



REAL ESTATE EMPLOYERS' FEDERATION

Submission regarding the 4-year review of the Real Estate Industry Award 2010

FWC Matter No. 2016/6

16 August 2017

1. INTRODUCTION

- 1.1 The Real Estate Employers' Federation (**REEF**) and the Queensland Real Estate Industrial Organisation of Employers (**QREIOE**) are registered organisations of employers under the *Fair Work (Registered Organisations) Act 2009*. This submission is made on behalf of both organisations.
- 1.2 REEF and QREIOE have in excess of 1,600 members in NSW, Victoria, Queensland, the ACT and Tasmania.
- 1.3 For the purposes of this submission:
 - (a) **2017 Exposure Draft** means the further revised Exposure Draft of the *Real Estate Industry Award 2015* that was issued by the Commission on 11 July 2017;
 - (b) **APSA** means the Australian Property Services Association;
 - (c) **Clerks Award** means the *Clerks – Private Sector Award 2010*;
 - (d) **Commission** means the Fair Work Commission;

- (e) **Hospitality Award** means the *Hospitality Industry (General) Award 2010*;
- (f) **Manufacturing Award** means the *Manufacturing and Associated Industries and Occupations Award 2010*;
- (g) **Miscellaneous Award** means the *Miscellaneous Award 2010*;
- (h) **MITA** means the *Minimum Income Threshold Amount* as prescribed by clause 9.7 of the 2017 Exposure Draft;
- (i) **PSA** means Property Sales Associate as set out in the classification structure of the Real Estate Award;
- (j) **PSMA** means either or both a Property Management Associate or Strata/Community Title Management Associate as set out in the classification structure of the Real Estate Award;
- (k) **PSMR** means either or both a Property Management Representative or Strata/Community Title Management Representative as set out in the classification structure of the Real Estate Award;
- (l) **PSMS** means either or both a Property Management Supervisor or Strata/Community Title Management Supervisor as set out in the classification structure of the Real Estate Award;
- (m) **PSR** means Property Sales Representative as set out in the classification structure of the Real Estate Award;
- (n) **PSS** means a Property Sales Supervisor as set out in the classification structure of the Real Estate Award;
- (o) **Real Estate Award** means the *Real Estate Industry Award 2010*;
- (p) **Restaurant Award** means the *Restaurant Industry Award 2010*;
- (q) **Retail Award** means the *General Retail Industry Award 2010*;
- (r) **RRESSA** means the Registered Real Estate Salespersons' Association of South Australia;
- (s) **Trade Rate** means the weekly rate of pay (currently \$809.10) that applies to a classification in many modern awards and which have their origins in the

C10 trades level rate in the predecessor awards to the Manufacturing Award. Such classifications include Level 2 Year 1 in the Clerks Award, Level 4 in the Retail Award 2010 and Level 4 in the Hospitality Award; and

(t) **Unions** means:

- RRESSA; and
- APSA.

1.4 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.

1.5 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. The request by the Full Bench for submissions was also set out in directions that were issued on 2 August 2017.

1.6 The matters that the Full Bench specifically asked the parties to comment on included:

- (a) The appropriate relativities to be applied to the minimum rates of pay for classifications other than PSRs;
- (b) The appropriate commencement dates for any increases applied to the classifications other than the PSR classification;
- (c) The appropriateness of phasing-in of the increase(s) to minimum rates of pay; and
- (d) Casual commission-only employment – including casual loading and the MITA.

1.7 REEF and QREIOE make this submission in response to the Full Bench’s call for submissions in its Decision.

2. ISSUE No. 1 – RATES OF PAY & ASSOCIATED MATTERS

i. Rates of Pay

- 2.1 In its Decision, the Full Bench determined that in its view *“the skills required to be exercised and the indicative tasks performed by Property Sales Representatives align more appropriately with those of the Level 2 employee under the [Clerks – Private Sector Award].”*¹
- 2.2 The Full Bench went on to conclude that *“the Property Sales Representative classification is the appropriate benchmark for other classifications in the REI Award. Rather than determining the relativities for the other classifications in that Award, we have decided that the parties should hold further discussions in an attempt to reach agreement on this matter. If agreement cannot be reached between the parties then the matter will be determined by the Full Bench”.*²
- 2.3 It is well understood that the rate of pay for the Level 2 - Year 1 classification in the Clerks Award is the current Trade Rate.
- 2.4 As requested by the Commission in its Decision, REEF has had discussions with the Unions in an attempt to reach agreement in relation to the question of appropriate new rates of pay (relativities) for the classifications in the Real Estate Award (other than PSRs). These discussions, to date, have not resulted in a consensus being reached on this issue.

¹ The Decision of the FWC in Matter No. AM2016/6 dated 6 July 2017 at paragraph 84.

² Ibid at paragraph 90.

- 2.5 REEF/QREIOE note that RRESSA has proposed a range of new pay rates that are aligned to the rates of pay for the broad-banded classification levels in the Clerks Award.³ However, RRESSA has not provided particulars about any methodology or rationale that it may have used in the formation of its submission to that effect.
- 2.6 REEF/QREIOE vigorously oppose the rates of pay proposed by RRESSA on the following grounds:
- (a) There appears to be no logical or proper basis to conclude that the rates of pay proposed by RRESSA (which are based on the internal relativities within the Clerks Award) appropriately or properly align with the skills, responsibilities or the conditions under which work is performed by employees who are covered by the Real Estate Award;
 - (b) RRESSA has not met its burden to establish that the increases to the rates of pay that it seeks for classifications other than PSRs are justified for work value reasons. This is a fundamental obligation that RRESSA has failed to address; and
 - (c) Furthermore, the Unions brought no evidence in the proceedings before the Commission as to the value of work performed by employees in any classifications other than employees classified as a PSR or as a PSMR. In particular, the Unions have presented no evidence in respect to work performed by a PSA, PSMA, PSS or a PSMS. As such, the Commission cannot be satisfied that an increase is justified for work value reasons to the minimum rates of pay for those other classifications where no evidence has been presented for its consideration.
- 2.7 Further to the above, should RRESSA's proposed rates of pay be adopted it would result *inter alia* in significant increases to the existing entry level rates of pay in the Real Estate Award. Moreover, in the case of PSAs in the first 6 months, it would also mean departing from a rate of pay (currently \$694.90) for entry level employees that the Real

³ Ibid at paragraph 27

Estate Award has in common with a number of other modern awards such as the Hospitality Award, the Manufacturing Award, the Restaurant Award and the Miscellaneous Award. It is further submitted that the Commission should in particular exercise caution in deciding to increase the minimum rates of pay for these entry level classifications as such increase would entail an obvious risk of adverse impact upon employment in the industry. This is particularly the case given the absence of any evidence in this award review to support an increase to those rates of pay on work value grounds.

Clerks Award not the appropriate award for the purpose of determining rates of pay in the Real Estate Award

2.8 Moreover, even if the Commission determines that the minimum rates of pay for the classifications (other than the PSR classification) in the Real Estate Award are undervalued, RRESSA has not provided any logical reasons why those rates should be aligned with rates that presently exist in the Clerks Award. It is to be noted that the Clerks Award, unlike the Real Estate Award, contains a classification structure with graduated or broad-banded levels. By comparison the Real Estate Award contains a classification structure that essentially has two streams, a property sales stream and a property/strata title management stream and has an occupational based classification structure within the two streams. Further, the classification structure in the Clerks Award provides for progression as additional experience, skills, specialisation and responsibilities are acquired. By contrast, the classifications in the Real Estate Award are different occupations. The classification structure in the Real Estate Award provides that:

- PSAs and PSMA's essentially help an employee(s) of higher levels to perform their duties;
- PSRs are essentially responsible for listing and selling properties and/or businesses and/or helping potential home buyers to purchase properties;

- PSMRs are essentially responsible for managing either properties or strata/community title managements;
- PSSs perform the duties of a PSR but also supervise at least one PSR; and
- PSMSs perform the duties of a PSMR but also supervise at least one PSMR.

As such, it follows that the classification structure in the Clerks Award should not be used to properly align different classifications in the Real Estate Award.

