

## Frequently Asked Questions Experienced Sales Personnel

**Q. What is the deterrent of whether a sales person can be “commission only”?**

A. The complete definition is in the Fact Sheet in page 9 and 10 of the Real Estate Commission Only AWA, however in rough summary it is as follows;  
(a) in a twelve month period of prior industry experience they would have earned, if they were in “commission only” would have earned in excess of about \$ 32,000 in that period.

**Q. Who determines whether the person qualifies as a “commission only” sales person?**

A. It doesn't matter, but if the sales person is subsequently discovered to have not been qualified then the sales person would be subject to the minimum guarantees under the relevant award. Furthermore if the employer was a party to falsely claiming a sales person was qualified when in fact they weren't, then it's possible that a vindictive Workplace Ombudsman might try and impose penalties on the employer. For this reason the SBU documentation recommends that the declaration of compliance with the “commission only” standard is to be made by the employee salesperson in the form of a statutory declaration. The penalty for falsely swearing s statutory declaration is 4 years jail. We believe an employer should be able to rely on the declaration of compliance from the employee in those circumstances because it is highly unlikely that a potential employee would make a false declaration.

**Q. Why does a “commission only” sales person have to be a permanent employee and not a “casual”?**

A. this was not the recommendation of APL/SBU. We wanted the simplest arrangement. It was the recommendations of the REI's for reasons we cannot understand because it means that sales people on “commission only” have to be guaranteed holiday and personal/sick/carers leave with all the commensurate administrative dramas.

**Q. Is there any way that the holiday and PSC leave can be incorporated into the all up commission rate so that it is easy to administer?**

A. Yes, but the documentation has to specifically allow for this.

**Q. Do we have a choice as to whether the sales people have an “all up” commission rate, or a lower commission rate plus holidays and PSC leaves?**

A. You don't, but the sales person does. Your choice is to set the commission rates that make it more attractive to have the “all up” commission rates.

**Q. Under the Pay Rate Choice clause 6 in page 4 we have two choices. Choice (b) has a section to fill in if the sales person actually wants to have paid holiday and PSC leave. What is that about?**

A. the actual percentage cost of holiday and PSC leaves is 12.16% of the commission schedule. So if your sales commission is say 50%, then that is exactly equivalent to \_\_\_\_\_% plus 4 weeks holiday and PSC leave based on the average of the commission earned over the year. If you really love doing unnecessary administration you would fill in 12.16% in the blank space. If however you don't really want to do that, then put in a higher figure (say) 16 or 20% so that you are collecting an administration fee for providing paid holidays and sick pay.

**Q. Clause 7, 8, 9 and 10 seem complicated. Do they have to be completed?**

A. All of these provisions are necessary if you want to end up with a simple system in your office. If you do nothing, you will have a commission only sales person who has to be also paid holiday and sick pay. Remember we neither recommend nor made these silly rules. Our role is to help get around their unnecessary consequences for the real estate industry so that you can continue doing what you have happily been doing for the last 100 years.

**Q. Can I still do debit and credit arrangements for “commission only” sales people?**

A. Of course. Just fill in clause 3 on page 3. Note however that any such advances are never of the nature of loans to the employee. They can be any amount you mutually agree upon. Number 8 of section 2 on page 3 establishes that any such offsets are debit of the sales person to the agency and are recoverable, unlike the offsets paid to a probationary salesperson.

**Q. The minimum age that a sales person can be is licensed or registered to sell real estate is 18, so why can only a 21 year old or over person be on “commission only”?**

A. Probably for the same foolish reason that “commission only” sale people have to be permanent and not the more easily administrated “casuals”. Who knows the minds of fools?

**Q. Can the commission rate incorporate superannuation?**

A. Yes, as long as it's agreed between the parties. The formula for doing it is in the AWA schedule 1 clause 7(b) on page 12 of the documents.

**Q. What is the minimum commission rate payable?**

A. This is all set out in the AFPC standard in page 9 and 10 of the documentation. However in general it's 35% plus holiday and PSC leave and superannuation, or if you agree to include all of the holiday and PSC leave, then the percentage is 39.84% of the agent's commission to the vendor less the following

- (i) Any portion of the employee's gross commission paid to an agent.

- (ii) Any GST on the gross commission.
- (iii) 10% of the amount remaining after (i) and (ii) have been subtracted.

**Q. Why do I have to record two weeks unpaid leave every year for the sales personnel who have elected to have all of their entitlements grossed into a commission rate.**

A. Part of the conversion of the holiday pay entitlement to commission is the advance payment of the half of the holiday not already cashed up (or in this case converted to a commission component). Holiday pay is valued at the time it is taken, and although the monetary value is expressed as a commission rate, to prevent possible future dispute we suggest that each year you beg the salesperson to have at least 2 weeks unpaid leave and duly record it.

**Q. How do I reclaim any monies from a sales person who has decided to leave with their account in debit?**

A. Send them a letter setting out the monies owed then put it in the hands of your solicitor.

**Q. What arrangements apply to commission or un-settled properties if the sales person leaves?**

A. in the absence of any written agreements then the sales person would be entitled to the full commission set out in your common schedule with the sales person. We suggest that you clearly set out the arrangements that will apply to commissions on unsettled properties. It is not unreasonable to reduce the paid commission rate if another sales person in the realtor's office has to attend to matters to ensure settlement. But these arrangements have to be in writing and agreed between the parties.

**Q. Do I need a roster for "commission only" sales people?**

A. because there is no minimum payment to the sales person the only purpose of the roster is to determine when you want sales people selling or attending meetings.

**Q. Does the Fairness Test apply to commission only AWAs?**

A. Yes, but the particular structure and set out of the SBU/ADL documentation means that it's relatively pointless. In summary, once you have lodged the document with the SBU, and we have filed it for you you can rest assured that it will be applicable in your business from that date onwards not just for the next 5 years, but for as long as that sales person stays with you.

**Q. How does the purchase of PSC leave work and why do we have to do it?**

A. First of all you don't have to do anything. By all means have personal/sick/carers leave if that's what you want. But if you want to incorporate all entitlements (you can't include compassionate leave) into the commission rate then we have to work around the "idiot" rule which states that before an employee can cash out their PSC leave, they first of all have to accumulate 15 days of PSC leave which would take 18 months. This would mean that they would have to work on a lower commission rate for that period, (almost 4 or 5% lower) before going into the full salesperson rates. Although they would theoretically have 15 days PSC available to them, they would in practise never be able to access it without lowering their commission rate (by about 4 or 5%). This is both unpractical and unfair on the employee. If they are happy to sign clause 10 page 4, they purchase the 15 days PSC entitlement there by enabling them to access the higher commission rate from day one. Provided they haven't made any paid PSC claim, then, when they leave the employer agrees to buy the entitlement back. Although no money needs to change hands because a loan account is created the purchase is real and the entitlements are real. It is not a sham. It simply allows the parties to achieve what they both want.