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APSA Membership Policy

Eligibility

Under the APSA Constitution and Rules:

1. *An unlimited number of the following categories of persons throughout Australia are eligible to become members of the association:*
 - a. *those persons who are employed, usually employed, qualified to be and desirous of being employed, or seeking to be employed:*
 - i. *in or in connection with the property sector*
 - ii. *in or in connection with the real estate industry, including but not limited to:*
 1. *real estate agency*
 2. *business and hotel broking*
 3. *strata and community title management*
 4. *Buyers agency*
 5. *real estate valuation*
 6. *developers*
 7. *the provision of any other service that may be covered by the Real Estate Award 2010 as varied from time to time.*
 - iii. *by stock and station agents, other than clerical and administrative personnel.*
 - b. *persons whether engaged as aforesaid or not who are:*
 - i. *elected officers of the association*
 - ii. *appointed officers of the association.*
 - c. *persons engaged as independent contractors who, if they were an employee performing work of the kind which they usually perform as an independent contractor, would be eligible for membership of the association.*
2. *Notwithstanding any other provision of these rules, nothing shall render eligible for membership of this association any person who is eligible for membership of the following organisations:*
 - a. *the Construction, Forestry, Mining and Energy Union*
 - b. *the Registered Real Estate Salespersons' Association of South Australia.*

Membership benefits

Key membership benefits include:

1. Assistance with the negotiation of employment agreements between employer and employee
2. Priority access to telephone advice by APSA officers with comprehensive knowledge of the relevant employment legislation
3. Representation:
 - a) to recover award or National Employment Standards (NES) entitlements

- b) to recover outstanding commissions, bonuses or incentive payments
- c) in cases of alleged wrongful dismissal.

Representation process

Representation will normally be conducted in two stages:

1. By APSA officers negotiating directly with the party that the member holds a claim against, with the objective being to resolve the matter without involvement of lawyers.
2. If the above is unsuccessful, by a specialist law firm on referral by APSA.

Conditions of representation

Member representation by APSA is **subject to the following conditions:**

1. Representation is limited to:
 - a) matters which are the subject of the NES or the Real Estate Industry Award 2010 (award); or
 - b) cases of alleged wrongful dismissal, pursuant to the *Fair Work Act 2009*.
2. APSA does not assist in internal disputes between employees
3. APSA does not assist in matters that relate to breaches or alleged breaches of 'real estate' legislation
4. APSA has no obligation to represent a member in any matter which arises from or during any period when they were unfinancial
5. The member or intending member must notify the relevant APSA Branch Secretary, in writing, within fourteen (14) days of when the member first becomes aware of any dispute which may require representation of that person by APSA
6. Any such notification made to the APSA Branch Secretary will be confidential between APSA (including its industrial advocate or legal advisors) and its member, until such time as the member authorises APSA, either verbally or in writing, to take the matter further
7. The APSA Branch Secretary and the APSA Branch Council expressly reserve the right to determine what means¹ and level of representation the APSA Branch will provide to the member
8. Such representation will be offered to a member based on the relative merit of each individual case, such merit to be assessed in the first instance by the APSA Branch Secretary
9. If the APSA Branch Secretary's decision is contested by the member, the member may appeal such decision to the APSA Branch Council, in accordance with the Constitution and Rules of APSA
10. In assessing the merit of any claim, the APSA Branch Secretary will normally start by addressing the question "if this matter were to end up in court, is there sufficient evidence² to support the claim?"

¹ APSA has various means of representation available to it – providing advice to the member without having contact with the employer, direct mediation between the parties, mediation via a franchise or marketing group to which the employer belongs, and the processes available through the Fair Work Commission, an industrial court or an industrial magistrates court.

Consequently, if a member wants to recover unpaid commission, bonus or incentive payment the member must be able to produce a written agreement³ (or other acceptable evidence) of an entitlement to commission, bonus or incentive payment entitlement

11. Such agreement or evidence must outline the member's entitlement(s) for the period pertaining to the matter(s) in dispute
12. If a written agreement (or evidence that the member has requested an agreement from their employer) doesn't exist APSA may, in its discretion, elect only to assist in the recovery of award or NES entitlements.

