

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 - s. 698 - reprint of award

PROPERTY SALES AWARD QUEENSLAND - STATE 2005

Pursuant to s. 698 of the *Industrial Relations Act 1999* Property Sales Award Queensland - State 2005 with all amendments as at 10 December 2009, is hereby reprinted.

I hereby certify that the Award contained herein is a true and correct copy of the Property Sales Award Queensland - State 2005 as at 10 December 2009.

Dated 10 December 2009.

G.D. Savill
Industrial Registrar

PROPERTY SALES AWARD QUEENSLAND - STATE 2005

PART 1 - APPLICATION AND OPERATION

1.1 Title

This Award is known as the Property Sales Award Queensland - State 2005.

1.2 Arrangement

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1.3 Preamble

1.3.1 *Minimum entitlements*

- (a) All employees are entitled to receive:
 - (i) wages;
 - (ii) paid leave (annual, sick, bereavement);
 - (iii) public holidays.
- (b) The above entitlements may be negotiated away in some circumstances, but only within the terms of Stage 2 Employment.
- (c) Employees are also entitled to receive:
 - (i) occupational superannuation;
 - (ii) long service leave.

1.3.2 *Employment Agreements*

All employees must have:

- (a) a written employment agreement (Agreement); and
- (b) such agreement registered with the Queensland Property Industry Registry, as set out in Parts 16 and 17.

1.4 Date of operation

This Award takes effect from 30 November 2005.

1.5 Award coverage

1.5.1 *Application*

- (a) This Award applies throughout the State of Queensland to employees principally engaged in the listing, sale, auction, tender, purchase and/or leasing of real property and to their employers.

- (b) This Award does not apply to any employee:
- (i) who occupies a management position with the employer; and
 - (ii) whose primary duties do not involve the listing, sale, auction, tender, purchase and/or leasing of real property; and
 - (iii) whose remuneration, not including anything other than salary and/or commission entitlements, is at or above the rate prescribed under Section 4 of Part 2 of the *Industrial Relations Regulation 2000* as adjusted from time to time.

1.5.2 The industrial organisations party to this Award, recognising the unique nature of the Real Estate Industry, have agreed upon conditions of employment contained in this Award that are best suited to the needs of employees and employers and reflect the non-standard nature of work in the industry.

1.5.3 The parties to this Award have also agreed to confer on at least an annual basis for the purpose of reviewing the practical effects of the implementation of this Award and to take any agreed steps to ensure its efficient operation.

1.5.4 This Award excludes any person employed principally as a clerk or for secretarial support.

1.6 Definitions

1.6.1 "Act" means the *Industrial Relations Act 1999* as amended or replaced from time to time.

1.6.2 "Casual Employee" means an employee who is engaged and paid by the day, and for less than 4 days per week averaged over a 4 weekly cycle (i.e. 15 days or fewer in 28).

1.6.3 "Commission" is a payment and/or any reward system that is linked to performance and/or results. This includes regular bonus and/or incentive payments that are linked to performance and/or results, but does not include *ex gratia* payments.

1.6.4 "Commission-Offset" means that an employee who is paid wages and/or leave entitlements may also be entitled to commission, against which wages and/or leave entitlements may be offset by the employer, in accordance with this Award.

The employee shall be entitled to be paid any commission credit that is surplus to wages and/or leave entitlements paid to the employee.

1.6.5 "Commission-Only" means that an employee is remunerated on the basis only of a proportion of the sales commission received by the employer as a result of the employee's activity, and that the employee is not entitled to Award wages, paid annual leave, paid sick leave, paid bereavement leave, family leave, or to any additional payment for working on public holidays, unless otherwise agreed in writing between the parties.

1.6.6 "Debit/Credit" has the same meaning as Commission Offset.

1.6.7 "Employee" for the purpose of this Award, in addition to any Common Law definition or any definition prescribed by the Act and any amendment thereto, means any of the following:

Any person who, under the *Property Agents and Motor Dealers Act 2000*:

- (a) is, or is required to be, an employee of a real estate agent or a property developer; and/or
- (b) is, or is required to be, a registered real estate salesperson; and/or
- (c) is, or is required to be, a registered property developer salesperson; and/or
- (d) holds, or is required to hold, a real estate agent's licence (as an employed licensee or otherwise) and who is not the principal licensee.

1.6.8 "Full-time Employee" means a permanent employee who works on 4, 5 or 6 days per week averaged over a 4 weekly cycle (i.e. between 16 and 24 days - both inclusive - in 28).

1.6.9 "Industrial Commission" means the Queensland Industrial Relations Commission.

1.6.10 "Legally-enforceable Contract of Sale" means a Contract of Sale that is signed by both Buyer and Seller.

- 1.6.11 "Part-time Employee" means a permanent employee who works less than 4 days per week averaged over a 4 weekly cycle (i.e. 15 days or fewer in 28).
- 1.6.12 "QPIR" means the Queensland Property Industry Registry, which is administered by the PSAQ and REEA.
- 1.6.13 "Property Sales Trainee" and "Traineeships" bears the meaning as provided within clause 9.2.
- 1.6.14 "Property Sales Person" means an employee engaged in the sale of real property.
- 1.6.15 "Property Sales Person (Advanced)" means an employee engaged in the sale of real property and whose duties, experience and level of achievement meet the following standards:
- (a) at least 4 years' experience in the industry; and/or
 - (b) a concentration on specialised areas of operation acknowledged within the industry as requiring particular skills and competencies.
- 1.6.16 "PSAQ" and "Union" means the Property Sales Association of Queensland, Union of Employees, its successors or assigns.
- 1.6.17 "REEA" means the Queensland Real Estate Industrial Organisation of Employers (trading as the Real Estate Employers' Association), its successors or assigns.
- 1.6.18 "REIQ" means the Real Estate Institute of Queensland Ltd.
- 1.6.19 "Sale of real property" means the duties carried out by an employee whose principal responsibilities include, but are not limited to the listing, sale, auction, tender, purchase and/or leasing of real property, however it excludes any person employed principally as a clerk or for secretarial support.
- 1.6.20 "Stage 1 Employment" means those employment conditions covered by Parts 12 and 14 of this Award.
- 1.6.21 "Stage 2 Employment" means those employment conditions covered by Part 15 of this Award.

PART 2 - FLEXIBILITY

2.1 Enterprise bargaining

2.1.1 It is acknowledged that:

- (a) flexible employment arrangements; and
- (b) appropriate understanding and regulation of commission-based remuneration,

are the central, defining characteristics of the industrial relations needs of Queensland's real estate industry, and that these priorities create some tension with the need for protection of employees via safety-net provisions, as prescribed by a traditional award.

2.1.2 The key to managing these competing priorities is:

- (a) Co-operation between the representative organisations of employees and employers.
- (b) A streamlined process to facilitate making and recording of individual employment arrangements.
- (c) A centralised administrative system to support the above process, that is in itself:
 - (i) understanding of the unique needs of the industry;
 - (ii) prompt in its responses; and
 - (iii) both capable of being, and authorised to be, flexible in its internal processes.

2.1.3 Accordingly, both the PSAQ and REEA undertake to positively co-operate with employers and their employees who wish to establish:

- (a) Written Employment Agreement/s in accordance with the provisions of this Award.
- (b) A Certified Agreement under this Award, in accordance with the provisions of Chapter 6 of Part 1 of the Act.

PART 3 - COMMUNICATION, CONSULTATION AND DISPUTE RESOLUTION

3.1 Settlement of disputes

3.1.1 In the event that any dispute between the employer and employee is unable to be resolved the following procedure shall apply:

- (a) the parties shall refer the matter to representatives of the respective industrial organisations who shall attempt to assist in a resolution by conciliation;
- (b) should such conciliation fail, the matter shall be pursued in accordance with the provisions of the Act and any amendment thereto. A decision made in accordance with the Act will be binding on the parties.

3.1.2 Unless a *bona fide* safety issue is involved, work shall proceed as normal while any of the foregoing procedures is being followed and such continuation of work shall not prejudice the final settlement of the matter.

3.1.3 For the purpose of clause 3.1.1(a), contact details for the Registered Office (as amended from time to time) of the parties to this Award shall be included in this Award:

- (a) PSAQ - Phone (07) 3841 6977; Fax (07) 3841 3799.
- (b) REEA - Phone (07) 3376 1397; Fax (07) 3715 8902.

