

**In the Fair Work Commission  
Fair Work Act 2009  
s.156 – 4 yearly review of modern awards  
REAL ESTATE INDUSTRY AWARD 2010  
(AM2016/6)**

**SUBMISSION**

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Date: 25 July 2016

**WITNESS STATEMENTS**

Mr Michael Freeland  
Mr Michael S [REDACTED]  
Mr Thomas French  
Mr Stephen Finch

In the Fair Work Commission  
*Fair Work Act 2009*  
s.156 – 4 yearly review of modern awards  
**REAL ESTATE INDUSTRY AWARD 2010**  
(AM2016/6)

## **SUBMISSION FROM THE AUSTRALIAN PROPERTY SERVICES ASSOCIATION**

### *Australian Property Services Association*

- (1) The Australian Property Services Association (APSA) is a registered organisation of employees under the *Fair Work (Registered Organisations) Act 2009* and was established as a result of an amalgamation of the Real Estate Association NSW (federally registered) and the Property Sales Association of Queensland (federally registered). The new organisation became effective from the 27 February 2010.
- (2) APSA represents employees covered by the Real Estate Industry Award 2010 (the award) that are employed in classifications of salespersons, property management, strata and community title management in all states of Australia except South Australia.

### *Statutory Framework of the 4 yearly review*

- (3) In conducting the 4 yearly review of modern awards, the task of the Full Bench is governed by statute. Section 156 of the FW Act sets out the requirement to conduct the review. The Commission has broad discretion as to the conduct of the review, but the Commission must ensure that the modern awards, together with the National Employment Standards (NES), provide a fair and relevant minimum safety net of terms and conditions, taking into account the modern award objective set out in s 134(1) of the FW Act.
- (4) The FW Act provides that the Commission must conduct a four yearly review of modern awards: s 156(1). Section 156(2) deals with what has to be done in a review.
- (5) In a four yearly review of modern awards, the FWC:
  - (a) must review all modern awards; and

(b) may make:

- (i) one or more determinations varying modern awards; and
- (ii) one or more modern awards; and
- (iii) one or more determinations revoking modern awards.

- (6) Subsection 156(5) provides that in a review each modern award is reviewed 'in its own right'. However, this does not prevent the Commission from reviewing two or more modern awards at the same time. The Commission has determined that this matter (along with several other matters) can be determined as common issues affecting all awards, *"as distinct from having the issue determined on an award by award basis during the award stage of the review"*.
- (7) In conducting a review the Commission will also have regard to the historical context applicable to each modern award, and previous decisions relevant to any contested issue. Previous Full Bench decisions should generally be followed, in the absence of cogent reasons for not doing so. However, the issue of a safety net provision for commission only employees has not been the subject of award hearings before the Commission or its predecessors, and so there is no precedent from which to depart, or to follow.
- (8) In *Re Four Yearly Review of Modern Awards – Preliminary Jurisdictional Issues* [2014] **FWCFB 1788** (*Jurisdictional Issues Decision*), the Full Bench identified that, in addition to s 156, a range of other provisions in the Act are relevant to the review. Those provisions included the objects of the Act (s 3), the interaction with the NES (s 55) and those provisions providing for the performance of functions and exercise of powers by the Commission (ss 577 and 578). The following essential features characterise the legislative regime established by the FW Act.
- (9) The starting point is that modern awards, together with the NES and national minimum wage orders, comprise the *"guaranteed safety net of fair, relevant and enforceable minimum terms and conditions"* In the 4 yearly review of modern awards, the Full Bench *"must ensure that modern awards, together with the NES, provide a fair and relevant minimum safety net of terms and conditions"*.
- (10) A term should be included in a modern award *"only to the extent necessary to achieve the modern awards objective"*
- (11) The modern awards objective is set out in s 134(1) of the Act and provides:

(1) The 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:

(a) relative living standards and the needs of the low paid; and

(b) the need to encourage collective bargaining; and

(c) the need to promote social inclusion through increased workforce participation; and

