

## SUMMARY OF SUBMISSIONS

This table is a summary of submissions lodged for this award on or before 5.00pm on 20 April 2016. The notes refer to the conference held on 21 April 2016 ([Transcript](#)) and the [Report to the Full Bench dated 22 April 2016](#).

ITEM	PARTY	DOCUMENT	CLAUSE (exposure draft)	CLAUSE (current award)	SUMMARY OF ISSUE	THEIR REFERENCE	NOTES
1.	REEF	<a href="#">Sub-10/11/15</a>		16.2(e)	<b>Commission only employment</b> Seeks to remove restriction which prevents commission-only salesperson from being engaged on “casual” basis.	Page 1	Substantive issues referred to separately constituted Full Bench in AM2016/6
2.	RRESSA	<a href="#">Sub-23/01/15</a>		3	<b>Definitions and interpretation</b> Insert new definition of “mobile communications device”.	Para 1	Substantive issues referred to separately constituted Full Bench in AM2016/6
3.	ABI&NSWBC	<a href="#">Sub-15/04/16</a>	8.3		<i>In response to question: parties are asked to clarify whether “at 18 years” includes employees younger than 18.</i> Yes, would be illogical for employees who are 17 years old or younger to not be governed by ‘junior rates’ clause and to be required to be paid adult rates.	Para 12.1	Parties agreed to change ED to make clear 60% rate also applies to employees under 18. Clause 8.3 and Sched B amended, see <a href="#">Transcript – 21 April 2016</a> [PN954 and PN987]
	AFEI	<a href="#">Sub-15/04/16</a>			Submits if at ‘18 years’ did not include employees younger than 18 years, a 17 year old employee covered by award could earn 40% more than an 18 year old by receiving the adult rate of pay.	Para 20	

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5.	REEF	<a href="#">Sub-11/02/16</a>		9.2(a)	<b>Written agreements generally</b> ED only makes reference to agreements made with respect to clause 9.7 and contends first part of clause should be amended – proposed wording in submission.	Para 3.1-3.3	Parties agree to cross-reference clause 9.1 in clause 9.2(a), see <a href="#">Transcript – 21 April 2016</a> [PN974]
6.	REEF	<a href="#">Sub-11/02/16</a>	9.6(a)		<i><b>In response to question: in light of Full Bench decision in Canavan Building Pty Ltd [2014] FWCFB 3202, parties are asked to comment on whether 9.6(a) is consistent with the NES</b></i> Submission will be made in matter AM2016/6.	Para 2.1-2.4	Substantive issues referred to separately constituted Full Bench in AM2016/6
	ABI& NSWBC	<a href="#">Sub-15/04/16</a>			Submission will be made in matter AM2016/6.	Para 12.2	Substantive issues referred to separately constituted Full Bench in AM2016/6
8.	REEF	<a href="#">Sub-11/02/16</a>	9.7(c)		<i><b>In response to question: parties are asked to comment on whether the award should contain a definition of ‘real estate sales’</b></i> Party considers it premature to consider insertion of definition ‘real estate sales’. If Commission determines matter should be further considered, issue should be referred to AM2016/6	Para 4.1-4.6	Parties agree to wait for the conclusion of the AM2016/6 before inserting a definition for ‘real estate sales’, see <a href="#">Transcript – 21 April 2016</a> [PN968]