PART 4 - EMPLOYER AND EMPLOYEES' DUTIES, EMPLOYMENT RELATIONSHIP AND RELATED ARRANGEMENTS

4.1 Application of general provisions

Parts 1 to 11 and Part 13 of the Award shall apply to all employees and their employers irrespective of whether other conditions of employment are covered by Stage 1 Employment or Stage 2 Employment.

4.2 Terms of engagement

4.2.1 At the point of engagement the employer shall stipulate in a written employment agreement whether the employee:

- (a) is full-time, part-time or casual; and
- (b) is either a Property Sales Trainee, a Property Sales Person or a Property Sales Person (Advanced).

Provided that, other than for a Property Sales Trainee, if at the point of engagement the employer fails to stipulate the employee's Award classification in a written employment agreement, the employee is deemed to be classified at least as a Property Sales Person.

4.2.2 Probationary periods

- (a) For a Property Sales Trainee, the probationary period shall be as determined under the *Vocational Education, Training and Employment Act 2000*.
- (b) For all other classifications the probationary period is the first 3 months' employment with the employer, however a shorter, or longer, or no probationary period may be agreed in writing between the employee and employer before employment starts.
- (c) A period of probation that is longer than 3 months must be a reasonable period having regard to the nature and circumstances of employment.
- (d) During any probationary period both parties will review the work performance to ascertain the employee's suitability to the employer's business. Within any probationary period the employer shall provide training and assistance to the employee to aid in the employee's assimilation into the job. This shall not affect the right of either party to terminate employment during the probationary period, in accordance with clause 4.3.

4.3 Termination of employment

4.3.1 Redundancy

In cases of redundancy the terms and conditions of the Statement of Policy of the Full Bench of the Industrial

Commission dated 29 October 2003 and published in QGIG Vol. 174, Folio 908 shall apply under this Award. A copy of the above decision shall be displayed in the employer's place of business so as to be easily read by employees.

Provided that, in the case of employees remunerated wholly or partially on the basis of commission, "ordinary time rate of pay" referred to in clause 12 of the Statement of Policy shall mean:

- (a) For an employee with less than 5 years continuous service:
 - (i) the employee's prescribed Award wage rate; or
 - (ii) the average weekly earnings calculated over the entire period of employment, whichever is the higher.
 - (iii) Commission earnings paid subsequent to termination shall not be taken into account unless they were due and payable during the period of employment.
- (b) For an employee with 5 years or greater continuous service:
 - (i) The average weekly earnings calculated over the 5 years of employment immediately preceding the termination date, except that the highest earnings year of employment and the lowest earnings year of employment in that period shall not be taken into account.
 - (ii) Commission earnings paid prior to, or subsequent to, the 5 year period shall not be taken into account unless they were due and payable during that period.

Further provided that, an employee under Stage 2 Employment and their employer may make a written agreement at any time for the employee to be paid at a specified rate, in addition to their ordinary time earnings, in lieu of payment for redundancy.

4.3.2 Property Sales Trainees shall only be terminated in accordance with the provisions of the *Vocational Education, Training and Employment Act 2000*.

4.3.3 In all other cases the following period of notice of termination of employment shall be given by either party, or the equivalent remuneration paid or forfeited in lieu thereof:

Period of Continuous Service	Period of Notice
Not more than 1 year	1 week
More than 1 year but not more than 3 years	2 weeks
More than 3 years but not more than 5 years	3 weeks
More than 5 years	4 weeks

4.3.4 In the case of termination of an employee by an employer, where the employee is over 45 years of age and has completed at least 2 years' continuous service with the employer, the above notice periods shall be increased by one week.

4.3.5 The period of notice shall not be counted as annual leave.

4.3.6 For employees remunerated by wage and commission or commission only, the amount to be paid or forfeited shall be calculated as follows:

- (a) for an employee who was continuously employed by the employer for 3 months or more immediately before the termination - the average weekly remuneration in the 3 months before termination; or
- (b) for an employee who was continuously employed by the employer for a period of less than 3 months - the average weekly remuneration in that period.

4.3.7 In cases of dishonesty, drunkenness, disobedience, refusal of duty, neglect or misconduct by any employee, termination shall be immediate and the employee entitled to wages and any annual leave due up to the time of termination.

PART 5 - WAGES AND WAGE RELATED MATTERS

5.1 Superannuation

5.1.1 Employees shall be entitled to occupational superannuation in accordance with the provisions of the *Occupational Superannuation Guarantee (Administration) Act 1992*:

Provided that, where payable, occupational superannuation shall be paid in addition to all wages, leave entitlements and/or commission entitlements.

However the employer and employee may agree in writing that, where an employee's overall remuneration is:

- (a) for a Stage 1 employee, equal to or greater than the prescribed Award wage rate plus the superannuation guarantee rate; or
- (b) for a Stage 2 employee, equal to or greater than 125% of the prescribed Award wage rate plus the superannuation guarantee rate,

the employee's gross wages and/or commission will be inclusive of the employer's superannuation contribution on behalf of the employee.

Such agreement will have the effect of allowing the employer to deduct the prescribed superannuation contribution from the employee's gross wages and/or commission to forward to a complying superannuation fund. The employee will then be entitled to receive wages and/or commission net of the superannuation contribution.

5.1.2 The occupational superannuation contributions must be paid to a complying superannuation fund, in accordance with the provisions of the *Occupational Superannuation Guarantee (Administration) Act 1992*.

5.1.3 For the purpose of this Award, REI Super shall be an approved superannuation fund.

PART 6 - HOURS OF WORK, BREAKS, OVERTIME SHIFT WORK, WEEKEND WORK

6.1 Working time

6.1.1 This Part applies to all employees covered by this Award, with the exception of Trainees.

6.1.2 The Industrial Organisations party to this Award recognise that because of the unique nature of the Real Estate Industry, and subject to the definitions in clause 1.6, the ordinary working time for employees covered by this Award may be worked on any or all days of the week and may be more or less than 8 hours per day or 40 hours per week. Accordingly overtime shall not apply.

6.1.3 An employee shall not be required to work more than 6 days per week averaged over a 4 weekly cycle (i.e. more than 24 days in 28).

6.1.4 Twice daily rest pauses of 10 minutes' duration may be taken at the employee's discretion at times which will not interfere with the continuity of work.

6.1.5 The minimum period of engagement for a Casual Employee shall be 2 hours per engagement.

PART 7 - LEAVE OF ABSENCE AND PUBLIC HOLIDAYS

7.1 Jury service

7.1.1 This Award has been exempted from the operation of the General Ruling concerning Jury Service make-up pay issued by the Industrial Commission on 14 September 2005.

7.2 Long service leave

7.2.1 All employees covered by this Award shall be entitled to long service leave on full pay under, subject to, and in accordance with the provisions of the Act and any amendment thereto:

Provided that, in the case of employees remunerated wholly or partially on the basis of commission payment "full pay" shall mean the average weekly earnings calculated over the 5 years of employment immediately preceding the date upon which the leave is taken, except that the highest earnings year of employment and the lowest earnings year of employment in that period shall not be taken into account.

7.2.2 Commission earnings paid prior to, or subsequent to, the 5 year period shall not be taken into account unless they were due and payable during that period.

7.2.3 An employee may be paid for all or part of an entitlement to long service leave instead of taking the leave or part of the leave if the employee and employer make a written agreement signed at or about the time of commencement of the long service leave:

Provided that, an employee under Stage 2 Employment and their employer may make a written agreement at any time for the employee to be paid at a specified rate, in addition to their ordinary time earnings, in lieu of payment for long service leave.

PART 8 - TRANSFERS, TRAVELLING AND WORKING AWAY FROM USUAL PLACE OF WORK

No provisions inserted in this Award relevant to this Part.

PART 9 - TRAINING AND RELATED MATTERS

9.1 Commitment to training and careers

Both the PSAQ and REEA commit to working with the industry professional body, the REIQ, and any other professional bodies they may agree upon from time to time, to continue the development of careers and professional standards within the industry.

9.2 Traineeship provisions

9.2.1 Objectives and application

The objective of the traineeship provisions is to establish a system of traineeships which provide approved training in conjunction with employment in order to enhance the skill levels and future employment prospects of trainees.

The system is neither designed nor intended that existing employees be prevented from participating in traineeship arrangements or be displaced from employment by trainees.

The Traineeship provisions of this Award shall only apply to those employees who are registered with the Training Recognition Council.

