

IN THE FAIR WORK COMMISSION

FOUR YEARLY REVIEW OF MODERN AWARDS

REAL ESTATE INDUSTRY AWARD 2010

AM2016/6

SUBMISSION IN RESPECT TO PART-TIME COMMISSION-ONLY ARRANGEMENTS

17 September 2018

Introduction

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*.
2. REEF SA/NT represents approximately 300 employer members across SA and NT.
3. On 6 July 2017, as part of the 4-year review of the Real Estate Industry Award (**Award**), the Full Bench issued its Decision¹.
4. At paragraph 107 of its Decision, the Full Bench stated:

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

¹ [2017]FWCFB 3543

5. REEF SA/NT make this submission in response to the Full Bench's call for submissions in its Directions issued on 31 July 2018, in respect to part-time employment for commission-only employees.

Part-Time Arrangements

6. REEF SA/NT disagrees with the Full Bench's provisional view in relation to the employment of part-time commission-only employees. We have gathered the views and concerns of our members in preparation for this submission and the scheduled hearing of 12 November 2018.
7. REEF SA/NT strongly supports the existing arrangements for part-time commission-only employment and this is evidenced in our submission dated 16 August 2017 where we argued that the Minimum Income Threshold Amount (**MITA**) should be pro-rated for part-time commission-only employees.
8. The objective of the *Fair Work Act 2009* as set out in s 134(d), requires the Commission to take into account '*the need to promote flexible modern work practices and the efficient and productive performance of work*'.
9. REEF SA/NT submits that the exclusion of part-time commission-only employment under the Award would be grossly inequitable and unfair, because:
 - (i) It would operate against the modern award objective;
 - (ii) Abolishing such an arrangement based on an assumption that is not useful or relevant without strong evidence will result in disadvantage to those engaged in part-time employment;
 - (iii) There are various safeguards under both the *Fair Work Act 2009* and the Award for part-time employees who are engaged on a commission-only basis; and
 - (iv) It would be discriminatory to employees who choose to work on a part-time commission-only basis.

10. We submit that in the most, part-time commission-only employment supports employees who have parenting responsibilities, and further supports those who have years of experience that are working towards retirement to continue to utilise their experience to be meaningfully employed.
11. The Full Bench mentioned that because of the nature of the real estate industry, commission-only employment on a part-time basis would be inappropriate as it would not sufficiently address how annual leave and personal leave will be calculated and managed. We submit that part-time commission-only employees have the protection of the National Employment Standards (**NES**) and that such entitlements are calculated on a pro-rata basis according to the ordinary hours of work.
12. Ordinary hours for part-time commission-only employees are confirmed in writing when the parties enter into a commission-only arrangement. Therefore, it is not difficult to ascertain on what basis their leave entitlements should accrue.
13. In the majority of cases, salespersons employed on a commission-only basis manage their own hours of work due to the flexibility required to meet client needs. Part-time commission-only employees enjoy this flexibility too and manage their own hours of work within the defined contracted ordinary hours of work. An assumption that part-time commission-only employees would be required to work overtime is incorrect, the employees written employment agreement defines the part-time hours of work.

Minimum Income Threshold Amount

14. REEF SA/NT further contends that the current MITA for part-time commission-only employees is unfair and disproportionate. The Award currently requires a part-time commission-only employee to meet the same standard as a full-time commission-only employee. We respectfully submit that this goes against the objective of the *Fair Work Act 2009* to promote flexible modern work practices.
15. To be clear, REEF SA/NT does not contend the current MITA set for initial qualification to be employed on a commission-only basis. However, we ask that a pro-rata of the

MITA be permitted for part-time commission-only employees when 12 monthly reviews are undertaken to fairly reflect the hours worked against the MITA.

Summary

16. REEF SA/NT submits that part-time commission-only employment is a necessary provision of the Award. To do away with such a provision would be grossly unfair.
17. REEF SA/NT further submits that the issue of the 12 monthly MITA review for 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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