2.9 REEF/QREIOE therefore submit that it is neither appropriate nor helpful to compare the rates of pay within the Real Estate Award to those within the Clerks Award. Further to this, REEF/QREIOE also contend that:

- Unlike the Clerks Award, there is no automatic progression between levels in the Real Estate Award because the Real Estate Award is comprised of various streams with a number of distinct jobs within each stream;
- The real estate industry is dominated by small and very small employers;
- The real estate industry is centered around sales and service and involves, by necessity, an emphasis on customer contact; and
- For the above reasons, it is more appropriate to align the rates of pay in the Real Estate Award to those contained in other industry awards particularly those in the sales and service industries with a dominance of small employers such as the Retail Award, the Hospitality Award or the Restaurant Award.

2.10 As mentioned above, REEF/QREIOE contend that it is more appropriate to have regard to the rates of pay for classifications in the Retail Award, the Hospitality Award or the Restaurant Award than to have regard to those in the Clerks Award. This is because those three industry awards apply to industries which have a great deal in common with the real estate industry. In particular the retail, restaurant and hospitality industries are sales/service based industries that revolve around customer contact and like the real estate industry those industries have a high proportion of small to very small employers.

As a result, many of the essential duties, functions, skills and responsibilities of workers in those three industries are distinctly similar to those in the real estate industry, as indeed are the conditions under which work is performed. Moreover, those awards contain job classifications at each broad-band level which in the submission of REEF/QREIOE are more suited to the real estate industry as there are a number of distinct jobs at various levels in the real estate industry.

- 2.11 Moreover, REEF/QREIOE believe that the first obligation that befalls RRESSA is to establish the skills, responsibilities and conditions under which work is performed and demonstrate the relationship to appropriate comparator classifications in other industries. In our view, RRESSA has failed to meet this obligation.
- 2.12 REEF/QREIOE also note that RRESSA's eligibility rules only permit it to enrol as members employees who are employed in the real estate industry in a property sales classification. As such, RRESSA is not able to enrol as members any employees who are engaged in a property management classification or in a strata /community title management classification. Accordingly, REEF/QREIOE respectfully submit that the Commission should give little weight to any submissions or anecdotal evidence that RRESSA seeks to make in respect to the work value of employees who perform work in a in a property management classification or in a strata title /community title management classification.
- 2.13 As such, REEF/QREIOE respectfully submit that the Commission should exercise caution before considering any increases to the rates of pay in the award other than the PSR classification without conducting a thorough and proper enquiry into the work value of employees in each of the respective classifications. REEF/QREIOE contend that this is even more critical in the case of the rates of pay for the PSA and PSMA classifications as they are the classifications for entry level employees to the industry.

Broad-band classification structure to prescribe new rates of pay

- 2.14 If however the Commission disagrees with REEF/QREIOE about this and determines that the rates of pay for classifications other than PSRs need to be varied then, as part of the exercise to determine new rates of pay, REEF/QREIOE contend that it would be appropriate to simultaneously move to a new broad-band classification structure. This submission puts forward for the Commission's consideration and adoption, a proposed broad-band classification structure together with appropriate rates of pay.
- 2.15 Given the decision of the Full Bench to attach the rate for Level 2 employees under the Clerks Award to the PSR classification, REEF/QREIOE submit that in determining those new rates of pay, the introduction of a broad-band classification would be a more appropriate way of setting out the minimum 'work valued' rates of pay. REEF/QREIOE propose the introduction of a new broad-band classification structure (containing 4 levels) into the Real Estate Award to replace the current multi-streamed, occupational-based classification structure. The proposed broad-band classification structure with its associated indicative tasks is set out in **Schedule A** to this submission. Accordingly, REEF/QREIOE propose that the current classification structure at Schedule A of the 2017 Exposure Draft be deleted and replaced with the classification structure in Schedule A to this submission.
- 2.16 In brief, the proposed broad-band classification structure at Schedule A provides for the following new structure:
- Real Estate Employee Level 1 (Associate Level);**
 - Real Estate Employee Level 2 (Representative Level);**
 - Real Estate Employee Level 3 (Supervisory Level); and**
 - Real Estate Employee Level 4 (In-Charge Level).**

2.17 The proposed new broad-band - **Real Estate Employee Level 1 (Associate Level)** - is essentially a consolidation of the following classifications from the current classification structure:

- I. Property Sales Associate; and
- II. Property Management Associate; and
- III. Strata/Community Title Management Associate.

2.18 The proposed new broad-band - **Real Estate Employee Level 2 (Representative Level)** - is essentially a consolidation of the following classifications from the current classification structure:

- I. Property Sales Representative; and
- II. Property Management Representative; and
- III. Strata/Community Title Management Representative.

2.19 The proposed new broad-band - **Real Estate Employee Level 3 (Supervisory Level)** - is essentially a consolidation of the following classifications from the current classification structure:

- I. Property Sales Supervisor; and
- II. Property Management Supervisor; and
- III. Strata/Community Title Management Supervisor.

Albeit some employees who are presently classified as a PSS or a PSMS under the current classification structure would move to the new Real Estate Employee Level 4 (In-Charge Level) broad-band under the proposed new broad-band classification structure.

2.20 The proposed new broad-band - **Real Estate Employee Level 4 (In-Charge Level)** - creates a new level to cater for an employee who holds an applicable qualification(s)

under real estate law and has been appointed by the employer to be responsible for ensuring the business complies with its statutory obligations under real estate law. The employees who would fall within this new classification level, would presently be classified as either a PSS or a PSMS under the current classification structure of the Real Estate Award.

The broad-band classification structure & proposed rates of pay

2.21 The broad-band classification structure proposed by REEF/QREIOE is set out in Schedule A. However, in brief the levels within the proposed new classification structure and the proposed rates of pay are as follows:

Broad-band Level	As a % of the current Trade Rate	Proposed weekly wage (rounded to nearest 10 cents)
Real Estate Employee Level 1 (Associate Level) - 1 st 6 months	85.89	\$694.90*
Real Estate Employee Level 1 (Associate Level) – between 6 months and 12 months	91.74	\$742.30*
Real Estate Employee Level 1 (Associate Level) - after 12 months	94.33	\$763.20*
Real Estate Employee Level 2 (Representative Level)	100	\$809.10*
Real Estate Employee Level 3 (Supervisory Level)	105.62	\$854.60*
Real Estate Employee Level 4 (In-Charge Level)	115.41	\$933.80*

****the basis of these proposed rates in the above table are detailed in paragraphs 2.26 to 2.50 below***

2.22 It is noted that the Full Bench found that the minimum rates of pay in the Real Estate Award have never been subject to minimum rates adjustment and nor have the rates of pay been set having regard to work value considerations. As such, it would clearly be erroneous to assume that any differentials that currently exist between the rates of pay

within the Real Estate Award have any proper basis or any connection to work value considerations. Indeed, as revealed during the Hearing, the rates of pay for the different classifications (other than for PSAs) were merely imported from the NAPSAs that previously applied in either New South Wales, Queensland or South Australia. It therefore follows that not only may some of the current rates of pay be undervalued, but some may be overvalued. Importantly, REEF/QREIOE contend that there is parity between the skills, responsibilities and conditions under which work is performed between:

- PSAs on the one hand and PSMAAs on the other;
- PSRs on the one hand and PSMRs on the other; and
- PSSs on the one hand and PSMSs on the other.

Indeed, REEF/QREIOE contend that the work value of the individual classifications in the property sales stream equates to the individual classifications of the same level within the property/strata management stream, and vice versa.

2.23 It therefore makes sense in our view to collapse the occupational based classification structure in favour of the more common broad-banded structure.

2.24 In moving to the proposed broad-band classification structure, it is important to note that the current PSA classification has two wage levels whereas the current PSMA classifications have only one wage level. A consequential change brought about by the proposed new structure, is the application of three wage levels for employees within the Level 1 broad-band – these being the first 6 months, 6 to 12 months and after 12 months.

2.25 Another consequential change would be that some employees who are classified as a PSS or as a PSMS under the current classification structure would move to Real Estate Employee Level 3 (Supervisory Level) broad-band while some would move to the new Real Estate Employee Level 4 (In-Charge Level) broad-band.

