

**From:** Ralph Clarke [mailto:clarker@bigpond.net.au]  
**Sent:** Monday, 30 July 2018 1:01 PM  
**To:** AMOD  
**Cc:** 'Greg Paterson - REEF'; 'Tom French'; 'Stephen Farrell'; 'Arvin Bisbal';  
lmassonforbes@gmail.com; foxhome@adam.com.au  
**Subject:** Re AM2016/6 - Clause 16.3 (a) (iii) Real Estate Award 2010

Dear Vice President Hatcher

On behalf of The Registered Real Estate Salespersons' Association of SA I have recently had discussions with Mr Greg Paterson from the Real Estate Employers Federation in Sydney, about the wording in clause 16.3 (a) (iii) of the current award dealing with commission – only salespersons. An issue has arisen in NSW where some employers have suggested that the current wording would allow property managers for example, to be remunerated on a commission – only basis. This has never been the case in the past and was not envisaged by any stakeholder during all of the negotiations and hearings on the Real Estate Award 4 Year Review. I understand from my discussions with Mr Paterson that he concurs with RRESSA view.

The current cl. 16.3 (a) (iii) reads as follows;

*(iii) the employee has been engaged in property sales or commercial, industrial or retail leasing as a Real Estate Employee Level 2 or ( with any licensed real estate agent) or was an active licensed real estate agent for at least 12 consecutive months in the 3 years immediately prior to entering into a commission – only agreement;"*

**RRESSA is suggesting the above paragraph be amended to read as follows, ( and also in the Exposure Draft Real Estate Award 2015 - clause 9.7 (c) (i) 3<sup>rd</sup> dot point) for the reasons set out below;**

*(iii). The employee has been engaged in property sales or commercial, industrial or retail leasing as a Real Estate Employee level 2 or higher ( with any licensed Real Estate Agent), or has operated his or her own real estate business, for at least 12 consecutive months in the 3 years immediately prior to entering into a commission – only agreement.*

The rationale for the changes are;

1. The word “higher” was inadvertently left out of the award and allows as it did previously, for more senior supervisory sales / leasing staff to agree to be remunerated on a commission – only basis, subject to the MITA and other qualifications in the award.
2. The insertion of a comma after the words “(with any licensed Real Estate Agent)” and again after the word “business” makes it clearer that to qualify to be employed on a commission – only basis that the person must have been either employed in a sales/ leasing position of level 2 or greater, or operated his/her own real estate business for a minimum of 12 consecutive months in a 3 year period immediately before entering into a commission – only agreement.

The existing clause without the commas suggests that rather than both a property sales employee or someone who has owned their own real estate business having to have worked in the industry for 12 consecutive months within a 3 year period immediately prior to

entering into a commission –only agreement, that the minimum 12 consecutive month period did not apply to the property sales employee, only those who had owned their own business.

3. The change to the wording from “*was an active licensed real estate agent*” to “*has operated his or her own real estate business*” , picks up the wording used in clause 16.3 (a) (vi) last sentence and provides consistency in the wording. In addition it takes into account that the existing words, “active licensed real estate agent” can mean different things given the different real estate statutes in the various States and Territories, where Property Managers and Strata Title Managers are in many cases required to be licensed as well as agents selling real property and leasing of same.

In summary the grounds for seeking the changes is simply to reconstruct the paragraph to avoid confusion about two matters well understood by all stakeholders to the award. That is:

- (a) Employees, other than those employed in property sales or leasing of real property, cannot be employed on a commission – only basis ( the words “ was an active licensed real estate agent” could result in an unintended, extended interpretation in certain jurisdictions as property managers for example are often licensed agents); and
- (b) The absence of the comma after the altered phrase in (a) above, is a grammatical error which necessarily needs correction for the sentence to have the intended meaning, i.e. the consecutive 12 month qualification period over the last 3 years prior to entering a commission – only agreement applies to both employees engaged in property sales and leasing and to a person who has operated his or her own real estate business.

RRESSA believes that the Full Bench which dealt with the Real Estate Award is still able to make amendments to the award given that there are still outstanding issues relating to the existing award, such as the applicability of part time employment for employees engaged on a commission – only basis, which is still to be determined by the Full Bench. In the alternative, RRESSA believes that the FWC could act on its own initiative pursuant to s 160 of the FWA 2009 to correct an error or remove an ambiguity in a modern award.

Regards

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Agent

RRESSA

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