

FAIR WORK COMMISSION

4 YEARLY REVIEW OF MODERN AWARDS

AM2014/196 and AM2014/197 – Casual employment and part time employment

Submission of the combined Local Government Associations

August 2017

Local Government Industry Award 2010

1. This submission is made on behalf of the combined Local Government Associations.
2. Local Government Associations (“Associations”) mean:
 - 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. This submission is made in response to the decision of the Full Bench of 5 July 2017 (“the Full Bench Decision”) and directions for the parties to provide written submissions on the proposed model casual conversion clause and the provisional view of the Full Bench to include a two hour daily minimum engagement period for casual employees in modern awards which do not currently contain a daily minimum engagement period.

Casual Conversation

4. The parties were asked to make submissions concerning the proposed model casual conversion clause, including whether it requires adaptation to meet the circumstances of particular Awards.
5. The Associations submit that if the proposed model clause were contained in the *Local Government Industry Award 2010* (the **Award**), the Award would conflict with the operation of some existing state legislation concerning merit based selection of employees.
6. Several states including NSW, SA, VIC WA and the Northern Territory have legislation that requires the appointment of employees for positions within local government to be based on merit. The relevant provisions of the legislation are set out in the attached Schedule 1.
7. The inclusion of a casual conversion clause in the Award, may create the situation where councils are not able to fulfil their statutory obligation to appoint the most meritorious applicants. Casual employees are recruited based on a range of methods. These may not require the applicant to undertake a merit based selection. It is submitted that where a position is advertised as a casual position the “pool” of applicants is limited by self-selection and some prospective applicants preferring a permanent position.

Additionally, employers should not be restrained from applying selection and other criteria for appointment to positions.

8. In the Full Bench Decision it was noted (at [340]) that in the *Secure Employment Test Case* (2006) 150 IR 1, the Full Bench of the Industrial Relations Commission of NSW excepted from a casual employment “test case” standard awards where the employment was regulated by the *Public Sector Employment and Management Act 2002* (NSW) or the *Local Government Act 1993* (NSW).
9. While observations were made in the Full Bench Decision about the changing nature of casual employment, casual employment remains a vital category of employment in local government. Casuals are used in local government to provide flexibility that is required by councils in delivering services to their communities. Examples include the engagement of employees to carry out work which is seasonal in nature, and where employees are engaged in function areas where the provision of services are directly linked to external funding sources.
10. Casuals are used extensively in Local Government to top-up available labour resources, for example where employees are absent on extended leave. Local Government Awards have traditionally contained generous leave provisions, which may exceed legislated minimums and provide for additional forms of leave. This is in addition to flexible work arrangement provisions that when utilised, can lead to the use of casual staff to temporarily replace absent staff or fill in hours for staff working reduced or varied hours..
11. A number of State awards applying to local governments do not have casual conversion clauses. A casual conversion clause being inserted into the Award may impact on decisions councils make about how to engage employees through other than direct employment (for example through labour hire arrangements).

Minimum Engagement

12. The Associations submit that the inclusion of a two hour daily minimum engagement period for casual employees would require local governments to change work practices and services that are provided to the community.
13. There are many instances in local government where employees are engaged for less than two hours. For example, fitness instructors and umpires, aged and personal care providers (shopping or showering), lunch or break coverage in various areas, tourism centres, and casual rangers being called out to deal with one off issues (i.e. impounding dogs). Fitness instructors can be engaged for one lunch time class that runs for 45 minutes. To require the Council to pay employees for two hours despite being less than an hour of work to be undertaken would be a major financial impact and may result in the removal of these positions and services. In smaller regional areas tourism operators are only required to open a gallery when people wish to walk through. This can be for a very short period of time.
14. The *Local Government Industry Award 2010* contains a minimum engagement for part time employees. Clause 10.4(e) requires that part time employees be engaged for a minimum of one hour. The inclusion of an engagement period of two hours for casual employees would create an inconsistency between the two groups of employees.
15. If the Commission is minded to consider a period of minimum engagement for casual employees, then the Associations submit that it should be in line with the minimum engagement periods already included in the Award for part time employees of one hour.

