

[\[22\]](#) Exhibits A2 A3 and A4.

[\[23\]](#) Ss 95-107 inclusive of the *FWA 2009*.

[\[24\]](#) S 96 *FWA 2009*.

[\[25\]](#) [\[1967\] AR\(NSW\) 471](#).

[\[26\]](#) [\(1989\) 31 IR 321](#).

[\[27\]](#) [\[2003\] WASCA 28](#).

[\[28\]](#) [\(1994\) 57 IR 89](#) at 95.

IN THE FAIR WORK COMMISSION

IN THE MATTER OF;

4 Yearly Review of Modern Awards-

Real Estate Award 2010

AM 2016/6

WITNESS STATEMENT OF RALPH DESMOND CLARKE

1. My name is Ralph Desmond Clarke of 4 Welwyn Road Manningham SA.
2. I am engaged as an Industrial Relations Advocate with the right to appear as a paid agent before the Industrial Relations Court and Commission of SA and the Fair Work Commission.
3. Since March 2011 to the present time I have acted as the Industrial Relations advisor to the Registered Real Estate Association of SA and appear before the aforesaid industrial tribunals on behalf of the Association's members in matters of unfair dismissal and underpayment of wages and/ or commissions in particular.
4. My past industrial experience has been;
 - (i) An official of the Federated Clerk's Union of Australia SA Branch 1974 – 1993, including 10 years as its Branch Secretary and from 1991 – 1993 that Union's National President and from 1993 – 1994 I was one of the 3 Joint National Presidents' of the amalgamated Union known as the Australian Services Union. Whilst Branch Secretary of the FCU I was responsible for ensuring that all the Union's State common Rule Awards, in particular the Clerks (SA) Award, accessed the minimum rates adjustment

principle, (MRA) handed down by the State Wage Full Bench of the IRCSA, in line with that principle laid down by a Full Bench of the Australian Industrial Relations Commission in 1989 and 1991.

(ii) 1993 – 2002 Member of the SA Parliament and for 4 years was the ALP's spokesperson on Industrial Relations.

(iii) I was for 10 years on the Executive of the United Trades and Labor Council of SA, In particular their wages committee and its representative on the Industrial Legislation Committee of the ACTU.

(iv) I have been operating my own industrial relations advocacy business in Adelaide since 2003.

5. I have accessed the archives of the IRCSA with respect to the Real Estate (SA) Award (SA award). In particular I have sought to find out whether that award had ever been the subject of a work value case and/ or had the benefit of having its property salespersons classification the subject of a minimum rates adjustment claim before the IRCSA. My investigations discovered the following;

(i) The SA award had never been the subject of a work value claim. The award rate of pay for a property salesperson prior to Work Choices coming into effect on the 26th March 2006 was based on the then minimum State award rate of pay as declared by successive State Wage Case decisions.

The SA Full Bench of the IRC in September 1989 adopted the AIRC NWC wage fixing Principles which included for the first time the minimum rates adjustment principle.

From my study of the archived files of the Real Estate Award the minimum award rate of pay for salespersons' had failed to keep pace with SWC decisions during the 1990s' to such an extent that in October 1999 both the union and the employers' agreed to

increase the then minimum award rate over time to become level with the prevailing State Minimum Award wage rate by incorporating the safety net adjustments for the period 1994 – 1998. In particular the employer representative Mr D Tepper at page 6 of the transcript dated 28/10/1999 at the hearing of this matter referred to the fact that the real estate award had not been subject to the minimum rates adjustment principle, (refer to attachment “A”).

The award was further reviewed by the parties and on 3rd August 2000 the minimum award wage was increased again to bring the wage level up to the State Minimum Award Wage of \$400.40 p.w. with effect from the 1st January 2001, (Refer to transcript of hearing at pages, 2, 3, 4, 5& 6 of attachment “B”).

The award was further revised significantly with effect from the 1st July 2001; however the application of the State Minimum Award wage remained for salespersons’. The significant changes to the award related to the employment of commission only salespersons and the minimum requirements that had to be observed if they were employed, as well as prohibiting the debiting from a salesperson’s commission, long service leave payments, employer superannuation contributions, authorised vendor advertising and other matters with respect to all new employment contracts entered into on or after the 1st July 2001.

- (ii) A Full Bench of the then Australian Industrial Relations Commission in 1989 handed down their National Wage Case decision and its principles of wage fixation. The decision given on the 7th August 1989 (30 IR 81) in part referred to the introduction of a minimum rates adjustment principle (MRA) to ensure that all award covered employees could seek to establish a fair safety net award rate of pay by using the Metal Tradespersons base award

rate for comparison purposes. The principles were to be subject to further debate during the course of 1990.

- (iii) The IRCSA SWC Full Bench adopted the AIRC principles including the MRA on the 22ND September 1989 (1989 SAIR 56, at p. 548).

The NSW Full Bench of its IRC adopted the AIRC principles save the MRA on the 4th October 1989 (30 IR 107) which was to be the subject of separate consideration by the NSW IRC. On the 6th March 1990 the NSW IRC handed down its decision with respect to MRA and adopted the AIRC MRA principle (35 IR 183). The Full Bench also found that the MRA principle of the AIRC had been adopted by all other jurisdictions at that date, (at p.194).

I have accessed the archives of the IRCNSW with respect to the NSW Real Estate Award. From 1990 – 2005 the award minimum wages for all its classifications which included salespersons and property managers, moved by the increases awarded by the NSW IRC SWC. All of those increases included the structural efficiency payments made under the wage fixing principles at the time, as well as SWC decisions flowing from NWC decisions of the AIRC. Like in SA the award in NSW has not been subject to a minimum rates adjustment application as allowed for under NSW SWC principles.

- (iv) The AIRC Full Bench gave further consideration to the MRA principles in two National Wage Case decisions in 1991; 16th April 1991 Vol 4 CAR (April 1991) p.205 (Print J7400) and the 30TH October 1991, Vol 10 CAR October 1991, p. 722 (Print K0300) and determined that all awards should have access to the MRA to establish a fair safety net award rate of pay vis a vis the Metal Tradesperson base award rate of pay.

The AIRC wage fixing principles from 1989 until its last National Wage Case in 2005, (Safety Net Review NWC (2005) AIRC 508 Print PR002005, dated 7th June 2005) maintained the MRA. From 26th March 2006 all minimum award wage classifications were determined by the Australian Fair Pay Commission and then in 2009 by the AIRC again. The MRA principle ceased as a wage fixing principle with the Work Choices Legislation coming into effect in March 2006.

6. As RRESSA Industrial advisor I recommended to them the relativities and wage rates that are in the Associations amended application.

The property salesperson I used as the base classification vis a vis a tradesperson, using the MRA principle of the AIRC. I also looked at the work value and responsibilities of the salespersons with those of clerical workers, a number of whom work in the real estate industry. In addition I took note of the various licensing requirements of property salespersons and property managers in each jurisdiction.

A summary of those requirements are attached, which are extracts from the COAG National Licensing Steering Committee study on – “Decision Regulation Impact Statement Proposal for National Licensing of the Property Occupations” re their attachment B, (marked as “C” to my statement) – “Overview of the property industry sector” and their attachment D- “Overview of existing licensing arrangements”, (marked as “D” to my statement).

I knew from my time as an official of the FCU and having led the MRA process in SA with respect to the State common rule awards, that the level 2 clerk was found by all arbitral tribunals to have performed the same work value as that of a C.10 tradesperson. I am also aware from my former union association that the MRA principle had flowed to all the FCUs’ clerical awards both at a State and National level by the early 1990’s.

Therefore I assessed the work and responsibilities of persons employed under the Real Estate Award, 2010 with the work and responsibilities of the clerical and administrative workers employed under the Clerks Private Sector Modern Award 2010. The Clerks Modern Award has had the benefit of its constituent parts when it was made, having wage relativities and value assessed under the MRA principles of various State and Federal Industrial Tribunals, thereby setting the foundations for a proper Safety Net Award for those employees who are award reliant for their livelihood. A copy of the classification structure of the current Clerks Private Sector Award 2010 is attached and marked as 'E'.

From my reading of the transcript of the hearing before SDP Harrison in the making of the modern real estate award (10/8/2009 – AM 2008/87) it is clear that the consent award wage rates were based on the highest award rate prevailing at the time in the 3 State based NAPSAs', i.e. NSW with respect to property salespersons where the wage was greater than the State Minimum Wage applicable in SA and Queensland. In respect to property managers, Queensland had a higher award wage than their NSW counterparts. (SA NAPSA did not cover property managers). In none of the 3 State based awards had there been a work value case to determine the appropriate wage relativities and in particular none had been applied for under the respective MRA principles of each jurisdiction.

A comparison of minimum safety net modern awards which include sales staff covered by some of those awards, illustrates again how out of kilter the property salespersons' award rate is;

(a) Banking and Finance Award - (level2)	\$783.30 p.w.
(b) Clerks Private Sector Award - (level2/yr1)	\$783.30 p.w.
(c) Commercial Sales Award -	\$785.30 p.w.
(d) Vehicle RS&R Salesperson + 6 months service -	\$743.30 p.w.
(e) General Retail Award (level 1 shop assist) -	\$738.80 p.w.

(f) Real Estate Property Salesperson -

\$713.20 p.w.

7. As RRESSA's Industrial advisor I have had substantial contact with members and real estate property salespersons in SA since 2011. On behalf of RRESSA I spend a considerable proportion of my time before the Industrial Relations Court of SA, suing employers in the industry for underpayment of wages, commissions and in my view unlawful deductions from salespersons' commissions. My particular concerns in relation to commission only salespersons' and the existing clause 16 of the award are;

- (i) The wording of clause 16.3 in particular. It is incomprehensible to almost every employer and employee in the industry and to my knowledge the Fair Work Ombudsman. The proposed new definition of the minimum income threshold is very clear as it is based on a % (160%) of the minimum award wage at the time of agreement to go commission only.
- (ii) The current award threshold to qualify to be employed on a commission only basis is so low as to make it a nonsense being a safety net provision. The threshold currently is \$40,795.04. If the salesperson meets that basic income test (subject to certain other qualifications set out in the award) that person for all intents and purposes becomes effectively award free, no guaranteed payment for work performed, no allowances such as a vehicle allowance when working on the employer's business, no overtime payments. In fact they have less protection than a trolley collector working for a supermarket where they are guaranteed the federal minimum wage for each hour worked.

A salesperson on just the minimum award wage and receiving no commission share, is guaranteed \$37,086.40 p.a. plus a vehicle allowance of at least \$146.15 p.w. for each week worked, if the

vehicle is less than 5 years old and has a c.c. of 1600 or less, say
 $\$146.15 \times 48 \text{ weeks} = \$7,015.20$ or $\$44,101.60$.

- (iii) The commission only classification inserted by the AFPC in August 2007 ([2007] APC 3), was described as being only available for those salespersons that had a proven track record of achieving sales. In its decision the Commission stated at pg18, "*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*".

Given the income threshold under the award currently is \$40,795.04, it clearly fails the AFPC benchmark.

RRESSA's view is that whilst it does not like commission only remuneration at all, (in part because its very existence tends to induce some employers in the industry to use it to employ salespersons who have had less than 12 months service as salespersons', despite it being contrary to the existing award) nonetheless recognises that some sales staff believe they can earn more by being commission only by obtaining a greater share of the employer's commission than they otherwise might enjoy. Therefore it is prepared to continue with it, subject to the minimum income test being significantly higher, i.e. 160% of the minimum award wage, which would make it \$59,338.24, (on current award rate of pay).

Given that the commission only salesperson has minimal award protection, RRESSAs' proposed income threshold provides far better protection for those salespersons that do not fit the "high sales achiever" status, the commission only provision was said to benefit.

8. With respect to RRESSAs' proposed amendments to prohibiting;

(a) The debiting of authorised vendor advertising from the employees' share of the commission earned from the sale of a property, I fully support.

This issue has occupied much of my time as RRESSA's industrial advisor since 2011. Many employment agreements involving sales staff refer to debiting unpaid vendor advertising from a salesperson's commission, if the employer has reasonably tried to collect the costs from the vendor.

As stated in other witness statements the Sales Agency Agreements, (SAA) used by employers in SA all refer to the contract being between the agent, i.e. the employer and the vendor. Each of the SAA makes it clear that the vendor accepts to meet any of the agreed marketing, advertising expenses incurred. In reality some employers will simply send the defaulting vendor an account or invoice asking for the money and if it is not paid they, in a number of cases will debit the money owed from the salesperson's commission.

I have repeatedly pointed out to employers that I regard their actions as being unlawful pursuant to sections 324 – 326 of the Fair Work Act, 2009 (FWA) and that as the SAA is between them and the vendor it is only they that can insist on the vendor meeting their obligation.

The response I get, particularly from their industrial association (REEF SA/NT) is that the above sections of the FWA only deals with amounts that are payable, and as the employment agreements provide a formula for calculating the amount owed by way of the employee's commission share, it is only that amount left after all the calculations in the formula have taken place and any amount left in credit is the amount owed to the employee. Therefore in REEF's view

such debiting of authorised vendor advertising costs is legal. This opinion is rejected by RRESSA.

In my opinion as the employment agreements must be in writing and therefore forms part of the award, (clauses 15.1. and 16.2) the terms and conditions of those agreements ,at the time of writing must conform with the terms of the FWA itself, i.e. ss 324 – 326 which apply at that instant. In any event the employment agreements even if it is simply a common law contract of employment cannot avoid the requirements of those sections of the FWA.

I attach examples of the employment agreements issued by employers often using the REEF SA/NT template with respect to agreed debits from the employee's share of the employer's net commission that has been extensively used in SA, (refer to attachments "F" – "I"). On behalf of a number of RRESSA members I issued proceedings before the IRCSA seeking repayment of advertising costs authorised by vendors where those costs have been debited from the members' commission. Each has been settled by agreement, except the matter of "H", proceedings have commenced.

The reason RRESSA seeks to have the award explicitly state that debits of authorised vendor advertising costs be prohibited in the award, rather than relying on ss 324 – 326 of the FWA, is because both the employees and employers do not know of ss 324 – 326, and rely on what they read in the award as to what is allowed or not. The Fair Work Ombudsman from experience will rarely if ever intrude into matters of award compliance unless it is spelt out in the award itself.

Unpaid authorised vendor advertising can amount to many thousands of dollars. In two cases in 2016 I have had one employer refuse to pay \$20,000 commission owing to 2 former sales staff because of unpaid vendor authorised advertising, even though the employer's own records showed that the vendors had authorised the

expenditure. Those claims settled following a court hearing which led to a consent order being made.

That same employer has issued legal proceedings through a mercantile company seeking payment of \$21,101.18 from another former salesperson in May 2016 regarding unpaid authorised vendor advertising. I have written to the mercantile company on behalf of the member pointing out that each of the claims relate to amounts authorised in each case by the relevant vendor under the SAA with the employer. I am awaiting a response.

Another member I represented in mid 2015 had \$10,500 in commission withheld because of the debiting of authorised vendor advertising against her final commission statement, some going back to 2011 and 2013. That matter was also settled by agreement.

In two matters in January 2013 a husband and wife, both of whom worked for the one agent had amounts of \$24,594.67 and \$24,735.47 respectively debited from their final commission statement because of unpaid authorised vendor advertising expenses. Those matters were settled by agreement.

In every case, except with respect to the issue involving the mercantile company, the members have had to issue proceedings in the IRCSA seeking restitution of their commissions and seeking pecuniary penalties to force the issue to a successful conclusion. It is time consuming and expensive for the members concerned. An award provision such as the one sought by RRESSA would ensure far greater compliance because the matter would be crystal clear to all concerned, including the Fair Work Ombudsman's Office.

- (b) In respect to the debiting of SGC employee contributions against the sales person commission statement, I support the views as expressed by Mrs Masson- Forbes in her witness statement. Further I point out

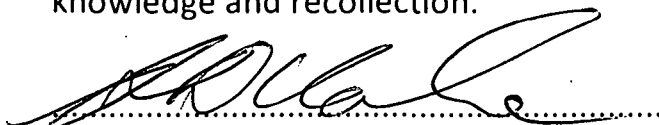
that the temp plate employment agreements used by REEF SA/NT specifically allows for the absorption of the value of the increase in the SGC as it increases via debiting from their commission, even though the amount of commission paid to salespersons' has remained static over the years I have dealt with the industry.

(c) In relation to the debiting of long service leave I again adopt the views of Mrs Masson – Forbes in her witness statement. Of particular concern is that it acts as a disincentive, particularly for commission only sales employees' from actually taking their long service leave when it falls due.

9. I have read and support the views stated by Mrs Masson- Forbes in her witness statement at paragraphs 18 and 19. In particular paragraph 19 dealing with amending the award to prevent the advance payment of National Employment Standards with respect to annual leave and sick/ carers leave.

In my experience with commission only employees, I do not know of any employer I have dealt with, who at the time an employee takes their annual leave or at the date that employee ceases employment, does a reconciliation of what was paid by way of advance commission to check if it was equal to or greater than the award minimum rate of pay. The employers' I have dealt with simply assume that if the employee is commission only their award obligation has been met if the NES are shown as having been included in the commission structure of the employee.

I make this statement as being true and correct to the best of my knowledge and recollection.



Ralph Clarke

25/7/2016
Date

A
COPYRIGHT RESERVED

(N.B.) Copyright in this transcript is the property of the Crown. If this transcript is copied without the authority of the Minister of Government Enterprises proceedings for infringement will be taken.

1/WN/B

IN THE INDUSTRIAL RELATIONS COMMISSION OF SOUTH AUSTRALIA

APPLICATION TO VARY

ADELAIDE

BEFORE COMMISSIONER FAIRWEATHER

No 105/82 - Req No 15

REGISTERED REAL ESTATE SALESPERSONS AWARD

TRANSCRIPT OF PROCEEDINGS

Thursday, 28 October 1999 at 1.09 pm

MR N. STAIT for the Real Estate Salespersons Association
of South Australia

MR D. TEPPER for the Real Estate Employers Federation

COMMISSIONER: I will take the appearances, please.

MR STAIT: If the commission pleases, my name is Stait and I appear for the applicant in these proceedings, the Real Estate Salespersons Association of South Australia (RESA).

MR TEPPER: If the commission pleases, I appear for the Real Estate Employers Federation, Tepper, D.

COMMISSIONER: Thank you. Yes, Mr Stait, would you like to report on the matter?

MR STAIT: Yes. The application which is before this commission today seeks nothing more than to apply the recent state wage case decision insofar as it relates to inserting the minimum wage into this award. As this arm of the commission would be aware, the state wage case decision number I29 of 99 followed on from the national wage case decision and in the application which is currently before you there are three appendices, appendix A, appendix B and appendix C.

My understanding is that appendix A in that format is required pursuant to the decision of the state wage case to be inserted into any award seeking to have the state minimum wage inserted into that setting. My further understanding is that as a result of that it subsumes all previous state wage case decisions and, in this regard and in particular in respect of this award, the commission and my friend would be well aware of the work which has gone into this award pursuant to the section 99 review and what has taken place over a long period of time.

I don't have to remind my friend nor the commission of the deleterious state of this award prior to the parties entering into that 99 review. As an aside I can indicate to the commission that the only remnants of the old award are in part A of the existing award, some 10 or 12 clauses which still have to be addressed and this is but one aspect of

that.

Part B of the new award really was a product of the 99 review and brought forth new clauses which were relevant in this award and in this industry. If I can now address appendix B. Appendix B arises in respect of sequential adjustments which are required to be made insofar as the current wage rates and the percentages which would be applied to those rates of pay, subject to any error or omission, and my understanding is that appendix A is also required in these circumstances.

Lastly, appendix C is a reference, on my understanding - once again emanating out of the state wage case decision - which is required to be inserted into the award. I have not indicated where that should be inserted into the award and I would simply suggest to this commission that subject to the settlement of the minutes the parties could agree to where it should be inserted.

Sir, I can indicate that the application was lodged and served in accordance with normal procedures. My understanding is that the application seeks to do nothing more than insert, as I have said, the state minimum wage and is not seeking to do anything contrary to the state wage case decision.

I might indicate at this stage, sir, that the applicant did receive correspondence from the South Australian Employer Chamber of Commerce and Industry dated, I think, 13 October, suggesting that a meeting should take place between representatives of RESA and REEF in respect of the application which is currently before you. I am advised no meeting took place between RESA and REEF in response to that letter of 13 October.

That then leads me perhaps to my closing remarks and, that is, sir, that whilst the

sum of money appears at first blush to be a considerable increase over the existing rate which is in the award - namely, the princely sum of \$290.10 - and to insert in lieu thereof the new minimum rate of \$385.40. At first blush it does seem that it is a reasonable sum of money. However, as I put to the commission it has been the industry that has really been missing out by now paying the appropriate rates with sequential adjustments being made in respect of state wage case decisions as they have arisen over the past 10 years or so.

If anything, the employers have been the ones who have benefited by not paying a rate which was commensurate with community standards, so my instructions are, sir, that with the approval of the commission we would be seeking the insertion of the state minimum wage be contained in the award consistent with the intent of the state wage case decision operative from the first pay week to apply on or after tomorrow's date; namely, 29 October 1999.

Sir, it is with those comments that I don't wish to take any more time of the commission and if there are any questions which may emanate from the bench I am only too happy to attempt to address those.

COMMISSIONER: I will wait until I have heard from Mr Tepper first.

MR STAIT: Thank you.

COMMISSIONER: Yes, Mr Tepper?

MR TEPPER: If the commission pleases, just a couple of comments which I guess form a backdrop to my subsequent submissions, and that is REEF is not opposed to the adult minimum wage going into the award. It is how it goes in I think is the big question, not only for yourself, sir, but for the parties.

The second comment as a backdrop to my subsequent submissions is that this is basically a commission industry so the fact that we have had a low wage - and that is all you can call it - a very low wage for so many years has to be put in context that the vast majority of salespersons have received commission as well as the wage. I tender, sir, the letter to which Mr Stait referred.

COMMISSIONER: I'll mark that as exhibit R1.
Correspondence from the Employers Chamber to the Real Estate Salespersons Association.

EXHIBIT R1 Letter from the South Australian Employers Chamber of Commerce and Industry tendered by MR TEPPER.
Admitted.

MR TEPPER: You will note, sir, in that letter, that I mention I had been served with a summons and that no formal discussions had occurred between the parties, and that REEF had its AGM on 20 October and that would be an excellent opportunity for REEF to take instructions from its members on RESA's application.

It was suggested that RESA urgently contact REEF for a meeting. In this way REEF would be in a position to put to its members at the AGM on the 20th what RESA's position was and their position of course would include what its attitude would be towards any type of phasing in, and also there were other technical aspects of the application to discuss and I go now, sir, just very briefly into what I consider to be technical aspects, bearing in mind we are not opposed to the minimum wage.

Principle 11.1, sir - and I may be misinterpreting this - as I understand it 11.1 is saying the minimum wage can only go in once the lowest classification equals or exceeds \$385.40. Now, of course, 290 doesn't equal that. We've got a bit of a problem there because there is only one

classification in the award; that is, salesperson.

Principle 11.7 says the minimum state wage case is subject to principle 12. If we go to principle 12, 12.1.1 talks about there are some awards of this commission which have not completed the minimum rates adjustment process and this is one of them, sir. It hasn't gone through the minimum rates process. In other words, we haven't addressed whether or not the current classification structure needs addressing and, if it does, in what way.

As you will remember, sir, I think there were either three or four adjustments in minimum rates when the relativities were brought into balance with the metal tradesperson's level as being 100 per cent - of course those relativities have probably gone out the window since enterprise bargaining. Principle 12.1.2 talks about structural efficiency adjustments. These have been done. Two structural efficiency adjustments were applied to this award: the first one on 19 December 1990 and the second one on 3 January 1990. Perhaps, sir, if I just hand this up. The right-hand column gives a history of the increases since the August 1989 state wage case.

COMMISSIONER: I will mark it for identification only at this stage.

MR TEPPER: Yes, sir. It is only to assist the parties.

COMMISSIONER: Yes.

MR TEPPER: Those two structural efficiency adjustments out of the August 89 state wage case have been applied to this award and so has the 1991 April 2.5 per cent adult total wage. That increase has also been applied to this award and that was applied on 11 June 1992 and as far as my research reveals that is the last increase applied to this award and that is where the current rate is now of \$290.10, so

all those increases - all those safety nets - that come after that have not been applied to the award. Neither has it gone through the minimum rates adjustment.

They are the technical aspects, if you like, which I wanted to sit down with RESA and discuss with them - how do we handle that. I think all the outstanding increases from October 93 onwards up until the last safety net adjustment total a sum of \$60, so had those increases been applied as they were available the award would be \$60 ahead now.

We are currently looking, sir, at an increase of \$95.30, which is the difference between the current award rate and the minimum adult wage. It is true that a lot of employers out there won't feel the effect of the increase under certain circumstances because a lot of employers and employees in this industry run on the debit-credit system, so if they're given \$385 a week and they're earning commission and they are on the debit-credit system that 385 then just gets debited out of their commission, but there are other instances in the industry where an increase - a sudden increase - of \$95 will be felt.

(Continued)

So we also wanted to talk to RESA on - and get some understanding with RESA about phasing-in this increase, and this is why we were particularly interested in doing it before 20 October because we had our AGM coming up, but I had no response from that correspondence; that is, REEF and RESA have not met and I think they should.

What I'm suggesting this afternoon, sir, is that you actually order the parties into conference to see if we can come to some agreement on phasing-in, thus saving the commission a lot of time in arbitrating that because if - certainly part of our application is to look at phasing in. We also have to look at overcoming my interpretation - and I could be wrong - what my interpretation of principle 11 is. The adult minimum wage can't be put in until the lowest classification reaches the adult minimum wage and, of course, 290 is nowhere near the adult minimum wage yet.

We're not about holding this matter up. We're not about delaying it. What we are about is can REEF and RESA sit down and agree on some sort of phasing in, agree on some sort of procedure that will accommodate the current principles and come back and put it before you as a consent position. Just to finish: we're not opposed to the minimum adult wage but we're certainly opposed to its operative date being tomorrow.

COMMISSIONER: Right. Do you wish to respond to those comments from Mr Tepper? The first one is the principles.

MR STAIT: Sir, it may be that Mr Tepper's - I am sorry, my friend's understanding and my understanding are either in sync with one another or diametrically opposed. My understanding is very simply this: that there is nothing in the state wage case decision and, in turn, the principles, which prevent the commission

from awarding the application as it currently stands before you in this award setting; that is, to insert the state minimum wage.

I do not read nor understand that there is an impediment placed before the commission - and certainly in this award setting - which prevents the awarding of the \$385.40 in lieu of the current \$290.10. My understanding may be wrong but I suggest it is not, sir. I suggest there is simply no impediment and that was the intent of the state wage case decision.

COMMISSIONER: Mr Tepper has raised 12.1.2. What do you say about that?

MR STAIT: I obliquely referred to that in my opening submission, sir. Look, it is trite for me to say this is a complicated award when it comes down to classifications. To the contrary. There is one classification in this award, it being of a registered real estate salesperson. In turn, my understanding was that there had been very minimal adjustments made to this award as far as the application of state wage cases over the last 10 years and I am indebted to my friend to indicate that he is aware of at least two adjustments which have been made.

Whether that can then be fairly and squarely thrust back on to the applicants in these proceedings to say the applicants over a period of time have not applied the state wage case decisions in this award, then we plead guilty. The fact of the matter is that RESA has not diligently followed the state wage case decisions as they have arisen from time to time over the last 10 years but, having said that, we cannot escape the fact that the only beneficiary in this industry has been the employers. Certainly the employees in the industry have been disadvantaged. Rightly or wrongly, as is in the case

in - - -

COMMISSIONER: I appreciate that and you have said that before, but it is still not answering the question I asked because you have put an argument up in your opening - and I'm not saying I accept it or reject it and I have made that quite clear and I would be inclined to say that some would have been - some employers have had the advantage and some it would have made no difference to.

There are two things I want to put to the parties. I believe there should be some discussions between the parties. How can I insert a state minimum wage of less than what the state minimum wage is? I don't want answers on that right now but I think it is something you have to look at because I want to hear argument on it. How can I insert a state minimum wage that is different from the official state minimum wage?

That is something I would want to hear from the parties on, and that then comes and - taking the arguments already put by Mr Tepper that you're not opposed to that going in but it should be phased in. I would want to hear the explicit argument - you know, if it's going to go to argument - if it can't be agreed how do I get around putting a minimum wage in which is different from every other minimum wage in this state? I'm not saying I can't, but I can't - I think they are the things you have got to look at in the discussions - and I think you should have discussions. I will direct the parties to have discussions - expeditiously, as well, so I can deal with it expeditiously - but they are the two main arguments: do the principles allow me first of all to put in what is sought.

If it does allow me to put it in whether you can then revert back to the point which was raised by Mr Tepper, and the other point of

principle about phasing in - the principles are quite clear on that. The third point is how can I make a minimum wage up?

MR STAIT: If I could just respond to one aspect of what you have said, sir. That's why I made the - sorry. Insofar as the potential to enter into negotiations over, shall we say, the phasing in - - -

COMMISSIONER: No, I'm not saying whether there's phasing in. I think negotiations should clear that up and I assume that will be over.

MR STAIT: I hear what you say about the parties entering into discussions or negotiations - that's accepted - but my instructions are, as I indicated at the end of my opening submission, that there is really nothing to discuss between the parties when it comes to the application of inserting the minimum wage into the - or the state minimum wage into this award, and my instructions are to seek that that be introduced expeditiously and hence my submission in respect of tomorrow.

Now, that may not be possible, given what has fallen from my friend and also from the bench but, clearly, my instructions are that there is nothing to negotiate in respect of phasing in that increase over a period of time.

COMMISSIONER: I'm not saying there will be negotiations on phasing-in. I said there will be negotiations on what is on before the parties as a - first of all, does the principle say certain things must occur before it goes in (indistinct) and the principles also talk about phasing in. The other matter is, can I put in anything less than what the minimum wage - state minimum wage is.

MR TEPPER: I didn't understand RESA applying for anything less, sir - they're applying for 385.40 - unless you're looking at - - -

COMMISSIONER: That's right. Say for instance on an argument on a phase-in I wouldn't be putting that, would I? If I accepted that there's - - -

MR TEPPER: If you phased it in?

COMMISSIONER: Yes.

MR TEPPER: Yes, I see where you are coming from.

COMMISSIONER: Yes, and so I will be putting a state minimum in that is different from the state minimum wage.

MR TEPPER: Yes.

COMMISSIONER: That is what I want the parties to discuss.

MR TEPPER: Yes, well, maybe one way for - and far be it for me to tell RESA what to do but one way they can overcome that is by applying for the safety net adjustments rather than the minimum wage.

COMMISSIONER: It's definitely a phase-in.

MR TEPPER: It's different amounts, yes, and that can be phased.

COMMISSIONER: I'm not coming to any conclusion. I'm just saying there have got to be discussions and they are the three points I want you to discuss. If you come back and you've not got agreement I will hear argument on the merits and - - -

MR TEPPER: Yes, and another thing I wanted to bring up with RESA, too, was it may well be to make that last hurdle from \$60 to \$90 it may have to be some sort of work value. The other thing was I wanted to talk to them about absorption. I haven't heard any undertaking from the union this afternoon on absorption.

COMMISSIONER: That must be done of course. That's... in the principles.

MR STAIT: That's why it's in the application.

COMMISSIONER: How soon can the parties get together on these points because it's not a matter - I mean, I suppose if the real estate salespersons are convinced

that the principles don't apply as such, there is not (indistinct) discussion about phasing in because that's where the phase-in comes - it's in the principles (indistinct).

There may not be any room to manoeuvre between the parties on that but I've not made up my mind obviously - I've not heard argument on the point I've raised - is whether I can put something in. See, if I can put less than what the state wage is, the minimum wage, I do have a right to phase in, but I'm not sure I've got the right to do that, so I want to hear - it's not come up from the parties but obviously I'm sitting here thinking what do I do and you are going to have to look at that, and that may go towards either party resolving any differences.

MR TEPPER: I just find it very strange and odd that RESA don't want to talk to us on an application that wants a \$90 increase and I suppose that's why I stressed five minutes ago that I'm asking the commission to - - -

COMMISSIONER: I have already said I am determined there will be talks. There's no doubt about that.

MR TEPPER: Thank you, sir.

COMMISSIONER: Because unless the parties are even prepared to argue the points I have raised, I think anybody that jumps to their feet on the points I have raised, to start arguing it would be very foolish without doing some research into it, so it's very important that that research is one from both sides - what argument you're going to put to the bench - because right now there is no consent matter.

It's a matter of the matter being determined one way or another unless you come up with a consent matter or an agreed point and I would have to hear the merits running right through about the power of the commission to do certain things in regard to the - because the principles tie us down to

a certain extent but I have raised that other curly one - what do you do on that point?

I would want to hear arguments on my power to do something on it because I have never looked into it myself, to be quite honest. I have just no idea whatsoever. Obviously if I had I would be telling the parties - some guidance - because I wouldn't be doing it without telling the parties. I am giving you an opportunity to put argument - if it needs to be - on that point and that may be resolving it. I have no idea. I do direct the parties to have discussions and I will get back to my question again - how soon can the discussions take place?

MR TEPPER: I guess as soon as we arrange our diaries. I mean, people can always fit in an hour or two.

MR STAIT: Sir, given your directions we will certainly meet with REEF as soon as is mutually convenient. What may assist the parties is if you are in a position to indicate to us perhaps your availability so we could perhaps aim at coming back to the commission within 10 or 14 days, or something like that.

DISCUSSION RE FURTHER HEARING DATE

COMMISSIONER: Wednesday, 10 November at 1.30. If the parties are able to report back before that I will fit in for a short session, whether it is in chambers or otherwise, to hear from the parties. Nothing further? Commission stands adjourned.

ADJOURNED 1.40 PM TO WEDNESDAY, 10 NOVEMBER 1999 AT 1.30 PM

" B "

COPYRIGHT RESERVED

(N.B.) Copyright in this transcript is the property of the Crown. If this transcript is copied without the authority of the Minister of Government Enterprises proceedings for infringement will be taken.

1/MCG/A

IN THE INDUSTRIAL RELATIONS COMMISSION OF SOUTH AUSTRALIA

APPLICATION TO VARY

ADELAIDE

BEFORE DEPUTY PRESIDENT STEVENS

No 105/82 - Reg No 17

REGISTERED REAL ESTATE SALESPERSONS AWARD

TRANSCRIPT OF PROCEEDINGS

Thursday, 3 August 2000 at 9.22 am

MR N. STAIT for the Real Estate Salespersons Association
MR D. TEPPER for the Real Estate Employers Federation

STEVENS DP: Good morning, I'll take the
appearances.

MR TEPPER: Good morning, sir.

MR STAIT: Good morning, deputy president. My
name is Stait, and I appear for the Real Estate
Salespersons Association.

STEVENS DP: Thank you.

MR TEPPER: If the commission pleases, my name is
Tepper and I appear for the Real Estate Employers
Federation.

STEVENS DP: Thanks, Mr Tepper. Yes, Mr Stait.

MR STAIT: If the commission pleases, the
application before this arm of the commission seeks
to vary the Registered Real Estate Salespersons Award
insofar as the most recent state wage case decision
of 31 May this year, and recorded in print SAIRCOM
29. The commission will well be aware that there was
a national wage increase in the order of \$15.
However, the history of this award, deputy president,
will indicate that for one reason or another, the
wage rates have been vastly below the state minimum
wage, and through a series of negotiations over a
protracted period of time, the parties have agreed to
a phasing-in, as it were, of national wage case
decisions, and then, in turn, the state wage case
decisions which reflected those national wage case
decisions to the extent that the rate of pay that
would be reflected in this award would be reflective
of the state minimum wage.

The variation that took place in
December of 1999 was a phasing-in amount with an
operative date, from memory, of the first pay period
on or after 31 January this year. However, the
parties agreed that with a pending state wage case
decision some time during the year 2000, that the
difference between the state minimum wage and the
wage rate that was applying at that time would be

incorporated into an adjustment which would then take effect from an agreed date, being the first pay period on or after 1 January 2001.

So simply what I'm saying to the commission is that we seek a flow-on of the state wage case decision to the rates of pay in this award, and that is recorded in appendix B. We also ask that the commission take into account the brief submission that I've indicated insofar as the wage rates will now reflect the state minimum wage of \$400.40, and consequently, those percentage adjustments to rates in accordance with what has been agreed. For example, there will be a rate of pay of \$380.40 or a classification at a certain level.

STEVENS DP: Yes.

MR STAIT: Sir, appendix A is a straight lift from the state wage case decision. However, as my friend has correctly indicated to me just prior to these proceedings, upon any perusal of this award, one will ascertain that there is much within appendix A which really doesn't apply in this award setting. I believe my friend will speak to that very briefly in a moment, but nevertheless, the application which is before this commission sought to do nothing more than take a straight lift from that state wage case decision and then insert it into this award setting. But for reasons which my friend will indicate, it may be that there is some merit to a modification to that, if the commission is wedded to that idea.

Insofar as appendix C is concerned, that's a statement which emanates once again out of the state wage case decision, and my understanding is that to comply with the provisions of that state wage case decision, that it is necessary to insert this once again into the award. Sir, it's with those comments that we would seek your blessing to having

the award varied in accordance with the application or, subsequently it may turn out to be with respect to further adjustments but based on the settlement of the minutes in respect of what my friend may have to say, that it also has then an operative date of the first pay period on or after 1 January 2001.

STEVENS DP: Yes, all right.

MR STAIT: If there's any questions from the bench, I'll endeavour to answer them.

STEVENS DP: No, there won't be until after I hear from Mr Tepper and we'll see where we'll go from there.

MR STAIT: There is one thing, sir, I should indicate, and perhaps I should have indicated from the outset, I did receive notification from your associate to pick up the summonses and serve them in accordance with the requirements of the act and the regulations. Unfortunately, I didn't understand the present time constraints between your directions and what I could comply with, but in the final analysis, the advertisement was placed in Saturday's Advertiser, rather than, I think it was Thursday.

STEVENS DP: That's all right.

MR STAIT: So it was placed in Saturday's Advertiser of 29 July.

STEVENS DP: Yes, in the circumstances I give leave to shorten the time there. No objection, Mr Tepper?

MR TEPPER: No, sir. There's only two main players, and we're here.

STEVENS DP: Yes, I understand that's the case in this award.

MR TEPPER: Yes.

MR STAIT: If the commission pleases.

STEVENS DP: Thank you. Yes, Mr Tepper.

MR TEPPER: If the commission pleases, I guess what the bottom line is - what we're consenting to - for the adult minimum wage to be inserted into this.

award in accordance with principle 11. So that is by ~~consent. I hand up - I don't know what to call it;~~ it's not really a draft order, I suppose, but in a sense it is. What it is, sir, it's simply a reproduction of Mr Stait's application and how I see that it would be in its final analysis. So I've actually tracked the changes so they can be appreciated, and I will just quickly run you through them. It will only take a minute.

STEVENS DP: Yes.

MR TEPPER: Delete clause 2.1 and replace it with the following: 2.1, the state minimum wage award. I've inserted "subject to clause 3" because clause 3 talks about trainees.

STEVENS DP: Yes.

MR TEPPER: 2.2, the old, little (b) there, I've crossed that out because there are no supported wages in the award. So to me, sir, that paragraph is superfluous and - - -

STEVENS DP: Yes. So long as that remains the case in this award.

MR TEPPER: And (c), sir - there's no part-time or casual in this award, and probably never will be.

STEVENS DP: No.

MR TEPPER: The old (3), sir, which is crossed out, there are no junior rates in this award. So I'm just simply seeing all that as superfluous. The employers and employees will read all that and get confused if it's left in there. 2.3, sir, I have simplified that to simply read:

This clause has no application to employees paid in accordance with clauses 2.5 -

which is probation, because probation is a lower wage than the adult minimum wage, and also a trainee, 2.7.

STEVENS DP: Yes.

MR TEPPER: Indeed, in the state wage case next year, I think I'll look to a lot of this drafting and

suggest to the UTLC that we can do a lot with it. That's by the way though. 2.4, I've crossed out Ordinary Hours, because there is no hours clause in the award.

STEVENS DP: Right.

MR TEPPER: Over the page, sir, I've crossed out overtime and penalty rates because they aren't in the award. As you would appreciate, sir, this is a Real Estate Award.

STEVENS DP: Yes, it's very different, isn't it?

MR TEPPER: It's very different from other industries, the way they operate and work. Then in 2.8, sir, I've simply inserted some extra words in there; that is, the adult rate of pay for a registered salesperson will be the state minimum award wage. I've crossed out the last paragraph, sir, because I really don't understand it, because although it was consented to in the state wage case, there seems to be a contradiction between those two last paragraphs. In 2.8 it is saying that any increase arising out of the minimum award wage may be offset, and then in the last paragraph it says:

Increases made under previous state wage case principles -

which is fair enough, but then it says -

and under the current declaration may not be offset.

So in the first paragraph it's saying you can offset, but in the second paragraph it's saying:

Under the current declaration you can't offset. I think there's tension between those two.

STEVENS DP: Yes, it doesn't seem to make sense, does it?

MR TEPPER: It doesn't, sir. Then the current, 2.5 in the award must come out because that's referring to all the previous safety net increases

which is covered by 242 of that draft that I handed up to you.

STEVENS DP: Yes, it does say that.

MR TEPPER: Yes, so the current 2.5 in the award, S2.5 will have to come out so that it's not talking about it twice. What Mr Stait and I have agreed on, sir, is that he has to get further instructions on how I've altered this. So what we've agreed is subject to your comments, subject to Mr Stait getting further instructions on this draft that I've just handed up, we can then present a draft order, say, in a couple of days' time.

STEVENS DP: Yes.

MR TEPPER: But as I said at the very beginning, the bottom line is for consenting to the minimum adult wage going into the award.

STEVENS DP: My only comments are that it seems to make sense to me with my limited knowledge of the award. I believe I understand what you're putting, Mr Tepper, and I can't take it any further than that. Do I take it that you agree to this operative date of the first full pay period on or after 1 January 2001?

MR TEPPER: Yes, sir, that was all agreed last year, that we do it in two votes.

STEVENS DP: That was agreed before anyway.

MR TEPPER: Yes.

STEVENS DP: So that will be the operative date for this order.

MR TEPPER: Yes, sir.

STEVENS DP: Mr Stait, I suggest you just go ahead and get instructions on those points and then be in a position early next week to provide a replacement draft order, if indeed there is agreement at that point between your association and the employers association.

MR STAIT: Yes, I'll do that, Mr Deputy President. I should indicate that I think the

approach is being wise insofar as my friend providing a document, for the want of a better description, and it appears that if the comments that have been made which are reflective of the approach to be adopted to affect this award variation, which in turn is not then inconsistent with the intentions of the state wage case, then perhaps the draft order won't vary very much from the document which is currently before you.

STEVENS DP: No.

MR STAIT: But I think the advice is correct, for me to seek directions from my principals and we will contact your associate in due course.

STEVENS DP: And just for what it's worth, I have never considered that the principles in the state wage case have to be followed absolutely rigidly, come what may, and although they are meant to have application, of course, to most awards, there are some awards of the commission that fall into the somewhat unusual, such as this award and the Mannequins and Models Award, to name but two, that just are not simply amenable to some of the provisions in the state wage case principles. All right, we'll adjourn the matter on that basis, and when you're ready to supply a replacement draft order, Mr Stait, no doubt you'll simply indicate at that point in time that you understand that is with the agreement of the employers association that you do that, and will go ahead and then prepare the order internally for settlement of the minutes.

MR STAIT: Yes, that's understood, sir.

STEVENS DP: We will adjourn sine die on that basis.

ADJOURNED 9.36 AM

Attachment B – Overview of the property industry sector

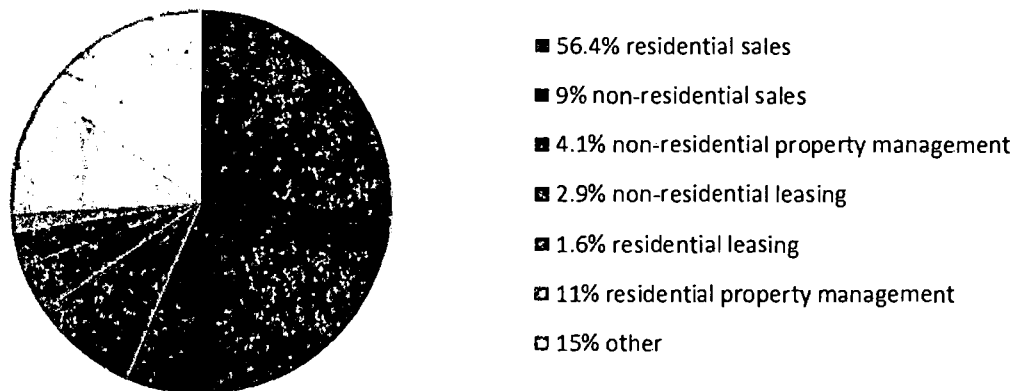
The property industry in Australia includes a large number of property occupations, such as real estate agents, business agents, strata managers, property managers and auctioneers.⁹² In 2012–13, the industry generated revenue of \$8.9 billion, the majority of which was derived from residential sales (56.4 per cent); residential property management and non-residential property sales were the next largest contributors.⁹³

While the residential market accounts for the majority of industry revenue, the commercial market is also a significant source of revenue. However, since fund managers and other financial institutions that own commercial properties can organise direct deals with buyers, the industry's (non-residential) services are not as influential in the industry.⁹⁴

In the residential market, operators mostly comprise localised firms with a smaller number of national franchises that mainly operate in the non-residential and rural markets.

Figure B.1 illustrates this product and service segmentation.

Figure B.1: Product and services segmentation, 2011



Source: IBISWorld 2012, *Industry Report: Real estate agents in Australia* October 2012.

Major real estate agencies are now forming joint ventures to participate in the fast-growing facilities management segment to generate fees from acting on behalf of tenants (e.g. government and major company tenants). Facilities management includes the management of hard services (e.g. air-conditioning, electrical systems, fire safety, lifts, boilers, mechanical repairs and maintenance); the control of contracts for soft services (e.g. cleaning, security, pest control, catering and grounds

⁹² The industry also includes conveyancers and valuers, which fall into the second tranche of national licensing occupations.

⁹³ IBISWorld 2012, *Industry Report L7720: Real estate agents in Australia*, October 2012.

⁹⁴ *Ibid.*

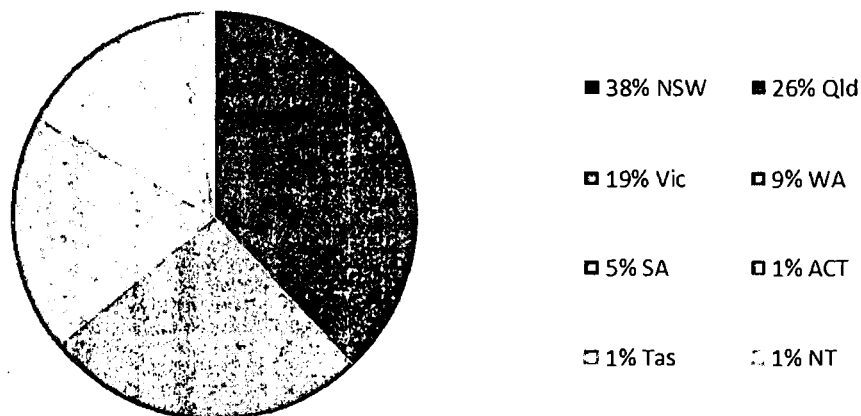
maintenance); and property agent services such as management of leases, property inspections, rent reviews, re-leasing of space and tenant relocations. These services have increased in popularity by agents over the past five years thanks to its income stability compared to sales income, which is a lot more volatile, making sales income a more popular pursuit during boom years⁹⁵.

Based on information provided by jurisdictional regulators, there are over 118,000 property licensees across Australia. Approximately 75 per cent of licences are issued in New South Wales, Victoria and Queensland.

The majority of real estate establishments (approximately 81.9 per cent) are located in New South Wales, Victoria and Queensland.⁹⁶ There has been significant growth in demand for both residential and non-residential real estate in Western Australia, which has resulted in more real estate agents in that state than population alone would suggest (see Figure B.2).

Mid-sized businesses dominate all states and territories. The largest businesses have the strongest presence in smaller markets, notably the Northern Territory and the Australian Capital Territory, because they are competing with much smaller operations.⁹⁷

Figure B.2: Business locations



Source: IBISWorld 2011, *Industry Report: Real estate agents in Australia*, October 2012.

⁹⁵ Ibid

⁹⁶ Ibid

⁹⁷ Ibid

ll
D
ll

Attachment D – Overview of existing licensing arrangements

Property occupations such as real estate, stock and station, and business agents are licensed in some way in all Australian states and territories. The majority of the regulators are government departments. In Victoria and the Northern Territory, occupational licensing is undertaken by a separate authority or board.

Table D.1: Jurisdictional regulators of the property occupations

State or territory	Regulator
New South Wales	NSW Fair Trading (Department of Finance and Services)
Victoria	Business Licensing Authority
Queensland	Fair Trading (Department of Justice and Attorney-General)
Western Australia	Department of Commerce
South Australia	Consumer and Business Services Division of the Attorney-General's Department
Tasmania	Office of Consumer Affairs and Fair Trading; Property Agents Board
Australian Capital Territory	Office of Regulatory Services
Northern Territory	Department of Business; Gambling and Licensing Services

Source: Provided by the regulatory authorities.

Overview of current licensing and eligibility requirements

Property agents are licensed to perform a variety of functions including buying, selling, renting and auctioning of real property. Some jurisdictions also define separate licences based on the nature of the property assets being transferred. For example, New South Wales has distinct licences for real estate agents, stock and station agents, strata managing agents and business agents, whereas in Victoria an estate agent's licence covers a broad scope of work that includes business agency work and auctioning of real property.

All jurisdictions make a distinction between those who are licensed to supervise property dealings and those who must be supervised. Attachment A contains a concise overview of current licensing arrangements.

Most regulators have access to the interest earned on money held in trust by property agents. These funds can be accessed to fund some regulatory activities and in most jurisdictions support a fidelity fund that may be accessed if there is a failure to account for moneys held in trust by an agent.

Current licensing of property work may be characterised as covering six main areas, which are outlined below.

Real estate agent

Real estate agents are currently licensed in all jurisdictions. There is general consistency in the core functions described in the scope of work for the various property agent licence categories across

jurisdictions. For example, all jurisdictions provide for the core functions of a real estate agent as acting (including negotiating) on behalf of another for reward in transactions relating to the sale, purchase, exchange, or leasing of real property (both residential and non-residential).

Victoria and South Australia take a broad licensing approach and issue a single licence to cover sale, auctioning of real property, leasing and management of residential, non-residential and rural property and businesses. Queensland and Tasmania include business agency work in the scope of a real estate agent.

New South Wales has a separate stock and station licence category for rural land, residential sales and the sale of livestock. Queensland also has a separate licence category relating to rural property called a pastoral house licence. The regulated work for Queensland pastoral house licence includes the sale of rural land and livestock, and auctioning of rural land, livestock, and, wool. It also authorises 4 annual non-rural land auctions, and the auctioning of plant, machinery, furniture and other items location on rural land. However, unlike New South Wales, in Queensland real estate agents are also able to sell, lease, or manage rural property and sell livestock.

The qualification requirement for real estate agents varies across the jurisdictions as follows:

- Western Australia, South Australia, Tasmania and the Northern Territory require a diploma level.
- New South Wales, Victoria require a Certificate IV.
- Queensland requires the completion of 19 units of competency.
- The Australian Capital Territory requires completion of 18 units of competency taken from both qualification levels.

Business agent

Business agency work is licensed in two different ways across the jurisdictions, either as a separate category (New South Wales, Western Australia, the Australian Capital Territory and the Northern Territory) or captured under a real estate agent's licence (Victoria, Queensland, South Australia and Tasmania). Where business licences are issued separately, the qualification requirement can be either a Certificate IV (New South Wales and the Australian Capital Territory) or a diploma (Western Australia and Tasmania). In the jurisdictions where business agency work is encompassed in that of a real estate agent, a real estate agent's qualification is required, except for South Australia where the completion of a specialised business agent unit of competency (CPPDSM4079A – Work in the business broking sector) is required.

Strata managing agent

Strata managers are currently licensed in different ways in the following four jurisdictions: New South Wales issues a separate licence, Victoria operates a registration system and in the Australian Capital Territory this work can be undertaken by a real estate agent or with a restricted licence. In the Northern Territory this work is undertaken by a real estate agent. Queensland, Western Australia, South Australia and Tasmania do not currently license strata managers and will not be required to do so under national licensing. The qualification requirement is very different in the jurisdictions that license or register strata managing work:

- In New South Wales, a certificate IV is required.
- In Victoria, a qualification is not required.
- In the Australian Capital Territory a qualification is not required if only undertaking strata managing work.

- In the Northern Territory a diploma is required

Property management

New South Wales and Tasmania issue a licence or registration respectively for property managers. In the other jurisdictions this work is included in the regulated work of a real estate agent or an agent's representative.

The qualification requirement in the jurisdictions that issue a separate licence is as follows:

- ten specified units of competency in New South Wales
- a diploma is required in Tasmania.

Agent or sales representative

An agent's representative or sales representative is an employee of a licensed estate agent or a business agent (where licensed separately) who can perform most of the regulated work of the employer but must do so under supervision. The current scope of work for an agent's (sales) representative in Western Australia and South Australia is broader than in other jurisdictions. For example, the drafting of contracts is within scope of the licence in South Australia.⁹⁸ Conversely, South Australia includes non-residential property management within the scope of work of an agent's (sales) representative, however residential property management is not included. Those performing residential property management work must be employed by a licensed land agent. A land agent is authorised to perform both residential and commercial property management.

Most jurisdictions currently have a registration scheme for the employee level, which requires an applicant to meet a range of eligibility criteria usually including personal probity (verified by a police check) and qualification requirements, except Tasmania where a negative licensing system operates, i.e. if an agent's representative is found guilty of a disciplinary offence they are listed on a register. In Victoria, the onus for registration falls on the employer rather than the employee and no licence fee is paid to the regulatory authority.

All jurisdictions require employees to have some level of training. However, the requirements differ significantly, as follows:

- New South Wales – four specified units of competency
- Victoria – three specified units of competency
- Queensland – seven units of competency
- Western Australia – seven specified units of competency
- South Australia – 17 specified units of competency
- Northern Territory – Certificate IV for business agent's representatives, and 24 specified units of competency for a real estate agent's representative
- Australian Capital Territory – five specified units of competency.

Auctioning of real property

Currently all jurisdictions license auctioneers of real property, albeit in different ways.

- In New South Wales, Victoria and the Australian Capital Territory auctioneers are also real estate agents

⁹⁸ A provision in the *Legal Practitioners Act (SA) 1981* recognises the skills and training of sales representatives to allow this work

- In South Australia an auctioneer is either a land agent or a sales representative
- In Tasmania if the property auctioned includes land a real estate agent's licence is required.

The auctioneer in the above jurisdictions has full responsibility for an auction through the real estate agent's or land agent's scope of regulated work.

- A separate licence is issued in Queensland, Western Australia and the Northern Territory without a prerequisite of being a real estate agent, and the auctioneer is authorised to auction all property, including chattels and livestock.
- Also, in Queensland a pastoral house licence authorises the auctioning of rural land and a small number of non-rural land auctions per year, in addition to the sale of rural land.

Auctioning of livestock

The auctioning of livestock currently falls within the scope of regulated work of an auctioneer in all jurisdictions except Victoria, South Australia and the Australian Capital Territory where this work is unlicensed.

The way in which the licensing arrangements are structured varies across jurisdictions:

- New South Wales: there is no separate stock auctioneer licence category but an endorsement placed on a stock and station agents licence.
- Queensland, Western Australia and the Northern Territory: an auctioneer's licence authorises the holder to auction any property including livestock.
- Tasmania: a general auctioneering licence is required to auction any property that does not include land (real property). If the property auctioned includes both real and personal property, a real estate agent's licence is required.
- Victoria, South Australia and the Australian Capital Territory do not require a licence to auction livestock.

Current licence categories

Currently the licensing of property occupations work may be characterised as fitting into nine main areas:

- real estate agent
- business agent
- strata managing agent
- stock and station agent
- buyers agent
- property managing agent
- agent's representative
- business agent's representative
- auctioneer (real property and stock).

Table D.2 illustrates which of these areas are covered by the various jurisdictional regulatory arrangements, and this is denoted by the shaded cells. The nomenclature of the licences issued differs across jurisdictions and may not necessarily be the same as the licence listed in the first column. For example, real estate agents are called 'land agents' in South Australia and 'estate agents' in Victoria. Agent's representatives are called 'sales representatives' in South Australia and Western Australia.

Table D.2: Property occupations licensing arrangements by jurisdiction (shaded area denotes licensing)

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
Real estate agent								
Business agent		b	b		b	b		
Strata managing agent		f				k	b	b
Stock and station agent								
Pastoral house agent			l					
Buyer's agent		b	b	b	b		b	b
Property managing agent		b and i	b	b	b and j			b
Auctioneer (real property)	a	b	d	d	e	c and d	b	d
Auctioneer (stock)	a		d	d		d		d
Agent's representative		g			j			
Business agent's representative		h	h	h	h			
Strata managing agent representative								

a No separate auctioneer licence category, but an endorsement is placed on a real estate agent's or stock and station agent's licence for competent persons.

b Not a separate licence category but forms part of the scope of work of a real estate agent or stock and station agent.

c Included in the scope of work of a real estate agent and can issue a separate registration for a general auctioneer.

d Auctioneer's licence captures the auction of both real and personal property, including livestock and separate licences categories are not issued. (Auctioneers in WA are licensed in the Magistrates Court.)

e An auctioneer must also be licensed as an agent or sales representative in order to obtain an auctioneer's licence.

f A registration scheme with no qualification requirement.

g Assessment of eligibility and recording of details of the public register is delegated to the employing agent.

h Not a separate licence category but forms part of the scope of work of an agent's representative.

i Victoria – Restricted to collecting rent.

j Sales representatives are required to be licensed (as a sales representative) only if they are performing commercial property management work (and must work for a licensed land agent). Those performing residential property management work do not currently require a sales representative licence, but they must still work for a licensed land agent. A single registration is issued for sales representatives to act as either a real estate sales representative or a business sales representative or both a real estate sales representative and a business sales representative.

k Tasmania operates a negative licensing scheme.

l Pastoral house licence also authorises the auctioning of livestock

Schedule B—Classifications

[Varied by [PR988359](#), [PR986427](#)]

The classification criteria in this schedule provides guidelines to determine the appropriate classification level of persons employed pursuant to this award. In determining the appropriate level, consideration must be given to both the characteristics and typical duties/skills. The characteristics are the primary guide to classification as they indicate the level of basic knowledge, comprehension of issues, problems and procedures required and the level of supervision or accountability of the position. The totality of the characteristics must be read as a whole to obtain a clear understanding of the essential features of any particular level and the competency required. The typical duties/skills are a non-exhaustive list of duties/skills that may be comprehended within the particular level. They are an indicative guide only and at any particular level employees may be expected to undertake duties of any level lower than their own. Employees at any particular level may perform/utilise one such duty/skill, or many of them, depending on the particular work allocated.

The key issue to be looked at in properly classifying an employee is the level of competency and skill that the employee is required to exercise in the work they perform, not the duties they perform per se. It will be noted that some typical duties/skills appear in more than one level, however when assigning a classification to an employee this needs to be done by reference to the specific characteristics of the level. For example, whilst word processing and copy typing are first specifically mentioned at Level 2 in terms of typical duty/skill, it does not mean that as soon as an employee operates a word processor or typewriter they automatically become Level 2. They would achieve a Level 2 classification when they have achieved the level of skill and competency envisaged by the characteristics and the relevant indicative duty(ies)/skill(s) of a Level 2. Level 1 in this structure is to be viewed as the level at which employees learn and gain competence in the basic clerical skills required by the employer, which in most cases would lead to progression through the classification structure as their competency and skills increase and are utilised.

B.1 Level 1

B.1.1 Characteristics

Employees at this level may include the initial recruit who may have limited relevant experience. Initially work is performed under close direction using established practices, procedures and instructions.

