

From: Elizabeth Rooke [mailto:Elizabeth.Rooke@lgsw.org.au]

Sent: Friday, 19 January 2018 12:14 PM

To: AMOD

Cc: Chambers - Hatcher VP

Subject: AM2014/196 and AM2014/197

Dear Modern Award Review Team,

On behalf of the State and Territory Local Government Associations, Local Government NSW attaches two statements which it will seek to rely upon for the purpose of oral submissions listed on 1 and 2 February 2018.

Regards,

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FAIR WORK COMMISSION

MATTER No. AM2014/196 and AM2014/197

4 Yearly review of modern awards - Casual employment and Part-time employment.

Witness Statement of Robert Spence

On 21 December 2017, I, Robert Spence of the Municipal Association of Victoria state as follows:

1. I am the Chief Executive Officer.
2. I have been provided with a copy of a draft determination proposing variations to the Award that was filed by the Australian Council of Trade Unions ("the ACTU").
3. It is my understanding that the ACTU is proposing variations to the Local Government Industry Award 2010 which include:
 - (i) Inclusion of minimum hours of engagement for casual employees;
 - (ii) a casual conversion clause which is triggered after six months, rather than the existing period of 12 months.

Casual Conversion.

4. Employment in Local Government in Victoria is not only governed by the provisions of the *Local Government Industry Award 2010* but also the *Local Government Act 1989* (the **Act**). The Act states that;

Employment principles

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.*
5. The employment principles under the Act are required to ensure all applicants are treated fairly during the application process and employees are not selected for any reason other than that they are the most meritorious applicant.
 6. This in part prevents undue pressure being placed on those recruiting for positions from any source whether it be internal or external to Council.
 7. If the model clause proposed by the ACTU were to allow casual employees to be engaged for a certain period of time then transfer to permanent positions it would cause a conflict between the Act and the Award. While the Award would prevail, this has the potential to

give rise to employees being engaged as casual employees then being transferred to permanent employees without undergoing merit based selection.

8. The fundamental basis of the provisions of the Act is to ensure the vacant position is awarded to the applicant who is most meritorious.
9. The pool of applicants for a casual role can be very different to the pool of applicants for a permanent role. Casual conversion can lead to employees being awarded positions where they are not the most meritorious applicant.
10. While the clause that is proposed allows the employer to refuse the request on reasonable grounds, this does not adequately deal with the provisions of the Act and protect the employment principles that are vital in Local Government.
11. A possible amendment to the model clause to ensure the intent of the provisions of the Act are not overridden may be;

11.6(g)(v) where the employer is required under any Act or law to undertake merit based selection, prior to request for casual conversion being granted, the employee may need to move through the employers selection process.

Signed:

Date:

22/12/17

FAIR WORK COMMISSION

MATTER No. AM2014/196 and AM2014/197

4 Yearly review of modern awards - Casual employment and Part-time employment.

Witness Statement of Anthony Brown.

On 16 January 2018, I, Anthony Brown of [REDACTED] state as follows:

1. I am the Executive Manager Governance and Organisational Services at the WA Local Government Association (WALGA). In this role I manage the following business areas; sector governance, recruitment, training, association governance and strategy, regional capacity building and employee relations.
2. I have worked in the Local Government sector for thirty five years and for WALGA for eleven of those years. A majority of my Local Government experience has been in Senior Management positions.
3. I provide this statement in support of the submission of the combined Local Government Associations of 2 August 2017, in matters AM2014/196 and AM2014/197, opposing the proposed variation to the Local Government Industry Award 2010 (the Award) as set out in the Full Bench decision [2017] FWCFB 3541 of 5 July 2017.
4. I have reviewed the proposed Award variations in relation to the introduction of:
 - (i) a two hour minimum engagement period for casual employees; and
 - (ii) a model casual conversion clause, which is effective after 12 months employment.

Casual Conversion

5. The system of Local Government in Western Australia is codified under s52 of the *Constitution Act 1889* (WA) and the primary legislation governing the sector is the *Local Government Act 1995* (WA) (the Act).
6. The Act provides the following at section 5.40:

5.40. Principles affecting employment by local governments

The following principles apply to a local government in respect of its employees —

- (a) employees are to be selected and promoted in accordance with the principles of merit and equity; [emphasis added] and*
- (b) no power with regard to matters affecting employees is to be exercised on the basis of nepotism or patronage; and*
- (c) employees are to be treated fairly and consistently; and*

- (d) there is to be no unlawful discrimination against employees or persons seeking employment by a local government on a ground referred to in the Equal Opportunity Act 1984 or on any other ground; and*
- (e) employees are to be provided with safe and healthy working conditions in accordance with the Occupational Safety and Health Act 1984; and*
- (f) such other principles, not inconsistent with this Division, as may be prescribed.*

7. To ensure all applicants are treated fairly during the recruitment and selection process, and applicants are appointed solely on merit, the principles affecting employment under the Act are embedded in strategies, documents, policies and procedures of the Local Governments.
8. In Western Australia, there has recently been increased scrutiny of Local Government by the Department of Local Government, Sport and Cultural Industries in the area of recruitment practices to ensure that appointments are made through a fair and transparent process, and the appropriate advertising and selection process has been followed. This is to ensure that the best applicant for the role is appointed.
9. If the model casual conversion clause is adopted by the Fair Work Commission in its current form, this would lead to a conflict between the requirements of the Act and the Award.
10. The recruitment processes in place in many Local Governments differ for casual engagement and permanent employment, with recruitment for permanent positions generally involving a more exhaustive process. As a result, an employee who is successful in obtaining casual employment, may be unsuccessful when exposed to the more exhaustive process and differing criteria applicable to permanent employment, making casual conversion as proposed unsuitable.
11. Further, the pool of applicants applying for a casual position are likely to differ from those attracted to a permanent position. This may lead to a situation where the best person for the role may not apply or be awarded the role when converted directly from a casual engagement. This outcome does not align to the employment principles set out in s5.40 of the Act.
12. A further example is found in section 5.37 of the Act dealing with recruitment of designated senior employees. Section 5.37 of the Act states:

5.37(3) Unless subsection (4A) applies, if the position of a senior employee of a local government becomes vacant, it is to be advertised by the local government in the manner prescribed, and the advertisement is to contain such information with respect to the position as is prescribed.
13. Section 5.37 of the Act requires that senior employee positions are to be advertised state-wide, with advertisements detailing particular information regulated by the *Local Government (Administration) Regulations 1996 (WA)*.

14. The reason for the principles affecting employment in the Act is to ensure the vacant position is awarded through a fair process to the best applicant, and in the case of senior employees, following the conduct of a highly visible public process featuring regulated disclosure of certain information.

15. While the casual conversion clause that is proposed allows the employer to refuse the request on reasonable grounds, this does not adequately deal with the conflict between the provisions of the Act and the principles of merit and equity, and as such, should not be included in the Award.

Signed:

Date:

16/1/18