

IN THE FAIR WORK COMMISSION

FOUR YEARLY REVIEW OF MODERN AWARDS

REAL ESTATE INDUSTRY AWARD 2010

AM2016/6

16 August 2017

1. INTRODUCTION

- 1.1 The Real Estate Employers' Federation of South Australia and the Northern Territory (**REEF SA/NT**) is a registered employer association under the *Fair Work (Registered Organisations) Act 2009*.
- 1.2 REEF SA/NT represents approximately 300 employer members across SA and NT.
- 1.3 The Real Estate Award is an award under review in Group 3 of the Commission's 4-year award review process. A number of matters that are in dispute between various interested parties were heard by a Full Bench of the Commission in November 2016 (the "**Hearing**"). On 6 July 2017 the Full Bench issued a decision in respect to the Hearing (the "**Decision**") and the 2017 Exposure Draft was subsequently issued on 11 July 2017.
- 1.4 In its Decision the Full Bench invited interested parties to make submissions in respect to certain matters arising from the Decision and/or in respect to the 2017 Exposure Draft.
- 1.5 REEF SA/NT make this submission in response to the Full Bench's call for submissions in its Decision.
- 1.6 REEF SA/NT has had the opportunity to review the submission made on behalf of The Real Estate Employers' Federation (**REEF**) and the Queensland Real Estate Industrial Organisation of Employers (**QREIOE**) (**the REEF Submission**) and supports that submissions. However, in relation to the phasing-in of any wages increases/decreases and the Minimum Income Threshold Amount ("**MITA**") for commission-only employment of part-time employees REEF SA/NT makes the submission below.

2. PHASING-IN OF WAGE INCREASES

2.1 REEF SA/NT has consulted with and surveyed its members in relation to the issue of phasing-in of wage increases and makes the following submissions on their behalf:

2.1.1 In relation to the issue of a commencement date for any increases to the minimum rates of pay, the Full Bench stated that its *“provisional view, subject to hearing from the parties, is that the increase to the minimum Award wage for Property Sales Representatives should apply in full from 1 January 2018. It should not be assumed that the Full Bench will grant the same operative date for any increases to the other classifications in the REI Award resulting from the new relativities.”*

2.1.2 It is the submission of REEF SA/NT that if the Full Bench determines after taking into account the submissions of the employer organisations regarding wage increases, that where the rate of pay for any employees covered by the Award should be increased on work value grounds, by more than \$10.00 a week, the increase should be considered significant.

2.1.3 Further, such an increase is likely to directly affect the costs of real estate industry employers in terms of cash flow and net earnings as an additional unexpected expense.

2.1.4 Such costs will not be able to be offset by current payments such as commission or over award payments as:

- a) It is not possible to ascertain how many Property Sales Representatives are actually in receipt of any commissions; if a Property Sales Representative is not in receipt of commission/ bonus because his/her sales performance is inadequate to create such an entitlement there is no capacity for an employer to immediately absorb the significant increase in the minimum award rate of pay.
- b) The number of employees who are commission-only employees in a real estate business is uncertain. However, a majority of the Property Sales Representatives employed by REEF SA/NT members are paid the Award rate rather than commission-only.
- c) There are a number of employees in a real estate business who will not qualify for commission / bonus as their duties are inconsistent with such a qualification e.g. property management employees and administration employees.
- d) There is no other reduction in costs under the current proposed amendments to the Award pursuant to which any increased minimum award payments can be offset.

2.2 Therefore, the decision to apply the wage increases for any classification under the Award without any phasing-in arrangements would be inappropriate and REEF SA/NT disagrees with RRESSA's submission that there should be no phasing-in of any increases to minimum rates of pay.

2.3 REEF SA/NT agrees with the REEF Submission when it submits that any increases to the wages should be phased-in in a similar way to the phasing-in arrangements applied by the then Australian Industrial Relations Commission (the “AIRC”) in the award modernisation process. In its 2 September 2009 decision, the AIRC recognised the impact significant wage increases may have and to lessen the impact, it adopted a model phasing-in schedule which included, relevantly, minimum wages. The AIRC adopted a transitional 5 year phase-in period to reach the modern award standard, with the standard being reached after 5 years.

2.4 REEF SA/NT respectfully asks the Commission to have regard to the following:

2.4.1 Approximately 80% of REEF SA/NT members are small business employers having less than 15 employees;

2.4.2 A number of its members pay the minimum award wages;

2.4.3 In a recent survey of its members conducted by REEF SA/NT, 67% of those surveyed said that the commencement date of 1 January 2018 of a significant wage increase without a reasonable phasing-in, would result in an immediate cash flow reduction for the businesses conducted by the members and may also result in businesses making decisions to downsize or cease operating; and

2.4.4 If the wage increases are to be the subject of further annual wages increases by virtue of the National Minimum Wage decision, the annual increases are likely to increase wages further each year.

2.5 Therefore, REEF SA/NT respectfully asks the Commission to provide for the phasing-in of any increases/decreases to classifications which are in excess of \$10.00 per week. It is proposed that this phasing-in would occur in three equal instalments, 12 months apart in accordance with the following timetable:

1 st instalment	(33.3% of the increase/decrease)	-	1 January 2018;
2 nd instalment	(33.3% of the increase/decrease)	-	1 January 2019;
3 rd instalment	(33.3% of the increase/decrease)	-	1 January 2020.

2.6 The proposed phasing-in arrangement would more fairly spread the impact over a reasonable period and allow businesses to adjust their cash flow to implement the changes in a manner that will not detrimentally affect their operation.

2.7 REEF SA/NT propose the adoption of transitional wage provisions as set out in Schedule B to the REEF submission as a 3 year phasing-in period rather than a 2 year phasing-in period.

3. THE MITA FOR PART-TIME COMMISSION-ONLY EMPLOYEES

- 3.1 REEF SA/NT submits that the MITA for the purposes of determining eligibility to remain on a commission-only arrangement for part-time employees should be less than the MITA for full-time employees and should be specifically referred to in the Award.
- 3.2 REEF SA/NT notes that pursuant to clause 10.3 of the current Award, a part-time employee is an employee who works less than 38 hours per week and that part-time employees are entitled to the same entitlements as full-time employees on a proportionate basis.
- 3.3 It submits that for the purposes of determining whether the MITA has been achieved after a 12 month period by employees who are currently paid as commission-only and are working part-time, the MITA should be proportioned based on the percentage of full-time hours worked by the part-time employee.
- 3.4 As there is no restriction on the number of hours a part-time employee must work under the Award, REEF SA/NT considers that there should be no restriction on the number of hours on which the MITA is based in order that the part-time employees remain as a part-time commission only employees.
- 3.5 REEF SA/NT is not proposing that the MITA be proportioned as part of the entry level qualification for commission only employment.

4. SUMMARY

- 4.1 REEF SA/NT submits that if minimum wages are increased, the potential impact on the operation of the business of members will be significant. Therefore, it respectfully requests the Commission to provide for the phasing-in of any increases/decreases to existing classifications which are in excess of \$10.00 per week in 3 equal instalments, 12 months apart.
- 4.2 REEF SA/NT submits that the issue of part-time commission-only employees be specifically addressed in the Award by including a provision that refers to the MITA for current commission-only part-time employees being proportioned based on the percentage of full-time hours worked by that employee.

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