Such employees perform routine clerical and office functions requiring an understanding of clear, straightforward rules or procedures and may be required to operate certain office equipment. Problems can usually be solved by reference to established practices, procedures and instructions.

Employees at this level are responsible and accountable for their own work within established routines, methods and procedures and the less experienced employees' work may be subject to checking at all stages. The more experienced employee may be required to give assistance to less experienced employees in the same classification.

A.8.2 Until 30 June 2010 the exemption clause will continue to apply to an employer of the kind in clause A.8.1 as if the clause were a term of this award and operated in relation to the corresponding provisions of this award rather than the provisions of the instrument.

A.9 Former Division 2B employers

[A.9 inserted by PR503605 ppc 01Jan11]

A.9.1 This clause applies to an employer which, immediately prior to 1 January 2011, was covered by a Division 2B State award.

A.9.2 All of the terms of a Division 2B State award applying to a Division 2B employer are continued in effect until the end of the full pay period commencing before 1 February 2011.

A.9.3 Subject to this clause, from the first full pay period commencing on or after 1 February 2011 a Division 2B employer must pay no less than the minimum wages, loadings and penalty rates which it would be required to pay under this Schedule if it had been a national system employer immediately prior to 1 January 2010.

A.9.4 Despite clause A.9.3, where a minimum wage, loading or penalty rate in a Division 2B State award immediately prior to 1 February 2011 was lower than the corresponding minimum wage, loading or penalty rate in this award, nothing in this Schedule requires a Division 2B employer to pay more than the minimum wage, loading or penalty rate in this award.

A.9.5 Despite clause A.9.3, where a minimum wage, loading or penalty rate in a Division 2B State award immediately prior to 1 February 2011 was higher than the corresponding minimum wage, loading or penalty rate in this award, nothing in this Schedule requires a Division 2B employer to pay less than the minimum wage, loading or penalty rate in this award.

A.9.6 In relation to a Division 2B employer this Schedule commences to operate from the beginning of the first full pay period on or after 1 January 2011 and ceases to operate from the beginning of the first full pay period on or after 1 July 2014.

B.1.2 Typical duties/skills

Indicative typical duties and skills at this level may include:

- (i) Reception/switchboard, e.g. directing telephone callers to appropriate staff, issuing and receiving standard forms, relaying internal information and initial greeting of visitors.
- (ii) Maintenance of basic records.
- (iii) Filing, collating, photocopying, etc.
- (iv) Handling or distributing mail including messenger service.
- (v) Recording, matching, checking and batching of accounts, invoices, orders, store requisitions, etc.
- (vi) The operation of keyboard and other allied equipment in order to achieve competency as prescribed in Level 2.
- (vii) Call centre customer contact trainee—customer contact functions with direct supervision.

B.2 Level 2

B.2.1 Characteristics

This level caters for the employees who have had sufficient experience and/or training to enable them to carry out their assigned duties under general direction.

Employees at this level are responsible and accountable for their own work which is performed within established guidelines. In some situations detailed instructions may be necessary. This may require the employee to exercise limited judgment and initiative within the range of their skills and knowledge.

The work of these employees may be subject to final checking and as required, progress checking. Such employees may be required to check the work and/or provide guidance to other employees at a lower level and/or provide assistance to less experienced employees at the same level.

B.2.2 Typical duties/skills

Indicative typical duties and skills at this level may include:

- (i) Reception/switchboard duties as in Level 1 and in addition responding to enquiries as appropriate, consistent with the acquired knowledge of the organisation's operations and services, and/or where presentation, and use of interpersonal skills are a key aspect of the position.
- (ii) Operation of computerised radio/telephone equipment, micro personal computer, printing devices attached to personal computer, dictaphone equipment, typewriter.
- (iii) Word processing, e.g. the use of a word processing software package to create, format, edit, correct, print and save text documents, e.g. standard correspondence and business documents.

Clerks—Private Sector Award 2010

- (iv) Stenographer/person solely employed to take shorthand and to transcribe by means of appropriate keyboard equipment.
- (v) Copy typing and audio typing.
- (vi) Maintenance of records and/or journals including initial processing and recording relating to the following:
 - reconciliation of accounts to balance;
 - incoming/outgoing cheques;
 - invoices;
 - debit/credit items;
 - payroll data;
 - petty cash imprest system; and
 - letters etc.
- (vii) Computer application involving use of a software package which may include one or more of the following functions:
 - create new files and records;
 - spreadsheet/worksheet;
 - graphics;
 - accounting/payroll file; and
 - following standard procedures and using existing models/fields of information.
- (viii) Arrange routine travel bookings and itineraries, make appointments.
- (ix) Provide general advice and information on the organisation's products and services, e.g. front counter/telephone.
- (x) Call centre customer contact officer grade 1 is employed to:
 - use known routines and procedures;
 - have some accountability for quality of outcomes;
 - receive calls;
 - use common call centre technology;
 - enter and retrieve data;
 - work in a team;
 - manage own work under guidance; and
 - provide at least one specialised service (sales and advice for products and services, complaints or fault enquiries or data collection surveys).

An employee who holds a Certificate II in Telecommunications (Customer Contact) or equivalent is to be classified at this level when employed to perform the functions defined.

B.3 Level 3

B.3.1 Characteristics

Employees at this level have achieved a standard to be able to perform specialised or non-routine tasks or features of the work. Employees require only general guidance or direction and there is scope for the exercise of limited initiative, discretion and judgment in carrying out their assigned duties.

Such employees may be required to give assistance and/or guidance (including guidance in relation to quality of work and which may require some allocation of duties) to employees in Levels 1 and 2 and would be able to train such employees by means of personal instruction and demonstration.

B.3.2 Typical duties/skills

Indicative typical duties and skills at this level may include:

- (i) Prepare cash payment summaries, banking report and bank statements; calculate and maintain wage and salary records; follow credit referral procedures; apply purchasing and inventory control requirements; post journals to ledger.
- (ii) Provide specialised advice and information on the organisation's products and services; respond to client/public/supplier problems within own functional area utilising a high degree of interpersonal skills.
- (iii) * Apply one or more computer software packages developed for a micro personal computer or a central computer resource to either:
 - create new files and records;
 - maintain computer based records management systems;
 - identify and extract information from internal and external sources; or
 - use of advanced word processing/keyboard functions.
- (iv) Arrange travel bookings and itineraries; make appointments; screen telephone calls; respond to invitations; organise internal meetings on behalf of executive(s); establish and maintain reference lists/personal contact systems for executive(s).
- (v) Application of specialist terminology/processes in professional offices.
- (vi) Call centre customer contact office grade 2 is employed to:
 - perform a broader range of skilled operations than grade 1;
 - exercise some discretion and judgment in the selection of equipment, services or contingency measures;
 - work within known time constraints;

- provide multiple specialised services to customers (including complex sales, service advice for a range of products or services, and difficult complaint and fault inquiries);
- deployment of service staff using multiple technologies; and
- exercise a limited amount of leadership over less experienced employees.

An employee who holds a Certificate III (Customer Contact) or equivalent is to be classified at this level when employed to perform the functions defined.

* Note: These typical duties/skills may be either at Level 3 or Level 4 dependent upon the characteristics of that particular level.

B.4 Call centre principal customer contact specialist

Employees at this level are employed to:

- perform a broad range of skilled applications;
- provide leadership as a coach, mentor or senior staff member, and provide guidance in the application and planning of skills;
- work with a high degree of autonomy with the authority to take decisions in relation to specific customer contact matters; and
- take responsibility for the outcomes of customer contact and resolve complex situations.

B.5 Level 4

B.5.1 Characteristics

Employees at this level will have achieved a level of organisation or industry specific knowledge sufficient for them to give advice and/or information to the organisation and clients in relation to specific areas of their responsibility. They would require only limited guidance or direction and would normally report to more senior staff as required. Whilst not a pre-requisite a principal feature of this level is supervision of employees in lower levels in terms of responsibility for the allocation of duties, co-ordinating work flow, checking progress, quality of work and resolving problems.

They exercise initiative, discretion and judgment at times in the performance of their duties.

They are able to train employees in Levels 1–3 by personal instruction and demonstration.

B.5.2 Typical duties/skills

Indicative typical duties and skills at this level may include:

- (i) Secretarial/executive support services which may include the following: maintaining executive diary; attending executive/organisational meetings and taking minutes; establishing and/or maintaining current working and

personal filing systems for executive; answering executive correspondence from verbal or handwritten instructions.

- (ii) Able to prepare financial/tax schedules, calculating costings and/or wage and salary requirements; completing personnel/payroll data for authorisation; reconciliation of accounts to balance.
- (iii) Advising on/providing information on one or more of the following:
 - employment conditions;
 - workers compensation procedures and regulations; and
 - superannuation entitlements, procedures and regulations.
- (iv) *Applying one or more computer software packages, developed for a micro personal computer or a central computer resource to either:
 - creating new files and records;
 - maintaining computer based management systems;
 - identifying and extract information from internal and external sources;
or
 - using of advanced word processing/keyboard functions.
- (v) Call centre customer contact team leader is employed to:
 - perform a broad range of skilled applications;
 - evaluate and analyse current practices;
 - develop new criteria and procedures for performing current practices;
 - provide leadership in a team leader role and provide guidance to others in the application and planning of skills; and
 - work with a high degree of autonomy and exercise authority to take decisions in relation to specific customer contact matters.

An employee who holds a Certificate IV (Customer Contact) or equivalent is to be classified at this level when employed to perform the functions defined.

* Note: These typical duties/skills may be either at Level 3 or Level 4 dependent upon the characteristics of that particular level.

B.6 Level 5

B.6.1 Characteristics

Employees at this level are subject to broad guidance or direction and would report to more senior staff as required.

Such employees will typically have worked or studied in a relevant field and will have achieved a standard of relevant and/or specialist knowledge and experience sufficient to enable them to advise on a range of activities and features and

contribute, as required, to the determination of objectives, within the relevant field(s) of their expertise.

They are responsible and accountable for their own work and may have delegated responsibility for the work under their control or supervision, including, scheduling workloads, resolving operations problems, monitoring the quality of work produced and counselling staff for performance and work related matters.

They would also be able to train and to supervise employees in lower levels by means of personal instruction and demonstration. They would also be able to assist in the delivery of training courses. They would often exercise initiative, discretion and judgment in the performance of their duties.

The possession of relevant post secondary qualifications may be appropriate but are not essential.

B.6.2 Typical duties/skills

Indicative typical duties and skills at this level may include:

- (i) Apply knowledge of organisation's objectives, performance, projected areas of growth, product trends and general industry conditions.
- (ii) Application of computer software packages within either a micro personal computer or a central computer resource including the integration of complex word processing/desktop publishing, text and data documents.
- (iii) Provide reports for management in any or all of the following areas:
 - account/financial;
 - staffing;
 - legislative requirements; and
 - other company activities.
- (iv) Administer individual executive salary packages, travel expenses, allowances and company transport; administer salary and payroll requirements of the organisation.
- (v) Call centre principal customer contact leader is employed to:
 - apply a significant range of fundamental principles and complex techniques across a wide and unpredictable variety of contexts in either varied or highly specialised functions;
 - co-ordinate the work of a number of teams within a call centre environment; and
 - have a number of specialists/supervisors reporting to them.

An employee who holds a Diploma—Front Line Management or equivalent is to be classified at this level when employed to perform the functions defined.

B.7 Call centre technical associate

A call centre technical associate is employed to:

- apply a significant range of fundamental principles and complex techniques across a wide and unpredictable variety of contexts in relation to either varied or highly specialised functions;
- contribute to the development of a broad plan, budget or strategy;
- work with a high degree of autonomy and be accountable and responsible for themselves and others in achieving outcomes (some supervision may be required);
- be involved in the design, installation and management of telecommunications computer equipment and system development;
- assess installation requirements;
- design systems;
- plan and perform installations; and
- install and manage data communications equipment and find faults.

Schedule C—Supported Wage System

[Sched C varied by [PR986427](#), [PR988359](#), [PR994549](#), [PR998748](#), [PR510670](#), [PR525068](#), [PR537893](#), [PR542122](#), [PR551831](#), [PR568050](#), [PR581528](#)]

C.1 This schedule defines the conditions which will apply to employees who because of the effects of a disability are eligible for a supported wage under the terms of this award.

[C.2 varied by [PR568050](#) ppc01Jul15]

C.2 In this schedule:

approved assessor means a person accredited by the management unit established by the Commonwealth under the supported wage system to perform assessments of an individual's productive capacity within the supported wage system

assessment instrument means the tool provided for under the supported wage system that records the assessment of the productive capacity of the person to be employed under the supported wage system

disability support pension means the Commonwealth pension scheme to provide income security for persons with a disability as provided under the *Social Security Act 1991*, as amended from time to time, or any successor to that scheme

relevant minimum wage means the minimum wage prescribed in this award for the class of work for which an employee is engaged

supported wage system means the Commonwealth Government system to promote employment for people who cannot work at full award wages because of a disability, as documented in the Supported Wage System Handbook. The Handbook is available from the following website: www.jobaccess.gov.au

SWS wage assessment agreement means the document in the form required by the Department of Social Services that records the employee's productive capacity and agreed wage rate

C.3 Eligibility criteria

C.3.1 Employees covered by this schedule will be those who are unable to perform the range of duties to the competence level required within the class of work for which the employee is engaged under this award, because of the effects of a disability on their productive capacity and who meet the impairment criteria for receipt of a disability support pension.

C.3.2 This schedule does not apply to any existing employee who has a claim against the employer which is subject to the provisions of workers compensation legislation or any provision of this award relating to the rehabilitation of employees who are injured in the course of their employment.

F

Brock Harcourts Gold Employee Collective Agreement (CA)

APPENDIX 1_Letter of Appointment
9 September 2011

Carolyn June Vass
4 Lake Miranda Court
Greenwith SA 5125

Dear Carolyn,

In accordance with the employee collective agreement clause 4.5 we agree that the following terms as indicated by the relevant crossed or ticked box and as allowed by the employee collective agreement apply to you:

1. **Your classification under clause 5.2 of the CA will be:**
 Salesperson as defined in the Real Estate Award
 (Sales) Manager as defined in the Real Estate Award
 Adult Clerical or Administrative employee Level {Level 1-2-3-4-5} of the Clerks (SA) Award
 Junior Clerical or Administrative employee Level {Level 1-2-3-4-5} of the Clerks (SA) Award
 Property Manager
 Salesperson Trainee on a contract of training as defined in Schedules 2 & 5 of the Real Estate Award
 Clerical Trainee on a contract of training as defined in Schedule 6 of the Clerks (SA) Award
2. **Your start date of employment will be/ was 9 September 2011**
3. **Your tenure of employment under clause 7 of the CA will be:**
 Full time Part time Casual Fixed term expiring on {Expiring Date}
4. **Under clause 10 of the CA state any agreed revised or new key performance indicator:**
 a) 3 Listings per month
 b) 3 Contracts per month
 c) 16 Appraisals
 d) Expected minimum commission of 2.2% + gst per listing, with a minimum flat rate of no less than \$7000 + gst

5. Your hours of work under clause 20 of the CA will be as follows:
 Your normal or ordinary working hours will be 38 hours per week

OR

- Your working hours will be irregular and therefore the employer will notify you from time to time what your working hours will be

AND

- May be worked at your own discretion (subject to employer's guidelines)

OR

- Will be worked as per the following table:

Day of week	Start	Finish	How Long Lunch
Monday			
Tuesday			
Wednesday			
Thursday			
Friday			
Saturday			
Sunday			

AND

- will not be averaged

OR

- will be averaged over a period of {insert} weeks (Note: Not more than 52 weeks – 4 weeks is recommended)

6. **Your method of remuneration under clause S1.1 of schedule 1 of the CA will be:**
- Option (A) - Your relevant pay scale (or if applicable the Federal minimum Wage), which currently is \${insert} and is subject to any increases
 - Option (B) - An annual salary of \${insert}
 - Option (C) - A higher hourly rate than the minimum relevant award wage or the Minimum Federal Wage namely \${insert}
 - Option (D) - Pay Scale, Car Allowance and Commission. Your current pay scale is \${insert current}per week plus car allowance of \$140.00per week both of these are subject to any increases as per the Real Estate Award.
 - Option (E) - Commission in satisfaction of pay scale and average over 12 months. Your current pay scale is \${insert} and is subject to any increases.
 - Option (F) - Commission only

7. **A.) If you are a salesperson then under clause S2.1 of Schedule 2 of the CA if we have agreed for you to have a commission share and it will be as follows:**

65% inclusive of superannuation

B) Personal Marketing

A minimum of \$1500.00per year to be spent on personal marketing at the sales consultants expense.

C) Client Marketing/ Vendor Valet

As of 1st January 2009 all vendor valet marketing will be the sole responsibility of the sales consultant and charged to them at 100%.

D) Vendor Advertising Accounts

It is the sales consultants responsibility to make their clients aware of our company policy with regard to collection of ongoing property marketing expenses. We will be sending out accounts on a fortnightly basis with payments to be made within 7 days. Any variation to this policy must be approved by management. Eg: payments at settlement

8. **Is there an agreed incentive/ bonus under Schedule 3 of the CA?:**

Yes NO

If "Yes" what is it? As per Schedule 3 of the Collective Agreement

S3.1 A Clerk who introduces to the employer a new rental will be paid 50% of the letting fee by the employer. A clerk or property manager who introduces a personal listing to the employer will receive 15% commission for the employer's net commission – the employer's net commission is defined under Schedule 2.

S3.2 It is a provision of the Collective Agreement that the employer and an employee may agree at any time in an employee letter as per clause 4.5 on any incentive/bonus arrangements. Incentives in this Schedule refer to incentives other than a salesperson's commission.

S3.3 An incentive or bonus scheme to which you will be entitled, whether cited in this Collective Agreement or whether agreed in accordance clause S3.2, will be inclusive of the employer's superannuation contribution and also minus GST and any franchise fee (if relevant).

9. **Is there an agreed to car or mobile phone allowance?:**

No (car allowance) No (phone allowance)

I, Carolyn Vass, have read and agree with the above terms of employment.

Signed: _____

CVass

Dated: _____

10/9/11

Brock Harcourts Gold Employee Collective Agreement (CA)

Subject and Clause Number

1	Parties to and name of the CA	29	Policies
2	Remuneration and payment frequency	30	Employer/employee responsibilities
3	Definitions	31	No conviction declaration
4	Operation of CA - CA replaces award – no disadvantage test- reference instrument – employee letter	32	Documentary proof of qualification or registration
5	Parties bound by CA	33	Employer computers
6	Employee's start date	34	Confidential information of the employer
7	Tenure of employment	35	Non-solicitation and restraint agreement
8	Reporting function	36	Severance of a provision in this agreement
9	Probation		
10	Key Performance Indicators		
11	Employee performance		
12	Driver's licence		
13	Motor vehicle		
14	Mobile phone		
15	Return of employer property		
16	Notice and other matters re termination of employment		
17	Redundancy		
18	Special arrangements		
19	Long service leave		
20	Hours of work		
21	Performance reviews		
22	Annual leave		
23	Personal/carer's leave		
24	Parental leave		
25	Meal breaks		
26	Public holidays		
27	Compliance with Act		
28	Dispute resolution		

Schedules

Schedule 1 – Remuneration

- Method of payment
- Pay scale increases
- Over pay scale payments
- Superannuation
- Salary sacrifice
- Overpayment
- Pay slip
- Means of payment
- Casual loading

Schedule 2 - Commission arrangements for a salesperson

Schedule 3 - Incentive/Bonus arrangements

Schedule 4 - Allowances/penalties etc

Signatures

Brock Harcourts Gold Employee Collective Agreement (CA)

1 PARTIES TO THE CA AND NAME OF AGREEMENT

1.1 Between: Gold Real Estate (SA) Pty Ltd (the "employer")
ABN 26109788114

Trading as: Brock Harcourts Gold

Situated at: 63 – 65 Hamilton Road, Fairview Park SA 5126

And: The employees who are identified in clause 5 of this CA

1.2 This agreement will be known as the "Brock Harcourts Gold Employee Collective Agreement"

2 REMUNERATION AND FREQUENCY OF PAYMENT

- Wages/salaries details and related matters are in Schedule 1
- Commission arrangements for salespersons are in Schedule 2
- Bonuses/Incentives are in Schedule 3
- Allowances, penalties, loadings, expenses are in Schedule 4

Frequency of payment

- (a) Wages or salaries will be paid fortnightly
- (b) Commission will be paid fortnightly
- (c) Bonuses or incentives will be paid annually.

3 DEFINITIONS

"Act" means the *Workplace Relations Act 1996* and the *Regulations* made there under as amended from time to time.

"Award" in this agreement is used as a generic term in relation to an applicable "Reference Instrument" [see 4.4].

"Basic Piece Rate of Pay" means a piece rate of pay, other than a piece rate of pay that is payable, as an incentive based payment or bonus, in addition to a basic periodic rate of pay and is generally referred to as 'commission only' in this CA in relation to a salesperson being classified under the Australian Fair Pay Commission's Real Estate Agents (Commission Only) Australian Pay and Classification Scale.

"Basic Periodic Rate of Pay" or "Basic Rate of Pay" in this agreement means a basic periodic rate of pay for a period worked (however the rate is described, e.g. pay scale, wage, salary, Federal Minimum Wage) and does not include incentive based payments and bonuses, loadings, monetary allowances, penalty rates or any other similar separately identifiable entitlements.

"CA" means employee collective agreement.

"Commission Only" – see "Basic Piece Rate of Pay"

"Employee" or "Employees" may be referred to as "you" or "your" in this CA.

"Employer" and "Employee/s" may be collectively referred to as "parties" or "we" or "us" or "our" in this CA.

"Federal Minimum Wage" has the meaning given by the Act.

"FMW" means "Federal Minimum Wage"

"Guaranteed hours" has the meaning given by the Act.

"Package" – if a salary or commission is a package it means that a salary or commission incorporates or includes in the package certain employee entitlements like the employer's

Brock Harcourts Gold Employee Collective Agreement (CA)

superannuation contribution, overtime payments, allowances, penalty rates or loadings and the like. Alternatively if any of the said employee entitlements are included or incorporated in a salary or commission it means the salary or commission is a package. A commission package is sometimes referred to as the commission being a 'loaded rate'. 'Commission' for a salesperson is more comprehensively defined in Schedule 2.

"Pay scale" means an "Australian Pay and Classification Scale" ("APCS") as defined by the Act. For the purposes of this CA if the employee is not covered by a pay scale then the term "pay scale" will be read down as the Federal Minimum.

"Property" includes a "business".

"Public holiday" are public holidays as defined by the Act.

"Reference Instrument" has the meaning given by the Act [see 4.4].

"Regulations" refer to the regulations under the Act as amended from time to time.

"Sales Transaction" or a phrase or word of similar meaning may also include a listing side.

"Trainee" is an employee who is employed to undertake a traineeship, as described in the Training Agreement, involving work and structured training which includes formal instruction and supervised practical experience at the workplace which has been approved by the relevant authority and which will lead to a recognised qualification.

"Wage" may be used in this agreement as a generic term for a pay scale, basic periodic rate of pay or FMW.

4 OPERATION OF CA - CA DISPLACES AWARD – NO DISADVANTAGE TEST - REFERENCE INSTRUMENT – EMPLOYEE LETTER

Operation of CA

This CA will come into operation the 7th day after the date of issue specified in the notice under subsection 346M (1) of the Act issued by the Workplace Authority Director and the CA's nominal expiry date will be the fifth anniversary of the date on which the agreement was lodged.

4.2 CA displaces award

This CA displaces any applicable award or applicable legislation except where this CA states that a provision of the award will apply or where the Act states that an award or legislation will prevail over a CA. This CA is the latest legally binding agreement between us, and replaces any previous agreement.

4.3 No Disadvantage Test

This CA when lodged in accordance with the Act must pass the No Disadvantage Test (NDT) in that the CA does not result, or would not result, on balance, in a reduction in the overall terms and conditions of employment of the employee whose employment is subject to the agreement under any reference instrument relating to the employee (see 4.4). If this CA does not pass the NDT a variation may be lodged in accordance with the Act.

4.4 Reference Instrument

For the purposes of the No Disadvantage Test for South Australia your reference instrument is as follows:

- (a) For the classifications of Salesperson, (Sales) Manager and Sales Trainee the reference instrument is the Real Estate Award.
- (b) For the classifications of Adult and Junior Clerk and a Clerical Trainee on a contract of employment the reference instrument is the Clerks (SA) Award.
- (c) For the classification of Property Manager there is no reference instrument as the industry of property management in South Australia has always been award free. For the

Brock Harcourts Gold Employee Collective Agreement (CA)

purposes of the No Disadvantage Test the Workplace Authority Director may or may not designate an award.

4.5 Employee letter

Note: There is a SAMPLE letter for the purposes of clause 4.5 attached to this CA as APPENDIX 1. The parties may use this sample letter but may also create their own version.

For each employee the employer will prepare a written employee letter [to be signed and dated by the employer and the employee] which, as applicable, states the following agreed terms as allowed by this CA:

1. What your classification is under this CA at any particular time
2. What your employment start date was/will be
3. What your remuneration option is as set out under Schedule 1 at any particular time with details of any salary or any higher hourly rate
4. Whether you are full time, part time, casual or on a fixed term of employment at any particular time
5. What your ordinary hours are at any particular time
6. Any commission rate agreed to under Schedule 2 for a salesperson at any particular time
7. Any agreed bonus/incentive at any particular time
8. Any agreed revised KPIs at any particular time under clause 22.1
9. Any agreed car or mobile phone allowance at any particular time for a property manager under Schedule 4.

NOTE: These letters will not be prepared for existing employees until this agreement is in operation – see clause 4.1 for when the agreement comes into operation. When a new employee starts the letter will be prepared after the new employee and the employee have agreed on which variables or options in the agreement will apply to the new employee.

4.5.1 Each employee should receive a copy of the employee letter (or any subsequent letter) referred to in clause 4.5 and the employer should also keep a copy of the letter as part of the employee's employment records for at least seven years from the termination of the particular employee's employment.

4.5.2 Notwithstanding anything else in this CA if the employer fails to do an employee letter under clause 4.5 that in itself will not invalidate the employee's term or condition under this CA. The basic intention of clause 4.5 is to have a written record of the employee's actual CA term or condition where there are variables or choices allowed in the CA, to eliminate any uncertainty in the future.

5 PARTIES BOUND BY THIS CA

This agreement will be binding upon the employer and the employees employed by the employer within the whole of the employer's single business and whose classifications appear in clause 5.2. The scope of this CA covers the employees whose classifications appear in clause 5.2 and are employed by Gold Real Estate (SA) Pty Ltd, ABN 26109788114, despite the trading name/s or location/s of the single business.

5.2 The following classifications come within the employer's single business, although all of the classifications may not be utilised at any given time:

- (a) Salesperson (as defined by Schedule 2 in the Real Estate Award)
- (b) (Sales) Manager (as defined by Schedule 2 in the Real Estate Award)
- (c) Adult Clerk (Levels 1-5 as defined in Schedule 1 in the Clerks (SA) Award)
- (d) Junior Clerk (Levels 1-2 as defined in Schedule 1 in the Clerks (SA) Award)
- (e) Property Manager (Award free)
- (f) Trainee Salesperson (as defined by Schedules 2 and 5 in the Real Estate Award)
- (g) Trainee Clerk (as defined by Schedule 6 in the in the Clerks (SA) Award)

6 EMPLOYEE START DATE

6.1 Your commencement date does not necessarily correspond to the commencement date of this CA. Your start date should be recorded as per clause 4.5 item 2.

Brock Harcourts Gold Employee Collective Agreement (CA)

7 TENURE OF EMPLOYMENT

You may be employed on a full time, part time or casual basis or you may be employed for a fixed term of employment which has a defined expiry date. Your tenure of employment should be recorded as per clause 4.5 item 4.

8 REPORTING FUNCTION

Salespersons and Property Managers will report to the Principal, or nominee and Clerks will report to the Business Owner or nominee.

9 PROBATION

If you are a new employee and not a trainee you will be on probation for a period of three months. By agreement between us and before your three months probation period finishes, your probation period may be extended by up to three months. An extension of probation may be based on such issues as prolonged absence by you because of illness or injury or because the employer feels more time is required to assess your performance.

If you are an existing employee you are not subject to probation unless you are still serving a period of probation.

If you are a trainee your probation period will be whatever period the relevant authority has specified for your contract of training.

Either party may terminate your employment without the need for notice at any time during the period of probation. An employer who terminates a trainee during probation may need to notify the relevant training authority in writing.

10 MINIMUM KEY PERFORMANCE INDICATORS (KPIs)

10.1 We will discuss from time to time what your minimum key performance indicators will be. Two general key performance indicators for all classifications are to keep harmonious relationships with other staff and to avoid complaints by delivering excellent customer service. If you are a salesperson, it is emphasised that it is an important term of a salesperson's employment that the salesperson maintain a certain minimum production of employer gross commission annually/quarterly/monthly. The salesperson should always remain aware that in the real estate industry the main source of the income from which the employer pays the salesperson is employer gross commission generated by the salesperson's own efforts.

10.5 Business Development Area/s

The employer may or may not allot a salesperson or property manager a specific business development area (BDA). If you are allotted a BDA then on the understanding that you may invest effort and some of your own funds in raising your profile in your BDA any change to your BDA by the employer will be by consultation and agreement with you. However, the employer must reserve the reasonable right to change your BDA without your agreement if operational requirements of the business necessitate a change but the employer must not unreasonably change your BDA.

11 EMPLOYEE PERFORMANCE

It is important that you maintain a minimum standard of performance and productivity for the duties allotted to you by the employer. If you are at all unsure about an employer expected standard for any of your duties you should raise this with the employer. If it becomes obvious to the employer that you are malingering or your performance/productivity/results indicate an unsatisfactory standard and/or return, then the employer may offer you training, instruction, coaching and the like. However, depending on the circumstances, and particularly if you have been spoken to before, then poor performance or misconduct by you may result in disciplinary action. One-off acts of serious misconduct can even result in instant dismissal. In an office environment it is important that all employees use their best endeavours to create harmonious working relationships. If an employee chooses consistently either not to cooperate with other staff or to be consistently overbearing towards other staff, this has the potential to create an unpleasant working environment which can affect every ones productivity and well being.

Brock Harcourts Gold Employee Collective Agreement (CA)

12 DRIVER'S LICENCE

- 12.1 If the employer requires you drive a motor vehicle to carry out some or all of your work related duties then you must be the holder of a current and appropriate motor vehicle licence which is issued by the relevant authority. For a salesperson and a property manager it is an express condition of your contract of employment that you hold a current and appropriate driver's licence and if your licence is disqualified the employer may terminate your employment with notice, unless other suitable arrangements can be agreed between you and the employer.
[Note: A training contract cannot be terminated by the employer without the approval of the relevant training authority]

13 MOTOR VEHICLE

- 13.1 If the employer requires you drive a motor vehicle to carry out some or all of your work related duties then you will provide yourself with a suitable, reliable and presentable motor vehicle to carry out your work-related duties, unless the employer supplies you with a motor vehicle. You will be responsible for all fees/expenses associated with the running of your motor vehicle. If the employer supplies you with a motor vehicle to carry out some or all of your work related duties, then the employer may attach to the use of the motor vehicle reasonable and lawful conditions for the use of the vehicle by you and you agree to abide by any conditions. Any agreed or award car allowance should be recorded in Schedule 4.
- 13.2 You must ensure that your motor vehicle that you use to carry out some or all of your work related duties is always currently registered and insured both third party and comprehensively before you drive it for work duties. You agree to indemnify the employer from any claims or damages (except workers compensation) arising out of the use of your own motor vehicle for work purposes.
- 13.3 You must not drive any motor vehicle for work duties before you have satisfied yourself that it is currently registered and insured both third party and comprehensively as a work-related vehicle and you can lawfully drive it.

14 MOBILE PHONE

- If requested by the employer you must provide yourself with a mobile phone and you will be responsible for all associated expenses unless agreed otherwise in writing between you and the employer, providing that if you earn no more than the minimum wage the employer must pay for the phone expenses. You agree to have message bank on your mobile phone together with an employer business greeting. You also agree to check your message bank at reasonable intervals and promptly return business calls. Any agreed or award mobile phone allowance should be recorded in Schedule 4.
- 14.2 If the employer supplies you with a mobile phone we will agree in writing as to who will pay expenses or how the expenses will be shared and any conditions of the phone's use by you. You agree to return forthwith upon the termination of your employment any mobile phone supplied to you by the employer together with the phone's allotted number and sim card in place.

15 RETURN OF EMPLOYER PROPERTY

- 15.1 Upon ceasing employment you must forthwith return to the employer all confidential information, intellectual and personal property in your possession or control and belonging to the employer including, listing files, data bases, client contact details, diaries, documents, papers, plans, drawings, equipment, materials, keys, which are in your possession, custody or control. You must destroy any such property, which cannot be returned (e.g. saved material on a personal computer). In the event that you intentionally breach this clause by refusing or failing to return any of the said items then you agree to indemnify the employer against any monetary costs to the employer if the employer needs to take any necessary lawful action to recover any of the mentioned items. You agree that any such costs would be recoverable as a debt in any competent court. The return of any employer property by you under this paragraph is subject to any special written agreement made between you and the employer in relation to any matter mentioned in this clause or subject to any other clause in this CA allowing you to retain any property or a copy of any property mentioned under this paragraph.

Brock Harcourts Gold Employee Collective Agreement (CA)

If at any time the employer makes a request that you are to keep a diary specifically for work purposes only, then you agree that you will do so. The diary will be considered employer property and must be returned to the employer forthwith upon the termination of your employment. The employer will pay for the cost of any such diary. If no such employer request is made you will use your own diary.

15.2 **Highlighting data bases and client contact details**

In the event of the termination of your employment the information contained in the employer's or your data base of the client contact details established by you as an employee will remain employer confidential information and remain the property of the employer and if in hard copy must be returned to the employer or if you have it in electronic form must be permanently deleted or destroyed by you.

16 **NOTICE AND OTHER MATTERS RE TERMINATION OF EMPLOYMENT**

16.1 **Employer to give notice of termination**

The employer must not terminate your employment unless you have been given the required period of notice as follows:

Employee's period of continuous service with the employer	Period of notice
Not more than 1 year	1 week
More than 1 year but not more than 3 years	2 weeks
More than 3 years but not more than 5 years	3 weeks
More than 5 years	4 weeks

If you are over 45 years and have at least 2 years continuous service you must be given an extra week's notice in addition to the period in the table.

16.2 **Payment in lieu of notice**

The employer may compensate you in lieu of giving you notice. The required amount of compensation instead of notice must equal or exceed the total of all amounts that, if your employment had continued until the end of the required period of notice, the employer would have become liable to pay to you because of the employment continuing during that period.

16.3 **Employee to give notice of termination**

If you resign you must give to the employer the period of notice as prescribed in a relevant award and in the absence of a relevant award you must give 1 weeks notice for your first 12 months service and 2 week's notice after 12 months service. If you do not give the required notice then you will owe the employer your basic rate of pay for the period of notice not given and the employer may deduct this amount from any money owing to you by the employer. The employer may waive in writing the need for you to give notice in which case you will not owe the employer any money for not giving notice.

The employer may request you to leave at any time before your required period of notice is served by you in which case the employer must pay you your basic periodic rate of pay in lieu of your required notice not served by you. However, we may mutually agree to shorten your required notice if you resign in which case no payment in lieu of notice will be required by the employer.

16.4 **Serious misconduct**

The following is an indication of serious and wilful misconduct. If you are ever guilty of such conduct then it may render you liable to instant dismissal:

- (a) Matters under 16.5 and 16.6
- (b) Any criminal offence which reflects adversely on the reputation of the employer and/or your reputation as a employee or the reputation of another employee

Brock Harcourts Gold Employee Collective Agreement (CA)

- (c) Any serious breach of decorum inside or outside of work and reflects adversely and seriously on the reputation of the employer and/or your reputation as an employee and/or another employee
- (d) Being appreciably affected by alcohol or illicit drugs at work
- (e) Sexual harassment, bullying or other unlawful harassment or discrimination
- (f) Intentional insubordination where you refuse or fail to carry out an employer instruction, which is reasonable and lawful.
- (g) Deliberate misleading or deceptive statement/s to a landlord, tenant, seller or buyer either verbally or by reducing it to writing or by your action/s or behavior or by an act of omission (direct or indirect)
- (h) Guessing at a fact without first checking the authenticity of the fact and writing that information in a contract or verbally conveying it to a landlord, tenant, seller or buyer
- (i) Having a personal interest in an employer listing without the employer's approval or the approval of a person stated in any relevant State/Territory legislation
- (j) Not following the correct procedure with the trust account
- (k) Refusing or failing to obey by act or omission a landlord's, tenant's, seller's or buyer's reasonable and lawful instruction
- (l) Creating a conflict of interest in relation to the employer's business affairs or maintaining a conflict of interest if you were not previously aware of it
- (m) Theft, fraud, embezzlement, false pretences, fraud other than false pretences, assault or battery.

16.5 An employee must:

- (a) Comply with the lawful and reasonable directions of the employer
- (b) Act in good faith and in doing so must not act against the best interests of the employer or damage the employer's business
- (c) Not accept bribes or secret commissions
- (d) Not damage or expose to damage the property or goodwill of the employer
- (e) Truthfully answer questions of the employer that are within the scope of employment
- (g) Safeguard the employer's confidential information

16.6 The following are some examples where fiduciary obligations may be breached by employees:

- (a) To divert a business opportunity or relationship that has come to the employee's attention during employment
- (b) To establish a joint venture with a client or a supplier of the employer
- (c) Prior to leaving the employee has approached key staff and a decision has been reached that they leave together (subject to 35.1 (b))
- (d) To secure a benefit for himself or herself that would otherwise belong to the employer
- (e) To exploit confidential information and/or property that belongs to the employer (Note: Listings are the property of the employer unless the employee and the employer have agreed to a different arrangement).

16.7 **Contract of training**

Notwithstanding anything else in this CA if you are a trainee under a contract of training this CA has effect subject to a law of a State or Territory when dealing with training arrangements. Training arrangements are a combination of work and training that is subject to a contract of training that is registered with the relevant State or Territory training authority; and to terminate, transfer or suspend a contract of training the employer and/or the employee must comply with the relevant State or Territory legislation dealing with contracts of training. [In relation to State and Territory traineeship legislation there is normally a provision where the employer needs approval to terminate, transfer or suspend a contract of training]

17 **REDUNDANCY PAYMENTS**

17.1 You will have an entitlement to redundancy payments in accordance with a relevant award, providing that you will not have an entitlement to redundancy payments if the employer employs less than 15 employees.

If you are award free and no award is designated then you will have an entitlement to redundancy payments as modelled on the Real Estate Award (S.A.), providing that you will not have an entitlement to redundancy payments if the employer employs less than 15 employees.

Brock Harcourts Gold Employee Collective Agreement (CA)

18 SPECIAL ARRANGEMENTS

- 18.1 The employer will use its best endeavours to accommodate any special request from you in relation to any family responsibilities you may have. This may be for example in the nature of sometimes working from home; job sharing; special leave without pay if you have run out of personal/carer's leave or other accrued leave; flexible start or finish times; and so on. However, because your employer is a small business operator it may not always be possible for the employer to fulfil wholly or in part any special request from you.

19 LONG SERVICE LEAVE

- 19.1 Your long service leave entitlements will be in accordance with the long service leave legislation and/or award in your State or Territory providing that we may agree in writing (signed and dated) for you to cash out long service leave once the relevant legislation and/or award states that you are eligible for long service leave or pro rata long service leave. A cash out of long service leave means you receive the money for the leave but forfeit the time to take leave.

20 HOURS OF WORK

- 20.1 The employer must not request or require you to work more than 38 ordinary hours a week and additional reasonable hours and how you will work your required specified hours will be at the employer's discretion and in the following manner as discussed between you and the employer from time to time:
- (a) You may work your ordinary hours at your own discretion but within any parameters or guidelines set by the employer (e.g. a salesperson must attend sales meetings); or
 - (b) The employer will from time to time in consultation with you set your start and finish times for your ordinary hours; or
 - (c) In the absence of agreement under paragraph (b) the employer will set your start and finish times for your ordinary hours.

It is a provision of this CA that the employer may give you seven days notice to vary your specified hours or start and finish times or alternatively we may agree at any time to vary your specified hours or start and finish times.

This subclause is subject to the employer complying with any relevant or designated award in relation to spread of hours (i.e. when ordinary can be worked) and time off.

- 20.2 It is a provision of this CA that we may by a separate written agreement introduce or vary an averaging period for your ordinary hours. Any agreed averaging period must not exceed 12 months.
- 20.3 Any reasonable additional hours (generally referred to as 'overtime') the employer requests or requires you to work will be recorded and signed for by the employer and the employee. A casual or irregular part time employee must record all hours worked. Also if an averaging period is introduced a time sheet should be kept of hours worked.
- 20.4 A clerk and the employer may agree that for any overtime that the clerk works at the request of the employer, the clerk may in lieu of being paid overtime take the time off during rostered ordinary hours in the ratio of 1:1. Either, any time off in lieu must be taken within 4 weeks of the overtime being worked; or, at the request of the clerk and with the employer's agreement, time off in lieu may be banked and taken at an agreed time within 12 months of the date of the clerk's request. Any time off in lieu not taken by the clerk in accordance with the time periods specified in this paragraph must be paid by the employer at the award overtime penalty rate. A property manager who works overtime at the request of the employer may also take time off in accordance with the said provisions in this paragraph for a clerk except overtime for a property manager is only paid at ordinary rates unless a designated award states otherwise.
- 20.5 If you self-elect or choose of your own volition to work additional hours outside of your ordinary hours without being expressly required or requested to by the employer then the only additional remuneration you will receive is any commission/bonus/incentive/referral fee and the like you may earn.

Brock Harcourts Gold Employee Collective Agreement (CA)

21 PERFORMANCE REVIEWS

Your performance and productivity may be reviewed by the employer from time to time in consultation with you. The reviews may take place both at regular intervals and on an ad hoc basis and may be both formal and informal.

22 ANNUAL LEAVE

- 22.1 Your entitlement to annual leave will be in accordance with the Act and the Regulations as amended from time to time. Casuals are not entitled to accrued paid annual leave. The employee is entitled to any relevant award annual leave loading.
- 22.2 We agree that generally speaking you will take the bulk of your accrued annual leave annually and at times when the industry is least busy for your classification in our geographical area and that you will endeavour to take the majority of your accrued leave during each anniversary year. If you want to accrue more than 12 months annual leave for a special reason we can discuss that as the need arises in an endeavour to come some agreed arrangement.
- 22.3 *Cashing out annual leave*
You are entitled to forgo the entitlement to an amount of annual leave during each 12 month period so long as the amount of annual leave which is forgone does not exceed more than 1/26th of the nominal hours worked by you during the period. If you and the employer elect to do this, you are entitled to receive payment in lieu of the amount of annual leave foregone at a rate that is no less than the rate that, at the time the election is made, is your basic periodic rate of pay (expressed as an hourly rate). For you to forgo the entitlement to an amount of annual leave both you and the employer must comply with the procedure in the Act.
- 22.4 If you are a salesperson and if you are paid a wage as well as commission (i.e. as opposed to 'commission only') we may agree for the employer to pay you your annual leave in advance by paying you weekly or fortnightly an additional 1/13th of your basic periodic rate of pay. When you do take annual leave the employer must ensure that any advanced payment at least equals what you would have been paid either at the time of taking leave or being paid out for any accrued annual leave when your employment ends. Advanced payment of annual leave does not cash out annual leave, however, any conversion of advanced payment for annual leave to a cash out must be done in accordance with 22.3.

23 PERSONAL LEAVE/CARER'S LEAVE

- 23.1 Your entitlement to personal/carer's leave will be in accordance with the Act and the Regulations as amended from time to time. Personal/carer's leave includes sick leave and compassionate leave and unpaid personal/carer's leave. Casuals are not entitled to accrued paid personal/carer's leave.

24 PARENTAL LEAVE

- 24.1 Your entitlement to parental leave (which includes maternity leave) will be in accordance with the Act and the Regulations as amended from time to time.

NOTES on annual leave, personal/carer's leave and parental leave:

1. For an understanding of entitlements and obligations for annual leave, personal/carer's leave and parental leave (including maternity/adoption leave and compassionate leave) see the Workplace Authority's Fact Sheet on <http://www.workplaceauthority.gov.au> http://www.workplaceauthority.gov.au/docs/employers/AFPC_Standard.pdf
2. An employee receiving a wage and is also paid in addition to the wage any commission/incentive/bonus, then any annual leave or personal/carer's leave paid entitlements are satisfied by the employer only paying the wage (or basic rate of pay). That is under the Act, the employer does not pay annual leave or personal/carer's leave on any commission/incentive/bonus when a wage is being received by the employee. "Wage" means basic periodic rate of pay. For a salesperson on 'commission only', a basic rate of pay is calculated by using a special formula which is cited in the Regulations. The formula under Regulations for a *basic rate of pay* for the payment of annual leave and personal/carer's leave for 'commission only' is calculated as follows:

$$\text{BPR} = \frac{\text{TA}}{\text{---}}$$

Brock Harcourts Gold Employee Collective Agreement (CA)

TH

BPR = basic periodic rate of pay expressed as an hourly rate
TA = total amount of commission earned for *relevant period*
TH = total of hours worked for *relevant period*

Relevant period means:

- (a) the 12 months before the rate is to be worked out; or
- (b) if a period of less than 12 months worked – that period.

25 MEAL BREAKS

25.1 The employer must not require you to work for more than 5 hours continuously without an unpaid interval of at least 30 minutes and not more than one hour for a meal. Any employee who is approved by the employer to work their hours at their own discretion will be responsible to setting their own meal break/s.

26 PUBLIC HOLIDAYS

26.1 You are entitled to a paid day off on a public holiday, providing you would have normally worked that day. The employer may request you to work on a public holiday and you agree to work it unless you have reasonable grounds for refusing to work it. In determining whether you have reasonable grounds for refusing a request the Act specifies certain grounds. If you work a public holiday at the request of the employer you are entitled to any reference instrument (see clause 4.4 and Schedule 4) penalty payment for a public holiday.

27 COMPLIANCE WITH THE ACT

27.1 This agreement will be construed at all times and interpreted in accordance with the Act. There is no intention by the parties for any provision in this agreement to be inconsistent with the Act but if a provision is found to be inconsistent with the Act that particular provision will be deemed severed from this agreement without affecting the remaining provisions of the agreement and if the interpretation so demands the employer must comply with the Act in relation to the inconsistency from the point in time that the inconsistency arose.

28 DISPUTE RESOLUTION PROCESS

28.1 The parties to a dispute must genuinely attempt to resolve the dispute at the workplace level. If a matter in dispute cannot be resolved at the workplace level, a party to the dispute may elect to use an alternative dispute resolution process in an attempt to resolve the matter. The alternative dispute resolution process is to be conducted by a person agreed between the parties in dispute on the matter and if a person cannot be agreed the parties should refer to the Act as to the process as laid down in the Act.

29 POLICIES

29.1 The employer may have in place workplace policies and procedures that are determined and/or amended from time to time by the employer. Any such policies and procedures will not reduce your substantive entitlements contained in this agreement but provide guidelines for the fair and efficient administration of the employment relationship. Any such policies do not form part of your contract of employment.

30 EMPLOYER/EMPLOYEE RESPONSIBILITIES

30.1 Employer's responsibilities

The duty of the employer is to provide a secure, safe and healthy work environment for employees. There is an implied duty of mutual trust and confidence between you and your employer that neither side will act in such a way as to breach that trust.

30.2 Employee's responsibilities

You agree to diligently and faithfully perform all the duties and responsibilities of your employment in accordance with your job description and such other duties as may reasonably be required by the employer.

You further agree:

- (a) To use your best endeavors to further the business and reputation of the employer;

Brock Harcourts Gold Employee Collective Agreement (CA)

- (b) Not to be directly or indirectly involved or engaged in work for or provide services to any other employer, business or individual, whether paid or not, which may in any way conflict with the interests of the employer, unless otherwise agreed between the parties in writing;
- (c) To actively seek new business on behalf of the employer. You will promptly notify the employer of all business available by or through the employer and you agree not to withhold any business or potential business from the knowledge of the employer and if you are a salesperson you will not offer any property (real or otherwise), goods, chattels or valuable security to any prospective purchaser, which is not authorised by or through the employer;
- (d) To forthwith report all complaints by your clients or customers to the employer and you will if required by the employer deal with any such complaint or permit the employer (or a representative of the employer) to deal with any such complaint;
- (e) To provide your employer with your current after-hours landline phone number and your current home address. The employer must keep this information confidential but the information is sometimes required by the employer to contact the employee on work related matters;
- (f) To attend training as nominated by your employer;
- (g) Not to use any intellectual or confidential property of the employer in as manner which is clearly in conflict with the employer's interests;
- (h) When working, to be and remain well groomed and dressed to a high standard of corporate professionalism such standard being recognised by a reasonable person in the context of the real estate industry. If the employer so directs you will wear an employer uniform the payment of which will be consistent with any relevant award – if no award exists then the payment of the uniform will be by agreement and in the absence of agreement the parties will defer to the dispute clause. You must take pride in your appearance at all times and if you are not sure about the standard of clothes or grooming or accessories like jewellery then you are to seek advice from the employer – as for jewellery it should be tasteful and not be excessive; oversize; or gaudy;
- (i) That you have fully and faithfully disclosed to the employer during your recruitment process any medical condition (physical or psychological) which may impact upon or have a detrimental effect upon the efficient and effective performance of your employment duties or which may affect the ability of the employer to provide you with a safe working environment;
- (j) To undergo a medical examination at any time during the course of your employment by a legally qualified medical practitioner of the employer's choice (employer will pay) if in the employer's opinion this is necessary or advisable in relation to your work related duties or conduct during work hours. The object of this paragraph is to enable the employer to have you medically examined if the employer has reasonable cause to suspect that any condition relating to you at work may put the employer at risk of not being able to supply you with a secure, safe and healthy work environment.

30.3 The buying and selling and leasing of real estate and businesses are subject to certain requirements as laid down by State legislation. As a salesperson or property manager you are expected to be fully conversant with all the relevant legislation. In addition your employer may have certain policies and procedures applying to your duties as a salesperson or property manager. It is extremely important that at all times you conform to the relevant legislation and to the employer's policies and procedures when carrying out your duties, as we operate in an industry in which it is not unusual to have litigation or threatened litigation by the public. Salespersons and property managers are reminded that that if you are ever guilty of willful and serious misconduct which involves a tort and your employer becomes vicariously liable for your action/omission then it might be possible for the employer to take legal action against you to recover any damages that may be awarded in legal action against the employer.

30.4 All salespersons will take particular care to ensure they are legally registered as a sales representative (and auctioneer if applicable) in accordance with State legislation (due to commence on 1/7/08). Also, this new legislation will introduce a range of new compliance issues for registered agents and registered sales representatives. Salespersons must be particularly careful to make themselves thoroughly familiar with the new legislation and abide by such legislation. Salespersons must always keep in mind that the employer under most circumstances will be vicariously liable for a salesperson's wrongful actions. To this end salespersons agree to indemnify the employer in relation to the employer's excess on the

Brock Harcourts Gold Employee Collective Agreement (CA)

employer's professional indemnity insurance if the employer has to make a claim because of the salesperson's unnecessary careless or reckless action/s or omission to act. Also, if because of a salesperson's unnecessary careless or reckless action/s or omission to act the employer privately settles a claim by a third party the salesperson agrees to share the cost of the settlement by at least 50%. Also, if because of a salesperson's unnecessary careless or reckless action/s or omission to act the employer receives a monetary penalty or expiation fee either under the Land Agents Act or the Land and Business (Sale and Conveyancing) Act, the salesperson agrees to pay it. Any money paid to the employer by a salesperson under this clause will be debited from the salesperson's commission (a salesperson on 'commission only' must still receive the minimum of 35% for each sales transaction [subject to splits]).

- 30.5 Salespersons will take all practical steps to register as a sales representative as soon as the legislation becomes effective on 1/7/08. Once registered the salesperson must carry their registration card with them at all times when they are working.
- 30.6 A salesperson must never obtain, or be in any way concerned in obtaining, a beneficial interest in land or a business or act on behalf of both a vendor and a purchaser, except in accordance with the Land and Business (Sale and Conveyancing) Act or any other relevant State Act.
- 30.7 A salesperson must notify the Commissioner for Consumer and Business Affairs of changes in their residential address or in the circumstances of their employment.
- 30.8 If any employee as an individual during the course of carrying out work related duties receives an expiation notice or a fine in accordance with any legislation then the employee will bear the personal responsibility for paying the expiation notice or fine.

31 EMPLOYEE CONVICTION DECLARATION

- 31.1 You declare that you do not have any previous conviction for either dishonesty or an offence involving violence or assault. You do not have to declare a conviction if any relevant legislation defines the conviction as being spent or prescribes other circumstances in which a conviction does not have to be declared. If you do declare a conviction it will be at the sole discretion of the employer whether or not you are employed or if already employed whether or not your employment continues. If you fail or refuse to tell the employer about a relevant conviction under this clause and the employer later finds out then your employment may be terminated for serious misconduct. If you are already employed and reasonable grounds exist the employer may request you to have a police check done at the employer's expense and you agree to have it done unless you think that reasonable grounds do not exist – in which case the parties will defer to the dispute clause. 'Conviction' includes where no conviction is recorded but the court has found the matter proved.
- 31.2 The employer's rationale for clause 31.1 are as follows:
- (a) Legislation may prevent the employer in real estate from employing certain classifications with certain convictions
 - (b) Employees in real estate have constant contact with the public and also develop trust relationships with clients
 - (c) Employees in real estate are constantly dealing with other peoples valuable property
 - (d) Employees in real estate are constantly dealing with other peoples money in very large amounts
 - (e) The employer is required by law to have a trust account and employees may interact with the trust account
 - (f) Vendors and landlords entrust the agent with very valuable assets
 - (g) Each item (a) to (f) may stand alone or the employer may consider any of them together.

32 DOCUMENTARY PROOF OF QUALIFICATION/REGISTRATION

- 32.1 At the commencement of your employment or at any time during your employment, if requested by your employer, you agree to supply copies of the following documents to the employer but only if any such document is relevant to your duties:
- (a) Your certificate of qualification or registration or similar showing that you are qualified and or registered in accordance with any relevant State/Territory legislation to act as a real estate salesperson or property manager.
 - (b) A copy of your current and appropriate State/Territory driver's licence.

Brock Harcourts Gold Employee Collective Agreement (CA)

- (c) A copy of your current registration and insurance papers for the motor vehicle you use for work duties, with confirmation from the insurance company that the insurance covers you for using the vehicle for "real estate" duties as an employee.
- (d) If you are not an Australian citizen, a copy of proof (e.g. visa) that you are entitled to work in Australia.

32.2 In the event that you fail or refuse to produce a copy of a relevant document in 32.1 or any of these documents is cancelled, suspended or disqualified or similar, your employment may be terminated because the possession by you of any relevant document in 32.1 is an express condition of your contract of employment and the required legal possession by you of any relevant document is your sole responsibility.

33 EMPLOYER COMPUTERS

- (a) Serious legal consequences can result from the injudicious and/or unlawful use of e-mails, the internet, blog sites or chat rooms.
- (b) You must only use e-mails, the internet, blog sites or chat rooms on an employer computer in accordance with the law and the employer's instructions and rules. Any general use of an employer computer by you must also be in accordance with the employer's instructions and rules especially in relation to security. Except if inconsistent with any Commonwealth law the employer reserves the right to check, download or print out from any employer computer any employee activity carried out by you on the employer computer – this will not apply to your private emails (if the employer has approved private emails) unless the employer has a reasonable suspicion that your private emails are either breaching this agreement or breaching the law.
- (c) You agree that during your employment and after your employment ends you will not, on a blog site, disparage, defame, slander or negatively comment on your employer or your employer's business affairs.
- (d) All files saved on an employer computer are the employer's property and you must not print out a file or save it to an external source except in the course of your normal and approved duties. In particular a salesperson leaving their employment can only take with him or her any client contact details belonging to the employer that the employer has agreed to.
- (e) Before you use a computer not belonging to the employer for work related duties you must first receive the employer's approval. You agree that part of that approval may include the employer's instructions and rules on the use of the said computer by you in relation to such matters as anti-virus and other software and the ownership of files saved on the said computer. You agree to abide by any the employer's instructions and rules in the use of the said computer and if you are not prepared to do that then you must not use the said computer for work related duties.
- (f) If you blatantly, wilfully and seriously disobey an employer instruction or rule on the use of an employer computer during your employment; or you breach paragraph (c) at any time and your actions may or do give rise to legal action (either against you or against the employer or against the both of us), you agree to indemnify your employer against costs or damages made in any claim by or against the employer in a competent court.
- (g) Most breaches by an employee under this clause could be described as serious and render you liable to instant dismissal or the very least a written warning – you are strongly advised to use the employer's computers in a lawful fashion and in accordance with the employer's rules – misuse of an employer computer by an employee is totally prohibited particularly in dealing with matters like pornography, sexual harassment, discrimination, bullying, paragraph (c) above, security and the like.

34 CONFIDENTIAL INFORMATION OF THE EMPLOYER

34.1 During your employment and after your employment ends you must not use, disclose, divulge or communicate to any person or entity whatsoever, in any form the **Confidential Information** of the employer, other than as expressly authorised by the employer in writing. **Confidential Information** indicates all information, whether tangible or intangible, of a confidential nature

Brock Harcourts Gold Employee Collective Agreement (CA)

regarding the business interests, methodology or affairs of the employer, or of any of its clients, including the employer's procedures and information, customer mailing lists or leads, client contacts details and history files, property plans, drawings, financial information, trade secrets, intellectual property and any other information which is notified by the employer to you during your employment as being confidential or any other information described as confidential.

- 34.2 **"Confidential Information"** does not include information that:
- (a) is in the public domain or after the date termination of your employment, becomes available in the public domain (other than as a result of a breach of 34.1)
 - (b) any portion of information contained within confidential information which could not be reasonably defined as being confidential
 - (c) was rightfully in your possession and not subject to an obligation of confidentiality on you before commencement of employment; or
 - (d) rightfully came into your possession as an employee other than through your service with the employer.

35 NON-SOLICITATION AND RESTRAINT AGREEMENT

35.1 You undertake and agree that for a period of 3 (three) months from the date of the termination of your employment that you will not:

- (a) Solicit, entice, canvass, or accept work from, any person (except an "exempted person") with whom the employer (whether through you or not) conducted any business with in relation to the listing, selling, buying or leasing of real estate during a period of 12 months prior to the termination of your employment. This paragraph will not apply to any such person in relation to whom the employer has agreed in writing that this paragraph will not apply to. An "exempted person" is someone like a friend or relative and but for your relationship with that person would not have conducted business with the employer.
- (b) Solicit entice or approach other employees of the employer with a view to persuading them to leave the employment of the employer. This paragraph will not apply to any such person in relation to whom the employer has agreed in writing that this paragraph will not apply to. Also, this paragraph will not apply to an employee who has relatively low work skills and can be readily replaced by the employer.
- (c) Directly or indirectly, be concerned with in any capacity or have an interest in (except as an employee) with a new real estate business (the same as or very similar to the business that the employer conducts) which conducts business within a radius of 3 kilometres of the employer's office in which you were based. To be clear this paragraph does **not** restrain you from being employed by another real estate agent anywhere and being able to apply your skills and know how as an employee of another employer but you would still be subject to clause 34. The prime intention of this paragraph is to obtain your agreement that for a reasonable period you will not set up or have an interest in setting up in business in opposition to the employer in close proximity to the employer.

We agree that that this non-solicitation/restraint clause is reasonable and fair for the protection of the employer's legitimate business interests and is not unduly injurious to your interests and the public's interest.

36 SEVERING A PROVISION OF THE AGREEMENT

36.1 Any provision in this agreement that is found to be void, unlawful or unenforceable will be severed from the agreement without the severed provision affecting the remaining provisions of the agreement.