9.2.2 Definitions

- (a) "Australian Quality Training Framework" (AQTF) means a national system of recognition for the issue of vocational credentials.
- (b) "Competency Based Training" is a way of approaching vocational training that places primary emphasis on what a person can actually do as a result of training (outcomes) and as such represents a shift away from an emphasis on the processes and time involved in training (inputs).
- (c) "Course of Instruction" means the training programs approved from time to time by the Training Recognition Council including the minimum training requirements for each AQTF level. Trainees undertaking a Course of Instruction shall be entitled to an AQTF level 4 outcome.
- (d) For the purpose of Part 9 only, "full-time employee" means an employee who is engaged to work 38 ordinary hours per week.
- (e) For the purpose of Part 9 only, "part-time employee" means an employee who is engaged to work between 16 and 32 hours per week.
- (f) "Training Recognition Council" bears the meaning and powers as defined in the *Vocational Education, Training and Employment Act 2000*.
- (g) "Training Agreement" bears the meaning contained in the *Vocational Education, Training and Employment Act 2000*.
- (h) "Training Record" bears the meaning contained in section 20 of the *Vocational Education, Training and Employment Regulation 2000*.

9.2.3 Training conditions

- (a) The Property Sales Trainee shall undertake a course of instruction as approved by the Training Recognition Council.
- (b) The employer agrees to ensure the necessary support and supervision and that officers of the Department of Employment and Training shall monitor the overall Traineeship and that the training record will be used as part of this monitoring process.
- (c) The training outcomes associated with the course of instruction are flexible and will lead to the issue of a credential by the Supervising Registered Training Organisation in accordance with the AQTF. Successful

completion of the Traineeship shall be based on the achievement of competence and the minimum training requirements within the course of instruction for each AQTF level and will be certified by the Training Recognition Council.

9.2.4 *Wage rates, existing employees, part-time arrangements*

(a) General:

- (i) for the duration of the Traineeship, Property Sales Trainees shall receive a rate of pay equal to 80% of the rate prescribed for a Property Sales Person, with these amounts rounded off to the nearest 10 cents;
- (ii) all other conditions of Part 12 shall apply;
- (iii) in addition to the above, an employee and an employer may agree in writing to a system of payment by commission, as outlined in Parts 13, 14, 16 and 17;
- (iv) on successful completion of the Traineeship, Property Sales Trainees shall, if employment continues, be appointed in accordance with the provisions of this Award.

(b) All existing employees are able to participate in traineeship arrangements. Notwithstanding the above, no employee shall lose income as a result of conversion to a traineeship program.

(c) Casual employment:

Property Sales Trainees may not be engaged on a casual basis.

(d) Existing employees:

(i) whose training contract is cancelled in accordance with the provisions of section 61 of the *Vocational Education, Training and Employment Act 2000*; or

(ii) who complete their Traineeship,

shall be offered reinstatement in their previous position, in accordance with section 139A of the Act.

(e) Part-time arrangements:

Property Sales Trainees may be engaged on part-time arrangements with the consent of the Training Recognition Council and be remunerated on a part-time basis in accordance with the provisions of this Award.

9.2.5 *Assessment and review*

Any dispute or grievance arising from difficulties in translation, assessment, progression through the levels or the achievement of competence shall be addressed through the policy of the Training Recognition Council and the processes of the *Vocational Education, Training and Employment Act 2000*.

9.3 Hours of duty for Trainees

9.3.1 *Ordinary hours*

The ordinary hours of duty for Trainees shall not exceed an average of 38 per week over a 4 week cycle, and may be worked on any 5 days of the 7 days in each week. The Trainee shall be entitled to take at least 2 consecutive days off in each fortnight.

9.3.2 *Standby and callout hours*

If a Trainee is on standby and/or called out outside of ordinary hours of duty and:

- (a) the Trainee is paid an allowance for being on standby and/or being called out, the time during which the Trainee is on standby and/or called out shall not count towards an accrual of ordinary hours of duty;
- (b) the Trainee is not paid an allowance for being on standby and/or being called out, the time during which the Trainee is on standby and/or called out shall count towards an accrual of ordinary hours of duty.

9.3.3 *Overtime*

Where any time is worked in excess of:

- (a) for a part-time Trainee, 128 hours over a 4 week cycle, the Trainee shall be granted equivalent paid time off in lieu, of the amount which exceeds 128 hours; or
- (b) for a full-time Trainee, 152 hours over a 4 week cycle, the Trainee shall be granted equivalent paid time off in lieu, of the amount which exceeds 152 hours.

If the time off in lieu is not granted within a period of 28 days following the period within which it became due, or if the benefit of the 28 day period to take time off in lieu is waived, the overtime shall be paid for at the rate of time and one-half for the first half of the total overtime hours in the 28 day period and the remainder at the rate of double time.

PART 10 - OCCUPATIONAL HEALTH AND SAFETY MATTERS, EQUIPMENT, TOOLS AND AMENITIES

No provisions inserted in this Award relevant to this Part.

PART 11 - AWARD COMPLIANCE AND UNION RELATED MATTERS

Preamble

Clauses 11.1 and 11.2 replicate and add to legislative provisions contained within the Act. In order to ensure the currency of existing legal requirements parties are advised to refer to sections 366, 372 and 373 of the Act as amended from time to time.

11.1 Right of entry

11.1.1 Authorised industrial officer

- (a) An "Authorised industrial officer" is any Union official holding a current authority issued by the Industrial Registrar.
- (b) Right of entry is limited to workplaces where the work performed falls within the registered coverage of the PSAQ.

11.1.2 Entry procedure

- (a) The authorised industrial officer is entitled to enter the workplace during normal business hours as long as:
 - (i) the authorised industrial officer alerts the employer or other person in charge of the workplace to their presence; and
 - (ii) shows their authorisation upon request.
- (b) Clause 11.1.2(a)(i) does not apply if the authorised industrial officer establishes that the employer or other person in charge is absent.
- (c) A person must not obstruct or hinder any authorised industrial officer exercising their right of entry.
- (d) If the authorised industrial officer intentionally disregards a condition of clause 11.1.2 the authorised industrial officer may be treated as a trespasser.

11.1.3 Inspection of records

- (a) An authorised industrial officer is entitled to inspect the time and wages record required to be kept under section 366 of the Act.
- (b) An authorised industrial officer is entitled to inspect such time and wages records of any former or current employee except if the employee:
 - (i) is ineligible to become a member of the PSAQ; or
 - (ii) is a party to a QWA or ancillary document, unless the employee has given written consent for the records to be inspected; or
 - (iii) has made a written request to the employer that they do not want their record inspected.

- (c) The authorised industrial officer may make a copy of the record, but cannot require any help from the employer.
- (d) A person must not coerce an employee or prospective employee into consenting, or refusing to consent, to the inspection of their records by an authorised industrial officer.

11.1.4 *Discussions with employees*

An authorised industrial officer is entitled to discuss with the employer, or a member or employee eligible to become a member of the PSAQ:

- (a) matters under the Act during working or non-working time; and
- (b) any other matter with a member or employee eligible to become a member of the PSAQ, during non-working time.

11.1.5 *Conduct*

An authorised industrial officer must not unreasonably interfere with the performance of work in exercising a right of entry.

11.2 Time and wages record

11.2.1 An employer must keep, at the place of work in Queensland, a time and wages record that contains the following particulars for each pay period for each employee, including apprentices and trainees:

- (a) the employee's award classification;
- (b) the employer's full name;
- (c) the name of the Award under which the employee is working;
- (d) for Trainees, the number of hours worked by the employee during each day and week, the times at which the employee started and stopped work, and details of work breaks including meal breaks;
- (e) for all employees other than Trainees, the number of days worked by the employee during each week;
- (f) for employees remunerated by wages, a weekly, daily or hourly wage rate - details of the wage rate for each week, day, or hour at which the employee is paid;
- (g) for employees remunerated by commission, details of the employee's commission entitlements;
- (h) the gross and net wages and/or commissions paid to the employee;
- (i) details of any deductions made from the wages and/or commissions; and
- (j) contributions made by the employer to a superannuation fund.

11.2.2 The time and wages record must also contain:

- (a) the employee's full name and address;
- (b) the employee's date of birth;
- (c) details of sick leave credited or approved, and sick leave payments to the employee;
- (d) the date when the employee became an employee of the employer;
- (e) if appropriate, the date when the employee ceased employment with the employer; and
- (f) if a Casual Employee's entitlement to long service leave is worked out under section 47 of the Act - the total hours, other than overtime, worked by the employee since the start of the period to which the entitlement relates, worked out to and including 30 June in each year.