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	AFEI	<a href="#">Sub-15/04/16</a>			Term 'real estate sales' not contentious and would therefore not appear to require definition.	Para 21	
10.	RRESSA	<a href="#">Sub-23/01/15</a>		14.1	<b>Minimum weekly wages</b> Delete and replace classifications and wage amount with respect to all adult property classifications.	Para 2	Proposed wording provided. Substantive issues referred to separately constituted Full Bench in AM2016/6
11.	RRESSA	<a href="#">Sub-23/01/15</a>		15.2	<b>Payment of wages with commission, bonus or incentive payments</b> Insert new clause 15.2 and renumber existing clause as 15.3.	Para 3	Substantive issues referred to separately constituted Full Bench in AM2016/6
12.	RRESSA	<a href="#">Sub-23/01/15</a>		16	<b>Commission-only employment</b> Delete existing clauses 16.1, 16.2 and 16.3 and replace with party's proposed clauses.	Para 4	Proposed wording provided. Substantive issues referred to separately constituted Full Bench in AM2016/6
13.	REEF	<a href="#">Sub-27/02/15</a>		16	1) Redraft Minimum Income Threshold Test (MITT) to remove ambiguity about methodology used to determine whether employee as satisfied the MITT. 2) Clarify how MITT should apply to an employee who performs work of a buyer's agent. 3) Remove restriction preventing commission-only employees being employed on a casual basis.	Para 5	

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14.	FWO	<a href="#">Corro-02/03/15</a>		16	<b>Commission-only employment</b> Queries whether “real estate sales” in clauses 16.2 and 16.3 should be calculated on gross sale amount of properties sold, the commission received by the employer, the commission received by the employee, or some other amount	Para 32	Substantive issues referred to separately constituted Full Bench in AM2016/6
15.	RRESSA	<a href="#">Sub-23/01/15</a>		17.1	<b>Matters relating to commission, bonus or incentive payments—</b> <b>Written agreements generally</b> Amend clause by inserting a new paragraph (e) Proposed wording provided	Para 5	Substantive issues referred to separately constituted Full Bench in AM2016/6
	RRESSA	<a href="#">Sub-23/01/15</a>		17.3	Amend clause by inserting a new paragraph (e). Proposed wording provided.	Para 5	Substantive issues referred to separately constituted Full Bench in AM2016/6
	REEF	<a href="#">Sub-27/02/15</a>			Amend clause to clarify an employee only entitled to portion of commission where existing legally enforceable contract was in place prior to cessation of employee’s employment.	Para 6	Substantive issues referred to separately constituted Full Bench in AM2016/6
18.	RRESSA	<a href="#">Sub-23/01/15</a>		17.5	<b>Matters relating to commission, bonus or incentive payments—</b> <b>Calculation of NES entitlements</b> Delete paragraphs (a) and (b) and renumber existing paragraphs (c) and (d) as (a) and (b), respectively.	Para 5	Substantive issues referred to separately constituted Full Bench in AM2016/6

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19.	FWO	<a href="#">Corro-02/03/15</a>		17.5	<p><b>Matters relating to commission, bonus or incentive payments— Calculation of NES entitlements</b>            Clause may be inconsistent with NES as commission-only employees may be paid entitlements to annual, leave, personal leave, or any other NES entitlements in advance.</p> <p>Pre-payment of annual leave considered to be a form of cashing out in a manner inconsistent with the NES in the Full Bench decision of <a href="#">Canavan Building Pty Ltd [2014] FWCFB 3202</a></p>	Para 33	Substantive issues referred to separately constituted Full Bench in AM2016/6
20.	REEF	<a href="#">Sub-27/02/15</a>		18	<p><b>Allowances</b>            Insert an allowance on a per kilometre basis for employees who provide a motor cycle.</p>	Para 7	Substantive issues referred to separately constituted Full Bench in AM2016/6
21.	RRESSA	<a href="#">Sub-23/01/15</a>		18.6	<p><b>Allowances—Mobile telephone allowance</b>            1) Delete paragraph (a) and replace with party's proposed clause.            2) Delete paragraph (e) and replace with party's proposed clause.            3) Delete the word "telephone" from (e) and replace with "communication device".</p>	Para 6	Proposed wording is provided. Substantive issues referred to separately constituted Full Bench in AM2016/6