Brock Harcourts Gold Employee Collective Agreement (CA)

Schedule 1

Remuneration

S1.1 PAYMENT OPTIONS

S.1.1.1 It is a provision of this CA that we may agree at any time on any of the following options (A) to (F) for your remuneration, but only if the option can be applied to your classification and which option we agree upon (including an over pay scale salary or over pay scale hourly rate agreed on) will be recorded as per clause 4.5.

If we subsequently agree to another option a notation of the option (including an over pay scale salary or over pay scale hourly rate agreed on) will be recorded as per clause 4.5.

Despite any other provision in this CA you must at all times receive no less than your relevant pay scale and in the absence of a pay scale then the term "pay scale" will be read down as the Federal Minimum Wage. Also, if an adult pay scale is less than the Federal Minimum Wage, then the Federal Minimum Wage will apply in lieu of that pay scale. A particular relevant pay scale can be located at www.workplaceauthority.gov.au and the Federal Minimum Wage can be located at www.fairpay.gov.au

Payment options (A), (B) and (C) for the classifications of:

- salesperson
- (sales) manager
- property manager
- adult clerk
- junior clerk
- trainee salesperson or trainee clerk on a contract of training

(A) Pay Scale

For your guaranteed hours you will receive your relevant pay scale for a basic periodic rate of pay for your classification.

(B) Salary

For your guaranteed hours you will receive an over pay scale agreed annual salary which will be recorded as per clause 4.5.

It is a provision of this CA that we may agree from time to time (normally annually) in a dated and signed employee letter to review and increase your salary. Any increase is discretionary by the employer and will primarily be based on your performance. An increase in salary will not necessarily set a precedent for any future increase.

Your salary must not fall below your relevant pay scale for your classification.

Option (B) may include Schedule 2 commission for a salesperson. Your commission will be regarded as incentive payments.

(C) Higher hourly rate

For your guaranteed hours you will receive an over pay scale agreed hourly rate which will be recorded as per clause 4.5.

It is a provision of this CA that we may agree from time to time (normally annually) in a dated and signed employee letter to review and increase your hourly rate. Any increase is discretionary by the employer and will primarily be based on your performance. An increase in your hourly rate will not necessarily set a precedent for any future increase.

Your hourly rate must not fall below your relevant pay scale for your classification.

Option (C) may include Schedule 2 commission for a salesperson. Your commission will be regarded as incentive payments.

Brock Harcourts Gold Employee Collective Agreement (CA)

Payment option (D) for the classifications of:

- salesperson
- (sales) manager
- trainee salesperson

(D) **Pay Scale and commission**

For your guaranteed hours you will receive your relevant pay scale for a basic periodic rate of pay. You will also receive commission. Your commission will be regarded as incentive payments.

Payment option (E) for the classification of:

- salesperson
- (sales) manager

(E) **Commission in satisfaction of pay scale**

For your guaranteed hours you will receive commission in satisfaction of your relevant pay scale for a basic periodic rate of pay and your pay scale will be guaranteed by the employer and averaged over a 12-month period.

Under this method of payment your commission in excess of the pay scale will be regarded as incentive payments.

In the event that your commission does not fully satisfy your pay scale in any 12-month period (or sooner if your employment ends), then the employer must ensure you receive no less than your pay scale before the completion of the 12-month period (plus any additional required superannuation contribution).

Payment option (F) for the classification of

- salesperson
- (sales) manager

(F) **Commission only**

We agree for you to be classified as *a commission only real estate salesperson undertaking sales transactions involving an agency relationship* and for your work performed you will receive commission only.

To be paid commission only the employer and the employee must comply with the Australian Fair Pay Commission's Real Estate Agents (Commission Only) Australian Pay and Classification Scale and if all the criteria in this pay scale cannot be met by the employer and the employee, then the employee is not allowed to work commission only.

In order to comply with the Australian Fair Pay Commission's Real Estate Agents (Commission Only) Australian Pay and Classification Scale the parties confirm the following:

The employee:

- (a) Has agreed in writing (as per this agreement) with the employer to be classified as a *commission only real estate salesperson undertaking sales transactions involving an agency relationship*; and
- (b) Is an employee within the meaning of the Act and
- (c) Is engaged to perform the functions of a real estate agent/salesperson; and
- (d) Has an agent's licence or is qualified/registered as a real estate agent/salesperson by the relevant State authority; and
- (e) Is not under 21 years; is not a casual; and is not a trainee; and
- (f) Has been selling real estate within an agency relationship for at least 12 months; and
- (g) Has demonstrated a historical earning capacity by using the following formula:
 - (i) Take any 12 month period out of the last five years (suggest the highest earning 12 months)

Brock Harcourts Gold Employee Collective Agreement (CA)

- (ii) Recalculate the employer's commission for which the employee was responsible, for the selected 12 month-period by deducting the GST and then deducting a further 10% and then multiply the result by 35% - to qualify for commission only the answer to this calculation must at least equal the current annual legal minimum wage for a salesperson (pay scale).
- (h) The employee undertakes that any data supplied to the employer for the purposes of paragraph (g) is true and correct to the best of the employee's knowledge. [See the note underneath (i)]
- (i) Must be paid a minimum of at least 35% net of the employer's net commission for listing and selling a property or business (commission splits are covered in Schedule 2).

Guidance Note: For the calculation under paragraph (g) above, the parties are looking for roughly a minimum of \$100,000 of employer's commission for the calculation to satisfy the minimum wage. Be careful if using group certificates because only past commission earned is taken into account and not past wages – and group certificates follow a financial year and the parties may have chosen a different 12-month period.

S1.2 PAY SCALE INCREASES

Any replaced, adjusted or new pay scale that is relevant to your classification will apply to you and may be absorbed into any over pay scale payment.

S1.3 OVER PAY SCALE PAYMENTS

If you receive an over pay scale payment (e.g. a salary) then such over pay scale payment will go towards satisfying the pay scale for the same guaranteed hours. In other words any money you earn in excess of the pay scale will go towards satisfying any overtime you work at the request or requirement of the employer and the aggregated excess is to be taken into account, not just the excess for the period when overtime is worked. In addition, your over pay scale payment in excess of your pay scale will be used to satisfy or assist in satisfying any penalties, loadings or allowances in the award. In other words over pay scale payment incorporates any award penalties, loadings or allowances when such items are calculated at the pay scale rate. However, the bottom line is that you must never receive less than your relevant pay scale and in addition any entitled award penalties, loadings or allowances calculated at the pay scale rate. The nature of this clause is to be interpreted that if you are paid in excess of your relevant pay scale then you are paid the excess on the express condition that the excess is to satisfy any overtime payments or any other award penalties, allowances or loadings when calculated at the pay scale rate. To be clear you will still be paid your over pay scale when overtime or award penalties, loadings or allowances do not apply.

S1.4 SUPERANNUATION

Superannuation contributions will be paid by the employer as required under the Superannuation Guarantee (Administration) Act 1992 as varied from time to time. "Ordinary Time Earnings" (OTE) are used to calculate superannuation and OTE are defined either by a relevant award or in the absence of an award by the Australian Taxation Office rulings. As from 1/7/08 OTE will only be defined by legislation, that is, an award (if one) definition for OTE will no longer apply.

S1.5 SALARY SACRIFICE

The employer may pay an amount in respect of you under a salary sacrifice arrangement but you must first give to the employer a written election, separate from this employment agreement, for a salary sacrifice arrangement and under any such arrangement the guarantee of basic rates of pay under the Act would be satisfied if the payment sacrificed were instead paid to you.

[Guidance Note: You can only salary sacrifice for remuneration earned after you have given the employer a written election for a salary sacrifice arrangement and the employer has agreed. The employer and the employee should enter into a separate written salary sacrifice written agreement and a pro forma can be obtained from the Real Estate Employers' Federation SA]

Brock Harcourts Gold Employee Collective Agreement (CA)

S1.6 OVERPAYMENT

The employer may make a deduction from your remuneration for the purpose of recovering a previous over payment of remuneration and your basic rate of pay would be satisfied if the amount of the over payment were instead paid to you.

S1.7 PAY SLIP

You must be provided with a pay slip by the employer in accordance with the Act and Regulations.

S1.8 MEANS OF PAYMENT

Any money payment paid to you by the employer will be paid by EFT, cheque or cash by agreement with you and in the absence of agreement the method of payment will be decided by the employer. The employer will be responsible for any costs associated with paying an employee (e.g. EFT costs).

S1.9 CASUAL LOADING

A casual employee must receive a casual loading of 20% in addition to the applicable pay scale ordinary hourly rate. If an award casual loading is higher than 20% then the award casual loading will apply in lieu of the 20%. A casual hourly rate that is greater than the relevant pay scale plus the applicable casual loading will be deemed to include the applicable casual loading.

S1.10 'COMMISSION ONLY' BASIC RATE OF PAY

If a basic rate of pay ever needs to be calculated for a salesperson on 'commission only' for matters such as payment in lieu of notice or redundancy payments, then the formula under Note 2 which appears underneath clause 24.1 will be used. This formula appears in the Regulations but is only cited in Regulations for annual leave and personal/carer's leave.

Brock Harcourts Gold Employee Collective Agreement (CA)

Schedule 2

Commission Arrangements for a Salesperson

Note: Where Schedule 2 talks about "receiving a wage" this also includes a salesperson receiving commission in satisfaction of the wage – i.e. option (e) under Schedule 1.

Schedule 2 only relate to a salesperson, sales manager or sales trainee

Commission Flow Chart Defining Commission Terms	
1	The employer's GROSS commission is the amount of commission paid to the employer by the client.
2	The employers NET commission is derived from the employer's GROSS commission (Clause S2.2 defines the employer's net commission)
3	The salesperson's COMMISSION SHARE is calculated on the employer's NET commission as per clause S2.1.1.
4	The salesperson's GROSS commission is derived from the Salesperson's COMMISSION SHARE after any packaged items as per clause S2.1.2 are satisfied from the Salesperson's COMMISSION SHARE.
5	Salesperson's NET commission (or 'gross taxable income') is derived from the Salesperson's GROSS commission after any off sets or debits are satisfied from the Salesperson's GROSS commission (majority of potential debits or offsets are listed under clause S2.4)

S2.1 YOUR COMMISSION SHARE

S2.1.1 Your commission share

The employer and a salesperson (including a trainee salesperson) may at any time negotiate (or renegotiate) for the salesperson to receive a salesperson's commission share of the employer's net commission (subject to the other provisions of this Schedule) received by the employer for properties or businesses you have listed and/or sold. Any agreement reached of what commission share you will receive should be recorded as per clause 4.5. If you only list or only sell your commission share will be subject to a split – splits are dealt with in clause S2.3. Your commission share may be or may not be a package (or loaded rate) as per clause S2.1.2.

Note: Despite anything else in this Schedule, a "commission only" salesperson for a salesperson's net commission, must receive not less than 35% of the employer's net commission [defined in clause S2.2 (b)] for each sales transaction [which is subject to commission splits – see S2.3 (b)] so as to comply with the commission only pay scale – the minimum of 35% is not negotiable. Normally a 'commission only' salesperson's commission share which is a package or 'loaded rate' is far in excess of 35% so as to satisfy any relevant packaged or debitable items.

S2.1.2 Salesperson's commission share packaged or not

(a) Is the salesperson's commission share a package or loaded rate?

YES NO

(b) If "YES" then the following item/s is/are packaged as part of your commission share:

- (i) If you are paid commission only advanced payment for annual leave and personal/carer's leave – your commission share includes an advanced payment of 12% for annual leave and personal/carer's leave which will be designated and paid to you as your basic rate of pay for annual leave and personal/carer's leave. It will be paid to you whenever a salesperson's net commission payment is due. When you are entitled to take accrued annual leave or accrued personal/carer's leave then no further payment will be made as you would have already been paid in advance – however, at the time an entitlement arises for you to take annual leave or personal/carer's leave (or a pay out for accrued annual leave on termination of employment) the employer must ensure

Brock Harcourts Gold Employee Collective Agreement (CA)

any advanced payment at least equals what you would have received had you been paid at the time of taking leave. Advanced payment of leave does not cash out accrued annual leave or accrued personal/carer's leave. Cash out of annual leave is dealt with under clause 22.

Once your commission share has been established as a money amount, the relevant percentage/s under S2.1.2 (b) above will be calculated on the money amount and contributed or paid to you and what money is left over will become your gross commission (which may still be subject to off sets or debits under clause S2.4.1).

- (c) On the employee's pay slip any money contributed by the employer or paid to the employee under paragraph (b) should all be defined and named as separate entries.
- (d) As your commission share is a package the employer has offered you a higher share of commission than would have otherwise been the case had your commission not been a package.

S2.1.3 Commission as a scale and splits re employer gross commission

If your commission share is or ever becomes a scale (as opposed to a flat rate) the employer will determine if it will operate within a period of a financial year, a calendar year; a quarter; an anniversary year or a month. That is, at the end of the said determined period your gross commission share returns to the bottom level of commission in the scale unless we agree otherwise. Also each level of commission stands alone.

When there is a commission split and in determining how much of the employer gross commission is attributable to you for the purposes of calculating your commission share it will be by agreement between you and the employer and in the event agreement cannot be reached it will be at the sole discretion of the employer.

S2.1.4 Commission account

The employer will keep a commission account/statement for you into which all agreed deductions, off sets, debits and credits are entered as they come to hand. At the end of a frequency pay cycle if your account is in credit, then you will be paid that credit as commission. On the other hand if at the end of a frequency pay cycle your account is in debit, the debit is carried forward to the next commission frequency pay cycle. This is subject to a 'commission only' salesperson having to receive a minimum of 35% net commission (subject to commission splits) for each sales transaction despite the account being in debit.

Debits and credits may be entered into your account at any time and may or may not relate to a particular property.

S2.2 DEFINITION OF EMPLOYER'S NET COMMISSION

- (a) For a salesperson that receives a wage then the Employer's Net Commission means the employer's gross commission from the sales transaction less:
 - (i) Any conjunction/listing agents fees (if any)
 - (ii) GST
 - (iii) Franchise or similar fee (if applicable)
 - (iv) Advertising overspends
- (b) For a salesperson who receives commission only then the Employer's Net Commission means the employer's gross commission from the sales transaction:
 - (i) less any conjunction agents fees (if any); and
 - (ii) less GST; and
 - (iii) less 10% (or a lesser amount) of the remaining amount after (i) and (ii) have been subtracted.

Note: For a commission only salesperson these are the only three items that may be deducted from the employer's gross commission according to the piece rate pay scale. The "10%" under item (iii) is a generic term for a "franchise/marketing fee" – so if it less than 10% or no franchise fee applies the 10% may be reduced accordingly.

Brock Harcourts Gold Employee Collective Agreement (CA)

S2.3 COMMISSION SPLITS

- (a) For a salesperson who **receives a wage** then unless they are already specified in this agreement, commission splits when you work in conjunction with another agent or salesperson will be in accordance with any agreement you make with the other agent or salesperson (subject to any employer policy or employer direction) or if agreement cannot be reached the split will be at the sole discretion of the employer. Also, splits for employer leads will be at the sole discretion of the employer unless they are already specified in this agreement.
- (b) For a salesperson who **receives commission only** then in relation to commission splits where:
- (i) two or more employees, whether they are covered by the commission only Pay Scale or not, are responsible for selling a property; and
 - (ii) each employee has agreed with his or her employer, in writing, as to the proportion of the employer's net commission each employee responsible for selling that property is entitled to; and
 - (iii) each agreement specifies that the employees responsible for selling a property are to be paid, in aggregate, at least 35% of the employer's net commission resulting from the completed sales transaction;

then each employee covered by the commission only Pay Scale must be paid at least the agreed amount.

For the avoidance of doubt, where the requirements set out in paragraphs (ii) and (iii) above are not met in relation to an employee responsible for selling a property, that employee must be paid the rate of at least a minimum of 35% of the employer's net commission.

S2.4 DEBITS FROM YOUR GROSS COMMISSION SHARE

S2.4.1 Off-sets from your share of your gross commission

Your gross commission share in S2.1.1 may be off set by the employer with the following items:

- (a) Any wages and loadings (including a salary) that are paid to you irrespective of what the wages or loadings (or salary) were paid for.
- (b) Any type of allowance that is paid to you. For a salesperson this usually includes any car allowance or telephone allowance paid to you.
- (c) Employer's superannuation contributions.
- (d) Any cost expended by the employer in promoting your personal profile to the public.
- (e) Any cost expended by the employer on your listing files for un-recovered advertising spends or marketing spends. Before a debit is made for un-recovered advertising there is an expectation for the employer to take all practical steps to legally recover the advertising costs from the vendor or buyer. There is also an expectation for you to use your best endeavours to communicate with the seller or buyer to realise un-recovered advertising because it is you who has the personal relationship with the seller or buyer. Overspends will not be debited if they are taken into account under S2.2 (iv).
- (f) Any cost relating or incidental to the administration or working of a listing of your's from the point in time the listing was secured to the point in time of the settlement of the listing or if settlement does not occur then to the point in time of the last event (eg withdrawal of property). This could include but not limited to costs for listing; searches; sketches/plans; sign boards and so on.
- (g) The cost for non-approved colour copying or the agreed figure for approved colour copying.
- (h) The cost of any training or professional development by you.
- (i) Any cash advance against commission as requested by you and agreed by the employer.
- (j) Any expense requested by you and approved and paid by the employer.
- (k) After your employment ends any cost incurred by the employer for necessary work carried out by the employer, which work would have been carried out by you had your employment not ended may be off set against any commission outstanding to you. The employer's time will either be costed at \$100 per hour or your commission for the file in question will be reduced by 10%, whichever is the lesser.
- (l) Any expense not authorised by the employer.
- (m) The cost of client gifts and business cards.

Brock Harcourts Gold Employee Collective Agreement (CA)

- (n) Any cost to the employer for its excess on Professional Indemnity or for a negotiated settlement for a claim by a third party against the employer any of which were as a direct result of your reckless or careless action/s or omission/s. This debit will be by consultation between us and will be based on the degree of your culpability. We will endeavour to agree on the amount to be debited. In the absence of agreement the employer will set what it considers to be a fair debit. Any off set under this provision must not exceed 50% of your gross commission share for the file in question.
- (o) The agreed cost of any Personal Assistant in the event that we agree for you to have employer Personal Assistant support
- (p) Any expense/cost/fee of any other debit or proportion of same that we agree upon.

Note: We will allow ourselves the flexibility in this agreement to negotiate at any time any of the above off sets as that is the nature of the industry, because as a general rule the higher a salespersons commission the more off sets there are. However, predominantly the employer at any time reserves the right on a discretionary basis to off set your gross commission with any the above items.

Despite what off sets are listed above if you are a 'commission only' salesperson you must always receive a minimum of 35% of net commission for each sales transaction (commission splits are dealt with above).

If any wages or payment for any allowances or entitlements are ever found during or after your employment to be payable to you then such wages or allowances or entitlements will be totally off set against your net commission earned for the entire period of your employment, providing the off set does take you below your pay scale.

NOTE: These off sets or debits are at the discretion of the employer which means they are not necessarily all applied all the time. Most real estate offices have a standard set of off sets or debits which differ from office to office. The above list is a generic list and not necessarily the standard set for this office.

S2.5 REFERRAL FEES

S2.5.1 Rental referral fee

In the event that the employer operates a rent roll and you introduce to the employer a new rental you will be paid 50% of the letting fee by the employer.

If a rental introduced by you is subsequently listed for sale with the employer it will become your listing subject to any commission split required by the employer, provided you are still employed with the employer.

S2.5.2 Other referral fees

Referral fees other than rental referrals may be paid to you as determined by the employer from time to time.

S2.5.3 Inclusive of superannuation

All referral fees (whether cited in this Schedule or elsewhere in this agreement or in an employee letter) will be inclusive of the employer's superannuation contribution and also minus GST and the franchise fee (if relevant) - "inclusive" means the referral fee offered to you is not your income – it only becomes your income after all debits or deductions have been accounted for.

S2.6 LISTING STATUS ON TERMINATION OF EMPLOYMENT

Any property which you have listed for sale as an employee but has not sold as at the date of the termination of your employment will continue to remain the property of the employer and you must not breach your fiduciary duty by making an effort to take the listing with you after your employment ends. Despite S2.1 and S2.7 and despite any other provision in this agreement you will not be entitled to any salesperson's commission share for any such unsold listing and you also will not be entitled to any selling commission split if the employer subsequently sells the unsold listing.

S2.7 COMMISSION PAYMENTS AFTER TERMINATION OF EMPLOYMENT

Brock Harcourts Gold Employee Collective Agreement (CA)

S2.7.1 When your employment ends you will only be entitled to receive your commission share on a sales transaction conducted by you if you (or another salesperson if you were only the lister) were responsible for putting in place before your employment ended an **unconditional and legally enforceable contract of sale** for the sales transaction and the property settles and the employer is paid. After your employment ends you will not be entitled to your commission for any post termination of employment settlements until the settlement has occurred and the employer has been paid by the vendor and all debits or off sets have been accounted for – the only exception to this is that a commission only salesperson must receive a minimum of 35% net salesperson's commission (subject to splits) for each sales transaction as soon as the employer has been paid despite what debits may be outstanding.

S2.7.2 Notwithstanding anything else in this agreement, when your employment ends and this agreement makes provision for you receive a fee/incentive/bonus of any description then you will only be entitled to receive any such fee/incentive/bonus if the appropriate documentation was in place before your employment ended and that such documentation, if applicable and/or appropriate, could be legally enforced.

Note: There may be a debit for costs incurred by the employer for work carried out by the employer, after your employment has terminated [see S2.4.1 (k)].

S2.8 WHEN A SALESPERSON EARNS COMMISSION AND WHEN IT IS PAID

Much controversy often surrounds the question of when a salesperson actually earns their commission on a sales transaction. Notwithstanding anything to the contrary in this agreement and subject to any pay scale definition a salesperson will be considered to have earned their commission upon the signing of an **unconditional and legally enforceable contract of sale**. However, payment of commission to the salesperson cannot be made until the property settles and the employer is paid by the vendor and most times settlement does not occur for weeks or months.

If a sale contract is conditional and the conditions are not met or a settlement falls through or the vendor for any reason does not pay the employer, the salesperson will be deemed as having not earned any commission for that sales transaction.

S2.9 RECOVERY OF ADVERTISING/MARKETING MONEY

Although it is the employer's responsibility to recover in a legal manner unpaid advertising or marketing by a vendor or buyer, providing the salesperson feels comfortable in doing so, the salesperson agrees to use his or her best endeavours to assist the employer by politely and in a civil manner requesting payment from a vendor or buyer who was a client of the salesperson in question, as it would have been the salesperson who developed the personal business relationship with the client in the first place. It is unlawful to use such things as pressure, duress or threat in debt recovery.

S2.10 LOST EMPLOYER COMMISSION

If because of a salesperson's unnecessary careless or reckless action/s or omission to act, the employer cannot by law demand, receive or retain commission or expenses from a vendor or purchaser in respect of the sale or purchase of land or a business, then despite any other provision in this agreement, the salesperson will not receive any commission either. The salesperson may still be liable in terms of this agreement to have any expenses debited from other commission.

Brock Harcourts Gold Employee Collective Agreement (CA)

Schedule 3

INCENTIVES/BONUSES

- S3.1** A Clerk who introduces to the employer a new rental will be paid 50% of the letting fee by the employer. A clerk or property manager who introduces a personal listing to the employer will receive 15% commission of the employer's net commission – the employer's net commission is defined under Schedule 2.
- S3.2** It is a provision of this CA that the employer and an employee may agree at any time in an employee letter as per clause 4.5 on any incentive/bonus arrangements. Incentives in this Schedule refer to incentives other than a salesperson's commission.
- S3.2** Any incentive or bonus scheme to which you will be entitled, whether cited in this CA or whether agreed in accordance clause S3.2, will be inclusive of the employer's superannuation contribution and also minus GST and any franchise fee (if relevant).

Schedule 4

ALLOWANCES – PENALTIES – LOADINGS

S4.1 Allowances, loadings, penalty rates

- S4.1.1** If the Clerks (SA) Award for a clerk or the Real Estate Award for a salesperson, (sales) manager or a sales trainee or for any designated award for a property manager has any of the following provisions in the award then the employer must pay you in accordance with the award rates for any relevant provision, namely:
- (a) Penalty rates, including for working on public holidays and weekends;
 - (b) Shift and overtime loadings;
 - (c) Monetary allowances (which includes any car, mileage or telephone allowance);
 - (d) Annual leave loadings;
 - (e) Public holidays;
 - (f) Casual loadings
- S4.1.2** The payment of any matter under S4.1.1 may be satisfied either in accordance with clause S1.3 of Schedule 1 (i.e. such matters may be incorporated into over pay scale payments such as a salary) or for a clerk or property manager who works overtime the overtime may be satisfied in accordance with clause 20.4 (time off in lieu).
- S4.1.3** *Clarifying matters under S4.1.1 for sales classifications*
A salesperson or (sales) manager is entitled to a car allowance of \$140 per week and a sales trainee a car allowance of \$110 per week. A salesperson who works 'commission only' is not entitled to a car allowance under the Real Estate Award and neither does this agreement provide for one. Any car allowance paid to a salesperson or (sales) manager or to a sales trainee is not paid while the employee is on paid or unpaid leave of absence (the car allowance may pro rata for this purpose). The car allowance may be converted to an hourly rate by dividing by 38 if a salesperson or (sales) manager is part time or casual but it will be capped at \$140 for 38 ordinary hours per week.

A salesperson, (sales) manager or sales trainee is not entitled to overtime penalties or leave loading under the Real Estate Award and neither does this agreement provide for these matters.

A salesperson, (sales) manager or sales trainee is entitled to be paid double time (wage only if on a wage – not commission) for work done on a public holiday at the request of the employer. If a salesperson works commission only and the employer directs you to work a public holiday

Brock Harcourts Gold Employee Collective Agreement (CA)

you are entitled to another day off. If a salesperson chooses for themselves to work a public holiday then the only extra you are entitled to is any commission you may earn.

S4.2 Mobile phone and car allowance for Property Managers

If you are a Property Manager and as you are award free, it is a provision of this CA that we may agree to a car allowance or mobile phone allowance at any time and record it as per clause 4.5. If an award is designated for a property manager and we have already agreed on a car allowance or a mobile telephone allowance and the designated award also has a car allowance or mobile telephone allowance in it, then you will be paid whichever is the higher allowance. If you receive a salary then in accordance with clause S1.3 the allowance may be incorporated into your salary.

S4.3 Designated award


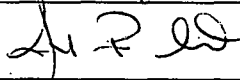
If the Workplace Authority designates an award for a property manager named and because of the designated award the employer becomes liable to pay such an employee for any payments under S4.1, then, if applicable, such payments may be satisfied either under clause S1.3 of Schedule 1 or from any incentive or bonus such an employee may receive under Schedule 3. Also if any allowance, penalty or loading specified in this CA for a property manager corresponds to a designated award allowance, penalty or loading, then the employee will be entitled to whichever is the higher allowance, penalty or loading.


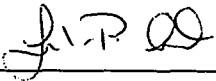
Brock Harcourts Gold Employee Collective Agreement (CA)

Signatures

A WITNESS can not be the other party to the CA; the bargaining agent of the other party; or a Director or person involved in the day to day management of the employer

Each line must be completed – i.e. don't leave out things like dates and addresses

SIGNED BY EMPLOYER AND EMPLOYER'S WITNESS	
Signed by/on behalf of Employer:	
Date:	15/7/08
Name in full (printed):	Dawn Simpson
Position:	Business Owner.
Address (printed):	4 Donovan St Greenwith SA 5125.
Explain your authority to sign (e.g. you are the employer, or you are an authorised officer of the registered company such as a director, or the employer has authorised you to sign, presumably because you hold a managerial position)	Business Owner.
Signed by Witness:	
Witness name in full (printed):	FRANK P. LELLI
Witness address (printed):	Shop 4 63-65 HAMILTON RD FAIRVIEW PK 5126

SIGNED BY EMPLOYEE AND EMPLOYEE'S WITNESS	
Signed by Employee:	
Date:	15/7/08
Employee name in full (printed):	Wendy Freeman
Employee address (printed):	1 Willow Ct Morningside SA 5086
Explain your authority to sign (e.g. you are the nominated employee's representative or the duly authorised bargaining agent)	Nominated by all employees to sign on their behalf. - office manager.
Signed by Witness:	
Witness name in full (printed):	FRANK P. LELLI
Witness address (printed):	Shop 4 63-65 HAMILTON RD FAIRVIEW PARK 5126

Employer must keep a signed copy of this CA for 7 years after the CA is terminated

This CA is made pursuant to Part 8 of the Workplace Relations Act 1996

Disclaimer: Real Estate Employers' Federation SA (REEF) and Don Tepper Consulting Pty Ltd (Company) or any other person acting on behalf of REEF or the company does not invite reliance upon, nor accept responsibility for, the information in this template agreement. Precautions have been taken to ensure that the information in this template agreement is accurate. However the company or any other person acting on behalf of it does not guarantee, and accepts no legal liability whatsoever arising from or connected to, the accuracy, reliability, currency or completeness of any material contained in this template agreement.

APPOINTMENT OF AN AGENT
EMPLOYEE COLLECTIVE AGREEMENT

Company Name: Gold Real Estate (SA) PTY LTD
(Employer)

ABN: _____

Trading As: Brock Harcourts Gold

Address: Unit 2#3/65 Hamilton Rd Fairview Park SA 5126

Phone: 8251 3600 Fax: 8251 7763

Mobile: 0113947249 Email: down.simpson@brockharcourts.co
wandy.freeman@brockharcourts.com.au

The Employer hereby appoints Don Tepper Consulting Pty Ltd as its agent in relation to the making or variation of an Employee Collective Agreement.



Signed by an authorised officer

15/07/08

Date

Down Simpson

Name (Print)

15/07/08

Title

Information Statement for Employees

Collective agreements

This information statement sets out important information you need to know about employee and union collective agreements. If your agreement is a greenfields agreement, there is a separate information statement for these types of agreements available from our website.

You should read it carefully. If you have any questions about any of this information, you can call the Workplace Infoline on **1300 363 264**, or visit www.workplaceauthority.gov.au

What is a collective agreement?

A collective agreement is a written agreement that covers a group of employees setting out the terms and conditions of their employment. These include things like how much you are paid, your hours of work, and other things relating to your job.

- An **employee collective agreement** is made between an employer and a group of employees and covers a group of employees
- A **union collective agreement** is made between an employer and a union or unions and covers a group of employees.

A collective agreement may cover businesses run by more than one employer. A collective agreement will be assessed against the no disadvantage test which ensures that the agreement does not, on balance, reduce the overall terms and conditions of employment of the employees covered by the agreement. This generally involves a comparison between the terms of the agreement and the terms of a relevant award or former state award.

What does a collective agreement do?

- It replaces any industrial award or agreement that would have applied to you except for the following: a current ITEA, AWA, or any other collective agreement that already applies to you and that has not passed its nominal expiry date
- It overrides employment conditions created by state or territory laws, if your collective agreement deals with those conditions, except it does not override state or territory laws covering occupational health and safety, workers compensation, child labour, equal employment opportunity and discrimination, or certain laws dealing with training arrangements.

Who can make a collective agreement?

An employer can make an employee collective agreement with employees employed in the employer's business whose employment is to be covered by the agreement. This includes an employee who is currently covered by an individual transitional employment agreement (ITEA) or AWA that has passed its nominal expiry date whose employment would be covered by the collective agreement if they weren't covered by the AWA or ITEA.

An employer can make a union collective agreement with one or more unions, provided that the union(s) is entitled to make the agreement on the basis of union membership and coverage.

Note: Your employer must also be in one of the categories of employers who can make workplace agreements under the *Workplace Relations Act 1996*. For more information please visit www.workplaceauthority.gov.au

What steps are involved in making a collective agreement?

Step 1

If your agreement is an employee collective agreement, you can ask someone to help you talk to your employer about making or varying the agreement. This person is called a bargaining agent. Your bargaining agent can ask for a certificate from the Workplace Authority which they can give to the employer. This certificate will not identify you, but will let your employer know that an employee has asked the bargaining agent to represent them in discussions about the agreement. Your employer can appoint a bargaining agent too.

Unless you withdraw your request, your employer must give your bargaining agent a reasonable opportunity to meet and confer with them about your agreement or variation for at least seven days before the agreement or variation is approved, ending on the day that the agreement is approved.

A bargaining agent can be a friend, relative, union representative, solicitor or any other person whose advice you trust. Bankrupts, people under the age of 18 and some others can not be appointed as bargaining agents.



information in relation to your employment that is lodged with your agreement. You may be contacted by the Workplace Authority for extra information to help with completing the test.

Once completed, the Workplace Authority will write to your employer and, in the case of a union collective agreement, the union(s) bound by the agreement to let them know whether or not your collective agreement has passed the no disadvantage test.

The employer must give copies of the notice from the Workplace Authority about whether the collective agreement passes the no disadvantage test to each employee covered by the agreement as soon as possible after the employer receives the letter.

When does a collective agreement start operating?

An employee collective agreement and a union collective agreement will not start operating until the Workplace Authority is satisfied that the agreement passes the no disadvantage test. Specifically the agreement will start to operate on the seventh day after the date of the notice from the Workplace Authority advising that the agreement has passed the no disadvantage test. Until your collective agreement starts to operate your employment will be covered by the industrial awards or agreements that currently apply to your employment.

In exceptional circumstances, where the Workplace Authority is satisfied that approval of the agreement would not be contrary to the public interest, an employee collective agreement or a union collective agreement may be taken to pass the no disadvantage test where it would otherwise fail.

A collective agreement will only operate if it has been validly approved by the employees and the signature requirements are met. These signature requirements are set out above. Also, a multiple business agreement can only operate if the Workplace Authority has authorised the making of the agreement.

What if my collective agreement does not pass the no disadvantage test?

If your collective agreement does not pass the no disadvantage test, the notice provided by the Workplace Authority will contain further information regarding the process to be followed to change your collective agreement to comply with the no disadvantage test. If your collective agreement is a union collective agreement the union(s) party to the agreement will also receive a copy of this notice.

Your employer may lodge a variation of the agreement in response to the no disadvantage test. The varied agreement will then be assessed to determine whether it passes the no disadvantage test. The Workplace Authority will then advise the employer in writing (and the relevant union(s), if the agreement is a union collective agreement) of the outcome. Your employer must provide relevant employees with a copy of this letter as soon as they can.

If the Workplace Authority decides that the varied agreement:

- passes the no disadvantage test - the varied agreement will start operating on the seventh day after the date of issue of the notice,
- does not pass the no disadvantage test - the agreement will not operate.

Your employer cannot dismiss you, or threaten to dismiss you, because your collective agreement does not pass the no disadvantage test.

When does a collective agreement stop operating?

Your collective agreement stops operating in relation to your employment in three situations:

1. it is terminated
2. it is replaced by another collective agreement after its nominal expiry date, or
3. it is declared to be of no effect by a relevant Court.

All collective agreements must have what is called a nominal expiry date. If your collective agreement passes its nominal expiry date and a new workplace agreement is not made, your existing collective agreement will continue to apply. As discussed below, the fact that the nominal expiry date of a collective agreement has passed will mean that the agreement can be replaced by another collective agreement or terminated in different ways.

The nominal expiry date of your agreement is generally either:

- a set date mentioned in the agreement (up to five years from the date of lodgement), or
- if no such date is specified, five years after the date of lodgement of the agreement.

A shorter nominal expiry date of up to 2 years will apply if the employee collective agreement or union collective agreement passed the no disadvantage test due to exceptional circumstances.



4. Personal leave.

Ten days paid personal/carer's leave per year and two days paid compassionate leave for each relevant occasion, except casual workers.* Where this paid personal leave has been used up, two days unpaid carer's leave for each carer's leave occasion. This unpaid leave is available to casuals.

5. Unpaid parental leave.

For all employees other than certain casual employees, up to 52 weeks unpaid parental leave (maternity, paternity and adoption).

** These conditions set out above are based on a full-time employee working up to 38 hours per week and apply on a pro-rata basis according to the hours worked by the employee.*

Any clauses of your agreement that seeks to exclude an entitlement provided for by the Standard will be of no effect and cannot be enforced. If you have any concerns that you are not being provided with the minimum conditions provided for by the Standard, please contact the Workplace Infoline on 1300 363 264 or the Workplace Ombudsman on 133 724 200.

Is there anything that should not be included in my agreement?

Yes. **Prohibited content** cannot be included in a collective agreement. Any prohibited content in a collective agreement has no effect and cannot be enforced. Employers can be fined if they recklessly lodge an collective agreement containing prohibited content.

For more detailed information about what terms contain prohibited content please visit www.workplaceauthority.gov.au

Why are workplace agreements for some Victorian employees different?

If you work in Victoria and your employer is not a 'constitutional corporation' (for example, they are not a company), your collective agreement must contain guarantees of minimum wage rates and casual loadings. If it doesn't, the collective agreement will be void.

Community language information

English

This letter was issued by the Workplace Authority and provides information about workplace agreements. If you cannot read English and need help to understand this information, please call the Workplace Authority through the Translating and Interpreting service on 13 14 50. This telephone interpreting service will be paid for by the Workplace Authority.

Arabic

هذا الخطاب صادر من Workplace Authority (سلطة أماكن العمل) وهو يعرض معلومات عن اتفاقيات مكان العمل. إذا كنت لا تستطيع قراءة اللغة الإنكليزية ولتحيت المساعدة في فهم هذه المعلومات، يرجى الاتصال بـ Workplace Authority عن طريق خدمة الترجمة الخطية واللغوية على الرقم 13 14 50. ستقوم Workplace Authority بنقل رسوم خدمة الترجمة اللغوية اليقينية هذه.

Chinese

此信函由工作場所管理局(Workplace Authority)簽發，其中提供了有關工作場所協議的信息。如果您不能閱讀英文而需要幫助了解此資料，請致電 13 14 50，透過翻譯及傳譯服務處與 Workplace Authority 聯絡。該電話傳譯服務之費用將由 Workplace Authority 支付。

Croatian

Ovo pismo izdala je Uprava za radne odnose (Workplace Authority) i u njemu se navode informacije o radnim ugovorima (workplace agreements). Ako ne možete čitati engleski i trebate pomoć kako biste razumjeli ove informacije, molimo nazovite Workplace Authority preko Službe prevoditelja i tumača (Translating and Interpreting Service) na broj 13 14 50. Usluge službe tumača plaća Workplace Authority.

Farsi

این نامه توسط Workplace Authority (اداره منول امور محل کار) صادر شده و اطلاعاتی درباره توافق های محل کار ارائه می دهد. اگر شما نمی توانید انگلیسی بخوانید و برای فهمیدن این اطلاعات کمک نیاز دارید، خواهشمند است از طریق خدمات ترجمه کتبی و شفاهی با شماره 13 14 50 به Workplace Authority تلفن کنید. هزینه این سرویس ترجمه تلفنی را Workplace Authority پرداخت.

Filipino

Ang liham na ito ay ipinalabas ng Workplace Authority (Tagapamahala sa Pinagtatrabahuang Lugar) at nagbibigay ng impormasyon tungkol sa mga kasunduan sa pinagtatrabahuan. Kung hindi kayo nakababasa ng Ingles at kailangan niyo ng tulong upang maintindihan itong impormasyon, pakitawagan ang Workplace Authority sa pamamagitan ng Serbisyo ng Tagasalin-wika at Interpreter (Translating and Interpreting Service) sa 13 14 50. Ang serbisyo ng pagsasalinwika sa telepono ay babayaran ng Workplace Authority.

Greek

Αυτή η επιστολή εκδόθηκε από το Workplace Authority (Αρχή Εργοδοτικών Χώρων) και παρέχει πληροφορίες σχετικά με τις συμβάσεις εργοδοτικού χώρου. Αν δεν μπορείτε να διαβάσετε τα Αγγλικά και χρειάζεστε βοήθεια για να καταλάβετε αυτές τις πληροφορίες, παρακαλείσθε να τηλεφωνήσετε στο Workplace Authority μέσω της Υπηρεσίας Μεταφραστών και Διερμηνέων (Translating and Interpreting Service) στο 13 14 50. Αυτή η τηλεφωνική υπηρεσία διερμηνέων θα πληρωθεί από το Workplace Authority.

Indonesian

Surat ini dikeluarkan oleh Workplace Authority (Otoritas Tempat Kerja) dan memberi informasi tentang persetujuan tempat kerja. Jika Anda tidak dapat membaca bahasa Inggris dan perlu bantuan untuk memahami informasi ini, silakan telepon Workplace Authority melalui Translating and Interpreting Service (Pelayanan Penerjemahan dan Juru Bahasa) di nomor 13 14 50. Pelayanan juru bahasa lewat telepon ini akan dibayar oleh Workplace Authority.

Italian

La presente lettera è stata rilasciata dalla Workplace Authority e contiene informazioni sui contratti di lavoro aziendali. Se non siete in grado di leggere l'inglese e avete bisogno di assistenza per comprendere queste informazioni, chiamate la Workplace Authority servendovi del servizio traduzioni e interpreti al numero 13 14 50. Il costo di questo servizio interpreti sarà a carico della Workplace Authority.

Khmer

លិខិតនេះ ត្រូវបាន បោះពុម្ព ដោយ Workplace Authority (អាជ្ញាធរ គ្រប់គ្រងទីកន្លែង ធ្វើការ) ហើយផ្តល់ ព័ត៌មានអំពីកិច្ចព្រមព្រៀងលើការងារ។ ប្រសិនបើលោកអ្នកមិនអាចអានភាសាអង់គ្លេស ហើយត្រូវការជំនួយដើម្បី យល់ព័ត៌មានលម្អិតអំពីកិច្ចព្រមព្រៀងនេះ សូមទូរស័ព្ទទៅ Workplace Authority តាមរយៈ កិច្ចប្រជុំបកប្រែភាសាសរសេរ និងភាសាស្តីបាយលេខ 13 14 50 អាជ្ញាធរ Workplace Authority នឹងបង្គំប្រគល់ការបកប្រែសំឡេង និងបកប្រែភាសាសរសេរជូនលើកិច្ចព្រមព្រៀងនេះ។

Korean

본 서신은 Workplace Authority(직장 관리국)에서 발행한 것으로서 직장 협약에 관한 정보가 실려 있습니다. 영어 외기에 어려움이 있으셔서 본 정보를 이해하는데 도움이 필요하시면 통번역 서비스를 지원해 드리는 TS, 전화 13 14 50번을 통해 Workplace Authority로 문의하시기 바랍니다. 전화 통역 서비스 비용은 Workplace Authority가 부담합니다.

Lao

ຈົດໝາຍສម្របនេះ ត្រូវបាន បោះពុម្ព ដោយ Workplace Authority (ក្រសួងព្រហ្មទណ្ឌសម្រាប់ការងារ) ហើយផ្តល់ ព័ត៌មានអំពីកិច្ចព្រមព្រៀងលើការងារ។ ប្រសិនបើលោកអ្នកមិនអាចអានភាសាអង់គ្លេស ហើយត្រូវការជំនួយដើម្បី យល់ព័ត៌មានលម្អិតអំពីកិច្ចព្រមព្រៀងនេះ សូមទូរស័ព្ទទៅ Workplace Authority តាមរយៈ កិច្ចប្រជុំបកប្រែភាសាសរសេរ និងភាសាស្តីបាយលេខ 13 14 50 អាជ្ញាធរ Workplace Authority នឹងបង្គំប្រគល់ការបកប្រែសំឡេង និងបកប្រែភាសាសរសេរជូនលើកិច្ចព្រមព្រៀងនេះ។

Macedonian

Ова писмо го издаде Workplace Authority (Управа за работни организации) и тоа содржи информации за работните споразуменија. Ако не можете да читате текстот на англиски јазик и ако ви треба помош да ги разберете овие информации, ве

молиме телефонирајте во Workplace Authority преку Службата за писмено и усмено преведување (Translating and Interpreting Service) на 13 14 50. За ова преведување преку телефон ќе плати Workplace Authority.

Malay

Surat ini dikeluarkan oleh Workplace Authority (Lembaga Tempat Kerja) dan memberi maklumat mengenai perjanjian tempat kerja. Jika anda tidak membaca bahasa Inggeris dan memerlukan bantuan untuk memahami maklumat ini, sila telefon Workplace Authority menerusi Perkhidmatan Penterjemahan dan Jurubahasa melalui talian 13 14 50. Perkhidmatan jurubahasa telefon ini akan dibayar oleh Workplace Authority.

Polish

Niniejsze pismo wydane zostało przez Workplace Authority (Urząd ds. Za(rodnienia) i zawiera informacje na temat umów o pracę. Jeśli nie czytasz po angielsku i potrzebujesz pomocy w zrozumieniu zawartych tu informacji, zatelefonuj do nas za pośrednictwem Biura Tłumaczy (Translating and Interpreting Service), tel. 13 14 50. Koszt pomocy tłumacza pokryty zostanie przez Workplace Authority.

Portuguese

Esta carta foi emitida pela Workplace Authority (Autoridade para as Condições de Trabalho) e oferece informação sobre acordos laborais. Se não puder ler inglês e necessita de ajuda para compreender esta informação, por favor contacte a Workplace Authority usando o Serviço de Tradução e Intérpretes através do 13 14 50. Este serviço de interpretação telefónica será pago pela Workplace Authority.

Russian

Настоящее письмо было подготовлено Workplace Authority (Управлением по производственным отношениям) и в нем приводится информация о трудовых соглашениях. Если вы не можете читать по-английски и нуждаетесь в помощи для понимания настоящей информации, звоните в Workplace Authority через посредство Переводческой службы TIS по тел. 13 14 50. Эта телефонная переводческая услуга будет оплачиваться Workplace Authority.

Samoan

Ole tusi lenei sa aumai i le Workplace Authority (Pulea Falefaigaluesga) ma e maua mai ai faamatalaga e uiga i faigalaga i falefaigaluesga. A le malai ona e faitau ile gavana Peretania ma e te mana'omia se fesoasoani ile faamatalamaina o nei faamatalaga, faamole mole valaau ile Workplace Authority e auata ile Auauanaga o Faaliliupu ma Faamatalaupu ile 13 14 50. O lenei auauanaga ole faamatalaupu ile telefoni ole a totogina ele Workplace Authority.

Serbian

Ovo pismo je izdala Workplace Authority (Organizacija za radne odnose) i u njemu se nalaze informacije o sporazumima o radu. Ako ne znate da читате на енглеском и треба вам помоћ да бисте разумели ове информације, молимо вас да назовете Workplace Authority преко Службе преводилаца и тумача на 13 14 50. Те услуге тумачења ће платити Workplace Authority.

Spanish

La presente carta fue expedida por la Workplace Authority (Autoridad para las condiciones de trabajo) y proporciona información sobre los convenios empresariales. Si usted no sabe leer inglés y necesita ayuda para entender la información contenida en este documento, llame a la Workplace Authority por medio del Translating and Interpreting Service (Servicio de Traducción e Interpretación) al 13 14 50. La Workplace Authority abonará la tarifa de dicho servicio de interpretación telefónica.

Swahili

Baibu hii ilitolwa na Utawala wa Workplace (Afisi inayosimamia kazi) na inatoa maelezo kuhusu makubaliano ya Workplace. Ikiwa hauwezi kusoma Kiingereza na unahitaji msaaada kuelswa hayo, tafadhali piga simu kwa Utawala wa Workplace kupitia Huduma ya Kutafsiri na Kukalimani, namba ya simu 13 14 50. Huduma hii ya Kutafsiri na Kukalimani italiywa na Utawala wa Workplace.

Thai

เอกสารนี้จัดทำโดย Workplace Authority (สำนักงานแรงงานสัมพันธ์) เพื่อให้สามารถเข้าใจกฎหมายว่าจ้าง (จ้าง) ซึ่งได้ให้ข้อมูลที่จำเป็นต่างๆในสถานที่ทำงาน หากท่านอ่านภาษาอังกฤษไม่ได้ และต้องการความช่วยเหลือที่ทำงานเข้าใจข้อมูลเหล่านี้ กรุณาติดต่อสำนักงาน Workplace Authority ผ่านการบริการล่ามและการแปลภาษา (Translating and Interpreting Service) ที่หมายเลข 13 14 50 ทาง Workplace Authority จะเป็นผู้ชำระค่าใช้จ่ายสำหรับการบริการล่ามภาษาให้ท่านฟรี

Tongan

Ko e tohi ko 'eni 'oku 'oatu ia 'e he Workplace Authority (Ma'u Mafai ki he ngaue'anga) pea 'oatu fokii ai ha fakamatala faka'aki mo e ngaahi aleapau fakangaue'anga. Kapau 'oku 'ikai ke ke lava 'o lautohi faka-Pilitania pea 'oku ke femau 'ha tokoni ke mahino 'a e fakamatala ko 'eni, pea ke kataki 'o ta ki he Workplace Authority 'o fakafou atu i he Translating and Interpreting Service (Va'a Ngaue ki he fakatonulea mo Liliu Lea) 'i he 13 14 50. 'E totongi 'e he Workplace Authority 'a e fakatonulea he telefoni ko 'eni.

Turkish

Bu belge, Workplace Authority (İşyeri Dairesi) tarafından hazırlanmış olup, işyeri anlaşmalar hakkında bilgi sağlamaktadır. Eğer İngilizce okuyamıyorsanız ve bu bilgiyi anlamakta yardıma ihtiyaç duyuyorsanız lütfen 13 14 50 nolu telefondan Yazlı ve Sözlü Tercümanlık Servisi (Translating and Interpreting Service) kanalıyla Workplace Authority'yi arayınız. Bu telefon tercüme servisinin ücreti, Workplace Authority tarafından karşılanacaktır.

Vietnamese

Bức thư này của Cơ quan Workplace Authority (Chuyên trách về Số làm) cung cấp thông tin về hợp đồng nơi số làm. Nếu quý vị không biết tiếng Anh và muốn được giúp đỡ hiểu những thông tin này, xin gọi tới Cơ quan Workplace Authority bằng cách gọi cho Đường dây Thông dịch và Dịch thuật số 13 14 50. Cơ quan Workplace Authority sẽ trả lệ phí dùng đường dây thông dịch.





Australian Government
Workplace Authority

23 July 2008

Agreement number: 085164263

GOLD REAL ESTATE (SA) PTY LTD
PO Box 234
Mitcham Shopping Centre
TORRENS PARK SA 5062

Declaration Receipt – Employee collective agreement

This receipt confirms that the Workplace Authority has received a declaration from GOLD REAL ESTATE (SA) PTY LTD, on 23 July 2008.

The employer has declared that a copy of an employee collective agreement named GOLD REAL ESTATE (SA) PTY LTD 23 JULY 08 was provided to the Workplace Authority.

The employer must give a copy of this receipt to each employee covered by the agreement. The employer has 21 days to do this and may be liable for a fine of up to \$3,300 (for an individual) or up to \$16,500 (for a corporation) if this does not happen.

The Workplace Authority will now assess the agreement to determine whether or not it passes the no-disadvantage test. The no-disadvantage test ensures that the agreement does not, on balance, reduce the overall terms and conditions of employment of the employees covered by the agreement. This generally is a comparison between the terms of the agreement and the terms of a relevant award or former state award.

We may need to contact you for extra information to help us complete the test. Employers are encouraged to provide a copy of information they provide to the Workplace Authority to the other party or parties to the agreement. Once completed, we will write to the employer to let them know whether or not the agreement has passed the no-disadvantage test. If the agreement has not passed, we will provide information on variations that can be made to the agreement so that it passes the no-disadvantage test.

The agreement will not start operating until we are satisfied that it passes the no-disadvantage test. Specifically, the agreement will start to operate on the seventh day after the date of issue of a letter from us advising that the agreement has passed the no-disadvantage test.

The employer must give copies of any relevant letters about the no-disadvantage test referred to above to each employee covered by the agreement when the employer receives the letter as soon as they can.

The agreement will only operate if it has been validly approved and the signature requirements are met. A multiple business agreement can only operate if the Workplace Authority has authorised the making of the agreement.

If you have any other questions, please contact the Workplace Infoline on 1300 363 264 and quote the agreement number at the top of this receipt. Please keep this receipt for your records.

Workplace Authority Director

EMPLOYMENT AGREEMENT – SALES – WAGED OR SALARIED
PPN Mawson Lakes Pty Ltd and David King

Superannuation is calculated by reducing the amount of credit at statement closure or reconciliation by 9% (this is calculated by dividing the credit by 1.09). Once super is calculated the remaining credit then and only then converts to commission payable to you.

Your credit will be broken down into the payments of:

- Commission payable
- Superannuation

(ii) A "NO" answer means:

Any credit at statement closure or reconciliation immediately converts to commission payable to you and the employer's superannuation contribution is paid in addition to or on top of any commission you become entitled to.

B.1.2 Statement after employment ends

Upon the termination of your employment (for any reason) your statement will continue to operate in accordance with the method of calculation under B.1 (and the rest of Schedule B) until all credits and debits have been exhausted – because of matters such as delays in property settlements and notification of credits and debits this could take several months.

B.1.3 Statement to be provided to salesperson

The employer must provide a copy of the statement to you every time the statement is closed or reconciled. You may request the employer for a copy of your commission statement at any time but no more often than monthly. A statement is not a pay slip so any commission payable and super must be entered onto the pay slip.

B.1.4 Varying commission arrangements

Nothing in this agreement will prevent the parties from agreeing *in writing* to different commission arrangements or from agreeing to vary any clause in Schedule B providing the variation is consistent with the award and the Act.

B.1.5 Increases in superannuation

We expressly agree that any increase in the employer's 9% superannuation contribution may be absorbed by the employer into your credit whether or not superannuation is already included in your credit.

B.2 **DEFINITION OF THE NET PROFESSIONAL FEE [EMPLOYER'S NET COMMISSION]**

The "employer's net professional fee" means the employer's gross professional fee from the sales transaction less:

- (a) Any conjunction/listing agents fees
- (b) GST

- (c) Franchise fee
- (d) Support fee

B.3 **COMMISSION SPLITS**

When your credit under B.1.1 needs to be shared with another person or department the splits will be as follows:

- (a) List only 20% *OK AA*
- (b) Sell only 30% *OK AA*

B.4 **DEBITS DEBITED TO YOUR STATEMENT**

B.4.1 Your commission statement under clause B.1 will be subject to the following debits being debited to your statement. It will be at the sole discretion of the employer whether or not your statement is debited. If your statement is not debited on an occasion with a particular debit this will not set a precedent for the future with the same debit.

(a) **Wages or salary** paid to you including wages or salary paid for annual leave (including any leave loading), personal/carer's leave, compassionate leave or long service leave (including commission paid for long service leave as well as wages/salary) or for any other type of leave or for any other purpose.

(b) **Allowances** paid to you including allowances, reimbursement or compensation for using your own motor vehicle or mobile phone.

(c) **Advertising** expenses pertaining to you.

Unauthorised advertising expenses

- Any client unauthorised advertising expenses incurred by you will be debited to your statement unless the employer has agreed otherwise – only in the event of it being recovered (rare) will it be credited back to you.

Authorised advertising expenses

- If the employer does not "carry" authorised advertising and the arrangement is that your client authorised advertising expenses are debited to your statement, then when the amount is recovered you will be entitled to a credit.
- If employer does not make a genuine attempt to recover unpaid client authorised advertising spent by you then you will be entitled to have the expenses credited back to your statement.

Unauthorised actions by you

- If a client does not pay their advertising because of something you have said or promised the client which was not sanctioned by the employer, then the advertising expenses will be debited to your statement.

(d) The cost for non-approved **colour copying** or the agreed figure for approved colour copying.

(e) Any cost relating to or incidental to the **administration** or working of your listing from the point in time the listing was secured by you to the point in time of settlement or if settlement does not occur then to the point in time of the last event (e.g. withdrawal of sale of property by

Effective 1/12/15

H

ITEM 1

Step 1 – How will the employer's net commission be defined?

The 'employer's net commission' means the employer's gross commission received from the client for the sale transaction less the following terms;

- a) GST
- b) Conjunctional fees
- c) Marketing Levy 8%

Step 2 - How much of the employers net commission will your commission/bonus account be credited with?

- a) The employer will maintain a debit/credit commission/bonus statement/account for you.
- b) For each settlement for which you are responsible your commission/bonus statement/account will be credited with **50%** of the employer's net commission, providing the employer's financial institution has cleared the funds. If you were not responsible for the whole sales transaction then list / sell splits are dealt with in step 3

Step 3 -Splits

Your credit split of the employers net commission will be as follows:

- a) Determined by the employer from time to time; or
- b) Agreed between the salespeople themselves if the employer approves of that course

Step 4 - The following debits may be debited to your commission/bonus statement/account

- a) An amount equivalent to any wages or salary paid to you for any purpose including any make up payments of wages or salary by the employer for any shortfall
- b) An amount equivalent to allowances or reimbursements paid to you for any purpose including any make up payments of wages or salary by the employer for any shortfall
- c) An amount equivalent to advertising/marketing costs organised and spent by you without the client's written authorisation (also known as overruns or overspends). In addition, if a client does not pay their authorised marketing/advertising expenses because of something you have said or promised the client which was not approved by the employer OR does not pay their marketing in accordance with our payment policy and you authorise the property to be released on the market before payment is made then an amount equivalent to the expenses may be debited to your statement
- d) An amount equivalent to costs (other than advertising/marketing) to be paid by the vendor that you were instructed by the employer to have written into a sales agency agreement but you failed to have these costs written into the sales agency agreement
- e) An amount equivalent to any expense requested by you and approved and paid by the employer
- f) An amount equivalent to any expense not authorised by the employer

If because of some clerical error or misunderstanding your commission statement is either over or under credited or debited the employer may rectify that in future statements. Depending on the amount involved this process may occur over a period of time.

Although we have agreed to the above debits, it is discretionary by the employer not to apply a debit at any time.

Debits do not have to relate to a particular file or settlement or time period.

Step 5 – Commission/bonus statement/account reconciliation and closing

- a) Your statement/account will be closed and reconciled in accordance with office practice.
- b) When your statement/account is closed and reconciled it will either be in credit or debit.
- c) If your statement/account is in debit the debit will be carried forward to the new statement/account and there will be no amount payable

Step 6 – Your credit under steps 2 & 3 and any other credit are packaged to include superannuation

- a) We agree that your credit under step 2 is packaged so as to include the superannuation that must be contributed by the employer to your nominated superannuation fund for all commission payable.
- b) Super is packaged in your credit and not in commission/bonus payable and when your statement/account is closed and reconciled, once your credit is reduced (see current superannuation guarantee amounts as per employment law) and super has been accounted for from your credit, then the remaining credit as this point in your commission/bonus calculation as set out in these steps now becomes payable to you and not before

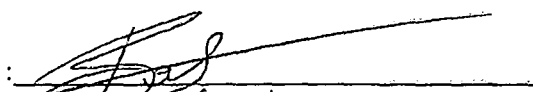
ITEM 2 – Varying commission/bonus arrangements

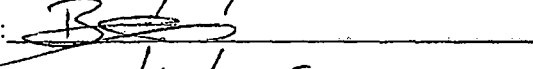
Nothing in this agreement will prevent the parties from agreeing in writing to different arrangements or from agreeing to vary a clause.