11.2.3 The employer must keep the record for 6 years.

11.2.4 Such records shall be open to inspection during the employer's business hours by an inspector of the Department of Industrial Relations, in accordance with section 371 of the Act or an authorised industrial officer in

accordance with sections 372 and 373 of the Act.

11.3 Posting of Award

A true copy of this Award shall be exhibited in a conspicuous and convenient place on the premises of the employer so as to be easily read by employees.

PART 12 - MINIMUM ENTITLEMENTS

12.1 Application

Part 12 applies to all employees other than those who are approved to Opt Out in accordance with Part 15. In the case of employees who are approved to Opt Out in accordance with Part 15, the provisions of this Part shall apply unless they are varied or over-riden by an Agreement registered in accordance with Parts 16 and 17.

12.2 Wages

12.2.1 Wage rates

(a)	Classification:	Southern Division, Eastern District
	Property Sales Person	\$576.80 per week
	Property Sales Trainee (refer to clause 9.2.4)	80% of the weekly rate for a Property Sales Person
	Property Sales Person (Advanced)	not less than 112% of the weekly rate for a Property Sales Person

The rates of pay in this Award are intended to include the arbitrated wage adjustment payable under the 1 September 2009 Declaration of General Ruling and earlier Safety Net Adjustments and arbitrated wage adjustments. This arbitrated wage adjustment may be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this Award which are above the wage rates prescribed in the Award. Such payments include wages payable pursuant to certified agreements, currently operating enterprise flexibility agreements, Queensland workplace agreements, award amendments to give effect to enterprise agreements and overaward arrangements. Absorption which is contrary to the terms of an agreement is not required.

Increases made under previous State Wage Cases or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated wage adjustments.

- (b) Award wage rates shall be rounded to the nearest 10 cents.
- (c) A Part-time Employee shall be paid 1/5th of the weekly rate for a Full-time Employee for each day upon which the employee works. Additionally, a Part-time Employee shall receive all the other entitlements of a Full-time Employee, on a *pro rata* basis.
- (d) A Casual Employee shall be paid an amount of at least 1/5th of the relevant classification weekly wage, as set out above, with a 23% loading, for each day of work. *Pro rata* payment of 1/10th of the relevant classification weekly wage, as set out above, with a 23% loading, may be made if 4 hours' work or less is required on any particular day. A Casual Employee shall not receive any of the paid leave entitlements of a permanent employee.
- (e) Casual rates of pay shall not apply to Property Sales Trainees.
- (f) No person employed as a Property Sales Person or Property Sales Person (Advanced) shall suffer any reduction in wages as a result only of the coming into operation of this Award.

12.2.2 Divisional and District parities

Employees located outside the Southern Division, Eastern District shall be paid an additional weekly amount in accordance with the following schedule:

	Per week
	\$
Southern Division, Western District	1.05
Mackay Division	0.90
Northern Division, Eastern District	1.05
Northern Division, Western District	3.25

The above Divisions and Districts are as defined by the Industrial Commission.

12.3 Leave, public holidays, etc.

12.3.1 Annual leave

- (a) At the end of each year of employment a Full-time Employee shall be entitled to a period of 4 weeks, exclusive of public holidays, annual leave on full pay. Annual leave may, by mutual consent, be taken in 2 or more periods, provided that one period is of at least one week's duration.
- (b) Payment for annual leave shall be:
 - (i) at the employee's relevant award rate plus a further 17.5%; or
 - (ii) at the employee's average weekly rate of pay (including both wages and commission) during the 12 months prior to taking the leave,whichever is the higher.
- (c) In the event of termination of employment, employees shall be paid for all annual leave owing (exclusive of public holidays which may fall during the period) calculated in accordance with clauses 12.3.1(b).
- (d) If the employment is terminated before a full entitlement to annual leave becomes due, the employee shall be paid:
 - (i) 1/12th of the award rate earnings over the period of employment, plus a further 17.5%; or
 - (ii) 1/12th of actual earnings,whichever is the higher.
- (e) Part-time Employees shall be entitled to annual leave on a *pro rata* basis.

12.3.2 Sick leave

- (a) An employee is entitled to:
 - (i) at least 8 days' sick leave on full pay for each completed year of employment with an employer; and
 - (ii) for each completed period of employment of less than a year, at least one day's sick leave on full pay for each completed 6 weeks of employment with an employer.
- (b) The employee's entitlement is conditional on:
 - (i) the employee promptly notifying the employer of:
 - (A) any illness that will cause the employee to be absent from work; and
 - (B) the approximate period for which the employee will be absent; and
 - (C) if the employee is absent for more than 2 days:
 - (1) the employee giving the employer a doctor's certificate about the nature of the illness and the approximate period for which the employee will be absent; or
 - (2) the employee giving the employer other evidence of the illness to the employer's satisfaction.
- (c) Sick leave shall be cumulative, provided that an employer shall not be obliged to pay an employee for more than 13 weeks' absence due to illness in any one year.
- (d) Payment for sick leave shall be:
 - (i) at the employee's relevant Award rate; or
 - (ii) at the employee's average weekly rate of pay during the 12 months prior to taking the leave,

whichever is the higher.

- (e) Part-time Employees shall be entitled to sick leave on a *pro rata* basis.

12.3.3 Bereavement leave

An employee shall on the death within Australia (or outside Australia where the employee travels to the funeral) of a wife, husband, father, mother, father-in-law, mother-in-law, brother, sister, child or step-child, be entitled on notice to leave up to and including the day of the funeral for such relation. Any such leave taken of up to 2 working days' duration shall not cause a reduction in the weekly remuneration of the employee.

The words "wife" and "husband" shall include a person, including a person of the same sex, who lives with the employee as a *de facto* wife or husband.

12.3.4 Family leave

The provisions of the Family Leave Award 2003 shall apply.

12.3.5 Public holidays

- (a) The following days shall be regarded as public holidays for the purposes of this Award:

- 1 January;
- 26 January;
- Good Friday;
- Easter Saturday (the day after Good Friday);
- Easter Monday;
- 25 April (Anzac Day);
- Labour Day;
- The Birthday of the Sovereign;
- Christmas Day;
- Boxing Day;
- Annual Show; or
- any day appointed under the *Holidays Act 1983*, to be kept in place of any such holiday.

- (b) Whether an employee does or does not work on any or all of the above-mentioned public holidays, such day(s) shall still be counted as days worked for the purposes of calculating the number of days worked within a 4 weekly cycle.

- (c) Where an employer specifically instructs an employee to work on any of the above-mentioned public holidays, the employee shall be paid an amount of at least 1/5th of the weekly rate of pay prescribed for the employee's Award classification multiplied by 2.5. *Pro rata* payment may be made if less than 4 hours' work is required on that particular day, but in no case shall payment be less than 1/10th of the weekly rate of pay prescribed for the employee's Award classification multiplied by 2.5.

12.3.6 Commencement of entitlements

Entitlements under clause 12.3 commenced to accrue from 1 July 1997, or from the date employment commenced, whichever was the later.

PART 13 - COMMISSION

13.1 Application

This Part applies to all employees covered by this Award.

13.2 Intent

The intent of Part 13 is to provide a framework for the regulation and centralised monitoring of all commission-based employment arrangements in the real estate industry.

It acknowledges the heavy reliance by employers on offers of commission entitlements not just as a means of remuneration, but also as a recruiting tool, and sets out to ensure that any offers of commission entitlements made by employers to employees are both recorded and enforceable.

The need to regulate commission arrangements for employees covered by this Award is a core reason for the existence of a central agreement registry, as outlined in Part 16.

