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## **REAL ESTATE INSTITUTE OF AUSTRALIA**

### **SUBMISSION TO THE SENATE EDUCATION, EMPLOYMENT AND WORKPLACE RELATIONS LEGISLATION COMMITTEE'S INQUIRY INTO THE FAIR WORK AMENDMENT BILL 2013**

#### **BACKGROUND**

The REIA is the peak national association for the real estate profession in Australia.

The REIA's members are the State and Territory Real Estate Institutes, through which around 75% of real estate agencies are collectively represented. The 2011 Census records the Rental, Hiring and Real Estate Services Industry employment sitting at a total of 117,880. By occupation the key data recorded by ABS Census were 64,699 Business Brokers, Property Managers, Principals, Real Estate Agents and Representatives.

The REIA represents an important element of the broader property and construction sector which together makes a significant contribution to Australia's social climate and economic development. Property contributes \$300 billion annually in economic activity.

Importantly, REIA represents an integral element of the small business sector. According to the ABS statistics, 73% of real estate agency businesses employ fewer than 10 employees (over 50% of this portion employed fewer than 5 employees). Only 0.6% of businesses employ 50 or more persons.

#### **INTRODUCTION**

REIA thanks the Committee for the opportunity to comment on particular elements of the Bill and its likely effects on the real estate industry.

REIA is responding to the Senate Education, Employment and Workplace Relations Committee's request for written submissions on the Fair Work Amendment Bill 2013 (the Bill) which is currently before Parliament. The Bill will implement several of the Fair Work Review Panel's (Panel) recommendations, following the post-implementation review of the *Fair Work Act 2009*. However, a number of measures that the Government wishes to implement are not specifically recommended by the Panel.

REIA has restricted its comments to the specific area relating to Schedule 2 of the Bill - the need to provide additional remuneration for employees working overtime; unsocial, irregular or unpredictable hours; working on weekends or public holidays; or working shifts - as this potentially has the greatest impact on the viability of real estate businesses and the service they provide.

Whilst REIA has not commented on other aspects covered by the Bill this does not mean that REIA supports the proposed changes. REIA has consulted the Real Estate Employers' Federation of New South Wales (REEF) on the matters before the Committee and is aware that REEF is addressing matters other than those relating to Schedule 2 and supports their submission.

## **DISCUSSION**

Item 1 of Schedule 2 of the Bill would insert a new s134 (1)(da) into the Act, which amends the modern awards objective. This paragraph provides that the Fair Work Commission (Commission) must consider the need to provide additional remuneration for employees working: overtime; unsocial, irregular or unpredictable hours; on weekends or public holidays; or working shifts.

Prior to the Prime Minister's announcement on 14th March, there has been no consultation with the business community about the industrial, financial and employment effects that might be imposed on business as a result of such legislative change, particularly in industries covered by modern awards that do not currently contain penalty rates for weekend work. The Real Estate Industry Award 2010 (Award) is such an award. This lack of consultation with representatives of the business community is disappointing given the impact of the Bill on business.

Equally disturbing is that no objective assessment has been made of the costs and benefits of the amendments. A detailed Regulatory Impact Statement should have been prepared. The Explanatory Memorandum for the Bill at page 13 indicates that the financial impact of the Bill will be announced as part of the 2013-2014 Budget. This step is too late.

The enactment of Schedule 2 will result in the mandatory insertion of penalty rates into awards that do not presently have such penalty rates regimes for weekend and evening work. This is particularly unfair where the exclusion of penalty rates from an award was both deliberate and the result of agreement between employee and employer representatives after consideration of the particular features of the particular industry.

REIA is concerned that Schedule 2 may result in applications by employees and/or unions effectively asking the Commission to impose penalty rates from other awards into the Award, notwithstanding that those penalty rates were developed as a result of the specific features of the industry/occupation to which those awards apply.

Modern awards are generally based on a principal pre-modern Federal award or an amalgam of conditions from various State/Federal awards. This is a result of recognition by the Commission during the award modernisation process about the importance of award

history. Each existing modern award in its current form should be seen as being a precedent.

The real estate industry Award came into existence during the award modernisation process. Except in relation to the Clerical & Salaried Staffs' (Agribusiness) Award 1999, there was no Federal award in the real estate industry prior to the completion of the award modernisation process. The Award adopted provisions from the NSW, QLD, SA and TAS state based awards none of which contained a penalty rate in relation to work performed during “unsocial” hours or work performed on the weekend. Further these state awards did not contain a spread of hours during which “ordinary hours” must be worked.