ITEM 3 – Loss of commission


If the employer cannot legally demand, receive or retain commission from a vendor or purchaser in respect of the sale or purchase of real estate or a business, then despite other provisions in this scheme you will not be entitled to any credit to your statement/account

Execution:

Signed by the employee : 
Dated: 1/12/2015

Signed witness: : 
Dated: 1/12/2015

Signed by the employer : 
Dated: 1/12/15

Signed witness: : 
Dated: 1/12/15

" I "

EMPLOYMENT AGREEMENT – SALES – WAGED OR SALARIED
Vigneswaran Nominees Pty Ltd and Peter Francis Souter

CONTENTS

Clause Subject

PART 1 – Parties and entire agreement

1. Parties and entire agreement

PART 2 – Definitions

2. Definitions

PART 3 – Commencement details

3. Classification and job title
4. Start date
5. Type of employment
6. Reporting function
7. Hours of work
8. Meal break
9. Location of employment
10. Probation [Minimum period of employment]
11. Driver's licence
12. Car
13. Mobile phone

PART 4 – Leave provisions

14. Annual leave
15. Personal/carer's/compassionate leave
16. Public holidays
17. Long service leave
18. Parental leave
19. Community and jury service leave
20. Leave accrual while on workers compensation

PART 5 – Performance management

21. Key performance indicators
22. Employee performance
23. Performance reviews

PART 6 – Notice and redundancy pay

24. Notice of termination of employment
25. Redundancy pay

PART 7 – Duties/responsibilities

26. OHS
27. Discrimination & harassment
28. Employee responsibilities

PART 8 – Employer property and computers

29. Employer computers
30. Employer property
31. Employer supplied property

PART 9 – Administration issues

32. The NES and the award
33. Copy of and varying this agreement
34. Severance
35. Policies
36. Consultation and dispute resolution
37. Proof of documents
38. Employee declaration

PART 10 – Confidentiality

39. Confidential information
40. Non-solicitation
41. Intellectual property

Schedule A: Remuneration arrangements

Schedule B: Commission arrangements

Schedule C: Incentive/bonus arrangements

Schedule D: Allowances and penalties

1. PARTIES TO THIS AGREEMENT

Employer's Details

Vigneswaran Nominees Pty Ltd
ABN 43135486072
Trading as Ray White Gawler
15 Adelaide Road Gawler SA 5118

Employee's details

Peter Francis Souter
7 Eucalypt Drive Gawler SA 5118

ENTIRE AGREEMENT

This agreement constitutes the entire agreement between us regarding the matters set out in it and supersedes any prior representations, understandings or arrangements between us, whether oral or in writing. Therefore, if you consider a previous promise has been omitted from this agreement you should not sign it and refer the matter back to the employer for further discussions.

2. DEFINITIONS

Act means the *Fair Work Act 2009 (Cth)*.

Award means the *Real Estate Industry Award 2010*.

Base rate of pay is the rate of pay payable for ordinary hours of work, but does not include incentive-based payments and bonuses; loadings; monetary allowances; overtime or penalty rates; any other separately identifiable amounts.

Client means any person who is or was a client of the employer with whom in the course of the last 12 months of your employment you have had dealings.

Confidential information includes information about the following matters that is confidential to the employer:

- (a) any client;
(b) the number, nature or mix of products or services provided by the employer;
(c) any person who the employer or you have approached or canvassed during the employment as a potential client, including their names, addresses, requirements and preferences concerning the products or services produced or that may reasonably be provided by or through the employer;
(d) marketing or business plans or strategies;
(e) techniques, procedures or methods devised by the employer or required to be used in the operation of its business, including the training of its personnel;

Confidential Information does not include:

- (i) information that is in the public domain or after the termination of your employment, becomes available in the public domain (other than as a result of a breach of clause 36)

EMPLOYMENT AGREEMENT – SALES – WAGED OR SALARIED
Vigneswaran Nominees Pty Ltd and Peter Francis Souter

- (ii) any portion of information contained within confidential information which could not be reasonably defined as being confidential
- (iii) information that was rightfully in your possession and not subject to an obligation of confidentiality on you before commencement of employment; or
- (iv) information that rightfully came into your possession other than through your service with the employer; or
- (v) a copy of the client contact details you created as an employee, providing clause 30.4 allows you take a copy with you when you leave. If clause 30.4 does not allow you take a copy with you when you leave then the information remains confidential.

Credit means the percentage of the employer's net commission (defined in B.2) credited to your commission statement or some other percentage or figure credited to your commission statement for an activity other than listing or selling, e.g. a rental referral. **Credit** is not *commission payable* until and unless Schedule B says so.

Employee may be referred to as "you" or "your" in this employment agreement.

Employer and "**Employee**" may be collectively referred to as "parties" or "we" or "us" or "our" in this employment agreement.

Employer may also be referred to as the "company".

Full rate of pay has the meaning given by Section 18 the Act.

FWA refers to the commission, "Fair Work Australia"

Inventions mean all inventions, discoveries and novel designs.

Legally-Enforceable contract has the meaning given by clause 3.1 of the award.

National Employment Standards has the meaning given by Part 2-2 of the Act. The National Employment Standards are minimum standards that apply to the employment of national system employees.

NES means the National Employment Standards.

Non-Solicitation period means the following period commencing immediately after termination of your employment:

- (a) 12 months, or if that is unreasonable
- (b) 9 months, or if that is unreasonable
- (c) 6 months, or if that is unreasonable
- (d) 3 months.

Professional fee means the agreed fee to be paid by the seller/buyer to the employer for services rendered to the seller/buyer by the employer or an employee acting on behalf of the employer.

Regulations mean the Regulations made under the Act.

Sales Transaction or a phrase or word of similar meaning means either a listing side or a selling side or both (normally both).

Supplier means any person who supplies services to the company with whom in the course of the last 12 months of your employment both the company and you have dealings;

Works means all works and other subject matter in which copyright exists.

3. CLASSIFICATION AND JOB TITLE

3.1 You will be classified under the award as a:

- Property Sales Associate
- Property Sales Representative
- Property Sales Supervisor
- Trainee: YES NO
- Junior: YES NO

3.2 Your job title will be Sales Representative. We may change your job title after consulting with you.

4. START DATE

Your date of commencement of employment with the employer will be/was 1/7/11.

5. TYPE OF EMPLOYMENT

You will be employed on a full time basis.

6. REPORTING FUNCTION

You will report to Kylie Duffield or nominee.

7. HOURS OF WORK

7.1 Your ordinary hours will be 38 per week. We may agree at any time to vary your ordinary hours of work particularly if your type of employment changes by agreement.

You may work your ordinary hours at your own discretion providing that the employer may require you to perform certain tasks at certain times or to attend the office at certain times. If in the employer's opinion you abuse this discretion then the employer may set reasonable start and finish times for you which you agree to abide by.

You must not take annual leave or long service leave without first informing the employer and the leave has definitely been approved by the employer in advance.

In particular and from day to day there must be no confusion over whether any day is a work day, an

EMPLOYMENT AGREEMENT – SALES – WAGED OR SALARIED
Vigneswaran Nominees Pty Ltd and Peter Francis Souter

annual leave day, a sick or carer's leave day, a compassionate leave day or a rostered day off. You must give notice for personal/carer's leave and compassionate leave in accordance with clause 14 of this agreement.

7.2 Days Off

The employer will allow you (other than a casual) either 1½ or 2 rostered days free of duty each week.

As you are authorised by the employer to work your ordinary hours at your own discretion (as opposed to set start and finish times) then you are directed by the employer to ensure that you roster yourself off for either 1½ or 2 rostered days free of duty each week and you must keep a log of your rostered days (or half days) off and submit to your employer at the end of each pay period a log of your rostered time off.

7.3 Averaging Hours

We may agree to average your ordinary hours over a maximum period of 8 weeks. If we so agree the employer must keep a record of the averaging agreement.

7.4 Timesheet

Unless the employer requests you to keep one there is no requirement for a full time or regular part time employee to keep a time sheet of ordinary hours.

A time sheet must be kept by you for all employer authorised or employer required overtime. A time sheet must also be kept for all hours worked by a casual or irregular part time employee.

Where required time sheets and the 'days off' log must be submitted by you to the employer at the end of each pay period.

7.5 Self Electing to Work

If you work hours at your own initiative without any express instruction from the employer to work those self-initiated hours in excess of your employer required ordinary hours you will not be entitled to payment in accordance with clause 24.1 (overtime) of the award. You will be entitled to any commission you earn through working self-initiated hours. This clause is not to be taken by you as the employer encouraging you to work self-initiated hours – if you do so it is entirely your free choice.

7.6 Toil

You may elect to take time off in lieu of being paid for employer approved overtime.

8. MEAL BREAK

You are not required to work for more than 5 hours without an unpaid meal break of at least 30 minutes. If the employer has approved for you to work your hours at your own discretion then you must roster yourself off for the required meal break. If you are

only rostered for a 6 hour shift you may elect, with the employer's approval, to waive your meal break.

9. LOCATION OF EMPLOYMENT

9.1 Your principal place of employment is the employer's address in clause 1 of this agreement. If you want to work from home from time to time you must discuss the situation with your employer and obtain the employer's approval.

9.2 If the employer operates from more than one office you agree to work out of any office providing if the employer requires you to change office it is within reasonable commuting distance in comparison to the original office location.

10. PROBATION [MINIMUM PERIOD OF EMPLOYMENT]

10.1 If your employer employs less than 15 employees then from the date of the commencement of your employment you will be on probation for 12 months.

10.2 If your employer employs 15 or more employees then from the date of the commencement of your employment you will be on probation for 6 months.

10.3 A probationary period enables the employer to assess your conduct and/or your capacity to do the job.

10.4 The probationary period of 12 or 6 months is referred to in the Act as the "minimum period of employment". It is lawful for the employer to terminate your employment during the "minimum period of employment" for issues to do with your conduct or your capacity to do the job (sometimes otherwise called conduct not appropriate or poor performance) and the law does not allow you to access an unfair dismissal remedy for this period.

11. DRIVER'S LICENCE

It is an express condition of your employment that you hold a current and appropriate motor vehicle licence. Disqualification of your licence may result in dismissal if satisfactory alternative arrangements to the employer cannot be found.

12. MOTOR VEHICLE

You are required to provide yourself with a suitable, reliable and presentable motor vehicle in accordance with the standards generally accepted in real estate to carry out your work-related duties. You will be responsible for all fees/expenses associated with the running of your motor vehicle. You must ensure that your motor vehicle is always currently registered and insured with both third party and comprehensive insurance before you drive it for work duties. You agree to indemnify the employer to the extent permitted by law from any claims or damages (except workers compensation) arising out of the use of your own motor vehicle for work purposes. You must not drive any motor vehicle for work duties before you have satisfied yourself that it is currently

registered and insured both third party and comprehensively as a work-related vehicle and you can lawfully drive it. When you are driving a motor vehicle in relation to work duties you must at all times drive with due care, attention and consideration of other road users and obey the road rules. You will bear the full responsibility for any fine, penalty or demerit points and the like you incur as the driver.

13. MOBILE PHONE

You are required to use your own mobile phone for work duties and any reimbursement is set out in the allowances Schedule.

14. ANNUAL LEAVE

14.1 The NES governs the substantive provisions for the annual leave minimum entitlements while the award governs some supplementary provisions. Annual leave is paid at the employee's base rate of pay. A casual does not accrue paid annual leave.

14.2 Except if you are a casual, you are entitled to 4 weeks annual leave. Annual leave accrues progressively from the commencement of your employment according to the number of ordinary hours worked. Annual leave loading is not payable in South Australia or Northern Territory until 1/1/15. You must be paid for any accrued leave upon termination of employment.

14.3 We agree that there is a mutual expectation for you to take your entitlement to accrued annual leave on an annual basis unless we agree otherwise. It is important in real estate because of the working patterns that you take annual leave on a regular basis and do not allow it to excessively accrue. Under the award if you have more than 4 weeks annual leave the employer can require you take the leave in excess of the 4 weeks accrued.

15. PERSONAL/CARER'S LEAVE AND COMPASSIONATE LEAVE

15.1 The NES governs the substantive provisions for the personal/carer's leave and compassionate leave minimum entitlements while the award governs some supplementary provisions. Personal/carer's leave and compassionate leave are paid at the employee's base rate of pay. A casual does not accrue paid personal/carer's leave.

15.2 Except if you are a casual you are entitled to 10 days personal/carer's leave which accrues progressively from the commencement of your employment according to the number of ordinary hours worked.

15.3 You are entitled to 2 days of paid compassionate leave for each occasion. Compassionate leave for a casual is unpaid.

15.4 *Notice*

You must give the employer notice as soon as practicable of the taking of personal/carer's leave and compassionate leave and advise the employer of the period or expected period of leave.

15.5 Evidence

For personal/carer's leave you are generally required to produce a medical certificate or if that is not practical you must do a statutory declaration to declare that you were or the person you were caring for was ill or injured or the member of your immediate family had an unexpected emergency.

For compassionate leave you are required to produce a death certificate or a medical certificate whichever is appropriate for the occasion – at the discretion of the employer, the employer may waive this requirement and either accept your word or require a statutory declaration.

15.6 If you fail to comply with the notice and evidence requirements you may not be entitled to paid leave.

15.7 "Personal" leave is leave for when you are ill or injured. Carer's leave and compassionate leave may be taken by you in relation to an immediate family member or a member of your household. Paid personal leave and paid carer's leave come out of the same accrual and there is no annual limit of carer's leave like there use to be.

immediate family of a national system employee means:

- (a) a spouse, de facto partner, child, parent, grandparent, grandchild or sibling of the employee; or
- (b) a child, parent, grandparent, grandchild or sibling of a spouse or de facto partner of the employee.

16. PUBLIC HOLIDAYS

The NES and the award govern the provisions for public holiday entitlements.

17. LONG SERVICE LEAVE

Your entitlement to long service leave is in accordance with the State/Territory Long Service Leave Act.

18. PARENTAL LEAVE

18.1 The NES and the award govern the provisions for parental leave minimum entitlements and is unpaid leave.

18.2 If you fail to comply with the notice and evidence requirements of Section 74 of the Act you may not be entitled to parental leave. As part of the evidence requirements the employer requires you to produce medical certificates.

18.3 The Commonwealth Government has established a scheme for the provision of paid parental leave for

children born on or after 1/1/11. You may be entitled to paid leave under that scheme in conjunction with unpaid leave under the NES.

19. COMMUNITY AND JURY SERVICE

The NES and the award govern the provisions for community and jury service. If you do not comply with the notice and evidence requirements in the NES the NES may not cover you for community and jury service

20. ACCRUAL OF LEAVE WHILE ON WORKERS COMPENSATION

Under the Act an employee is not entitled to accrue or take any leave of absence (whether paid or unpaid) while receiving workers compensation payments, except if the taking or accrual of leave is permitted by State or Territory compensation law. An employee may take unpaid parental leave during a compensation period.

21. KEY PERFORMANCE INDICATORS (KPI's)

21.1 Key performance indicators (KPI's) are set by the employer so that you know the key tasks that the employer wants you to achieve and are inherent tasks of your job. In the event that the KPI's are not achieved they will serve as a basis for performance management. The following will be part of your KPI's with the employer reserving the right to set others in consultation with you:

- (a) Do a minimum of 16 appraisals per month.
- (b) List a minimum of 5 properties per month.
- (c) Sell a minimum of 2 properties per month.
- (d) Zero tolerance to paperwork mistakes.
- (e) Keep harmonious relationships with other staff.
- (f) Avoid complaints by delivering excellent customer service.

We agree that the above KPI's are reasonable, realistic and achievable at the time they were agreed upon by us. If at any time you consider circumstances have changed and your KPI's should be reviewed you should raise the matter with your employer.

As market conditions change the employer reserves the right to vary your minimum KPI's in line with the changed market conditions but this will be done by agreement with you. If agreement cannot be achieved we will refer to the dispute resolution provision in the award. Agreement between us on your KPI's is ideal as it is important for you to "own" your KPI's.

21.2 Business Development Area/s

The employer may or may not allot to you a specific business development area (BDA) – also known as a "farm area". If you are allotted a BDA then any change to your BDA by the employer will be initially by consultation and agreement with you. However, the employer reserves the right to change your BDA

without your agreement if the operational requirements of the business necessitate a change.

22. EMPLOYEE PERFORMANCE

You must achieve and maintain a minimum standard of conduct, performance and productivity as set by the employer. If you are unsure about a standard you should raise the matter with the employer. If any standard is unsatisfactory then the employer may offer you training, instruction, coaching and the like. Repeated unsatisfactory standard/s may result in a warning or even dismissal with notice. Serious misconduct may result in instant dismissal.

In an office environment it is important that all employees facilitate harmonious working relationships. Lack of cooperation or an overbearing attitude towards other staff creates a very unpleasant and unproductive working environment.

23. PERFORMANCE REVIEWS

23.1 Your standards of conduct, performance and productivity may be reviewed by the employer from time to time in consultation with you. The reviews may be formal or informal.

23.2 Performance reviews may serve one or more purposes, namely:

- (a) Recognition for good results
- (b) Remedial action for poor results
- (c) Further training requirements
- (d) Remuneration review

24. NOTICE OF TERMINATION OF EMPLOYMENT

24.1 The NES governs the minimum entitlements for notice of termination of employment, particularly in relation to the amount of notice the employer must give.

The award also governs the minimum entitlements for notice of termination of employment, particularly in relation to the amount of notice the employee must give.

Payment in lieu of an employee serving a period of notice of termination is paid at the full rate of pay.

The period of notice an employer must give is as follows:

Up to 1 year service	1 week
1 to 3 years	2 weeks
3 to 5 years	3 weeks
Over 5 years	4 weeks

Increase the period by 1 week if the employee is over 45 years old and has completed at least 2 years of service

24.2 If you resign you must give one week's notice.

24.4 State legislation for agents and an employee acting as a registered salesperson

- (a) If applicable it is your sole responsibility to ensure that you are registered as a sales representative in accordance with the Land Agents Act. If your registration is refused,

EMPLOYMENT AGREEMENT – SALES – WAGED OR SALARIED
Vigneswaran Nominees Pty Ltd and Peter Francis Souter

cancelled or suspended by the Office of Business and Consumer Affairs your employment must be terminated. Once registered you must carry your registration card with you at all times when you are working.

- (b) You must know and understand Forms R1 to R7 of the Land and Business (Sale and Conveyancing) Regulations 1995 and ensure you apply and distribute the correctly filled out form to the applicable person in the relevant circumstances.
- (c) Except in accordance with the Land and Business (Sale and Conveyancing) Act or any other relevant State Act, you must never obtain, or be in any way concerned in obtaining, a beneficial interest in land or a business or act on behalf of both a vendor and a purchaser.
- (d) You must notify the Commissioner for Consumer and Business Affairs of changes in your residential address or in the circumstances of your employment.
- (e) You must not conduct an auction unless you are registered as an auctioneer. If you are registered as an auctioneer and you do conduct an auction you must comply with the relevant legislation for auctions.
- (f) If during the course of carrying out work related duties you receive an expiation notice or a fine in accordance with any legislation then you will bear the personal responsibility for paying the expiation notice or fine.
- (g) It will be irrefutably presumed by the employer that you are familiar with and know and understand the Land Agents Act or the Land and Business (Sale and Conveyancing) Act as the Acts apply to you as a registered salesperson or auctioneer.

25. REDUNDANCY PAY

The NES governs your minimum entitlements to redundancy pay – if the employer employs less than 15 employees the NES does not entitle you to redundancy pay.

The award also contains supplementary provisions on redundancy pay.

26. OCCUPATIONAL HEALTH AND SAFETY

Occupational health and safety (OHS) provisions are governed by individual State and Territory legislation. The federal government is endeavouring for all legislation to be harmonised by 1/1/12.

OHS legislation imposes on employers a general duty to protect employee's health and safety at work and is framed in terms of what is reasonably practicable.

Also under OHS legislation employees are to take reasonable care both of their own safety and those

that might be affected by their actions at the workplace and to also cooperate with the employer in complying with the legislation.

Compensation provisions for workplace injury and illness are governed by individual State and Territory legislation. If you are injured or become ill at work you should notify the employer as soon as practicable.

This merely an 'awareness' clause in this agreement as the employer may deal with these issues separately, e.g. by way of policies and procedures.

27. DISCRIMINATION AND HARASSMENT

All States and Territories and the Commonwealth have legislation which governs discrimination, sexual harassment, bullying, victimisation and whistle blowing.

The legislation imposes on employers a general duty to take all reasonable steps to prevent discrimination, sexual harassment, bullying and victimisation. An individual employee is personally responsible if they unlawfully discriminate, sexually harass, bully or victimise.

This is merely an 'awareness' clause in this agreement as the employer may deal with these issues separately, e.g. by way of policies and procedures.

28. RESPONSIBILITIES

28.1 Employee's responsibilities

You agree:

- (a) To diligently and faithfully perform all the duties and responsibilities of your employment in accordance with the employer's legal and reasonable directions; your job description; the employer's policies and procedures; and such other duties as may reasonably be required by the employer from time to time;
- (b) To use your best endeavors to further the business and reputation of the employer;
- (c) Not to be directly or indirectly involved or engaged in work for or provide services to any other employer, business or individual, whether paid or not, which may in any way conflict with the interests of the employer, unless otherwise agreed between the parties in writing. *Under no circumstances are you to perform work or tasks for another real estate agent unless the work or task is transparent and with the full knowledge of and in conjunction with your employer.*
- (d) To actively seek new business on behalf of the employer; to promptly notify the employer of all business available to the employer through you; and not to withhold any business or potential business from the knowledge of the employer. You will not offer any property (real or otherwise), goods, chattels or valuable security to any prospective purchaser, which is not authorised by or through the employer;
- (e) To forthwith report all complaints by your clients or customers to the employer and you

EMPLOYMENT AGREEMENT – SALES – WAGED OR SALARIED
Vigneswaran Nominees Pty Ltd and Peter Francis Souter

- will if required by the employer deal with any such complaint or permit the employer (or a representative of the employer) to deal with any such complaint;
- (f) To provide your employer with your current after-hours landline phone number and your current home address. The employer *must keep this information confidential* but the information is sometimes required by the employer to contact you on work related matters;
 - (g) To attend training as nominated by your employer;
 - (h) Not to use any intellectual property or confidential information of the employer, except for the purposes of your employment;
 - (i) When working, to be and remain well groomed and dressed to a high standard of corporate professionalism such standard being recognised by a reasonable person in the context of the real estate industry. If the employer so directs, you will wear a uniform which the employer must either provide or pay for but you will be responsible for the dry cleaning or laundering of it. You must take pride in your appearance at all times and if you are not sure about the standard of clothes or grooming or accessories like jewellery then you are to seek advice from the employer – as for jewellery it should be tasteful and not be excessive, oversize, or gaudy. Visible tattoos and body piercings (except earlobes) are not acceptable to the employer as they are not a public expectation for real estate;
 - (j) To undergo a medical examination at any time during the course of your employment by a legally qualified medical practitioner of the employer's choice (employer will pay) if in the employer's opinion this is necessary or advisable in relation to your work related duties or conduct.

28.2 Serious misconduct

You may be instantly dismissed for serious and wilful misconduct. Examples are:

- (a) Matters under 28.2.1 and 28.2.2;
- (b) Any criminal offence found proved by a court which reflects adversely on the reputation of the employer and/or your reputation as an employee or the reputation of another employee;
- (c) Any serious breach of decorum inside or outside of work that reflects adversely and seriously on the reputation of the employer and/or your reputation as an employee and/or another employee;
- (d) Being appreciably affected by alcohol or illicit drugs at work;
- (e) Sexual harassment, bullying or unlawful discrimination or harassment;
- (f) Refusing to obey the employer's reasonable and lawful instruction;
- (g) Deliberate misleading or deceptive statement/s to a landlord, tenant, seller or buyer either verbally or by reducing it to writing or by your action/s or behavior or by an act of omission (direct or indirect);
- (h) Guessing or estimating a fact without first checking the authenticity of the fact and writing that information in a contract or

- verbally conveying it to a landlord, tenant, seller or buyer;
- (i) Having a personal interest in an employer listing without the employer's approval or the approval of a person stated in any relevant legislation;
- (j) Not following correct procedure with the trust account;
- (k) Refusing or failing to obey by act or omission a landlord's, tenant's, seller's or buyer's reasonable and lawful instruction;
- (l) Creating a conflict of interest or maintaining a conflict of interest if you were not previously aware of it; or
- (m) Theft, fraud, embezzlement, false pretences, fraud other than false pretences, assault or battery.

28.2.1 An employee must:

- (a) Comply with the lawful and reasonable directions of the employer;
- (b) Act in good faith and in the best interests of the employer;
- (c) Not accept bribes or secret commissions;
- (d) Not damage or expose to damage the property or goodwill of the employer;
- (e) Truthfully answer questions of the employer that are within the scope of employment; and
- (g) Safeguard the employer's confidential information.

28.2.2 The following are some examples where fiduciary obligations may be breached by employees:

- (a) Diverting a business opportunity or relationship that has come to the employee's attention during employment;
- (b) Establishing a joint venture with a client or a supplier of the employer;
- (c) Prior to leaving, approaching key staff and reaching a decision that they leave together;
- (d) Securing a personal benefit that would otherwise belong to the employer; or
- (e) Exploiting confidential information or property that belongs to the employer (**Note:** When your employment ends, listings remain the property of the employer during the currency of a sales agency agreement unless you and employer agree in writing otherwise).

28.3 Real Estate Law

The buying, selling and leasing of real estate and businesses are subject to legislative requirements. If you are acting as a registered salesperson you must be fully conversant with all the relevant legislation in relation to the selling, buying and leasing of real estate and businesses. In addition your employer may have certain policies and procedures applying to your duties as a registered salesperson. It is extremely important that at all times you comply with the relevant legislation and the employer's policies and procedures when carrying out your duties, as we operate in an industry in which it is not unusual to have litigation or threatened litigation. In addition the licensed agent and the salesperson can

be prosecuted for not complying with the relevant legislation. Salespersons are reminded that if you are ever guilty of wilful and serious misconduct which involves a tort and your employer becomes vicariously liable for your action/omission then it might be possible for the employer to take legal action against you to recover any damages that may be awarded in legal action against the employer.

29. EMPLOYER COMPUTERS

29.1 Serious legal consequences can result both to the employer and to an employee from the injudicious or unlawful use by an employee of e-mails, the internet, blog sites, social networking sites or chat rooms on an employer computer.

29.2 You must only use e-mails, the internet, blog or social networking sites or chat rooms on an employer computer in accordance with the law and the employer's lawful instructions and rules. Any general use of an employer computer by you must also be in accordance with the employer's lawful instructions and rules especially in relation to security. Except if inconsistent with any relevant legislation the employer reserves the right to monitor, check, download or print out from any employer computer any employee activity carried out by you on the employer computer – this will generally not apply to your private emails (if the employer has approved private emails) unless the employer has a reasonable suspicion that your private emails are either breaching this agreement or breaching the law. However, if the employer allows you reasonable use of private emails you are well advised to be very circumspect as to the content of the emails as upon an employer check of your emails, to isolate private emails from business emails may be a difficult if not an impossible task.

29.3 You agree that during your employment and after your employment ends you will not, on a blog site or social networking site on any computer or otherwise, disparage, defame, slander or negatively comment on your employer or your employer's business affairs. If you do carry out such an action you expressly agree to indemnify the employer against any loss or damages that the employer may incur because of your action and costs that the employer may incur for legal action taken against you. Any said action carried out by you during your employment will be regarded by the employer as serious misconduct.

29.4 All files saved on an employer computer are the employer's property and you must not print out a file or save it to an external source except in the course of your normal and approved duties. In particular an employee leaving their employment can only take with him or her (whether in hard or electronic copy) any client contact details belonging to the employer that the employer has agreed to in writing. You are never to delete a file or data saved on an employer

computer without the express written approval of the employer.

29.5 Before you use a computer not belonging to the employer for work related duties you must first receive the employer's approval. You agree that part of that approval may include the employer's instructions and rules on the use of the said computer by you in relation to such matters as anti-virus and other software and the ownership of files saved on the said computer. You agree to abide by any of the employer's instructions and rules in the use of the said computer for work related work and if you are not prepared to do that then you must not use the said computer for work related duties.

29.6 If you disobey an employer instruction or rule on the use of an employer computer during your employment and your disobedience amounts to serious misconduct and gives rise to legal action (either against you or against the employer or against the both of us), you expressly agree to indemnify your employer against any costs or damages made in any claim by or against the employer in a competent court or tribunal.

29.7 Most breaches by an employee under this clause could be described as serious and render you liable to instant dismissal or the very least a written warning – you are strongly advised to use the employer's computers in a lawful fashion and in accordance with the employer's rules – misuse of an employer computer by an employee is totally prohibited particularly in dealing with matters like pornography, sexual harassment, unlawful discrimination, bullying, clause 29.3 above, security and the like.

30. EMPLOYER PROPERTY

30.1 Return of employer property

When your employment ends (whether instigated by you or the employer) you must forthwith return to the employer all employer personal property in your possession, custody or under your control. The employer's personal property includes confidential information, intellectual property, appraisal, listing, sales agency agreement and contract files, data bases, client contact details, diaries, documents, papers, plans, drawings, equipment (including open boards), materials and keys (including keys to the office, company vehicles and any property keys), which are in your possession, custody or control. After providing the employer with a true copy, you must destroy or permanently delete any such property which cannot be returned (e.g. saved material on a personal computer). The return of employer property by you is subject to any special written agreement made between you and the employer in relation to any matter mentioned in this clause or subject to any other clause in this agreement allowing you to retain any property or a copy of any property.

30.2 *Office keys*

Any key/s given to you by the employer for the purpose of you gaining access to the employer's business premises always remain the employer's property and you must not duplicate any such key without the express written approval of your employer.

30.3 *Diaries*

It will be at the employer's sole discretion if the employer allows you to use your own diary or the employer provides you with one. If you use your own diary you are reminded that any confidential information entered into it by you remains confidential after your employment ends. If the employer provides your diary you must return all diaries to the employer when your employment ends.

30.4 *Highlighting data bases and client contact details*

In the event of the termination of your employment (whether instigated by you or the employer) the information, however or wherever recorded, of the client contact details established by you as an employee will remain employer confidential information and remain the property of the employer and if you have such information in hard copy you must return it to the employer or if you have it in electronic form on your own computer or memory stick or elsewhere, then after supplying a true copy to the employer you must permanently delete or destroy the information.

30.5 *Recovery of employer's property*

After the termination of your employment you agree that the employer can recover as a debt any costs incurred by the employer in recovering from you any of the employer's personal property in your possession, custody or control which you have not returned and either the employer has requested that you return the property to the employer or this agreement imposes an obligation on you to return the property.

31. EMPLOYER SUPPLIES PROPERTY

Despite anything to the contrary in this agreement if the employer supplies you with any company property the employer unequivocally reserves the right to remove that property from your possession, custody or control during any prolonged leave of absence by you. The only exception to this would be if the leave was for annual leave or long service leave and the employer's offer of employment included the company property as part of a salary package.

"Leave of absence" includes workers compensation, long service leave, parental leave, annual leave, personal/carer's leave, leave without pay and so forth.

"Prolonged leave of absence" is a value judgment depending on the circumstances. It may include a period greater than a month but there may be circumstances where a shorter period will apply.

"Company property" includes but is not limited to a company motor vehicle; a company mobile phone; or a company lap or desk top computer.

32. THE NES AND THE AWARD

Although the NES and the award govern minimum terms of your employment they do not form part of your contract of employment. The parties cannot contract out of the terms of the NES and the award and must comply with both instruments.

33. COPY OF VARYING THIS AGREEMENT

Once this agreement has been signed by the parties the employer should supply a signed copy of the agreement (or any agreed variation) to the employee. This agreement may be varied but only by the mutual written agreement of the parties. Any agreed written variation must be consistent with the award and the Act and should be annexed to the employer's and the employee's signed copies of this agreement.

In the event of any significant agreed change to your duties the parties agree to do a fresh agreement so as to remove any doubt that the significant change may or may not be an actual agreement to terminate this agreement and create a new contract of employment.

34. SEVERANCE

If any clause or any part of any clause in this agreement is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) of this agreement, which will continue in full force and effect.

35. POLICIES

The employer has in place workplace policies and procedures (whether written or verbal) that are made and amended from time to time by the employer. Any such policies and procedures cannot reduce your entitlements contained in this agreement, the award, the NES or the Act but provide guidelines for the administration of the employment relationship. Any such policies do not form part of your contract of employment or part of this agreement even if they are distributed to you at the same time as this agreement. Policies are independent documents that stand alone and are complied with and enforced in their own right.

36. CONSULTATION AND DISPUTE RESOLUTION

EMPLOYMENT AGREEMENT – SALES – WAGED OR SALARIED
Vigneswaran Nominees Pty Ltd and Peter Francis Souter

Consultation and dispute resolution are governed by the award.

employment duties or which may affect the ability of the employer to provide you with a safe working environment.

37. PROOF OF DOCUMENTS

At the commencement of your employment, or at any time if requested by the employer, you must supply a current true copy to the employer of the following documents:

- (a) Your qualification and registration showing that you are qualified and registered in accordance with the relevant legislation if you will be acting as a real estate salesperson.
- (b) Your current and appropriate driver's licence if the employer requires you to have one.
- (c) Your current registration and comprehensive insurance papers for your motor vehicle if you will be using it for work duties with evidence from the insurance company that your vehicle is comprehensively insured for real estate business use.
- (d) If you are not an Australian citizen, your visa stating that you are entitled to work in Australia.

If any of the above documents require renewal you must supply a true copy to the employer of the renewal as soon as practicable after you have renewed the document. The responsibility of renewal is entirely your responsibility.

In the event that you fail or refuse to provide a true current copy of an above relevant document or any of these documents is refused, cancelled, suspended, disqualified or similar, your employment may be terminated because the possession by you of any these documents *which are relevant* to your work is an express condition of your contract of employment.

38. EMPLOYEE DECLARATION

You declare that by the signing of this agreement:

- (a) you do not have any previous conviction for dishonesty; and
- (b) you are not suspended or disqualified from practising or carrying on an occupation, trade or business under any law of a State or Territory or of the Commonwealth; and
- (c) if you are going to act as a sales representative you are legally registered to so act; and
- (d) you are legally entitled to work in Australia; and
- (e) if you are required to drive a motor vehicle during work hours you hold a current and appropriate motor vehicle licence; and
- (f) if you going to use your own motor vehicle for work duties that it is currently registered and insured in accordance with the law and this agreement; and
- (g) That you have fully and faithfully disclosed to the employer during your recruitment process any medical condition (physical or psychological) which may impact upon or have a detrimental effect upon the efficient and effective performance of your inherent

Your declaration will not be false or misleading if you do not have to declare a conviction because any relevant legislation defines the conviction as being spent or prescribes other circumstances in which a conviction does not have to be declared.

If you cannot sign this agreement because you cannot make the declaration under any of the above relevant paragraphs (a) to (d) it may be that legislation will prevent the employer from employing you.

If you make the declaration under any of the above by the signing of this agreement and it later turns out to be false or misleading in some respect then your employment may be terminated for serious misconduct.

If you sign this agreement and the declaration under any of the above later turns out to be false or misleading you expressly agree to indemnify the employer against any loss, damages, costs, monetary penalties or the like that the employer may incur because of your subsequent actions or omissions as an employee relevant to the false or misleading declaration. Such indemnification by you would be premised on the fact that a false or misleading declaration by you under this clause would be considered by the employer as serious misconduct.

39. CONFIDENTIAL INFORMATION

39.1 Confidential information

In the course of your employment, you will become privy to **confidential information** of the employer or its clients, whether in written, computerised or oral form.

39.2 Obligations of confidence

You will, both during your employment and for as long as the confidential information remains confidential after the termination of your employment (unless it ceases to be confidential other than by your breach of this clause):

- (a) not at any time, either directly or indirectly, disclose or communicate to any person any confidential information that may come to your knowledge during or in the course of employment, unless expressly authorised by your employer or required by law or court order;
- (b) use your best endeavours to prevent disclosure or publication of the confidential information where that disclosure or publication is not authorised by your employer;
- (c) if required by law or court order to disclose any confidential information, advise the employer of that fact and take all lawful steps to confine disclosure of the confidential information and preserve its confidentiality,

including taking steps to allow the employer or its agents to do so;

- (d) not use or attempt to use confidential information for your own purpose or for any purposes other than for the purposes of the employer or in any manner which may injure or cause loss directly or indirectly to the employer and/or its business; and
- (e) acknowledge and agree that, without prejudice to any other remedy that the employer may have, the employer will be entitled to injunctive and other equitable relief to prevent or cure any breach or threatened breach of this clause.

40. NON-SOLICITATION

40.1 You will not during the **non-solicitation period** (as defined) by any means whatsoever directly or indirectly:

- (a) attempt in any manner to solicit, entice or approach a **client** (as defined) with a view to persuading that person to cease dealing with or to reduce the dealings which that **client** has customarily had or contemplated having with the employer. If a **client** approaches you (by any means) during the non-solicitation period you will advise that person that you are within a non-solicitation period.
- (b) attempt in any manner to persuade a **supplier** (as defined) to cease dealing with or to reduce the dealings that the supplier has customarily had or contemplated having with the employer;
- (c) attempt in any manner to persuade any employee or contractor of the employer with whose skills and abilities you have become familiar in the course of your employment to cease providing services to the employer and/or to provide services to you or another person;

40.2 Interpretation

Each of the covenants contained in this clause resulting from each **non-solicitation period** (as defined) and the **restraint area** (as defined) constitutes and is to be construed and will have effect as a separate, distinct, severable and independent provision from the other covenants (but cumulative in overall effect) and clause 34 will apply.

40.3 Acknowledgment

You acknowledge and agree that, without prejudice to any other remedy that the employer may have, the employer will be entitled to injunctive and other equitable relief to prevent or cure any breach or threatened breach of this clause.

We agree that this non-solicitation clause is reasonable and fair for the protection of the employer's legitimate business interests and is not unduly injurious to your interests and the public interest.

41. INTELLECTUAL PROPERTY

41.1 Acknowledgments

You acknowledge and agree that:

- (a) all intellectual and industrial property rights in **confidential information** and any modifications and enhancements to confidential information are owned by the employer;
- (b) any **inventions** or **works** created during and in the course of the employment and the entire copyright throughout the world in all **works** are owned by the employer;
- (c) the employer owns all **inventions** and **works** absolutely and without further payment by the employer to you and to the extent necessary, you irrevocably assign to the employer all your present and future rights, title and interests in and to all **inventions** and **works**;
- (d) you must immediately disclose to the employer (and to no other person) all the details of any **inventions** or **works** created by you during your employment.

41.2 Consent

You:

- (a) consent to the **works** being changed, copied, edited, added to, taken from, adapted and or translated in any manner or context by the employer, and any person authorised by the employer to do so, for any purpose related to the employer's business, notwithstanding that such conduct may amount to derogatory treatment of the **works** within the meaning of the *Copyright Act 1968*; and
- (b) acknowledge that the consent in clause 38.2(a) above is given genuinely and is not given because any person:
 - (i) applied duress to you (or your representative) to give that consent; or
 - (ii) made a false and misleading statement to you in relation to the giving of that consent.

41.3 General

You must, both during your employment and thereafter:

- (a) do all such acts and things as the employer may request reasonably to secure to the employer ownership or registration rights in the **inventions** or **works**, and you hereby grant to the employer the right to use your name to obtain any protection of the **inventions** or **works**; and
- (b) not engage in any conduct that may damage the employer's intellectual property or industrial rights.

SCHEDULE A

REMUNERATION AND RELATED MATTERS

A.1 METHOD OF PAYMENT

A.1.1 Salary

- (a) An annual salary, namely **\$50,023.20** will become payable to you for work performed; and superannuation will be paid in addition to your salary.
- (b) We may agree from time to time (normally annually) to review your salary. Any agreed variation to your salary must be in writing and signed by us. An increase in your salary will not necessarily set a precedent for any future increase.

Award provisions included in your annualised salary

A.1.2 The salary payable to you under A.1.1 for work performed is annualised and includes the following award provisions that do or may become payable to you:

- (a) Clause 14 of the award - the minimum wage for your classification
- (b) From clause 18 of the award - allowances, the following:
 - (i) <insert>
- (c) From clause 24 of the award - overtime
- (d) From clause 28 of the award - working on a public holiday
- (e) From clause 25 of the award - annual leave loading (when applicable on 1/1/15)

A.1.3 *Salary must be no less than the award*
Your annualised salary payable to you for work performed must be no less than the amount you would have received under the award.

A.1.4 *Employer to review*
Your annualised salary should be reviewed by the employer at least annually to ensure that the compensation is appropriate having regard to the award provisions which are satisfied by the payment of the annual salary.

A.1.5 *Base rate of pay for you on annualised salary arrangements*
For the purposes of the NES, the base rate of pay of you receiving an annualised salary under this clause comprises the portion of the annual salary equivalent to the relevant rate of pay in clause 14—Minimum weekly wages (subject to any phasing provisions) and excludes any incentive-based payments, bonuses, loadings, monetary allowances, overtime and penalties.

A.2 WAGE INCREASES

Any wage increase by Fair Work Australia that is relevant to your award classification must be paid to you and may be absorbed by the employer into any over award wage/salary payment you receive.

A.3 SUPERANNUATION

See the award.

A.4 SALARY SACRIFICE FOR SUPERANNUATION

In accordance with Section 324 of the Act you may authorise in writing the employer to deduct an amount from an amount payable to you in relation to the performance of work by you for the purposes of a superannuation salary sacrifice arrangement. Any salary sacrifice arrangement that you may want must be by agreement with the employer.

A.5 PAY SLIP

You must be provided with a pay slip by the employer each time an amount becomes payable to you.

A.6 FREQUENCY AND MEANS OF PAYMENT

The frequency and means of payment for wages, allowances, commission, incentives and bonuses are covered in clause 21 of the award. Amounts that become payable to an employee by the employer must be paid no less frequently than monthly providing when commission, bonus, incentive becomes payable (and that will depend on the method of calculation) it must be paid within 14 days providing where relevant payment has been made to the employer and the funds have been cleared.

A.7 DEDUCTING MONEY FROM AMOUNTS PAYABLE TO AN EMPLOYEE

The employer must not deduct any money from amounts that become payable to an employee unless the employee has authorised a deductible amount in writing and the deduction is for the employee's benefit or the deductible amount is authorised by an award, the Act or a court order.

A.8 AMOUNTS PAYABLE TO AN EMPLOYEE

Amounts that become payable to an employee by the employer must be paid no less frequently than monthly.

SCHEDULE B

COMMISSION ARRANGEMENTS AGREEMENT

- Waged/salaried salesperson
- Commission-only salesperson

B.1 Method of calculating how much commission becomes payable

Note: "Credit" is not "commission payable" until the calculation under B.1 says so.

B.1.1 Commission statement/account

In a written commission statement / account ("statement") your credits and debits will be recorded and a running balance kept.

B.1.2 Credits/Debits to your statement

Your statement will be:

- (a) Credited with the percentage share in the following table of the employer's net commission for each settlement for which you are responsible. If this credit is subject to a split then that is dealt with in B.3:

Employer's Gross Commission (less GST) to the office	Salesperson's credit triggered by the gross in the left hand column but calculated on the employer's net commission
Up to 200,000	45%
200,001-300,000	50%
300,001 +	55%
1. Each level in this scale stands alone; that is if a higher level is reached that higher level is not retrospective to a lower level just because the higher level has been reached. 2. This scale will operate over the period of a FINANCIAL YEAR and at the beginning of each new period the credited percentages start at the lowest level again - at the discretion of the employer if employment starts part way through the period the above left hand column may be pro rated.	

- (b) Credited with any other credits/referral fees as listed in this agreement; and
- (c) Debited as appropriate with the debits as specified in B.4 or elsewhere in this agreement. Agreed debits do not have to relate to or be confined to a settlement file; and
- (d) Closed and reconciled at an agreed time and when this occurs your statement will either be in debit or credit. If it is in debit there will be no commission payable.

B.1.3 Payments for Superannuation

Superannuation contributions by the employer that become payable **are inclusive** in your credit under B.1.2 and therefore, when your statement is closed and reconciled, your credit will be reduced by the amount of superannuation payable and any remaining credit then and only then will covert to commission payable.

Superannuation contributions by the employer that become payable **are not inclusive** in your credit under B.1.2 and the credit immediately converts to commission payable and superannuation is payable on top of or in addition to commission payable.

B.1.4 When commission becomes payable

Your statement will be closed and reconciled at an agreed time (e.g. fortnightly, monthly, after each settlement). Each time your statement is closed and reconciled any commission payable must be paid within 14 days.

B.1.5 Statement after employment ends

Upon the termination of your employment (for any reason) your statement will continue to operate in accordance with the method of calculation under B.1 (and the rest of Schedule B) until all credits and debits have been exhausted - because of matters such as delays in property settlements and notification of credits and debits this could take several months.

B.1.6 Statement to be provided to salesperson

You may request the employer for a copy of your commission statement at any time but no more often than monthly. A statement is not a pay slip but the employer must provide a copy of the statement to you every time you are provided with a pay slip.

B.1.7 Varying commission arrangements

Nothing in this agreement will prevent the parties from agreeing *in writing* to different commission arrangements or from agreeing to vary any clause in Schedule B providing the variation is consistent with the award and the Act.

B.1.8 Increases in superannuation

We expressly agree that any increase in the employer's 9% superannuation contribution will be included in your credit whether or not superannuation is already included in your credit under B.1.3.

B.2 DEFINITION OF THE NET PROFESSIONAL FEE [EMPLOYER'S NET COMMISSION]

The "employer's net professional fee" means the employer's gross professional fee from the sales transaction less:

- (a) Any conjunction/listing agents fees

- (b) GST
- (c) Franchise fee

B.3 COMMISSION SPLITS

When your credit under B.1.2 needs to be shared with another person or department the splits will be as follows:

- (a) Determined by the employer from time to time; or
- (b) Agreed between the salespersons themselves if the employer approves of that course.

B.4 DEBITS DEBITED TO YOUR STATEMENT

B.4.1 Your commission statement under clause B.1 will be subject to the following debits being debited to your statement. It will be at the sole discretion of the employer whether or not your statement is debited. If your statement is not debited on an occasion with a particular debit this will not set a precedent for the future with the same debit.

- (a) **Wages** paid for any purpose and **payments** made for any **National Employment Standard**.
- (b) **Allowances** paid to you including allowances, reimbursement or compensation for using your own motor vehicle or mobile phone.
- (c) Any amount expended by the employer in **promoting your personal profile** to the public. If your personal profile is promoted as part of a corporate plan the debit will be proportional to the number of salespersons involved.
- (d) **Advertising** expenses pertaining to you.
Unauthorised advertising expenses
 - Any client unauthorised advertising expenses incurred by you will be debited to your statement unless the employer has agreed otherwise – only in the event of it being recovered (rare) will it be credited back to you.*Authorised advertising expenses*
 - If the arrangement is that your client authorised advertising expenses are debited to your statement, then when the amount is recovered you will be entitled to a credit.
 - If the employer does not make a genuine attempt to recover unpaid client authorised advertising spent by you then you will be entitled to have the expenses credited back to your statement.*Unauthorised actions by you*
 - If a client does not pay their advertising because of something you have said or promised the client which was not sanctioned by the employer, then the advertising expenses will be debited to your statement.
- (e) The cost for non-approved **colour copying** or the agreed figure for approved colour copying.
- (f) Any cost relating to or incidental to the **administration** or working of your listing from the point in time the listing was secured by you to the point in time of

settlement or if settlement does not occur then to the point in time of the last event (e.g. withdrawal of sale of property by vendor or the cancellation of the sales agency agreement). This could include but is not limited to costs for listing; searches; sketches/plans; sign boards and so on. We may agree on a standard listing/administration fee to be debited to your statement.

- (g) If because of an **unauthorised, careless or reckless act** or an **unauthorised, careless or reckless omission** by you the employer considers you are wholly or partially at fault for a third party:
 - (i) Making a monetary claim or demand against the employer; or
 - (ii) Issuing legal proceedings against the employer; or
 - (iii) Being successful in court for recovering damages or compensation in courtthe employer may debit your statement with an amount equivalent to (or a lesser amount):
 - (iv) An amount paid to a third party to settle the matter; and/or
 - (v) If the employer's professional indemnity insurance covers the damages or compensation then your commission statement will be debited with the monetary amount of the policy excess on the employer's professional indemnity insurance claim; and/or
 - (vi) If the employer's professional indemnity insurance does not cover or only partially covers the damages or compensation then the amount that will be debited to your commission statement will be by agreement and if you and the employer cannot agree on the amount of the debit then the employer will, at the sole discretion of the employer, debit your commission account with what the employer considers a reasonable monetary amount.
- (h) Employer's **superannuation** contributions on wages or salaries.
- (i) The cost of any **training** or professional development paid for you by the employer.
- (j) Any **cash advance** against commission as requested by you and agreed by the employer.
- (k) Any **expense requested by you** and approved and paid by the employer.
- (l) After your employment ends if the employer is required to carry out **extra and necessary work** on your file/s waiting for settlement then your commission statement will be debited with a file management fee at the rate of \$100 per hour (or part thereof).
- (m) The cost of any **uniform** provided by the employer.
- (n) Any **expense not authorised** by the employer.
- (o) The cost of client **gifts**.
- (p) The cost of **business cards**.

EMPLOYMENT AGREEMENT – SALES – WAGED OR SALARIED
Vigneswaran Nominees Pty Ltd and Peter Francis Souter

- (q) The agreed cost of any **Personal Assistant** in the event that we agree for you to have employer Personal Assistant support.
- (r) Any **make up payments** by the employer for any shortfalls.
- (s) Social club & coffee.
- (t) Any expense/cost/fee or any **other debit** or proportion of same that we agree upon.

B.4.2 If because of a clerical error or some misunderstanding your commission statement is either over or under credited or debited the employer may rectify this in future statements. Depending on the amount involved this process may occur over a period of time.

B.5 REFERRAL FEES

B.5.1 **Rental referral fee**
Not applicable.

B.5.2 **Other referral fees**
Referral fees other than rental referrals may be credited to your commission statement as determined by the employer from time to time.

B.5.3 **Inclusive of superannuation**
All types of referral fees will be, at the employer's discretion, inclusive of the employer's superannuation contribution and also minus GST and the franchise fee (if relevant).

B.6 LISTING STATUS ON TERMINATION OF EMPLOYMENT

Any property which you have listed for sale as an employee but which has not sold as at the date of the termination of your employment the listing will continue to remain the property of the employer. You must not breach your fiduciary duty by making an effort to take the listing with you after your employment ends unless the employer and the seller have agreed *in writing* for you to take the listing. Despite the normal listing commission split credit that may have applied to you during the course of your employment you will not receive or be entitled to any listing commission credit for an unsold listing of yours upon the termination of your employment.

B.7 COMMISSION PAYMENTS AFTER TERMINATION OF EMPLOYMENT

What commission you are entitled to after your employment ends is outlined in clause 17.3 of the award.

Clause 17.3 of the award in effect says if you have a settlement after your employment ends you will only be entitled to be credited with a commission percentage of the commission paid to the employer on the settlement of the property if a legally enforceable contract existed before your employment ended or the legally enforceable contract was executed during any period of notice.

Your credited commission percentage for such a settlement will be calculated in accordance with B.1.

B.8 WHEN A SALESPERSON BECOMES ENTITLED TO BE CREDITED WITH THEIR COMMISSION PERCENTAGE

You will only become entitled to have your commission statement credited with your entitled percentage under B.1 once settlement has successfully occurred and the employer has been paid by the client and the funds have been cleared. To be clear a 'credit' is not commission payable until the calculation under B.1 says so.

B.9 LOST EMPLOYER COMMISSION

If the employer cannot legally demand, receive or retain commission from a vendor or purchaser in respect of the sale or purchase of real estate or a business, then despite any other provision in this agreement, you will not be entitled to be credited with any commission percentage cited in the sales agency agreement for that transaction.

B.10 ADVERTISING OVERRUNS

- (a) Advertising costs must be very strictly controlled by you
- (b) You must at all times adhere to any company policy or employer instruction on advertising spends
- (c) You must be very particular and pay attention to detail in a Sales Agency Agreement about the advertising for which a vendor has agreed to pay
- (d) Also before you spend money on advertising which has not been authorised by the client you must first obtain the approval of your employer.

B.11 VENDOR COMMISSION

You must strictly adhere to any company policy or managerial instruction on what commission (professional fee) you negotiate with a client and write into a Sales Agency Agreement.

B.12 LISTINGS

Special mention is made concerning current listings that you may have when either you are contemplating resignation or when you do actually resign or your employment otherwise terminates. You are to understand that, unless we have otherwise agreed in writing, listings for which you were responsible (as well as all other company listings) always remain the property of the employer while the sales agency agreement between the seller and the company is current. Upon your employment ending, or at any time beforehand, you must not attempt to arrange or actually arrange with the seller to secure a company listing while it is current for your own or any other person's benefit after you have left the company.

EMPLOYMENT AGREEMENT – SALES – WAGED OR SALARIED
Vigneswaran Nominees Pty Ltd and Peter Francis Souter

[See also clause 30.4 as to our agreement concerning data bases and client contact details upon your employment ending]

Unless this agreement allows a more generous payment, allowances penalties and loadings will be in accordance with the award.

B.13 OFFSETTING AGAINST COMMISSION

It is an express condition of your employment contract that if at any future time, as a result of any claim by you, it is found or maintained by a tribunal, court or person that the employer owes you wages, car allowances or mobile phone reimbursements for any period of your employment, then any such wages, car allowances or mobile phone reimbursements will be wholly offset against any commission that has already been paid to you by the employer, providing that if you were paid on a commission-only basis the only offset that can be made is for any commission you were paid in excess of 35% of the employer's net commission for each of your sales transactions.

For clarity the employer is under no obligation to offer you commission if you are receiving a wage or if you are commission-only the employer is under no obligation to offer you commission in excess of the 35% minimum. Therefore what commission you are offered as a waged employee or what commission you are offered in excess of the 35% minimum as a commission-only employee is conditional upon this clause.

SCHEDULE C

**INCENTIVE/BONUS OTHER THAN COMMISSION
UNDER SCHEDULE B**

- C.1 BONUS/INCENTIVE ARRANGEMENTS**
Not applicable

SCHEDULE D

ALLOWANCES AND PENALTIES ETC


- D.1 MOTOR VEHICLE ALLOWANCE**
You will receive a car allowance of **\$140** per week (or **\$110** for a trainee). The car allowance is not paid for a period of leave of absence as you are not required to use your car for work purposes during such a period.
- D.2 MOBILE PHONE REIMBURSEMENT**
The employer requires you to use your own mobile telephone in the course of employment and in accordance with clause 18.6 of the award we agree that the following method of payment for reimbursement is reasonable:

\$10/week
- D.3 OTHER ALLOWANCES PENALTIES ETC**

SIGNATURES

SIGNED BY THE EMPLOYER

Signed:



Date:

5th July 2011

Name in Full (printed):

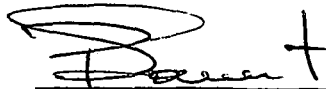
KYLIE DUFFIELD.

SIGNED BY THE EMPLOYEE

NOTE BEFORE SIGNING:

1. Your signature to this agreement includes the declaration under clause 38 of this agreement. If you cannot make the declaration then you must not sign this agreement and you must bring the matter to the attention of the employer.
2. You further declare that by the signing of this agreement you have read it and understand its contents and for any provision that you may not have understood you have had the opportunity of having it clarified and/or seeking advice about the agreement's contents. By signing this agreement you accept the terms and conditions in it as the employer's offer of employment.
3. You also declare that you have noted "Entire Agreement" under clause 1 of this agreement and you are satisfied that this agreement covers all previous promises by the employer.

Signed:



Date:

5th July 2011.

Name in Full (printed):

PETER SOUTER.

NOTE:

- Both parties please initial any agreed pen amendments on any page.
- Both parties should keep a signed copy of this agreement (and any written agreed variation) in a secure place for at least 7 years from the termination of employment.
- It is also good practice for the parties to initial each page when signing this agreement.

IN THE FAIR WORK COMMISSION

IN THE MATTER OF:-

4 Yearly Review of Modern Awards –

Real Estate Industry Award 2010

AM2016/6

WITNESS STATEMENT OF Mrs LYNN MASSON-FORBES

1. My address is 22A Pridmore Road Glen Osmond SA and I am the President of the Registered Real Estate Salespersons' Association of South Australia, RRESA (SA) and have held that position for the last 10 years.
2. I have been employed in the Real Estate industry for the last 15 years working on a fulltime basis. I was originally employed as trainee salesperson and studied at the Real Estate Training College part time where I obtained my certificate 4, and successfully completed the 17 units to obtain my certificate and allowing me to become a licenced salesperson pursuant to the Land Agents Act, 1994 in SA.

I am entitled to act as a licenced Real Estate Agent in my own right as my qualifications at that time permitted me to hold both licences. However since then the educational qualifications to be an agent has increased to a diploma level.
3. I have worked as a residential salesperson for the whole of my time in real estate, I have worked for small independent agents (non franchise), large corporate ones such as Ray White corporate – Adelaide and for Lend Lease at their Mawson Lakes office which involved selling house and land packages. I worked for a small family real estate company Gaetjens prior to opening my own business. At Gaetjens I was involved in selling residential properties but mainly I was employed to head their seniors' real estate sales for SA. I was with them for 5 years. My current business - My Next Phase (its name), is a concierge service for seniors wanting to down size their residential homes.
4. During my employment I was employed on the award wage and its various allowances, principally the vehicle allowance which was debited against the commission I was entitled to receive under the terms of my employment agreement. When I was employed by Gaetjens I was paid a significantly higher salary than when I was a salesperson with a far lower commission entitlement and no debiting of my salary or allowances from any commission I was entitled to.
5. In SA Real Estate Agents and licenced salespersons' are governed by the Land Agents Act, 1994. To obtain a salespersons' licensed one must successfully complete their certificate 4.

The certificate can be studied at the Real Estate Institute of SA (REISA) or at another training provider. I attach hereto a document from REISA which sets out the subjects a salesperson must successfully complete.

The Role and Responsibilities of a Property Salesperson

6. I have looked at the description of a Property Salesperson under the award and the indicative duties of a salesperson. I agree with the description of the responsibilities as set out in the award and would say the following as to what I believe are the essential skills, responsibilities of a residential property salesperson;
- Excellent interpersonal skills
 - Be a very good negotiator – the salesperson is selling for most families the most valuable asset of their lives and must seek to extract the best possible price for the vendor.
 - Must be self motivated and driven, working whatever hours are necessary to list properties for sale and then selling them.
 - Must show a high degree of initiative in their work and in marketing their skills to prospective clients.
 - High level of personal presentation.
 - Able to deftly handle or minimise conflict between vendors where there is conflict amongst family members over the sale of a deceased estate, couples separating or divorcing where each party has a different view as to whether a sale should take place and on what terms and costs.
 - Must keep abreast of the market, doing sound research on property prices in different areas and be able to advise vendors as to the likely price range the property might fetch.
 - Over the last 6 years there is much greater use of technology by Sales staff, e.g. the use of Tablets to present themselves to potential vendors, being able display the type of marketing that is recommended, costs, draft contracts such as sales agency agreements, showing other sales by the salesperson and sale prices obtained. Sales staff now uses sms texts to potential and/ or clients emailing and calling them, re number of persons attending an open inspection, degree of interest shown and any follow ups.
 - The sales person also needs to be able to suggest the type of marketing/ advertising campaign for the property concerned and the budget the vendor can afford, e.g. using the internet, use of print media -- local papers and state-wide, sign boards, leaflet drops, quality brochures to be given out during open inspections. Also give advice as to whether the property should be auctioned (additional costs), open

inspections or by appointment only and expressions of interest. The salesperson in giving this advice has to take into account the locality of the property, its condition and likely value and comparative sale prices in the same area to justify the type of sale recommended.

- The salesperson must keep abreast of changes in real estate laws or legislation that might impinge on the value of a property for sale. In SA there can no longer be “bait advertising” where a property is advertised at a lower than expected price to attract more potential customers. The price range advertised must be within a 10% range of what the vendor’s minimum price is set at, which is stated in the sales agency agreement. The sales person must also write into the agency agreement the value they believe the property is worth, which may differ considerably to that stipulated by the vendor.

Whenever a sales agency agreement is entered into the sales person has to ensure that attached to it is a list showing at least 5 properties that have been sold in the locality concerned over the previous 12 months.

The sales person has to be aware of legislation such as the significant tree laws in SA, which require the owner to seek local council permission if they want to remove a tree that is significant as defined under the legislation. A large block with a significant tree located in the middle of the block may cause the value of the block to a developer to be a lot less than would otherwise be the case. The salesperson would need to be aware of the council’s policy on such matters.

In addition other legal matters which the salesperson needs to know of are in the area of possible land contamination, any easement issues, whether there is any asbestos on the property and their impact on the price of the property. Also other matters like ensuring that the vendor or the purchaser has the authority to buy/ sell the property such as in the case of deceased estates.

- The sales person also gives vendors advice on how best to present their property without incurring significant extra costs, re painting, cleaning particular areas, “dressing up” particular rooms with cushions, etc.
- In SA the salesperson is responsible to handle all legal documentation for sale and has the oversight of the whole sale process through to settlement.

