

# Workplace Relations in Queensland's Real Estate Industry

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## Workplace Relations in Queensland's Real Estate Industry

- Presented by Barry Gannon:
  - State & Federal Secretary, Property Sales Association of Queensland (PSAQ).
- Assisted by PSAQ Vice Presidents:
  - Tom French (Member Services).
  - Andrew Ross (ICT & Special Projects).
- A History
- The Present Situation
- The Future?

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## Origins

- The PSAQ was registered on 9/4/1974, in response to an attempted "hostile" takeover of the industry by outside unions, but it eventually became dormant.
- As a result, when a similarly "hostile" takeover attempt was made in 1994, the PSAQ was no longer operating.
- It was reinvigorated in 1994/1995, a new committee of management was elected and, after protracted legal battles, it eventually defeated the threatened takeover.

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## First-Ever Award - 1997

- When the attempted takeover was being fought, the PSAQ was advised that, in the absence of an industry award, another takeover attempt could be made in the near future.
- As a result, the PSAQ Committee of Management made a decision to introduce an award that suited the needs of the industry.
- This award was developed during 1995/1996, and became operative on 1 July 1997.
- It was also acknowledged that a traineeship for real estate salespeople & property management employees should be introduced. This commenced in September 1997.

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## Key Characteristics of Award

- Three key characteristics were identified as being necessary in an award for the real estate industry:
  - Commission-only employment to be preserved for salespeople who had proven competent to be paid in this manner.
  - An income safety-net for salespeople whose income-earning potential hadn't yet been proven.
  - A mechanism to ensure that employees' promised commission entitlements were recorded and enforceable.

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## First-Ever Award for Property Management Employees - 2002

- The 1997 Property Sales award covered both sales and property management employees (due to the latter being required to be registered as salespeople).
- However the PSAQ soon realised that employment arrangements for property management employees needed a special focus.
- As a result, and after extensive consultation across the industry, the first ever property management award was introduced, in April 2002.
- Amongst other things, this new award introduced regulated hours of work, and car & mobile telephone allowances.

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## Australian Workplace Agreements

- The ability to make Australian Workplace Agreements (AWAs) was established by the Federal Government in 1996, and Queensland Workplace Agreements (QWAs) not long afterwards.
- In contrast with common-law employment contracts, AWAs & QWAs allowed employees to agree to be paid "below the minimum standard".
- One of the "unintended consequences" of AWAs & QWAs was that they allowed employees to be paid commission-only without their competence to earn commission being proven.
- QWAs were made inoperative by Queensland Labor in the early 2000s, but from about 2002/2003 onwards, AWAs became more prominent in Queensland.
- "Underpayment" complaints received by the PSAQ increased significantly, but the Federal Government agency responsible for approving AWAs was not prepared to change its approval processes.
- Consequently, many employees were significantly disadvantaged by AWAs.

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## 2005 – WorkChoices

- In 2005, the PSAQ finalised two new awards, which introduced the Queensland Property Industry Registry – QPIR – for registration of employment agreements.
- In the same year, the re-elected Federal Government, now with control of the Senate, announced its intention to legislate for (what turned out to be) a "hostile" takeover of workplace relations from the States.
- As a consequence, the "WorkChoices" legislation was approved in late 2005, and commenced operation on 27 March 2006.
- WorkChoices applied to trading corporations only, and did not affect sole traders or partnerships.
- The WorkChoices legislation was extremely rushed, poorly thought out, exceptionally badly drafted and had the most devastating effect on, of all industries, the real estate industry.

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## 2006 – Initial Effects of WorkChoices

- WorkChoices "imported" existing State awards as National Agreements Preserving State Awards (NAPSAs), initially to run for three years (this period was subsequently extended by Federal Labor).
- In areas where there was a conflict between WorkChoices and a particular NAPSA, WorkChoices prevailed.
- Amongst other things, this meant that commission-only employment, as we knew it, was no longer permissible for new employees.
- With ongoing queries from members about commission-only employment, the PSAQ commenced discussion with interstate real estate unions & the real estate employer associations.
- At the instigation of the PSAQ, this led to a meeting between all relevant associations in Sydney in early 2007, at which time it was agreed that the overriding priority was to seek the return of commission-only employment as an option for the industry.

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## 2006 – Further Effects of WorkChoices

- WorkChoices affected not only commission-only employment.
- It also had the following implications:
  - Regulated hours of work.
  - Mandatory recording of time worked.
  - Mandatory paid leave.
  - The types of new agreements that could be made was unclear.
  - There was uncertainty if existing agreements could continue to operate, and if so, to what extent.

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## 2007 – Commission-Only Employment

- The early 2007 meeting of the Industrial associations resolved to approach the Australian Fair Pay Commission (AFPC) to seek an Australian Pay & Classification Scale (Pay Scale) for commission-only employment for real estate salespeople.
- The associations adopted the name Real Estate Industrial Group (REIG) in order to take a unified approach to matters industrial.
- The AFPC accepted REIG as being broadly representative of the real estate industry, and agreed to work towards creating a Commission-Only Pay Scale.
- In consultation with the REIA and major franchise/marketing groups, REIG developed a comprehensive submission in support of commission-only employment. This submission was then put to, and accepted by, the AFPC.
- After working through the appropriate legal requirements, the Real Estate Agents' Commission-Only Pay Scale became operative on 1 October 2007.

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## 2007 – No Disadvantage Test for AWAs

- WorkChoices had one positive for the real estate industry – new AWAs were no longer as detrimental to real estate salespeople as had been the case historically.
- However, political pressure regarding AWAs generally led to the introduction of a "No Disadvantage Test" for AWAs, in the latter part of 2007.
- The result of this misnomer in legislative drafting (a bit like the name "WorkChoices") meant that there was now the potential for property management employees in particular to be disadvantaged by the use of AWAs.
- Again REIG considered these consequences, approached the Federal agency concerned, and was able to ensure that the No Disadvantage Test was correctly applied.