(d) the need to promote flexible modern work practices and the efficient and productive performance of work; and

(da) the need to provide additional remuneration for:

(i) employees working overtime; or

(ii) employees working unsocial, irregular or unpredictable hours;  
or

(iii) employees working on weekends or public holidays; or

(iv) employees working shifts; and

(e) the principle of equal remuneration for work of equal or comparable value;  
and

(f) the likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden; and

(g) the need to ensure a simple, easy to understand, stable and sustainable modern award system for Australia that avoids unnecessary overlap of modern awards; and

(h) the likely impact of any exercise of modern award powers on employment growth, inflation and the sustainability, performance and competitiveness of the national economy.

This is the ***modern awards objective***.

- (12) The s 134(1)(a) to (h) factors in the modern awards objective are “broad Considerations” which the Commission must take into account in considering whether a modern award meets the objective set by s 134(1)
- (13) The criteria “do not set any standard against which a modern award could be evaluated” and many of them are properly described as “broad social objectives.” No particular weight should be attached to any one consideration over another; and not all of the matters identified in s 134(1) will necessarily be relevant to a particular proposal to vary a modern award. To the extent there is any tension between some of the considerations in section 134(1), “the Commission’s task is to balance the various considerations and ensure that modern awards, together with the NES, provide a fair and relevant minimum safety net of terms and conditions.”
- (14) The requirement in s 138 of the FW Act that a term be ‘necessary’ to achieve the modern award objective requires the Full Bench to form “a value judgment” based on the considerations delineated in s 134(1) of the FW Act.
- (15) The Full Bench does not form its value judgment in a vacuum.
- (16) Consistent with the Explanatory Memorandum to the Fair Work Bill 2008, it is expected that when considering whether and how to vary the content of a modern award in the four yearly review process, the Commission will be “guided by criteria which take into account public, social interest and economic aspects”.
- (17) Section 578 of the FW Act provides that in performing functions or exercising powers, in relation to a matter (including a review), the Commission must take into account the objects of the Act; equity, good conscience and the merits of the matter; and the need to respect and value the diversity of the workforce by helping to prevent and eliminate, inter alia, discrimination on the basis of sex and family or carer’s responsibilities.
- (18) Further, in performing functions or exercising powers, the Commission must take into account the objects of the FW Act including, relevantly, “ensuring a guaranteed safety net and conditions” including through modern awards.
- (19) In respect of the modern awards objective, the Commission’s obligation is to take into account the need to ensure that modern awards provide a fair and relevant minimum safety net: s 134(1). Those considerations of the modern awards objective that are particularly relevant to this application relate to section 134(1) of the Act subsection 1(a) and d(a) ii.

### *APSA's Application*

- (20) On the 30 May 2016, directions were issued to those that are parties to the Real Estate Industry Award 2010 to file submissions in relation to outstanding matters that are scheduled for hearing by the full bench in November 2016.
- (21) On the 30 November 2015, the APSA filed with the commission, an application to vary clause 16 (9.7(g) exposure draft award 2015) of the award as follows:

***“where an employee is engaged on a commission only employment method, either full time, part time or casual and does not in each 6 month period of employment earn the equivalent of the award wage as prescribed for in clause 14 of this award in commission payments, the employer shall pay the employee the difference between the earnings of commissions and the award wage for that 6 month period. For the purposes of this clause, 6 month period means each 6 month period from the date of commencement of commission only employment”***

- (22) It is not the intention of APSA to abolish commission only employment. APSA recognises that commission only employment offers an alternate method of employment and remuneration for those persons who qualify to be engaged on commission only.

### *Commission Only and Contractors*

- (23) Over the past 14 years, the Associations' Principal Industrial Officer had received enquiries, complaints and concerns from employees and association members who had been given letters or directions that they would be required to work on commission only from a certain date as the employer could not afford to continue to pay their wages. Failure to agree to the new arrangements would result in termination or threats that the office would close.
- (24) Over the past 14 years, the Associations' Principal Industrial Officer had received enquiries from employees who were told, and/or advised to apply for an "ABN" to work as a contractor on commission only. Our advice is for the employee concerned to be very careful regarding "going down that path" as it could be contrary to ATO laws, workplace rules and regulations.

