

Fair Work Act 2009

s. 156-4 yearly review of modern awards

4 yearly review of modern awards-Real Estate Industry Award 2010

(Matter No. AM 2016/6)

**WRITTEN OUTLINE OF SUBMISSIONS MADE ON BEHALF OF THE
QUEENSLAND REAL ESTATE INDUSTRIAL ORGANISATION OF
EMPLOYERS.**

1. This submission is made as a consequence of the decisions of the Full Bench, as presently constituted, on 6 July 2017¹ and 29 March 2018² and the directions issued on 31 July 2018.

2. In the 6 July 2017 decision your Honours and Commissioner Gregory made the statement: –

“We are also of the view that because the REI Award does not provide for overtime payments for commission-only employees or any restrictions on when hours may be worked, part-time and casual employment concepts are neither useful nor relevant for commission-only employees.”

3. The Queensland Real Estate Industrial Organisation of Employers (also known as the “REEA”) takes issue with this view. It is submitted that the experience of REEA members is to the contrary and the view expressed is not supported historically in Queensland.

4. Part of the modern awards objective set out in s134 of the *Fair Work Act 2009* requires that the Fair Work Commission, as presently constituted, needs to take into account the: –

“need to promote flexible modern work practices and the efficient and productive performance of work.”

5. In preparation for the submissions REEA sought the views of its members in Queensland. Two matters were at the forefront of the views expressed supporting part-time commission only employment.

¹ See [2017] FWCFB 3543.

² See [2018] FWCFB 1882.

6. The first matter concerned transition arrangements especially with respect to elderly full-time commission only sales persons. Those around the age of 65 years are looking towards semi-retirement but still want to maintain a connection with the industry particularly where they may have built up a clientele over the years that they have worked as full-time commission only sales persons. They understand the incentive basis in working on commission only.

7. Further, where owners of real estate agencies wish to sell their agencies, particularly in regional Queensland, they are likely to want to retain contact with their clients and will build that in as part of the selling process of the agency. However, they may not want to work for the new acquirer of their agency on a full-time basis but simply want to earn remuneration on a part-time basis and maintain their skills.

8. The second matter expressed in support for having part-time commission only sales persons is the flexibility which it permits parents with school-age children to remain in the workforce and work around their parental demands.

9. Experience shows that real estate industry activity in Queensland tends to be concentrated on weekends. Part-time commission only employment would be a natural adaptation to this occurrence.

10. It is not a natural consequence that because the REI Award does not provide for overtime nor a restriction on hours that part-time employment for commission only sales persons is not useful or relevant. Firstly, this assumes that part-time commission only sales persons would be required to work outside their part-time hours. Their written employment agreement would not permit that if they were employed on the basis that they worked hours less than a full-time employee and those hours were stated, as they should be, in the agreement. Further, if the Full Bench, as presently constituted, has a real concern about abuse in this regard then the award could be amended so as to prevent part-time commission only employees working outside of their agreed hours.

Historical context in Queensland.

11. The last award made by the Queensland Industrial Relations Commission in relation to the real estate industry in Queensland with respect to property sales persons was the *Property Sales Award Queensland-State 2005*.

12. Like the situation that prevailed under the REI award until 31 December 2014 written employment agreements with respect to commission-only employment were required to be registered with an entity known as the Queensland Property Industry Registry (“the QPIR”).

13. It was envisaged that the 2005 award would cover part-time commission-only sales persons.

14. That this is so can be demonstrated by reference to an extract from that award which dealt with discretionary powers of the QPIR with respect to registration of agreements notwithstanding that they may not strictly comply with the award in circumstances described as “for such other purposes as the QPIR deems reasonable”³. There then followed an example which said: –

“Example 1: A commission-only sales person may not meet the award definition of part-time employment and has not met the 125% income threshold when an Approval to Opt Out falls due. This may be because of geographic location, or because they are employed to provide real estate services to a particular niche market.

The employee can clearly demonstrate that their employment is less than what a reasonable person would see as full-time, they are satisfied with the remuneration they are receiving for the work they are performing, and they not being financially disadvantaged by their arrangements.

In this case, it may be seen as reasonable to approve their continued employment on a commission-only basis.”

Minimum Income Threshold Amount .

15. Where a commission-only salesperson is transitioning from full-time commission-only employment then meeting the minimum income threshold amount would probably not present a difficulty. However, it may do so in subsequent years given that the threshold amount is geared to full-time employment. It therefore seems reasonable that this amount should be reduced on a pro rata basis to take into account the hours worked on a part-time basis.

Dated the 13th of September 2018.



Bruce Siebenhausen

Secretary/Treasurer REEA

³ See clause 19.1 (b) (ii).

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STATEMENT OF BRUCE SIEBENHAUSEN

1. I am the secretary/treasurer of the Queensland Real Estate Industrial Organisation of Employers also known as the REEA.
2. I have held this position for the past 22 years.
3. In my role I act as an advisor to members of the REEA on workplace relations issues. I have regular contact with those members and on occasions non-members.
4. Commission only employment is a popular form of engagement of sales persons in Queensland both from an employer and an employee perspective. It provides a degree of flexibility in working conditions and the opportunity for employees to earn an income which is above the minimum award rate.
5. Previously the REEA has consulted with the Real Estate Employers' Federation (also known as REEF) with respect to this modern awards review and in the past has either been jointly represented by counsel or has agreed to a joint submission made by REEF. However, due to REEF applying to alter its eligibility rule to include employers in Queensland this is no longer possible and I have arranged for a submission to be made separately for the REEA.
6. I have communicated to the members of the REEA that this matter is before the Fair Work Commission and sought their views on the question of part-time commission only sales persons being recognised in the modern award.
7. The overwhelming response from the members who have contacted me is in support of allowing part-time commission only employment. For example one member commented: –

“Thank you for the article on part time commission only employment. I personally think as us baby boomers sell our business's to be employed on a part time basis in sales either on debit/credit or commission only will be very important as an large percentage will have to work some hours to meet the rising cost of living. With clientele built up over the years consultants would be able to obtain a living only working as a casual or permanent part time basis.

I already feel there is a high demand for casual sales consultants that may only work the weekends with mainly open home's and be on a commission split etc." (I have retained the typographical errors that were set out in the email from this member).

Another member commented: –

“Thank you for your correspondence. I can confirm all of my sales team are in favour of this proposal. I have 4 full time com only sales people. 2 of which are over the age of 65 and the other two in their 50's. All 4 employees have worked in this office for more than 16 years and are valuable to our team. The new award is crippling to them and our business and we support any positive changes that assist both the employee and employer to further continue their careers in the industry.”

Another member has commented: –

“Firstly, thank you for your ongoing action in this matter. We have at least 2-3 members of our sales team that used to work full time on a commission only basis but due to age and health reasons no longer can or wish to do so. They would prefer to be able to work part time and be employed on a commission only basis. I think what needs to be taken into account by the FWA is that many of those in real estate sales still wish to work and spend a number of years in the industry on reduced hours as they wind down towards retirement.”

Yet another member has commented: –

“I have certainly two staff members and possibly 1/3 who very much want to stay in the Industry, but on a Part Time Basis. They have individually Twenty to Thirty plus years of service and don't want to have it any other way than the Commission Only Arrangement they have always worked under. However, Part Time will possibly not achieve the current requirements.”

9. I have not received any comments from members who support the abolition of part-time commission only employment.

8. Another area of concern for members is the fact that if part-time commission only employment is not available then those salespersons who have family responsibilities particularly with school-aged children may be excluded from the workforce where those persons want the benefits of commission only remuneration.

Bruce Siebenhausen



Dated the 13 day of September 2018.