7. In my experience in the industry I believe around 65-70% of the residential salespersons’ at least receive a weekly wage and car allowances which are then debited against their share of the employers net commission, (ex GST and franchise fees if applicable). This is more so in the case of an early entrant into the industry or when a salesperson moves to another employer and takes on a new territory to “farm”.

It takes some time for a new entrant in the industry in particular to gain their own contacts to start the “farming”, the so called prospecting of potential clients via leaflet drops, advertising in the local media as well as on social media and utilising family and friends to

promote their name to their friends and family members etc. In addition the salesperson relies on the employer to pass out equitably, office leads that come into the office.

Commissions earned by salespersons can take some time to be actually paid into their bank accounts. From the date of listing a property for sale it will take at least 5 weeks by the time the property is advertised in the appropriate media, opened for inspection and potential buyers negotiated with and having them arrange their personal finances. Then if all goes smoothly with respect to the execution of the contract for sale, the financing of the purchase and the conveyancing is achieved on time, the settlement will take place within another 4 weeks usually and then the conveyancer transfers the commission payable to the employer and in turn that is passed on to the salesperson, subject to whatever debits are made against that commission, e.g. wages, allowances and superannuation.

The salesperson will often need their weekly award wage and allowances to keep paying their own mortgages, car expenses and daily living expenses whilst waiting for any commission in credit owed to them. In that sense the salespersons under the Real Estate Award are all award reliant (save for commission only salespersons) for their income for the basic necessities of life. The commission, if payable, is a variable over award payment from month to month, totally dependent on the state of the housing market at the time. During the Great Financial Crisis 2009 – 2012 in particular, when finance from the banks was tight for housing loans, the feedback our Association got from the industry was that commission earnings were at an all time low and many sales staff were entirely dependent on their award wages to survive, including many senior, as in years of experience, sales staff.

8. When I compare the award wage and the work value for a sales person with all of the legal and ethical obligations and responsibilities they have, with the award wage and work value of a level 2 clerk working in the same office, it is absolutely inequitable for there to be such a wage differential comparing the work value of each of those workers. During my time with RESSA (SA) I have never known the award, i.e. the former State Award and later as a NAPSA to have been subject to a work value case by either the State Industrial Commission or the Fair Work Commission and its predecessor. I know during my time that the award was varied to provide for State Wage Increases following National Wage Decisions and after Work Choices the National Wage decisions by the relevant Federal authority at the time.
9. I took part in the negotiations for the current national award in 2009; it was bringing together 3 different State awards in essence, then known as NAPSA's. At the time we agreed to simply transpose the highest wages applicable in any of the 3 State based NAPSA's for each classification currently in the award, (in SA our award only covered salespersons, not property managers or strata titled managers etc. Our state based constitution allowed us only to cover as members, salespersons') and to transition any wage increase over 4 years. There was no consideration at the time as to establishing the true work value of the salesperson or any other position currently in the modern award.

Property Managers and Strata Title Managers.

10. I have worked with property managers and strata title managers, but never worked as one. Hence my knowledge is based only on what I have observed. I know that the role of a property manager is a very important one in the business of a Real Estate Agent. Whilst in SA there are no formal qualifications required before being employed as one, the duties can be very responsible and at times onerous, particularly if the person is also responsible for operating the Trust account for the business, accepting rent payments, bond money, paying expenses related to the property being managed, large and small and accounting for it on a monthly-basis to the owners of the property and responding to their enquiries.
11. Property managers perform the duties as outlined in the current modern award and the work value is significant. The selection of tenants, whether residential or commercial is not only time consuming but essential in checking on the references of tenants, their financial capacity to meet rent payments on a regular basis, inspection of premises and ensuring they are maintained to the level required by the owner, chasing up rent arrears, and commencing legal action to evict tenants from properties in breach of their lease, appearances before residential tenancy tribunals to support their actions in trying to remove tenants and substantiating the holding back of bond money to the departing tenants
12. Rent rolls for an estate agent is critical, it provides a stable and increasing share of the turnover of the business. Unlike residential sales in particular there is not the same fluctuation in the market, where rises in interest rates or banks holding back on home loans and the like can have an immediate impact on the sales market, the managing of established properties is an ongoing process as is the collection of fees for performing the work. Rent rolls are a saleable asset of any estate agents business, it has a tangible value and a large rent roll can be sold to another agency for considerable sums of money.

Commission only salespersons'

13. RESSA (SA) view on the employment of commission only salespersons' is that it is not a desirable form of remuneration. It is the only form of employment that an employee can be engaged in and is not guaranteed any payment of wages for the work they perform. However it has been a feature in this industry for many years, and given that there are some salespersons who prefer this type of employment, believing that they can earn more money via a higher commission rate from their employer if they work on a commission only basis, RREASSA is prepared to support its continued use by the award subject to far greater safeguards than exist in the current award.
14. The proposed new award clause offers far greater clarity and protection than the current award. The increase in the minimum income threshold an employee has to achieve before being eligible to be remunerated on a commission only basis is considerably strengthened.
15. Commission only employment was only ever meant to apply to those salespersons' that had a successful track record of achieving above award rates of pay and allowances. During the GFC 2009 – 2012 a number of salespersons 'contacted me that they were being told by their

employer's that given the housing market conditions were poor they would only be able to keep a job if they changed their remuneration from wage plus commission to commission only. For a number of those salespersons' going commission only meant earning less than the award rate of pay. I was recently approached by a commission only salesperson that was operating in an area of high unemployment and where there was a glut of housing on the market and told that he had to rely on Centrelink support to survive financially.

16. The proposed amendment increases the minimum income bar to \$59,338.24 p.a. from \$40,795.04. Given that the car allowance that is not payable to commission only employees ranges from \$7,015.20 p.a. to \$9,771.36 p.a. (based on 48 weeks p.a. And the motor vehicle is less than 5 years old), the commission only salesperson needs to be able to cover his/ her minimum wage plus the running costs of their vehicle and then some, given that their commission is only payable as and when a property is sold and settled, a process that at the least would take 8 – 10 weeks or in many cases longer.

Debiting of Advertising, Superannuation and Long Service Leave from Commissions.

17. As President of RESSA(SA) the three items above are the most contentious issues which are brought to my attention by members and non members alike;

- (i) The practice of many employers to debit authorised vendor advertising/ marketing costs that are unpaid against the commission earned by their sales staff is widespread and unconscionable, given that the Sale Agency Agreement (SAA) is a legal contract between the employer and the vendor. The salesperson signs the agreement on behalf of the principal. It is the principal who has the legal right to pursue the non payment of these costs from the vendor, not the salesperson. However many employer's believe it is easier to recoup the costs from their sales staff rather than seek payment from the defaulting vendor.
- (ii) The practice of employer's debiting the superannuation payable to the salesperson's superannuation fund is seen by many employees as being a practice whereby the employee is paying for what they see as an employer's responsibility. In my 15 years of working as a salesperson, the usual commission share a salesperson receives if they are paid a debitable award wage and allowances is between 45 – 50%. The employers simply adjust the variable over award payment (commission) by absorbing the superannuation payment from the employee's commission. So that in 2016 when the SGC is 9.5%, the commission share is still 45 – 50 %, the same as when the SGC was 3%.

Whilst RESSA (SA) proposed amendments may allow the employer to reduce the commission share of the salesperson to compensate for not being allowed to debit the SGC amount from their commission; the true value of the commission share will be more transparent to the employee.

- (iii) The employer's practice of debiting statutory beneficial legislation like Long Service Leave from a salesperson's commission once it is paid to the employee is seen again

by employees as simply paying for their own LSL, rather than it being the employer's responsibility. Like with superannuation, in my experience the employment agreements for salespersons do not reflect a LSL component as to the commission share a salesperson receives. If one is employed on a debitable wage plus commission basis, the commission share ranges from 45 – 50 %. That applies equally to a salesperson who may never work long enough with one employer to be eligible for LSL payment on termination, or the salesperson is employed (in SA) for 7 or more years . With respect to commission only employees, the same applies The commission offered has in the past included some identifiable components such as annual leave paid in advance and sick/ carers leave but not long service leave.

Of further concern with respect to the debiting of LSL entitlements against an employee's commission is that it acts as a serious disincentive for the salesperson from taking any LSL whilst employed with the same employer. LSL was introduced as a benefit for employees who serve a significant period of employment with the same employer and who need to be able to refresh themselves after a legislated period of time (10 years in SA) and enjoy a period of 13 weeks paid leave of absence.

Debiting the LSL payment against commission is a disincentive for sales staff to take their paid leave of absence. For commission only employees, 3 months paid leave away from listing and selling properties, on returning to work return to work; finding, listing and selling properties, and then having those commissions being debited against by the LSL payment can cause significant financial hardship to the commission only employee. That is why in my experience so few sales staff, particularly commission only staff don't take LSL as and when it falls due.

Amendments to Existing Clause 17.3 - Entitlements after employment ends.

18. The current award clause protects the salesperson's right to receive their share of the commission paid on the settlement of a property sold by them but not settled as at the date they leave their employment. The amendment sought by RESSA(SA) seeks to extend that protection to salespersons who have listed properties for sale but which have not been sold as at the date of their ceasing employment with their employer. The listed properties traditionally remain the property of the employer even after the cessation of the salespersons' employment. Under RESSA (SA)'s proposed amendment the salesperson will be paid their listing share of the sale, should it take place within the exclusive agency agreement time frame, usually up to a maximum of 90 days for a residential sale agency agreement.

The hardest part of a salespersons job is to obtain listings of properties for sale. It takes many hours of the salesperson's time in getting out marketing themselves to potential clients, preparing written appraisals, and doing the necessary research to be able to confidently present to a prospective client the comparison of properties sold in the local area and the state of the market. Once the property is listed there is more time and expense for the salesperson to prepare and execute the agreed upon marketing plan, such as writing the text for the media medium such as the internet, print advertising, both local and state-

wide, attending open inspections at the property and liaising with the vendor's on the progress of the open inspections, names and numbers of prospective purchasers, keeping a tab on the advertising expenses to see if they are as authorised or if varied to make sure they have the vendor's written amended authority. Open inspections can take between 30 – 45 minutes each, with additional time to set up sign boards etc and there can be considerable costs incurred in fuel and travelling time between open inspections.

The proposed amendment, will give those salespersons' who have listed a property for sale and who leave their employment (other than for serious misconduct) before a sale takes place, the right to receive a fair payment for the time and expense they have put into winning that listing, if it is sold within the exclusive agency agreement time frame that they secured at first instance.

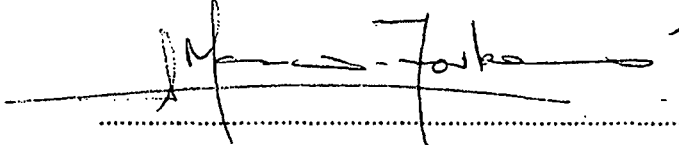
Amendments proposed for existing clause 17.5 - Calculation of NES entitlements

19. RESSA (SA) amendment provides for the payment of annual leave and sick/ carers leave as and when they are taken by commission only salespersons. The existing award reflected a practice developed over the years in relation to commission only salespersons that they were paid in advance for annual leave and sick/ carers leave.

This practice is opposed by RESSA (SA); principally because commission only employees in my experience rarely take 4 weeks annual leave each year, at best between 1 and 2 weeks. The reason being they are not paid for taking annual leave, and they could not afford to take the time off with their families. Whilst in theory their commission share was higher because of the so called advance payment of such leave, like casual employees, the "extra money" was rarely set aside so they could take 4 weeks leave off with pay to relax and unwind.

In addition, because commission only employees get paid when they sell properties, to take 4 weeks leave without pay and then having to find clients and get listings to just earn a living with a lead time of 8 -10 weeks from listing to settlement at best, the taking of the full 4 weeks leave in the one year is just too difficult financially for many of them.

I make this statement as being true and correct to the best of my knowledge and recollection.



Lynn Masson-Forbes

25-7-2016

Date

Qualification: CPP40307 Certificate IV in Property Services (Real Estate)

Qualification Requirements:

To successfully gain the Certificate IV in Property Services (Real Estate), students must demonstrate competency in 24 units packaged as five (5) core units, plus nineteen (19) electives.

Core Units

CPPDSM4007A	Identify legal and ethical requirements of property management to complete agency work
CPPDSM4008A	Identify legal and ethical requirements of property sales to complete agency work
CPPDSM4009B	Interpret legislation to complete agency work
CPPDSM4015B	Minimise agency and consumer risk
CPPDSM4080A	Work in the real estate industry

Elective Units

BSBCMM401A	Make a presentation
BSBWOR402A	Promote team effectiveness
CPPDSM4003A	Appraise property
CPPDSM4005A	Establish and build client-agency relationships
CPPDSM4010A	Lease property
CPPDSM4011A	List property for lease
CPPDSM4012A	List property for sale
CPPDSM4013A	Market property for lease
CPPDSM4014A	Market property for sale
CPPDSM4016A	Monitor and manage lease or tenancy agreement
CPPDSM4017A	Negotiate effectively in property transactions
CPPDSM4018A	Prepare and present property reports
CPPDSM4019A	Prepare for auction and complete sale
CPPDSM4022A	Sell and finalise the sale of property by private treaty
CPPDSM4056A	Manage conflict and disputes in the property industry
CPPDSM4057A	Monitor a safe workplace in the property industry
CPPDSM4079A	Work in the business broking industry
CPPDSM5012A	Develop a strategic business plan in the real estate industry
CPPDSM5032A	Market the agency

In the Fair Work Commission

In the matter of;

4 Yearly Review of Modern Awards-

Real Estate Award 2010

AM 2016/6

Witness Statement of Nathan Fox

1. My name is Nathan L. P. Fox of 18 Oakfield Avenue Clarence Park SA
2. I am the Vice President of the Registered Real Estate Salespersons' Association of SA and have held that position continuously since March 1997.
3. I have been a licensed real estate salesperson in SA since June 1987. I am also a licensed Real Estate Manager and Land Agent in SA since July 1993. I attach hereto my c.v. and qualifications with respect to my work within the real estate industry in SA (marked with the letter "A").
4. I have had the benefit of reading the witness statement of Lynn Masson – Forbes dated,xyz the President of RRESSA and concur with her with respect to the skills and responsibilities of a property salesperson employed under the award in particular in relation to residential property salespersons (paragraph 6). I have acted as both a residential property salesperson and still do but principally I act in the commercial sector of the industry in relation to selling/leasing commercial and industrial property.

Commercial and Industrial Property Salesperson – Skills and Responsibilities.

5. In my experience the education and skills required for a commercial or industrial property salesperson is greater than that required to be a residential property salesperson. New entrants to the industry in my experience are required to have either the experience or qualifications of a valuer who is required to successfully complete a 4 year degree. The reasons for requiring these skills is because;
 - It is necessary for the commercial salesperson to learn the square metreage value of the land, the cost of building the property be it multi level or single level, what the market lease return per square metre for that particular building would be once completed, together with market yield that has to within the market acceptable range, together with GST implications and when they apply. All of these factors need

to be pulled together so as to be able to advise the client before the project actually gets off the ground.

- In my experience for large commercial sales/ leasing it is essential for the salesperson to have the valuers qualifications or the necessary work experience to be able to do the job properly.
- The commercial property salesperson needs to know the market rate per square metre with respect to rents and statutory outgoings in order to facilitate a full depreciation schedule for investors/ relevant vacancy rate information in the location concerned and to have a full understanding of all this information to be able to deal with clients and potential tenants. A developer will want to know from the salesperson if the project to build goes ahead what rents it will achieve in both the investor and owner occupier markets. E.g. A retail store in a building in King William Street Adelaide ground floor attracts a higher rent than an office upstairs in the same building.
- When selling or leasing commercial property there are different rates of return on investments depending on the location of the property. In addition the salesperson needs to be aware of a number of legislative measures which will impact on the costs of the project such as soil contamination, the presence of asbestos on site and the like.
- The salesperson also needs to have an understanding of contract law, not that they draw up the contracts for the sale or lease of a commercial building, but they must have knowledge of what is in the contract so as not to mislead potential purchasers.

For example I am dealing with the pre sale of 40 apartments in an inner eastern suburb of Adelaide currently. The contract has approximately 240 pages to it which deals with matters such as if the developer goes bankrupt, soil contamination, all environmental agreements, insurance, protection for the vendor and purchaser with respect to let out clauses, detailed specifications of the building re allocation of car parks to each apartment, projected outgoings for the strata title holders with respect to Lifts and other ongoing fees and charges, what happens if the developer dies before the building is completed.

The salesperson whilst not drawing up the contract must be aware of what is in it and have a very good understanding of what it all means. If the sales person knows of any impediment to the property for sale/ lease they must disclose it to a prospective purchaser.

6. A property salesperson in SA, unlike in other jurisdictions is permitted because of their training to complete contracts for the sale of land of residential property, (refer to

attachment marked "B"). In addition they are permitted to complete what is known as a Form 1 – Vendor's Statement,(attachment marked "C").

7. I agree with the observations and points made by Ms Masson- Forbes in her paragraphs 7, and 8 in relation to the numbers of salespersons in SA employed on a wage and allowances debited against any share of commission they might earn and the work value of property salespersons vis a vis a level 2 clerk working in the real estate industry.

8. I was one of RRESSA's negotiators at the time of making the 2001 Real Estate SA Award. During my time on the committee of RRESSA I have never known the State Award to have been work valued by the Industrial Relations Commission of SA. The base rate of pay for a property salesperson (the award only ever covered property salespersons') was set at the minimum State award rate of pay. During the 1990's the award had not kept up to date with the various State Wage Case decisions including the structural efficiency payments available under the Wage Fixing principles at that time. The Salespersons' award had in fact fallen well behind the State Minimum Award rate of pay by the time the award was re negotiated in 2000, taking effect in full from the 1st July 2001. The award rate of pay was increased to reflect the then current State Minimum Award Wage. The award in my time never had its wages increased as a result of a work value comparison vis a vis the Metal Trades Award re the tradesperson award rate of pay, or any other award for that matter.

From 1st July 2001 the State Real Estate Award increased by whatever general wage increase was awarded by the various State Wage Case Decisions regarding the State Minimum Award rate of Pay. From March 2006 with respect to Work Choices most of the industry fell under the then new Federal Government legislation and the State Award became a NAPSA and the wage increases in the NAPSA followed Federal Minimum Wage Increases ordered by the Australian Fair Pay Commission and the Australian Industrial Relations Commission prior to the introduction of the Modern Award on 1st January 2010.

I took part in the negotiations with respect to the making of the real estate modern award in 2009. I agree with the statement by Ms Masson- Forbes at paragraph 9 of her statement, as to the setting of the wage rates in the current award.

9. I agree with Ms Masson – Forbes with respect to the work value of property managers and strata title managers in this industry. Whilst I have not worked in either capacity I have and still do work with a number of persons who work as property managers and strata title managers. Their skills and responsibilities warrant their being paid no less than their clerical counterparts paid under the Clerks Private Sector Award.

Commission Only Salespersons'

10. I support the views put forward by Ms Masson – Forbes in her witness statement, paragraphs 13 – 16 inclusive. The former NAPSA and State Award allowed for commission only salespersons, and I draw the Full Bench's attention to the relevant clauses in that

award, (attachment marked "D"). It provided a minimum income threshold in 2001 of \$60,000 p.a. and all such agreements had to be approved by the Industrial Relations Commission of SA before they could come into force. Due to changes in the Workplace Relations Act, 1996 with the advent of Australian Workplace Agreements and Federal collective enterprise agreements and Work Choices, the safeguards with respect to commission only salespersons were significantly reduced.

The current award prescription is far too lax, with a minimum income threshold of only \$40,795.04 p.a. i.e. 110% of the award minimum wage including the use of a private vehicle on company business. The minimum award wage is \$713.20 p.w. (\$37,086.40 p.a.) and the car allowance of \$146.15 p.w. (if less than 5 years of age and no more than 1600 cc) for 48 weeks of the year is \$7,015.20, a total of \$44,101.60 p.a.

Commission only salespersons should be restricted only to those salespersons that have a proven track record in achieving sufficient sales and commission that they can earn enough income to meet their own costs of living and also the costs of running a vehicle for their work, mobile phone and compensate them for the lack of continuity of a regular income, given they only get paid when a property is sold and settled.

Debiting of Advertising, Superannuation and Long Service Leave from Commission

11. I agree with the views of Ms Masson – Forbes in her statement at paragraph 17.

These debits are the ones that most vex the salespersons' in our industry, particularly authorised vendor advertising that is unpaid and is debited from a salesperson's commission, even though they are not a party to the sales agency agreement between the vendor and the principal of the real estate agency.

I attach a standard sales agency agreement (SAA) used by employers in SA, (attachment "E"). In particular I draw the Full Bench's attention to page 4 of the SAA with reference to the section headed "Vendor's Marketing Costs". It is clear the vendor undertakes the payment of all approved marketing expenses. I also draw the Bench's attention to the attachment to the SAA headed "General Conditions for Residential Agency Agreement", clause 9, again it is explicit that vendor authorised advertising is at the costs of the vendor and they are contracted to pay the agreed amount. The vendor's are further reminded of their rights and obligations and have another attachment to their SAA headed "Form 1 Sales Agency Agreements" and draw the Bench's attention to the part headed, "Advertising and Marketing". All the aforesaid attachments are required by law to be given to each vendor by the real estate agency.

The vendors who don't pay their accounts are those that don't sell their property and resent having to pay for something when the property for whatever reason fails to sell. The agent in a number of instances will not pursue the outstanding account except in a desultory manner at first instance and then claims the cost off the salesperson's commission earned from the sale of another property. The salesperson has no legal standing to seek restitution from the

defaulting vendor as the salesperson is not a party to the contract and has no say as to whether the agent wipes out the debt of the vendor or not.

I also refer to the NAPSA that previously covered property salespersons in SA and draw attention to the fact that since 2001, that award provided for the non debiting of long service leave payments and the SGC payments made on salesperson's behalf. The award was varied in 2001 for the same reasons put by Ms Masson – Forbes in her statement, paragraph 17. I, endorse and support her statements concerning same.

Amendments to Existing Clause 17.3 - Entitlements after employment ends.


12. I endorse and support the statement of Ms Masson – Forbes in relation to the above matter in her statement at paragraph 18. In addition I point out that for commercial property salespersons the need for this protection is even greater than for the residential salesperson.

Many commercial properties such as for example, offices, retail or apartments are contracted to an agent to sell, some for over a 2 – 3 year time frame. The property maybe multi level with the banks not willing to loan the money to a developer until say 50% of the apartments have been pre sold off the plan. Those sales are only for part payment of the sum owing for the apartment sold off the plan, and full payment is not made until the building is completed and handed over to the owner. Therefore the sales person who has listed the property for sale over the course of 2 – 3 years and perhaps sold some of the apartments but leaves the employer for whatever reason, loses any rights to their listing share of the final commission on those properties they have listed but not sold as at the date of their ceasing employment, unless their contract of employment has incorporated such a saving provision. RRESSA amendment seeks ensure that protection via the proposed amendment.

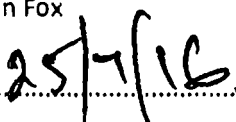
Amendments proposed for existing clause 17.5 Calculation of NES entitlements

13. I agree with the views expressed by Ms Masson –Forbes in her statement at paragraph 19 with respect to RRESSA's claim.

I make this statement as being true and correct to the best of my knowledge and recollection.


.....

Nathan Fox


.....

"A"

Smallacombe

Nathan Fox

A.R.E.I., C.C.I.P., C.P.M

All Hours
0412 818 208

Direct Business Line
8274 8719



Appointed Licensed Real Estate Salesperson SA	June 1987
Appointed Licensed Real Estate Manager SA & Registered Land Agent	December 1990
Appointed Senior Committee Member RESA (Encompasses sitting on committee for Real Estate Industry promoting industry work ethics & professional standards)	July 1993
Awarded Certificate of Commercial & Industrial Practice Real Estate Industry Australasia	January 1994
Appointed Director/Trustee of Real Estate Industry South Australia Superannuation Fund	January 1994
Appointed Vice President of RESA - March 1997	1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016
Appointed Associate Director of Theodore Bruce Group Pty Ltd	July 1997
Appointed Committee Member of Commercial & Industrial Division of SA through Real Estate Institute of SA	1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016
Joined Rob Younger Real Estate as a Licensed Real Estate Manager supplying a high level of professional expertise in both the commercial & residential sphere	March 1998 - 2006
Joined Smallacombe Real Estate Group operating as a Licensed Residential and Commercial Real Estate Manager with the emphasis on continuing to supply an extremely high level of professional expertise in both the character residential and residential project field together with the commercial/industrial field Nathan works throughout the metropolitan area and operates out of the Mitcham Office	July 2006
Appointed Industry Assessor by John Rau, Deputy Premier under "The Land Agent's Act 1994" to hear and provide advice to the District Court	August 2012

"In short, Real Estate is Nathan's chosen livelihood and profession with a dedication to ensuring professional advice and service is provided along with a genuine interest in ensuring the rest of the Real Estate Industry is providing the same degree of professionalism, having been appointed Vice-President of the Real Estate Salesperson's Association 1997 – 2016 together with being appointed Senior Committee Member of the Commercial & Industrial Division through the Real Estate Institute of South Australia."



u B u

CONTRACT FOR THE SALE OF LAND RESIDENTIAL PROPERTY

Notice to purchaser: This is a contract for the sale of residential land. You may be bound by the terms of this contract if it is signed by both you and the vendor. You should seek independent legal advice if you are unsure about the terms contained in this contract. Contracts for the sale of land may be subject to a 2 day cooling-off period (exercisable by the purchaser) under section 5 of the *Land and Business (Sale and Conveyancing) Act 1994*.

The Vendor agrees to sell and the Purchaser agrees to buy the property at the price and on the terms set out herein.

VENDOR _____

PURCHASER _____

ACN _____ Mobile _____ Phone _____

THE PROPERTY being improved / unimproved land situated at and known as _____

and being Allotment / Lot / Unit _____ on Strata / Community / Deposited / Filed Plan _____

in the Area named _____ in the Hundred of _____

and being whole / portion of Certificate of Title Volume / Folio _____

GST Conditions of Sale (General Conditions clause 21)

- | | |
|--|--|
| 1. The Vendor is registered or required to be registered for GST.
If No, GST does not apply. Do not complete questions 2, 3 and 4.
If Yes, answer question 2. | No <input type="checkbox"/> Yes <input type="checkbox"/> |
| 2. The sale of the Property is the supply of residential premises which is input taxed.
If No, answer question 3.
If Yes, GST does not apply. Clause 21.2 applies. Do not complete question 3 and 4. | No <input type="checkbox"/> Yes <input type="checkbox"/> |
| 3. The margin scheme is to be applied to the sale of the Property.
If No or Yes, answer question 4. | No <input type="checkbox"/> Yes <input type="checkbox"/> |
| 4. GST is to be added to the Purchase Price.
If No, clause 21.4 applies. If Yes, clause 21.3 applies. | No <input type="checkbox"/> Yes <input type="checkbox"/> |

PURCHASE PRICE	Amount Payable for Property	_____
GST	GST payable (if applicable)	_____
	TOTAL	_____

DEPOSIT \$ _____

The deposit will be paid:

- immediately after auction; or if no auction
 if the cooling off right is waived then on signing this Contract; or
 on the next day following the expiration of the "cooling off" period, being 2 business days after service of the Form1.
 other: _____

tick or cross the applicable boxes

SETTLEMENT DATE

Settlement will be:

(a) the _____ day of _____ 20 _____ ; or
(b) within _____, whichever is the later;
or such other date as mutually agreed in writing.

SCHEDULE

Inclusions: Other property (chattels and fixtures and fittings) included in the sale
All fixed floor coverings, light fittings and window treatments and solar panels (if any installed).

Consumer Credit Chattels (if any)

Exclusions: Other property (fixtures and fittings and other property) not included in the sale (use an Annexure as necessary)

- Vendor's Occupier's personal effects non standard telephones
- loose floor coverings furniture dishwasher other as detailed or attached

Known Encroachments and Fences not on Boundaries (if any)

Alterations and Improvements erected without consent ("notified works" if any) (General Condition 5)

Works to be carried out by Vendor prior to settlement (if any "Vendor's Works")

Swimming Pool and Spa Compliance Not Applicable Pool on Property Pool Complies

The Vendor must by law at or before settlement ensure that the swimming pool and spa ("Pool") complies with all Pool safety requirements. For Pools constructed pre June 1993 refer *Development Act 1993* and Ministerial Specification SA 76D and safety barriers. If constructed after 1993 refer to the *Development Act 1993* and Regulations and Australian Standards AS 1926. The Vendor will produce and/or obtain a pool compliance certificate prior to settlement if necessary or required for settlement and so requested by the Purchaser.

If works are required detail the works

Tenancies (if applicable)

Tenant _____
Periodic or Fixed _____
Period: from _____ to _____
Rent Payable: \$ _____ per _____ Bond with tribunal No Yes \$ _____

Matters Affecting Title

(Only complete if a Form 1 is not served at the time of Contract and a 'cooling off' period is not applicable.)
Details all encumbrances (existing or intended to be created) not to be discharged prior to settlement.

SPECIAL CONDITIONS

(clause 14)

SC 1 FINANCE

SC 1.1 This Contract is conditional upon the Purchaser obtaining, on or before the date specified below, approval in writing for a loan in the amount specified below (or such lesser amount as the Purchaser may accept) at the interest rate specified below and otherwise on such terms and conditions that the lender requires acceptable to the Purchaser, to assist in purchasing the property ("the approval"). Upon notification of the approval to the Vendor this conditional provision will be satisfied and notwithstanding that the lender may subsequently withdraw the approval the Purchaser will be bound by this Contract.

SC 1.2 The Purchaser will use best endeavours to obtain the loan.

SC 1.3 In the event that the approval is not obtained on or before the latest date for approval and provided the Purchaser has not waived this special condition and communicated such waiver to the Vendor in writing then either party (but, in the case of the Purchaser, provided it has complied with SC1.2) may immediately terminate this Contract by giving notice in writing to the other party.

SC 1.4 In the event of termination of the contract pursuant to SC1.3 and provided the Purchaser has complied with SC1.2 all monies paid by or on behalf of the Purchaser shall be repaid to the Purchaser.

SC 1.5 In the event of termination of this Contract pursuant to SC1.3 in circumstances where the Purchaser has failed to comply with SC1.2 the Vendor will be entitled to the deposit which is forfeited and to proceed against the Purchaser for damages for breach of Contract.

Latest date for approval _____
Amount of Loan \$ _____ (or less than) _____
Interest Rate _____ % per annum (or less than) _____

SC 2 SALE OF THE PURCHASER'S PROPERTY

The Purchaser will use all best endeavours to sell and effect settlement of the property, the subject of this clause.

SC 2.1 *This Contract is conditional upon the Purchaser entering into a contract on or before the _____ day of _____ 20 ____ for the sale of property at _____ for a price of not less than \$ _____ or such lesser sum that the Purchaser may accept and settlement of that contract occurring on or before the _____ day of _____ 20 ____

SC 2.2 *This Contract is conditional upon the sale of the Purchaser's property, being the property at _____ settling on or before the _____ day of _____ 20 ____ pursuant to a contract entered into by the Purchaser dated the _____ day of _____ 20 ____

** delete if not applicable*

SC 2.3 In the event that the condition in SC2.1 or SC 2.2 (if applicable) is not satisfied within the time prescribed and provided the Purchaser has not waived this special condition and communicated such waiver to the Vendor in writing either party (but, in the case of the Purchaser, provided it has used all best endeavours as required by this clause) may immediately terminate this Contract by giving notice in writing to the other.

SC 2.4 In the event of termination of this Contract pursuant to SC2.3 and provided the Purchaser has used all best endeavours all monies paid by or on behalf of the Purchaser shall be repaid to the Purchaser.

SC 2.5 In the event of termination of this Contract pursuant to SC2.3 in circumstances where the Purchaser has failed to use best endeavours the Vendor will be entitled to the deposit which is forfeited and to proceed against the Purchaser for damages for breach of Contract.

OTHER CONDITIONS

(rule off if this area is not needed)

GENERAL CONDITIONS

1 Encumbrances

The property is sold subject to and together with the encumbrances that are not to be discharged prior to settlement as detailed:

- 1.1 if a Form 1 is served before or contemporaneously with the execution of this Contract by the Purchaser, then as detailed in the Form 1; or
- 1.2 as detailed herein under Matters Affecting Title in the Schedule.

2 Moneys Payable Prior to Settlement

All moneys payable by the Purchaser prior to the Settlement Date will be paid to the Vendor's agent or representative who will hold the moneys as stakeholder pending settlement.

3 Settlement

- 3.1 Settlement will take place at the Lands Titles Office, or such other location as the parties will agree, on the Settlement Date.
- 3.2 The Purchaser will, not less than seven (7) days prior to the settlement date and at the Purchaser's expense tender a Transfer of the property to the Vendor. The Vendor may allow the Purchaser possession of the executed Transfer in escrow for stamping prior to settlement but for all purposes the Transfer will be the property of the Vendor.
- 3.3 At settlement, subject to the Vendor having performed all of the Vendor's obligations under the Contract up to settlement, the Purchaser will pay to the Vendor by bank cheques the balance of the Purchase Price and other moneys payable by the Purchaser on settlement in exchange for the registration documents. If for any reason a cheque tendered at settlement is not paid on presentation, the Purchaser will re-convey the property to the Vendor. Prior to any reconveyance the unpaid amount of any cheque will be a charge on the property in favour of the Vendor.
- 3.4 The Purchaser will pay the cost of the first 2 bank cheques required by the Vendor at settlement and the Vendor will pay the cost of any additional bank cheques required by it. Cheque details will be advised by the Vendor not less than 2 business days prior to settlement.
- 3.5 Subject to clause 9.4(d) all outgoings and income relating to the property will be apportioned and adjusted as between the Vendor and Purchaser to midnight on the day prior to settlement. The Vendor will pay all outgoings up to the date of settlement and thereafter the Purchaser will pay all outgoings.
- 3.6 If at the date of settlement the property is connected to a sewer line and if any moneys are or will become owing to the water authority or otherwise in respect of that connection, the amount of those moneys will be paid by the Vendor on or before settlement.
- 3.7 The parties may settle under protest should there be any dispute as to the amount payable under the Contract at settlement.

4 Possession

- 4.1 Subject to the Purchaser having performed all of the Purchaser's obligations under the Contract, the Purchaser will be entitled to and the Vendor will give vacant possession of the property to the Purchaser subject only to any tenancies specified.
- 4.2 The Vendor will remove all excluded chattels and fixtures from the property prior to settlement and make good any damage caused thereby.
- 4.3 The Vendor will carry out any works as detailed in the Schedule (Vendor's Works) in a proper and workman like manner prior to the Settlement Date.
- 4.4 The Purchaser is not entitled to access to the property until settlement unless agreed to in writing by the Vendor.
- 4.5 In the event the Purchaser is granted possession prior to Settlement Date the Purchaser will execute a licence agreement with the Vendor prior to taking possession and any breach of the terms of such a licence agreement will be deemed a default under the Contract and subject to the Vendor's rights to termination pursuant to clause 9.2.

5 Purchaser's Risk

The property will be at the risk of the Purchaser from the date of this Contract and without limiting the effect thereof the Purchaser is obliged to meet the cost of any repairs or loss (including but not limited to) for any electrical, mechanical or structural problems existing after the date of the Contract. The Vendor will notify the Purchaser of any breakdown or damage to the property needing attention within a reasonable time. The Vendor will reasonably maintain and use the property until settlement but is not liable for repairs or breakdown costs unless caused by the Vendor's negligence. The Purchaser buys the property subject to the notified works in the Schedule above.

6 Vendor's Warranties

There are not within the Vendor's knowledge except as stated in this Contract and in the Form 1:

- 6.1 any outstanding or impending demands, orders or requisitions of any competent authority relating to the property;
- 6.2 any proposals for the re-alignment, widening or alteration of the level of any road adjoining the property by any competent authority that would materially affect the property or the use thereof;
- 6.3 except in relation to a strata unit or community lot or as detailed in the certificate of title, any sewers, drains, pipes, cables or other installations passing through the property providing the relevant services to other land;
- 6.4 any outstanding or impending notice, demand or liability to join in or contribute to the construction or repair of a dividing fence between the property and any adjoining land under the *Fences Act* or otherwise;

- 6.5 any encroachments onto the property by any building or structure from the adjoining land;
- 6.6 any amounts owing to any competent authority in respect of works performed or to be performed or any expenses incurred or to be incurred by the authority in relation to the property;
- 6.7 any notice of resumption or intended resumption of the property or any part thereof by any competent authority; or any buildings and improvements which are not on or within the boundaries of the property and so far as the Vendor is aware, all dividing fences and walls are on the boundaries of the property.

7 Warranties if Property is subject of Strata or Community Title

In addition to the warranties in clause 6, where the property is a strata unit or community lot there are not within the Vendor's knowledge except as stated in the Form 1:

- 7.1 any facts or circumstances relating to the common property that will materially affect the Purchaser's use or enjoyment of the property or the common property except those mentioned in the Contract or disclosed to the Purchaser in writing prior to the date of this Contract, or apparent on inspection or mentioned in the strata or community plan or a schedule hereto;
- 7.2 any current or pending proceedings relating to the strata or community corporation or to the strata unit or community lot and there are no unsatisfied judgments or orders against the strata or community corporation;
- 7.3 any proposals for or any proceedings or procedures initiated for the variation of the schedule of entitlement in respect of the strata or community corporation or community lot/strata unit, the grant, variation or surrender of any easements or restrictive covenants which affect the land, or the transfer, lease or licence of any part of the common property; and
- 7.4 any current or impending proposals to pass any special resolutions of the strata or community corporation or to pass any resolution of the strata or community corporation and the Vendor undertakes to advise the Purchaser of any and all pending meetings and proposals relating to the strata or community corporation not less than 7 days prior to any formal meeting and warrants that it will vote only in accordance with the directions of the Purchaser.

8 Misdescription

This Contract will not be terminated for any error or misdescription of the property but the Purchaser will be entitled to seek compensation from the Vendor for any loss or damage arising from the error or misdescription subject to any claim being notified and demanded within 14 days of settlement.

9 Default by Purchaser

9.1 Default in Payment of Deposit

Notwithstanding any other provision of this Contract, in the event the Purchaser fails to pay all or any part of the deposit by the date specified then the Vendor will be entitled to immediately terminate the Contract without prior notice.

9.2 Default by Purchaser Prior to Settlement

In the event the Purchaser is in default in performing or observing any obligation imposed on the Purchaser under this Contract prior to settlement then the Vendor, in addition to any other rights or remedies it may have under this Contract or otherwise, may give the Purchaser notice in writing requiring the Purchaser to remedy the default within seven (7) days from service of the notice. If the Purchaser fails to comply with the notice the Vendor may terminate the Contract by further written notice without prejudice to the Vendor's rights and entitlements at law. The Vendor will be entitled to serve more than one notice without prejudice to any of its rights and obligations.

9.3 Default by Purchaser in Settlement

In the event the Purchaser defaults in the due observance or performance of the obligations on the Purchaser's part to settle and such default continues for a period of three (3) clear business days after the Settlement Date then the Vendor may serve a notice on the Purchaser requiring the default to be remedied and appointing a time for settlement being not less than three (3) clear business days after the service of the notice requiring the Purchaser to settle at the time and date appointed in the notice. If the Purchaser fails to comply with the notice the Vendor may terminate the Contract by further written notice without prejudice to the Vendor's rights and entitlements at law. The Vendor will be entitled to serve more than one notice without prejudice to any of its rights and obligations.

9.4 Remedies of Vendor

- (a) In the event this Contract is terminated by the Vendor then the Vendor may either retain the property or sell the property and in either event sue the Purchaser for damages.
- (b) The Vendor will be entitled to retain the deposit if this Contract is terminated by the Vendor.
- (c) If the Vendor re-sells the property the Vendor may retain absolutely any surplus arising from such re-sale in excess of the original Purchase Price and expenses arising from the re-sale and all losses and expenses incurred by the Vendor resulting from the Purchaser's default.
- (d) In the event this Contract settles on a date after the date for settlement first agreed to by the parties and as stated in the Contract (and whether or not subsequently varied by agreement) and provided that the delay in settlement is not due to the Vendor's default, the Purchaser will pay at settlement, if demanded by the Vendor, interest on the Purchase Price at the default rate for the period between the date for settlement first agreed and the date of actual settlement. In this event, at settlement all outgoings and income on the property shall be apportioned and adjusted to midnight on the day before the date for agreed settlement.

10 Default by Vendor

In the event the Vendor defaults in performing or observing any obligations or duties under the Contract and such default continues for a period of three (3) business days after the Settlement Date then the Purchaser in addition to any rights at law may serve a notice on the Vendor requiring the Vendor to remedy the breach within three (3) clear business days from service of the notice. If the Vendor fails to comply with the notice the Purchaser may terminate this Contract by further written notice without prejudice to the Purchaser's rights and entitlements at law. The Purchaser will be entitled to serve more than one notice without prejudice to any of its rights and obligations.

11 Stakeholder may pay Moneys into Court

In the event of a dispute between the Purchaser and the Vendor as to the application of the deposit then any person holding the deposit may pay the moneys into court. The person paying the moneys into court will be entitled to first deduct all their legal fees and actual costs incurred from the moneys held. Those costs will be claimable by the parties between themselves subject to any order of the court determining the dispute and which party should pay them.

12 Arbitration

Any dispute involving the sum of \$50,000 or less will be determined by an independent arbitrator appointed by the then President of the Society or his nominee at the request of either party. The determination of the arbitrator will be final and binding between the parties and the provisions of the *Commercial Arbitration Act* will apply. The costs of the arbitration will be paid by such party/s as directed by the arbitrator. The arbitrator will advise of and request payment of reasonable fees prior to acting and in default of agreement to same may refuse to act. The parties will have no right of appeal under section 38(2) or to apply with respect to a question of law under section 39(1) of the *Commercial Arbitration Act*. The arbitrator will direct and determine all procedure for the arbitration.

13 Notices, Service and Interest for Late Settlement

13.1 Subject to other provisions allowing immediate termination, neither the Vendor nor the Purchaser will be entitled to terminate this Contract on the ground of the other's default in performing or observing an obligation imposed on that other party under the Contract; unless

- (a) the party not in default has first given to the party in default a written notice specifying the default complained of, which notice will require that the default be remedied within the period stipulated in the notice; and
- (b) the party in default fails to remedy the default within the period stipulated in that notice.

13.2 The Vendor may at any time serve a demand on the Purchaser certifying the amount due by way of principal and interest which interest will be calculated on a daily rate from the day following the day that any moneys were due and payable under the Contract (without serving any prior notices) and interest may be stated as a continuing daily rate. The Purchaser will pay interest to the Vendor at the default rate (as defined) on monies due and payable under the Contract but unpaid from the date the moneys first fell due under the Contract until date of payment.

13.3 The Purchaser will pay \$550.00 (inc GST) to the Vendor's solicitor or conveyancer for the cost of preparation and service of each default notice under the Contract which moneys will, together with interest at the default rate (if due), be added to and thereafter be deemed to be part of the purchase price. The Vendor will pay \$550 (inc GST) to the Purchaser's solicitor or conveyancer for each notice served under this Contract arising from a failure in settlement by the Vendor.

13.4 A notice served by registered mail will for all purposes be deemed served two (2) clear business days after posting.

13.5 Service may be effected by facsimile transmission to the party or the party's representative to such facsimile number advised from time to time such service being deemed immediate service.

13.6 Service on one or more of the persons together comprising the Vendor or Purchaser as the case may be will for all purposes be deemed service on all persons comprising the Vendor or Purchaser.

13.7 Service may be effected personally, by facsimile or by registered mail to the address of the person detailed in the Contract or the representative of the party.

13.8 Where a party is entitled to immediately terminate the Contract, such termination is to be effected by service on the other party of a written notice to that effect.

14 Time of the Essence

Time will be of the essence of this Contract in respect of any obligation under clauses 9, 10, 13 and all special conditions.

15 Costs and Stamp Duty

Each party will bear its own legal and other costs and expenses in entering into this Contract and settlement except as otherwise specified in damages and the Purchaser will pay all stamp duty assessed on the Contract and on the transfer to the Purchaser.

16 Depreciable Items

For the purposes of the *Income Tax Assessment Act, 1936 and 1997* ('the Tax Act'), the price of any improvements or items comprised in the property in respect of which depreciation has been allowed or is allowable under the Tax Act is the price allocated, or if no price is so allocated, the depreciated value thereof for the purposes of the Tax Act at the date of the Contract.

17 Further Assurance and Best Endeavours

Both the Vendor and the Purchaser will each use their best endeavours to deal with any "requisition notice" issued by the Lands Titles Office and to comply with any condition of this Contract. Subject to the Purchaser having performed all of the Purchaser's obligations under the Contract, the Vendor will with all reasonable dispatch do all things necessary to enable a registrable transfer of the property to be lodged and registered by the Land Titles Office.

18 No Merger

The provisions of the Contract continue for all purposes to subsist after settlement.

19 Debits Tax and Special Lands Titles Office Fees

In the event the deposit is repaid or to be repaid to the Purchaser for any purpose then the Purchaser will pay to the agent or other person holding the moneys as stakeholder such sum equal to the government charges dutiable against the moneys under the *Debits Tax Act, 1990* or such other similar Acts in force from time to time and amendments thereof and it will be lawful and it is agreed that the stakeholder may retain from the deposit moneys held such moneys equal to the taxes and levies charged against the deposit and apply them to the taxes accounting to the Purchaser for the balance. The Purchaser will pay any special charges of the Lands Titles Registration Office levied for settlements occurring on particular days.

20 Foreign Investor

The Purchaser warrants that it does not require approval from the Foreign Investment Review Board (or any similar organisation) for the purchase herein unless otherwise specified.

21 GST General

21.1 General

- (a) Terms used in this clause and in the GST Conditions of Sale have the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* ('the GST Act'), unless the context otherwise requires.
- (b) This clause survives completion.
- (c) If the sale of the Property constitutes a mixed supply (for example, the sale is an input taxed supply only in part, or the margin scheme applies only in part, or full GST applies only in part) then the Vendor shall reasonably determine the consideration for the sale of each part, and these clauses shall apply as if the Property being supplied is that part only.

21.2 Sale is Input Taxed

If the sale of the Property is residential premises which is input taxed, the Purchaser warrants that the Property is to be used predominantly for residential accommodation.

21.3 If GST is to be added

If GST is to be added to the Purchase Price for the Property AND

- (a) The GST Conditions of Sale provide that the margin scheme is to be applied to the sale of the Property:
 - (i) the Vendor warrants that the Property was not acquired through a taxable supply in which the margin scheme did not apply;
 - (ii) the Vendor must obtain, at the Purchaser's expense, a valuation (if applicable) of the Property which complies with section 75-10(3) of the GST Act, and provide that valuation to the Purchaser not less than 7 days prior to Settlement;
 - (iii) the Purchaser must pay to the Vendor an additional amount on account of GST equal to 10% of the margin at Settlement, together with any costs incurred by the Vendor in relation to the valuation; and
 - (iv) the Vendor must choose to apply the margin scheme to the sale of the Property in completing its Business Activity Statement;

OR

- (b) The GST Conditions of Sale provide that the margin scheme will not be applied to the sale of the Property:
 - (i) the Purchaser must pay to the Vendor an additional amount on account of GST equal to the consideration for the sale of the Property multiplied by 10%; and
 - (ii) the Vendor must provide to the Purchaser a tax invoice in relation to the sale of the Property at Settlement.

21.4 If GST is not to be added

If GST is not to be added to the Purchase Price for the Property AND

- (a) The GST Conditions of Sale provide that the margin scheme is to be applied to the sale of the Property:
 - (i) the Vendor warrants that the Property was not acquired through a taxable supply in which the margin scheme did not apply;
 - (ii) the Vendor must obtain, at the Vendor's expense, a valuation (if applicable) of the Property which complies with section 75-10(3) of the GST Act and provide that valuation to the Purchaser not less than 7 days prior to Settlement; and
 - (iii) the Vendor must choose to apply the margin scheme to the sale of the Property in completing its Business Activity Statement;

OR

- (b) The GST Conditions of Sale provide that the margin scheme will not be applied to the sale of the Property: the Vendor must provide to the Purchaser a tax invoice in relation to the sale of the Property at Settlement.

22 Release of security interests

- 22.1 This provision applies if any part of the property is subject to a security interest to which the *Personal Property Securities Act 2009 (Cth)* ('the PPS Act') applies.
- 22.2 The Vendor must ensure that at or before settlement, the Purchaser receives:
- (a) a release from the secured party releasing the security interest in respect of the property; or
 - (b) a statement in writing in accordance with section 275(1)(b) of the PPS Act setting out that the amount or obligation that is secured is nil at the due date for settlement; or
 - (c) a written approval or correction in accordance with section 275(1)(c) of the PPS Act indicating that, on the due date for settlement, the personal property included in the contract is not or will not be property in which the security interest is granted
- if the security interest is registered in the Personal Properties Securities Register.
- 22.3 The Vendor is not obliged to ensure that the Purchaser receives a release, statement, approval or correction in respect of any personal property that is sold in the ordinary course of the Vendor's business of selling personal property of that kind unless, in the case of goods that may or must be described by a serial number in the Personal Properties Securities Register, the Purchaser advises the Vendor at least 21 days before the due date for settlement that the goods are to be held as inventory.
- 22.4 The Vendor is not obliged to ensure that the Purchaser receives a release, statement, approval or correction in respect of any personal property that:
- (a) is not described by serial number in the Personal Property Securities Register; and
 - (b) is predominantly used for personal, domestic or household purposes; and
 - (c) has a market value of not more than \$5,000 or, if a greater amount has been prescribed for the purposes of section 47(1) of the PPS Act, not more than that prescribed amount.
- 22.5 A release for the purposes of this clause 22.2(a) must be in writing and in a form published by the a professional legal body, Law Council of Australia or the Australian Bankers Association or in a form acceptable to the Vendor in its discretion or published under the PPS Act.
- 22.6 If the Purchaser receives a release under clause 22.2(a), the Purchaser must provide the Vendor with a copy of the release at or as soon as practicable after settlement.
- 22.7 In addition to ensuring a release is received under clause 22.2(a), the Vendor must ensure that at or before settlement, the Purchaser receives a written undertaking from a secured party to register a financing change statement to reflect that release if the property being released includes goods of a kind that are described by serial number in the Personal Property Securities Register.
- 22.8 The Purchaser must advise the Vendor of any security interest that the Purchaser reasonably requires to be released at least 21 days before the due date for settlement.
- 22.9 Words and phrases used in this clause which are defined in the *Personal Property Securities Act 2009 (Cth)* have the same meaning herein.

Interpretation

In these Conditions unless the Contract otherwise requires:

"the Act" means the *Land and Business (Sale and Conveyancing) Act 1994* as amended from time to time.

"the agent" means the agent for the Vendor registered under the *Land Agents Act 1994*.

"business day" means any day other than a Saturday, Sunday or public holiday in South Australia.

"community lot" means a community lot or community strata lot in a Community Plan deposited or intended to be deposited at the Lands Titles Office;

"default notice" means a notice given pursuant to clauses 9,10 and/or 13.1.

"default rate" means the rate of interest published by the Reserve Bank of Australia for the cash rate, on the day of the default first occurring or on the date of Settlement, plus five (5) percentage points, or at the Vendor's election the Vendor's then commercial banking overdraft rate plus two (2) percentage points; and for all purposes the parties agree these are reasonable estimations of the cost of or loss of use of money to the Vendor and damages. A statement from the representative of the party, being a calculation of interest will be prima facie evidence of the rate and will be deemed the amount of interest payable.

"deposit" means the amount detailed in this Contract as payable for a deposit and may include a "Deposit Guarantee" or "Deposit Bond" in the Vendor's discretion which are guarantees by a registered insurance company or bank to pay to the Agent or Vendor an amount agreed as the deposit in the event of a default in settlement by the Purchaser.

"encumbrance" includes a mortgage, charge, bill of sale, lien, pledge, easement, restrictive covenant, building condition, writ, warrant, caveat and the claim stated therein, or other right or interest affecting the property or any part thereof.

"Form 1" means the Form 1, under the Act.

"income" means all rent, benefits and other moneys received or receivable directly arising from the rights and use of the property.

"land" means the freehold land (including a strata unit or community lot) or leasehold land, together with all buildings and other improvements thereon including all Vendor's fixtures and fittings the subject of the Contract detailed herein.

"latest date for approval" means, if the Contract is subject to the approval of a loan, 5:00pm on the day specified in this Contract as "the latest date for approval" in respect of such loan.

"other property" means the chattels and personal items (if any) described in the Contract and agreed to be sold thereby.

"outgoings" means and includes:

- (a) all rates, taxes, levies, assessments and charges or other outgoings (periodical or otherwise) chargeable or payable in respect of the property; and
- (b) if the property is or includes a strata unit or community lot;
 - (i) all contributions in respect thereof levied by the strata corporation payable under the *Strata Titles Act, 1988* or by the Community Corporation under the *Community Titles Act* and if there is no fund or there are insufficient funds or if the Vendor is in default or arrears of payments then the Vendor will pay to the Purchaser in proportion of the Vendors liability for unit entitlement moneys adjusted to equal the Vendor's liability for contributions to the strata or community fund; and
 - (ii) all rents, fees and other periodical amounts payable under any lease, licence or agreement; and
- (c) land tax which will be adjusted on the basis that the land constitutes a single holding; and
- (d) water consumption which will be adjusted on the pro rata daily rate of the current water consumption rates and any consumption and charges will be adjusted prior to settlement or otherwise so soon as is practical after settlement and the Vendor will pay for any water use in proportion to the consumption year up to settlement.

"person" will mean and include a corporation.

"the property" means the land described on page 1 together with any chattels agreed to be sold.

"registration documents" means a transfer in registrable form for the Lands Title Office together with any applications, transfers, instruments, declarations or documents required to be tendered at the settlement to enable the conveyance of clear title.

"representative" means the agent, solicitor or conveyancer acting for the party concerned.

"Society" means the Society of Auctioneers and Appraisers (SA) Incorporated.

"special condition" means all the provisions in this Contract so titled and or in any annexure attached so titled.

"strata unit" means a unit on a strata plan registered at the Lands Titles Office.

A reference to an Act of Parliament or to a section of an Act includes any amendment thereto or re-enactment thereof for the time being in force. Where two (2) or more persons are named in this Contract as the Vendor or the Purchaser, their liability under this Contract is joint and several. Where the day or last day for doing an act is not a business day, the day or last day for doing the act will be deemed to be the next following business day.

PURCHASER

WITNESS

DATE

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

VENDOR

WITNESS

DATE

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

**VENDOR by the Agent or Auctioneer
if sold at auction**

WITNESS

DATE

_____	_____	_____
-------	-------	-------

AUCTION CONDITIONS

The Conditions of Sale of Real Property By Public Auction, of the Society or the Real Estate Institute of South Australia exhibited prior to the Auction will apply to the Contract. If sold by auction then the deposit of 10% of the Purchase Price (or such other amount notified by the auctioneer or agent prior to the auction and advised to the Purchaser prior to the auction) is payable in cash or by cheque immediately upon the successful acceptance of the bid unless a Deposit Guarantee or Deposit Bond is accepted by the Vendor in the Vendor's discretion and delivered on acceptance of this Contract. The Vendor is not bound to accept any Deposit Guarantee or Deposit Bond.

NOTE

There is no "cooling off" period under the Act if purchased at auction or if the Purchaser bids at the auction and enters into a contract that day or if the Purchaser waives the "cooling off" period by obtaining independent legal advice and delivers a certificate from a lawyer with the offer (Section 5 of the Act). A company does not have a "cooling off" period.

PRIVACY ISSUES

The Agent may use personal information collected from this Contract to perform its obligations for the Vendor and it is agreed the Agent may disclose this information for general purposes to legal advisers, conveyancers, financial institutions, insurers, valuers and the agents of banks and financiers who may provide finance or insurance, their agents, or any other persons and for all purposes for any valuation databases. The Agent will only disclose information to other parties as required to perform their duties under this Contract, for the purposes specified above or as otherwise allowed under the Privacy Act 1988. If you would like to access this information you can do so by contacting the Agent at the address and contact numbers in this Contract. You can correct any information if it is inaccurate, incomplete or out-of-date. Real estate and tax law requires some of this information to be collected.

NOTE: ALL PARTIES SHOULD INITIAL ALL PAGES

© Corsers



FORM 1 - VENDOR'S STATEMENT

(Section 7 Land and Business (Sale and Conveyancing) Act 1994)

Contents

- Preliminary
- Part A – Parties and land
- Part B – Purchaser's cooling off rights and proceeding with the purchase
- Part C – Statement with respect to required particulars
- Part D – Certificate with respect to prescribed inquiries by registered agent
- Schedule

Preliminary

To the purchaser:

The purpose of a statement under section 7 of the *Land and Business (Sale and Conveyancing) Act 1994* is to put you on notice of certain particulars concerning the land to be acquired. If you intend to carry out building work on the land, change the use of the land or divide the land, you should make further inquiries to determine whether this will be permitted. For example, building work may not be permitted on land not connected to a sewerage system or common drainage scheme if the land is near a watercourse, dam, bore or the River Murray and Lakes.

The *Aboriginal Heritage Act 1988* protects any Aboriginal site or object on the land. Details of any such site or object may be sought from the "traditional owners" as defined in that Act.

If you desire additional information, it is up to you to make further inquiries as appropriate.

Instructions to the vendor for completing this statement:

- means the Part, Division, particulars or item may not be applicable.

If it is applicable, ensure the box is ticked and complete the Part, Division, particulars or item.

If it is not applicable, ensure the box is empty or strike out the Part, Division, particulars or item. Alternatively, the Part, Division, particulars or item may be omitted, but not in the case of an item or heading in the table of particulars in Division 1 of the Schedule that is required by the instructions at the head of that table to be retained as part of this statement.

- * means strike out or omit the option that is not applicable.

All questions must be answered with a YES or NO (inserted in the place indicated by a rectangle or square brackets below or to the side of the question).

If there is insufficient space to provide any particulars required, continue on attachments.

PART A – PARTIES AND LAND

1 Purchaser:

Address:

2 Purchaser's registered agent:

Address:

3 Vendor:

Address:

4 Vendor's registered agent:

Address:

5 Date of contract (if made before this statement is served):

6 Description of the land

[Identify the land including any certificate of title reference]

PART B – PURCHASER'S COOLING-OFF RIGHTS AND PROCEEDING WITH THE PURCHASE

TO THE PURCHASER:

Right to cool-off (section 5)

1 – Right to cool-off and restrictions on that right

You may notify the vendor of your intention not to be bound by the contract for the sale of the land UNLESS–

- (a) you purchased by auction; or
- (b) you purchased on the same day as you, or some person on your behalf, bid at the auction of the land; or
- (c) you have, before signing the contract, received independent advice from a legal practitioner and the legal practitioner has signed a certificate in the prescribed form as to the giving of that advice; or
- (d) you are a body corporate and the land is not residential land; or
- (e) the contract is made by the exercise of an option to purchase not less than 5 clear business days after the grant of the option and not less than 2 clear business days after service of this form; or
- (f) the sale is by tender and the contract is made not less than 5 clear business days after the day fixed for the closing of tenders and not less than 2 clear business days after service of this form; or
- (g) the contract also provides for the sale of a business that is not a small business.

2 – Time for service

The cooling-off notice must be served–

- (a) if this form is served on you before the making of the contract– before the end of the second clear business day after the day on which the contract was made; or
- (b) if this form is served on you after the making of the contract– before the end of the second clear business day from the day on which this form is served.

However, if this form is not served on you at least 2 clear business days before the time at which settlement takes place, the cooling-off notice may be served at any time before settlement.

3 – Form of cooling-off notice

The cooling-off notice must be in writing and must be signed by you.

4 – Methods of service

The cooling-off notice must be–

- (a) given to the vendor personally; or
- (b) posted by registered post to the vendor at the following address:

- (c) (being the vendor's last known address); or
- (c) transmitted by fax or email to the following fax number or email address:

8271 1846 or nathan@smallacombe.com.au

- (d) (being a number or address provided to you by the vendor for the purpose of service of the notice); or
- (d) left for the vendor's agent (with a person apparently responsible to the agent) at, or posted by registered post to the agent at, the following address:

89-91 Belair Road, KINGSWOOD SA 5062

(being *the agent's address for service under the *Land Agents Act 1994*/an address nominated by the agent to you for the purpose of service of the notice).

