

Fair Work Commission

Exhibition Street

Melbourne Victoria

23rd February 2018

Re 4 Yearly review of modern awards – Real Estate Industry Award 2010

Dear FWC

I write on behalf of the Registered Real Estate Salespersons' Association of SA (RRESSA) in respect of the Full Bench's decision of 17th January 2018 as corrected [2018]FWCFB 354, inviting comments from stakeholders on the draft determination of the Full Bench and the 4th Exposure Draft of the Award.

RRESSA makes the following comments in relation to the draft determination (as amended). Also marked are the corresponding clauses in the 4th Exposure Draft Award 2015 that we believe will need amending in line with those suggested for the draft determination, (highlighted in red).

1. By adding a new paragraph to the proposed new clause 14.2.

"All past service of an employee engaged as a Real Estate Employee Level 1 (Associate Level) as at the coming into force of clause 14.1, shall count for the purpose of determining if the employee is to be paid the minimum wage in their first 12 months of employment or higher".

The reason for seeking this amendment is to ensure that employees, employed prior to 2nd April 2018, engaged as an associate Level 1, do not lose their past service when the new structure takes place on the 2nd April 2018. The current wording may suggest that as the new associate level comes into force on the 2nd April 2018 that employees already engaged in that level, would only commence their 12 month service from that date, rather than have their past service count towards the 12 months when they would move into the high pay rate for level1.

[The above amendment should also be reflected in the Exposure Draft of the Award, new clause 8.2]

2. Clause 16.5 (c) to (f) – item number 11 of the determination.

The new clause 16.5 (f) (ii) which deals with where 2 or more employees are separately responsible for different components of the sale or lease of a property needs to be amended by deleting the words , "net commission" and replaced with the words, "employer's gross commission". This amendment which has not been picked up in the draft determination or in the Exposure Draft Award 2015, needs to follow the decision of the Full Bench in amending the minimum commission payable to a commission only salesperson from 35% of the employer's net commission to 31.5% of the employer's gross commission. Without the suggested amendment

where there is split commission payable to 2 or more salespersons their minimum commission entitlement would be 28.35%, not 31.5%. Further clause 3 of the award (Definitions and interpretations) needs to be amended by deleting all reference to the definition of “employer’s net commission”, as it was only relevant in the context of commission only sales persons and the 35% minimum commission payable less up to 10%.

[The above amendments need also to be made to clause 9.7 (iii) of the exposure draft award, 2015 and Schedule G Definitions - delete reference to employer’s net commission.]

3. Clause 17.3 Entitlements after employment ends

Amend sub clause (a) (ii) by deleting the words “employee is terminated” in the first line of the paragraph (a) (ii) and insert in lieu the following, “employee’s employment ceases”.

The purpose of the original clause put forward to the Full Bench by all stakeholders, was to ensure that employee’s who had their employment terminated by the employer for reasons other than serious misconduct, or the employee chose to resign, the employee would be entitled to receive their share of the commission payable for properties sold or leased on or before their employment ceased. Further those employees would also be eligible to be paid their listing share of the employer’s commission on properties they listed for the employer but were not sold as at the date of their ceasing employment, but subsequently sold within the exclusive agency period.

Paragraph 17.3 (a) (i) allows the employee who is terminated for serious misconduct, whilst not entitled to any listing share of the employer’s commission on properties sold after they ceased employment, to be paid the sales commission on properties sold or leased prior to their termination on the grounds of serious misconduct.

The suggested amendment RRESSA believes makes the intention of the parties clearer, as the current wording may imply that the employee’s listing share is only payable if his/ her employment is terminated at the initiative of the employer, and not if they were to resign their employment.

[The above amendment should also be included in the 2015 4th Exposure Draft Award clause 9.4 (a) (ii)]

Schedule B – Classification Structure and Definitions

Real Estate Employee Level 1 (Associate level)

Clause B.1.1 - RRESSA seeks the deletion of the word “principally” from the second sentence of the subclause. The reason for seeking this amendment are explained in the Associations email response to DP Asbury dated 8th November 2017, wherein RRESSA agreed to the structure and almost all of the wording put forward by the employer stakeholders at the conciliation conference chaired by Her Honour on the 3rd November 2017.

The employer wording which included the word, “principally” was objected to on the grounds that it may allow associates with licences to work without supervision on a regular basis at open inspections for example, consulting and negotiating with prospective buyers, without being entitled to be paid the higher wage of representative. The wording in the existing Schedule B of

the 2010 Award refers consistently that associates, whether they be in sales, property management or strata title management, have to be supervised by a more senior person and that they are there to assist that more senior person. The word “principally” does not appear in any of the associate definitions in the existing Schedule B. The employers in response to RRESSA’s email to DP Asbury agreed (with a caveat) to RRESSA’s proposed amendment, re email from REEF dated 9th November 2017, REEF SA/NT email dated 13th November 2017 & REEFWA email dated 13th November 2017.

The employer’s caveat was that they do not agree that an associate has to be under constant supervision at all times in the performance of their duties. RRESSA agrees that from time to time an associate may be allowed, if licensed, to attend open inspections unsupervised if the sales representative is temporarily unable to be present at the same time. However in RRESSA’s view the inclusion of the word “principally” connotes that such unsupervised work may become a more regular feature of an associates work without the corresponding wage increase of a level 2 Representative.

[The above amendment will also need to be made to the Exposure Draft award 2015 – Schedule A, clause A.1.1]

For all the above reasons we ask the Full Bench to make the amendments as sought.

Regards

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Agent for RRESSA

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