- (25) A recent advertisement by “workforce assist” [www.workforceassist.com.au](http://www.workforceassist.com.au) suggests to employers that ***“did you know you can engage real estate sales staff on commission only? Whether experienced or not. Not possible you think? Call us and we can show you legally how it can still be done!”***
- (26) In November 2009 the Federal Magistrate Court of Australia in a matter of Fair Work Ombudsman v Land Choice Pty Ltd & Anor FMCA 1255 ruled that the company contravened the Workplace Relations Act 1996 in relation to the employment of Ms Tiek Leng Lau in that it misrepresented the contract under which she was to preform work as a contract for services.
- (27) In June 2013 the Federal Circuit Court of Australia in a matter of Fair Work Ombudsman v Lovers of Property Pty Ltd & Ors FCCA 2269 ruled that the company contravened ss44(1) and 44 of the Fair Work Act 2009. The evidence suggested that a respondent carried on a business establishing and administering a scheme whereby people or companies who would ordinarily be considered employers, could engage the services of people who would ordinarily be considered employees, purportedly as independent contractors. Such an arrangement perceived the benefits of one of the respondents in this case: a lesser incidence of taxation, PAYG tax, superannuation payments, payroll taxation payments and the like.
- (28) Paragraphs 25, 26, and 27 of this submission highlights how some employers are attempting to circumvent the award by engaging employees either as contractors or those not qualified to be engaged on commission only. This is evidenced by the statement attached from Mr Michael Freeland who was engaged on commission only who not only did not received any remuneration but was also not qualified to work as a commission only sales person. The Employer Associations may argue the above examples are not relevant to the application being made by APSA for a safety net, however, it is our view that some employers are abusing the commission only provisions of the award by engaging persons to work outside of award conditions. There are a significant number of Real Estate Agencies in Central Sydney NSW who, APSA will allege engages employees as contractors. These employees are predominantly selling “off the plan” investment properties to overseas investors.
- (29) Attached statement from Mr Michael S [REDACTED] also highlights how employees are employed as commission only and not meeting the requirements of the award. In this case after intervention by the Association, he was paid some remuneration but far short of the award wage.

*Grounds and reasons*

- (30) The Real Estate Industry Award 2010 and its' predecessors is/were one of the most flexible awards of the Commission. Salespersons are rostered to work almost all weekends and rostered off during the week. They are not paid weekend penalty rates. By nature of their position they work far in excess of 38 hours per week without any additional remuneration. The differing types of employment options for salespersons are:
- (a) Debit/credit whereby the employer will deduct from any commissions that are due to be paid to the salesperson, all payments made to the employee including wages, allowances and superannuation, leaving the balance if any, payable to the employee.
  - (b) Target system whereby the employee must meet a predetermined target of commissions before any commissions are paid to the employee. For example, a target of \$30,000 per quarter then an agreed percentage for all amounts above \$30,000 is paid to the employee. If the target is not achieved then any shortfall is carried over to the next quarter.
  - (c) Commission only employment who are not entitled to a minimum weekly wage or payment for use of motor vehicle expenses, no payment of telephone allowance or overtime.
- (31) Commission only employees unlike any other employee in Australia are not guaranteed a wage as provided for in an award. They can work for many months without receiving any remuneration. Because these employees are full time they cannot access any Centrelink benefits if they haven't received any remuneration or have earned significantly less than those employed on an award wage.
- (32) APSA does not believe that there are large numbers of employees working on commission only who haven't achieved at least the award wage in commissions. Never the less there is evidence that it has and does occur and we believe those employees need the protection of a safety net in the award. We believe that if our application is approved, there will only be a small additional cost to employers.
- (33) With respect to those employees who were engaged on a commission only basis without qualifying under the MITT, employer groups could argue that there are provisions to deal with those issues under the Act whereby those employers could be prosecuted for breach of the award. That may be correct, but APSA contends that whether an employee qualifies or doesn't qualify for commission only, the provision our application to vary the award to include a safety net protects both those employees. It would become difficult