Note–

Section 5(3) of the *Land and Business (Sale and Conveyancing) Act 1994* places the onus of proving the giving of the cooling-off notice on the purchaser. It is therefore strongly recommended that–

- (a) if you intend to serve the notice by leaving it for the vendor's agent at the agent's address for service or an address nominated by the agent, you obtain an acknowledgment of service of the notice in writing;
- (b) if you intend to serve the notice by fax or email, you obtain a record of the transmission of the fax or email.

5 – Effect of service

If you serve such cooling-off notice on the vendor, the contract will be taken to have been rescinded at the time when the notice was served. You are then entitled to the return of any money you paid under the contract other than–

- (a) the amount of any deposit paid if the deposit did not exceed \$100; or
- (b) an amount paid for an option to purchase the land.

PROCEEDING WITH THE PURCHASE

If you wish to proceed with the purchase—

- (a) it is strongly recommended that you take steps to make sure your interest in the property is adequately insured against loss or damage;
- (b) pay particular attention to the provisions in the contract as to time of settlement - it is essential that the necessary arrangements are made to complete the purchase by the agreed date - if you do not do so, you may be in breach of the contract;
- (c) you are entitled to retain the solicitor or registered conveyancer of your choice.

PART C – STATEMENT WITH RESPECT TO REQUIRED PARTICULARS
(section 7(1))

To the purchaser:

*I/We,

of

being the *vendor(s)/~~person authorised to act on behalf of the vendor(s) in relation to the transaction~~ state that the Schedule contains all particulars required to be given to you pursuant to section 7(1) of the *Land and Business (Sale and Conveyancing) Act 1994*.

Date: _____ Signed: _____

PART D – CERTIFICATE WITH RESPECT TO PRESCRIBED INQUIRIES BY REGISTERED AGENT



(section 9)

To the purchaser:

I,

certify *that the responses/that, subject to the exceptions stated below, the responses to the inquiries made pursuant to section 9 of the *Land and Business (Sale and Conveyancing) Act 1994* confirm the completeness and accuracy of the particulars set out in the Schedule.

Exceptions:

Date: _____ Signed: _____

*Vendor's/Purchaser's agent

*Person authorised to act on behalf of *Vendor's/Purchaser's agent

SCHEDULE – DIVISION 1

PARTICULARS OF MORTGAGES, CHARGES AND PRESCRIBED ENCUMBRANCES AFFECTING THE LAND

(section 7(1)(b))

Note –

Section 7(3) of the Act provides that this statement need not include reference to charges arising from the imposition of rates or taxes less than 12 months before the date of service of the statement. Where a mortgage, charge or prescribed encumbrance referred to in column 1 of the table below is applicable to the land, the particulars in relation to that mortgage, charge or prescribed encumbrance required by column 2 of the table must be set out in the table (in accordance with the instructions in the table) unless—

- (a) there is an attachment to this statement and –
 - (i) all the required particulars are contained in that attachment; and
 - (ii) the attachment is identified in column 2; and
 - (iii) if the attachment consists of more than 2 sheets of paper, those parts of the attachment that contain the required particulars are identified in column 2; or
- (b) the mortgage, charge or prescribed encumbrance –
 - (i) is one of the following items in the table:
 - (A) under the heading 1. General –
 - 1.1 Mortgage of land
 - 1.4 Lease, agreement for lease, tenancy agreement or licence
 - 1.5 Caveat
 - 1.6 Lien or notice of a lien
 - (B) under the heading 33. Other charges –
 - 33.1 Charge of any kind affecting the land (not included in another item); and
 - (ii) is registered on the certificate of title to the land; and
 - (iii) is to be discharged or satisfied prior to or at settlement.

TABLE OF PARTICULARS

Column 1	Column 2	Column 3
----------	----------	----------

[If an item is applicable, ensure that the box for the item is ticked and complete the item.]

[If an item is not applicable, ensure that the box for the item is empty or else strike out the item or write "NOT APPLICABLE" or "N/A" in column 1. Alternatively, the item and any inapplicable heading may be omitted, but not in the case of-

- (a) the heading "1. General" and items 1.1, 1.2, 1.3 and 1.4; and
- (b) the heading "4. Development Act 1993" and items 4.1 and 4.2; and
- (c) the heading "5. Repealed Act conditions" and item 5.1,

which must be retained as part of this statement whether applicable or not.]

*[If an item is applicable, all particulars requested in column 2 must be set out in the item unless the Note preceding this table otherwise permits. Particulars requested in **bold type** must be set out in column 3 and all other particulars must be set out in column 2.]*

[If there is more than 1 mortgage, charge or prescribed encumbrance of a kind referred to in column 1, the particulars requested in column 2 must be set out for each such mortgage, charge or prescribed encumbrance.]

[If requested particulars are set out in the item and then continued on an attachment due to insufficient space, identify the attachment in the place provided in column 2. If all of the requested particulars are contained in an attachment (instead of in the item) in accordance with the Note preceding this table, identify the attachment in the place provided in column 2 and (if required by the Note) identify the parts of the attachment that contain the particulars.]

Column 1	Column 2	Column 3
1. General		
1.1 Mortgage of land	<p><i>Is this item applicable?</i></p> <p><i>Will this be discharged or satisfied prior to or at settlement?</i></p> <p><i>Are there attachments?</i></p> <p><i>If YES, identify the attachment(s) (and, if applicable, the part(s) containing the particulars):</i></p> <p>Number of mortgage (if registered):</p> <p>Name of mortgagee:</p>	<input type="checkbox"/> YES/NO YES/NO
<p>[Note - Do not omit this item. The item and its heading must be included in the statement even if not applicable.]</p>		
<p>1.2 Easement (whether over the land or annexed to the land) Note - "Easement" includes rights of way and party wall rights.</p>	<p><i>Is this item applicable?</i></p> <p><i>Will this be discharged or satisfied prior to or at settlement?</i></p> <p><i>Are there attachments?</i></p> <p><i>If YES, identify the attachment(s) (and, if applicable, the part(s) containing the particulars):</i></p> <p>Description of land subject to easement:</p> <p>Nature of easement:</p> <p>Are you aware of any encroachment on the easement?</p> <p>(If YES, give details):</p> <p>If there is an encroachment, has approval for the encroachment been given?</p> <p>(If YES, give details):</p>	<input type="checkbox"/> YES/NO YES/NO
<p>[Note - Do not omit this item. The item and its heading must be included in the statement even if not applicable.]</p>		
1.3 Restrictive covenant	<p><i>Is this item applicable?</i></p> <p><i>Will this be discharged or satisfied prior to or at settlement?</i></p> <p><i>Are there attachments?</i></p> <p><i>If YES, identify the attachment(s) (and, if applicable, the part(s) containing the particulars):</i></p> <p>Nature of restrictive covenant:</p> <p>Name of person in whose favour restrictive covenant operates:</p> <p>Does the restrictive covenant affect the whole of the land being acquired?</p> <p>(If NO, give details):</p> <p>Does the restrictive covenant affect land other than that being acquired?</p>	<input type="checkbox"/> YES/NO YES/NO
<p>[Note - Do not omit this item. The item and its heading must be included in the statement even if not applicable.]</p>		
<p>1.4 Lease, agreement for lease, tenancy agreement or licence</p> <p>(The information does not include information about any sublease or subtenancy. That information may be sought by the purchaser from the lessee or tenant or sublessee or subtenant.)</p>	<p><i>Is this item applicable?</i></p> <p><i>Will this be discharged or satisfied prior to or at settlement?</i></p> <p><i>Are there attachments?</i></p> <p><i>If YES, identify the attachment(s) (and, if applicable, the part(s) containing the particulars):</i></p> <p>Names of parties:</p> <p>Period of lease, agreement for lease etc: From</p> <p>to</p> <p>Amount of rent or licence fee:</p>	<input type="checkbox"/> YES/NO YES/NO
<p>[Note - Do not omit this item. The item and its heading must be included in the statement even if not applicable.]</p>		

Column 1	Column 2	Column 3
	Is the lease, agreement for lease etc in writing? If the lease or licence was granted under an Act relating to the disposal of Crown lands, specify- (a) the Act under which the lease or licence was granted: (b) the outstanding amounts due (including any interest or penalty):	

4. Development Act 1993

<p>4.1 Part 3 - Development Plan</p> <p><i>[Note - Do not omit this item. The item and its heading must be included in the statement even if not applicable.]</i></p>	<p><i>Is this item applicable?</i></p> <p><i>Will this be discharged or satisfied prior to or at settlement?</i></p> <p><i>Are there attachments?</i></p> <p><i>If YES, identify the attachment(s) (and, if applicable, the part(s) containing the particulars):</i></p> <p>Title or other brief description of zone or policy area in which the land is situated (as shown in the Development Plan):</p> <p>Is the land situated in a designated State Heritage Area?</p> <p>Is the land designated as a place of local heritage value?</p> <p>Is there a current Development Plan Amendment released for public consultation by a council on which consultation is continuing or on which consultation has ended but whose proposed amendment has not yet come into operation?</p> <p>If YES, state the name of the council:</p> <p>Is there a current Development Plan Amendment released for public consultation by the Minister on which consultation is continuing or on which consultation has ended but whose proposed amendment has not yet come into operation?</p>	<p style="text-align: right;"><input type="checkbox"/></p> <p style="text-align: right;">YES/NO</p> <p style="text-align: right;">YES/NO</p>
--	---	--

<p>4.2 section 42 - Condition (that continues to apply) of a development authorisation</p> <p><i>[Note - Do not omit this item. The item and its heading must be included in the statement even if not applicable.]</i></p>	<p><i>Is this item applicable?</i></p> <p><i>Will this be discharged or satisfied prior to or at settlement?</i></p> <p><i>Are there attachments?</i></p> <p><i>If YES, identify the attachment(s) (and, if applicable, the part(s) containing the particulars):</i></p> <p>Date of authorisation:</p> <p>Name of relevant authority that granted authorisation:</p> <p>Condition(s) of authorisation:</p>	<p style="text-align: right;"><input type="checkbox"/></p> <p style="text-align: right;">YES/NO</p> <p style="text-align: right;">YES/NO</p>
--	--	--

5. Repealed Act conditions

<p>5.1 Condition (that continues to apply) of an approval or authorisation granted under the Building Act 1971 (repealed), the City of Adelaide Development Control Act 1976 (repealed), the Planning Act 1982 (repealed) or the Planning and Development Act 1966 (repealed)</p> <p><i>[Note - Do not omit this item. The item and its heading must be included in the statement even if not applicable.]</i></p>	<p><i>Is this item applicable?</i></p> <p><i>Will this be discharged or satisfied prior to or at settlement?</i></p> <p><i>Are there attachments?</i></p> <p><i>If YES, identify the attachment(s) (and, if applicable, the part(s) containing the particulars):</i></p> <p>Nature of condition(s):</p>	<p style="text-align: right;"><input type="checkbox"/></p> <p style="text-align: right;">YES/NO</p> <p style="text-align: right;">YES/NO</p>
---	---	--

Form R3

Buyers information notice

Land and Business (Sale and Conveyancing) Act 1994 section 13A

Land and Business (Sale and Conveyancing) Regulations 2010 regulation 17

Before you buy a home there are a number of things that you should investigate and consider. Though it may not be obvious at the time, there could be matters that may affect your enjoyment of the property, the safety of people on the property or the value of the property.

The following questions may help you to identify if a property is appropriate to purchase. In many cases the questions relate to a variety of laws and standards. These laws and standards change over time, so it is important to seek the most up to date information. Various government agencies can provide up to date and relevant information on many of these questions. To find out more, Consumer and Business Services recommends that you check the website: www.cbs.sa.gov.au

Consider having a professional building inspection done before proceeding with a purchase. A building inspection will help you answer some of the questions below. The questions have been categorised under the headings **Safety**, **Enjoyment** and **Value**, but all of the issues are relevant to each heading.

Safety

- Is there **asbestos** in any of the buildings or elsewhere on the property eg sheds and fences?
- Does the property have any significant **defects** eg **cracking** or **salt damp**? Have the wet areas been waterproofed?
- Is the property in a **bushfire** prone area?
- Are the **electrical wiring**, **gas installation**, **plumbing and appliances** in good working order and in good condition? Is a **safety switch** (RCD) installed? Is it working?
- Are there any prohibited **gas appliances** in bedrooms or bathrooms?
- Are **smoke alarms** installed in the house? If so, are they hardwired? Are they in good working order and in good condition? Are they compliant?
- Is there a **swimming pool and/or spa pool** installed on the property? Are there any safety barriers or fences in place? Do they conform to current standards?
- Does the property have any **termite** or other pest infestations? Is there a current preventive termite treatment program in place? Was the property treated at some stage with persistent organochlorins (now banned) or other **toxic** termiticides?
- Has fill been used on the site? Is the soil contaminated by **chemical residues** or waste?
- Does the property use **cooling towers** or manufactured warm water systems? If so, what are the maintenance requirements?

January 2014

Enjoyment

- Does the property have any **stormwater** problems?
- Is the property in a **flood prone** area? Is the property prone to coastal flooding?
- Does the property have an on-site **wastewater treatment** facility such as a septic tank installed? If so, what are the maintenance requirements? Is it compliant?
- Is a **sewer mains connection** available?
- Are all gutters, downpipes and stormwater systems in good working order and in good condition?
- Is the property near **power lines**? Are there any trees on the property near power lines? Are you considering planting any trees? Do all structures and trees maintain the required clearance from any power lines?
- Are there any **significant** trees on the property?
- Is this property a unit on **strata or community title**? What could this mean for you? Do you understand the restrictions of use and the financial obligations of ownership? Will you have to pay a previous owner's debt or the costs of planned improvements?
- Is the property close to a hotel, restaurant or other venue with entertainment consent for live music? Is the property close to any industrial or commercial activity, a busy road or airport, etc that may result in the generation of **noise** or the **emission of materials or odours** into the air?
- What appliances, equipment and fittings are included in the sale of the property?
- Is there sufficient car parking space available to the property?

Value

- Are there any **illegal or unapproved additions**, extensions or alterations to the buildings on the property?
- How **energy efficient** is the home, including appliances and lighting? What **energy sources** (e.g. electricity, gas) are available?
- Is the property connected to SA Water operated and maintained **mains water**? Is a **mains water** connection available? Does the property have a **recycled water** connection? What sort of water meter is located on the property (a **direct or indirect meter** – an indirect meter can be located some distance from the property)? Is the property connected to a water meter that is also serving another property?
- Are there water taps outside the building? Is there a watering system installed? Are they in good working order and in good condition?
- Does the property have **alternative sources** of water other than mains water supply (including **bore or rainwater**)? If so, are there any special maintenance requirements?

For more information on these matters visit:

www.cbs.sa.gov.au

Disclaimer: There may be other issues relevant to the purchase of real estate. If you are unable to ascertain enough information about the questions raised in this form and any other concerns you may have we strongly recommend you obtain independent advice through a building inspection, a lawyer, and a financial adviser.

January 2014

Smallacombe Real Estate Pty Ltd
89-91 Belair Road
KINGSWOOD SA 5062
Tel: 8274 8741 Fax: 8271 1846
email: nathan@smallacombe.com.au
RLA: 1520



" E "

1/1/2014 / © Lawsoft Pty Ltd

RESIDENTIAL SALES AGENCY AGREEMENT

The Vendor appoints the Agent to sell the property. The Agent accepts the appointment and the parties agree that the appointment is subject to the terms as set out herein.

VENDOR _____

E-mail 1 _____

E-mail 2 _____

ABN _____

Mobile 1 _____

Mobile 2 _____

Other _____

AGENT

Smallacombe Real Estate Pty Ltd trading as Smallacombe Real Estate Pty Ltd, 89-91 Belair

Road, KINGSWOOD SA 5062

E-mail nathan@smallacombe.com.au

ABN 78 008 006 997

Mobile _____

PROPERTY _____

CERTIFICATE OF TITLE / CROWN LEASE Volume / Folio _____

(Detail if available)

VENDOR'S SELLING PRICE

Price \$ _____

AGENT'S ESTIMATE OF PRICE

\$ _____

ADVERTISING

The law sets a Prescribed Minimum Advertising Price as the higher of the Vendor's or Agent's Price above. No advertising can be less than that and any advertising in a range used in marketing the upper limit must not be more than the Prescribed Minimum Advertising Price plus a maximum of 10%. The Agent's estimate above is the Agent's genuine estimate based on comparable sales and market research and is not a valuation. The Vendor may request a written valuation be obtained from a valuer at the Vendor's cost.

MARKET WITH A RANGE and/or

\$ _____ to \$ _____

MARKET WITH A FIXED PRICE

\$ _____

MARKET WITH NO PRICE

Yes

METHOD OF SALE

(auction, listed for price, expressions of interest, tender)

AUCTION

Proposed Auction Date _____ time _____

Location

on site or _____

The Reserve Price at auction (by law) must not be more than the Vendor's Selling Price and 10%.

SETTLEMENT DATE

30 days

other _____

PREVIOUS AGENTS

No Yes

The Vendor confirms the Property was previously listed for sale by:

Agent _____

Sole Agency expired

No Yes

Written termination to previous Agent(s) given

No Yes Vendor to attend to

Vendor has signed a notice and Agent to send for Vendor

TERM OF AGENCY

The agency will be for 90 days and is a sole agency except as detailed below. If acting for the owner of a land development the agency is _____ and continues as a general agency after that until notice of not less than 1 month is given.

Vendor does not retain the right to sell privately

Conjunctual and or General Agency

No Yes

CHATELS (IF ANY) INCLUDED WITH PROPERTY

Fixed Floor coverings

Light Fittings

Window Treatments

Compliant Smoke Alarm

Solar Electrical System

Consumer Credit Chattels

No

Yes Details (if any) _____

Security System

No

Yes (Rental Details) _____

Other

EXCLUSIONS

Other property (fixtures and fittings and other property) not included in the sale *(use an Annexure as necessary)*

Vendor's

Occupier's

Personal effects

Non-standard telephones

Loose floor coverings

Furniture

Dishwasher

Pot plants and all garden Ornaments

Other as detailed or attached

TENANCIES No Yes

Tenant _____

Managing Agent _____

Commencement of Tenancy _____ End of Tenancy / Date _____

Rental \$ _____ week f/night month year

Fixed term Periodic Bond with Tribunal No Yes Amount \$ _____

Upon sale Vendor to advise tenants No Yes

Sale is to be subject to existing tenancy continuing No Yes

KNOWN ENCROACHMENTS AND FENCES NOT ON BOUNDARIES (if any)

ALTERATIONS AND IMPROVEMENTS ERECTED WITHOUT CONSENT ("notified works" if any)

Swimming Pool and Spa Compliance Not Applicable Pool on Property Pool Complies

The Vendor must by law at or before settlement ensure that the swimming pool and spa ("Pool") complies with all Pool safety requirements. For Pools constructed pre June 1993 refer *Development Act 1993* and Ministerial Specification SA 76D and safety barriers. If constructed after 1993 refer to the *Development Act 1993* and Regulations and Australian Standards AS 1926. The Vendor will produce and/or obtain a pool compliance certificate prior to settlement if necessary or required for settlement and so requested by the Purchaser.

If works are required detail the works

GST ISSUES RELATING TO THE PROPERTY

The Vendor advises the Agent that:

The Vendor is or is required to be registered for GST No Yes

The Vendor will obtain advice from their accountant regarding GST issues.

The Agent is not advising on GST.

SPECIAL TERMS (if any)

PRIVACY STATEMENT

The Agent used personal information collected from you to act as your Agent and to perform its obligations under this Agreement. The Agent may also use such information collected to promote the services of the Agent and/or seek potential clients. The Agent may disclose information to other parties including media organizations on the internet to potential tenants, or to clients of the Agent both existing and potential as well as tradespersons, strata corporations, government and statutory bodies and to other parties as required by law. The Agent will only disclose information in this way to other parties as required to perform their duties under this Agreement for the purposes specified above or as otherwise allowed under the Privacy Act 1988. If you would like to access this information you can do so by contacting the Agent at the address and contact numbers in this Agreement. You can correct any information if it is inaccurate, incomplete or out-of-date. Real estate and tax law requires some of this information to be collected.

VENDOR

DATED

The Vendor appoints the Agent

AGENT

DATED

The Agent hereby accepts the appointment

ACKNOWLEDGEMENT

The Vendor acknowledges receipt of the following forms prior to entering into this Agency

- Yes* R1 Prescribed Form Rights and Obligations in Agency Form
- Yes* R2 Prescribed Form Agents Disclosure of Rebates and Benefits Form (if applicable)
- Yes* Agent's report on comparable sales and research as to Price
- Yes* General Conditions for Residential Agency Agreement (attached) of The Society of Auctioneers and Appraisers (SA) Incorporated - which are and form terms of this Agreement.

* *tick if applicable*

PROPERTY PARTICULARS

Approximate Age of Building _____
 Council Area _____
 Council Rates \$ _____
 Water Rates \$ _____
 Sewer Rates \$ _____
 Emergency Services Levy \$ _____
 Land Tax \$ _____

Insurance

The Vendor agrees to immediately advise its insurance company of the agency and will obtain increased cover (if necessary) to cover invitees and any claims arising from open inspections and auctions (refer clause 11)

Yes

Strata / Community Title No Yes

Strata Title Community Title

Strata / Community Manager _____

Strata / Community Levy \$ _____

Other Details _____

SERVICES TO PROPERTY

Mains Water Supply	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Sewer	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Septic	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Common Effluent	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Hot Water System	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Gas	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Electric	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Solar	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Instant	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Storage	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Ceiling	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Mains	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Gas	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Mains	<input type="checkbox"/> No	<input type="checkbox"/> Yes
LPG	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Power	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Telephone	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Cable TV / Satellite	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Owned or leased	_____	
Other	_____	

IMPROVEMENTS

Heating	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Gas	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Open Fires	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Combustion	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Radiant	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Detail	_____	
Air Conditioning	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Ducted R/C	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Ducted Evaporative	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Wall/Window unit	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Ceiling Fan	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Other	_____	
Water Treatments	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Softener	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Filter	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Watering System	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Fully Reticulated Grounds	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Automatic Control	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Insulation	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Ceiling	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Exterior Walls	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Type	_____	
Electronic Security	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Rented	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Monitored	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Details	_____	
Security Hardware	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Deadlocks	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Sensor Lights	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Window Locks	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Details	_____	
Swimming Pool	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Concrete	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Fibre Glass	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Gas Heated	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Solar	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Salt	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Safety Compliant	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Safety Upgrade Needed	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Pool Equipment included	_____	
Details	_____	
Spa	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Tennis Court	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Lights	<input type="checkbox"/> No	<input type="checkbox"/> Yes
White Ant/Termite Treatment (recent)	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Details	_____	
Electrical	_____	
Hard Wired Smoke Alarm	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Safety Switches	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Surge Arrestors	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Solar	_____	
Electrical Panels	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Hot Water	<input type="checkbox"/> No	<input type="checkbox"/> Yes

This form is not and does not form part of the Residential Sales Agency Agreement or its terms. This information is for the Agent from the Vendor as to the particulars of the property to assist the Agent in marketing once a Residential Sales Agency Agreement is



GENERAL CONDITIONS FOR RESIDENTIAL AGENCY AGREEMENT

1 AUCTION (if applicable)

The Agent will offer the Property for sale by public auction at the time and in the manner detailed herein and or as further detailed in any auction direction forms of the Society or otherwise in writing.

2 AGENTS AUTHORITY

- 2.1 The Vendor authorises the Agent to accept the deposit or other moneys due to the Vendor under the contract for the sale of the Property and the Agent will hold any moneys received in accordance with the provisions of the Land Agents Act 1994. The Agent will be entitled to receive a deposit guarantee in lieu of a cash deposit.
- 2.2 The Vendor irrevocably authorises the Agent to transfer to itself from trust all professional fees and expenses and all claimed interest and costs upon settlement.
- 2.3 The Agent is not authorised to sign a Contract for the Sale of the Property unless expressly instructed and authorised in writing by the Vendor to do so either prior to auction or otherwise for a Contract by private treaty.

3 FORM OF AGENCY

- 3.1 The Agent will be the Sole Agent (unless the initial appointment is as a General Agency) for the sale of the Property during the Term. The Agent may determine this Agency Agreement at any time.
- 3.2 The Vendor will not be entitled to withdraw the Sole Agency granted during the term agreed unless the Agent is in fundamental breach of this Agreement and is not using its reasonable endeavours to market the Property after prior written notice from the Vendor. If there is a dispute as to this clause and entitlements the parties will arbitrate the dispute pursuant to clause 15. If the Vendor was not entitled to terminate then the Agent will be paid damages by the Vendor for wrongful termination to be determined by the arbitrator.
- 3.3 A General Agency will entitle the Agent to promote the Property and introduce or procure a Purchaser for the Property and the Vendor will in all things assist the Agent in the Agent's endeavours to sell the Property.
- 3.4 The Vendor warrants that no other agent will be appointed during the period of any Sole Agency unless otherwise specified herein.

4 WARRANTY BY AGENT

The Agent will at all times act in the best interests of the Vendor and comply with the provisions of the Act and the ethics of the Society.

5 DEEMED SALE

- 5.1 The Agent will be deemed to have effected a sale of the Property; if during the term of the Agency the Agent introduces a prospective Purchaser who does not settle on the Property as a result of the Vendor failing to enter into a contract for an amount at or above the Vendor's Selling Price in the Schedule or at (or more than) the price later agreed to be offered or the auction reserve price (for whatever reason), or failing to use its best endeavours as required by Clause 13 of this Agreement; or
 - 5.2 if the Vendor sells to a Purchaser not introduced by the Agent which sale is entered into during the Sole Agency, and which sale is not effected by the Vendor exercising its right to sell privately; or
 - 5.3 if during the term of the Agency the Agent introduces a Purchaser who enters into a contract after the expiry of the Sole Agency but before the Vendor enters into another Sole Agency with another Agent.
- 6 In the event there is a transfer of the beneficial ownership of the Property to a Purchaser introduced or procured by the Agent and the transfer is effected by some means other than a transfer of legal ownership from the Vendor, then that transfer of the beneficial interest will be deemed a sale effected by the Agent and in particular but without limiting the effect thereof:
- 6.1 in the event one of the Vendors is a corporation, a transfer of the shares of that corporation giving control to another will be deemed a transfer of that Vendor's interest in the Property;



6.2 in the event one of the Vendors owns its interest in the Property as trustee, a transfer of the beneficial interest of that trust will be deemed to be a transfer of that Vendor's interest in the Property; and the Agent's Professional Fee will be calculated by reference to the 'Professional Fee' in the Schedule and calculated to the value of the Property to the extent of the beneficial interest transferred.

7 TRANSFER NOT FOR MONEY

Should the consideration to be given by a Purchaser be expressed other than in monetary terms, the Professional Fee will be calculated by reference to the scale or amount under 'Professional Fee' in this Agreement.

8 VALUATION

For the purposes of clauses 6 and 7 above and in the absence of agreement between the parties as to the value of the Property, either party may request the President of the Society to appoint a valuer to ascertain the value of the Property. The costs of the valuation will be borne equally by the parties.

9 EXPENSES AND PROFESSIONAL FEE

- 9.1 The Agent is authorised by the Vendor to incur the expenses set out in this Agreement. The Agent may expend more on one expense than another in the Agent's discretion but such that the total is not exceeded without the consent of the Vendor.
- 9.2 The Vendor will pay the amount of the expenses and Professional Fee within 7 days after invoice, or at settlement whichever is the earlier, and in the event they are not paid then the Agent may issue a written notice by letter or other form requiring immediate payment.
- 9.3 In the event any moneys demanded by a notice issued pursuant to clause 9.2 are not paid within the time stipulated in the notice, those moneys will then upon such default become a charge over the Property and any other real property the Vendor may own from time to time until paid in full to the Agent. The Agent will not be entitled to caveat the Property or such other real property owned by the Vendor to secure payment of the moneys due under the charge herein granted but may apply to register a mortgage over any land owned by the Vendor to secure the charge and the Vendor will consent and not object if the debt is due and outstanding even pending any dispute between the parties. All costs incurred by the Agent in collecting the moneys demanded in the notice issued pursuant to clause 9.2 including stamp duty and all legal costs of any applications and recovery costs on a solicitor client basis will be payable by the Vendor and the Agent will be entitled to \$300 for each notice issued.
- 9.4 The Agent may receive rebates on advertising and associated expenses from 3rd parties as disclosed under the Act and the Vendor acknowledges and agrees the Agent will not be required to account for any disclosed rebates. The Vendor acknowledges any rebates are in addition to the Professional Fees payable. Any prepaid expenses not expended by the settlement date will be repaid to the Vendor.
- 9.5 Notwithstanding the above, the Vendor agrees to pay all expenses and Professional Fees no later than settlement if the property is sold.
- 9.6 The Vendor will pay interest on any outstanding monies payable to the Agent calculated at 10% per annum.
- 9.7 In the event GST is imposed on any service in respect of this Agency Agreement, any amount payable by the Vendor to the Agent or a third party (for all other goods and services to include advertising) in respect of those services will be increased by the rate at which GST is imposed at that time. The Vendor will pay the increased amount to the Agent at the same time payment is due under this Agency Agreement to the Agent for the services and the Agent will render a tax invoice.

10 FORM OF CONTRACT

The Agent will offer the Property for sale in the form of the contract authorised and approved by the Society as varied from time to time.



11 INDEMNITY TO AGENT

The Vendor indemnifies the Agent against all costs, expenses, damages and loss (including any loss of fees) suffered by the Agent and holds harmless the Agent against claims, demands, actions and losses arising from the Agent acting for the Vendor save and except to the extent that the costs, expenses, damages and losses are a result of the negligence of the Agent.

The Vendor indemnifies and holds harmless the Agent for any loss or damage whatsoever to the Property or to any goods and chattels of the Vendor or any third party in or on the Property arising from the act or omission of any third party during any inspection of the Property or during the auction. The Vendor further warrants the Vendor has or will provide suitable insurance cover for the Property, the Vendors (or any tenant's) personally therein and for all persons invited onto the Property for the purpose of offering the Property for sale directly or indirectly.

12 VENDOR'S WARRANTIES

12.1 The Vendor warrants the Vendor has good authority and full capacity to sell the Property.

12.2 The Vendor warrants all information detailed in this Agency Agreement and otherwise provided to the Agent is accurate and correct. The Vendor will promptly advise the Agent of any changes to the information given which comes to the Vendor's knowledge or attention.

12.3 The Vendor warrants there is no other information material to the sale which the Vendor is aware of and should be brought to the attention of the Agent and all equipment and operating fixtures are in good working condition.

13 BEST ENDEAVOURS

In the event the Agent introduces a prospective Purchaser offering to purchase the property at or above the price to be offered, the auction reserve price or such lower price as may be agreed with the Vendor, the Vendor undertakes to enter into a contract of sale of the Property. The Vendor further undertakes to observe, perform and carry out any contract of sale of the Property effected by the Agent and will use its best endeavours to ensure that settlement occurs.

14 TERMINATION

Where the Vendor has contracted to purchase another property marketed by the Agent and that contract is terminated for any reason the Vendor may withdraw the Property from sale and terminate this Agency Agreement.

15 ARBITRATION

Disputes involving the sum of \$40,000 or less will be determined by an independent arbitrator appointed by the President of the Law Society at the request of either party. The determination of the arbitrator will be final and binding between the parties and the provisions of the Commercial Arbitration Act will apply. The costs of the arbitration will be paid by the party/s as directed by the arbitrator. The arbitrator will advise of procedures and will request payment of reasonable fees prior to acting and in default of payment may refuse to act. The parties will have no right of appeal under section 38(2) or to apply with respect to a question of law under section 39(1) of the Commercial Arbitration Act.

16 AFTER AUCTION AGENCY BECOMES STANDARD PRIVATE TREATY AGENCY

If this Agency is for and specifies an Auction Sale Program then immediately after the Auction or if the property is withdrawn from Auction by the Vendor and is not an Auction Agency then this Agency Agreement automatically becomes a standard Agency Agreement for Sale by Private Treaty and is not an Auction Agency Agreement from that time onwards.



INTERPRETATION

Unless this Agency Agreement otherwise requires-

'a Contract' means the sale agreement between a transferee and the Vendor for the transfer of the Property. **'Corporation'** means a corporation as defined under the Corporations Act. **'documentation fees'** means fees charged by the Agent for and incidental to opening files and preparing documents for the Vendor. **'expenses'** means those costs set out above in Vendors Marketing Costs to include any interest, costs and other expenses properly payable in addition to any GST payable for those services. **'Statutory Forms'** means and includes all forms detailing the property searches required to be served and delivered under the Land and Business (Sale & Conveyancing) Act 1994 (as amended) or the Act. **'General Agency'** means more than one Agent may be appointed and the Vendor may act. **'GST'** means A New Tax System (Goods and Services Tax) Act 1999 or any other Act or Regulation amending, replacing or directly associated with that Act and any goods and services or similar tax imposed thereby. **'land'** and **'Property'** means the freehold land (including a strata unit), leasehold land, or community title, together with all buildings and other improvements thereon the subject of this Agency Agreement. **'Professional Fee'** means that amount agreed as the Professional Fee calculated on the gross price excluding any GST and includes any Administration Fee payable and all expenses payable and any interest accrued. **'Purchaser'** includes the Purchaser's assignee or nominee disclosed. **'Services'** has the same meaning as supply for all purposes of the GST including supply as defined therein and to mean and include Professional Fees and all other fees and costs payable under this Agency Agreement. **'Settlement'** means the date referred to in any contract for the sale of the Property or upon a transfer of the Property. **'Sole Agency'** means the Agent appointed is the only appointed Agent for the period. **'the Agent'** means the Agent registered under the Land Agents Act 1994 and any employee or representative of the Agent. **'the Act'** means the Land Agent's Act 1994 as amended from time to time and or the Land & Business (Sale and Conveyancing) Act 1994. **'the Society'** means the Society of Auctioneers and Appraisers (SA) Incorporated. A reference to an Act of Parliament or to a section of an Act includes any amendment thereto or re-enactment thereof for the time being in force. Where two (2) or more persons are named in this Agency Agreement as the Vendor or the Agent their liability under this Agency Agreement is joint and several.

© Corsers

Form R1

Sales Agency Agreements

Rights & obligations of vendor

Land and Business (Sale and Conveyancing) Act 1994 s20(2)

An agent must give you, the vendor, this guide outlining your rights and obligations **before** making a sales agency agreement with you.

Choosing an agent

Agents, including companies that are agents, must be registered under the *Land Agents Act 1994*. You can check whether they are registered on the Consumer and Business Services website: www.cbs.sa.gov.au.

Choosing the best real estate agent to negotiate the sale of your property is important. The services provided and the associated costs may vary significantly so it is a good idea to obtain advice from several agents before signing an agency agreement. You should ask them for their proposed marketing plan — what they will do to market your property and what will be your financial contribution to the marketing of the property.

It may not be in your best interests to choose the agent who provides you with the highest estimated sale price of your property because this price may be unachievable and could delay the sale.

When the agent provides you with an estimated sale price of your property you should ask how they have determined the estimated sale price. It is a requirement to include recent sales figures for comparable properties in your area and any other information the agent relies upon for their genuine estimate of the selling price into any sales agency agreement you choose to sign with an agent. You can also engage a qualified valuer to prepare an independent valuation if you so choose.

Role of the agent

When you list your property with an agent, you are employing them to sell your property for a price that is acceptable to you. The agent should always act in your best interest and engage in good business practices. The agent will charge a fee for their services either in the form of a commission, a set fee or a combination of both.

The agent should outline a marketing plan for your property and undertake various searches. You can generally expect the agent to:

- advise on a method of sale
- advertise and market the property
- organise and attend open house and other inspections
- attract prospective buyers

Role of the agent (cont.)

- communicate offers to you
- organise an auction, if this is the preferred method of sale
- arrange the signing of the contract of sale
- assist in the preparation of the disclosure statement to be given to the purchaser.

The sales agency agreement

An agent must not act for you unless they have been authorised by a sales agency agreement that is dated and signed by you, the vendor, and the agent. This contractual agreement sets out the rights and obligations of both you, the vendor, and the agent. A copy must be given to you when you sign it or at a later time within 48 hours as agreed by you and the agent.

Every sales agency agreement for residential property must include:

- a description of the land that is the subject of the agreement
- your full name and that of the agent
- the agent's registration number
- the chattels that are included in or excluded from the sale
- the services that will be provided by the agent or another person for which you will be separately charged (e.g. advertising and marketing)
- the nature, source and amount of rebates that the agent expects to receive in relation to separately charged services (e.g. advertising and marketing)
- details of the circumstances in which the agent will be entitled to receive commission or fees for the sale of the land, and also the circumstances in which the sale may not be attributable to the agent
- the duration of the agency agreement (maximum term is 90 days for sale of residential land)
- the agent's genuine estimate of the sale price of the property (a single figure) ,
- the selling price you are seeking or would accept (a single figure)
- comparable sales data and any other information the agent relies upon to support their estimate
- the manner of sale of the property (e.g. auction, private treaty or tender)
- your rights to terminate the agreement
- whether the agreement is a sole agency agreement
- whether the agent has authority to accept an offer for the property on your behalf
- a term warranting that the agent will comply with the Act and will act in your best interests.

Advertising and marketing

The sales agency agreement must specify all services that will be separately charged for, including advertising and marketing, and whether those services will be provided by the agent or by a third person. Amounts to be charged for the services and the time for payment must also be specified.

You should make sure you have a clear understanding of how the agent intends to market your property and what this will cost you. The cost of advertising and marketing a property varies significantly depending on the type of advertisement and where the advertisement will appear, e.g. the internet, The Advertiser. Some agents may charge a low commission rate but charge more for marketing and advertising your property.

You may be charged the up front cost of advertising with a particular publication, but agents commonly receive a rebate as a result of placing large numbers of advertisements.

You should make sure you ask the agent questions about the amount of advertising rebate that the agent expects to receive. You are within your rights to negotiate with the agent to receive some benefit from those rebates.

You should determine whether the amount you are paying for advertising and marketing a property is reasonable. The agent must disclose the nature, source and, if known, the amount or value of any rebate, discount, refund or other benefit they expect to receive in relation to these services. You can also include in a sales agency agreement a clause requiring the return to you of some or all of the rebate when it has been paid to the agent.

You must also ensure that any information provided to the agent about your property is factual and up-to-date. If a buyer can show that advertising of a property is false or misleading, the buyer may be able to take legal action. Under s36 of the Act, significant penalties apply to making false or misleading representations for the purpose of inducing another person to purchase a property.

Duration of the agreement

You should consider the length of the sales agency agreement because you may be obliged to continue under it even if you are unhappy with the services provided by the agent.

Under the Act, the maximum duration of a sales agency agreement is 90 days.

Towards the end of the sales agency agreement, you and your agent may decide to extend the sales agency agreement or enter into a subsequent or new sales agency agreement.

Price

In a sales agency agreement the agent must specify the agent's genuine estimate of the selling price of the property. It is important to note that this genuine estimate is not a valuation but rather the agent's best estimate of the likely price you could expect based upon a whole range of factors – it is in no way any guarantee that you will receive that price in the market place. The price must be expressed as a single figure without any qualifying word or symbols (eg \$300,000). In addition, the agent must provide you with details of sales of comparable land and any other information on which the agent will rely in support of their genuine estimate of the selling price.

The agreement must also specify a single figure sale price for the property that you would find acceptable to ensure any price advertising is not misleading or deceptive. If you are auctioning your property, you cannot increase your acceptable price in the agreement.

To help you decide on a price you should:

- consider the agent's estimated selling price
- research sale prices in your area
- consider seeking an independent valuation by a qualified valuer
- not allow emotion to cloud your judgment.

Having a realistic idea of the likely sale price of your property will help you avoid both disappointment and the risk of purchasing another property based on an unrealistic expectation of the sale price of your own property.

Prescribed minimum advertising price

The price that you and your agent list in the sales agency agreement will affect the price for which the property can be advertised. For example, if you advertise a likely sale price for your property, the price cannot be lower than the higher of the:

- amount you specify as acceptable in the sales agency agreement and
- amount the agent has estimated as the sale price.

Reserve price

The reserve price for the land must not, at any time before or during the auction, be set at an amount exceeding 110% of the amount that you have specified as your acceptable price in the sales agency agreement. For example, if you specify \$400,000 in the sales agency agreement as your acceptable selling price, then the reserve cannot be more than \$440,000.

Manner of sale

The sales agency agreement must specify the manner of the sale.

The most common ways to sell a property are by auction or private treaty. Your agent should advise you of the most appropriate way to sell your property. You should ask the agent about the advantages and disadvantages of both methods of sale before you decide what to do.

Termination of the agreement

A sales agency agreement must specify your rights to terminate the agreement. An agreement may limit your rights in this respect to certain circumstances, or provide for costly termination fees. An agreement may also deem termination to occur in certain circumstances; for example, if you sell the property privately, or through another agent. In such circumstances, depending on the agreement, the first agent may still be entitled to a commission.

You should seek independent legal advice if you are unsure about your rights or the consequences of termination of an agreement.

Sole agency agreement

The agreement must specify whether the agreement is a sole agency agreement.

Sole agency agreements are the most common form of agreement in South Australia. Your agent will most likely suggest a sole agency agreement, particularly where sale is to be by auction.

Under a sole agency agreement the agent has the exclusive right to sell the property and is entitled to receive the agreed commission whether or not they are the one to actually sell the property. In other words, if you sell the property yourself you will generally still have to pay the agent their commission. This will depend on the wording of the agreement.

Authority to accept an offer

The sales agency agreement must specify whether or not the agent has authority to accept an offer on your behalf, for example when circumstances make it difficult to contact you at the time an offer to buy the property is made.

If an agent signs a contract of sale on your behalf, then the contract is binding on you. So, if you think it is appropriate for the agent to be able to accept an offer on your behalf then the contract should clearly state when and in what circumstances you consider it acceptable for the agent to accept an offer.

If, on the other hand, you retain the right to accept an offer yourself, then your property cannot be sold unless you agree to the offer.

Disputes and complaints

If you have a dispute with an agent you should first try to resolve it with the agent. If that is unsuccessful, you can contact Consumer and Business Services on **131 882** for advice

Disclaimer: This publication is a plain language guide to your rights and responsibilities. It must not be relied upon as legal advice. For more information please refer to the appropriate legislation or seek independent legal advice.

u D u

REAL ESTATE AWARD

PART 1 - APPLICATION AND OPERATION OF AWARD

OPDATE 01:07:2001 on and from

CLAUSE 1.1 - TITLE

OPDATE 01:07:2001 on and from

This Award is known as the Real Estate Award.

CLAUSE 1.2 - ARRANGEMENT

OPDATE 01:07:2001 on and from

This Award is arranged as follows:

1.2.1 By Part

Subject matter

Clause number

Part 1 - Application and operation of award

Title	1.1
Arrangement	1.2
Scope, Persons Bound and Locality	1.3
Commencement Date of Award and Duration	1.4
Definitions	1.5
Continuous Service	1.6
Reserved Matters	1.7

Part 2 - Award flexibility

Enterprise Flexibility	2.1
------------------------	-----

Part 3 - communication, consultation and dispute resolution

Introduction of Change	3.1
Dispute/Grievance Avoidance/Settling Procedures.	3.2

Part 4 - Employer and employees' duties, employment relationship and related arrangements

Anti-Discrimination	4.1
Letter of Appointment	4.2
Termination of Employment	4.3
Redundancy	4.4
Transmission	4.5
Service Provisions (Termination, Change and Redundancy)	4.6

Part 5 - wages and related matters

Classification of Employees	5.1
Wage Rates	5.2
Methods of Remuneration	5.3
Vehicle Allowance	5.4
Superannuation	5.5
Expenses	5.6

AN150126 – Real Estate Award

This AIR consolidated award reproduces the former State award Real Estate Award as at 27 March 2006.

About this Award:

Former award of the Industrial Relations Commission of South Australia.

Printed by authority of the Commonwealth Government Printer.

Disclaimer:

Please note that this consolidated former State award is believed to be accurate but no warranty of accuracy or reliability is given and no liability is accepted for errors or omissions or loss or damage suffered as a result of a person acting in reliance thereon.

Subject matter	Clause number
-----------------------	----------------------

Part 6 - Days off

Days Off.	6.1
-----------	-----

Part 7 -Leave of absence and public holidays

Annual Leave	7.1
Sick Leave	7.2
Bereavement Leave	7.3
Parental Leave	7.4
Carer's Leave	7.5
Public Holidays	7.6
Long Service Leave	7.7

Part 8 - Training and related matters

Training Wage Arrangements	8.1
----------------------------	-----

Part 9 - Award compliance and association related matters

Posting of Award	9.1
------------------	-----

Schedules

Wage Rates and Vehicle Allowance	Schedule 1
Classification Structure Definitions	Schedule 2
Pro Forma Letter of Appointment (LOA)	Schedule 3
Pro Forma Variation to Letter of Appointment (LOA) .	Schedule 4
Training Wage Arrangements	Schedule 5
Transition and Summary of Allowable Debits.	Schedule 6
Summary of What Must be in the Letter of Appointment	Schedule 7
Clauses Applying to Employees Employed Prior to 1/07/2001	Schedule 8

1.2.2 In Alphabetical Order

Subject matter	Clause number
-----------------------	----------------------

Annual Leave	7.1
Anti-Discrimination	4.1
Arrangement	1.2
Bereavement Leave	7.3
Carer's Leave	7.5
Classification of Employees	5.1
Classification Structure Definitions	Schedule 2
Clauses Applying to Employees Employed prior to 1/07/2001	Schedule 8
Commencement Date of Award and Duration	1.4
Continuous Service	1.6
Days Off	6.1
Debits - Summary of Definitions.	Schedule 6 1.5
Dispute/Grievance Avoidance/Settling Procedures	3.2
Enterprise Flexibility	2.1
Expenses	5.6
Introduction of Change	3.1
Letter of Appointment.	4.2
Letter of Appointment (LOA) - Pro Forma	Schedule 3
Letter of Appointment (LOA) - Pro Forma Variation	Schedule 4
Letter of Appointment - Summary of What Must be in the	Schedule 7

Subject matter	Clause number
Long Service Leave	7.7
Methods of Remuneration	5.3
Parental Leave	7.4
Posting of Award	9.1
Public Holidays	7.6
Redundancy	4.4
Reserved Matters	1.7
Scope, Persons Bound and Locality	1.3
Service Provisions (Termination, Change and Redundancy)	4.6
Sick Leave	7.2
Superannuation	5.5
Termination of Employment	4.3
Title	1.1
Training Wage Arrangements	Schedule 5
Transmission	4.5
Vehicle Allowance	5.4
Wage Rates	5.2
Wage Rates and Vehicle Allowance	Schedule 1

CLAUSE 1.3 - SCOPE, PERSONS BOUND AND LOCALITY

OPDATE 01:07:2001 on and from

This Award applies throughout the State of South Australia to the industry of the occupations of Qualified Sales Representatives and/or Trainee Salespersons and/or Registered Managers within the meaning of the *Land Agents Act 1994* or any person who is permitted under South Australian law to represent the employer in their dealings with the buying or selling public of real estate, whether as employees or employers, but excludes:

1.3.1 any person employed exclusively in the sale of livestock;

1.3.2 any person employed for the major or substantial part of their time in the leasing or management of real property and/or the collection of rent;

1.3.3 any person employed for the major or substantial part of their time in any clerical capacity;

1.3.4 any person who is for the time being subject to an enterprise agreement within the meaning of the *Industrial and Employee Relations Act 1994*; and

1.3.5 any person employed for the major or substantial part of their time in the auctioning of property.

CLAUSE 1.4 - COMMENCEMENT DATE OF AWARD AND DURATION

OPDATE 01:07:2001 on and from

1.4.1 This Award operates on and from 1st July, 2001 and continues in force until amended, rescinded or replaced.

CLAUSE 1.5 - DEFINITIONS

OPDATE 01:07:2001 on and from

1.5.1 "**Act**" means the *Industrial and Employee Relations Act 1994*.

1.5.2 "**Advertising Rebate**" or similar terms means the rebate or discount achieved and received by the employer from any newspaper (eg the Advertiser or Messenger Press) for advertising real estate or businesses for sale in that particular newspaper.

- 1.5.3 "**Agency Agreement**" means a legally binding agreement setting out the specific fees and expenses and all essential matters of authorisation of the Employer to act for a Principal (Vendor or Purchaser).
- 1.5.4 "**Allowable Debit/s**" or like phrases means the only debit/s allowed by this Award that can be debited either from the employer's commission or the employee's commission/incentive.
- 1.5.5 "**Appraisal Fee**" means the amount paid to the employer by the client to meet the cost of any property appraisal.
- 1.5.6 "**Association**" means the Real Estate Salespersons' Association of South Australia (RESA).
- 1.5.7 "**Award**" means the Real Estate Award.
- 1.5.8 "**Client**" means the person(s), corporation or entity, with whom the employer or the employee is conducting Real Estate business in relation to the employer's business.
- 1.5.9 "**Contact**" means the person/s, corporation or entity with whom the employer and/or the employee has formed a relationship based on regular communication and/or a data base compiled and maintained by either party.
- 1.5.10 "**Debit/Credit System**" or other like terms means that the employee will be remunerated (in part or whole) by commission/incentive according to an agreed calculation as detailed in the Letter of Appointment, which may include either the employer's commission or the employee's commission being debited with certain agreed and allowable debits.
- 1.5.11 "**Effected Sale, Sale Effected, Settlement**" and expressions of similar character means a sale in respect of which a contract of sale has been fully executed and signed by the parties and all conditions of the contract have been complied with and the employer has received the professional fee.
- 1.5.12 "**Employee's commission**" means the agreed percentage of the employer's commission, which is paid to the employee minus any agreed allowable debits.
- 1.5.13 "**Employee's incentive**" means either the agreed percentage of the employer's commission, minus any agreed allowable debits, which is paid to the employee or the granting of some benefit (either money or in kind) after some agreed target has been met.
- 1.5.14 "**Employer's Commission**" means the professional fee received by the Employer in direct consequence of the services performed by the employee for and on behalf of the employer but does not include GST.
- 1.5.15 "**Industrial Commission**" means the Industrial Relations Commission of South Australia [**IRCSA**].
- 1.5.16 "**IRCSA**" means the Industrial Relations Commission of South Australia.
- 1.5.17 "**Listing Fee**" means the amount (as agreed in the Letter of Appointment) to be paid to an employee as a commission/incentive payment for the action of securing for the Employer an Agency Agreement where subsequently the professional fee is received.
- 1.5.18 "**Listing/s**" means property that has been listed for sale, with the execution of a legally binding written authority (Agency Agreement) from the registered proprietor(s).
- 1.5.19 "**Mutual Agreement or Agreement**" means an agreement without duress.

1.5.20 "**Ordinary Earnings**" means the earnings of the employee including wages commission/incentive payments but does not include allowances or expenses.

1.5.21 "**Professional Fee**" means the commission received by the employer in accordance with the terms of the Agency Agreement.

1.5.22 "**Property**" means the subject of an Agency Agreement, which may also include a business, livestock, goods or chattels.

1.5.23 "**Purchaser Contribution**" means payment made or promised by the client in any Agency Agreement to meet the costs or expenses incurred by the employer or employee in the course of acting for a purchaser in the attempt to purchase land or business.

1.5.24 "**REEF**" means The Real Estate Employers' Federation or the Federation.

1.5.25 "**RESA**" means the Real Estate Salespersons' Association of South Australia.

1.5.26 "**Reversal Rate**" means that it is intended that the employee will be paid by "commission only", but at the same time a wage and commission/incentive rate (the reversal rate) has been agreed in advance in the event that the employee has to revert from "commission only" to wage and commission/incentive in accordance with 5.3.2 or 5.3.3.

1.5.27 "**Search Fees**" means the expense of providing prescribed enquiries as defined under the Land and Business (Sales and Conveyancing) Act including any public or private land based information service required for the purpose of conducting the business of the employer.

1.5.28 "**Selling Fee**" means the amount to be paid to an employee as a commission/incentive payment for the purpose of securing the purchaser that results in a settled sale.

1.5.29 "**Settled Sale, Sale Settled**" and expressions of a similar nature means a sale in respect of which the employer has received their professional fee.

1.5.30 "**Spouse**" includes a defacto spouse, but, except in relation to parental leave does not include a spouse from whom the employee is legally separated.

1.5.31 "**Trainee Employee**" means a person who is seeking accreditation as a Qualified Salesperson through the attainment of the qualification of a Certificate in Real Estate Operations (Sales Consulting) and the employer and the employee have entered into a training contract.

1.5.32 "**Vendor/Client Authority or Vendor Contribution**" is generally contained within an Agency Agreement (or addendum) and refers to where the employer has been authorised in writing to invest vendor/client monies in advertising and marketing expenses on behalf of the vendor/client.

CLAUSE 1.6 - CONTINUOUS SERVICE

OPDATE 01:07:2001 on and from

1.6.1 Maintenance of Continuous Service

Except as otherwise indicated, service is deemed to be continuous despite:

1.6.1.1 absence of the employee from work in accordance with the employee's contract of employment or any provision of this Award.

1.6.1.2 absence of the employee from work for any cause by leave of the employer.

1.6.1.3 absence from work on account of illness, disease or injury.

1.6.1.4 absence with reasonable cause. Proof of such reasonable cause lies with the employee.

1.6.1.5 interruption or termination of the employee's service by an act or omission of the employer with the intention of avoiding any obligation imposed by this Award, the *Industrial and Employee Relations Act 1994* or the *Long Service Leave Act 1987*.

1.6.1.6 interruption or termination of the employee's service arising directly or indirectly from an industrial dispute if the employee returns to the service of the employer in consequence of the settlement of the dispute.

1.6.1.7 transfer of the employment of an employee from one employer to a second employer where the second employer is the successor or assignee or transmittee of the first employer's business. In this case, service with the first employer is deemed to be service with the second employer.

1.6.1.8 interruption or termination of the employee's service by the employer for any reason other than those referred to in this Clause if the worker returns to the service of the employer within two months of the date on which the service was interrupted or terminated.

1.6.1.9 any other absence from work for any reason other than those referred to in this Clause, unless written notice is given by the employer that the absence from work is to be taken as breaking the employee's continuity of service. Such notice must be given during the period of absence or no later than fourteen (14) days after the end of the period of absence.

1.6.2 Calculation of Period of Service

Where an employee's continuity of service is preserved under this Clause, the period of absence from work is not to be taken into account in calculating the period of the employee's service with the employer except:

1.6.2.1 to the extent that the employee receives or is entitled to receive pay for the period; or

1.6.2.2 where the absence results from a decision of the employer to stand the employee off without pay.

CLAUSE 1.7 - RESERVED MATTERS

OPDATE 01:07:2001 on and from

1.7.1 Leave is reserved for any party at any time to apply for a retrospective variation to any variation made in this Award on 18/5/01 which is having consequences that were unintended by the parties when negotiating this Award.

1.7.2 Reserved Matters:

- Auctioneer Clause 1.3.5
- Personal Assistant
- Royalty
- Job Description
- Contacts/Intellectual Property/Equipment
- Client Base/Farm Area
- Office Expenses
- Annual Leave
- Days Off
- Ordinary Earnings

- Employer Requested Expenses
- Commission Only
- Allowances

PART 2 - AWARD FLEXIBILITY

OPDATE 01:07:2001 on and from

CLAUSE 2.1 - ENTERPRISE FLEXIBILITY

OPDATE 01:07:2001 on and from

2.1.1 In this Clause a "**relevant Association**" means an organisation of employees that:

2.1.1.1 has an interest in this Award; and

2.1.1.2 has one or more members employed by the employer to perform work in the relevant enterprise or workplace.

NOTE: The failure by an employer to give each relevant Association an opportunity to be involved in the consultative process leading to the making of an agreement may result in the Industrial Commission adjourning or refusing the application to vary the award

2.1.2 At each enterprise or workplace, consultative mechanisms and procedures will be established comprising representatives of the employer and employees. Each relevant Association will be entitled to be represented.

2.1.3 The particular consultative mechanisms and procedures will be appropriate to the size, structure and needs of the enterprise or workplace.

2.1.4 The purpose of the consultative mechanisms and procedures is to facilitate the efficient operation of the enterprise or workplace according to its particular needs.

2.1.5 Where agreement is reached at an enterprise or workplace through such consultative mechanisms and procedures, and where giving effect to such agreement requires this Award, as it applies at the enterprise or workplace, to be varied, an application to vary will be made to the **Industrial Commission**. The agreement will be made available in writing, to all employees at the enterprise or workplace and to the relevant Associations with an interest in this Award.

2.1.6 When this Award is varied to give effect to an agreement made pursuant to this Clause the variation will become a Schedule to this Award and the variation will take precedence over any provision of this Award to the extent of any expressly identified inconsistency.

2.1.7 The agreement must meet the following requirements to enable the **Industrial Commission** to vary this Award to give effect to it:

2.1.7.1 That the purpose of the agreement is to make the enterprise or workplace operate more efficiently according to its particular needs.

2.1.7.2 That the majority of employees covered by the agreement genuinely agree to it.

2.1.7.3 That the Award variation necessitated by the agreement is consistent with the requirements of Section 79 of the **Act**.

PART 3 - COMMUNICATION, CONSULTATION AND DISPUTE RESOLUTION

OPDATE 01:07:2001 on and from

CLAUSE 3.1 - INTRODUCTION OF CHANGE

OPDATE 01:07:2001 on and from

3.1.1 Notification of Intended Changes

3.1.1.1 Where an employer has made a firm decision to implement changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, the employer must, as soon as practicable, notify the employees who may be affected by the proposed changes and their Association.

3.1.1.2 "**Significant Effects**" include:

1. termination of employment;
2. major changes in the composition, operation or size of the employer's workforce or in the skills required;
3. the elimination or diminution of job opportunities, promotion opportunities or job tenure;
4. the alteration of hours of work;
5. the need for retraining or transfer of employees to other work or locations and the restructuring of jobs.

3.1.1.3 Where the Award makes provision for alteration of any of the matters in 3.1.1.2, an alteration will be deemed not to have significant effect.

3.1.2 Consultation with Employees and their Association

3.1.2.1 The employer must discuss with the employees affected and their Association, among other things:

1. the introduction of the changes referred to in 3.1.1.1;
2. the effects the changes are likely to have on employees;
3. measures to avert or mitigate the adverse effects of such changes on employees.

The employer must give prompt consideration to matters raised by the employees and/or their Association in relation to the changes.

3.1.2.2 The discussions must commence as early as practicable after a firm decision has been made by the employer to make the changes referred to in 3.1.1.1.

3.1.2.3 For the purposes of such discussion, the employer must provide in writing to the employees concerned and their Association:

1. all relevant information about the changes, including the nature of the changes proposed; and
2. the expected effects of the changes on employees and any other matters likely to affect them.

Employers are not required to disclose confidential information disclosure of which, when looked at objectively, would be against the employer's interests.

CLAUSE 3.2 - DISPUTE/GRIEVANCE AVOIDANCE/SETTLING PROCEDURES

OPDATE 01:07:2001 on and from

3.2.1 Subject to the provisions of the **Act**, any industrial dispute or matter likely to create a dispute must be dealt with in the following manner:

1. Any dispute or claim by any employee will first be raised and discussed with the employee's immediate supervisor.
2. If the matter is not resolved it may be referred to the Association and Federation representatives and the employer.
3. If the matter is still not resolved, either party may refer the matter to the **Industrial Commission**.

PART 4 - EMPLOYER AND EMPLOYEES' DUTIES, EMPLOYMENT RELATIONSHIP AND RELATED ARRANGEMENTS

OPDATE 01:07:2001 on and from

CLAUSE 4.1 ANTI-DISCRIMINATION

OPDATE 01:07:2001 on and from

4.1.1 It is the intention of the parties to this Award to achieve the principal object in section 3(m) of the **Act** by helping to prevent and eliminate discrimination on the basis of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.

4.1.2 Accordingly, in fulfilling their obligations under the disputes avoidance and settling clause, the parties must make every endeavour to ensure that neither the Award provisions nor their operations are directly or indirectly discriminatory in their effects.

