

FAIR WORK COMMISSION

4 YEARLY REVIEW OF MODERN AWARDS

AM2019/17 – October 2019 Exposure Draft of the Local Government Industry Award

Submission of the combined Local Government Associations

1. This submission is made on behalf of the combined Local Government Associations.
2. Local Government Associations (**Associations**) include the:
 - 2.1 Municipal Association of Victoria;
 - 2.2 Local Government Association of Tasmania;
 - 2.3 Local Government Association of South Australia;
 - 2.4 Local Government Association of Queensland;
 - 2.5 Local Government Association of the Northern Territory;
 - 2.6 Local Government and Shires Association of New South Wales; and
 - 2.7 Western Australian Local Government Association.
3. We refer to the Decision issued by the Full Bench of the Fair Work Commission (**FWC**) on 14 October 2019 relating to the finalisation of exposure drafts for tranche 2 awards ([2019] FWCFB 6861) (**Decision**).
4. The Decision directs interested parties to comment on the tranche 2 exposure drafts including the Exposure Draft of the Local Government Industry Award published on 14 October 2019 (**Exposure Draft**).
5. In this submission a reference to a clause is a reference to a clause in the Exposure Draft.

Minor drafting amendments

6. We refer to clause 13.1(i) and submit that after '*in accordance with clause 22.2*' the following clause reference should be included '*and clause 22.3*'.
7. We refer to clause 17.2(b) and submit the word '*clause*' should be inserted before '*17.2(a) is subject to...*'.
8. We refer to clauses 19.2(f), 21.7(a) and 22.2(a), and submit the word 'service' should be amended to 'services' to ensure consistency in the language used.
9. We refer to clause 19.3(a)(ii) which appears to be missing the word '*be*' and submit the clause should read:

'(ii) An additional meal allowance of \$15.94 will be paid where the employer requires the employee to continue working for a further 4 hours of continuous overtime work.'

10. We refer to clause 19.4(a)(i) and submit that as '*normal starting point*' is defined in clause 2:

10.1 The word 'normal' should be inserted before 'starting' where it first appears and the clause should read:

'(i) All employees upon engagement will be given a normal starting point which will be, subject to clause 19.4(a)(v), the starting point of their daily work activities.'

10.2 Clause 19.4(a)(ii) should be deleted, and clauses 19.4(a)(iii), (iv) and (v) be renumbered as (ii), (iii) and (iv) respectively.

10.3 Consequently the reference in clause 19.4(a)(i) to clause 19.4(a)(v) should be amended to 19.4(a)(iv).

11. We refer to clause 20.3(c) and submit the word '*subclauses*' should be amended to '*clauses*' to ensure consistency in the language used.

12. We refer to NOTE 1 of clause 23.7 and submit that a space should be inserted between '*clause 23.7(d)*' and '*may result*'.

13. We refer to clause C.1.1 of Schedule C and submit that a close parenthesis should be inserted after the three references to clause 19.2(c)(iii).

Public holiday clauses 14.1(d) and 28

14. We submit that all provisions for public holidays be contained in one clause. Currently clause 28.5 covers public holidays occurring on a rostered day off but provision for public holidays for an accrued rostered day off is contained in clause 14.1(d) regarding rostering.

15. We submit that clause 14.1(d) be deleted and inserted as new clause 28.6 titled '*Public holiday occurring on an accrued rostered day off*'.

16. Consequently, clause 28.6 should be renumbered as clause 28.7.

Location of on call allowance clause 19.2(e)

17. We refer to the plain drafting amendment made to the Exposure Draft to move part of the on-call allowance clause from clause 21.6 to clause 19.2(e).

18. We respectfully request that the on-call allowance remain within the on-call allowance clause as currently set out in the Local Government Industry Award 2010 (**LGIA**) as the removal of part of the clause makes the on-call provisions more difficult to navigate.