[Note: Where no written agreement exists the member may, in some cases, still have a substantial claim to wages in addition to commission already received.]

Statutory limits on claims

Members are advised that there is:

- a fourteen-day limit on the lodgement of wrongful dismissal claims with the Fair Work Commission
- a six-year statute of limitations on wages, commission, bonus or incentive payment claims.

Accordingly, the APSA Branch Secretary reserves the right to determine the extent of APSA's representation of any particular dispute (within any limits imposed by the legal system), in order that all matters which APSA has at hand at any time may receive due attention and consideration.

Fees payable

In any matter where the APSA Branch Secretary and/or the APSA Branch Council agree to represent a member, industrial advocacy and/or legal expenses may be incurred.

Legal/industrial advocate fees

Responsibility for the payment of any legal/industrial advocate fees will rest entirely with the member.

It is the policy of APSA that such fees should be agreed in writing between the parties, prior to formal engagement of a lawyer or industrial advocate taking place.

Should such agreement not be reached, the APSA Branch Secretary and/or the APSA Branch Council reserve the right to deny further representation to the member.

Offsetting costs

In many cases a claim for pecuniary penalties will be lodged with the courts. Where such a claim is successful, the monies will be used by APSA to offset the member's costs.

² For any commission, bonus or incentive payment claim to succeed in court the claimant must be able to prove the entitlement. Verbal arrangements are usually worthless.

³ The best starting point for evidence of such entitlement is a written agreement registered in accordance with the Real Estate Industry Award 2010.

Notes

Copies of documents

Most disputes arise after termination of employment and at this stage, access to documents is often refused by the employer. Therefore it is vital for employees to keep a copy of each document they sign in a safe location.

To prove entitlements, it is important for the employee to keep their own copies of Contracts of Sale, Appointments to Act, advertising with the employee's name on it, etc., until commissions, bonuses and incentive payments are paid to the satisfaction of the employee.

Such documents should be used only to help establish legitimate entitlements, and not for any other purpose.



APSA Queensland Membership Policy

Assistance given to non-members

Please be advised that the APSA Queensland Branch Council has adopted a new policy with regards to representation of members in dispute with employers.

Previously any person who was a member **or** who joined the Association would receive representation by the Association without any further cost. As a consequence there was little reason to join the Association; you could join after you had a dispute and receive the same service as a member of many years standing. A bit like insuring your car after the accident.

Most disputes arise after termination, when employers commonly refused to pay outstanding commissions or award entitlements, and it is at this point that many members join.

The Branch Council considers this is unfair to *bona fide* members of the Association with many years of membership, who are paying for this service for others, who use the Association's services and then resign.

As from 1 July 2014 the policy of the APSA Queensland Branch is that a "service fee" will be charged to persons joining who have a dispute requiring the representation of the Association, on the following basis:

- Advice on entitlements, etc. over the phone will only be provided to *bona fide* members as our insurance does not cover advice to non-members. There will be no charge to members.
- Persons who join the Association with a dispute "on foot" will be charged a "service fee" of \$500.00, in addition to the usual joining and annual membership fees. They will then receive full representation by the Association.
- The "service fee" reduces to \$200.00 after twelve months' membership, and reduces to \$100.00 after two years' continuous financial membership. After the third year of continuous financial membership no service fee will apply.
- The "service fee" policy does NOT APPLY to persons who joined prior to 1 July 2014 and who maintain continuous financial membership.

The overall cost to a new member who joins with a dispute "on foot" totals \$800.00 (inclusive of \$125.00 joining fee, \$175.00 annual membership, and \$500.00 service fee). This amount represents approximately four years dues, and is still considerably less than most solicitors' fees.

If the matter requires the services of a lawyer it will be referred to the Queensland Branch Association solicitors, and the member will receive the first visit free and a special reduced rate for members thereafter. [Most matters are resolved by the Association's Officers without referral to solicitors.] If the solicitor's referral is made, the service fee will not be charged.

Do your friends and co-workers a favour, and advise them to join APSA now – **before** they need assistance!!

Regards,



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APSA Queensland Branch Secretary

APSA Queensland

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