

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

**AUSTRALIAN PROPERTY SERVICES ASSOCIATION
SUBMISSION IN REPLY**

The Australian Property Services Association (APSA) responds to submissions filed by:-

**REAL ESTATE EMPLOYERS' FEDERATION & QUEENSLAND REAL ESTATE INDUSTRIAL
ORGANISATION OF EMPLOYERS (REEF & QREIOE)**

REAL ESTATE EMPLOYERS' FEDERATION OF WESTERN AUSTRALIA (REEFWA)

**REAL ESTATE EMPLOYERS' FEDERATION OF SOUTH AUSTRALIA
& NORTHERN TERRITORY (REEFSA/NT)**

REAL ESTATE INSTITUTE OF VICTORIA (REIV)

Filed on behalf of: Australian Property Services Association
Filed by: Henry Lewocki, Principal National Industrial Officer
Address: 302/33 Lexington Drive Bella Vista NSW 2153
Postal Address: PO Box 8269 Baulkham Hills B/C 2153
Email: Henry.Lewocki@myapsa.com.au
Phone: 0430 46 1012
Date: 31 October 2016

APSA RESPONSE AND SUBMISSION IN REPLY.

1. The submission by REEF & QREIOE (11 & 12) states that RRESA is not entitled to bring that part of the application for wages increases to those persons under the Modern Award and that the Fair Work Commission ought to dismiss that part of RRESA's application which refers to classifications in Property Management or Strata/Community Title Management.
2. ***At a conference before Hampton C in Adelaide, the APSA stated that its' supports the application made by RRESA for a work value on the operational classification in the award. Further APSA at a hearing before His Honour Hatcher when asked who supported RRESA's work value application APSA confirmed again that we support such application. APSA has the legal entitlement to make such application and bestows out entitlement to RRESA to file an application and argue the merits of such application.***
3. One underlining common response from all the employer groups in their objection to APSA's application for a top-up safety net for commission only employees was that the Real Estate Award (the award) provided for a minimum income threshold test whereby those seeking employment on a commission only basis must meet.
4. ***APSA supports the award clause that makes it mandatory and compulsory for prospective commission only employees to meet an essential criteria by demonstrating that the employee has met an agreed minimum threshold in their past employment. This essential criteria protects vulnerable and inexperienced persons from being exploited by employers. The fact that the award has this criteria does not counteract the issue of an employee not earning at least the award wage in commissions in a six month period.***

5. REEFSA/NT (36) and REIV (79) both stated that commission only employment was by agreement and a voluntary arrangement. REEFSA/NT (35) states that the award already provides for a safety net of 35% commission payment, and REEFWA (45) states that commission only benefits both employees and employers and REEFSA/NT (38) underpinning does not make a whole lot of sense.
6. ***APSA agrees that a commission only arrangement is both voluntary and by agreement and that it can benefit both the employee and employer. APSA supports the continuation of commission only employment, however, the protection of employees working on those arrangements must be available. APSA does not agree with REEFSA/NT statement that the 35% minimum commission payment as provided for in the award is in itself a safety net.***
7. REEFSA/NT (37) and REEFWA (43) refer to employees who are employed on commission only contrary to the award provision, that remedies are available through the Fair Work Commission. Further REEFWA (41) denounces APSA for failing to produce evidence of employees who haven't earned the award wage in commissions, and REEFWA (44) suggests that the insertion of such clause to provide for a top-up "will have a devastating effect on employment within the real estate industry in Western Australia"
8. ***In APSA's submission (33), reference was made regarding employees who were engaged on commission only who should not have been and again states that if the award had a "safety net" provision then clearly an employer could not change the conditions of employees from wage plus commission to commission only to endeavour to have cheap labour or employ a person who does not qualify. APSA notes REEFWA (40) remarks regarding not providing evidence that this is widespread issue throughout Australia and can only comment that anecdotal evidence suggests that it is an issue certainly in NSW, Queensland and South Australia. REEFWA has not provided any evidence that the introduction of a safety net "top-up" clause will have a devastating effect on the industry in Western Australia, however such a comment can only lead APSA to believe that if payment***

of a “top-up” will be devastating, then the issue of employees not achieving the award wage must be widespread throughout Western Australia.

9. REEFWA (46) states there has been a decline in salespersons in Western Australia since January 2015 allegedly with the introduction of annual leave loading, car allowance and phone allowance and the introduction of ASPA’s application may have the same effect.

10. Firstly Commission Only employees do not receive a car allowance, phone allowance and until recently, did not receive annual leave payments or loading. This has or will change because of the Canavan decision. It is questionable if Commission Only employees will receive a phone or car allowance once the Canavan decision is made for the real estate industry.

The decline in salespersons in Western Australia could be due to many reasons, however, APSA does not accept that the introduction of annual leave loading, car allowance or phone allowance is a fundamental cause nor will the introduction the APSA’s application to vary the award.

The down turn in the Western Australian economy could be one reason. We note in paragraph 22 of Mr Khune’s statement the decline of 4041 salespersons from January 2015 to 3854 in August 2016 of 187 persons, however in the same period property managers were 2040 in January 2015 to 2256 in August 2016 an increase of 216. Could it be that the “mining boom” decline has seen a reduction the number of property sales and increased the number of property rentals?

11. In the submission by REEFSA/NT (40) suggests that to pay a commission only employee a “top-up” will be a financial drain on the employer.

12. APSA has the view that a Commission Only sales person does not have to share the burden of the employers running costs and the financial position of the company The employee has no influence on how the business is run or operated and has no

input into the strategic direction or financial investment of the employers business. In APSA's submission (32) we do not believe that there are large numbers of employees who haven't earned the award wage in commission payments. To suggest that an employee who is lawfully entitled to earn the basic wage can be a financial burden on the employer then the employer should consider if they should be in business at all.

CONCLUSION

The Australian Property Services Association re-iterates its' support for Commission Only employment on a voluntary and mutually agreed basis.

APSA confirms its' commitment to protect the inexperienced and vulnerable from being exploited.

Further, APSA is determined to ensure that employees receive at least the award wage as a minimum, regardless of the fact that they work on the basis of commission only.

By having a safety net "top-up" clause in the award, employers will be encouraged to provide their employees with meaningful assistance so they can achieve a reasonable income. It will discourage employers from changing employees working arrangements from wages and commissions to commission only to have a cheaper labour.

Australian Property Services Association

Bella Vista NSW

31 October 2016