for an employer if our application is approved, to change the working conditions of an employee from wages plus commissions to commission only to have “cheap” labour. The award if varied would make it mandatory for the employer to “top up” the remuneration of the employee if they fail to earn the minimum wage in commissions. APSA believes that some Employer Associations are aware that some employers are abusing the commission only provisions of the award to have a “cheap way of achieving sales” APSA contends that employer groups are aware of some employees working on commission only are earning very little money”.

- (34) With respect to an application filed by RRESSA and supported by the Real Estate Employers Federation of NSW to increase the Minimum Income Threshold amount currently in the award to 160% , if this application is approved it will not address the issue of employees not achieving the minimum award wage once employed on a commission only basis.

### *Conclusion*

- (35) The Full Bench of the Fair Work Commission in the 4 yearly review of modern awards *“must ensure that modern awards, together with NES, provide a fair and relevant minimum safety net of terms and conditions”* taking into account the *“relative living standards and the needs of the low paid”*
- (36) APSA contends that commission only employees who can work for one day, one week or one month without any remuneration would qualify as a low paid worker, and also contends that the living standards of those employees are significantly and greatly reduced.

### **The Harvester Judgement 1907. 2 CAR 1**

*In 1907, an arbitration court judge decided that wages at a Melbourne factory should be based on the cost of living for a worker and his family. From then on, Australia’s minimum wage was based on what was **fair and reasonable rather than what the employer was offering.** (Our emphasis)*

*The decision was made in the Commonwealth Court of Conciliation and Arbitration, just a few years after Federation in 1901 as the laws of the new nation were being developed.*

*Justice Higgins, the judge on the case, decided that the test of a fair and reasonable wage was ‘the normal needs of the average employee regarded as a human being living in a civilized community’. He also said that the pay of the employee should not be dependent on the profits of the employer.*

(37) The APSA requests that the Full Bench of the Fair Work Commission approve of the application filed the APSA for reason outlined in this submission, or for whatever other reasons the Commission deem fair and appropriate.

If the Commission pleases.

A handwritten signature in cursive script, appearing to read "Lewocki".

**Henry Lewocki**  
**Principal National Industrial Officer**

**In the Fair Work Commission  
S.156 – 4 yearly review of modern awards  
REAL ESTATE INDUSTRY AWARD 2010  
(AM2016/6)**

**APPLICATION BY THE AUSTRALIAN PROPERTY SERVICES ASSOCIATION  
TO VARY CLAUSE 16 (9.7(g) EXPOSURE DRAFT AWARD 2015)  
REAL ESTATE INDUSTRY AWARD 2010.**

**WITNESS STATEMENT OF MICHAEL FREELAND**

I, Michael Freeland of

state as follows:

1. I worked for the NSW Government, most recently with NSW Maritime and with Roads and Maritime Services, as an engineer and project manager before retiring in 2013.
2. In May 2014, I met with Mr Mohsin (Moss) Akbarian, whom I knew and was acquainted with from the time I worked at NSW Maritime. He informed me that he was setting up a new Ray White office at St Ives NSW in conjunction with an existing Ray White office at Gordon NSW, which was managed by his wife.
3. He asked me to work for him on a 50% commission only basis. He told me to complete a Certificate of Registration course which I did and I subsequently obtained my certificate from Fair Trading NSW on the 21<sup>st</sup> September 2014. I commenced work with Mr Akbarian on or about the 18<sup>th</sup> October 2014.
4. Upon commencement I requested a written contract or agreement but he kept saying we would have a verbal agreement only. Ray White St Ives was a new agency, operating in 'competition' with the existing Ray White Gordon. This was my first job in real estate so I had to start from scratch and the only way I could get clients was to door knock which I did at some 1500 homes. I was only asked twice to attend an "open house" to learn the process and of my own initiative, I attended other "opens" in my own time to continue to learn more.
5. I did develop some leads and wrote around 35 client specific market appraisals at no cost to the clients. I also, without reward, arranged for advertising his agency in the Jewish media, met with Council on zoning issues and seniors developments, and distributed my own brochures.
6. It was very, very difficult to compete with established agencies in the area and as a consequence by April 2015, I had no sales and earned no money at all. It was costing me to use my car and phone and I was out of pocket for genuine work-related costs