4.1.3 Nothing in this Clause is to be taken to affect:

4.1.3.1 any different treatment (or treatment having different effects) which is specifically exempted under the State or Commonwealth anti-discrimination legislation.

4.1.3.2 until considered and determined further by the **Industrial Commission**, the payment of different wages for employees who have not reached a particular age.

4.1.3.3 an employee, employer or registered organisation, pursuing matters of discrimination in the State or

Federal jurisdiction, including by application to the Human Rights and Equal Opportunity Commission.

4.1.4 Nothing in this Clause is to be taken to prevent:

4.1.4.1 a matter referred to in 4.1.1 from being a reason for terminating employment if the reason is based on the inherent requirements of the particular position.

4.1.4.2 a matter referred to in 4.1.1 from being a reason for terminating a person's employment as a member of the staff of an institution that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed, if the employer terminates the employment in good faith in order to avoid injury to the religious susceptibilities of adherents of the religion or creed.

CLAUSE 4.2 - LETTER OF APPOINTMENT

OPDATE 09:09:2003 on and from

4.2.1 Must Have Letter of Appointment

As from 1/7/2001 every employer and new employee must have a Letter of Appointment in accordance with the requirements of 4.2.2. The employer and the employee may use the pro forma Letter of Appointment and the pro forma Variation to the Letter of Appointment in Schedules 3 and 4 respectively. If these pro formas are not used then the Letter of Appointment or any variation thereto must still conform to the requirements as to contents and registration as specified in clause 4.2.2.

A Letter of Appointment may contain agreed items other than specified in clause 4.2.2 so long as those items are not inconsistent with the award.

4.2.1.1 Once a Letter of Appointment has been agreed and signed it can only be varied by mutual agreement.

4.2.2 Requirements of the Letter Of Appointment

The following are the requirements of The Letter of Appointment:

4.2.2.1 Both the employer and the employee must sign on or prior to the date of commencement of employment the original Letter of Appointment and this also includes where the employee is to be remunerated by commission only. The employer will facilitate three (3) copies of the signed original Letter of Appointment and give the employee two (2) copies. The signing of a Letter of Appointment on a date subsequent to the employee's commencement date will not invalidate the Letter of Appointment by the reason only that the Letter of Appointment should have been signed earlier in accordance with 4.2.2.1; and

4.2.2.2 Within 14 days of the Letter of Appointment being signed the employer will send one copy to:

The Real Estate Employers' Federation of South Australia
PO Box 72
Mitcham Shopping Centre SA 5062
Phone: 8357 1462

together with a registration and administration fee of \$50.00; and

The employee will send one copy to:

The Real Estate Salespersons' Association of South Australia c/- The Secretary
PO Box 6665
Halifax Street
Adelaide SA 5000
Phone: 8289 5484

together with a registration and administration fee of \$50.00; and

4.2.2.3 As a minimum the Letter of Appointment must contain:

(i) ***Name and Address***

Names and addresses of the employer and the employee.

(ii) ***Classification***

The Classification in which the employee is to be employed.

(iii) **Wage**

The minimum wage or salary to be paid to the employee, the method of payment and the period at which such wages are to be paid.

(iv) **KPI's**

Specific key performance indicators required of the employee.

(v) **Higher Duties**

Any special or higher duties required of the employee and the amounts to be paid to the employee, method of payment and period at which such wages are to be paid and in any new contracts of employment on and from 1/7/2001 the extra payment made for when these duties are required will not be debited.

(vi) **Training**

Type and frequency of training to be provided by the employer. A general description only is required unless the parties can be more specific.

(vii) **Allowances and Expenses**

The minimum allowances and expenses to be paid to the employee, the method of payment and the period at which allowances and expenses are to be paid. Such allowances and expenses may include, where appropriate, but not necessarily limited to, office expenses, communications, advertising and marketing expenses, employee expenses and vehicle allowance.

(viii) **Method of Calculating Commission/Incentive**

The method of calculating any commission/incentive payment, the method of payment and the period in which such commission/incentive payment is to be paid. Any commission/incentive payments which are to be offset or reduced by allowable debits as mutually agreed in the contract of employment must be specified in the Letter of Appointment.

In addition, if it is intended for the employee to work on "commission only" the Letter of Appointment must also state what the agreed commission/incentive would be if the employee must revert to a wage in accordance with 5.3.2 or 5.3.3.

In addition to any other debits as allowed by this Award, the employer may debit franchise fees, listing fees and agents conjunction fees from the employer's commission.

(ix) **Entitlements on Termination**

What the employee is entitled to receive in full, by way of any commission/incentive payment after the termination of employment and the method by and times at which such commission/incentive payment is to be paid.

(x) **When Commission/Incentive to be paid by**

The employees' commission/incentive payment will be paid no later than one calendar month after the employer receives their professional fee or such shorter time as mutually agreed between the employer and the employee.

(xi) ***Fees, Incentives etc. Payable***

An outline in full of the amounts payable, if any, to the employee, (percentage or otherwise) for the following:

- trainer assessor or auctioneer commission/incentive
- listing fee
- selling fee
- marketing management fee
- appraisal fee
- profit/bonus share
division of a fee if sale is affected by more than one employee at settlement amount deducted from employee's share of the settled sale if property is sold and subsequently their employment is terminated
- advertising rebate paid on vendor/client contribution
- rental referral fee
- Salesperson's expenses to be paid by the vendor

(xii) ***Location of Award***

Where on the employer's business premises the Real Estate Award can be located.

(xiii) ***Annual Leave in Commission***

Whether annual leave is inclusive in commission payments.

4.2.3 Variations to the Letter of Appointment

When any agreed variation to a Letter of Appointment occurs such variation will be recorded in a Variation Form (Schedule 4) or similar form and signed by the employer and the employee. The employer will facilitate three (3) copies of the signed Variation Form and give two copies to the employee. The Variation Form (or similar form) is to be registered in the same manner as specified in clause 4.2.2 (including the fee).

Any Letters of Appointment pre-existing before 1/7/2001 that are varied by agreement after 1/7/2001 can only contain a variation that would be permissible for new employees employed after 1/7/2001.

4.2.4 Onus

The only requirements of the employee under clause 4.2 are the signing of the Letter of Appointment (once the employer's offer has been accepted by the employee) and forwarding a copy of it to the Real Estate Salespersons Association. All other requirements under 4.2 are the responsibility of the employer.

4.2.5 Failure to Comply With All the Provisions of Clause 4.2

If either the employer or the employee fail to comply with all the provisions of Clause 4.2 in relation to the requirements and registration of Letters of Appointment that failure to comply will not prima facie invalidate the remaining provisions of the Letter of Appointment.

(Note: RESA and REEF recommend that an unsigned but completed Letter of Appointment be supplied by the employer to the prospective employee in sufficient time for the applicant to peruse the document and if necessary to take some advice on it.)

CLAUSE 4.3 - TERMINATION OF EMPLOYMENT

OPDATE 01:07:2001 on and from

4.3.1 Notice of Termination by Employer

4.3.1.1 In order to terminate the employment of an employee, the employer must give the employee the following notice:

Period of continuous service	Period of notice
Not more than 1 year	At least 1 week
More than 1 year but not more than 3 years	At least 2 weeks
More than 3 years but not more than 5 years	At least 3 weeks
More than 5 years	At least 4 weeks

4.3.1.2 In addition to the notice in 4.3.1.1, employees over forty-five years of age at the time of the giving of notice, with not less than two (2) years continuous service, are entitled to additional notice of one week.

4.3.1.3 Payment at the ordinary rate of pay in lieu of the notice prescribed in 4.3.1.1 and/or 4.3.1.2 and/or 4.4.4, must be made if the appropriate notice period is not given. Employment may be terminated by part of the period of notice specified and part payment in lieu.

4.3.1.4 In calculating any payment in lieu of notice, the employer must pay the wages an employee would have received in respect of the ordinary time the employee would have worked during the period of notice had the employee's employment not been terminated.

4.3.1.5 The period of notice in this Clause does not apply in the case of:

1. dismissal for conduct that at common law justifies instant dismissal;
2. casual employees;
3. employees engaged for a specific period of time; or
4. employees engaged for a specific task or tasks.

4.3.2 Time Off During Notice Period

Where an employer has given notice of termination to an employee, the employee is entitled to up to one day of timeoff without loss of pay for the purpose of seeking other employment. The time off is to be taken at times that are convenient to the employee, after consultation with the employer.

4.3.3 Statement of Employment

At the employee's request, the employer must provide to an employee whose employment has been terminated a written statement specifying the period of the employee's employment and the classification of, or the type of work performed by the employee.

4.3.4 Payment in Lieu

If an employer makes payment in lieu for all or any of the period of notice prescribed, the period for which such payment is made must be treated as service with the employer for the purpose of computing any service related entitlement of the employee.

4.3.5 Notice of Termination By Employee

In order to terminate employment, an employee must give the employer the following notice:

Period of continuous service

Period of notice

Not more than 1 year

At least 1 week

More than 1 year

At least 2 weeks

or forfeit the wages appropriate to the notice period.

CLAUSE 4.4 - REDUNDANCY

OPDATE 01:07:2001 on and from

4.4.1 Definition

"**Redundancy**" in this Clause means the loss of employment due to the employer no longer requiring the job the employee has been doing to be performed by anyone, and "**redundant**" has a corresponding meaning.

4.4.2 Exclusions

4.4.2.1 This Clause does not apply to employees with less than one (1) year of continuous service. The general obligation of employers would be no more than to give such employees an indication of the impending redundancy at the first reasonable opportunity, and to take such steps as may be reasonable to facilitate the obtaining by such employees of suitable alternative employment.

4.4.2.2 This Clause does not apply where employment is terminated as a consequence of conduct that at common law justifies instant dismissal, or in the case of casual employees or employees engaged for a specific period of time or for a specific task or tasks.

4.4.3 Discussions Before Termination

4.4.3.1 Where an employer has made a firm decision that the employer no longer requires the job the employees have been doing done by anyone, and that decision may lead to termination of employment, the employer must have discussions, as soon as practicable, with the employees directly affected and with their Association.

Discussions must include:

1. the reasons for the proposed terminations;
2. measures to avoid or minimise the terminations; and
3. measures to mitigate the adverse effects of any terminations on the employees concerned.

4.4.3.2 For the purposes of such discussion the employer must, as soon as practicable, provide in writing to the employees concerned and their Association, all relevant information about the proposed terminations, including:

1. the reasons for the proposed terminations;
2. the number and categories of employees likely to be affected;
3. the number of workers normally employed; and
4. the period over which the terminations are likely to be carried out.

No employer is required to disclose confidential information the disclosure of which, when looked at objectively, would be against the employer's interests.

4.4.4 Period of Notice of Termination on Redundancy

4.4.4.1 If the services of an employee are to be terminated due to redundancy, such an employee must be given notice of termination as prescribed by Clause 4.3 of this Award.

4.4.4.2 Employees to whom notification of termination of service is to be given on account of the introduction or proposed introduction by the employer of automation or other like technological changes, in the industry in relation to which the employer is engaged, must be given not less than three months notice of termination.

4.4.4.3 Should the employer fail to give notice of termination as required in 4.4.4.1 or 4.4.4.2 in this Award, the employer must pay to that employee the ordinary rate of pay for a period being the difference between the notice given and that required to be given. The period of notice to be given is deemed to be service with the employer for the purpose of the *Long Service Leave Act 1987*.

4.4.5 Time Off During Notice Period

4.4.5.1 During the period of notice of termination given by the employer, an employee is entitled to up to one day off without loss of pay during each week of notice for the purpose of seeking other employment.

4.4.5.2 If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee must, at the request of the employer, produce proof of attendance at an interview. If such proof is not produced the employee is not entitled to receive payment for the time absent. For this purpose a statutory declaration will be sufficient.

4.4.6 Notification to Centrelink

Where a decision has been made to terminate the employment of an employee, or of employees, on account of redundancy, the employer must notify Centrelink accordingly, as soon as possible, giving relevant information including:

4.4.6.1 a written statement of the reason(s) for the termination(s);

4.4.6.2 the number and categories of the employees likely to be affected; and

4.4.6.3 the period over which the termination(s) are intended to be carried out.

4.4.7 Severance Pay

4.4.7.1 In addition to the period of notice prescribed for termination in Clause 4.3 and 4.4.4.1 or 4.4.4.2 an employee whose employment is terminated by reason of redundancy is entitled to the following amounts of severance pay in respect of a continuous period of service:

Period of continuous service	Period of notice
Less than 1 year	Nil
1 year and less than 2 years	4 weeks pay
2 years and less than 3 years	6 weeks pay
3 years and less than 4 years	7 weeks pay
4 years and over	8 weeks pay

4.4.7.2 The severance payment need not exceed the amount which the employee would have earned if employment with the employer had proceeded to the employee's agreed date of retirement or the employee's eligibility date for social security benefits.

4.4.7.3 An employer may apply to the **Industrial Commission** for an order allowing the off-setting of all or part of an employee's entitlement to severance payment on the basis that such payment or part of it is already provided for or included in the contributions which the employer has made over and above those required by law to a superannuation scheme, and which are paid or payable to the employee on redundancy occurring.

4.4.8 Incapacity to Pay

An employer may make application to the **Industrial Commission** for an order to have the severance pay prescription varied on the basis of the employer's incapacity to pay.

4.4.9 Alternative Employment

An employer may make application to the **Industrial Commission** to have the severance pay prescription varied if the employer obtains acceptable alternative employment for an employee.

4.4.10 Written Notice

The employer must, as soon as practicable, but prior to the termination of the employee's employment, give to the employee a written notice containing, among other things, the following:

4.4.10.1 The date and time of the proposed termination of the employee's employment.

4.4.10.2 Details of the monetary entitlements of the employee upon the termination of the employee's employment, including the manner and method by which those entitlements have been calculated.

4.4.10.3 Advice as to the entitlement of the employee to assistance from the employer, including time off without loss of pay in seeking other employment, or arranging training or retraining for future employment.

4.4.10.4 Advice as to the entitlements of the employee should the employee terminate their employment during the period of notice.

4.4.11 Transfer to Lower Paid Duties

Where an employee whose job has become redundant accepts an offer of alternative work by the employer, the rate of pay for which is less than the rate of pay for the former position, the employee is entitled to the same period of notice of the date of commencement of work in the new position as if the employee's employment had been terminated. The employer may pay in lieu thereof an amount equal to the difference between the former rate of pay and the new lower rate for the number of weeks of notice still owing.

4.4.12 Employee Leaving During Notice

An employee whose employment is terminated on account of redundancy may terminate his or her employment during the period of notice. In this case the employee is entitled to the same benefits and payments under this Clause as if remaining with the employer until the expiry of such notice. In such circumstances the employee is not entitled to payment in lieu of notice.

CLAUSE 4.5 - TRANSMISSION

OPDATE 01:07:2001 on and from

4.5.1 Transmission of Business

This Clause applies where a business, undertaking or establishment, or any part of it, has been transmitted from an employer (**the transmittor**) to another employer (**the transmittee**).

Transmission, without limiting its ordinary meaning, includes transfer, conveyance, assignment or succession, whether by agreement or operation of law. **Transmitted** has a corresponding meaning.

4.5.2 Acceptance of Employment with Transmitlee

Subject to further order of the **Industrial Commission**, where a person who at the time of the transmission was an employee of the **transmittor** in that business, undertaking, establishment, or part of it, becomes an employee of the **transmitlee**:

4.5.2.1 the period of service which the employee has had with the **transmittor** or any prior **transmittor** will be deemed to be service of the employee with the **transmitlee** for the purpose of calculating any entitlement of the employee to service related periods of notice or severance payments; and

4.5.2.2 the provisions of Clause 4.4 do not apply in respect of the termination of the employee's employment with the **transmittor**.

4.5.3 Offer of Employment With the Transmitlee

An employee is not entitled to benefits under Clause 4.4 in respect of termination of employment resulting from transmission of the business, undertaking, establishment or part of it if:

4.5.3.1 the employee is offered employment by the **transmitlee**;

4.5.3.2 the offer is made before the transmission of the business, undertaking, establishment or part of it;

4.5.3.3 the terms and conditions of the new employment offered:

1. are not substantially different from those applying to the employment with the **transmittor**; or
2. are substantially different, but the offer constitutes an offer of suitable employment in relation to the employee; and

4.5.3.4 the employee unreasonably refuses to accept the offer.

CLAUSE 4.6 - SERVICE PROVISIONS (TERMINATION, CHANGE AND REDUNDANCY)

OPDATE 01:07:2001 on and from

4.6.1 Continuity of Service

For the purpose of Clause 4.4 and 4.5 "**service**" means continuous service (as defined in Clause 1.6).

4.6.2 Service with Two or More Corporations

Where an employee has been employed by two or more corporations that are associated corporations, or by two or more corporations that are related to each other within the meaning of Section 50 of the Corporations Law, the service of the employee with each such corporation must be included in the calculation of the employee's continuous service for the purpose of determining the employee's entitlements according to Clauses 4.4 and 4.5.

PART 5 - WAGES AND RELATED MATTERS

OPDATE 01:07:2001 on and from

CLAUSE 5.1 - CLASSIFICATION OF EMPLOYEES

OPDATE 01:07:2001 on and from

This Award covers the following classifications of employees:

1. Salesperson as defined in Schedule 2.
2. Registered Branch Manager as defined in Schedule 2.
3. Trainee Salesperson as defined in Schedule 2.

CLAUSE 5.2 - WAGE RATES

OPDATE 01:07:2001 on and from

Note: For employees employed prior to 1/7/2001 the relevant wage rates clause is in Schedule 8, Clause S8.1.

5.2.1 Minimum Wage

The minimum wage for an employee who is a Qualified Salesperson is specified in Schedule 1 and the minimum wage for a trainee salesperson is specified in Schedule 5 Clause S5.8.4.

5.2.2 Any payment to an employee by the employer of any wages, commission, incentive, allowance or expenses may be paid either by cash, cheque or electronic funds transfer to a bank, building society or credit union account nominated by the employee. Except for normal government duties imposed on financial institution account transactions, the employer is liable for any costs associated with non-cash payment.

5.2.3 When the employee is paid any wage or commission or incentive the employee is to receive pay statements detailing such items as remuneration earned and for what period and all credits and debits taken into account and the name of property settlements. An employee is to receive a Commission statement at least monthly.

CLAUSE 5.3 - METHODS OF REMUNERATION

OPDATE 01:07:2001 on and from

Note: For employees employed prior to 1/7/2001 the relevant wage rates clause is in Schedule 8, Clause S8.1.

5.3.1 An employer may offer a prospective employee a remuneration package based on any of the following alternatives, providing the employee fits any particular criteria mentioned in any of the alternatives. The employer and an existing employee may agree at any time to change from one alternative form of remuneration to another form providing the employee fits any particular criteria mentioned in any of the alternatives:

(i) Alternative 1

Wage only as specified in Schedule 1 (Qualified Salesperson) or Schedule 5 (Trainee) or such higher amounts as agreed; **or**

(ii) Alternative 2

Wage as specified in Schedule 1 (Qualified Salesperson) or Schedule 5 (Trainee) **and in addition commission or incentive** as negotiated between the employer and the employee, providing that in any new contracts of employment on and from 1/7/2001, any debits that apply to an incentive or commission are only debits as allowed by this Clause or elsewhere in this Award. The employer and the employee may agree (but not a trainee) that the wage will be debited from either the employer's commission or the

employee's commission/incentive and the agreement must be recorded in the Letter of Appointment; **or**

(iii) Alternative 3

By the payment of **commission only** as negotiated between the employer and the employee (but not a trainee). Remuneration by commission only must conform with the following criteria:

1. In any new contracts of employment on and from 1/7/2001 when negotiating "commission only" the parties must also at the same time negotiate a **reversal rate** [see definitions] and what debits would apply to the reversal rate. The **reversal rate** and what debits would apply must be stated in the Letter of Appointment.

2. In any new contracts of employment (including an existing employee changing by agreement from "wage and commission" to "commission only") on and from 1/7/2001 any debits that apply to the commission must only be debits as allowed by this Award.

3. The employer and the employee will jointly sign a "commission only" summons/application and it will be filed with the Industrial Registrar of the Industrial Relations Commission of South Australia (**IRCSA**). In the summons/application the employer and the employee must be able to satisfy the criteria set out in point 5 below. For a new employee this filing should be done before commencement of employment and in any event should be done within 14 days of the commencement of employment. For an existing employee where agreement is reached to change to "commission only" the filing should be done within 14 days from the date of agreement but the employee must stay on the current remuneration arrangements until the application for "commission only" has been approved by the **IRCSA**. Filings outside of the 14 days will still be received by the **IRCSA**.

4. The **IRCSA** will advise the parties if it will need the parties to appear or whether the Commission will deal with the matter ex parte.

5. On and from 1/7/2001, in considering the summons/application the **IRCSA** must be satisfied that the following criteria apply to the employee:

That there is mutual agreement between the employer and the employee for the employee to be remunerated by commission only; and

- That the employee has worked as a real estate salesperson for two years out of the previous five years, with one year of experience being immediately prior to the date of application **or** the **IRCSA** is alternatively satisfied that the employee's previous experience in real estate (and perhaps coupled with other life experiences) is sufficient to cover the criteria first set out in this paragraph; and
- The employee must be solely engaged in the real estate industry; and
- The **IRCSA** approval only relates to the current contract of employment.
- The employer and the employee have agreed in advance to a reversal rate as mentioned in item 1 above, in case of the event that either the **IRCSA** does not approve the application for "commission only" and the parties must revert to a wage plus incentive/commission (see 5.3.2), or if after 12 months the employee must revert from "commission only" to a wage because of stipulation in 5.3.3.

5.3.2 In the event of the **IRCSA** not granting approval for a new employee to be remunerated by commission only, the employer and the employee, if it is agreed to continue the employment contract, must apply the reversal rate (as defined). Any period

of time between the employer filing for approval for the new employee to work commission only and the **IRCSA** not approving the application, the employee will be deemed to have had approval but only for that period.

5.3.3 An employer and employee in any new contract of employment entered into on or after 1/7/2001, who are granted approval by the **IRCSA** to work "commission only" must on the first and subsequent 12 month anniversaries apply the "reversal rate" (as defined) if the employee has not grossed at least \$60,000.00 of taxable income in the previous 12 months. A subsequent application for "commission only" may be filed in the **IRCSA** but not for at least 6 months. The \$60,000.00 will be reduced on a pro rata basis for any leave without pay.

5.3.4 An employee being remunerated by "commission only" will not be paid the award wage or any award allowances.

CLAUSE 5.4 - VEHICLE ALLOWANCE

OPDATE 01:07:2001 on and from

Note: For employees employed prior to 1/7/2001 the relevant vehicle allowance clause is in Schedule 8, Clause S8.5.

5.4.1 If the employee is required by the employer to use the employee's own motor vehicle to carry out the employee's duties as a Salesperson (or trainee), the employer will pay the employee the motor vehicle allowance as specified in Schedule 1. The employer and the employee may agree in the Letter of Appointment to debit the motor vehicle allowance from the employer's commission or the employee's commission/incentive, except that in the case of a trainee salesperson the motor vehicle allowance in any new contract of employment on and from 1/7/2001 must not be debited.

5.4.2 If the employer provides a motor vehicle to the employee for the employee to carry out the employee's duties as a Salesperson (or trainee), the employer will be responsible for all the costs associated with the legal running expenses of the vehicle, providing the employer and the employee may agree in the Letter of Appointment to debit an agreed amount of the motor vehicle's running expenses from the employer's commission or the employee's commission/incentive, except that in the case of a trainee salesperson the motor vehicle's running expenses in any new contract of employment on and from 1/7/2001 must not be debited.

5.4.3 The motor vehicle allowance is not payable while the employee is on paid or unpaid leave.

CLAUSE 5.5 - SUPERANNUATION

OPDATE 01:07:2001 on and from

Note: The Superannuation Legislation Amendment (Choice of Superannuation Funds) Act 2005 provides that individual employees generally have the opportunity to choose their own superannuation funds. For further information see the AIRC guidance note — Choice of Superannuation Funds and Award Provisions.

5.5.1 Definitions

5.5.1.1 "**Fund**" means any superannuation scheme registered and approved by the Insurance and Superannuation Commission.

5.5.1.2 "**Ordinary Time Earnings**" means, for the purposes of the *Superannuation Guarantee (Administration) Act 1992*, the earnings of an employee, including wages, incentive payments and commission, but does not include allowances or expenses.

5.5.2 Membership

An employer will ensure an employee becomes and remains (whilst employed by the employer) a member of a **fund**.

5.5.3 Contributions

An employer will make contributions for an employee on at least a monthly basis in accordance with the legislative requirements in 5.5.4. These contributions will be based on the employee's **ordinary time earnings**. If a new employee is already a member of a **fund** and wishes to remain in that **fund**, then the employer will contribute to that **fund**

5.5.4 Superannuation Legislation

5.5.4.1 The subject of superannuation is dealt with extensively by legislation including the *Superannuation Guarantee (Administration) Act 1992*, the *Superannuation Guarantee Charge Act 1992*, the *Superannuation Industry (Supervision) Act 1993* and the *Superannuation (Resolution of Complaints) Act 1993*. This legislation, as varied from time to time, governs the superannuation rights and obligations of the parties.

5.5.4.2 The maximum contribution base of contributions which must be made for each employee by the employer are indexed annually by the *Superannuation Guarantee Charge Act 1992*. Where the employee's income reaches the maximum contribution base the commission/incentive rate will revert to the pre-adjustment rate.

5.5.5 Debit/Credit System

5.5.5.1 As from 1/7/2001 an employer must not debit the employer's superannuation contribution from any employer's commission or employee's commission/incentive, providing that any employer who was debiting such contributions prior to 1/7/2001 may reduce the employee's commission/incentive by dividing by a factor of 1.08 of the commission rate (see example below).

Example Only

As an example, if an employee is receiving 60% of the professional fee [also known as the employer's commission] as an incentive or commission payment and the superannuation contribution is 8%, the employer may reduce the 60% by dividing by a factor of 1.08, thus reducing the 60% to 55.555%.

(Note: This is a one-off adjustment and no further adjustments are to be made.)

Note for Guidance

If an incentive or commission scheme does not lend itself to a simple mathematical calculation for the reduction, the employer and the employee should come to an agreement on how the reduction should be calculated. In any disagreement the Dispute/Grievance Avoidance/Settling Procedure in Clause 3.2 should be followed.

CLAUSE 5.6 - EXPENSES

OPDATE 01:07:2001 on and from

Note: For employees employed prior to 1/7/2001 the relevant expenses clause is in Schedule 8, Clause S8.4.

5.6.1 Employer Requested Expenses

Where an employee incurs expenses at the request or direction of the employer, the employer will reimburse the expenses on the next first full pay period. At the request of the employee and where reasonably practicable, expenses will be paid in advance.

5.6.2 Advertising and Marketing Expenses in Relation to Debiting

5.6.2.1 *Debiting - General*

In any new contract of employment on and from 1/7/2001, advertising and marketing expenses will not be debited from the employer's commission or the employee's commission/incentive, except as allowed by 5.6.2 and noted in the Letter of Appointment.

5.6.2.2 *Failure To Recover Vendor's Expenses*

In any new contracts of employment on or after 1/7/2001, neither the employer's commission nor the employee's commission/incentive will be debited with any vendor/client's authorised expenses if the employer fails to recover any such vendor/client's authorised expenses.

5.6.2.3 *Employee Exceeding Vendor's Authority (Overruns)*

In any new contracts of employment on or after 1/7/2001:

(a) Where Settlement Is Achieved

(i) Where a sale and settlement is achieved and the employee has authorised (with the authority of the employer) advertising and marketing in excess of the vendor's authority then subject to 5.6.2.4 that excess amount may be deducted by the employer from the employer's professional fee, or such lesser amount may be deducted as the employer and employee agree, before calculation of the Salesperson's commission/incentive payments.

(ii) If the employee authorises advertising and marketing in excess of the vendor's authority without the employer's authority then subject to 5.6.2.4 the employer may debit the excess amount from the Salesperson's commission/incentive payment or such lesser amount as agreed.

(b) Where Settlement Is Not Achieved

Where a sale and settlement is not achieved and the employee has authorised advertising and marketing in excess of the vendor's authority then subject to 5.6.2.4 the excess amount may be debited, in full or such other lesser amount as agreed, against the employer's commission or the Salesperson's commission/incentive payments.

5.6.2.4 *When Debiting Advertising*

(i) This sub-clause only applies to an employer who achieves and receives an advertising rebate from a newspaper and the advertising debit is one allowed under clause 5.6.2 (overruns).

(ii) If an employee considers that an advertising debit from an overrun that has been debited against their commission, has been debited at the full advertising rate, as opposed to the advertising rebate rate, the onus will be on the employee (or ex employee) to bring that fact to the attention of the employer, which must be done within 12 months from the date of the debit or the entitlement is lost, and

(iii) Once the employee has brought the above fact to the notice of the employer, it will be then the duty of the employer to credit the difference to the employee between the full advertising rate and the advertising rebate rate, and

(iv) The employer need only credit the difference once the employer knows that the advertising rebate has been achieved in terms of the advertising rebate contract with the particular newspaper. If the employer does not achieve the advertising rebate in terms of the advertising rebate contract with the particular newspaper then the employer will be entitled to leave the debit at the full advertising rate.

(v) The employer may at the employer's discretion debit at the rebate rate initially and later recover the difference (through debiting) if the employer does not achieve the rebate rate.

5.6.3 Office Expenses

In any new contracts of employment (on or after 1/7/2001) the employee will not be responsible (in terms of being debited that is) for any specific or proportional amount of the employer's day to day running expenses of the office of the employer. These office expenses will include but not be limited to: provision of desk space for the employee, secretarial wages, phone and communication expenses, computer hard/software, postage, key copying, photocopying, search fees, photography, general office advertising, signage, telephone canvassing services, legal expenses, excess payments on insurance policies and all general office expenses.

5.6.4 Employee Expenses

5.6.4.1 If an employee, with the approval of the employer, chooses to incur personal business expenses in the name of the employer (such as: advertising; printing; bulk postage and delivery of material; real estate industry goods or services; training or membership of professional industry associations; or the purchase of gifts to clients or for the purpose of contacting potential new personal clients) then such expenses may be debited against either the employer's or the employee's commission/incentive payments, or such lesser sum as the employer and employee may agree.

5.6.4.2 If an employee incurs personal expenses of the type referred to in 5.6.4.1 without the approval of the employer, the employer may debit those expenses in full from the employee's commission/incentive, whether or not it is noted in the Letter of Appointment.

5.6.4.3 A notation of the procedure in 5.6.4.1 is to be made in the Letter of Appointment.

PART 6 - DAYS OFF

OPDATE 01:07:2001 on and from

CLAUSE 6.1 - DAYS OFF

OPDATE 01:07:2001 on and from

6.1.1 (i) The employee is entitled to any two (2) full unpaid days off per week.

(ii) In the alternative the employer and the employee may agree to any combination of half days and full days off during the week, so that over the week there is an aggregate of two (2) days off.

(iii) Which days they are, are negotiable, but in the event that agreement cannot be reached, the employer may allocate the days.

(iv) A written roster of days off will be made by the employer at least a month in advance, but days off may be changed at any time by agreement.

6.1.2 An employee who is required by the employer to work on a day off will be granted by the employer either another day off within three months or an additional payment of 1/5th of the award wage which is not to be debited against any commission/incentive.

6.1.3 An employee who self elects to work on a day off will not be entitled to the benefits under 6.1.2 but only to the benefit of any commission/incentive earned.

6.1.4 It is the responsibility of the employer to keep a written record of days off. The rosters made under 6.1.1 will be prima facie evidence of days off.

PART 7 - LEAVE OF ABSENCE AND PUBLIC HOLIDAYS

OPDATE 01:07:2001 on and from

CLAUSE 7.1 - ANNUAL LEAVE

OPDATE 01:07:2001 on and from

Note: For employees employed prior to 1/7/2001 the relevant annual leave clause is in Schedule 8, Clause S8.7.

7.1.1 Entitlement to Annual Leave

A employee is entitled to four (4) weeks annual leave for each completed year of **continuous service**.

Payment must not be made or accepted in lieu of taking annual leave except in the case of termination of employment.

7.1.2 Annual Leave Exclusive of Public Holidays

The annual leave prescribed by this Clause is exclusive of the public holidays named in this Award that fall on a Monday to Friday inclusive. If any such holiday falls within an employee's period of annual leave, the period of leave will be increased by one day for each holiday.

7.1.3 Accrual of Annual Leave Entitlement

A employee's entitlement to annual leave accrues as four (4) weeks per annum for each completed year of **continuous service**.

7.1.4 Upon termination of employment, if the period of service is not exactly divisible into complete years, a full-time employee accrues 1.6666 days annual leave for each completed month of service in the incomplete year.

7.1.5 Time of Taking Annual Leave

7.1.5.1 Annual leave is to be taken at a time or times agreed between the employer and the employee.

7.1.5.2 If an employer and an employee fail to agree on the time (or times) for taking annual leave or part of it, the employer may require the employee to take annual leave by giving the employee notice of the requirement at least two (2) weeks before the period of annual leave is to begin.

7.1.6 Payment for Annual Leave

7.1.6.1 Payment for annual leave may be agreed as one of the following alternatives (including the alternative in 7.1.6.3):

1. Paid in advance monthly (or whatever period is agreed) at the rate of 1/12th extra of ordinary earnings (as defined).

On this method the employee will not be entitled to any extra payments for annual leave when leave is actually taken; or

2. Paid in advance monthly (or whatever period is agreed) at the rate of 1/12th extra on the commission/incentive portion if paid by wage and commission/incentive.

This method allows the employee to still receive their minimum weekly wage whilst on annual leave; or

3. Paid annual leave on ordinary earnings (as defined) only when leave is actually taken.

When annual leave is taken, any wage being paid will continue to be paid weekly or as a lump sum at the beginning of leave.

For the purposes of calculating the employee's commission/incentive payments for the purposes of annual leave pay, the weekly rate of commission/incentive pay will be ascertained by averaging the employee's weekly commission/incentive earnings over the period since annual leave was last taken (if no annual leave has been taken, then the period would be back to the commencement of employment under this Award).

7.1.6.2 Whatever method of annual leave payment the employer and the employee agree upon, the method must be nominated in the Letter of Appointment. In any new contract of employment on and from 1/7/2001, annual leave payments must not be debited from the employer's commission or the employee's commission/incentive.

7.1.6.3 If an employee's commission/incentive is inclusive of annual leave payment this must be noted in the Letter of Appointment together with the notation of what proportion of the employee's commission/incentive is allocated to the annual leave payment, which must not be less than 1/12th.

(Note: If the employee's commission/incentive is inclusive of annual leave and the employee is also receiving a wage, then annual leave is still payable on the wage as a separate payment)

7.1.6.4 Upon termination of employment an employee must be paid for leave accrued unless the payment has already been satisfied under 7.1.6.1 or 7.1.6.3.

7.1.6.5 At the employee's termination the employer may do a reconciliation of annual leave paid for commission/incentive. Based on the principle that the employee is entitled to 1/12th of commission/incentive as annual leave payment, any shortfall must be made up and any excess may be deducted from monies owed to the employee. This subclause will not apply if 7.1.6.3 applies.

CLAUSE 7.2 - SICK LEAVE

OPDATE 01:07:2001 on and from

Note: For employees employed prior to 1/7/2001 the relevant sick leave clause is in Schedule 8, Clause S8.8.

7.2.1 Entitlement to Sick Leave

A employee who has a sick leave credit:

7.2.1.1 is entitled to take sick leave if too sick to work;

7.2.1.2 or who is on annual leave is entitled to take sick leave if too sick to work for a period of at least three (3) days. Sick leave so taken does not count as annual leave.

7.2.2 Accrual of Sick Leave Entitlement

7.2.2.1 A employee's entitlement to sick leave accrues as follows:

1. for the first year of continuous service at the rate of .833 days for each completed month of work to a maximum of ten (10) days; and
2. for each later year of continuous service, at the beginning of each year ten (10) days accrue.

7.2.2.2 An employee's sick leave accumulates from year to year and any sick leave taken by the employee is deducted from the employee's sick leave credit.

7.2.3 Conditions for Payment of Sick Leave

The employee is not entitled to payment for sick leave unless:

7.2.3.1 the employee gives the employer notice of the sickness, its nature and estimated duration, before the period for which sick leave is sought begins (but if the nature or sudden onset of the sickness makes it impracticable to give the notice before the period begins, the notice is validly given if given as soon as practicable and not later than 24 hours after the period begins); and

7.2.3.2 the employee must provide, at the request of the employer, a medical certificate or other reasonable evidence of sickness.

7.2.3.3 Payment for sick leave for seven (7) or less continuous days will be the minimum award wage despite how the employee is being remunerated. After seven continuous sick days the employee will be remunerated by averaging the employee's ordinary earnings (as defined) over the previous 36 months service or if a lesser period, then an average over that period.

7.2.3.4 In any new contract of employment on and from 1/7/2001 sick leave payments must not be debited from the employer's commission or the employee's commission/incentive.

CLAUSE 7.3 - BEREAVEMENT LEAVE

OPDATE 01:07:2001 on and from

7.3.1 Entitlement to Leave

A employee, on the death of a:

- spouse;
- parent;
- parent-in-law;
- sister or brother;
- child or step-child;

is entitled, on reasonable notice, to leave up to and including the day of the funeral of the relative. This leave is without deduction of pay for a period not exceeding two (2) days in any completed year of continuous service. Proof of death must be furnished by the employee to the satisfaction of the employer, if requested. "**Pay**" means only the award wage despite how the employee is being paid.

7.3.2 Entitlement to Additional Bereavement Leave

Subject to the same provisions of 7.3.1, where the leave in 7.3.1 has been exhausted, an employee is entitled to leave up to two (2) days on each occasion of a death of a relative.

This additional leave may, at the employee's request and with the agreement of the employer, be provided on the following basis:

7.3.2.1 Where paid leave is sought, it will be debited against the available sick leave credit of the employee and paid according to the sick leave Clause 7.2.3.

7.3.2.2 Where the sick leave credit of the employee has been exhausted and additional leave is sought, the employee may either access paid leave as provided for elsewhere in this Award or apply for unpaid leave, which will not be unreasonably withheld by the employer.

7.3.3 Effect of Other Leave

This Clause has no operation where the period of entitlement to this leave coincides with any other period of leave.

7.3.4 In any contract of employment on and from 1/7/2001 bereavement leave payments must not be debited from the employer's commission or the employee's commission/incentive.

CLAUSE 7.4 - PARENTAL LEAVE

OPDATE 01:07:2001 on and from

7.4.1 Definitions

In this Clause, unless the contrary intention appears:

7.4.1.1 "**Adoption**" includes the placement of a child with a person in anticipation of, or for the purposes of, adoption.

7.4.1.2 "**Adoption Leave**" means adoption leave provided under 7.4.3.4.

7.4.1.3 "**Child**" means a child of the employee or the employee's spouse under the age of one year; or

means a child under the age of five years who is placed with an employee for the purposes of adoption, other than a child or step-child of the employee, or of the spouse of the employee, who has previously lived with the employee for a continuous period of at least six months.

7.4.1.4 "**Extended Adoption Leave**" means adoption leave provided under 7.4.3.4(2).

7.4.1.5 "**Extended Paternity Leave**" means paternity leave provided under 7.4.3.3(2).

7.4.1.6 "**Government Authority**" means a person or agency prescribed as a government authority for the purposes of this definition.

7.4.1.7 "**Maternity Leave**" means maternity leave provided under 7.4.3.2.

7.4.1.8 "**Medical Certificate**" means a certificate as prescribed in 7.4.5.1.

7.4.1.9 "**Parental Leave**" means adoption leave, maternity leave, paternity leave, extended adoption leave or extended paternity leave as appropriate, and is unpaid leave.

7.4.1.10 "**Paternity Leave**" means paternity leave provided under 7.4.3.3.

7.4.1.11 "**Primary Care-Giver**" means a person who assumes the principal role of providing care and attention to a child.

7.4.1.12 "**Relative Adoption**" means the adoption of a child by a parent, a spouse of a parent or another relative, being a grandparent, brother, sister, aunt or uncle (whether of the whole blood or half blood or by marriage).

7.4.1.13 "**Short Adoption Leave**" means adoption leave provided under 7.4.3.4(1).

7.4.1.14 "**Special Adoption Leave**" means adoption leave provided under 7.4.10.

7.4.1.15 "**Special Maternity Leave**" means maternity leave provided under 7.4.9.1.

7.4.1.16 "**Spouse**" includes a defacto spouse or a former spouse.

7.4.2 **Employer's Responsibility to Inform**

7.4.2.1 On becoming aware that:

1. an employee is pregnant; or
2. an employee's spouse is pregnant; or
3. an employee is adopting a child;

7.4.2.2 an employer must inform the employee of:

1. the employee's entitlements under this Clause; and
2. the employee's responsibility to provide various notices under this Clause.

7.4.3 **Eligibility For and Entitlement to Parental Leave**

7.4.3.1 Subject to the qualifications in 7.4.4, an employee is entitled to parental leave in accordance with this subclause.

7.4.3.2 An employee who becomes pregnant is, on production of the required medical certificate, entitled to up to 52 weeks of maternity leave.

7.4.3.3 A male employee is, on production of the required medical certificate, entitled to one or two periods of paternity leave, the total of which must not exceed 52 weeks, as follows:

1. An unbroken period of up to one week at the time of the birth of the child.
2. A further unbroken period of up to 51 weeks in order to be the primary care-giver of the child (to be known as **extended paternity leave**).

7.4.3.4 An employee is entitled to one or two periods of adoption leave, the total of which must not exceed 52 weeks, as follows:

1. An unbroken period of up to three weeks at the time of the placement of the child (to be known as **short adoption leave**).
2. A further unbroken period of up to 49 weeks in order to be the primary care-giver of the child (to be known as **extended adoption leave**).

7.4.4 **Qualifications on Entitlements and Eligibility**

7.4.4.1 An employee engaged upon casual or seasonal work is not entitled to parental leave.

7.4.4.2 An entitlement to parental leave is subject to the employee having at least 12 months of continuous service with the employer immediately preceding:

1. in the case of maternity leave, the expected date of birth; or otherwise
2. the date on which the leave is due to commence.

7.4.4.3 The entitlement to parental leave is reduced:

1. in the case of maternity leave, by any period of extended paternity leave taken by the employee's spouse and/or by any period of special maternity leave taken by the employee.
2. in the case of extended paternity leave, by any period of maternity leave taken by the employee's spouse.
3. in the case of extended adoption leave, by any period of extended adoption leave taken by the employee's spouse.

7.4.5 Certification Required

7.4.5.1 An employee must, when applying for maternity leave or paternity leave, provide the employer with a medical certificate that:

1. names the employee or the employee's spouse as appropriate;
2. states that the employee or the employee's spouse is pregnant and states:
 - the expected date of birth;
 - the expected date of termination of pregnancy; or
 - the date on which the birth took place

whichever is appropriate.

7.4.5.2 At the request of the employer, an employee must, in respect of the conferral of parental leave, produce to the employer within a reasonable time a statutory declaration that states:

Parental Leave

1. The particulars of any period of parental leave sought or taken by the employee's spouse; and where appropriate,
2. that the employee is seeking the leave to become the primary care-giver of a child.

Adoption Leave

1. In the case of adoption leave, a statement from a Government Authority giving details of the date, or presumed date, of adoption; and
2. that for the period of the leave the employee will not engage in any conduct inconsistent with the employee's contract of employment.

7.4.6 Notice Requirements

7.4.6.1 ***Maternity Leave***

An employee must:

1. not less than ten (10) weeks before the expected date of birth of the child, give notice in writing to her employer stating the expected date of birth; and

2. give not less than four weeks notice in writing to her employer of the date on which she proposes to commence maternity leave stating the period of leave to be taken; and
3. notify the employer of any change in the information provided pursuant to 7.4.5 within two weeks after the change takes place.

An employer may, by not less than 14 days notice in writing to the employee, require her to commence maternity leave at any time within six weeks immediately before the expected date of birth. Such notice may be given only if the employee has not given her employer the required notice.

7.4.6.2 Paternity Leave

An employee must:

1. not less than ten (10) weeks prior to each proposed period of paternity leave, give the employer notice in writing stating the dates on which he proposes to start and finish the period(s) of paternity leave.
2. notify the employer of any change in the information provided pursuant to 7.4.5 within two weeks after the change takes place.

7.4.6.3 Adoption Leave

An employee must:

1. on receiving notice of approval for adoption purposes, notify the employer of the approval and, within two months of the approval, further notify the employer of the period(s) of adoption leave the employee proposes to take.
2. in the case of a relative adoption, so notify the employer on deciding to take the child into custody pending an application for adoption.
3. as soon as the employee is aware of the expected date of the placement of a child for adoption purposes, but not later than 14 days before the expected date of placement, give notice in writing to the employer of that date, and of the date of commencement of any period of short adoption leave to be taken.
4. at least ten (10) weeks before the proposed date of commencing any extended adoption leave, give notice in writing to the employer of the date of commencing leave and the period of leave to be taken.

7.4.6.4 Unforeseen Circumstances

An employee is not in breach of these notice requirements if the employee's failure to comply is caused by unforeseen or other compelling circumstances, including:

1. the birth occurring earlier than the expected date; or
2. the death of the mother of the child; or
3. the death of the employee's spouse; or
4. the requirement that the employee accept earlier or later placement of the child;

so long as, where a living child is born, the notice is given not later than two weeks after the birth.

7.4.7 Taking of Parental Leave

7.4.7.1 No employee may take parental leave concurrently with such leave taken by the employee's spouse, apart from paternity leave of up to one week at the time of the birth

of the child or adoption leave of up to three weeks at the time of the placement of the child.

7.4.7.2 Subject to complying with any relevant provision as to the taking of annual leave or long service leave, an employee may, instead of or in conjunction with parental leave, take any annual leave or long service leave to which the employee is entitled.

7.4.7.3 Paid sick leave or other paid absences are not available to an employee during the employee's absence on parental leave.

7.4.7.4 A period of maternity leave must be taken as one continuous period and must include, immediately following the birth of the child, a period of six (6) weeks of compulsory leave.

7.4.7.5 Maternity leave and paternity leave cannot extend beyond the child's first birthday.

7.4.7.6 Adoption leave cannot extend beyond the child's fifth birthday.

7.4.7.7 Extended adoption leave cannot extend beyond the first anniversary of the initial placement of the child.

7.4.8 Variation or Cancellation of Parental Leave

7.4.8.1 Without extending an entitlement beyond the limit set by 7.4.3, parental leave may be varied as follows:

1. The leave may be lengthened once by the employee giving the employer at least 14 days notice in writing stating the period by which the employee required the leave to be lengthened.
2. The leave may be lengthened or shortened by agreement between the employer and the employee.

7.4.8.2 Parental leave, if applied for but not commenced, is cancelled:

1. should the pregnancy terminate otherwise than by the birth of a living child; or
2. should the placement of a child proposed for adoption not proceed;

as the case may be.

7.4.8.3 If, after the commencement of any parental leave:

1. the pregnancy is terminated otherwise than by the birth of a living child or, in the case of adoption leave, the placement of a child ceases; and
2. the employee gives the employer notice in writing stating that the employee desires to resume work,

the employer must allow the employee to resume work within four weeks of receipt of notice.

7.4.8.4 Parental leave may be cancelled by agreement between the employer and the employee.

7.4.9 Special Maternity Leave and Sick Leave

7.4.9.1 If:

1. a employee not then on maternity leave suffers illness related to her pregnancy; or
2. the pregnancy of an employee not then on maternity leave terminates after 28 weeks otherwise than by the birth of a living child,

she may take such paid sick leave as she is then entitled to and such further unpaid leave (to be known as ***special maternity leave***) as a legally qualified medical practitioner certifies to be necessary before her return to work, provided that the aggregate of paid sick leave, special maternity leave and maternity leave must not exceed the period to which the employee is entitled under 7.4.3.2.

7.4.9.2 An employee who returns to work after the completion of a period of such leave is entitled to the position which she held immediately before commencing such leave, or in the case of an employee who was transferred to a safe job, to the position which she held immediately before such transfer.

7.4.9.3 If that position no longer exists, but there are other positions available which the employee is qualified for and is capable of performing, she is entitled to a position, as nearly as possible, comparable in status and pay as that of her former position.

7.4.10 Special Adoption Leave

7.4.10.1 An employee who has received approval to adopt a child who is overseas, is entitled to such unpaid leave as is reasonably required by the employee to obtain custody of the child.

7.4.10.2 An employee who is seeking to adopt a child is entitled to such unpaid leave, not exceeding five days, as is required by the employee to attend to such interviews, workshops, court attendance or examinations as are necessary as part of the adoption procedure.

7.4.10.3 The leave under this subclause is to be known as ***special adoption leave*** and does not affect any entitlement under 7.4.3.

7.4.10.4 Special adoption leave may be taken concurrently by an employee and the employee's spouse.

7.4.10.5 Where paid leave is available to the employee, the employer may require the employee to take such leave instead of special adoption leave.

7.4.11 Transfer to a Safe Job : Maternity Leave

7.4.11.1 If, in the opinion of a legally qualified medical practitioner:

1. illness or risks arising out of the pregnancy, or
2. hazards connected with the work assigned to the employee,

make it inadvisable for the employee to continue her present work, the employee must, if the employer considers that it is practicable to do so, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of maternity leave.

7.4.11.2 If the transfer to a safe job is not considered practicable, the employee is entitled, or the employer may require the employee, to take leave for such period as is certified necessary by a legally qualified medical practitioner.

7.4.11.3 Leave under this subclause will be treated as maternity leave.

7.4.12 **Part-Time Work**

An employee who is pregnant or is entitled to parental leave may, by agreement with the employer, reduce the employee's hours of employment to an agreed extent subject to the following conditions:

7.4.12.1 Where the employee is pregnant, and to do so is necessary or desirable because of the pregnancy.

7.4.12.2 Where the employee is entitled to parental leave, by reducing the employee's entitlement to parental leave for the period of such agreement.

7.4.12.3 If under this subclause an employee's hours are reduced, the employer may reduce the employee's award entitlements on a pro rata basis.

7.4.13 **Return to Work after Parental Leave**

7.4.13.1 An employee must confirm the employee's intention to return to work, by notice in writing, to the employer given at least four weeks before the end of the period of parental leave.

7.4.13.2 On returning to work after parental leave an employee is entitled:

1. to the position which the employee held immediately before commencing parental leave; or
2. in the case of an employee who was transferred to a safe job, to the position which she held immediately before the transfer.

7.4.13.3 If the employee's previous position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, the employee is entitled to a position as nearly as comparable in status and pay to that of the employee's former position.

7.4.14 **Termination of Employment**

7.4.14.1 An employee on parental leave may terminate the employee's employment at any time during the period of leave by giving the required notice.

7.4.14.2 An employer must not terminate the employment of an employee on the ground of her pregnancy or an employee's absence on parental leave. Otherwise the rights of an employer in relation to termination of employment are not affected by this Clause.

CLAUSE 7.5 - CARER'S LEAVE

OPDATE 01:07:2001 on and from

7.5.1 **Definitions**

7.5.1.1 "**Carer's Leave**" means leave provided in accordance with this Clause.

7.5.1.2 "**Immediate Family**" includes:

1. spouse (including a former spouse, a de facto spouse and a former de facto spouse) of the employee. A "**de facto spouse**", in relation to a person, means a person of the opposite sex to the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person; and

2. child or an adult child (including an adopted child, a step-child or an ex nuptial child), parent, grandparent, grandchild or sibling of the employee or spouse of the employee.

7.5.1.3 "**Sick Leave**" means leave provided for in accordance with Clause 7.2.

7.5.2 Paid Carer's Leave

7.5.2.1 An employee with responsibilities in relation to either members of the employee's immediate family or household who need the employee's care and support is entitled to up to five (5) days in any completed year of continuous service to provide care and support for such persons when they are ill.

7.5.2.2 The entitlement to use carer's leave is subject to the employee being responsible for the care of the person concerned.

7.5.2.3 The employee must, if required by the employer, establish by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another.

7.5.2.4 In normal circumstances an employee must not take carer's leave where another person has taken leave to care for the same person.

7.5.2.5 The employee must, where practicable, give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and the person's relationship to the employee, the reasons for taking such leave and the estimated length of absence. If it is not practicable for the employee to give prior notice of absence, the employee must notify the employer by telephone of such absence at the first opportunity on the day of the absence.

7.5.2.6 The amount of carer's leave taken is to be deducted from:

1. the bereavement leave entitlement provided for in subclause 7.3.1 until exhausted; and then

2. the amount of the employee's sick leave credit.

3. Payment will be made according to the bereavement leave Clause 7.3.2. or the sick leave Clause 7.2.3

7.5.2.7 In any new contract of employment on and from 1/7/2001, carer's leave payments must not be debited from the employer's commission or the employee's commission/incentive.

7.5.3 Unpaid Carer's Leave

An employee may elect, with the consent of the employer, to take unpaid leave for the purpose of providing care to an immediate family or household member who is ill.

CLAUSE 7.6 - PUBLIC HOLIDAYS

OPDATE 01:07:2001 on and from

7.6.1 An employee who is not being remunerated by "commission only" is entitled to be free of duty for all public holidays (as defined in 7.6.4) without loss of wages. If such an employee elects of their own volition to work a public holiday it will be at the ordinary wage rate. If the employer expressly requires such an employee to work on a public holiday then payment must be at double the award wage rate, or by agreement the employee can take off another day at the ordinary wage rate. Any penalty paid for a public holiday is not to be debited after 1/7/2001.

7.6.2 Employees on "commission only" are entitled to be free of duty for all official public holidays. However, if the employee self-elects to work a public holiday it will be without any liability on the employer other than for any commission earned by the employee. If the employer requires such an employee to work on a public holiday the employer will allow the employee to take another day off.

7.6.3 When any public holiday coincides with a day off (see Clause 6.1) the employee will be granted an extra day off by the employer or else the employee can accept 1/5th of the award wage (not to be debited) in lieu of the extra day off.

7.6.4 The following days will be public holidays:

New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Adelaide Cup Day, Queen's Birthday, Labour Day, Christmas Day and Proclamation Day and any other days which by Act of Parliament or Proclamation may from time to time be declared for the State of South Australia, or may be substituted for any such holidays.

CLAUSE 7.7 LONG SERVICE LEAVE

OPDATE 01:07:2001 on and from

On and from 1/7/2001 no new contract of employment will contain a provision to debit long service leave.

PART 8 - TRAINING AND RELATED MATTERS

OPDATE 01:07:2001 on and from

CLAUSE 8.1 - TRAINING WAGE ARRANGEMENTS

OPDATE 01:07:2001 on and from

The training wage arrangements for trainees are set out in Schedule 5.

PART 9 - AWARD COMPLIANCE AND ASSOCIATION RELATED MATTERS

OPDATE 01:07:2001 on and from

CLAUSE 9.1 - POSTING OF AWARD

OPDATE 01:07:2001 on and from

A copy of this Award must be made available by the employer and placed in a conspicuous part of their premises where it will be easily accessible to and may be read by their employees.

SCHEDULE 1. WAGE RATES AND VEHICLE ALLOWANCE

OPDATE 01:06:2005 1st pp on or after

This Schedule will operate from the 1st pp on or after 1st June, 2005.

Note: For employees employed prior to 1st July 2001 the relevant wage rates clause is in Schedule 8, clause S8.1.

S1.1 MINIMUM WAGE - ADULT EMPLOYEES

S1.1.1 The minimum adult wage rate payable to a Qualified Salesperson will be \$467.40 per week, and may be paid either weekly or fortnightly and not later than Thursday in any such week or fortnight.

S1.1.2 A Registered Branch Manager will be remunerated by the payment of an additional 25 percent to the weekly rate as prescribed in S1.1.1 for a Registered Salesperson.

S1.1.3 Wages for trainees are set out in Schedule 5.

S1.2 VEHICLE ALLOWANCE

S1.2.1 Subject to clause 5.3.4 of the Award an employee who is classified as a Salesperson will be paid a motor vehicle allowance of \$140.00 per week payable either weekly or fortnightly or as otherwise agreed.

S1.2.2 An employee who is classified as a Trainee will be paid a motor vehicle allowance of \$110.00 per week, payable either weekly or fortnightly or as otherwise agreed.

S1.3 THE STATE MINIMUM AWARD WAGE

S1.3.1 Subject to S1.3.3.1 no employee will be paid less than the State Minimum Award Wage.

S1.3.2 Amount of State Adult Minimum Award Wage:

S1.3.2.1 The State Minimum Award Wage for full-time adult employees not covered by S1.3.3.1 (special categories clause), is \$467.40 per week.

S1.3.3 Application of Minimum Wage to Special Categories of Employee:

S1.3.3.1 S1.3.1 and S1.3.2 have no application to employees paid in accordance with clause S5.8 (trainee) and Clause 5.3.1 (iii) (commission only).

S1.3.4 Application of State Minimum Award Wage to Award Rates Calculation

The State Minimum Award Wage:

S1.3.4.1 applies to the calculation of superannuation, payments during sick leave, long service leave and annual leave, and for all other purposes of this Award; and

S1.3.4.2 is inclusive of the arbitrated safety net adjustments provided by the State Wage Case decision of June 2004 [[2004] SAIRComm 31] and all previous safety net and state wage adjustments.

S1.4 SAFETY NET ADJUSTMENTS

S1.4.1 The rates of pay in this award include the arbitrated safety net adjustment payable under the State Wage Case decision of June 2004 [[2004] SAIRComm 31]. This arbitrated safety net adjustment may be offset against any equivalent amount in rates of

pay received by employees whose wages and conditions of employment are regulated by this award which are above the wage rates prescribed in the award. Such above award payments include wages payable pursuant to enterprise agreements, certified agreements, currently operating enterprise flexibility agreements, Australian workplace agreements, award variations to give effect to enterprise agreements and over award arrangements. Absorption which is contrary to the terms of an agreement is not required. Increases made under previous State Wage Case principles or under the current Declaration, excepting those resulting from enterprise agreements, or award variations to give effect to enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

S1.4.2 The rates of pay in this award also contain safety net wage adjustments as determined by previous State Wage Case decisions. The absorption arrangements applying in relation to those adjustments continue to apply.

SCHEDULE 2. CLASSIFICATION STRUCTURE DEFINITIONS

OPDATE 01:07:2001 on and from

This Schedule will operate on and from 1st July, 2001.

S2.1 "**Trainee Salesperson**" means an employee who is seeking accreditation as a employee through the attainment of the qualification of Certificate of Real Estate Operations (Sales Consulting).

Duties may include, but not be limited to:

- conducting, attending or hosting open inspections;
- conducting, attending or hosting inspections by appointment;
- listing for sale real property;
- processing the sales documentation;
- making representations about real property to the buying or selling public.

S2.2 "**Salesperson**" means an employee who holds the Certificate of Real Estate Operations (Sales Consulting) or the equivalent qualification as provided in the *Land Agents Act 1994* or a person who does not hold the said qualification and is authorised by the employer to conduct some or any of the duties of a employee, which duties are not inconsistent with the *Land Agents Act 1994*.

Duties may include, but not be limited to:

- conducting, attending or hosting open inspections;
- conducting, attending or hosting inspections by appointment;
- listing for sale real property;
- processing the sales documentation;
- making representations about real property to the buying or selling public;
- conducting an auction.

S2.3 "**Trainer**" means a employee who, in addition, is an employee who is qualified or accredited as a trainer of a person who is seeking the qualification of Certificate of Real Estate Operations (Sales Consulting) and will also mean a person who conducts group or one on one staff training at the request of the employer.

Duties will include:

- supervision and training of a trainee employee;
- general office sales and professional training.

S2.4 "**Assessor**" means an employee who, in addition, is an employee who is qualified or accredited as an assessor of a person who is seeking the qualification of Certificate of Real Estate Operations (Sales Consulting).

Duties will include:

- assessment of a trainee employee.

S2.5 "**Manager**" means an employee who is responsible for the supervision and management of a real estate office and/or group of employees.

