



## PSAQ Membership Policy

### Eligibility

Under the PSAQ Constitution and Rules “The persons eligible for Membership of the Association shall be Property Salespeople and/or Real Estate Salespeople<sup>1</sup> who are employed in that capacity in the State of Queensland, and any person so employed may apply for Membership of the Association”.

### Membership benefits

Key PSAQ membership benefits include:

1. Assistance with the negotiation of employment agreements between employer and employee
2. Priority access to telephone advice by PSAQ officials with comprehensive knowledge of the relevant employment legislation
3. Representation:
  - a) to recover award or National Employment Standards (NES) entitlements
  - b) to recover outstanding commissions, bonuses or incentive payments
  - c) in cases of alleged wrongful dismissal.

### Representation process

Representation will normally be conducted in two stages:

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

### Conditions of representation

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

1. Representation is limited to:
  - a) matters which are the subject of the NES or the Real Estate Industry Award 2010 (award); or
  - b) cases of alleged wrongful dismissal, pursuant to the *Fair Work Act 2009*.
2. The PSAQ does not assist in internal disputes between employees
3. The PSAQ does not assist in matters that relate to breaches or alleged breaches of the *Property Agents and Motor Dealers Act 2000*
4. The PSAQ has no obligation to represent a member in any matter which arises from or during any period when they were unfinancial
5. The member or intending member must notify the PSAQ Secretary, in writing, within fourteen (14) days of when the member first becomes aware of any dispute which may require representation of that person by the PSAQ

<sup>1</sup> Under the *Property Agents and Motor Dealers Act 2000*, both sales and property management employees are deemed to be real estate salespeople.

6. Any such notification made to the PSAQ Secretary will be confidential between the PSAQ (including its industrial advocate or legal advisors) and its member, until such time as the member authorises the PSAQ, either verbally or in writing, to take the matter further
7. The PSAQ Secretary and the PSAQ Committee of Management expressly reserve the right to determine what means<sup>2</sup> and level of representation the PSAQ will provide to the member
8. Such representation will be offered to a member based on the relative merit of each individual case, such merit to be assessed in the first instance by the PSAQ Secretary
9. If the PSAQ Secretary's decision is contested by the member, the member may appeal such decision to the PSAQ Committee of Management, in accordance with the Constitution and Rules of the PSAQ
10. In assessing the merit of any claim, the PSAQ Secretary will normally start by addressing the question "if this matter were to end up in court, is there sufficient evidence<sup>3</sup> to support the claim?"
11. Consequently, if a member wants to recover unpaid commission, bonus or incentive payment the member must be able to produce a written agreement<sup>4</sup> (or other acceptable evidence) of an entitlement to commission, bonus or incentive payment entitlement
12. Such agreement or evidence must outline the member's entitlement(s) for the period pertaining to the matter(s) in dispute
13. If a written agreement (or evidence that the member has requested an agreement from their employer) doesn't exist the PSAQ may, in its discretion, elect only to assist in the recovery of award or NES entitlements.

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

### **Statutory limits on claims**

Members are advised that there is:

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

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

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<sup>2</sup> The PSAQ has various means of representation available to it – providing advice to the member without having contact with the employer, direct mediation between the parties, mediation via a franchise or marketing group to which the employer belongs, and the processes available through Fair Work Australia, an industrial court or an industrial magistrates court.

<sup>3</sup> For any commission, bonus or incentive payment claim to succeed in court the claimant must be able to prove the entitlement. Verbal arrangements are usually worthless.

<sup>4</sup> The best starting point for evidence of such entitlement is a written agreement registered in accordance with the Real Estate Industry Award 2010.

## **Fees payable**

In any matter where the PSAQ Secretary and/or the PSAQ Committee of Management agree to represent a member, industrial advocacy and/or legal expenses may be incurred.

### **Legal/industrial advocate fees**

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

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

Should such agreement not be reached, the PSAQ Secretary and/or the PSAQ Committee of Management reserve the right to deny further representation to the member.

### **Offsetting costs**

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

## **Notes**

### **Copies of documents**

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

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

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