- 2.26 REEF/QREIOE respectfully submit that the proposed rate of pay of \$694.90 per week for the proposed Real Estate Employee Level 1 (Associate Level) broad-band in the first 6 months at that level is proper. Notably, the proposed rate of pay of \$694.90 presently applies to the PSA classification first 6 months and it is 85.89% as a percentage of the current Trade Rate. As mentioned above, there is no discernable difference between the skills, responsibilities and work value of PSAs on the one hand and PSMA's on the other. Most, if not all, of these employees would be entry level employees with no experience in real estate and little if any practical skills or knowledge. Indeed, for many or most of the employees who are classified at this level, it would be their first job after finishing school. The proposed rate of pay of \$694.90 per week for this level aligns to the minimum rates for similar entry level employees in a number of other awards including Engineering/Manufacturing Employee – Level 1 (C14) in the Manufacturing Award, Introductory Level in the Restaurant Award and the Hospitality Award and Level 1 in the Miscellaneous Award.
- 2.27 REEF/QREIOE respectfully submit a rate of pay of \$742.30 per week for the proposed Real Estate Employee Level 1 (Associate Level) broad-band 6 to 12 months at that level is proper. The proposed rate of \$742.30 per week is 91.74% as a percentage of the current Trade Rate. The proposed rate aligns to the minimum rate for Engineering/Manufacturing Employee - Level III (C12) under the Manufacturing Award and to that of Level 2 employees under the Restaurant Award, the Hospitality Award and the Miscellaneous Award. REEF/QREIOE submit that in particular there is a high degree of parity between the skills, responsibilities and conditions under which work is performed by employees in the Real Estate Employee Level 1 (Associate Level) broad-band 6 to 12 months on the one hand and Level 2 employees under the Restaurant Award, Hospitality Award and Miscellaneous Award on the other. It is noted that the Level 2 broad-band in the Restaurant Award and the Hospitality Award contain the following occupational classifications:

Restaurant Award - Level 2	Hospitality Award - Level 2
<i>Food and beverage attendant grade 2</i>	Clerical grade 1
<i>Cook grade 1</i>	Cook grade 1
<i>Kitchen attendant grade 2</i>	Door person/security officer grade 1
<i>Clerical grade 1</i>	Food and beverage attendant grade 2
<i>Storeperson grade 1</i>	Front office grade 1
<i>Door person/security officer grade 1</i>	Guest service grade 2
	Kitchen attendant grade 2
	Leisure attendant grade 1
	Gardener grade 1
	Storeperson grade 1

By way of example, the Food and beverage attendant grade 2 classification in the Restaurant Award provides as follows [our emphasis added]:

***Food and beverage attendant grade 2** means an employee who has not achieved the appropriate level of training and who is engaged in any of the following:*

- (a)** supplying, dispensing or mixing of liquor;*
- (b)** assisting in the cellar;*
- (c)** undertaking general waiting duties of both food and/or beverage including cleaning of tables;*
- (d)** receipt of monies;*
- (e)** attending a snack bar;*

(f) delivery duties;

(g) taking reservations, greeting and seating guests.

It is also noted that Level 2 in the Hospitality Award contains a Food and beverage attendant grade 2 classification which is similar but not identical to the Food and beverage attendant grade 2 classification in the Restaurant Award.

- 2.28 Having regard to the Food and beverage attendant grade 2 classification in the Restaurant Award alone, it is clear that the similarities include, at a minimum, dealing directly with / serving customers, receiving monies, recording the interest of customers (i.e. taking reservations) and delivery duties. Given the above, it is clear in our view that the skills, responsibilities and conditions under which work is performed by employees in the proposed Real Estate Employee Level 1 (Associate Level) broad-band 6 to 12 months are similar to that of employees at Level 2 in both the Hospitality Award and the Restaurant Award.
- 2.29 REEF/QREIOE respectfully submit that a rate of pay of \$763.20 per week for proposed Real Estate Employee Level 1 (Associate Level) broad-band more than 12 months at that level is proper. The proposed rate of pay of \$763.20 per week is 94.33% as a percentage of the current Trade Rate. Importantly, the proposed rate is the rate of pay for the Retail Employee Level 1 classification in the Retail Award. It is further noted that a similar rate of \$767.80 per week is the rate of pay for Level 3 employees under the Restaurant Award and the Hospitality Award and also Engineering/Manufacturing Employee – Level IV (C11) in the Manufacturing Award. It should also be noted that a rate of pay of \$753.40 per week applies to the “Merchandiser” classification in the *Commercial Sales Award 2010*.
- 2.30 The alignment of the rate of pay for the Real Estate Employee Level 1 (Associate Level) - more than 12 months at that level - with Retail Employee Level 1 under the Retail Award

is particularly appropriate in our view. Importantly, Level 1 in the Retail Award includes the following indicative job titles [our emphasis added]:

- **Shop Assistant,**
- **Clerical Assistant,**
- **Check-out Operator,**
- **Store Worker,**
- *Reserve Stock Hand,*
- *Driver,*
- *Boot/Shoe Repairer (Not Qualified),*
- *Window Dresser (Not Qualified),*
- *LPO,*
- *Photographic Employee,*
- **Store Greeter,**
- *Assembler,*
- *Ticket Writer (Not Qualified),*
- *Trolley Collector,*
- **Video Hire Worker,**
- **Telephone Order Salesperson,**
- **Door-to-door Salesperson, or Retail Outdoor Salesperson, and,**
- **Demonstrator and/or Merchandiser not elsewhere classified** (including a Demonstrator and/or Merchandiser who is not a direct employee of the retailer)

As well as the following list of indicative duties [our emphasis added]:

- **the receiving and preparation for sale and or display of goods in or about any shop;**
- *the pre-packing or packing, weighing, assembling, pricing or preparing of goods or provisions or produce for sale;*

- *the **display, shelf filling, replenishing or any other method of exposure or presentation for sale of goods;***
- *the **sale or hire of goods by any means;***
- *the **receiving, arranging or making payment by any means;***
- *the **recording by any means of a sale or sales;***
- *the **wrapping or packing of goods for despatch and the despatch of goods;***
- *the **delivery of goods;***
- *the **window dressing and merchandising;***
- *loss prevention;*
- *the **demonstration of goods for sale;***
- *the **provision of information, advice and assistance to customers;***
- *the **receipt, preparation, packing of goods for repair or replacement and the minor repair of goods;***
- *all **directly employed persons engaged in retail stores in cleaning, store greeting, security, lift attending, store cafeterias and food services;***
- ***Clerical Assistants functions Level 1; or***
- *work which is incidental to or in connection with any of the above.*

2.31 REEF/QREIOE submit that there is parity between the skills, responsibilities and conditions under which work is performed by Level 1 employees under the Retail Award on the one hand and employees in the proposed Real Estate Employee Level 1 (Associate Level) broad-band with more than 12 months at that level on the other. The duties that both are entrusted to perform include greeting customers/potential customers, the sale or hire of items, receipt of payment, the provision of information, advice and assistance to customers, recording sales transactions and preparing and demonstrating items/property to be sold.

2.32 REEF/QREIOE note that the Full Bench has indicated in its Decision that it will increase the minimum rate of pay for the PSR classification to \$809.10 per week, which is 100% as a percentage of the current Trade Rate. With this determination in mind, REEF/QREIOE contend that a rate of \$809.10 per week should be applied to the proposed Real Estate Employer Level 2 (Representative level) broad-band. This broad-band will also cover the current **PSMR** classifications. To this extent, REEF/QREIOE contend that there is no discernable difference between the work value of employees engaged in the PSMR and PSR classifications in the Real Estate Award. Moreover, the proposed rate of pay of \$809.10 per week also applies to employees in classifications in other awards with a comparable work value including Level 4 in the Retail Award, Hospitality Award and Restaurant Award. That proposed rate also aligns to the rates for Engineering/Manufacturing Tradesperson – Level 1 (C10) under the Manufacturing Award and Level 3 in the Miscellaneous Award.