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## 2007 – The Broader Impact of WorkChoices

- By the end of 2007, the broader impact of WorkChoices on the real estate industry was becoming apparent – it was an **absolute shambles!**
- There had been a continuous string of changes to the legislation and its underpinning regulations, and confusion reigned across the industry.
- The only "light at the end of the tunnel" was a change of Government, with its promise to unwind many aspects of the WorkChoices legislation.

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## 2007 - Agreement Making Summary

By late 2007 the following were each subject to different minimum standards:

- Property Management personnel employed pre-30/11/2005 with no registered agreements.
- Persons employed:
  - by Sole Traders, Partnerships, etc. under the State Award, with registered agreements.
  - by Corporations prior to WorkChoices with pre-WorkChoices registered agreements now under NAPSAs.
  - by Corporations prior to WorkChoices with AWAs.
  - after WorkChoices commenced, by old Corporations subject to NAPSAs and WorkChoices.
  - after WorkChoices commenced, by new Corporations which were subject to WorkChoices but not subject to NAPSAs.
  - by Corporations after introduction of the AWA "No Disadvantage Test".
  - by Corporations and under the Commission-Only Pay Scale.

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## November 2007 – A New Federal Government

- With the election of a new Federal Government, many changes were quickly implemented with respect to workplace relations:
  - The right to make new AWAs was outlawed (however existing AWAs were permitted to run their course).
  - The AWA process was replaced by limited-life ITEAs.
  - A ministerial directive was given for the Australian Industrial Relations Commission (AIRC) to create "modern" industry-based awards in the Federal system by 1 January 2010.
  - The end date for NAPSAs was extended to 31 December 2009.

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## 2008 – Industry Submissions to the AIRC

- In early 2008, REIG met in Adelaide and discussed the prospects for a Federal award to cover the real estate industry.
- From these meetings, it was agreed that submissions should be made to the relevant Federal agencies about the need for a special focus on the workplace needs of our industry.
- Various REIG participants, including the PSAQ, eventually went to Melbourne in May 2008, to present submissions to the AIRC on behalf of the industry.
- In June 2008, arising from the May submissions, the AIRC stated that "the real estate industry requires separate consideration".

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## 2008 - 2009 – Directive to REIG by the AIRC

- REIG then met in Brisbane in August 2008 to discuss the necessary parameters for a Federal Real Estate Industry Award.
- Subsequent to the August meeting, the PSAQ wrote to the President of the AIRC to request, on behalf of REIG, assistance to develop a Federal award.
- The President then authorised a member of the AIRC to meet with REIG. This meeting took place in Sydney in February 2009.
- Subsequent to that meeting, REIG then met in Perth to commence negotiations around Federal award, a draft of which was prepared by the Real Estate Employers' Federation of NSW and the PSAQ.
- REIG agreed it is important to develop an award which can operate with both rewards for good performers & safeguards for beginners.

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## Draft Federal Real Estate Award I

- REIG is now in the process of finalising a draft Federal award, for presentation to the AIRC.
- The draft is based on the various existing State awards, namely those in NSW, QLD & SA.
- However any new award also has to comply with minimum standards that have been set by the AIRC and the Workplace Relations Act.
- Because the State awards vary there are many compromises necessary to compress provisions from three awards into one.
- There will also be a phase-in period for any new provisions that may have not applied before.

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## Draft Federal Real Estate Award II

- The Government directed that there should be no extra costs to employers and no loss to employees. This is an impossible request that cannot, realistically, be accomplished.
- Accordingly the REIG is working to achieve a balanced result where the new award is workable and fair to all parties.
- The time constraints to create a new award are difficult to achieve, however failure to do so could see the industry placed under a "Miscellaneous Award", removing the ability of the industry to operate in the manner it has traditionally enjoyed.
- The new real estate industry award is expected to be finalised by December 2009, to take effect from 1 January 2010.

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## Fair Work Act 2009

There are also a number of changes due to the new Fair Work Act, effective from 1 July 2009. The more notable of these are:

- Changes to dismissal laws.
- It would appear that 12-month wage averaging is no longer permitted.
- The process for making new Enterprise Agreements means a union can now be appointed as a bargaining agent by its members.

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## Other Issues

- The PSAQ is also involved in a number of other issues important to the industry:
  - The proposed National Licensing system.
  - Revision of Training Package arrangements.
  - An online employment agreement builder:
    - Employers can "tailor" highly-customised employment agreements to suit their business.
    - Minimal workplace relations knowledge is needed.
    - Agreements by REPSA – [www.repsa.com.au](http://www.repsa.com.au).

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## PSAQ Membership

- PSAQ members can access professional assistance with the following issues:
  - Review of employment paperwork (pre-, post- & during employment).
  - Recovery of unpaid wages.
  - Resolution of long service leave claims.
  - Termination of employment (including how to resign correctly!).
- The PSAQ regularly assists individual members to recover unpaid entitlements upwards of \$5,000.00.
- Such assistance is provided free of charge, but is only given if the person is a financial member of the PSAQ of at least three month's standing.
- PSAQ membership costs \$165.00 per annum, and is fully tax-deductible.
- PSAQ membership applications: [www.psaq.com.au](http://www.psaq.com.au).

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## Contact Details

- PSAQ office & Barry Gannon: 07 3841 6977
- Tom French: 0419 787 526 (Member Services)
- Web Site: [www.psaq.com.au](http://www.psaq.com.au)
- Real Estate Personnel Solutions Australia (REPSA)
- Web Site: [www.repsa.com.au](http://www.repsa.com.au)
- P: 07 3219 7099

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