The following table shows that nearly two-thirds of agents work 40 or more hours a week with almost a half of these working 49 or more hours per week.

**Distribution of the Number of Hours per Week Worked by Real Estate Agents (Expressed as a Percentage of the Total)**

		NSW	VIC	QLD	SA	WA	TAS	NT	ACT	AUST
Real Estate Sales Agents	None	2.7	2.8	2.2	3.1	3.4	3.3	6.1	3.5	2.7
	1-15 hrs	5.1	4.2	5.2	6.2	7.4	6.6	3.8	5.0	5.3
	16-24 hrs	5.9	5.0	5.2	6.1	7.2	4.3	3.3	4.2	5.6
	25-34 hrs	6.2	6.2	7.4	7.5	9.2	6.7	4.8	6.5	7.0
	35-39 hrs	14.2	11.6	13.5	15.2	14.3	17.5	16.3	14.5	13.6
	40 hrs	23.3	20.2	20.4	18.1	21.8	18.3	19.9	19.6	21.2
	41-48 hrs	13.3	14.3	11.9	13.2	10.7	15.0	12.8	15.4	12.9
	49 hrs and over	27.6	34.3	33.1	29.8	24.9	27.4	31.6	30.1	30.3
	Not stated	1.5	1.5	1.0	0.7	1.3	0.9	1.3	1.2	1.3
	TOTAL	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

Source: 2011 Census

Employees in the real estate industry require flexibility in their working hours and appreciate that evening and weekend work is required to meet clients need. This is a distinguishing characteristic of the real estate industry. It is recognised and understood, that their hours are dictated by the convenience of their clients and home seekers, whether to rent or to buy. A survey undertaken by REEF shows that that over 98% of respondents provides real estate services on a Saturday – the vast bulk of which (75%) operate for the entire day up to 5.00pm. Saturday is considered a vitally important time to do business. 92% of respondents indicated that Saturday is an important time to conduct open homes. Importantly, Saturday is a convenient time for the general public to attend to their real estate needs.

The REEF Survey further showed that approximately 50% of respondents have at least one employee working before 7.00am and/or after 7.00pm. Early morning or evenings are a convenient time for home owners to meet with an agent to discuss the sale or management of the owner’s property.

The state awards recognised the need for employees to have this flexibility to work hours and days of their choosing without the application of a penalty rate to work performed at particular times of the day or week.

The Award was the product of a consent position between the unions and employer representatives in the industry. Consistent with all the state awards that operated within the industry, the modern Award made by the then Australian Industrial Relations Commission in December 2009, did not contain penalty rates for work performed during unsocial hours or on the weekend. It was an award made by the industry for the industry. The flexibility it provides in relation to hours of work is a reflection of its history as well as the characteristics of the industry.

There is no evidence of the need for change in this regard. Indeed any change imposed by way of Schedule 2 would add to the cost impost and be unwarranted.

If passed, the legislation will have serious adverse effect on the real estate industry. Not only would costs be driven up but fees to clients would rise. This will have flow on affects to consumers through higher rents for example and the inconvenience and cost associated with the possible push by agencies to have business such as open house inspections and auctions conducted during normal weekday working hours. The introduction of penalty rates for evening or weekend work for sales and property management staff will require a complete rethink on how real estate agencies conduct their business.

Almost 70% of respondents to the REEF survey indicated that the introduction of penalty rates would result in fewer employees being rostered to work on the weekend or lead to a reduction in the hours that staff work on the weekends (61%). 82% of respondents indicated that the introduction of penalty rates for work performed on weekends for operational employees, would potentially threaten the financial viability of the business. It is anticipated the economic impacts on both businesses and employees of introducing penalty rates to an industry currently exempt from such rates, will be significant.

A report by Macquarie Relationship Banking, *2012 Residential Real Estate Benchmarking Report*, shows that 55% of an agencies cost are salary, wages and commissions. It is not difficult to gauge the impact that the proposed amendments would have on an agencies costs and financial viability if the costs were not passed on.

## **RECOMMENDATIONS**

***The REIA recommends that***

- ***The Senate Education, Employment and Workplace Relations Committee recommend to the Senate that it not pass this Bill***
- ***At a minimum the Bill should be deferred until a comprehensive and quantified assessment of the impact of the proposed changes is undertaken.***

### **PREPARED BY**

Real Estate Institute of Australia

April 2013