2.33 REEF/QREIOE believe that there is parity between the Real Estate Employee Level 2 (Representative Level) broad-band level and the Retail Employee Level 4 classification in the Retail Award. Importantly, Level 4 in the Retail Award includes the following indicative job titles [our emphasis added]:

- *An Assistant, Deputy, or 2IC Shop Manager of a shop without Departments,*
- ***An employee who is required to utilise the skills of a trades qualified person for the majority of the time in a week. This includes: Butcher, Baker, Pastry Cook, Florist,***
- ***An employee who has completed an appropriate trades course or holds an appropriate Certificate III and is required to use their qualifications in the course of their work,***
- *A Qualified Auto Parts and Accessories Salesperson,*
- *A Window Dresser (Cert III or equivalent experience),*

- *A Boot/Shoe Repairer (Cert III),*
- *A Shiftwork Supervisor,*
- *Section/Department manager with up to 2 employees (including self),*
- *Service Supervisor of up to 15 employees,*
- *Nightfill Supervisor/Leader,*

As well as the following indicative duties [our emphasis added]:

- *Management of a defined section/department,*
- *Supervision of up to 4 sales staff (including self),*
- ***Stock control,***
- ***Buying/ordering requiring the exercise of discretion as to price, quantity, quality etc.,***
- ***An employee who is required to utilise the skills of a trades qualification for the majority of the time in a week, or***
- *Clerical functions Level 2.*

2.34 Given the above, it is clear in our view that the skills, responsibilities and conditions under which work is performed by employees in the proposed Real Estate Employee Level 2 (Representative Level) broad-band is similar to that of Level 4 employees under the Retail Award. Indeed, it is clear that the similarities include exercising discretion, buying/ordering/dealing with suppliers, obtaining new stock/monitoring existing stock and exercising skills to the level of a trade qualified employee for at least some of the time.

2.35 Moreover, the proposed rate of pay of \$809.10 per week for the Real Estate Employee Level 2 (Representative Level) broad-band also applies to classifications with a comparable work value in other modern awards including Level 4 in the Restaurant Award and the Hospitality Award. To that extent, it is noted that Level 4 in the

Hospitality Award and the Restaurant Award contain the following occupational classifications:

Hospitality Award – Level 4	Restaurant Award – Level 4
<i>Clerical grade 3</i>	<i>Food and beverage attendant grade 4 (tradesperson)</i>
<i>Cook (tradesperson) grade 3</i>	<i>Cook grade 3 (tradesperson)</i>
<i>Food and beverage attendant (tradesperson) grade 4</i>	<i>Clerical grade 3</i>
<i>Front office grade 3</i>	<i>Storeperson grade 3</i>
<i>Guest service grade 4</i>	
<i>Leisure attendant grade 3</i>	
<i>Gardener grade 3 (tradesperson)</i>	
<i>Storeperson grade 3</i>	

2.36 Accordingly, REEF/QREIOE respectfully submit that a rate of pay of \$809.10 per week for the proposed Estate Employee Level 2 (Representative Level) broad-band is proper.

2.37 Similarly, the same comments, as made about the parity between the work value of the PSR and PSMR positions, are made with respect to the PSS and PSMS positions except that the PSMS classification (and associated wage rate) was imported from the Queensland NAPSA. REEF/QREIOE contend that there is no discernable difference between the skills, responsibilities and work value of the PSS on the one hand and the PSMS on the other. The skills and responsibilities required to be performed by employees in either classification are, we say, appropriately and properly aligned to

each other for work value purposes. Under REEF/QREIOE's proposal, this would provide a rate of pay of \$854.60 per week to both classifications. The proposed rate of \$854.60 is 105.62% as a percentage of the current Trade Rate.

- 2.38 REEF/QREIOE respectfully submit that a rate of pay of \$854.60 per week for the proposed Estate Employee Level 3 (Supervisory Level) broad-band is proper. Importantly, the proposed rate of pay is the rate of pay that applies to Retail Employee Level 6 under the Retail Award. It is also noted that a similar rate of pay of \$859.80 per week applies to classifications with a similar work value in other awards and in particular to Level 5 in the Hospitality Award and the Restaurant Award. That rate of pay of \$859.80 per week also applies to Engineering/Manufacturing Tradesperson – Special Class Level I (C8) in the Manufacturing Award.
- 2.39 REEF/QREIOE respectfully contend that it is particularly appropriate to anchor the rate of pay for the proposed Real Estate Employee Level 3 (Supervisory Level) broad-band to the rate for Retail Employee Level 6 under the Retail Award as there is parity between the work value, skills, responsibility and conditions under which work is performed of employees in these respective classifications. Importantly, the Retail Employee Level 6 classification in the Retail Award includes the following indicative Job titles:
- *Section/Department manager with 5 or more employees (including self),*
 - *Manager/Duty Manager in a shop without Departments/Sections (may be under direction of person not exclusively involved in shop management),*
 - *Assistant or Deputy or 2IC Shop Manager of a shop with Departments/Sections,*
 - *Clerical Officer Level 3.*
- 2.40 It is therefore self-evident that some employees who are classified as Retail Employee Level 6 will supervise a department (with up to 5 employees) in a larger shop (that has departments) while some other employees at this level will supervise smaller stores that do not have any discrete departments. As such, employees at this level will not be

responsible for the overall supervision of larger department stores that contain discrete departments. In our view, this is almost identical to the supervisory responsibility of the proposed Real Estate Employee Level 3 (Supervisory Level) broad-band level. Employees at this level under the Real Estate Award would be expected to have supervisory responsibility for a relatively small number of employees of a lower level and in some instances they may have responsibility for supervising a property sales department or a property/strata title management department, however employees at this level would not be expected to have responsibility for the overall supervision of a real estate agency as that would be conducted by employees classified at the proposed Real Estate Employee Level 4 (In-Charge Level).

- 2.41 As already mentioned, REEF/QREIOE note that there is a slightly higher rate of pay of \$859.80 per week which applies to some classifications of comparable work value in other modern awards and in particular to Level 5 in the Hospitality Award and the Restaurant Award. Importantly, the Level 5 broad-band in the Restaurant Award and the Hospitality Award contain the following occupational classifications:

Hospitality Award - Level 5	Restaurant Award - Level 5
<i>Clerical supervisor</i>	<i>Food and beverage supervisor</i>
<i>Cook (tradesperson) grade 4</i>	<i>Cook grade 4 (tradesperson)</i>
<i>Food and beverage supervisor</i>	<i>Clerical supervisor</i>
<i>Front office supervisor</i>	
<i>Guest service supervisor</i>	
<i>Gardener grade 4 (tradesperson)</i>	

- 2.42 It is therefore evident that a key distinguishing characteristic of Level 5 employees in the Hospitality and Restaurant Awards, as compared to Level 4 in those awards, is supervisory responsibility for employee(s) of a lower level. This is also the case with the proposed Real Estate Employee Level 3 (Supervisory Level) broad-band, as employees at this level will perform the same duties as real estate employees at Level 2 but in addition they will also be responsible for supervising at least one Level 2 real estate employee.
- 2.43 Given the above, REEF/QREIOE contend that a rate of pay of between \$854.60 and \$859.80 per week is in effect a common industrial standard for employees whose primary duties and responsibilities include sales and/or service together with supervisory responsibility.
- 2.44 The proposed new broad-band classification structure would also introduce a new classification level - Real Estate Employee Level 4 (In-Charge Level). As mentioned above, employees who would move to this new classification level would presently be classified as either a PSS or as a PSMS under the Real Estate Award. The intention in this new classification level is to cater for the most senior employees in the real estate industry who have responsibility for the supervision of the business as a whole and who have additional responsibility under applicable real estate law to ensure that the business complies with real estate law in the applicable state or territory. For example the Property, Stock and Business Agents Act 2002 (NSW) requires that a Licensee-in-Charge be appointed by the business owner to be responsible for compliance of the business with the Property, Stock and Business Agents Act 2002 (NSW) and with other real estate law.
- 2.45 REEF/QREIOE respectfully submit that a rate of pay of \$933.80 per week for the proposed Real Estate Employee Level 4 (In-Charge Level) broad-band, is proper. The proposed rate of pay of \$933.80 per week is 115.41% as a percentage of the current Trade Rate. Importantly, the proposed rate of pay of \$933.80 per week is the rate of pay

for Retail Employee Level 8 under the Retail Award. REEF/QREIOE contend that there is parity between the skills, responsibility and conditions in which work is performed between these respective levels. Retail Employee Level 8 in the Retail Award includes the following indicative job titles:

- *A Shop Manager of a shop with Departments/Sections, or*
- *Clerical Officer Level 5.*

2.46 As such, employees who are classified as Retail Employee Level 8 under the Retail Award may have responsibility for the overall supervision of employees within the employers' business which would also be the case with the proposed Real Estate Employee Level 4 (In-Charge Level) broad-band.

