



# The Real Estate Industry Award

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Australian College  
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# The Real Estate Industry Award



On a weekly basis, we receive many enquiries in relation to how agents are paid. This is a very individual negotiation for each person – however, guidance firstly comes from the NSW Real Estate Industry Award.

As of 2 April 2018, there was a new award for people employed within the property industry. It is important that all people working within the industry are aware of the award and its requirements. Whether you are an employer or an employee, you should be knowledgeable about your rights and obligations. We have summarised below the main areas within the award that most agents ask questions about.

## Classification Structure

Employment in the property industry falls within four broad areas:

1. Associate level – employee level 1 (basically people who hold a Certificate of Registration). There are two sub-levels for Associate level – one for the first 12 months of employment and one for after the first 12 months at this level
2. Representative level – employee level 2 (people who hold a full licence)
3. Supervisory level – employee level 3 (people holding management or supervisory positions in an organisation)

4. In-charge level – employee level 4 (Licensee-In-Charge responsibilities)

## Increase to Minimum Wage

As of 1 July 2021, the base wage for a full-time or part-time adult real estate salesperson (Level 1 in the first year of employment) is \$21.31 per hour.

## Additional Allowances

- Mobile Phone Allowance – an employee is responsible for paying 50% of an employee's mobile plan, up to the value of a \$100 plan. For example, this means that if an employee has an \$80 plan, the employee is required to pay \$40 per month
- Motorcycle Allowance – if an employee uses a motorcycle they will receive 27 cents per kilometre rather than the 72 cents per kilometre for a car – up to a maximum of 400km per week.
- Vehicle Allowance – when an employee is required to use their own vehicle, an allowance is paid based on the size of engine of the vehicle (ranging from 13 cents to 17 cents per kilometre), a lump sum, or a standing charge plus an amount per kilometre.

## Commission

There are now specific guidelines in the new award in relation to commission payments and splits if an employee leaves their employment prior to the settlement of a property that they have listed and/or sold. Briefly, if a salesperson leaves the

employment of an agency and they have listed a property and it has exchanged, they are entitled to the commission when the property settles. In addition, if a property that they have listed has not exchanged when they leave employment of that agency, and then the property exchanges whilst it is still in the “exclusive listing period”, then that salesperson is entitled to the listing component of that commission, as would be detailed in their employment agreement.

Naturally, if the salesperson is terminated for serious misconduct, the commission is limited to properties that have exchanged prior to their termination.

### **Commission-Only Employees**

As the property industry is the last remaining industry with commission-only employees, the new award has included some specific requirements around this category of employment. The core requirements for commission-only employment are:

- Commission-only employment is for either full-time or part-time employees
- The person must be over 21 years of age and hold a real estate licence or certificate of registration and agree (in writing) to be employed on a commission-only basis
- The person must have been working as a salesperson in the industry for at least 12 months during the past 3 years
- The person must meet the MITA (Minimum Income Threshold Amount) test where they earn 125% of the award rate (\$55,542.50 per annum + allowances). This rate applies to both full-time and part-time employees, and is not pro-rated for part-time Commission-Only employees. The person must have

met the MITA test in past 12 month employment during the past 3 years

- If the person falls short of meeting the MITA test, they are no longer eligible to be employed on a commission-only basis
- The employer needs to withhold allowance for personal and recreation leave from each commission payment, and only pay this to the employee when they take that leave

These are significant changes for commission-only employees, and must be considered seriously by both employees and employers.

### **Independent Contractors**

Those persons who work as independent contractors in the property industry are NOT covered by the new award. An independent contractor should seek legal advice in terms of signing an agreement with their chosen agency. It is an expectation that independent contractors are employing other people to assist them in their own business, where these employees need to be active agents, not just people who assist with accounts or marketing. As a College, we refer agents to Jemmeson & Fisher who specialise in supporting agents in all legal and accounting aspects of their business.

**MORE INFORMATION:** I highly recommend that you, whether you are an employer or an employee, visit the REEF (Real Estate Employers Federation) website at [www.reef.org.au](http://www.reef.org.au) and ensure that you have all the information you require to make sure that are complying with the Real Estate Industry Award.

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