



FACT SHEET

The Australian Fair Pay Commission (Commission) has determined a new piece rate Australian Pay and Classification Scale (Pay Scale) for the real estate sector. The Real Estate Agents' (Commission Only) Australian Pay and Classification Scale¹ allows certain employees engaged as real estate agents/salespersons to agree to be paid by commission-only arrangements instead of being paid by hourly rates of pay.

Who does the new Pay Scale apply to?

In order to be covered by the Real Estate Agents' (Commission Only) Australian Pay and Classification Scale, an employee must:

- be covered by the federal workplace relations system;² and
- be employed as a real estate agent/salesperson undertaking sales transactions involving an agency relationship.

The Commission is aware that there are factors outside the control of a real estate sales employee in obtaining sales, and that a commission-only arrangement may be unreasonably used by some employers, particularly in relation to the remuneration of inexperienced recruits.

Therefore, in addition to the wage guarantee required by the *Workplace Relations Act 1996*, the new Pay Scale is only available as an option for employees who have demonstrated sufficient experience and track record to earn commissions in excess of the otherwise applicable minimum basic periodic rates of pay.

The new Pay Scale will be limited to employees who:

- hold the relevant qualifications and/or are properly registered as real estate agents/salespersons; and
- have been performing work as real estate agents/salespersons for at least 12 months; and
- agree in writing to be paid by commission-only; and
- have shown that they are capable, based on their previous sales performance, of earning 'sufficient income' under the commission-only arrangements that are set out in the Pay Scale.

Sufficient income is demonstrated where:

IF the commission only arrangements had applied to the employee in any single 12 month period in the five years before entering into the commission-only agreement,

THEN the employee would have earned at least the amount they would have received under their current Pay Scale³ for the 12 month period immediately before entering the commission-only agreement.

An example of how these calculations can be made is attached.

¹ [2007] APCS 3.

² For information on who is covered by the federal workplace relations system, see <https://www.workchoices.gov.au/ourplan/publications/html/WorkChoicesandwhoiscovered.htm>.

³ If the employee is not covered by a Pay Scale (eg. was award free prior to 27 March 2006) they are required to paid, at a minimum, the equivalent of the standard Federal Minimum Wage for the 12 month period immediately before entering into the commission-only agreement

Where an employee does not agree – and agree in writing – to be employed as a commission-only real estate sales person, they will retain all relevant employment entitlements and **not** be affected by the determination of the new Pay Scale.⁴

The new Pay Scale does not cover employees:

- who are under 21 years of age; or
- who are engaged as casual employees; or
- to whom training arrangements apply.

How are rates of pay calculated under the new Pay Scale?

The following demonstrates how calculations are made where one or more employees are involved in a property sale.

One employee selling a property

A single employee covered by the Pay Scale responsible for selling a property is entitled to at least 35% of the employer's net commission for the completed sales transaction.

Employer's net commission means the employer's gross commission minus:

- (i) any portion of the employer's gross commission paid to a conjunction agent; and
- (ii) any applicable GST on the employer's gross commission; and
- (iii) 10% of the amount remaining after the above amounts have been subtracted.

Two or more employees working together to sell a property

Where two or more employees are involved in selling a property:

- each employee is required to make an agreement with their employer, in writing, that states the proportion of the employer's net commission that they will receive if the sale proceeds to completion; and
- the total of all the proportions in the agreement(s) must add up to at least 35% of the employer's net commission.

Need further information?

If you would like more information on wage rates, call the Workplace Infoline on 1300 363 264.

If you would like to view the Commission's decision in full you can visit the Australian Fair Pay Commission website at www.fairpay.gov.au.

⁴ Real estate agents are generally covered by a Pay Scale and entitled to a basic periodic rate of pay. If an employee is not covered by a Pay Scale or other relevant instrument (eg. the employee was award free prior to 27 March 2006) they are entitled to be paid the standard Federal Minimum Wage.

Example

Zac has been working as a licensed real estate salesperson since 2003. He has recently taken up a position with XYZ Real Estate Pty Ltd where he and his new employer are seeking to establish commission-only pay arrangements.

On 5 December 2007, Zac and his new employer signed an agreement stating that Zac agrees to be paid on a commission-only basis and to be classified as a 'commission only real estate salesperson undertaking sales transactions involving an agency relationship'.

Before 5 December 2007, Zac was covered by the Pay Scale derived from the Real Estate Industry (State) Award 2003 [NSW]. His guaranteed rate of pay under that Pay Scale was \$14.65 per hour. This rate was increased from \$14.38 per hour on 1 October 2007.⁵

To determine whether Zac satisfies the necessary income requirements, Zac and his employer need to examine Zac's previous working and sales records in order to calculate:

1. the amount of pay Zac would have earned under the Pay Scale derived from the Real Estate Industry (State) Award 2003 [NSW] in the 12 month period immediately prior to 5 December 2007; and
2. the amount of pay Zac would have earned in a chosen 12 month period in the past five years had the commission-only arrangements set out in the Real Estate Agents' (Commission Only) Australian Pay and Classification Scale applied.

Zac and his employer made the following calculations:

1. $(43 \text{ weeks} \times 38 \text{ hours per week} \times \$14.38 \text{ per hour}) + (9 \text{ weeks} \times 38 \text{ hours per week} \times \$14.65 \text{ per hour}) = \mathbf{\$28,507.22}$ for the 12 month period immediately prior to 5 December 2007.

Because Zac was responsible for selling 14 properties in the 12 month period from February 2004 to February 2005 and the average *employer's net commission* that resulted from those sales was \$7,100;

2. $14 \text{ completed sales transactions} \times \$7,100 \text{ employer's net commission} \times 35\% \text{ commission rate} = \mathbf{\$34,790.00}$ for the 12 month period from February 2004 to February 2005.

Because the amount that results from calculation 2 is higher than the amount that results from calculation 1, Zac satisfies the necessary income requirements to be classified as a 'commission only real estate salesperson undertaking sales transactions involving an agency relationship'.

Therefore, Zac is covered by the Real Estate Agents' (Commission Only) Australian Pay and Classification Scale from 5 December 2007 and is guaranteed to be paid the commission-only rates of pay that are set out in that Pay Scale.

⁵ If you require information regarding past and current rates of pay for employees engaged as real estate agents in order to satisfy the necessary income requirements mentioned above, contact the Workplace Infoline on 1300 363 264.