2.47 To this extent, REEF/QREIOE also note that there are classifications in other awards with a lower rate of pay of \$882.80 per week such as Level 6 in the Restaurant Award and the Hospitality Award in which the skills, responsibility and conditions in which work is performed are comparable to that of the proposed Real Estate Employee Level 4 (In-Charge Level) broad-band. Notably, that rate of pay of \$882.80 per week is also the rate of pay for Level 4 in the Miscellaneous Award and for Engineering/Manufacturing Tradesperson – Special Class II (C7) in the Manufacturing Award. Further, a minimum annual salary of \$45,987.00 per annum is payable to employees in the Managerial Staff (Hotels) classification level under the Hospitality Award.

2.48 Relevantly, Level 6 in the Restaurant Award is the top Level in that award and it is comprised of a Cook grade 5 (tradesperson) classification, which is as follows:

Cook grade 5 (tradesperson) means a chef de partie or equivalent who has completed an apprenticeship or has passed the appropriate trade test or who has the appropriate level of training in cooking, butchering or pastry cooking and who performs any of the following:

(a) general and specialised duties including supervision or training of other kitchen staff;

(b) ordering and stock control; and

(c) solely responsible for other cooks and other kitchen employees in a single kitchen establishment.

It appears from this, that an employee who is classified as a Cook grade 5 (tradesperson) in the Restaurant Award may have responsibility for the overall supervision of employees (including other trade qualified employees) in the employer's business in circumstances where the business consists of a single kitchen establishment.

- 2.49 REEF/QREIOE therefore contend that a rate of pay of \$933.80 per week for the proposed Real Estate Employee Level 4 (In-Charge Level) broad-band is proper, and indeed that a rate of pay within the range of \$882.80 to \$933.80 per week would be appropriate.

Summary of REEF/QREIOE's proposed real estate relativities to the relevant comparator awards

- 2.50 For ease of reference, the rates of pay proposed by REEF/QREIOE and comparable rates of pay in other modern awards are set out in the table below on the following two pages:

Real Estate Award <i>Proposed classifications and proposed rates of pay</i>	Retail Award	Restaurant Award & the Hospitality Award	Miscellaneous Award	Manufacturing Award
\$694.90 Real Estate Employee Level 1 (Associate Level) - 1 st 6 months at this level	N/A	\$694.90 - Introductory Level	\$694.90 - Level 1	\$694.90 - Engineering/ Manufacturing Employee - Level I (C14)
\$742.30 Real Estate Employee Level 1 (Associate Level) - 6 to 12 months at this level	N/A	\$742.30 – Level 2	\$742.30 - Level 2	\$742.30 - Engineering/ Manufacturing Employee - Level III (C12)
\$763.20 Real Estate Employee Level 1 (Associate Level) - after 12 months at this level	\$763.20 - Retail Employee Level 1	\$767.80 - Level 3	N/A	\$767.80 - Engineering/ Manufacturing Employee - Level IV (C11)
\$809.10 Real Estate Employee Level 2 (Representative Level)	\$809.10 - Retail Employee Level 4	\$809.10 - Level 4	\$809.10 - Level 3	\$809.10 - Engineering/ Manufacturing Tradesperson - Level I (C10)
\$854.60 Real Estate Employee Level 3 (Supervisory Level)	\$854.60 - Retail Employee Level 6	\$859.80 - Level 5	N/A	\$859.80 - Engineering/ Manufacturing Tradesperson – Special Class Level I (C8)
\$933.80 Real Estate Employee Level 4 (In-Charge Level)	\$933.80 - Retail Employee Level 8	\$882.80 - Level 6	\$882.80 - Level 4	\$882.80 - Engineering/ Manufacturing Tradesperson – Special Class Level II (C7)

Clause 8 of the Exposure Draft Award to be varied

2.51 To give effect to the proposed broad-band classification structure and the proposed rates of pay, a number of consequential changes would need to be made to the 2017 Exposure Draft. Importantly, it would be necessary to delete the current clause 8.1 and replace it with the following clause:

8. Minimum wages

8.1 An employer must pay adult employees the following minimum wages for ordinary hours worked by the employee:

<i>Classification</i>	<i>Minimum Weekly Wage</i>
<i>Real Estate Employees Level 1 (Associate Level) - first 6 months of employment at this level</i>	<i>\$694.90</i>
<i>Real Estate Employees Level 1 (Associate Level) - between 6 months and 12 months of employment at this level</i>	<i>\$742.30</i>
<i>Real Estate Employees Level 1 (Associate Level) – after 12 months of employment at this level</i>	<i>\$763.20</i>
<i>Real Estate Employees Level 2 (Representative Level)</i>	<i>\$809.10</i>
<i>Real Estate Employees Level 3 (Supervisory Level)</i>	<i>\$854.60</i>
<i>Real Estate Employees Level 4 (In-Charge Level)</i>	<i>\$933.80</i>

If broad-banding is not accepted by the Commission

2.52 In the event that the Commission decides to increase the rates of pay (for classifications other than PSRs) but decides not to introduce the new broad-band classification structure proposed by REEF/QREIOE, then we propose that the rates of pay be varied as set out in the table below:

Classification	Minimum Weekly Wage	As a percentage % of the current Trade Rate
<i>Property Sales Associate - first six months of employment at this classification</i>	\$694.90	85.89%
<i>Property Sales Associate - after six months of employment at this classification</i>	\$753.40	93.12%
<i>Property Sales Representative</i>	\$809.10	100%
<i>Property Sales Supervisor</i>	\$854.60	105.62%
<i>Property Management Associate</i>	\$753.40	93.12%
<i>Property Management Representative</i>	\$809.10	100%
<i>Property Management Supervisor</i>	\$854.60	105.62%
<i>Strata/Community Title Management Associate</i>	\$753.40	93.12%
<i>Strata/Community Title Management Representative</i>	\$809.10	100%
<i>Strata/Community Title Management Supervisor</i>	\$854.60	105.62%

We propose the above rates of pay for the same reasons that we have proposed the wages in our suggested broad-band classification structure. In saying this, it is also important to observe that the proposed rates of pay for PSAs after 6 months and PSMAs in the above table are different to the three wage levels proposed for our Real Estate Employee Level 1 (Associate Level) broad-band level.

- 2.53 In proposing this rate of pay of \$753.40 in the above table for PSAs after 6 months and PSMAs it is important to note that the current classification structure in the Real Estate Award contains a single wage level for PSMAs and two wage levels for PSAs (first 6 months and after 6 months) whereas our broad-banded structure proposes three wage levels (first 6 months, 6 to 12 months and after 12 months) for employees in the corresponding broad-band level.
- 2.54 Accordingly, in circumstances where the current classification structure is to be maintained, any variation to the rates of pay would need to take into account not only the work value of PSAs and PSMAs of more than 12 months but also the work value of PSMAs and PSAs of 6 to 12 months as well as the work value of PSMAs in the first 6 months.
- 2.55 The proposed rate of pay of \$753.40 in the table in paragraph 2.52 above, is 93.12% as a percentage of the current Trade Rate and it aligns to the rate of pay for the “Merchandiser” classification in the *Commercial Sales Award 2010*. We contend that the work value of employees in the Merchandiser classification in the Commercial Sales Award is comparable to the overall work value of PSAs more than 6 months and PSMAs. Accordingly, we respectfully submit that the rate of pay of \$753.40 per week for PSAs after 6 months and for PSMAs is proper in these circumstances.

ii. Phasing-in & commencement date

- 2.56 In relation to the issue of a commencement date for the ‘work valued’ 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.” (emphasis added) ⁴

2.57 In relation to the Full Bench’s determination that the rate of pay for a PSR should be increased on work value grounds, the Full Bench did observe that the increase was *prima facie*, significant. However, its decision to apply the increase for this classification without any phasing-in arrangements, seems to have been motivated by the evidence before it that the increase “*will be offset because it will be absorbed into commission, bonus or incentive payments currently paid to a significant number of Property Sales Representatives.*”⁵”

Phasing-in should be applied even for PSRs

2.58 While REEF/QREIOE concede that a significant portion of PSRs will have an ‘**opportunity**’ to earn over-award payments by way of commission from property sales, it is impossible to know just how many PSRs are actually in receipt of commission payments. Simply put, if a PSR is not in receipt of any commission, bonus or incentive payment because his/her performance does not create any such entitlement, there will be NO capacity for absorption of what the Commission acknowledges is a “*significant*” increase in the minimum award rate of pay. REEF/QREIOE respectfully submit that evidence from the witnesses is far from conclusive regarding the extent of over award payments. The evidence provided in this respect was largely anecdotal and did not provide any significant detail in respect to the likely dollar amount of over-award payments, how common-place over-award payments are, or whether over-award payments vary by location, length of service, experience or job classification.