13.3 Commission entitlements

- (a) If at any time an employer indicates to an employee that commission entitlements are available to that employee, the employer and the employee shall reach agreement:
 - (i) as to the percentage, amount and/or method of calculation of any commission entitlement; and
 - (ii) where possible, the circumstances under which the commission entitlement arises.
- (b) The terms of any such commission arrangement shall be in the form of a written employment agreement (Agreement), in accordance with Parts 16 and 17.
- (c) Where the Agreement involves commission entitlements being offset against wages:
 - (i) the Agreement must:
 - (A) specify whether commission entitlements are also to be offset against any of the employee's paid leave entitlements;
 - (B) be signed by the parties; and
 - (C) be registered in accordance with Parts 16 and 17.
 - (ii) if the Agreement fails to specify whether commission entitlements are to be offset against paid leave entitlements, the commission entitlements shall not be offset against any paid leave entitlements.
 - (iii) if the employee's commission entitlement is in debit when compared against wages and/or leave entitlements paid to the employee, the debit may only be recovered from commission entitlements earned by that employee.
- (d) It will be the responsibility of the employer to ensure that the Agreement is signed by both parties.
- (e) In the absence of a written employment agreement, if any commission is paid or payable by the employer to the employee under a verbal agreement, which may or may not be evidenced by historical payments of commission, such commission is deemed to be in addition to the entitlements of Part 12, and not a substitute for those entitlements.
- (f) Where an Agreement exists between the employer and employee, but is not registered in accordance with Parts 16 and 17, commission entitlements are payable to the employee in accordance with the provisions of the unregistered agreement, except that any commission entitlement will be deemed to be additional to the entitlements of Part 12, and not a substitute for those entitlements.
- (g) Until an Agreement is registered with the QPIR in accordance with Parts 16 and 17:
 - (i) the employer must pay, on a weekly basis, not less than the Award classification rate of pay; and
 - (ii) commission shall not be offset against paid leave entitlements.

PART 14 - PAYMENT OF WAGES, ALLOWANCES AND/OR COMMISSION

14.1 Application

Part 14 applies to all employees other than those who are approved to Opt Out in accordance with Part 15. In the case of employees who are approved to Opt Out in accordance with Part 15, the provisions of this Part shall apply unless they are varied or over-ridden an Agreement registered in accordance with Parts 16 and 17.

14.2 Payment of wages and/or allowances

Wages and/or allowances shall:

- (a) be paid weekly, fortnightly or monthly in accordance with the employee's Award classification; and
- (b) if employment has been terminated, be paid to any former employee no later than 3 days after termination of employment.

14.3 Payment of commission

An employee's commission entitlements shall:

- (a) be paid to the employee no later than 30 days after commission is received by the employer;
- (b) if employment has been terminated, be paid to the former employee no later than 3 days after commission is received by the employer, where, if the employee's commission entitlement is based on:
 - (i) Contracts of Sale obtained by the employee, a legally-enforceable Contract of Sale;
 - (ii) Listing agreements obtained by the employee, an Appointment to Act signed by the Seller;
 - (iii) Properties found for buyers by the employee, an Appointment to Act signed by the Buyer;
 - (iv) Agreements to lease obtained by the employee, an Agreement to Lease which eventually proceeds to become a lease (i.e. signed by intending lessee and intending lessor);
 - (v) Leases obtained by the employee, a lease;
 - (vi) Property management agreements obtained by the employee, an Appointment to Act signed by the Lessor; and/or
 - (vii) Tenancy agreements obtained by the employee, a Tenancy Agreement signed by the Lessee and the Lessor or the Lessor's Agent,

was in effect at the employee's date and time of termination.

PART 15 - PERSONAL, STAND-ALONE NO DISADVANTAGE TEST

15.1 Application, flexibility, intent, minimum income threshold, authorisation

15.1.1 Application of this Part

This Part, otherwise known as Stage 2 Employment, applies only to those employees who have been assessed by independent, industry-based peers, as demonstrating sufficient competence to make employment arrangements which differ from the provisions of Parts 12 and/or 14.

This Part constitutes a Personal, Stand-alone No Disadvantage Test, which must be applied separately from any other Part of this Award.

This Part does not apply to Casual Employees or Trainees (i.e. Casual Employees and Trainees may **not** Opt Out).

15.1.2 Flexible Employment Arrangements

Part 15:

- (a) facilitates the often-competing objectives of:
 - (i) a regulated employment environment that ensures sufficient protection for competent employees; and
 - (ii) significant flexibility in employment arrangements for employers.
- (b) allows employers and employees covered by this Award to:
 - (iii) arrive at arrangements which differ from the provisions of Parts 12 and/or 14; and
 - (iv) subject to such arrangements being registered as prescribed in Parts 16 and 17, apply those arrangements in lieu of Parts 12 and/or 14.

15.1.3 Statement of Intent

Stage 2 Employment is designed to recognise the unique nature of Queensland's Real Estate Industry, and its practices and procedures which have been accepted and proven over time, including the remuneration of employees, either totally or in part, by commission.

It incorporates a minimum income threshold of 125% of the employee's prescribed Award rate of pay, which is deemed

to compensate the employee for annual leave and/or leave loading, bereavement leave, family leave, sick leave, wages for working public holidays, any allowances and/or any time worked beyond 38 hours per week averaged over a 4 week cycle.

15.1.4 *Minimum income threshold*

Stage 2 Employment incorporates a minimum income threshold of 125% of the employee's prescribed Award rate of pay, which is deemed to compensate the employee for annual leave and/or leave loading, bereavement leave, family leave, sick leave, wages for working public holidays, any allowances and/or any time worked beyond 38 hours per week averaged over a 4 week cycle.

15.1.5 *Authorisation*

The Industrial Commission recognises the Queensland Property Industry Registry (QPIR), which is administered by the PSAQ and REEA, as the entity performing the assessments prescribed by Part 15.

15.2 Opting Out of Parts 12 and/or 14

15.2.1 *Qualifying to Opt Out - Assessment Criteria*

Where it can be demonstrated, to the satisfaction of the QPIR, that an employee:

- (a) has held a Real Estate Agent's Licence for at least 2 continuous years; or
- (b) has at least 6 months' full-time equivalent recent experience in the industry and a historical earning capacity of at least 125% of the rate of pay prescribed for the employee's Award classification; or
- (c) can demonstrate a personal work history which would provide a reasonable expectation of an earning capacity of at least 125% of the rate of pay prescribed for the employee's Award classification; or
- (d) is guaranteed by the employer to earn at least 125% of the rate of pay prescribed for the employee's Award classification during each year of employment (or part thereof),

the employee and the employer may freely elect to alter any of the provisions of Parts 12 and/or 14, subject to the conditions set out in Parts 15, 16 and 17.

The alteration of the provisions of Parts 12 and/or 14 shall be known as Opting Out.

15.2.2 *No Disadvantage Test - Initial Assessment of Competence*

An employee may Opt Out of Parts 12 and/or 14 only after being assessed as competent to do so, under the criteria outlined in clause 15.2.1, by the QPIR, which is the sole entity approved by the Industrial Commission to assess whether the employee meets the requirements of clause 15.2.1.

15.2.3 *No Disadvantage Test - Recurring Assessment of Competence*

In order to ensure that the employee achieves a minimum safety-net income during the course of employment, the No Disadvantage Test assessment of the employee's competence to Opt Out shall be a recurring event, as prescribed in clause 16.3.2(b)(ii)(B).

PART 16 - MANDATORY REGISTERED EMPLOYMENT AGREEMENTS

16.1 Preamble, intent

16.1.1 *Preamble*

Part 16 addresses a unique aspect of the real estate industry, wherein a very high proportion of employment arrangements are characterised by individual, commission-based working arrangements and/or a high level of flexibility with respect to probation periods, allowances and/or hours/days of work, necessitating a centralised record of each such employment arrangement.

The parties to the Award, and the Industrial Commission, recognise that because of the free-enterprise nature of this industry it has specific needs, including significant depth of understanding by its regulators, flexibility in employment arrangements, and the ability to make speedy responses to changing employment circumstances.

The parties also acknowledge that for any commission-based working arrangement to succeed, two otherwise disparate elements need to converge:

- the employee must be competent to perform effectively in such an environment; and
- the employer must create a working environment that is conducive to an employee being able to perform effectively.

Accordingly, the Industrial Commission has authorised the industrial organisations representing the industry to maintain a central registry of all employment arrangements for those employees who are covered by this Award.

16.1.2 *Intent*

Part 16 is intended to facilitate the existence of a central registry of individual employment arrangements in the industry. The central registry, known as the Queensland Property Industry Registry (QPIR), administered by the PSAQ and REEA, will hold an independent copy of a written employment agreement (Agreement) for every employee covered by this Award:

- to ensure that employees' entitlements to commissions and/or allowances are protected; and
- to protect employers against claims for entitlements they did not agree to.

