

4 May 2016

By email: chambers.johns.c@fwc.gov.au

Commissioner Johns
Fair Work Commission
Level 10, Terrace Tower
80 William Street
East Sydney NSW 2011

Dear Commissioner

AM2014/234 – Local Government Industry Award 2010 [MA000112]

I refer to matter AM2014/234 concerning the 4 yearly Review of the *Local Government Industry Award 2010*, the *Exposure Draft – Local Government Industry Award 2015* (revised version, dated 28 April 2016) and the Conference before the Commission on 27 April 2016.

I write on behalf of the combined State and Territory Local Government Associations (“LGAs”)-

Upon further reflection, the LGAs are of the opinion that clause 6.5(ii) of the *Exposure Draft – Local Government Industry Award 2015* as revised on 28 April 2016 (the “**Exposure Draft**”) does not accurately represent the method of calculating casual loading and overtime for casual employees.

In particular, we are concerned that the clause suggests that a casual employee receives both the casual loading and overtime penalties when they perform overtime work. In our opinion, this is not the case.

Clauses 10.5(b) and 10.5(c) of the existing *Local Government Industry Award 2010* (the “**2010 Award**”) provide:

“(b) Casual loading

Casual employees will be paid, in addition to the hourly ordinary time rate and rates payable for shift and weekend work on the same basis as a weekly employee, an additional loading of 25% of the hourly ordinary time rate for the classification in which they are employed as compensation instead of paid leave under this award and the NES. (emphasis added)

“(c) Penalties and overtime

Penalties, including public holiday penalties and overtime, for casual employees will be calculated on the hourly ordinary time rate for the classification in which they are employed exclusive of the casual loading.

It is our understanding that the effect of the above clauses and the most common practice within the Local Government Industry (nationally) is that when a casual employee works overtime they must be paid the applicable overtime penalty. It is our view that there is no award requirement that they also be paid casual loading on such overtime work.

Further, under the 2010 Award, permanent full-time and part-time employees only accrue leave on their ordinary hours of work. They do not accrue leave on any overtime work that they may perform (if it were the case that full-time employees accrued leave on overtime work they would end up accruing more than 4 weeks annual leave per year).

Clause 6.5(c) of the Exposure Draft (concerning penalties and overtime)

Whilst clause 6.5(b)(i) of the Exposure Draft correctly provides that the casual loading is to be paid “*for each ordinary hour worked*”, to remove ambiguity and avoid confusion we submit that sub-clause 6.5(c)(ii) of the Exposure Draft should be amended by removing the reference to overtime. The LGAs also propose a minor grammatical change to sub-clause 6.5(c) to clarify the meaning of the expression “penalties” (which could be easily misunderstood to include “overtime”) (see below).

Proposed new subclause to be included within clause 6.5 (concerning overtime)

For the purposes of clarifying the circumstances in which a casual employee is entitled to overtime, and to address the concern identified by the Australian Industry Group at paragraph 360 of its submissions dated 14 April 2016, it is proposed that the title of sub-clause 6.5(c) of the Exposure Draft be amended to say “Penalties” (instead of “Penalties and Overtime”), and a new sub-clause entitled “Ordinary hours and overtime” be inserted in clause 6.5 that identifies when a casual employee works ordinary time and when they are entitled to be paid overtime (see below).

Clause 6.5 – the logical order of provisions

If the above proposed amendments are accepted, it may be appropriate for the sub-clauses within clause 6.5 to be reordered to improve the logical flow of the provisions. We submit that the appropriate order is as follows:

“6.5 Casual employees

Casual employment provisions may be affected by AM2014/197

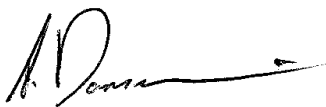
- (a) A casual employee is an employee who is engaged and paid as a casual employee.
- (b) **Ordinary hours and overtime**

- (i) The ordinary hours of work of a casual employee under this award are up to an average of 38 per week.
 - (ii) A casual employee shall be paid at overtime rates for all work performed at the direction of the employer:
 - in excess of the ordinary weekly hours for a full-time employee as specified in clause 8.1(b);
 - on days other than ordinary working days as specified in clause 8.1; or
 - in excess of the maximum ordinary hours on any day as provided by clause 8.1(k).
- (c) **Penalties ~~and overtime~~**
- (i) Casual employees are entitled to penalty rates for shift and weekend work in accordance with clause 13—Penalty rates.
 - (ii) ~~Penalty rates payable in accordance with clause 13 – Penalties, including public holiday penalties and overtime~~ Penalty rates and public holiday penalties for casual employees will be calculated on the minimum hourly rate for the classification in which they are employed exclusive of the casual loading. These penalties are in addition to **and cumulative with** the casual loading of 25% of the minimum hourly rate.”

It may be convenient for the Commission to convene a further conference of the parties to address the above and any other outstanding issues.

On behalf of the LGAs, I confirm that all other changes in the Exposure Draft (as revised on 28 April 2016) accurately reflect the matters discussed during the conference on 27 April 2016 and are agreed to by the LGAs.

Yours sincerely



Adam Dansie
Senior Manager, Industrial Relations