16. Schedule one contains the relevant legislation applying to the appointment to employees in the States and Northern Territory.



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Local Government and Shires Association
of New South Wales

On behalf of the Associations

Date: 2 August 2017

SCHEDULE 1

Submission of the combined Local Government Associations

Local Government Industry Award 2010 ("LGI Award:)

4 yearly review of modern awards- Casual employment and Part-time employment

Casual Conversion Clause:

New South Wales

The *Local Government (State) Award 2017* and its processors do not contain provisions for casual conversion.

The *Local Government Act 1993* (NSW) requires at section 349 that;

1. *When the decision is being made to appoint a person to a position:*
 - a. *only a person who has applied for appointment to the position may be selected, and*
 - b. *from among the applicants eligible for appointment, the applicant who has the greatest merit is to be selected.*
2. *The merit of the persons eligible for appointment to a position is to be determined according to:*
 - a. *the nature of the duties of the position, and*
 - b. *the abilities, qualifications, experience and standard of work performance of those persons relevant to those duties.*

Northern Territory

Prior to coverage under the Local Government Industry Award 2010 the Awards that applied were:

- i. Municipal Employers (Northern Territory) Award 2003; and
- ii. Municipal Officers (Northern Territory) Award 2002

Neither of these Awards contained casual conversion clauses.

The *Local Government Act 2008* (NT) provides at section 104 that;

A council must ensure that its policies on human resource management give effect to the following principles:

- a. *selection processes for appointment or promotion:*
 - i. *must be based on merit; and*
 - ii. *must be fair and equitable;*
- b. *staff must have reasonable access to training and development and opportunities for advancement and promotion;*
- c. *staff must be treated fairly and consistently and must not be subjected to arbitrary or capricious decisions;*
- d. *there must be suitable processes for dealing with employment-related grievances;*
- e. *working conditions must be safe and healthy;*
- f. *there must be:*

- i. *no unlawful discrimination against a member, or potential member of staff on the ground of sex, sexuality, marital status, pregnancy, race, physical or intellectual impairment, age or any other ground; and*
- ii. *no other form of unreasonable or otherwise unjustifiable discrimination against a member or potential member of staff.*

South Australia

The *Local Government Act 1999* (SA) at section 107 requires;

1. *The chief executive officer must ensure that sound principles of human resource management are applied to employment in the administration of the council, and must take reasonable steps to ensure that those principles are known to all employees.*
2. *In particular, the chief executive officer must ensure—*
 - a. *that selection processes are based on an assessment of merit, and are fair and equitable; and*
 - b. *that employees are given reasonable access to training and development, and are afforded equal opportunities to secure promotion and advancement; and*
 - c. *that employees are treated fairly and consistently, and are not subject to arbitrary or capricious decisions; and*
 - d. *that employees have access to suitable processes to deal with grievances concerning working conditions or the decisions of supervisors; and*
 - e. *that employees are given regular reports on their performance; and*
 - f. *that employees are provided with safe and healthy working conditions; and*
 - g. *that an equal employment opportunity program relating to employment with the council is implemented, and reviewed on a regular basis; and*
 - h. *that there is no unlawful discrimination against employees or persons seeking employment in the administration of the council on the ground of sex, sexuality, marital status, pregnancy, race, physical or intellectual impairment, age or any other ground and that there is no other form of unjustifiable discrimination exercised against employees or persons seeking employment.*

Victoria

The *Local Government Act 1989* (Vic) at section 94 C requires;

A Council must establish employment processes that will ensure that—

- (a) *employment decisions are based on merit;*
- (b) *employees are treated fairly and reasonably;*
- (c) *equal employment opportunity is provided;*
- (d) *employees have a reasonable avenue of redress against unfair or unreasonable treatment.*

Western Australia

The *Local Government Officers (Western Australia) Award 1999* and the *Municipal Employees (Western Australia) Award 1999* covered employees working in Local Government prior to the introduction of the *Local Government Industry Award 2010*. Neither of the previous awards provided for casual conversion.

The *Local Government Act 1995* (WA) provides at section 5.40 that;

'employees are to be selected and promoted in accordance with the principles of merit and equity'