

Overview of the Real Estate Industry Award 2010

from Barry Gannon, Property Sales Association of Queensland

On 4 December 2009 the Australian Industrial Relations Commission published the Real Estate Industry Award 2010. As a result, **from 1 January 2010** employment conditions in the Real Estate Industry for 'operational' employees of constitutional corporations are governed by the following federal instruments:

- The *Fair Work Act 2009*
- The National Employment Standards (NES)
- The Real Estate Industry Award 2010

The new Real Estate Industry Award 2010 covers salespeople, property managers, strata & community title management employees, and business broker employees. Clerical employees are covered by the Clerks-Private Sector Award.

It is a requirement that employers make copies of the award and the NES readily available to employees. A copy of each award, and the NES, can be obtained from www.psaq.com.au.

What changes and what remains the same?

Employees are advised to read the award carefully to understand the complete implications. The full contents of the award is too detailed to duplicate here, but a few of the more important changes are set out below.

[Please Note: The award does **not** apply to full-time employees who earn more than a **guaranteed** \$108,300.00 per annum, however the National Employment Standards (NES) will still apply to such an employee. The **guarantee** referred to herein must be in writing, and applies to salary/wage employees only.]

The Real Estate Industry Award

An expanded classification structure now provides for Property Sales and Property/Strata Management Associates, Property Sales/Strata Management Representatives (formerly salespersons) and Property Sales/Property Strata Management Supervisors. We would recommend that each employee read the definitions in Schedule B to the award. Although describing indicative tasks only, these definitions are quite broad.

Notice of Termination

Under the NES, employees may give only one week's notice of termination, unless the parties have otherwise agreed in writing. Employers must give the usual notice based on length of service and the age of the employee.

Wage Rates

Wage rates are listed in Clause 14 of the award, and transitional provisions apply. PSAQ members may obtain more details from our office.

Casual Employees

The hourly rate for casual employees is now loaded by 25%.

Allowances

As was the past in terms of the Queensland awards, there will be no car allowance payable to salespeople in Queensland until at least 1 January 2015.

Property/Strata Management employees however, must have a written agreement about payment of a motor vehicle allowance (as in the existing State award).

All employees (including all salespeople, except those on commission-only) must have a written agreement about payment for use of a mobile phone provided by the employee. PSAQ members may obtain more details from our office.

Commission-Only Employment

Commission-only employment has been retained, but the qualifying criteria differs from earlier requirements. If you wish to be paid by commission-only, please study Clause 16 of the award very carefully. PSAQ members may obtain more details from our office.

Mandatory Written Agreements

There must be a written agreement about commission rates, bonuses or incentives. The agreement must specify whether the employee is or is not entitled to be paid commission, bonuses or incentives.

Hours of Work

Ordinary working hours are an average of 38 hours per week, on any day of the week and may be averaged over an 8 week period, with one and a half or two days off per week off duty.

Overtime

Except for commission-only employees, overtime on an employee's day off worked at the specific direction of the employer is paid for at time and a half for the first 2 hours and double time thereafter. Overtime may be taken as time off in lieu on the basis of an hour for each hour worked.

Agreements for Corporations

Registration of Written Agreements

The Real Estate Industry Award 2010 states that in Queensland, every employee's written agreement must be registered with the Queensland Property Industry Registry (QPIR).

Failure to register a written agreement with QPIR means that the employee cannot be a commission-only employee, and the minimum weekly wage must be paid in addition to any commission, bonus or incentive.

Other Agreements

Under federal legislation, employers may enter into enterprise agreements (formerly known as collective agreements) to cover all employees in their business. In the past, these types of agreements have **not** found favour in many real estate businesses because of their highly-restrictive nature, and the procedures involved in making them.

Further, a significant proportion of those employers who had previously embraced such agreements, not knowing the pitfalls, and are now seeking to abandon them in favour of more-flexible individual arrangements.

What to do with Existing Agreements?

The PSAQ has obtained advice from senior counsel about existing agreements. This advice has been released via a separate information sheet, which is available to download from www.psaq.com.au.

Agreement Suppliers

A number of previously-high profile agreement suppliers have withdrawn from the market. This does not surprise us, especially with agreement-making (especially in this industry) being such a specialised task, and so complex.

However the following suppliers have developed agreements that appear to be suitable for employers under federal legislation:

- Basic agreements – Realworks Live (www.realworks.com.au)
- Comprehensive agreements – REPS Australia (www.repsa.com.au)

PSAQ has significant input into agreements from both suppliers.

Private Employers

Employers which are not constitutional corporations (companies) – sole traders and partnerships – were previously not subject to the federal system (WorkChoices) and could operate exclusively under the relevant State awards. The Queensland Government has now decided to hand over its industrial relations powers for private-sector employers and employees to the federal government – from, we understand, 1 January 2010.

However we believe that until 1 January 2011, transitional arrangements will apply. This topic is also covered in a separate information sheet, available from www.psaq.com.au.

Sham Contracting

There are quite a number of “sham contracting” cases currently before the courts. All we would say is that the issue of “contracting” is often not as simple as it seems.

Employees are therefore encouraged to **obtain robust advice** – and not from commercial suppliers trying to “sell” you or your employer on contracting – **before** going down this path.

In Conclusion

This overview summarises key aspects of the new awards, however more-detailed information is available to PSAQ members.

If **PSAQ members** have any questions, please feel free to contact us as follows:

- Barry Gannon (E: barry.gannon@psaq.com.au; P: 07 3841 6977)
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If you have questions and are not already a PSAQ member, please visit our web site (www.psaq.com.au) and submit a membership application **before** you contact us.

Yours faithfully,



BARRY GANNON.
State & Federal Secretary
Property Sales Association of Queensland