Due to the unique, commission-based nature of the industry, the central registration of individual Agreements:

- is a necessary alternative to a prescriptive, rigid Award;
- encourages transparency and accountability on the part of employers:
 - regarding their offers of and/or agreements to provide commission entitlements; and
 - by ensuring that allowances are agreed to in writing as required by the Award; and
- enables Award compliance to be monitored, regulated and, where necessary, reported to the Industrial Commission.

For the reasons outlined above, the central registration of Agreements for all employees is the most important aspect of this Award.

16.2 **Minimum requirements**

16.2.1 *Make and register an Agreement*

The employer shall provide an Agreement and an application to QPIR to each person employed under this Award, and:

- the Agreement and the application shall both be signed and each page of the Agreement initialled by both the employer and the employee; and
- both the employer and the employee shall retain one copy of the signed and initialled Agreement and application; and
- the original Agreement and application shall be forwarded to the QPIR for registration, as set out in Parts 16 and 17.

16.2.2 *Application of clause 16.2.1*

At the time this Award takes effect, if an existing employee covered by this Award is **not** entitled to commission, clause 16.2.1 shall only apply if the employer and the employee agree that it shall apply.

16.3 **Minimum conditions**

16.3.1 *Stage 1 Employment*

Where an employee is employed under Stage 1 Employment, the Agreement reached in accordance with clause 16.2 shall:

- meet the provisions of Parts 12 and 14;
- incorporate any terms and conditions of employment in addition to the minimum entitlements prescribed by Parts 12 and 14, including:
 - the percentage, amount and/or method of calculation of any commission entitlements; and

- (ii) where possible, the circumstances under which the commission entitlements arise.

16.3.2 Stage 2 Employment

- (a) Where an employee intends to be employed under Stage 2 Employment:
 - (i) the employee shall seek approval from the QPIR to Opt Out, in accordance with Part 15; and
 - (ii) the Agreement reached in accordance with clause 16.2 shall:
 - (A) incorporate all terms and conditions of employment, including:
 - (1) which provisions of Parts 12 and/or 14 will or will not be Opted Out of;
 - (2) the percentage, amount and/or method of calculation of any commission entitlements; and
 - (3) where possible, the circumstances under which the commission entitlements arise.
 - (B) set out employment arrangements which, overall, provide at least equal benefits to the average good employee as prescribed by Parts 12 and 14.
- (b) Once an employee is approved by the QPIR to Opt Out:
 - (i) If the Agreement:
 - (A) describes the basis of remuneration as "Commission Only", none of the conditions of Part 12 will apply;
 - (B) does not describe the basis of remuneration as "Commission Only", all of the conditions of Part 12 will apply,unless the employee and the employer specifically agree otherwise.
 - (ii) The employee's Approval to Opt Out shall:
 - (A) apply for:
 - (1) 3 years; or
 - (2) if requested by the employee and the employer, such shorter period as may be determined by the QPIR.
 - (B) no longer apply once the expiry date of the employee's approval to Opt Out is reached, at which time the employee shall apply for their approval to Opt Out to be renewed, for such further period as prescribed by clause 16.3.2(b)(ii)(A).
 - (iii) Where an employee under Stage 2 Employment earns less than 125% of the rate of pay prescribed for the employee's Award classification in the first 12 months (excluding any periods of sick leave or absence from work on workers compensation) after the employee's Registered Agreement and approval to Opt Out become operative, and upon written notification to the employer and the QPIR by the employee:
 - (A) as from the date of the written notification by the employee being received by the QPIR:
 - (1) all of the conditions of Parts 12 and 14 shall apply; and
 - (2) the employee's Registered Agreement and approval to Opt Out shall terminate.
 - (B) all outstanding entitlements due under the Registered Agreement at the date of its termination shall be paid by the employer when they fall due.
- (c) If the employee's approval to Opt Out is not renewed as prescribed in clause 16.3.2(b)(ii)(B), all conditions of Parts 12 and 14 shall apply from the date after the approval to Opt Out expires.
- (d) An employee's Approval to Opt Out is not transferable from one employer to another.

16.3.3 Stage 1 and Stage 2 Employment

- (a) The employer will ensure that the Agreement and each application to the QPIR is signed and initialled by both parties.
- (b) The Agreement:
 - (i) shall cease to operate:
 - (A) 3 years from its operative date, as determined by the QPIR; or
 - (B) if requested by the employee and the employer, after such shorter period as may be determined by the QPIR; or
 - (C) if the employer and the employee mutually agree to terminate the Agreement.
 - (ii) may be re-registered in:
 - (A) its current form; or
 - (B) a re-negotiated form,at the expiry of the period determined in clause 16.3.3(b)(i)(A) or 16.3.3(b)(i)(B).
- (c) When an Agreement ceases to operate in accordance with clause 16.3.3(b)(i)(A) or 16.3.3(b)(i)(B), if the employer and the employee:
 - (i) re-register the Agreement in accordance with clause 16.3.3(b)(ii), the re-registered Agreement:
 - (A) shall cease to operate:
 - (1) after a further 3 years; or
 - (2) if requested by the employee and the employer, after such shorter period as may be determined by the QPIR, at the QPIR's sole discretion; or
 - (3) if the employer and the employee mutually agree to terminate the Agreement.
 - (B) may again be re-registered with QPIR, at the expiry of the operative period prescribed in clause 16.3.3(c)(i)(A)(1) or 16.3.3(c)(i)(A)(2).
 - (ii) decide not to re-register the Agreement in accordance with clause 16.3.3(b)(ii), the employer and the employee must register a new Agreement.
- (d) Until an Agreement is registered with the QPIR:
 - (i) the employer must pay, on a weekly basis, not less than the employee's prescribed Award rate of pay; and
 - (ii) commission shall not be offset against paid leave entitlements.

16.4 Amendments

Where the parties to a Registered Agreement agree during the life of the Agreement to:

- (a) amend the terms of employment, an amended or replacement Agreement shall:
 - (i) be prepared and signed as prescribed by clause 16.2; and
 - (ii) registered with the QPIR; and
 - (iii) conform with the requirements of this Award applicable to the existing Agreement; and
 - (iv) amend or replace the existing Agreement for the remainder of the life of the existing Agreement.
- (b) transfer employment from Stage 1 Employment to Stage 2 Employment, or vice-versa, a new Application shall be required (i.e. for the purpose of this Award, such a transfer shall not be treated as an amendment to the terms of employment).

PART 17 - REGISTRATION PROCESS

17.1 Application

Part 17 applies to all employees covered by this Award.

17.2 Registering an Agreement and/or Opting Out

17.2.1 An Application to Register an Agreement and/or Opt Out shall:

- (a) be in the prescribed form as set out in Schedule 1 to this Award;
- (b) be accompanied by, or incorporated in an Employment Agreement within 7 days of the date from which the Agreement is intended to operate and, if applicable, Opting Out is intended to commence, be forwarded by the employer to the QPIR for Registration of the Agreement and, if applicable, approval to Opt Out.

17.2.2 Where an Application to Register an Agreement and/or Opt Out is incorporated in an Employment Agreement, all elements of Schedule 1 to this Award shall be contained within the first 2 pages of the Employment Agreement, unless QPIR agrees otherwise.

17.3 Agreement Re-registration, Renewal of Approval to Opt Out

17.3.1 An application to Re-register an Agreement and/or renew an approval to Opt Out shall:

- (a) be in the form as provided by the QPIR (which may be similar to Schedule 1 to this Award);
- (b) if the employer and the employee agree to amend or replace the Registered Agreement at the time of Renewal, be accompanied by, or incorporated in an Employment Agreement;
- (c) within 7 days of the date from which the re-registered Agreement is intended to operate and, if applicable, Opting Out is intended to commence, be forwarded by the employer to the QPIR for Re-registration of the Agreement and, if applicable, Renewal of the Approval to Opt Out.

17.4 Registering Amended Terms of Employment

17.4.1 An Application to Register Amended Terms of Employment shall:

- (a) be in the prescribed form as set out in Schedule 2 to this Award;
- (b) be accompanied by:
 - (i) or incorporated in an Employment Agreement: or
 - (ii) a document that clearly outlines the amended terms of employment;
- (c) within 7 days of the date from which the amended terms of employment are intended to operate, be forwarded by the employer to the QPIR for registration.