by almost \$1660. Mr Akbarian did pay me \$150 to letter box drop 1500 flyers announcing the opening of the agency. He also funded my meal, along with others, at the agency's Melbourne Cup lunch and Christmas function.

7. As a result of not making any sales, on the morning of the 21<sup>st</sup> April 2015, Mr Akbarian became very angry and abusive towards me in front of other staff, so that afternoon I packed my things and left. I was sure that Mr Akbarian and his wife were working towards terminating my services.
8. I found employment with another agency working on a fixed fortnightly salary plus all other entitlements. The divisional manager of this agency, after hearing of my experience working with Ray White, prompted me to contact the union as he informed me that I shouldn't have been employed on commission only, and only after I read the award I realised that I didn't meet the criteria in the award to be employed as a commission only sales person.

Signed by Michael Freeland

Michael Freeland

Date:

10/7/2016

In the Fair Work Commission.  
S.156 – 4 yearly review of modern awards  
REAL ESTATE INDUSTRY AWARD 2010  
(AM2016/6)

APPLICATION BY THE AUSTRALIAN PROPERTY SERVICES ASSOCIATION  
TO VARY CLAUSE 16 (9.7(g) EXPOSURE DRAFT AWARD 2015)  
REAL ESTATE INDUSTRY AWARD 2010.

STATEMENT FROM MR MICHAEL S [REDACTED]

I, Michael S [REDACTED] of

state as follows:

1. In January 2015, whilst seeking employment, I rang Harcourts Chatswood to introduce myself and was offered an interview.
2. At the interview I told them of my experience and was asked by Andrew Huang and Kandi Chang, Directors of the company what remuneration I expected. I told them I would prefer to work on a debit/credit system. They persuaded me to join them on commission only saying I would be able to set myself up as a successful agent under Maestro Property in a short time.
3. I said I would think about it, and when I rang back later to let them know I would join the company they were very happy about it and said I had the job. I commenced employment on the 27<sup>th</sup> January 2015.
4. After a few weeks it became apparent that I wasn't getting any help and subsequently I was terminated by email on the 3<sup>rd</sup> March 2015 without notice. Later I did some research and found out that I didn't meet the minimum income threshold criteria for commission only. I'm yet to receive a real estate commission in my career.
5. I contacted the Association who wrote a letter of demand on my behalf. The company refused to pay anything. It wasn't until February 2016 that I agreed to \$3500.00 to settle my claim for wages and allowances which was well short of the \$4457.00 they owed me.

Signed by Michael S [REDACTED]  
[REDACTED]

Date: 20<sup>th</sup> / July / 2016

**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
  
2. I am the Secretary of the Queensland Branch (APSAQ) of the Australian Property Services Association (APSA) and have held that position since 14<sup>th</sup> December 2014 when the then Secretary, Mr William Barry Gannon, retired . APSA was formed on the 1<sup>ST</sup> March 20014 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 – 28<sup>th</sup> February 2014 and then Vice President of APSAQ until 14<sup>th</sup> 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 6<sup>th</sup> 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. In my capacity as Vice President of PSAQ, Vice President of APSAQ and Secretary of APSAQ, I have regularly been requested to provide advice to Members and any industry party inquiry received regarding Award matters and general employment matters. One topic of inquiry frequently received was regarding the provisions of the Queensland State Awards (The Property Sales Award and the Property

Management Award) and since 1<sup>st</sup> January 2010, The modern Federal *Real Estate Industry Award 2010* (the Award) relating to Commission Only employment. A most recent inquiry was in the form of an email asking for advice in the event of a salespersons commission earnings, as entitled and defined in a Commission only employment agreement, not achieving the Award minimum wage. A Copy of that email with the writers express permission is attached hereto and marked as Annexure "A".