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22.	RRESSA	<a href="#">Sub-23/01/15</a>		18.9	<b>Allowances—Adjustment of expense related allowances</b> Insert additional index figure to read “Communications sub-group” in “Applicable Consumer Price Index” column.	Para 6	
23.	RRESSA	<a href="#">Sub-23/01/15</a>		20	<b>Stand-by and call-out</b> 1) Amend clause 20.2 by inserting party’s proposed wording after words “identified in the agreement”. 2) Delete clause 20.3 and renumber clause 20.4 and 20.3. 3) Renumber clause 20.5 as clause 20.4.	Para 7	
24.	RRESSA	<a href="#">Sub-23/01/15</a>		23	<b>Ordinary hours of work and rostering</b> Insert a new 23.5 with party’s proposed wording.	Para 8	
25.	RRESSA	<a href="#">Sub-23/01/15</a>		24	<b>Overtime—Time off instead of payment for overtime</b> 1) Delete words “if requested by the employee” from clause 24.2. 2) Insert new clause 24.3 with party’s proposed wording.	Para 9	Referred to Award Flexibility Full Bench in <a href="#">AM2014/300</a>
26.	RRESSA	<a href="#">Sub-23/01/15</a>		25.3	<b>Annual leave</b> Delete words “Subject to clause 17.5” and capitalise the word “payment”.	Para 10	

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27.			A.2.2(b)(xi)		<i>In response to question: parties are asked to clarify what is meant by the term 'Residential Tenancy Tribunal' (i.e. whether it is a specific body or whether it is being used as a generic term for a variety of state-based residential tenancy tribunals</i>	PN954	No formal submissions made. Parties agreed at 21 April conference clause could be made clearer. Should be 'state or territory Residential Tribunal matters'. <a href="#">Transcript – 21 April 2016</a> [PN954]
28.	REEF	<a href="#">Sub-27/02/15</a>		B.1.1(a)	<b>Schedule B—Classifications</b> Amend role definition for Property Sales Associate to prescribe that employee can assist either Property Sales Representative or Property Sales Supervisor.	Para 8	Substantive issues referred to separately constituted Full Bench in AM2016/6
29.			B.3.1- B.3.2		<b>Summary of hourly rates of pay</b> Rates of pay referring to juniors should be amended to include 18 years or less	PN991	No formal submissions made. Identified at 21 April conference before Roe C. ED to be amended. <a href="#">Transcript – 21 April 2016</a> [PN991]
30.	AFEI	<a href="#">Sub-15/04/16</a>	Sched G		<b>Definitions</b> Party submits that as 'real estate industry' is defined in clause 3, it is unnecessary to be repeated in definitions Schedule and should be deleted with from Schedule G.	Para 19	Standard approach to provide definition both places – no change, see <a href="#">Transcript – 21 April 2016</a> [PN972]

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31.	APSA	<a href="#">Application 30/11/15</a>		16.3(c)	<b>Commission-only employment</b> Proposal to insert new clause: “The minimum income threshold referred to in clause 16.3(a)(i)&(ii) herein shall not be pro rata for part time or casual employees.”	REEF WA <a href="#">Corr-11Dec15</a> p.1	Substantive issues referred to separately constituted Full Bench in AM2016/6
32.	APSA	<a href="#">Application 30/11/15</a>		16.7	<b>Commission-only employment</b> Proposal to insert new clause: “Where an employee is engaged on a commission only employment method, either full time, part time or casual and does not in each 6 month period of employment earn the equivalent of the award wage as prescribed for in clause 14 of this award in commission payments, the employer shall pay the employee the difference between the earnings of commissions and the award wage for that 6 month period. For the purposes of this clause, 6 month period means each consecutive 6 month period from the date of commencement of commission only employment.”	REEF WA <a href="#">Corr-11Dec15</a> p. 1	

NOTE: This award has been the subject of conferences before Commissioner Hampton – see [Report](#) of 2 September 2015



**List of abbreviations (in alphabetical order)**

ABI&NSWBC	Australian Business Industrial and New South Wales Business Chamber
AFEI	Australian Federation of Employers and Industries
APSA	Australian Property Services Association
FWO	Fair Work Ombudsman
REEF	Real Estate Employers' Federation
RREESA	Registered Real Estate Salespersons' Association of SA