17.5 Operative dates

17.5.1 Each application to Register an Agreement and/or Opt Out or application to Register Amended Terms of Employment shall operate from:

- (a) the earlier of the date the Agreement, the Schedule 1 or the Schedule 2 is signed by the employee or the employer; or
- (b) if there is no "date signed" on either the Agreement, the Schedule 1 or the Schedule 2, the date the Application is registered with the QPIR; or
- (c) if requested by the employee and the employer, such other date as may be determined by QPIR, at the QPIR's sole discretion.

17.5.2 Each re-registered Agreement and, if applicable, renewed approval to Opt Out, shall operate from the date the Agreement re-registration and, if applicable, Opt Out renewal fell due.

17.5.3 The date on which a Registered or Re-registered Agreement ceases to operate, and the expiry date of an approval

or renewal of Approval to Opt Out, shall be concurrent.

17.6 Investigation, alteration

17.6.1 Any Application made under clause 17 shall:

- (a) be investigated by the QPIR as the QPIR deems appropriate;
- (b) be referred, in the event that the QPIR is not satisfied that the application meets the required criteria, back to the employer:
 - (i) with suggested alterations to the application which would meet the required criteria; and
 - (ii) the employer and the employee should make such alterations as are necessary to meet the required criteria; and
 - (iii) the alterations should be signed and/or initialled by the employee and the employer; and
 - (iv) the altered application should then be immediately returned by the employer to the QPIR for registration or re-registration of the Agreement and, if applicable, approval for the employee to Opt Out. The QPIR may then:
 - (A) Register or re-register the Agreement and, if applicable, approval for the employee to Opt Out; or
 - (B) refer the application to the Industrial Commission in the event that the QPIR cannot be satisfied that the Agreement should be registered or re-registered or, if applicable, the application to Opt Out approved; or
 - (C) decide that the application still does not meet the required criteria and refer the application back to the employer and the employee for further alteration.
- (c) cease to operate if the QPIR determines that the application does not meet the necessary criteria and refuses to register the application;

17.7 Application and/or registration fees

17.7.1 Any application made under Part 17 shall be accompanied by such application and/or registration fees as agreed between REEA and the PSAQ.

17.7.2 Due to the work that is done and the expense incurred by the QPIR once it receives an application, application and/or registration fees are non-refundable, unless the QPIR, in its sole discretion, determines that there are mitigating circumstances, and decides to issue a refund.

17.7.3 By signing any application under this Award the employee hereby authorises the employer to:

- (a) pay the prescribed application and/or registration fees; and
- (b) deduct 50% of the application and/or registration fees from any monies owing to the employee.

17.7.4 The industrial organisations defined in clause 1.6 shall determine an apportionment of the application and/or registration fees, to ensure that the following administrative expenses are able to be met and services provided:

- (a) consultation with employees and employers with a view to the establishment and/or renegotiation of Agreements, as per clause 2.1;
- (b) provide Field Officer services to the Industry to educate and update both employees and employers with respect to award provisions, employment agreement registration, and all related matters in support of clause 2.1 and Parts 16 and 17;
- (c) registration of completed applications;
- (d) review of applications submitted to the QPIR for registration and/or approval;
- (e) notification of registration of completed applications to employees and/or employers;
- (f) database entry and filing of completed applications;

- (g) database entry and filing of applications to Amend Terms of Employment during the period of the Agreement's operation;
- (h) notification to employees and/or employers of Re-registration of Agreements and/or renewal of approvals to Opt Out;
- (i) archiving of applications for 6 years after the expiry of their attached registered Agreements;
- (j) ongoing provision of copies of completed applications at the request of employees and/or employers;
- (k) ongoing provision of true copies of applications to industrial tribunals, courts, etc., as the case may be; and
- (l) assistance to employees and employers in settlement of disputes, as outlined in clause 3.1.

17.8 Additional employer responsibilities

17.8.1 The employer shall be responsible to ensure that all new applications, renewals and/or Re-registrations are attended to by the prescribed date.

17.8.2 This responsibility extends to ensuring that the employer's current postal and/or electronic mail information is provided to the QPIR, in order to facilitate communications between the employer and the QPIR.

17.9 Notification of Registrations and Approvals

17.9.1 A decision on the approval and/or registration of any Application under this Part by the QPIR shall be made and notified to the parties, within 21 days of the date the Application is received by the QPIR.

17.10 Review of Decisions

17.10.1 Any person aggrieved by a decision of the QPIR to withhold approval and/or registration of any Application under this Part may seek a review of that decision, within 21 days of receiving advice from the QPIR, by the Industrial Commission.

17.11 Record Keeping

17.11.1 A record of all completed applications under Part 17 shall be kept in a register to be maintained by the QPIR.

17.11.2 A copy of all completed applications under Part 17 shall be held by the QPIR in printed form and electronically.

17.12 Copies of completed applications to Industrial Registry

17.12.1 An electronic copy of all completed Applications under this Part shall be forwarded by the QPIR to the Queensland Industrial Registry, on a calendar-monthly basis, if practicable.

17.12.2 The lodgement of an electronic copy of each Agreement with the Industrial Registry serves to make each Agreement a Schedule to this Award.

PART 18 - STATUS OF REGISTERED AGREEMENTS

18.1 Generally

18.1.1 The status of a Registered Agreement is as follows:

- (a) Those provisions contained in a Registered Agreement, but which are outside of matters covered by this Award, operate independently of any registration, expiry, or otherwise of that Agreement.
- (b) After a Registered Agreement has ceased to operate under the terms of this Award:
 - (i) commission entitlements owing to the employee for work done by the employee before the date the Registered Agreement ceased to operate shall be payable to the employee as though the Registered Agreement were still in operation;
 - (ii) any other commission entitlements prescribed by the Registered Agreement cease to exist;
 - (iii) commission entitlements earned by the employee for work done by the employee after the date the Registered Agreement ceased to operate:

- (A) do not arise out of the Agreement;
- (B) are deemed to be paid in addition to any entitlement under Parts 12 and 14 of the Award; and
- (iv) when commission entitlements are earned by the employee for work done after the date the Registered Agreement ceased to operate, the employer may not offset commission against wages and/or leave entitlements paid to the employee.

18.2 Existing Registered Agreements

- (a) Registered Agreements which were in force, prior to the commencement of this Award, under the previous Property Sales Award Queensland - State, shall expire in accordance with the provisions of the previous Award.
- (b) Once a Registered Agreement has expired in accordance with the provisions of the previous Award, the parties shall enter into, and register, a new Agreement, in accordance with the provisions of this Award.
- (c) The PSAQ is authorised to transfer responsibility for the storage and registration of existing registered agreements to QPIR, if the PSAQ and REEA agree that such a transfer should occur.

18.3 Transmission of business

Where a business is transmitted from one employer to another employer any existing registered Agreement/s between the former employer and employee/s of that employer shall remain in force between the employees whose services are engaged by the new employer, unless those parties agree that different conditions are to apply, in which case new Agreements shall be registered, in accordance with the provisions of this Award.

18.4 Termination of employment

Registered Agreements are not transferable other than in circumstances outlined in clause 18.3. Where a termination of employment occurs in other circumstances, any existing Registered Agreement shall cease to operate, other than to the extent of any:

- (a) entitlements owing to the employee at the time of termination; and
- (b) commission entitlements still outstanding to the employee after employment is terminated.

PART 19 - THE QPIR'S DISCRETIONARY POWERS, ETC.

19.1 Discretionary Powers

- (a) The QPIR is authorised to exercise discretion with respect to:
 - (i) approving applications to Opt Out that do not specifically meet the criteria outlined in Part 15; and
 - (ii) the operative date and/or the term of Registered or Re-registered Agreements and approvals or renewal of Approvals to Opt Out.
- (b) Such discretion may be applied:
 - (i) for administrative purposes (i.e. to ensure concurrency of the expiry dates for Agreements and/or approvals to Opt Out within a particular workplace); and
 - (ii) for such other purpose as the QPIR deems reasonable.

Example 1: A commission-only salesperson may not meet the award definition of part-time employment and has not met the 125% income threshold when an Approval to Opt Out falls due. This may be because of geographic location, or because they are employed to provide real estate services to a particular niche market.

*The employee can clearly demonstrate that their employment is less than what a reasonable person would see as full-time, they are satisfied with the remuneration they are receiving for the work they are performing, and they not being financially disadvantaged by their arrangements.
In this case, it may be seen as reasonable to approve their continued employment on a commission-only basis.*

Example 2: An employer may have overlooked making a new application or a renewal within the prescribed period.