⁴ *ibid* at paragraph 91

⁵ *ibid* at paragraph 89

- 2.59 REEF/QREIOE vigorously disagree with RRESSA’s submission that there should be no phasing-in of any increases to minimum rates of pay. REEF/QREIOE respectfully submit that any increases to the PSR, as well as other Real Estate Award classifications, 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 adopted a model phasing-in schedule which included, relevantly, minimum wages. The AIRC was mindful that the adjustment to increases/decreases in minimum rates of pay in some awards would need to be managed fairly for both employers and employees and a balance needed to be struck. The AIRC adopted a 5 year phase-in period to reach the modern award standard, with the standard being reached after 5 years.
- 2.60 REEF/QREIOE respectfully asks the Commission to provide for the phasing-in of any increases/decreases to existing classifications which are in excess of **\$10.00 per week**. It is proposed that this phasing-in would occur in two equal instalments, 12 months apart in accordance with the following timetable:
- | | | |
|---|---|------------------------|
| 1 st instalment (50% of the increase/decrease) | - | 1 January 2018; |
| 2 nd instalment (final 50% of the increase/decrease) | - | 1 January 2019. |
- 2.61 The proposed phasing-in arrangement would end after only 12 months but it would more fairly spread the impact over a reasonable period.
- 2.62 Of course, this phasing-in arrangement would be subject to employees not suffering any reduction in take-home pay. This would be applicable at the Associate Level (Property/Strata Management) for the first 6 months only, and the Supervisory level for a PSMS. Once the work value percentages have been applied, the new minimum wage rates for all other classifications will remain the same or be subject to an increase.

2.63 The following table sets out the work value impact of REEF/QREIOE’s proposed rates of pay on the current classifications under the Real Estate Award*:

Current classification	Proposed work value increase/decrease
Property Sales Associate – 1 st 6 mths	No change for 1 st 6 months
Property Sales Associate – after 6 mths	+\$23.10 (between 6 mths & 12 months) +\$44.00 (after 12 months)
Property Sales Representative	+\$72.40
Property Sales Supervisor	+\$7.20
Property M’gt/Strata Associate	-\$48.00 (first 6 mths ONLY); -\$00.60 (between 6 mths & 12 months) +\$20.30 (after 12 months)
Property M’gt/Strata Representative	+\$24.10
Property M’gt/Strata Supervisor	-\$46.80

*This assumes that the Commission will adopt REEF/QREIOE’s proposed broad-band classification structure.

2.64 REEF/QREIOE propose the adoption of transitional wage provisions as set out in **Schedule B** to this submission. Schedule B provides a machinery provision for the implementation of phasing-in arrangements where any increase (or decrease) is greater than \$10 per week.

3. ISSUE No. 2 – COMMISSION-ONLY EMPLOYMENT (VARIOUS MATTERS)

(i) **The MITA, and part-time/casual employment**

- 3.1 The Full Bench has determined that, given the significant increase to the minimum rate of pay for a PSR, the entry level into commission-only employment should be an amount of **125%** of the annualised salary for the relevant property sales classification of the employee. The Decision expressly states that the MITA is not to be pro-rated on account of part-time (or casual) employment when determining an employee’s eligibility to **both** enter into and remain on a commission-only arrangement.
- 3.2 REEF/QREIOE further acknowledge that the Full Bench has formed an “in-principle” view that “*commission-only employees should not be employed on a casual basis*”⁶. In respect to the Commission’s enquiry into the commission-only (piece rates) arrangements prescribed in the Real Estate Award, REEF/QREIOE note that there is no application presently before the Commission to have the arrangements extended to an employee engaged as a “casual”. While REEF’s initial application to the Commission to vary the Real Estate Award included such an application, REEF subsequently withdrew that part of its initial application.
- 3.3 Notwithstanding, at paragraph 108 of its Decision, the Full Bench asked the Parties to provide their views in relation to “casual” commission-only employment and “*the manner in which the MITA will reflect the casual loading which would be payable to such employees in lieu of leave and other entitlements*”. REEF/QREIOE take this opportunity to respond to the Full Bench’s request in this regard.

⁶ Ibid at paragraph 108

There is a legitimate and equitable role for “casual” commission-only employment

- 3.4 Firstly, and in response to the casual loading issue, should the Full Bench alter its in-principle view concerning “casual” commission-only employment, then the casual loading should in our submission be managed in the same way as for wage/salary employees who are engaged on a casual basis. The minimum commission-only rate (31.5% of the Employer’s Gross Commission) would be increased by 7.8% (25% equivalent) to 39.38%.
- 3.5 In relation to the general prospect of “casual” commission-only employment, REEF/QREIOE are of the view that there would be significant merit in extending the option of commission-only employment to employees engaged on a casual basis. This view is held because there are circumstances where experienced and successful sales people reach a stage in their lives when they want greater flexibility around their working arrangements. They do not necessarily want to be tied to a regular pattern of work including rostered days or hours when an employer expects work will be performed.
- 3.6 Given past experience as a real estate salesperson combined with the extensive range of contacts built up over time in their chosen market, “casual” engagement would allow such a person to perform work when work becomes available or, alternatively, when the employee indeed wants to work. A past client, a personal associate or an acquaintance may approach the salesperson to list and sell their property or they may approach the salesperson asking for help to buy a property. Such employees often tend to be mature age employees who are seeking a more comfortable life-style with less structured work commitments or, alternatively, a younger worker with young children who wants more time to spend at home thus enabling them to perform work when time allows and it best suits them to do so. Most often such employees will have been in the industry for a

considerable period of time and they will have a strong personal network of prospective vendors or purchasers who will contact the employee when they want to list or buy property. Such employees typically only want to work when one of those contacts comes to them and asks them to list their home for sale or to help them to buy a home. In other words, they generally don't want to do other sales work that might not be as productive for them such as prospecting and canvassing.

Appropriateness of a pro-rata MITA to assess continuing commission-only employment for part-time employees

- 3.7 Clearly, the Real Estate Award currently provides that a person can be employed as a commission-only employee (subject to qualification) on a part-time basis. Following the Decision, this will not change under the revised Real Estate Award. Given a key qualification for an employee to work on a commission-only basis is written agreement to do so, it is not unreasonable to conclude that the hours worked by a commission-only employee will be largely of their own election. Such employees tend to be fiercely independent and see themselves as running their own business inside a business.
- 3.8 The correlation between the hours worked and income would seem obvious enough. One is invariably proportionate to the other. As a piece rate employee, the harder one works, the greater the expected level of income. Notwithstanding, given the strongly independent nature of commission-only employment and its limited application to experienced and successful salespeople, some employees will be unwilling or unable to accept a full-time work schedule with all of the associated commitments. Commission-only employment is essentially about flexibility for the best performing salespeople.
- 3.9 It seems incongruous therefore that such an employee should have to achieve the "full" MITA over a defined period of 12 months, or otherwise relinquish the opportunity to work as a commission-only employee. Where an employee through personal election

works significantly reduced hours or days because that suits his/her personal circumstances, it will naturally be more difficult for that employee to satisfy the MITA after a 12 month period of such part-time commission-only employment. The consequences of this situation are obvious enough. The employee will have to be either moved onto a salaried arrangement with the consequential loss of flexibility or resign and seek employment elsewhere as a commission-only employee (provided the MITA over the previous 3 years is satisfied). This would not necessarily be a favourable outcome for either employee or employer.