19. We submit that:

19.1 Clause 21.6(b) of the Exposure Draft be deleted and replaced with the following clause:

'Where the employee is on call, the employee will be paid an on call allowance as follows:

- (i) *Monday to Friday inclusive – \$22.70 per day;*
- (ii) *Saturday – \$34.05 per day; or*
- (iii) *Sunday or a public holiday – \$45.40 per day.'*

19.2 A new clause 19.2(e) be inserted to read:

'An employee who is on-call will be paid an on-call allowance in accordance with clause 21.6.'

Schedule B – Summary of hourly rates of pay

20. The Exposure Draft includes a new Schedule B setting out a summary of hourly rates of pay for full-time, part-time and casual adult employees.

21. The tables in clause B.1.1 and B.2.1 of Schedule B refer to penalty rates for work on Saturday and Sunday with a footnote to refer users to clause 22.2 as not all work areas are paid the same weekend penalty rates.

22. When the Full Bench of the FWC first considered the insertion of hourly rates of pay into the body of awards in the *4 yearly review of modern awards (AM2014/1 and others)* [2015] FWCFB 4658 it said at paragraph [60]:

'As outlined in our decision of 23 December 2014 one of the objectives of this Review is to make information about entitlements and obligations under modern awards more accessible. In the Citizen Co-design process, small business owners supported the inclusion of schedules of hourly rates of pay including penalties and loadings in modern awards. Further the Fair Work Ombudsman (FWO) encouraged the Commission to include detailed schedules in all awards.'

23. The Full Bench then went on to say at paragraph [62]:

'The Full Bench supports the inclusion of detailed schedules of hourly rates in modern awards but we agree that it is prudent to not adopt a 'one size fits all' approach and to develop rates tables in consultation with the interested parties.'

24. The Exposure Draft has a unique and complex hours clause (see clause 13) that reflects the wide range of services provided by Local Governments and the unique operational requirements for those services.

25. We submit that Schedule B in its current form in the Exposure Draft, despite the use of footnotes to refer to other clauses of the award, has the potential to mislead employers and employees as to the correct rate of pay for different groups of employees at different times given the Exposure Draft:
- 25.1 distinguishes between groups of employees that work ordinary hours on Monday to Friday, and Monday to Sunday; and
- 25.2 excludes employees engaged in recreation centres and community services from receiving weekend penalty rates if working between 5am and 10pm on Saturday or Sunday.
26. The amendments we propose to the tables contained in Schedule B, by referring to the three major groups of employees with different ordinary hours and weekend penalty rates, in our view provides more obvious direction to those reading the Schedule B tables as to the correct rate of pay at the time of the performance of the work.
27. We set out in **Attachment A** our proposed headings for the tables in Schedule B.
28. We note the FWC is currently considering, as a common issue, overtime for casuals (AM2017/51).
29. The Associations have made submissions with respect to this, most recently on [28 October 2019](#), and are waiting for the Full Bench to consider the wording proposed by the Associations.
30. In clauses B.2.1, B.2.2 and B.2.3 of Attachment A we have set out the casual penalty and overtime rates to reflect the submissions of the Associations to the FWC.
31. Should the FWC adopt our proposed headings for the Schedule B tables, consequential amendments will be needed to populate the hourly rates of pay.

Schedule C – Summary of monetary allowances

32. We refer to clause C.1.1 of Schedule C and have identified a number of errors with regard to the frequency of payment for certain allowances.
33. The adverse working conditions allowance for levels 1, 2 and 3 pursuant to clause 19.2(c)(iii) is payable on an hourly and not a weekly basis.
34. We submit that the reference to *'per week'* for the adverse working conditions allowance for levels 1, 2 and 3 in the table in clause C.1.1 of Schedule C be amended to read *'per hour.'*
35. Further, the sleepover allowance pursuant to clause 21.7(a) is payable on an hourly and not a weekly basis.