The employer and the employee subsequently agree on a retrospective operative date for an Agreement and/or Application, and request that the QPIR approve operative date/s in accordance with the parties' agreement.

Provided that there is genuine agreement between the parties, it should be seen as reasonable that the QPIR be free to accommodate the parties' request.

19.2 Authority

Notwithstanding the failure of an employer to forward an Application made under Part 17 within the prescribed 7 day period, the QPIR is authorised to:

- (a) register an Agreement;
- (b) approve an application to opt out;
- (c) re-register an Agreement;
- (d) approve renewal of an application to opt out;
- (e) register an amended Agreement;
- (f) determine such operative date as the QPIR deems reasonable,

provided that the QPIR is satisfied that both parties are willing for the Application/s to proceed.

19.3 Responsibilities

19.3.1 The primary purpose of the agreement registration process is to independently record whatever agreement regarding employment arrangements are made between the employer and the employee, regardless of the enforceability or otherwise of such arrangements.

The QPIR's responsibility is, having received an application, to ensure that a copy of the application is, if possible, registered.

19.3.2 Accordingly, neither the QPIR nor the PSAQ or REEA is responsible:

- (a) for the content of any Agreement;
- (b) for determining the enforceability or otherwise of any particular part of any Agreement;
- (c) for reviewing any Agreement;
- (d) for ensuring that an application or Agreement is correctly signed or dated;
- (e) for determining whether an applicant is or is not covered by this Award.

19.3.3 However, if the QPIR, the PSAQ or REEA choose to:

- (a) check the content of any Agreement;
- (b) to try and determine the enforceability or otherwise of any particular part of any Agreement;
- (c) review any Agreement;
- (d) ensure that an application and/or Agreement is correctly signed or dated;
- (e) determine whether or not an applicant is or is not covered by the Award,

and in the process of doing this, determine that an application and/or Agreement:

- (a) cannot or should not be registered;
- (b) decide that the application and/or Agreement requires or would benefit from modification by the parties,

they are authorised to make such decisions and/or determinations.

PART 20 - NON-COMPLIANCE

20.1 Employer's failure to comply

20.1.1 An employer's failure to comply with the registration and approval requirements of Parts 16 and/or 17 shall:

- (a) prevent the employer from offsetting commission against wages and/or paid leave entitlements; and
- (b) require the employer to meet all of the requirements of Stage 1 Employment, in addition to any commissions paid to the employee.

**Property Management Award Queensland - State 2005 and Property Sales Award Queensland - State 2005
SCHEDULE 1 - Application to Register Agreement AND/OR Opt Out**

Parties			
Employer Details		Employee Details	
Please PRINT clearly:		Please PRINT clearly:	
Employer (Personal) Name	_____	First/Middle/Last Names	_____
Company Name	_____	Home Address	_____
ABN	_____		_____
Employer Trading Name	_____		Postcode
	_____		_____
Office Address	_____	Phone Numbers	Please PRINT clearly:
	_____	Employee's Mobile Phone	_____
	_____	Employee's Home Phone	_____
	Postcode	Office Phone	_____
	_____		_____
Office Admin eMail Address	_____	Office Fax	_____
	_____		_____

<p>Which Award? Tick ONE box only:</p> <p><input type="checkbox"/> Property Management Award Queensland - State 2005.</p> <p><input type="checkbox"/> Property Sales Award Queensland - State 2005.</p>	<p>Opting Out - "No Disadvantage" Assessment This section is to be completed only by those who want to Opt Out The Employee:</p> <p><input type="checkbox"/> has held a Real Estate Agent's Licence for at least 2 continuous years (a copy of the current Licence is attached); OR</p> <p><input type="checkbox"/> has at least 6 months' full-time equivalent recent experience within the real estate industry, and has earned in excess of 125% of the rate of pay prescribed for their Award classification in the past months/years, with employer name ; OR</p> <p><input type="checkbox"/> can demonstrate a personal work history (as per attached written explanation, signed by the employee), which would provide a reasonable expectation of an earning capacity of at least 125% of the rate of pay prescribed for their Award classification; OR</p> <p><input type="checkbox"/> is guaranteed by the Employer to earn at least 125% of the rate of pay prescribed for their Award classification during the next year (or part thereof)</p>
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<p>What are the Employment Arrangements? Tick ONE box only:</p> <p><input type="checkbox"/> All provisions of Parts 12 and 14 of the Award apply; OR</p> <p><input type="checkbox"/> The employee wants to Opt Out of one or more provisions of Parts 12 and/ or 14 of the Award (complete "No Disadvantage" Assessment section). The employee's entitlement to commission earnings (or otherwise), and/or those Award provisions that have</p>	
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<p>Agreement Registration Fee</p> <p><input type="checkbox"/> The non-refundable Agreement Registration Fee (\$132.00 including GST), is enclosed. [This fee is to be shared equally between the employer and the employee.]</p>	
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Signatures			
The Parties hereby apply to Register the attached Employment Agreement with the QPIR, and/or apply for the Employee to Opt Out of one or more conditions of Parts 12 and/or 14 of the Award under which this Application is made. The Parties acknowledge that they have read, and understand, the Award, and also agree that the			
Preferred Date Agreement	Operative To (maximum 3	Preferred Date Agreement	Operative To (maximum 3
_____	_____	_____	_____
Employee's Signature	_____	Employer's Signature	_____
Date Signed	_____	Date Signed	_____
Employee's Name	Witness'	Employer's Name	Witness' Name
_____	_____	_____	_____
Employee's Signature	_____	Employer's Signature	Witness' Signature
_____	_____	_____	_____

Posting

Send by mail:

- This Application; plus
- One** copy of the Employment Agreement; plus
- A non-refundable **cheque** (payable to "QPIR") for the Agreement Registration Fee.

QPIR
PO Box 9999
ZXXXZXXXZXXX QLD 4999

OFFICE USE

Employee \$..... E#
 R#
 Office \$ R#

QPIR to Sign

The attached Agreement is **hereby registered**. The Agreement (Registration No.) shall operate from, and shall continue to operate until, unless terminated earlier by the Parties; **AND/OR**

The employee is **approved to Opt Out**. The Approval to Opt Out shall operate from and shall continue to operate until, unless terminated earlier by the Parties.

QPIR

Date Signed

Property Management Award Queensland - State 2005 and Property Sales Award Queensland - State 2005
SCHEDULE 2 - APPLICATION TO REGISTER AMENDED Terms of Employment

Parties			
Employer Details Please PRINT clearly:		Employee Details Please PRINT clearly:	
Employer (Personal) Name	_____	First/Middle/Last Name	_____
Company Name	_____	Home Address	_____
ABN	_____		_____
Employer Trading Name	_____		Postcode _____
Office Address	_____	Phone Numbers Please PRINT clearly:	
	_____	Employee's Mobile Phone	_____
	_____	Employee's Home Phone	_____
	Postcode _____	Office Phone	_____
Office Admin eMail Address	_____	Office Fax	_____

Existing Agreement Registration Number:

... .. - -

Date Existing Agreement Registration Operative To:

... .. / /

Registration Fee - Amended Agreement

The non-refundable Registration Fee for an Amended Agreement (\$66.00 including GST), is enclosed.
 [This fee is to be shared equally between the employer and the employee, except where the

Signatures

The Parties hereby apply to Register the attached Amended Agreement with the QPIR. The Parties acknowledge that they have read and understand the Award and agree that the Agreement shall cease to operate from the

Preferred Date Amendment Operative _____

Employee's Signature _____ Employer's Signature _____

Date Signed _____ Date Signed _____

Employee's Name	Witness'	Employer's Name	Witness'
Employee's Signature	Witness'	Employer's Signature	Witness'

Posting

Send by mail:

- This Application; plus
- One** copy of the amended Employment Agreement; plus
- A non-refundable **cheque** (payable to "QPIR") for the Agreement Registration Fee.

QPIR
PO Box 9999
ZXZXZXZXZXZX QLD 4999

OFFICE USE

Dated 18 November 2005
By the Commission,
[L.S.] G.D. SAVILL,
Industrial Registrar.

QPIR to Sign

The attached amended Agreement is **hereby registered**. The amended Agreement (Registration No.) shall operate from, and shall continue to operate until, unless terminated earlier by the Parties.

QPIR _____ **Date Signed** _____

Operative Date: 30 November 2005
Repeal and New Award - Property Management Award
Queensland - State 2005
Released: 5 December 2005