6. With respect to Commission Only employment of salespeople, it is my opinion that a number of employers seek to use this classification as an avenue to avoid paying allowances that are the entitlement of wages employees and adopt the attitude that little training, mentoring and assistance is necessary as there is no direct cost of remuneration. It is my firm opinion that a progress assessment of earnings as proposed by APSANSW in their application, providing for the Commission Only salesperson earning at least the commission income defined therein is necessary for the benefit of the salesperson, the industry and the consumer (sellers and buyers of real property)
7. Further to 6 herein above, it is my opinion that the vast majority of Commission Only classified salespeople generate personal income (commissions) well in excess of the minimum income threshold defined in the Award and now as proposed in the RRESA application before the Commission and the safety net provisions proposed in the APSANSW application will generally affect employers who seek to exploit their Commission Only salespeople.
8. Additionally, I have received an email from a salesperson stating that she was employed as a novice salesperson and on commencement signed an employment agreement defining her employment as part time and her hours limited to 10 hours per fortnight. At the same time this person was required to sign another employment agreement commencing date 12 months hence, that defined her employment as Commission Only and that she had achieved the minimum income threshold as defined in Section 16 of the Award. This minimum income threshold was calculated as a pro rata amount based on 10 hours per fortnight.
9. The salesperson referred to in 8 above did not succeed in the industry and states that "I was paid for 10 hours per fortnight, had to spend my own resources and considerable additional time to attempt to generate my profile in my district and could not continue after persevering for some months due to depletion of my reserve finances" This person has departed from the Real Estate Industry

10. The APSANSW application also seeks to disallow pro rata calculation of the minimum income threshold, the reason is linked to items 6, 7, 8 and 9 herein above and I firmly support that application.

A handwritten signature in black ink, appearing to be 'T. French', written in a cursive style.

Thomas C French, LREA, LA, LCA, Secretary APSAQ



Hi Tom,

## **ANNEXURE "A"**

Sometime ago you helped me getting a fair go from my previous employer and you were great in an industry that is seemingly plagued by unethical practice.

Since moving on from my last place of employment on good terms I decided to join my first corporate brand ██████████ in the promise of mentoring, professional experience and training.

Since day one I am still alone trying to work everything out myself without out assistance to the point where I don't want anyone to help because you can't trust anyone's agenda in what they're telling you unless they are outside of the company!?

Since I am a commission only agent it is very hard to stay motivated when I give so much away yet bring in all my own business and then its like thanks for coming from my office perspective.

Doing it tough at the moment since I haven't sold anything in sometime due to a recent break when I dare speak up the response is simply try harder, knock on more doors etc etc but when you're working for free actually paying to come to work with advertising, car & phone expenses etc it can be very hard to stay focused when it just feels like one is being used just like cog in a wheel.

This I understand my position is to work no doubt but I was wondering on my rights as a commission only agent when I don't even get a breathe of a lead (although I don't expect anything) or receive very little leadership. Seems like a great business for my employer as he only pays me once I give him half of my income, a great business model where there little risk/cost outgoing for the return.

Since fully licensed I do understand upfront costs of running an office and do appreciate the wi-fi I get at the office however when I email my principal voicing my concerns I don't even get a response which makes me feel quite low and borderline question why I even come into the office. Yes I have considered going out on my own but with little to no finances and no backing I am still sometime away from this.

In summary I would like to better understand my rights as a commission only agent as the amount of constant stress I am taking on board which has costed me a relationship as touching the surface is nearly driving me to leave the industry and pursue a career which seems more stable and more ethical.