36. We submit that the reference to *'per week'* for the sleepover allowance in the table in clause C.1.1 of Schedule C be amended to read *'per hour'*.
37. The wage-related allowances table in C.1.1 of Schedule C does not refer to clause 10.2(c) which provides that part-time employees receive pay and conditions on a pro rata basis, and may mislead employers to paying for example, the total weekly allowance to a part-time employee when this is ordinarily adjusted on a pro rata basis.
38. In support of our submission we refer to the Fair Work Ombudsman Pay Guide for the LGIA published on [27 June 2019](#) (**FWO Pay Guide**) which contains a table of allowances that clearly stipulates calculations for the first aid and leading hand allowances as an hourly rate, as well as a maximum weekly rate.
39. The FWO Pay Guide expresses the allowance rates as follows:
- 39.1 First aid allowance: \$0.42 per hour, up to a maximum of \$15.89 per week;
- 39.2 Leading hand allowance – Level 3 or 4 classification supervising 1-5 employees: \$0.66 per hour, up to a maximum of \$24.97 per week;
- 39.3 Leading hand allowance – Level 3 or 4 classification supervising 6-15 employees: \$0.90 per hour, up to a maximum of \$34.05 per week; and
- 39.4 Leading hand allowance – Level 3, 4 or 5 classification supervising more than 15 employees: \$1.14 per hour, up to a maximum of \$43.13 per week.
40. For clarity we submit that a new clause C.1.2 be inserted as follows:

'The leading hand allowance in clause 19.2(a) and first aid allowance in clause 19.2(b) will be paid to part-time and casual employees on a pro rata basis.'



Emma Clements
Employee Relations Service Manager
Western Australian Local Government Association

Date: 27 November 2019

ATTACHMENT A

PROPOSED AMENDMENTS TO SCHEDULE B OF THE EXPOSURE DRAFT

B.1 Full-time and part-time adult employees

B.1.1 Full-time and part-time adult employees – ordinary and penalty rates for employees working ordinary hours of work from Monday to Friday as provided in clause 13.1(d) and 13.1(h).

	Ordinary hours	Work outside span of ordinary hours	Public holiday
% of minimum hourly rate			
	100%	120%	250%

B.1.2 Full-time and part-time adult employees – ordinary and penalty rates for employees working ordinary hours of work from Monday to Sunday as provided in clause 13.1(e), 13.1(f) and 13.1(g), excluding employees engaged in community services and recreation centres.

	Ordinary hours	Work outside span of ordinary hours	Saturday	Sunday	Public holiday
% of minimum hourly rate					
	100%	120%	150%	175%	250%

B.1.3 Full-time and part-time adult employees – ordinary and penalty rates for employees engaged in community services and recreation centres.

	Ordinary hours	Work outside span of ordinary hours	Saturday before 5am or after 10pm	Sunday before 5am or after 10pm	Public holiday
% of minimum hourly rate					
	100%	120%	150%	175%	250%

B.1.4 Full-time and part-time adult employees – overtime rates

	Monday to 12pm Saturday – first 2 hours	Monday to Saturday – after 2 hours	After 12pm Saturday, and Sunday	Public holiday
	150%	200%	200%	250%

B.2 Casual adult employees

B.2.1 Casual adult employees – ordinary and penalty rates ordinary and penalty rates for employees working ordinary hours of work from Monday to Friday as provided in clause 13.1(d) and 13.1(h).

	Ordinary hours	Work outside span of ordinary hours	Public holiday
% of minimum hourly rate			
	125%	145%	250%

B.2.2 Casual adult employees – ordinary and penalty rates for employees working ordinary hours of work from Monday to Sunday as provided in clause 13.1(e), 13.1(f) and 13.1(g), excluding employees engaged in community services and recreation centres.

	Ordinary hours	Work outside span of ordinary hours	Saturday	Sunday	Public holiday
% of minimum hourly rate					
	125%	145%	175%	200%	250%

B.2.3 Casual adult employees – ordinary and penalty rates for employees engaged in community services and recreation centres.

	Ordinary hours	Work outside span of ordinary hours	Saturday before 5am or after 10pm	Sunday before 5am or after 10pm	Public holiday
% of minimum hourly rate					
	125%	145%	175%	200%	250%

B.2.4 Casual adult employees – overtime rates

	Monday to 12pm Saturday – first 2 hours	Monday to Saturday – after 2 hours	After 12pm Saturday, and Sunday	Public holiday
% of minimum hourly rate				
	150%	200%	200%	250%