- 3.10 It is well understood that the availability of part-time work plays an important role in helping to create a more inclusive society as it assists various sectors of society, such as older workers and parents, to remain active and in gainful employment and it assists them to stay involved socially and to make a contribution to society. As such, it is clear that increased part-time work can have a significant social benefit to different sectors of the Australian workforce. Indeed, the importance of fostering and extending the availability of part-time employment on account of its importance to social inclusion has long been recognised in the Australian workplace relations framework.
- 3.11 REEF/QREIOE therefore respectfully submit that the 2017 Exposure Draft be amended in respect to the MITA, to provide that the MITA can be pro-rated for the purposes of the annual review assessment under clause 9.7(h)(iv) of the 2017 Exposure Draft where a “part-time” commission-only employee works 24 hours (3 day equivalent) or less per week. We seek this amendment because, as previously observed, it would be very difficult for a commission-only employee to achieve the initial MITA of \$52,733 per year if they are working significantly less than full-time hours. As mentioned above, we understand that many commission-only employees (particularly more mature people) only choose to work when they are approached by one of their contacts to list or buy a property. The proposed “24 hour” per week figure is, in our view, a sufficient additional measure that will protect the minimum employment conditions of commission-only

employees who elect (on account of their own personal circumstances) to work significantly less than full-time hours.

- 3.12 For avoidance of doubt, REEF/QREIOE is not proposing that the MITA be pro-rated as part of the entry level qualification for commission-only employment. It would be applicable only to the annual review of income level used to determine eligibility to remain on the commission-only arrangement.
- 3.13 To give effect to this proposal, REEF/QREIOE respectfully request that the current clause 9.7(h)(iv) of the 2017 Exposure Draft be deleted and replaced with the following clause:

“ (iv) Where the review establishes that the gross income of a commission-only employee for the year under review is less than the MITA as provided in clause 9.7(d) the commission only arrangement must cease, save that in these circumstances the MITA in clause 9.7(d) may be pro-rated for a part-time commission-only employee who has worked 24 hours per week or less during the applicable 12 month period.”

4. ISSUE No. 3 – OTHER ELEMENTS OF THE EXPOSURE DRAFT

- 4.1 On 24 June 2016 and at the Commission’s request, REEF filed with the Commission an Amended Exposure Draft Award (the “**2016 Amended Exposure Draft**”) incorporating, *inter alia*, marked up proposed variations agreed to by interested parties and a number of variations which were in dispute between the parties. REEF/QREIOE note that there appear to be a number of errors or omissions in the 2017 Exposure Draft. REEF/QREIOE would like to bring these errors and omissions to attention of the Full Bench.
- 4.2 The 2017 Exposure Draft does not contain the “*motor cycle*” allowance sought by REEF in its revised draft variation and as agreed by all interested parties. This variation was contained in clauses 10.2(g) and 10.4 of the 2016 Amended Exposure Draft.
- 4.3 The 2017 Exposure Draft does not contain the agreed variation concerning the payment of a mobile phone allowance where an employee is required to supply and use their own mobile phone in the course of employment. This variation was contained in clause 10.7(a)-(e) of the 2016 Amended Exposure Draft.
- 4.4 Clause 13.5(b)(ii) of the 2017 Exposure Draft prescribes that annual leave loading is not payable in the circumstances of a commission-only employee. REEF/QREIOE respectfully submit that clause 13.5 should be added to the list of award clauses not applying to commission-only employees and as set out in clause 9.7(e) of the 2017 Exposure Draft.
- 4.5 In clause 9.7(c)(vi) of the 2017 Exposure Draft, the reference to clause 9.7(c) should be amended to read “**9.7(d)**”.

5. SUMMARY

5.1 For the reasons detailed in this submission, REEF/QREIOE contend that:

- There is no evidence to support a variation in pay rates other than for PSRs or PSMRs. However, if the Commission decides that variations to current rates of pay are appropriate on work value grounds, REEF/QREIOE propose the move to the broad-band classification structure set out in Schedule A of this submission together with the associated rates of pay proposed by REEF/QREIOE;
- REEF/QREIOE contend that there should be a phasing-in of work value increases/decreases to rates of pay where the increase (or decrease) is \$10.00 or more per week. The phase-in should be undertaken in two equal installments 12 months apart to take effect on 1 January 2018 and 1 January 2019. In order to facilitate this, REEF/QREIOE propose that the Commission adopt the transitional provisions set out in Schedule B to this submission;
- REEF/QREIOE contend that there are important and legitimate reasons why “casual” commission-only employment should be permitted by the Real Estate Award, and should the Commission see fit to introduce it, REEF/QREIOE propose that a casual loading of 25% be applied to the minimum commission-only rate of 31.5% of employers gross commission which is prescribed by the 2017 Exposure Draft;
- REEF/QREIOE do not object to the Commission introducing a provision to prevent the MITA being pro-rated in respect to the qualification test for employees seeking to be engaged on a commission-only basis. However, REEF/QREIOE strongly support the appropriateness of the MITA being pro-rated for purposes of undertaking the

annual re-assessment test with respect to employees who work 24 hours or less per week as a commission-only employee; and

- REEF/QREIOE have identified a number of errors or omissions in the 2017 Exposure Draft and in particular that the 2017 Exposure Draft does not contain the new telephone allowance or motor cycle allowance that has been agreed between the interested parties and which were set out in the 2016 Amended Exposure Draft. REEF/QREIOE therefore respectfully ask that the amendments/corrections sought in paragraphs 4.2 to 4.5 (inclusive) of this submission be made to the 2017 Exposure Draft.

6 FURTHER CONFERENCE TO RESOLVE OUTSTANDING ISSUES

- 6.1 As stated in this submission, there have been discussions with the Unions regarding wage rates for the different classifications under the Real Estate Award. To this point no agreement has been able to be reached.

- 6.2 REEF/QREIOE however would support a conference before a member of the Full Bench to discuss and attempt to narrow the differences between the competing proposals presented by REEF/QREIOE and RRESSA.

Schedule A - Classification Structure and Definitions

Real Estate Employee Level 1 (Associate level)

Employees at this level have not been classified as a Level 2, 3 or 4 employee by the employer. Generally, an employee at this level will be principally engaged to assist an employee(s) at a higher level. However, an employee at this level will not have responsibility for listing and/or selling of real property or businesses or managing rental or strata/community title properties.

Indicative job titles of a Real Estate Employee Level 1 (Associate Level) are:

- Property Sales Assistant or Property Sales Associate;
- Buyer's Agent Assistant or Associate;
- Property Management Assistant or Property Management Associate;
- Property Officer;
- Leasing Officer or Assistant;
- Strata/Community Title Management Assistant or Strata/Community Title Management Associate.

Indicative tasks

Indicative tasks at this level may include:

- (i) assisting an employee(s) at a higher level;
- (ii) under the guidance and/or direction of a more senior person, following up enquiries with sellers and/or buyers of real property and businesses;
- (iii) responding to general enquiries from potential tenants for properties under management;
- (iv) providing support to an employee(s) at a higher level in undertaking a range of functions associated with the selling, leasing and/or management of real property (including strata title management) and businesses;

- (v) assisting in the preparation of documentation and correspondence in relation to the sale, leasing and/or management of real property (including strata title management) or businesses. Such documentation and correspondence may include:
- agency agreements;
 - commercial and/or residential leases;
 - advertising material associated with the sale or leasing of real property and businesses;
 - property inspection reports (ingoing, outgoing and periodic) under the direction of a more senior person;
 - strata/community title management agreements;
 - The preparation of minutes from meetings of owner's corporations;
- (vi) collecting rents from tenants and/or issuing rental receipts;
- (vii) investigating and arranging for the collection of rental arrears;
- (viii) prospecting and canvassing under direction of an employee at a higher level, including phone canvassing, door knocking and letter box dropping;
- (ix) in consultation with a more senior person, arranging maintenance and repairs to properties under management (including under strata/community title management);
- (x) providing support to an employee at a higher level in a range of functions associated with strata and community title management, in accordance with owners' corporations instructions;
- (xi) responding to general enquiries from the owner's corporation of strata/community title schemes;
- (xii) assisting with auctions of real property or businesses to the extent permitted under real estate law;
- (xiii) assisting with property inspections (including open for inspections), including the placement of sign boards, maintaining attendee lists from property inspections, opening and closing homes after inspection;

- (xiv) assisting with post sale processes including pest and building inspections, searches and checking progress of the conveyance process; and
- (xv) preparing and updating rental lists and website material.