I love the industry, love clients its what happens behind the scenes which I think lets it down for everyone.

The rules of engagement in Australian realestate certainly seem to be still stuck in the 90's (eg assisting buyers) yet so much has changed.

Appreciate your thoughts and information,

**IN THE FAIR WORK COMMISSION****IN THE MATTER OF;****4 YEARLY REVIEW OF MODERN AWARDS****REAL ESTATE AWARD 2010****AM2016/6****WITNESS STATEMENT OF Stephen D. E. FINCH**

1. My name is Stephen David Edward Finch OF

2. I was employed as a property salesperson between 2005 – December 2011 with various real estate agents. From the 3<sup>rd</sup> May 2010 – 5<sup>th</sup> December 2011 I was employed by the Stell Family Pty Ltd (Stell) t/a First National Gawler SA.

3. When I commenced employment with Stell on the 3<sup>rd</sup> of May 2010 I was employed as a waged salesperson with a vehicle allowance and other entitlements under the award, debitable against any share of the employer's commission I earned.

4. On the 17<sup>th</sup> September 2010 I was advised in writing by Stell that unless I met certain sales targets he could not afford to maintain paying me the award wage as I was in debit to him (i.e. my commission on sales had not equalled or exceeded my award entitlements). I was warned if I did not meet the sales targets I would have to be employed on a commission only basis to keep my employment. I was reluctant to accept a commission only appointment as sales were slow, (the effects of the Great Financial Crisis and its impact on housing sales were being felt in the industry as a whole at this time).

5. In January 2011 Stell spoke to me and said from February 2011 I was going to be employed on a commission only basis or I had no job. Stell believed that from my previous sales with former employers, 2005 – 2010 when I joined his company I would be eligible under the award to be remunerated as commission only. I did not understand how that formula in the award worked and how it was to be applied. In any event I felt I had no choice but to agree to go commission only as I had a young family to support.

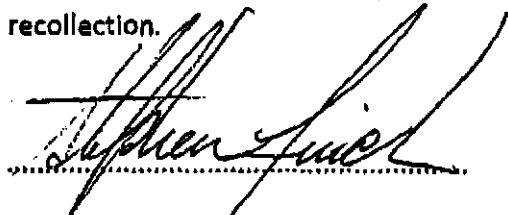
I commenced being remunerated as a commission only employee from the 4<sup>th</sup> February 2011 until I left on the 5<sup>th</sup> December 2011. During those 304 days of commission only employment I earned a total of \$13,825. Out of that money I had to pay the costs of running my private motor vehicle and mobile phone, attending open inspections, doing appraisals and the like. The area I was prospecting covered the regional town of Gawler and the surrounding Barossa Valley where distances I travelled were considerable.

The commission share I was paid was 50% of the employer's net commission and that money was debited by 10% to go towards paying off the debt I had with Stell, when I was being paid the award wage.

6. The award wage for the period 4<sup>th</sup> February 2011 – 5<sup>th</sup> December 2011 totalled \$23,111.07 and the vehicle allowance \$5460. In all, the commission paid to me as compared to the minimum award entitlements, there was a shortfall of \$9,286 in wages and \$5,460 in vehicle allowance, (Ralph Clarke my agent representing the Salespersons' Association did the calculations on my behalf). This matter was the subject of an underpayment of wages claim by me against Stell, (liability was denied) in the Industrial Relations Court of SA, (File Number 3266/2012W). It was settled by agreement on a confidential basis.

7. I am no longer working in the real estate industry. Commission only is a big risk for any sales person. Income is not guaranteed but expenses are; such as the cost of your motor vehicle, mobile phone, personal advertising and simply working many hours for little or no return. One year you could be a "prince" and the next year a "pauper" because of factors out of your control, high unemployment, increases in distressed sales arising from the unemployment, lack of finance or high interest rates and the like.

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



Stephen D.E. Finch

22-7-2016

Date