2008 Minimum Wage Review

Submission to the Australian Fair Pay Commission

14 March 2008
Dear Professor Harper,

**2008 MINIMUM WAGE REVIEW**

*Submissions of the Local Government and Shires Associations of New South Wales*

The Local Government Association of New South Wales and the Shires Association of New South Wales (the Associations) seek the exclusion of NSW local government from any determination resulting from the 2008 Minimum Wage Review. The Associations’ submission is based on the following reasons:

- Prior to the commencement of Work Choices, employees in NSW Local Government benefited from scheduled award increases that at the same time, provided councils with predictable budgeted variations and wage cost stability.

- In the two years since the Work Choices reforms commenced, councils in NSW have administered three adjustments to employee rates of pay and there continues to be confusion and uncertainty in relation to the appropriate rates of pay for local government employees.

- In handing down the two Wage-Setting Decisions since the reform commencement, the Australian Fair Pay Commission (the AFPC) has overlooked the unique nature of the existing arrangements and concerns of NSW local government.

- The relevant industry parties have all expressed a preference that NSW local government is returned to state industrial coverage.

In seeking to have the preserved Australian Pay and Classification Scale (the APCS) derived from the *Local Government (State) Award 2004* exempted from any variation to rates of pay, this correspondence will expand upon the reasons referred to above.
In the first instance, the Associations reiterate their submissions in preceding Minimum Wage Reviews. These submissions presented that as a consequence of orderly and negotiated outcomes that took into account the industry’s circumstances, since the mid 1990’s the earnings of local government employees in NSW have outpaced comparable Safety Net, Federal Minimum Wage and State Wage Case adjustments.

In addition to these rates, NSW councils that are constitutional corporations have administered the following three adjustments to employee rates of pay since the reform’s commencement.

**Wage-Setting Decision 1/2006**

In the 2006 Minimum Wage Review, the Associations’ submissions argued that, at the time, it appeared that the requirements of section 208(4) of the Workplace Relations Act 1996 (Cth) had been satisfied and that the preserved APCS derived from the Local Government (State) Award 2004 ought to be excluded from any adjustments or variations made by the AFPC.

The AFPC handed down its Wage-Setting Decision 1/2006 in October 2006 and did not exclude NSW local government. The wage increases stemming from this Decision were effective from 1 December 2006 and provided NSW local government employees with either:

- an increase of $0.72 per hour for employees earning a basic periodic rate of pay of up to and including $18.42 per hour; or
- an increase of $0.58 per hour for employees earning a basic periodic rate of pay that was more than $18.42 per hour.

**Wage-Setting Decision 3/2007**

As part of the 2007 Minimum Wage Review, the Associations submitted that continued confusion in relation to the operation of section 208(4) could be alleviated if the AFPC either:

- directly addressed the complications encountered by the preserved AFPCS derived from the Local Government (State) Award 2004 as a result of the operation of section 208(4) of the Workplace Relations Act 1996 (Cth); or
- published definitive and sanctioned pay scales.

The 2007 Minimum Wage Review led to the AFPC making Wage-Setting Decision 3/2007, providing that local government employees receive from the first pay period commencing on or after 1 October 2007 either:

- an increase of $0.27 per hour for basic periodic rates of pay of up to and including $18.42 per hour; or
- an increase of $0.14 per hour for basic periodic rates of pay in excess of $18.42 per hour.
Increase in rates in November 2007

On 26 July 2007, the Department of Employment Workplace Relations (DEWR) published a Pay Scale summary of the preserved APCS derived from the Local Government (State) Award 2004. The Pay Scale Summary was published without consulting the industry parties and its provisions added to confusion in relation to rates of pay.

To introduce certainty in relation to rates of pay for employees of councils that are constitutional corporations, the Associations and industry unions agreed on the terms of a new APCS the provisions of which were documented in a Heads of Agreement dated 7 November 2007. A copy of the Agreement had been provided to the AFPC at the time.

In addition to a new APCS for NSW local government, the Agreement including an undertaking that the Associations would recommend that councils bring rates of pay in line with those prescribed by the Local Government (State) Award 2007 effective from the first pay period on or after 1 November 2007. Councils’ compliance with the Associations’ recommendation represented the third adjustment to rates of pay made since the Work Choices reforms commenced on 27 March 2006.

The AFPC will recall that arrangements had been made with the Associations and industry unions that they attend a roundtable discussion with the AFPC Secretariat’s Pay and Classification Scales Team on 4 December 2007 for purpose of creating a legally binding Pay Scale for NSW local government. Further, the parties were provided with copy of the agreed APCS for the proposed discussion.

Following the election of the Rudd Labor Government, the New South Wales Local Government, Clerical, Administrative, Energy, Airlines and Utilities Union (the USU) advised that it no longer considered there to be a need for a new APCS. Despite the pre-existing agreement between the parties to terms of a new APCS and participation in a round table discussion, the USU indicated that it was no longer prepared to attend as scheduled. Consequently, the AFPC Secretariat postponed the roundtable discussion and it is now a matter of record that the AFPC has ceased the process of creating and publishing new APCS.

The Associations remain disappointed by this outcome as uncertainty and confusion continues to prevail in the void created by the failure to publish legally binding documents establishing minimum rates of pay for NSW local government. To this extent, further adjustments in rates of pay compound the difficulties facing councils that are constitutional corporations in calculating and budgeting for wage increases.

Returning NSW local government to state industrial coverage

The Associations have written to both State and Federal Ministers seeking the return of NSW local government to state industrial coverage. In correspondence dated 28 February 2008, the Deputy Prime Minister’s Chief of Staff advised the Associations that:

“It is Government’s policy that state governments will be free to determine the approach to regulating the workplace arrangements of their own employees and local government employees…. The Government will deliver on these commitments in its substantive workplace relations legislation, which will be introduced into the Parliament later this year”.

Given the potential that NSW local government will be returned to the state industrial jurisdiction, the Associations submit that the AFPC ought not pre-empt the Federal Government’s stated commitment by covering NSW local government in its 2008 Minimum Wage Review.

Should you have any queries in relation to this correspondence you are invited to contact the undersigned on (02) 9242 4000.

Yours sincerely

[Signature]

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Director
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