Real Estate Employee Level 2 (Representative level)

Employees at this level have been classified as Level 2 by the employer. An employee at this level may perform any of the duties of a Real Estate Employee Level 1 (Associate Level) but will also have responsibility for the listing and/or selling of real property or businesses, for helping clients to buy real property or businesses or for managing rental or strata/community title properties or for sourcing and/or securing new property managements (including strata/community title managements).

Indicative job titles of a Real Estate Employee Level 2 (Representative Level) are:

- Property Sales Representative or Real Estate Salesperson;
- Buyer's Agent;
- Property Management Representative or Property Manager;
- Business Development Manager;
- Strata/Community Title Management Representative or Strata Title Manager.

Indicative tasks

Indicative tasks at this level may include:

- (i) performing market appraisals for sale or lease of real property or businesses;
- (ii) conducting and/or supervising the preparation of documentation and correspondence associated with the sale or leasing of real property or businesses.

Such documentation and correspondence may include:

- agency agreements for both sale and property management;
- tenancy agreements;
- rental bond documents;
- commercial and/or residential leases;

- advertising material associated with the sale or leasing of real property and businesses;
 - inventory reports;
 - strata/community title management agreements;
 - property inspection reports (ingoing, outgoing and periodic);
- (iii) conducting or supervising property inspections (ingoing, outgoing and periodic);
 - (iv) organising advertising of a property;
 - (v) organising sign boards for open for inspections;
 - (vi) conducting inspections with interested parties for real property or businesses that are for sale or lease;
 - (vii) conducting negotiations between a prospective buyer and seller of real property or a business, or between a prospective tenant and the property owner;
 - (viii) using personal initiative to source and secure prospective properties to sell or manage;
 - (ix) the listing and/or sale of real property or businesses;
 - (x) the leasing of commercial, industrial or retail property;
 - (xi) conducting market research and provide marketing advice to customers;
 - (xii) conducting auctions of real property;
 - (xiii) liaising with conveyancers and solicitors involved in the sale of real property or businesses or in the commercial leasing process;
 - (xiv) assessing and processing tenancy applications;
 - (xv) organising property repairs and maintenance, including ingoing and outgoing property condition reports;
 - (xvi) providing advice to property owners and tenants on preventative and planned maintenance;
 - (xvii) accounting for rents and expenses to property owners;
 - (xviii) liaising with and report to property owners and/or owners corporations;

- (xix) appearing before Tenancy Tribunals and providing advice to property owners on state and territory Residential Tenancy matters (including the termination of tenancies);
- (xx) attending and/or conducting strata management meetings;
- (xxi) completing strata management documentation;
- (xxii) carrying out all duties and functions required under a strata managing agency agreement.

Real Estate Employee Level 3 (Supervisory level)

A principal requirement of an employee at this level is the supervision of employee(s) classified as Real Estate Employee Level 2 (Representative Level). An employee at this level may perform any of the duties of a Real Estate Employee Level 2 (Representative Level) but will also have responsibility for the allocation of duties, co-ordinating work flow, checking progress, quality of work and resolving problems of an employee(s) at a lower level.

Indicative job titles of a Real Estate Employee Level 3 (Supervisory Level) are:

- Property Sales Manager or Property Sales Supervisor;
- Property Management Supervisor;
- Strata/Community Title Management Supervisor.

Indicative tasks

Indicative tasks at this level may include:

- (i) providing leadership and supervision to level 1 and level 2 employees;
- (ii) the supervision and/or management of work teams;
- (iii) implementing and/or supervising quality customer service;
- (iv) the development of operational plans;
- (v) taking responsibility for resolving customer complaints;
- (vi) developing and monitoring safe workplace practices;

- (vii) managing personal work priorities and professional development of self and others in the work team(s);
- (viii) training employees at lower level by personal instruction and demonstration;
- (ix) involvement in either selling of real property or businesses, leasing of commercial, industrial, retail or residential property, or supervision of a portfolio of rental properties or strata/community title schemes;
- (x) managing the owners corporation processes to ensure legislative compliance.

Real Estate Employee Level 4 (In-Charge-Level)

Employees at this level have been classified as Level 4 by the employer. An employee at this level may perform any of the duties of a Real Estate Employee Level 3 (Supervisory Level). The employee at this level will hold applicable qualification(s) under real estate law and have been appointed by the employer to be responsible for ensuring the business complies with its statutory obligations under real estate law.

Indicative job titles of a Real Estate Employee Level 4 are:

- Licensee-In-Charge;
- Agency Manager.

Indicative tasks

Indicative tasks at this level may include:

- (i) overall supervision and management of the office;
- (ii) planning and managing business finances for the organisation;
- (iii) ensuring that the office complies with all of its statutory obligations imposed under relevant real estate law;
- (iv) facilitating change and innovation.

Schedule B – Transitional Wage Provisions

Transitional wage provisions

1) These provisions in this Schedule will commence operation on 1 January 2018 and they will cease to operate from the beginning of the first full pay period on or after 1 January 2019.

2) For the purposes of this Schedule the term :

2010 Award means the Real Estate Industry Award 2010 as at 31 December 2017

2015 Award means this award as at 1 January 2018

corresponding classification means the classification in the 2010 Award that corresponds most closely to a classification under the 2015 Award, in accordance with the following table:

2010 Award Classification	2015 Award Classification
Property Sales Associate	Real Estate Employee Level 1 (Associate Level)
Property Management Associate	Real Estate Employee Level 1 (Associate Level)
Strata/ Community Title Management Associate	Real Estate Employee Level 1 (Associate Level)
Property Sales Representative	Real Estate Employee Level 2 (Representative Level)
Property Management Representative	Real Estate Employee Level 2

	(Representative Level)
Strata/ Community Title Management Representative	Real Estate Employee Level 2 (Representative Level)
Property Sales Supervisor	Real Estate Employee Level 3 (Supervisory Level); or Real Estate Employee Level 4 (In-Charge-Level)
Property Management Supervisor	Real Estate Employee Level 3 (Supervisory Level); or Real Estate Employee Level 4 (In-Charge-Level)
Strata/ Community Title Management Supervisor	Real Estate Employee Level 3 (Supervisory Level); or Real Estate Employee Level 4 (In-Charge-Level)

transitional amount means the monetary difference between the minimum wage payable to an employee in a classification under this award from the first full pay period commencing on or after 1 January 2018 on the one hand and the minimum wage payable to an employee in the corresponding classification under the 2010 Award in the last full pay period commencing on or before 31 December 2017 on the other hand.

- 3) These transitional provisions will apply in circumstances where the minimum wage prescribed for employees in a classification under this award from 1 January 2018 differs

from the minimum wage prescribed for employees in the corresponding classification immediately prior to 1 January 2018.

4) In this clause minimum wage includes:

(a) a minimum wage for an adult employee, a junior employee, an employee to whom training arrangements apply and an employee with a disability; and

(b) a piecework rate.

5) (a) In circumstances where there is an increase on 1 January 2018 to the minimum wage for a classification that is in excess of \$10.00 per week when compared to the minimum wage for the corresponding classification that applied immediately before that date the provision in clause 5(b) will apply.

(b) From the following dates the employer must pay no less than the minimum wage for the classification in this award minus the specified proportion of the transitional amount: First full pay period on or after 1 January 2018 – 50%, on or after 1 January 2019 – 0%.

6) (a) In circumstances where there is a decrease on 1 January 2018 to the minimum wage for a classification that is in excess of \$10.00 per week when compared to the minimum wage for the corresponding classification that applied immediately before that date the provision in clause 6(b) will apply.

(b) From the following dates the employer must pay no less than the minimum wage for the classification in this award plus the specified proportion of the transitional amount: First full pay period on or after 1 January 2018 - 50%, on or after 1 January 2019 – 0%.

7) There will be no reduction in the minimum wage payable to employees as a result of the changes to the minimum wages in this award that took effect on 1 January 2018, where the employee was employed in the corresponding classification immediately before 1

January 2018 and the minimum wage payable for that corresponding classification was higher than the minimum wage payable for the classification as at 1 January 2018.

- 8) The employer must apply any increase in minimum wages in this award resulting from an annual wage review.
- 9) These provisions cease to operate from the beginning of the first full pay period on or after 1 January 2019.