

FAIR WORK COMMISSION
4 YEARLY REVIEW OF MODERN AWARDS
AM2019/17 – February 2020 Draft Determination
Local Government Industry Award
Submission of the Western Australian Local Government Association

1. This submission is made on behalf of the Western Australian Local Government Association.
2. We refer to the Decision issued by the Full Bench of the Fair Work Commission (**FWC**) on 24 December 2019 relating to the finalisation of exposure drafts and variation determinations for tranche 2 awards ([2019] FWCFB 8569) (**24 December Decision**) and the subsequent Decision [2020] FWCFB 690 issued by the Full Bench on 14 February 2020 (**14 February Decision**).
3. The 24 December Decision and 14 February Decision directs interested parties to comment on the tranche 2 draft determinations including the draft determination of the Local Government Industry Award published on 19 February 2020 (**Draft Determination**).
4. In this submission a reference to a clause is a reference to a clause in the Draft Determination.

Minor drafting amendments

5. We refer to clause 5.13 which is missing a full stop at the end of the clause.
6. We refer to clause 19.1 and submit that the reference to clause 18 is incorrect and should be replaced by clause 19. We note that clause 19 is correctly used in the Exposure Draft published in the 24 December Decision.
7. We refer to Schedule B.1.3 and submit that the footnote reference to 'clause 22.1' should be to 'clause 22.3'.

Schedule B.2 – Hourly rates of pay for casuals and overtime

8. We refer to Schedule B.2.1 regarding casual rates of pay.
9. At paragraph [237] of the 24 December Decision the FWC adopted the position, consistent with respect to all other awards, that the schedules will not be varied to deal with overtime for casuals until the Full Bench constituted to decide on matters relating to overtime for casuals (AM2017/51) (**Casuals Full Bench**) has issued a decision on the matter.

10. The submissions before the Casuals Full Bench regarding the Local Government Industry Award are in relation to the calculation of overtime rates for casuals and the calculation of public holiday penalty rates for casuals. The calculation of those entitlements arise from the same subclauses, being subclauses 11.2 and 11.3 of the Draft Determination.
11. We submit that clauses 11.2 and 11.3 of the Draft Determination provide that casual loading is not payable with respect to public holidays and overtime. This is supported by numerous submissions of the Local Government Associations, in particular the submission dated [28 June 2019](#), which is supported by the submission of the Australian Services Union (ASU) dated [2 July 2019](#).
12. The heading of the final column of the table in Schedule B.2.1 is '*public holiday*' and directly below it is a rate of '275%'. This is contrary to the Local Government Associations and the ASU's interpretation of how public holiday penalty rates are to be calculated for casual employees.
13. We respectfully request that the entire column in subclause B.2.1 with the heading '*public holiday*' be deleted until the Casuals Full Bench issues a decision regarding the calculation of public holiday penalty rates for casual employees under the Local Government Industry Award.

Schedule I – Part-day Public Holidays

14. We refer to Schedule I of the Draft Determination regarding part-day public holidays.
15. In Appendix B of the Part-day Public Holidays Decision [2019] FWCFB 8491 the FWC indicated that the Local Government Industry Award would be amended to include version 2 of the terms of the Part-day Public Holidays clause.
16. The Draft Determination is missing subclause X.2 '*An employer and employee may agree to substitute another part-day for a part-day that would otherwise be a part-day public holiday under the NES*'.
17. We submit that this wording should be included as subclause I.3 of Schedule I and the current subclause I.3 be renumbered I.4.



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