Duties will include:

- Sales Manager;
- Office Manager;
- Selling Manager (one who acts as an employee and manager);
- checking sales documentation;
- supervising the productivity and profitability of a sales office or team;
- supervising disputes resolution;
- coordinating annual leave of employees.

SCHEDULE 3. PRO FORMA LETTER OF APPOINTMENT (LOA)

OPDATE 09:09:2003 on and from

This Schedule will operate on and from 9th September, 2003.

AN AGREEMENT made on theday of.....20.....

BETWEEN:
(Legal Name of Employer)

ABN

Of.....P/code.....

Phone:.....Fax:.....E-mail.....

Trading.....
(write "As above" if same)

In the State of South Australia ("the Agent")

AND:.....(Name of Employee)

Of.....PostCode
("the Salesperson")

Business Phone.....

WHEREBY IT IS AGREED as follows:

1. COMMENCEMENT DATE AND CLASSIFICATION

Employee's commencement date: _____

Employee's classification:

- Salesperson
- Trainee
- Branch Manager

2. WAGE/SALARY

EITHER

- The Award wage will be paid:
- Fortnightly
- Weekly

OR

- An annual salary of \$_____ (insert amount) will be paid:
- Fortnightly
- Weekly

OR

- The payment of a wage or salary is not applicable because the Salesperson will be paid commission only.

3. METHOD OF PAYMENT

Any money paid to the employee by the employer will be paid by:

- Electronic transfer into an institution nominated by the employee
- Cheque
- Cash

4. KEY PERFORMANCE INDICATORS (Optional)

- The employee should write each month (based on an average over each quarter) at least \$.....(insert amount) of the employer's gross commission.

This KPI is to commence on(insert date).

- The employee should list at least(insert number) properties each month (based on an average over each quarter) and should sell at least.....(insert number) properties each month (based on an average over each quarter).

This KPI is to commence on (insert date).

- (Other)_____

5. HIGHER DUTIES

Will there be any paid special or higher duties required of the employee?

- YES
- NO

If "YES" complete the table:

Name of Duty	Payment	When Paid

6. TRAINING

List any type and frequency of training to be provided by the employer:

7. ALLOWANCES AND EXPENSES

7.1 Locomotion Allowance

EITHER

- The employee will receive the Award vehicle allowance and the:

Frequency of the payment will be:

- Fortnightly Weekly
 (Other agreed basis) _____

OR

- The employer will provide a motor vehicle for the use of the employee and conditions of use (if any) of the motor vehicle by the employee are as follows:

OR

- No locomotion allowance will be paid because the employee is being remunerated by "commission only".

7.2 Other Allowances and Expenses

- Apart from the vehicle allowance will there be any other allowances and expenses to be paid to the employee?

YES NO

If "YES" fill in the Table

Subject/Item	\$ Amount	When Paid

8. METHOD OF CALCULATING COMMISSION/INCENTIVE

If the following format does not suit the method of calculating the employee's commission/incentive or it does suit and there is an additional incentive, then attach an annexure.

Step one

Insert what commission/incentive the employee is to receive. Depending on the office practice this may be expressed in different ways and the following are some examples:

Example 1

The employee will receive 35% of the employer's commission as a [commission][incentive] payment. The employee will receive 60% of the 35% if he/she only lists or 40% of the 35% if he/she only sells, or such other percentage splits as agreed.

Example 2

The employee will receive 20% of the employer's commission for a listing and 15% for a sale.

Example 3

<i>Agent's Gross Commission Generated by Salesperson. Each year stands alone.</i>	<i>Salesperson's Gross Commission/Incentive on Office Lead</i>	<i>Salesperson's Gross Commission/Incentive Own Lead</i>
<i>Up to \$10,000</i>	<i>25%</i>	<i>35%</i>
<i>\$10,001 to \$50,000</i>	<i>35%</i>	<i>45%</i>
<i>\$50,001 and over</i>	<i>45%</i>	<i>50%</i>

Now insert what commission/incentive the employee is to receive:

Step two

Agreed Debits

The employer may take the following debits into account when calculating the employee's commission/incentive

No.	Name of Debit	From whose commission/incentive debited
1	Franchise fees, listing fees and Agents conjunction fees	Employer's
2	The wage of a Qualified Salesperson	Employer's or employee's (not applicable if employee being paid by "commission only")
3	The vehicle allowance of a Qualified Salesperson	Employer's or employee's (not applicable if employee being paid by "commission only")
4	(Settlement achieved) Advertising in excess of vendor's authority with employer's authority	Employer's at rebate rate or lesser amount if agreed
5	(Settlement achieved) Advertising in excess of vendor's authority without employer's authority	Employee's at rebate rate or lesser amount if agreed
6	(Settlement not achieved) Advertising in excess of vendor's authority	Employer's or employee's at rebate rate or lesser amount as agreed
7	Approved employee business expenses against employer's name	Employee's or lesser amount as agreed and advertising at rebate rate
8	Non-Approved employee business expenses against employer's name	Employee's in full.

Step three

The credits (if any) under Step 1 are added to the employee's commission/incentive account as they come in.

The debits (if any) under Step 2 are added to the employee's commission/incentive account as they come in.

At the appointed time (see Clause 10 of this LOA) the employee's commission/incentive account will be reconciled and any credit paid to the employee.

If the employee's commission/incentive account balance is in debit at the time of reconciliation, that debit balance will be carried forward to the next reconciliation period.

8.1 Reversal Rate

"Reversal Rate" means that it is intended that the employee will be paid by "commission only", but at the same time a wage and commission/incentive rate (the reversal rate) has been agreed in advance in the event that the employee has to revert from "commission only" to wage and commission/incentive in accordance with the Award.

If the employee will be paid by "**commission only**" and in the event that the employee must revert to a wage because either the SAIRC does not approve "commission only" (5.3.2 of the award) or the employee grosses less than \$60,000 (taxable income) in their first and subsequent years (see 5.3.3 of the award), the following commission/incentive is agreed in advance in the event that the employee must revert to wage and commission/incentive in lieu of "commission only".

Write in sufficient details to identify the amount of the employee's commission/incentive in the event that a wage must be reverted to.

Step one

Insert what commission/incentive the employee is to receive. Depending on the office practice this may be expressed in different ways and under the above Step 1 are some examples:

Now insert what commission/incentive the employee will receive if he/she must revert to a wage:

Step two

Agreed Debits

The employer may take the following debits into account when calculating the employee's commission/incentive

No.	Name of Debit	From whose commission/incentive debited
1	Franchise fees, listing fees and Agents conjunction fees	Employer's
2	The wage of a Qualified Salesperson	Employer's or employee's
3	The vehicle allowance of a Qualified Salesperson	Employer's or employee's
4	(Settlement achieved) Advertising in excess of vendor's authority with employer's authority	Employer's at rebate rate or lesser amount if agreed
5	(Settlement achieved) Advertising in excess of vendor's authority without employer's authority	Employee's at rebate rate or lesser amount if agreed
6	(Settlement not achieved) Advertising in excess of vendor's authority	Employer's or employee's at rebate rate or lesser amount as agreed

No.	Name of Debit	From whose commission/incentive debited
7	Approved employee business expenses against employer's name	Employee's or lesser amount as agreed and advertising at rebate rate
8	Non-Approved employee business expenses against employer's name	Employee's in full.

Step three

The credits (if any) under Step 1 will be added to the employee's commission/incentive account as they come in.

The debits (if any) under Step 2 will be added to the employee's commission/incentive account as they come in.

At the appointed time (see Clause 10 of this LOA) the employee's commission/incentive account will be reconciled and any credit paid to the employee.

9. ENTITLEMENTS ON TERMINATION

9.1 Award and Legislative Entitlements on Termination

The employer must pay any outstanding Award or legislative entitlements due to the employee at the time of termination of employment.

9.2 Commission Entitlements on Termination and Post Termination

Upon the termination of the employee's employment, the employee's commission account will continue to be administered, using the same method and same time lines for any payments as applied during the employee's employment. After a reasonable time (as defined) has elapsed, the account will be closed and reconciled according to the usual method. Up until the account is closed, the employer will be entitled to debit any reasonable expenses to which the employer is put after the employee's termination.

"Reasonable Time" the employer allowing time both for settled sales and for the receipt of all known debits (if any) which are attributable to the employee.

10. WHEN COMMISSION/INCENTIVE PAID BY

When is the employee's commission/incentive to be paid [it can be no longer than one month after the employer's commission is received - see clause 4.2.2.3 (x) of the Award]?

_____ (Insert intervals of payment eg monthly).

11. METHOD OF ANNUAL LEAVE PAYMENT

Payment for annual leave is split into two components, the first one on the wage/salary (11.1) and the second, on the commission/incentive (11.2). If remuneration is by "commission only", then only fill out the second component only (11.2).

11.1 First component - Payment for Annual Leave on the Wage/Salary Component

EITHER

- The wage/salary payable by the employer to the employee will continue to be paid when annual leave is taken or paid as a lump sum at the start of leave.

OR

- Annual leave will be paid by the employer to the employee at the rate of an additional 1/12th of the wage/salary and paid to the employee at the same time the wage/salary is paid, provided that the employee will not be entitled to any additional payments when annual leave is actually taken.

OR

- Being paid annual leave on wage/salary will be not applicable because the employee will be paid by "commission only".

11.2 *Second Component - Payment for Annual Leave on the Commission/Incentive Component*

EITHER

- Annual leave will be paid on commission/incentive earnings at the same time the employee actually takes leave and calculated as per the award.

OR

- The employer will pay annual leave to the employee at the rate of an additional 1/12th of the employee's commission/incentive paid to the employee at the same time the employee's commission/incentive is paid, provided that the employee will not be entitled to any additional payments when annual leave is actually taken.

OR

- The employee's commission/incentive has been set at a higher level than otherwise would have been the case in order to be inclusive of payment for annual leave. 8.4% [ie 1/12th] of the employee's commission/incentive is identified as a payment for annual and the employee will not be entitled to any further payment for annual leave in relation to commission/incentive earnings.

12. PROBATION

The employee will be on probation for a period of three months providing the probationary period for a Trainee will be as specified in the training contract.

13. TERM OF CONTRACT EITHER

- The basis of employment will be full-time.

OR

The basis of employment will be full-time but for a fixed term of:

..... (insert period) and

expiring on (insert date)

No obligation exists with the employer to continue the employment of a Trainee beyond the completion of the Traineeship, unless otherwise agreed.

14. INSURANCE

The employee must have a current policy of insurance indemnifying the employer from any claims arising out of the use of the employee's own vehicle for work purposes.

The employee must, at the request of the employer, produce a current policy of insurance indemnifying the employer from any claims arising out of the use of the employee's own vehicle for work purposes.

15. RELATIONSHIP TO COMPANY POLICIES AND PROCEDURES

This Agreement is supported by company policies and procedures determined by the company from time to time. These policies and procedures will not reduce the Salesperson's substantive entitlements contained in this Agreement but provide guidelines for the fair and efficient administration of the employment relationship.

16. DUTY/RESPONSIBILITY

The employee will diligently and faithfully perform all the duties and responsibilities of their employment in accordance with the job description and the company's policies and procedures and such other duties as may reasonably be required by the company. The employee undertakes:

- to devote the whole of the employee's working time and attention to the use of the employee's best endeavours to further the development, reputation and business of the company;
- to observe all lawful directions, orders, instructions and policies (as varied from time to time) of the company; and
- not to be directly or indirectly involved or engaged in work for or provide services to any other company, business or individual, whether paid or not, which may in any way conflict with the interests of the company, unless otherwise agreed between the parties in writing.

17. NON-SOLICITATION COVENANT

The employee agrees to enter a non-solicitation covenant as a term of employment.

18. SALE BY TWO OR MORE EMPLOYEES

Where a sale is effected by two or more employees the commission is to be divided between the employees in such proportion as they may agree, provided that any such agreement may be varied at any time by the employees. In the absence of agreement, the commission will be split equally.

19. DISTRIBUTION OF LETTER OF APPOINTMENT

Upon completion and execution of this Letter of Appointment by both the employer and the employee:

- One copy must be retained by the employer.
- One copy must be retained by the employee.
- One copy must be posted by the employer to The Real Estate Employers' Federation of South Australia:

PO Box 72
 Mitcham Shopping Centre SA 5062
 Phone: 8357 1462

With a registration and an administration fee of \$50.00 payable by the employer.

- One copy must be posted by the Employee to the Real Estate Salespersons' Association of South Australia: Secretary

PO Box 6665
 Halifax Street
 Adelaide SA 5000
 Phone: 8289 5484

with a registration and an administration fee of \$50.00 payable by the Employee.

20. VARIATION TO AGREEMENT

The parties acknowledge that the LOA can be only varied by agreement of both parties signing a variation agreement at any time. The variation must be in writing and lodged in accordance with Clause 19 of this Agreement.

21. PAY STATEMENTS

When the employee is paid any wage or commission or incentive the employee is to receive pay statements detailing such items as remuneration earned and for what period and all credits and debits taken into account and the name of property settlements. An employee is to receive a Commission statement at least monthly.

22. WHERE AWARD LOCATED

A copy of the award can be located on the employer's premises in the _____

(Space allowed for other clause or attach annexures)

SIGNATURES

Signed for or on behalf of the Employer

Signed:.....
 Date: _____/_____/_____
 Name in Full (printed):.....
 Position:.....
 Witnessed By:
 Witness Name in Full (printed):.....
 Witness Address:.....

Signed by the Employee

Signed:.....
 Date: _____/_____/_____
 Name in Full (printed):.....
 Position:.....
 Witnessed By:
 Witness Name in Full (printed):.....
 Witness Address:.....

SCHEDULE 4. PROFORMA VARIATION TO LETTER OF APPOINTMENT (LOA)

OPDATE 01:07:2001 on and from

AN AGREEMENT made on theday of20.....

BETWEEN:

(Name of Employer)

ABN

Of Post Code

Phone:.....Fax:.....E-mail

Trading as

(write "As above" if same)

In the State of South Australia ("the Agent")

AND:(Name of Employee)

Of.....PostCode

("the Salesperson")

Business Phone.....

WHEREBY IT IS AGREED as follows:

1. On the _____ day of _____(month) _____(year), the employer and the employee executed a Letter of Appointment ("LOA"). The employer and the employee have come to an agreement to vary this LOA in the following terms:

Clause _____ of the original LOA is varied as follows:

2. The variation is to commence on the _____(insert date)

3. This variation will form an annexure to the LOA and will be registered in accordance with Clause 4.2.2.2 of the Real Estate Award.

SIGNATURES

Signed for or on behalf of the Employer

Signed:.....

Date: _____/_____/_____

Name in Full (printed):.....

Position:.....

Witnessed By:

Witness Name in Full (printed):.....

Witness Address:.....

Signed by the Employee

Signed:.....

Date: _____/_____/_____

Name in Full (printed):.....

Position:.....

Witnessed By:

Witness Name in Full (printed):.....

Witness Address:.....

SCHEDULE 5. TRAINING WAGE ARRANGEMENTS

OPDATE 01:06:2005 1st pp on or after

This Schedule shall operate from the first pay period commencing on or after 1st June 2005.

S5.1 ARRANGEMENT

Subject	Clause Number
Application	S5.2
Arrangement	S5.1
Definitions	S5.5
Employment Conditions	S5.7
Objective	S5.3
Supersession	S5.4
Training Conditions	S5.6
Wages	S5.8

S5.2 APPLICATION

S5.2.1 Subject to S5.2.4, this Schedule will apply only to persons who are undertaking a **traineeship** and is to be read in conjunction with the Award.

S5.2.2 Despite the foregoing, this Schedule does not apply to employees who were employed by an employer bound by this Award prior to a date of approval of a **Traineeship Scheme** relevant to the employer, except where agreed between the employer and the **relevant Association**.

S5.2.3 This Schedule does not apply to the apprenticeship system.

S5.2.4 Where the employment of a **trainee** by an employer is continued after the conclusion of the **traineeship**, this Schedule ceases to apply to the employment of the **trainee** and the Award will apply to the former **trainee**.

S5.2.5 The parties to this Award agree that in the development of any enterprise agreement, relevant to parties bound by this Award, the maintenance of the integrity of these arrangements is highly desirable.

S5.2.6 The parties to this Award agree that the provisions of this Schedule will not be used as a precedent in any other proceedings.

S5.3 OBJECTIVE

S5.3.1 The objective of this Schedule is to assist in the establishment of a system of **traineeships** which provides **approved training**, in conjunction with employment, in order to enhance the skill levels and future employment prospects of **trainees**, particularly young people and the long-term unemployed.

S5.3.2 The system is neither designed nor intended for those who are already trained and job ready. It is not intended that existing employees will be displaced from employment by **trainees**.

S5.3.3 Except as provided for in S5.4, nothing in this Schedule will be taken to replace the prescription of training requirements in the Award.

S5.4 SUPERSESSION

Any existing award provision for the Australian Traineeship System (ATS) or the Career Start Traineeship (CST) will not apply to any employer bound by this Schedule, except in

relation to ATS or CST trainees who commenced a **traineeship** with the employer before the employer was bound by this Schedule.

S5.5 DEFINITIONS

S5.5.1 "**Approved Training**" means that training which is specified in the training plan which is part of the Training Agreement registered with the AIRC. It includes training undertaken both on and off-the-job in a traineeship and involves formal instruction, both theoretical and practical, and supervised practice. The training reflects the requirements of a National Training Package or a Traineeship Scheme and leads to a qualification set out in Clause S5.6.5).

S5.5.2 "**ARC**" means the Accreditation and Registration Council or its successor.

S5.5.3 "**Commission**" means the Industrial Relations Commission of South Australia.

S5.5.4 "**Parties To A Traineeship Scheme**" means the employer association and/or employer, and the relevant employee association(s) involved in the consultation and negotiation required for the approval of a Traineeship Scheme.

S5.5.5 "**Relevant Association**" means an association of employees, as defined in Chapter 1, 4(1) of the **Act**, which has an interest in the Award and which is entitled to enrol the trainee as a member.

S5.5.6 "**Trainee**" is a individual who is a signatory to a Training Agreement registered with the ARC and is involved in paid work and structured training which may be on or off the job.

S5.5.7 "**Traineeship**" means a system of training which has been approved by the ARC or which meets the requirements of a National Training Package developed by the National Industry Advisory Board and endorsed by the National Training Framework Committee which leads to an Australian Qualifications Framework qualification specified by that National Training Package and includes full-time traineeships and part-time traineeships, including school based traineeships.

S5.5.8 "**Training Agreement**" means a contract of training made between an employer and the trainee for a traineeship and which is registered with the ARC.

S5.5.9 "**Traineeship Scheme**" means traineeship approved by the ARC applicable to a group or class of employees or to an industry or sector of an industry or an enterprise.

A Traineeship Scheme must not be given approval unless consultation and negotiation with all the relevant association(s) of employees, upon the terms of the proposed Traineeship Scheme and the traineeship, has occurred.

An application for approval of a Traineeship Scheme must identify all the relevant association(s) of employees and demonstrate, to the satisfaction of the ARC, that the abovementioned consultation and negotiation has occurred.

S5.5.10 "**Year 10**" means, for the purpose of this Award, any person leaving school before completing Year 10 will be deemed to have completed Year 10.

S5.6 TRAINING CONDITIONS

S5.6.1 The **trainee** must attend an **approved training** course or training programme prescribed in the **Training Agreement**, or as notified to the trainee by the **ARC** in accredited and relevant **Traineeship Schemes**.

S5.6.2 A **traineeship** must not commence until the relevant **Training Agreement**, made in accordance with a **Traineeship Scheme**, has been signed by the employer and

the **trainee** and lodged for registration with the **ARC**. However if the **traineeship** is not in a standard format, a **traineeship** must not commence until the **Training Agreement** has been registered with the **ARC**. The employer must ensure that the **trainee** is permitted to attend the training course or programme provided for in the **Training Agreement** and that the **trainee** receives the appropriate on-the-job training.

S5.6.3 "**Training Plan**" means a programme of training which forms part of a **Training Agreement** registered with the **ARC**.

S5.6.4 "**Training Package**" means the competency standards, assessment guidelines and Australian Qualifications Framework qualification endorsed for an industry or enterprise by the National Training Framework Committee placed on the National Training Information Service with the approval of Commonwealth, State and Territory Ministers responsible for vocational education and training.

S5.6.5 The employer must provide a level of supervision, in accordance with the **Training Agreement**, during the **traineeship** period.

S5.6.6 The employer agrees that the overall training programme will be monitored by officers of the **ARC** and that training records or work books may be utilised as part of this monitoring process.

S5.6.7 Training must be directed at:

S5.6.7.1 the achievement of key competencies required for successful participation in the workplace (eg. literacy, numeracy, problem solving, team work, using technology), and an Australian Qualification Framework Certificate Level 1 and/or;

S5.6.7.2 an Australian Qualification Framework Certificate Level II or above.

S5.7 EMPLOYMENT CONDITIONS

S5.7.1 A **trainee** must be engaged as a full-time employee for a maximum of one years duration, provided that a **trainee** will be subject to a satisfactory probation period of up to six weeks, which may be reduced at the discretion of the employer. By agreement in writing, and with the consent of the **ARC**, the relevant employer and the **trainee** may vary the duration of the **traineeship** and the extent of **approved training**, provided that any agreement to vary is in accordance with the relevant Traineeship Scheme. Where the **trainee** completes the qualification in the Training Agreement earlier than the time specified in the Training Agreement, then the Traineeship may be concluded by mutual agreement.

S5.7.2 An employer must not terminate the employment of a **trainee** without firstly having provided written notice of termination to the **trainee** concerned, in accordance with the **Traineeship Agreement**, and subsequently to the **ARC**. The written notice to be provided to the **ARC** must be provided within five (5) working days of the termination.

An employer who chooses not to continue the employment of the **trainee** upon the completion of the **traineeship** must notify, in writing, the **ARC** of their decision.

S5.7.3 The **trainee** is permitted to be absent from work without loss of continuity of employment and/or wages to attend approved training.

S5.7.4 Where the employment of a **trainee** is continued, by the employer, after the completion of the **traineeship** period, such **traineeship** period will be counted as service for the purposes of the Award and/or any other legislative entitlements.

S5.7.5

S5.7.5.1 The **Traineeship Agreement** may restrict the circumstances under which the **trainee** may work overtime and shift work in order to ensure the training programme is successfully completed.

S5.7.5.2 No **trainee** will work overtime or shift work on their own unless consistent with the provisions of the Award.

S5.7.5.3 No **trainee** will work shift work unless the parties to a **Traineeship Scheme** agree that such shift work makes satisfactory provision for **approved training**. Such training may be applied over a cycle in excess of a week, but must average over the relevant period no less than the amount of training required for non-shift work **trainees**.

S5.7.5.4 The **trainee** wage will be the basis for the calculation of overtime and/or shift penalty rates prescribed by the Award, unless otherwise agreed by the parties to a **Traineeship Scheme**.

S5.7.6 All other terms and conditions of the Award that are applicable to the **trainee**, or would be applicable to the **trainee** but for this Schedule, will apply unless specifically varied by this Schedule.

S5.7.7 A **trainee** who fails to either complete the **traineeship**, or who cannot for any reason be placed in full- time employment with the employer on successful completion of the **traineeship**, is not entitled to any severance payments payable pursuant to Termination, Change and Redundancy provisions or provisions similar there to.

S5.7.8 The right of entry provisions contained in this Award will apply to the parties bound by this schedule. S5.8 **WAGES**

S5.8.1 The weekly wages payable to **trainees** will be as provided in tables contained in this clause.

S5.8.2 These wage rates will only apply to **trainees** while they are undertaking an approved **traineeship**, which includes **approved training**.

S5.8.3 The wage rates prescribed by this Clause do not apply to complete trade level training which is covered by the apprenticeship system.

S5.8.4 Trainee salespersons are to receive \$439.00 minimum training wage per week, which in any new contract of employment on and from 1/7/2001 is not to be debited from either the employer's commission or the employee's commission/incentive:

SCHEDULE 6. TRANSITION AND SUMMARY OF ALLOWABLE DEBITS

OPDATE 01:07:2001 on and from

S6.1 TRANSITION

S6.1.1 Any clause in this award, which refers to new contracts of employment on or after 1/7/2001 will mean that employees employed prior to 1/7/2001 and their employer will be bound by Schedule 8 - Clauses Applying to Employees Employed Prior to 1/07/2001. If, after 1/7/2001, such employee changes employer or such parties agree to enter into a new Letter of Appointment then Schedule 8 will not apply.

S6.1.2 Schedule 8 will remain in force for the purpose as specified above in S6.1.1 until 11.59 p.m. on 30/6/2006. On or prior to 30/6/2006 the employer of an employee who was employed prior to 1/7/2001 and is still with the same employer, then both parties must attempt to negotiate a new Letter of Appointment in the terms of this award (excluding Schedule 8).

S6.1.3 Any clause in this award which changes the terms and conditions of an employee who was employed prior to 1/7/2001, then such changes will not require the employer and the employee to do either a new or amended Letter of Appointment. Any existing Letter of Appointment will be read in accordance with the clause in the award if it applies.

S6.1.4 In negotiating a new Letter of Appointment under S6.1.2 the established industrial principles of a "fair go all round" and ensuring industrial "fair play" will apply. For example, if it is going to cost more for an employer to employ the employee because the employer must stop certain debits, the employer may well be justified in offering a lower commission when negotiating a new Letter of Appointment. If the parties can not agree on the terms of a new Letter of Appointment, then the following procedure will be followed:

(i) A letter outlining the issue/s to be resolved and signed by the employer and the employee will be sent to REEF and RESA.

(ii) If the employer, the employee and REEF and RESA can not resolve the problem, then it will be referred to **IRCSA** for resolution in accordance with the **Act**.

S6.1.5 In negotiating this award it was the parties intention to put into code form what debits could be and could not be debited from either the employer's commission or the employee's commission/incentive. Hopefully this will give clarity and certainty to all the parties.

S6.1.6 The prohibition of most non-allowable debits will only take place from a certain date [the date as specified in the relevant clause] when a new employee is employed. That is, subject to S6.1.2, existing contracts of employment may stay in place until the employee leaves or the employer and the employee agree to change the terms of an existing contract of employment. This procedure is not to be taken as giving any credence to pre existing Letters of Appointment in that they comply with either the previous award or with legislation. Each Letter of Appointment existing prior to this award will be still assessed on its own merits against the prevailing law at the time.

S6.1.7 There are, however, notable exceptions to the above, so the employer and the employee should read this award carefully and if necessary seek advice from REEF or RESA. For example, the debiting of superannuation will not be permitted for all existing employees, as well as new employees. However, so that neither the employer nor the employee is disadvantaged, the clause allows a procedure to occur so that the exercise is cost neutral.

S6.1.8 The debit/credit system has created a great deal of confusion in the Real Estate Industry in the past. Therefore, the parties decided it would be easier for employers and

employees to understand what is allowed and not allowed to be debited from commission by inserting summary tables of **allowable debits** and **non-allowable debits**.

S6.1.9 This does not mean where a debit is not listed in the "non-allowable" debits table that it can be debited. Clause 5.3.1 (ii) states that the only "allowable debits" are those allowed by the Award [and for this purpose refer to the "Summary of Allowable Debits" table below].

The "Non Allowable Debits" table was inserted to give a summary of the debits that must stop and for whom and by when they must stop.

S6.2 ALLOWABLE DEBITS

Name of Allowable Debit	Clause Number	Comment
Franchise fees, listing fees and agents conjunction fees	4.2.2.3	If debited must be from employer's commission
The wage of a Qualified Salesperson	5.3.1 (ii)	Note that this only refers to a Qualified Salesperson and <u>not to a trainee</u> . The wage (by agreement) may be debited from either the employer's or the employee's commission/incentive.
The car allowance of a Qualified Salesperson	5.4.1	Note that this only refers to a Qualified Salesperson and <u>not to a trainee</u> . The car allowance (by agreement) may be debited from either the employer's or the employee's commission/incentive.
(Settlement achieved) Advertising in excess of vendor's authority with employer's authority	5.6.2.3 (a) (i)	To only be debited from the employer's commission at rebate rate or lesser amount if agreed.
(Settlement achieved) Advertising in excess of vendor's authority without employer's authority	5.6.2.3 (a) (ii)	May be debited from the employee's commission at rebate rate or lesser amount if agreed.
(Settlement not achieved) Advertising in excess of vendor's authority	5.6.2.3 (b)	May be debited from the employer's commission or the employee's commission/incentive at rebate rate or lesser amount if agreed.
Approved employee business expenses against employer's name	5.6.4.1	May be debited against employee's commission/incentive or such lesser amount as agreed. Advertising to be at rebate rate.
Non-Approved employee business expenses against employer's name	5.6.4.2	May be debited in full against employee's commission/incentive.

S6.3 NON ALLOWABLE DEBITS

SUMMARY OF NON ALLOWABLE DEBITS

Name of Non Allowable Debit	Clause Number	Operative Date	Comment
Trainee's car allowance	5.4.1	1/7/2001 for all new contracts of employment	Employment contracts prior to 1/7/2001 not affected.
Superannuation	5.5.5	1/7/2001 For existing and new employees	From 1/7/2001 the employer must stop debiting superannuation for all Salespersons and Trainees but may proportionately reduce commission/incentive rate.
Vendors authorised advertising and marketing expenses not recovered	5.6.2.2	1/7/2001 for all new contracts of employment	This type of advertising not recovered is the responsibility of the employer.
Office Expenses	5.6.3	1/7/2001 for all new contracts of employment	Employment contracts prior to 1/7/2001 not affected
Required by employer to work a day off - to get another day off or extra 1/5 th of wage	6.1.2	1/7/2001 for everyone	The extra 1/5 th is not to debited.
Annual leave payments	7.1.6.2	1/7/2001 for all new contracts of employment	Employment contracts prior to 1/7/2001 not affected
Sick leave payments	7.2.3.4	1/7/2001 for all new contracts of employment	Employment contracts prior to 1/7/2001 not affected
Bereavement Leave	7.3.4	1/7/2001 for all new contracts of employment	Employment contracts prior to 1/7/2001 not affected
Carers Leave	7.5.2.7	1/7/2001 for all new contracts of employment	Employment contracts prior to 1/7/2001 not affected
Public Holidays re any penalty payment	7.6.1	1/7/2001 for everyone	Any penalty paid for a public holiday is not to be debited
Long Service Leave	7.7	1/7/2001 for all new contracts of employment	Employment contracts prior to 1/7/2001 not affected
Trainee's wages	S5.8.4	1/7/2001 for all new contracts of employment	Employment contracts prior to 1/7/2001 not affected
Litigation	5.3.1. (ii) and (iii) 2.	1/7/2001 for everyone	

SCHEDULE 7. SUMMARY OF WHAT MUST BE IN THE LETTER OF APPOINTMENT

OPDATE 01:07:2001 on and from

SUMMARY OF WHAT MUST BE AS A MINIMUM IN THE LETTER OF APPOINTMENT

SUBJECT MATTER	CLAUSE	COMMENT
Must have a LOA	4.2.1	
May use pro-forma in Schedule 3 of the Award - if not used then LOA must conform with Award requirements	4.2.1	
LOA can only be varied by agreement	4.2.1.1	
Employer and employee must sign LOA on or prior to commencement	4.2.2.1	
Employer must facilitate 3 copies of original signed LOA and give the employee 2 copies	4.2.2.1	
Employer and the employee must register LOA with REEF and RESA respectively	4.2.2.2	
A variation to a LOA must follow same procedure, names/addresses; classification; wage; key performance indicators; higher duties; training; allowances and expenses; method of calculating commission/incentive (including the reversal rate as defined); entitlements on termination; when commission/incentive paid; fees, incentives etc payable	4.2.2.3	This is the general clause on the contents of the Letter of Appointment.
Whether a qualified salesperson's wage is going to be debited	5.3.1. (ii)	
When paid "commission only" parties must also set a "reversal rate" in the event of reverting to wage and commission/incentive	5.3.1 (iii) 1.	
Whether a qualified salesperson's vehicle allowance is going to be debited	5.4.1	
A notation that Salesperson exceeding the vendor's authority in marketing/advertising, then the excess can be debited	5.6.2.3	
A notation that any employee incurring personal business expenses in the name of and with the approval of the employer may have those expenses debited	5.6.4.1 & 5.6.4.2	
What method of annual leave payment has been agreed upon	7.1.6.2	
If annual leave is inclusive in commission/incentive what is the proportion that represents annual leave	7.1.6.3	

SCHEDULE 8. CLAUSES APPLYING TO EMPLOYEES EMPLOYED PRIOR TO 01/07/2001

OPDATE 29:01:2002 1st pp on or after

PREAMBLE

The clauses in this Schedule will only apply to employees employed prior to 1/7/2001 and further will only apply as follows:

- (i) The clauses will apply in lieu of the nominated clause within the body of this Award.
- (ii) The clauses will cease to operate at 11.59pm on 30/06/06.
- (iii) If the employer and the employee enter into by agreement a new Letter of Appointment in accordance with S6.1.2 before 30/6/06 then the clauses will cease to operate for that employee.

CLAUSE S8.1 - WAGES

In the context of the preamble above, this clause will apply in lieu of Clauses 5.2. and 5.3 in the body of this award.

S8.1.1 The minimum adult wage payable to a registered salesperson will be as set out in Schedule 1 of this Award.

S8.1.1.1 The minimum adult wage payable to a registered salesperson will be as per the rate shown on the Wage Rates Schedule and may be paid either weekly or fortnightly and not later than Thursday in any such week or fortnight.

S8.1.1.2 A registered branch manager will be remunerated by the payment of an additional 25 percent to the weekly rate as prescribed in Clause S8.1.1.1 for a registered salesperson or as prescribed in Clause S8.1.1.3.

S8.1.1.3 An employer may remunerate a salesperson by wage and incentive payment or solely by commission only where approval has been granted subject to Clause S8.1.2.

S8.1.2 COMMISSION ONLY

S8.1.2.1 Commission only may be granted by the **Industrial Commission** following the lodgement of an application by either the employer or the salesperson.

S8.1.2.2 In order for the Industrial Relations Commission of South Australia to grant such an application all of the following criteria must apply:

1. The agreement will be entered into by mutual agreement between the employer and the salesperson.
2. The salesperson will have worked as a registered salesperson for two years out of the previous five years, with one year of experience being immediately prior to the date of application.
3. The salesperson must be solely engaged within the real estate industry.
4. Once commission only status is granted there is no portability of the status from one employer to the next.

S8.1.2.3 Where commission only status has been approved by the **Industrial Commission** a letter of appointment (as detailed in Clause S8.2 - Letter of Appointment) must be completed and lodged with The Real Estate Employers' Federation and the Real Estate Salespersons' Association.

CLAUSE S8.2 - LETTER OF APPOINTMENT

In the context of the preamble above, this clause will apply in lieu of Clause 4.2 in the body of this award

S8.2.1 In respect of every employee employed, the employer must complete a letter of appointment in quadruplicate, containing the information set out in Clause 3 of Section A - Contents of Letter of Appointment of this Award, together with such other matters as the employer may require which are not inconsistent with any other provisions of this Award. The employer and the employee must sign the letters of appointment and each will retain a copy.

S8.2.1.1 The salesperson will send one copy of it (together with a registration fee of \$50.00) to the Secretary, Real Estate Salespersons' Association of South Australia, PO Box 6665, Halifax Street, Adelaide SA 5001; and the employer will send one copy of it (together with a registration fee of \$30.00 for non-members) to The Real Estate Employers' Federation of South Australia, Level 1, 136 Greenhill Road, Unley SA 5062.

S8.2.2 Such letter of appointment must be signed within fourteen days from the date of commencement of employment.

S8.2.3 When variations to the letter of appointment take place a new letter of appointment must be prepared and signed in accordance with the provisions of Clause S8.2.1.

CLAUSE S8.3 - CONTENTS OF LETTER OF APPOINTMENT

In the context of the preamble above, this clause will apply in lieu of Clause 4.2 in the body of this award

S8.3.1 Letters of appointment entered into, pursuant to Clause 2 of Section A - Letter of Appointment of this Award, must contain the following particulars:

S8.3.1.1 Names and addresses of the employer and the employee.

S8.3.1.2 Classification in which the employee is to be employed.

S8.3.1.3 The minimum wages to be paid to the employee and the method by and times at which such wage is to be paid.

S8.3.1.4 The minimum locomotion allowance and expenses to be paid to the employee and the method by and times at which such allowances and expenses are to be paid.

S8.3.2 Where an employee is to be remunerated wholly or in part by any commission and/or incentive payments, the letter of appointment must contain the following particulars: S8.3.2.1 Name and address of employer and the employee.

S8.3.2.2 Classification in which the employee is to be employed.

S8.3.2.3 The method of calculating such commission and/or incentive payments and the method by and times at which such commission and/or incentive payments are to be paid.

S8.3.2.4 Whether or not the employee is entitled to receive any commission and/or incentive payments after the termination of employment, and, if so, the method by and times at which such commission and/or incentive payments are to be paid.

S8.3.2.5 Where such commissions and/or incentive payments are a percentage of the employer's commission (whether or not subject to any debits, target figure or other figures as prescribed in the letter of appointment), provisions that such commissions and/or incentive payments (if applicable after taking into account any debits, target figure or other figures as prescribed in the letter of appointment) will be paid to the employee within thirty days after the employer receives the employer's commission, or as may be mutually agreed upon between the employer and the employee.

S8.3.2.6 A provision that the following phrases will have the meanings set out hereunder:

1. **Effected Sale, Sale Effects** and expressions of similar character, will mean a sale in respect of which a contract of sale has been made and signed by the parties thereto; and all conditions of the contract have been complied with. The payment or not of a deposit, whether required or not, or the holding of a deposit by any particular person or body, will have no bearing on whether or not a sale is affected.

2. **Settled Sale, Sale Settled** and expressions of a similar character, will mean a sale in respect of which the employer has received the employer's commission.

S8.3.2.7 For the purpose of this Clause, employer's "**nett commission**", upon which the calculation of a salesperson's commission may be based, will mean the commission received by the employer in respect of each sale, from which amount may be deducted only any agency franchise fees, listing service fees and conjunction agent's fees. This clause applies only to employees paid by commission only but will have no effect on proceedings filed in the Industrial Court of South Australia prior to 1/7/2001

S8.3.2.8 Where a sale is effected by two or more salespersons, the selling commission will be divided between the salespersons in such proportion as they agree.

CLAUSE S8.4 - EXPENSES

In the context of the preamble above, this clause will apply in lieu of Clause 5.6 in the body of this award

An employee who incurs expenses at the request of the employer will be reimbursed on the following full pay period by the employer. Where reasonably practicable, expenses will be paid in advance.

CLAUSE S8.5 - LOCOMOTION ALLOWANCE

In the context of the preamble above, this clause will apply in lieu of Clause 5.4 in the body of this award

Where an employer provides a motor vehicle for the use of an employee, all expenses arising out of the provision, maintenance or operation of such vehicle for business purposes will be at the expense of the employer. Where an employee is required to use the employee's own motor vehicle under authorisation of the employer, in the course of normal duties, the employee will be paid a minimum allowance as set out in Schedule 1, such allowance to be paid weekly or fortnightly unless varied by mutual consent between the employer and employee.

A trainee employee who was a trainee employee prior to 1/7/2001 may be paid either an allowance of 41 cents per kilometre to a maximum of \$110.00 per week, or an allowance of \$110.00 per week.

CLAUSE S8.6 - DAYS OFF

Clause 6.1 in the body of this award will apply to all employees.

CLAUSE S8.7 - ANNUAL LEAVE

In the context of the preamble above, this clause will apply in lieu of Clause 7.1 in the body of this award

S8.7.1 PERIOD OF LEAVE

S8.7.1.1 Every employee will be entitled to and be granted twenty-one (21) consecutive days leave (including non- working days) in respect of each complete period of twelve months continuous service.

S8.7.1.2 Provided, however, that where an employee completes such twelve months continuous service on or after 1 January 1983, the employee will be allowed twenty-eight consecutive days leave (including non- working days).

S8.7.2 ANNUAL LEAVE EXCLUSIVE OF PUBLIC HOLIDAYS

S8.7.2.1 Subject to this subclause, the annual leave prescribed by this Clause will be exclusive of any public holiday prescribed by this Award and; if any such holiday falls within an employee's period of annual leave and is observed on a day which, in the case of that employee, would have been an ordinary working day; there will be added to the period one day for each such holiday falling as previously mentioned.

S8.7.2.2 Where a public holiday falls as in S8.7.2.1 and the employee fails, without reasonable cause (proof which will be upon the employee), to attend for work at the ordinary starting time on the working day immediately following the last day of the period of annual leave, the employee will not be entitled to be paid for any such public holiday.

S8.7.3 PAYMENT FOR PERIOD OF LEAVE

S8.7.3.1 Each employee, before going on leave, will be paid such wages as are payable in respect of the period of leave due and being taken by the employee. For the purpose of this subclause, an employee who completes twelve months continuous service prior to 1 January 1983 will have wages calculated at the rate of three-forty-ninths of the total earnings (excluding locomotion allowance) computed over the previous twelve months, and an employee who completes twelve months continuous service on or after 1 January 1983 will have wages calculated at the rate of one-twelfth of the total earnings (excluding locomotion allowance) computed over the previous twelve months.

S8.7.3.2 Payment for public holidays occurring during an employee's annual leave will, pursuant to clause S8.7.2 hereof, be paid to such employee during the first pay period upon the employee's return to work.

S8.7.4 PROPORTIONATE LEAVE ON TERMINATION

S8.7.4.1 If an employee, in any qualifying twelve-monthly period prior to 1 January 1983, leaves their employment or their employment is terminated by the employer, the employee will be paid three-forty- ninths (3/49) of the employee's total earnings (excluding locomotion allowance) earned during the qualifying period.

S8.7.4.2 If an employee, in any qualifying twelve-monthly period on or after 1 January 1983, leaves their employment or their employment is terminated by the employer, the employee will be paid one-twelfth of the employees total earnings (excluding locomotion allowance) earned during the qualifying period.

S8.7.5 TIME OF TAKING LEAVE

S8.7.5.1 Annual leave will be given at a time fixed by mutual agreement between the employee and the employer, but in any event not later than six months of such leave becomes due and payable.

S8.7.5.2 Annual leave will be given and taken either in one consecutive period or two periods, which will be of three weeks and one week respectively, or if the employee and the employer so agree, in either two, three or four separate periods.

CLAUSE S8.8 - SICK LEAVE

In the context of the preamble above, this clause will apply in lieu of Clause 7.2 in the body of this award

S8.8.1 Every employee who is unable to attend or remain at the place of employment by reason of illness, and who complies with the conditions prescribed by clause S8.8.2 hereof, will be granted by the employer paid leave not exceeding the sick leave credit of the employee.

S8.8.2 The said leave will be granted and the employee will be entitled to pay in respect of it on compliance with the following conditions:

S8.8.2.1 An employee will, as far as is practicable, either before or at the employee's usual time of commencement (and in any event not later than 24 hours after the commencement of the employee's absence), advise the employer of the employee's inability to attend for duty, and, as far as practicable, of the nature of the illness and the estimated duration of the absence.

S8.8.2.2 If so required by the employer, the employee will produce to the employer a medical certificate or other reasonable evidence to prove that the employee was unable to attend for duty on the day or days in respect of which the employee claims sick leave.

S8.8.3 For the purpose of this Clause, the word "**illness**" includes personal injury but does not include an injury for which compensation is payable under the *Workers Rehabilitation and Compensation Act 1986*.

S8.8.4 For the purpose of clause S8.8.1, the sick leave credit of an employee with an employer will be determined by adding to the credit of that employee with that employer, (pursuant to this or any other award or industrial agreement relating to the industry of the occupations to which this agreement relates) immediately before 4 January 1973, the amount of leave that the employee is entitled to be granted by the employer pursuant to this Clause, and deducting from the total so obtained, the amount of sick leave that the employee has had granted by the employer pursuant to this Clause.

S8.8.5 In respect of:

S8.8.5.1 the first year of service with an employer that follows 4 January 1973, a full-time employee will be entitled to a grant of leave on full pay, as prescribed in Clauses 1 or 9 of Section A (whichever is applicable) under this Clause, by that employer of 1.54 hours per week; and

S8.8.5.2 the succeeding years of continuous service with that employer, such an employee will, on or after the commencement of each such year, be entitled to grant of leave under this Clause, by that employer, equal to ten days on such full pay.

CLAUSE S8.9 - PROBATIONARY SALESPERSON

Probationary salesperson has been deleted from the award.

CLAUSE S8.10 - PUBLIC HOLIDAYS

Clause 7.6 in the body of this award will apply to all employees.

**** end of text ****

IN THE FAIR WORK COMMISSION

IN THE MATTER OF;

4 YEARLY REVIEW OF MODERN AWARDS

REAL ESTATE AWARD 2010

AM2016/6

WITNESS STATEMENT OF Mrs RAFFAELA ("MARIA") BELL

1. My name is Mrs Raffaella Bell (Maria), of 19 Palace Street Ashfield NSW.
2. I am the property manager for a real estate company known as R&R Bell Pty Ltd t/a Bell Realty Inner West, 197 Liverpool Road Ashfield NSW. I am also the company secretary of the business, which is a small business with just my husband Robert and in the recent past a part time property salesperson. In addition I am a member of the NSW Branch Committee of the Australian Property Services Association (APSA).
3. I have been employed in the real estate industry for 5 years, both as a property manager and as a property salesperson. However I spend most of my working day performing my property management responsibilities. I hold a full licence to operate a real estate agency, re sales and property management and am also a licensed auctioneer. I studied for my licence at the Kogarah Think Real Estate Institute where I completed more than 24 units (12 of them relating to property management) over 2 years part time (re attachment). To work as a property manager in NSW the person must be registered.
4. Bell Realty has approximately 150 properties that I manage. The properties range from single units to houses and a boarding house accommodating 6 persons, to commercial properties including bulky goods stores.
5. I perform my duties the way I believe a responsible property manager should perform their duties on behalf of their clients, i.e. the land lord and also the manner and way tenants should be handled and respected. The skills and responsibilities that a property manager performs based on my experience are;
 - (i) Absolute honesty in the handling of other peoples' money with respect to the company's trust account and a keen attention to detail in recording each transaction. I accept significant sums of money by way of the payment of rental bonds and rent money. I also must ensure the payment of accounts

related to each of the properties I manage, such as council rates, strata title fees, water rates, insurance, maintenance and repair work on the properties and the like. At the end of each and every month I have to prepare statements for the land lords, listing the income and expenditure for each property and then transfer the excess rent to the owners' bank account, leaving a zero balance in each trust account.

In NSW the trust accounts of real estate agents are audited every year for a fee of \$1,500. The trust account records must be scrupulously kept up to date every month. When there is an audit, the auditor checks to ensure every rental or sales agreement has been registered with the Department of Fair Trade with an ID number against it. Every tenancy agreement has to be on file in hard copy for inspection. The auditor will select at random a date and go through the files checking the trust accounts for each client and ensuring all the paperwork dealing with the leases are in order and in compliance with the legislative requirements. In our office the auditor usually spends 6 hours doing their audit on our files and trust account.

- (ii) Property Managers must have drive and initiative to develop the business. Property management is very competitive amongst agents with varying fees. You need to be able to market your company and make the case why a particular owner should entrust you with their property even though another agent may have cheaper fees. The property manager must be able to give the owner of the property accurate information about the rental return they can reasonably expect, given the state of the property itself, good condition or otherwise, number of bedrooms, house vs. a unit, its location, proximity to public transport, schools, child care and other public amenities. For example I always inspect the property myself and look out for any repairs that need to be made to attract the best rental return and suggest what maintenance should be done before letting it out. For instance every window of the property has to have a lock on it; otherwise a tenant will not be able to get household insurance on their personal property.
- (iii) They need to be straight forward with the client, telling them exactly the level of service they can expect from you and to stick to that undertaking.
- (iv) The property manager needs to undertake proper due diligence in the selection of tenants. This will involve advertising the property for rent on the internet and on our front window display of available properties, accepting on line applications which include a privacy statement allowing us to discuss their application with their referees and employer. Our policy is that we want

at least 2 referees from their work and another 2 from friends. I also meet with the applicants at the property to show the prospective tenants and outline any issues known to me about the property. I ask to see the applicant's bank details and employer payslips and how long they have worked with that employer. I also enquire where they lived before making the application and the contact details of the previous land lord or real estate office. I will check out all of the above information we have asked for from each applicant. It takes a considerable amount of time but it has to be done if you are going to do the right thing by the land lord and save yourself and them greater difficulty later on if the work isn't done and the tenant abuses the property by damaging it or by failing to meet their rent.

- (v) If a tenant is not looking after the property or is significantly in arrears in their rent a property manager must follow the legislation governing evictions and ensure all of the legislative requirements are met, proper notice given to the tenant and being able to appear if necessary before the NSW Civil and Administrative Tribunal to defend a decision to terminate a lease. With commercial leases they are registered on the title of the property and as the matter is dealt with by a civil court lawyers handle tenancy disputes, although property managers can and do arrange for the changing of the locks of the premises on the landlords behalf.
- (vi) Property managers need to have high level of interpersonal skills and empathy, not only for the land lord but also importantly tenants. An example is where one of the tenants (usually female often with young children) has an Apprehended Violence Order against their former partner. There have been instances of where the ex partner (usually male) breaks into the tenant's premises and destroys part of the property. The tenant may no longer be able to stay at the property because the ex partner knows of her whereabouts and needs to shift. That will involve the breaking of the lease and finding other accommodation. That process could lead to the tenant being liable for significant costs, loss of the bond, loss of rental for early breach of the rental agreement and the like. A property manager needs to be able to negotiate between the needs of the tenant in these circumstances and the land lord to hopefully achieve a successful outcome for both parties.
- (vii) Property Managers as a standard practice have a "bank" of maintenance tradespeople who can at short notice attend to any maintenance work at a property. They range from electricians, plumbers, locksmiths to name a few. A property manager may inherit the contacts from previous property managers, but they also need to develop their own contacts over time to

ensure that there is a competent tradesperson who is reliable to do a job on time and at a cost which is reasonable for the land lord. There are also times when a property needs a major renovation and the land lord may ask the property manager to arrange for quotes from a range of builders/ trades people to undertake, say installing a new kitchen or lay new flooring, carpet or tiles, repainting the premises or install new built in ward robes.

In our company I would organise meetings with the potential contractors on site and then sift through them for the land lord, with their quotes and what references I have been able to get about their past work performance and give the land lord say my best 3 options as well as the details from any of the other potential contractors for the land lord to decide his/ her choice of contractor and for them to thereafter deal direct with the contractor of their choice.

It is very important for a property manager to treat tenants with respect and attend to their reasonable demands, such as if the hot water system breaks down, you must ensure that there is a replacement that same day if possible, or not later than the following day. Hot water is an essential item and if it is not available for 3 days or more in NSW, the tenant is entitled to a rent rebate for every day it is not available.

- (viii) A property manager not only needs to be aware of the specific legislation dealing with the rights of land lords and tenants, but also the privacy laws and a number of other legislative measures which impact on properties, e.g. regulations dealing with swimming pools and the safety requirements regarding same, smoke alarms and the need to replace the batteries every 12 months, the issue of significant trees on a property and the rights of land lords to cut them down etc and the local council's policy regarding same, if a window needs replacing the legislation requires them to be replaced by a professional glazier not a " handyman" and made of safety glass, if there is asbestos in the property the duty of care to the tenant advising them of its presence and informing them they cannot drill into it (as in a wall) and advise the land lord to get rid of it if possible.

There are always issue with respect to Cat and Dogs as pets for tenants and what is and is not allowed and the duty on tenants to have their pets registered. Tenants who have a companion pet cannot be discriminated against by the land lord, e.g. a person with a disability having a companion dog for their health and well being.


Managing a property which is part of a strata title group can be difficult if the land lord and other strata title owners have one view and your client has another viewpoint regarding the communal affairs of the strata. There is a need for careful liaison between the property manager and the strata title manager, tenant/ land lord to achieve an acceptable outcome.

(ix) A property manager is on call for the tenant and / or the landlord 7 days of the week and 24 hours of the day, if there is a leak in the roof of the property or some other major fault with the property during the day or night, the property manager has to be advised so that any necessary repairs can be organised at short notice.

(x) The management of a rent roll (property management) by a real estate company is a very important asset. It is an asset which is tangible and can be sold to another agent. It also provides the "bread and butter" of the real estate agent which provides a steady income each month, whereas property sales and prices can and are affected significantly by events outside of the control of the agent, e.g. interest rates on borrowings, the state of the national or state economy and the like. Therefore the skills and responsibilities of a property manager in winning new business as well as holding onto its client base is a very important part of the employer's business.

(xi) I speak with and deal with other property managers in this industry every day of the week. The essential work, skills and responsibilities of property managers I have outlined in this statement are the same for all of us, large or small businesses.

I make this statement as being true and correct to the best of my knowledge and recollection.


Mrs Raffaella Bell

21/7/16
Date



thinkrealestate

**Transcript of Competencies Achieved: Certificate no: 4873;
Issued 11/10/2012**

This is to certify that

Raffaella Bell Student AGS - 15072
Laing & Simmons Ashfield
197 Liverpool Road ASHFIELD

Has achieved competency in the following units for
CPP40307 - Certificate IV in Property Services (Real Estate)

BSBLED401A	Develop teams and individuals
BSBRKG304B	Maintain business records
BSBSMB406A	Manage small business finances
CPPDSM4003A	Appraise property
CPPDSM4004A	Conduct auction
CPPDSM4005A	Establish and build client - agency relationships
CPPDSM4006A	Establish and manage agency trust accounts
CPPDSM4007A	Identify legal and ethical requirements of property management to complete agency work
CPPDSM4008A	Identify legal and ethical requirements of property sales to complete agency work
CPPDSM4009A	Interpret legislation to complete agency work
CPPDSM4010A	Lease property
CPPDSM4011A	List property for lease
CPPDSM4012A	List property for sale
CPPDSM4013A	Market property for lease
CPPDSM4014A	Market property for sale
CPPDSM4015A	Minimise agency and consumer risk
CPPDSM4016A	Monitor and manage lease or tenancy agreement
CPPDSM4017A	Negotiate effectively in property transactions
CPPDSM4019A	Prepare for auction and complete sale
CPPDSM4020A	Present at Tribunals
CPPDSM4022A	Sell and finalise the sale of property by private treaty
CPPDSM4049A	Implement maintenance plan for managed properties
CPPDSM4056A	Manage conflict and disputes in the property industry
CPPDSM4080A	Work in the real estate industry

Brian Cannan
Chief Executive Officer

Serial Number: 4873

This statement is issued without alterations or erasure

Training Provider 91262
Brian Cannan Auctions Pty Limited ABN 59 075 576 788
Trading as **Think Real Estate**
323 Princes Highway, Carlton NSW 2218
Phone 02 9587 5277 Facimile: 02 9587 5266
WEB: www.thinkrealestate.net.au

IN THE FAIR WORK COMMISSION

IN THE MATTER OF;

4 YEARLY REVIEW OF MODERN AWARDS

REAL ESTATE AWARD 2010

AM 2016/6

WITNESS STATEMENT OF THOMAS CLARK FRENCH

1. My name is Thomas Clark French and my address is 205 Winston Road Palmwoods, Queensland.
2. I am the Secretary of the Queensland Branch of the Australian Property Services Association, (APSAQ) and have held that position since 14th December 2014 when the then Secretary, Mr William Barry Gannon, retired. APSA was formed on the 1st March 2014 following the amalgamation of the Property Sales Association of Queensland, Union of Employees (PSAQ) with the Real Estate Association of NSW, (REANSW). Prior to the amalgamation I was Vice President of the PSAQ from 1997 – 28th February 2014 and then Vice President of APSAQ until 14th December 2014. I am also a member of the Federal Council of APSA.
3. I have been working in and in connection with the Real Estate Industry since the 6th July 1988, when I commenced working as a real estate salesperson. Since 1997 I have been a licensed real estate agent and auctioneer in the State of Queensland. During the period 1997 – 2002 I was also a real estate trainer and Marketing and Sales Manager at the Cooloola Sunshine Institute of TAFE. In 2012 I was appointed to the Occupational Licensing Advisory Committee (OLAC) for Property Services as part of the project to establish National Licences.
4. Since 2005 I have provided advice to both employers and employees under a field services arrangement with the Queensland Property Industry Registry (QPIR). This can be directed to employers and employees, or providing assistance to the QPIR administration staff about whether agreements that are to be registered are compliant with the relevant award and any legislation applicable at the time.
5. The Queensland Property Sales Award (State Award) was introduced with effect from the 1st of July 1997. There had been no award coverage of sales staff or property management staff in Queensland before the 1st July 1997. I believe the



7. Given my experience with working in the industry and also having had the benefit of perusing many of the employment agreements that were then registered through the Queensland Property Industry Registry I would estimate that some 70% of sales staff in the real estate industry in Queensland are remunerated as commission only salesperson, with the remainder being paid the award wage and allowances, debitable against any commission earned by them. It is also my experience that property managers may receive commissions, bonuses and incentive payments.
8. I have had the benefit of reading the witness statements of Lynn Masson- Forbes and Nathan Fox both from SA. In Queensland property sales staffs are not required to successfully complete the same number of modules to qualify to be a sales agent as in SA. They nonetheless must comply with State legislation dealing with real property and its sale or lease, which impose a number of obligations and responsibilities in the performance of their job. The relevant legislation currently in force is the Property Occupations Act 2014 and the Residential Tenancies and Rooming Accommodation Act, 2008.
Property managers and salespersons registration in Queensland require the successful completion of 7 modules from the CPP Property Services Training package and for residential letting agents, the successful completion of 6 modules.
9. In relation to Mrs Masson – Forbes witness statement, re her paragraphs, 6, 7 (except that in Queensland the proportion of commission only sales staff is 70%), 8 (except in so far as my knowledge of the SA award), 14, 16, 17 (I agree with her views, based on similar matters being raised with me as the field officer for QPIR), 18 &19. – I support and adopt them. I cannot support Mrs Masson –Forbes statement in her paragraph 13 that Commission only is not a desirable method of remuneration. However I do support her statement that safeguards must be increased as is proposed by the RRESA application and the APSANSW application.
10. In relation to the witness statement of Mr Nathan Fox, re his paragraphs, 5, 11 &12; I support and adopt them.

And I make this statement as being true and correct, to the best of my knowledge and recollection.



.....
Signed Thomas French LREA, LA, LC- Secretary, APSAQ.

Date 21/7/16.....

clerical workers in the real estate industry were covered by the relevant clerical common rule awards. The State Award rates of pay were made by consent between the employer organisation, Queensland Real Estate Industrial Organisation of Employers and the Property Sales Association. Both organisations were registered under the Queensland Industrial Relations legislation.

6. My understanding as to how the rates of pay for the first award was determined is that for property managers; the administrator of the employers association conducted a review of the industry as to the actual rates of pay being paid to property managers. From that review an averaging process was applied to determine the minimum award rate of pay should be for that classification. This figure was agreed to by the employees association at the time. In respect of property salespersons' it was agreed that those who were paid wages (debitable against their share of the employer's commission on sale of property) should receive the State Minimum Wage as varied from time to time. I confirmed my understanding as to the making of the first award in discussions I had in early July 2016, with the then secretary of the Queensland Real Estate Industrial Organisation of Employers, Mr Bruce Siebenhausen, and Mr Barry Gannon, the then secretary of the Property and Sales Association of Queensland, (now retired).

The award remained on that basis for the entire time of its existence as both a State Award and as a NAPSA after the introduction of Work Choices on the 26th March 2006. That is the award wages were increased by each State Wage Case (SWC) with respect to the State Minimum Award Wage or after Work Choices by the Australian Fair Pay Commission and subsequently the AIRC in 2009 until the current award came into effect on the 1st January 2010.

At no time had the State Award or subsequently had any of the work covered by those awards been work valued nor had it been subject to the minimum rates adjustment principle that applied under the Federal Wage Fixing Principles and the Queensland Industrial Relations Commission.

I was one of PSAQ's negotiators when the 2010 Real Estate Award was agreed to by all parties. The wage rates adopted simply transposed the highest NAPSA award rate of pay from any of the 3 state based NAPSAs' classification and applied nationally, with a phasing in period of 5 years. There was no consideration of any work value of the classifications or pay rates, or comparisons made with work of a similar value in other awards and their rates of pay.

