

**FAIR WORK COMMISSION**  
**4 YEARLY REVIEW OF MODERN AWARDS**

**AM2014/234**

**Submission of the combined Local Government Associations**

**April 2016**

**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 directions issued by the Fair Work Commission on 2 November 2015 for the parties to provide written submissions on the technical and drafting issues related to exposure drafts in Group 3.
4. These submissions are based on the exposure draft of the award uploaded to the Fair Work Commission website on 18 December 2015.
5. The parties were asked whether clause 6.5(c)(ii) appears to state that the penalties and casual loading are added together before being added to the minimum hourly rate (cumulative, rather than compounding). The Associations confirm that the example of the casual employee 'Alexa' accurately represents the method of calculating penalty rates for casual employees.
6. The parties were asked to comment on whether the reference to 'accident make-up pay' should be deleted from clause 10.5(d)(ix). It is the submission of the Associations that the reference to 'accident make-up pay' should be deleted from this clause.
7. The parties were asked to clarify the rate of pay applicable on a public holiday for an employee on extended higher duties. The position of the Associations is that an employee on extended higher duties would be entitled to payment at their base rate of pay rather than the minimum hourly rate applicable to the higher level position.
8. The parties were asked to clarify whether the "appropriate rate of pay" in clause 11.4(b)(ii) is their minimum rate or can it include penalties. It is the submission of the Associations that the "appropriate rate of pay" can include penalties.
9. The parties were asked to clarify 'whether clause 18.3 applies where a State or Territory government declares an 'observed public holiday' for example when a public holiday falls on a weekend and the Monday is declared a public holiday'.

10. The Associations submit that clause 18.3 has the ability to apply in each State and Territory, as the applicable public holiday legislation provides for the ability to declare additional public holidays. The applicable public holiday legislation is set out Schedule 1 to this submission.
11. The Associations submit that in the following States public holiday legislation expressly provides for a second or 'observed' public holiday on a Monday or Tuesday when a public holiday falls on the weekend, although in some cases the second day is referred to as an additional day:

*New South Wales - Public Holidays Act 2010 (NSW)*

Section 4 Standard Public Holidays – New Year's Day (when it is a Saturday or Sunday, there is an additional day on the following Monday, Christmas Day (where it is a Saturday there is an additional day on the following Monday, and when it is a Sunday, an additional day on the following Tuesday), Boxing Day (when it is a Saturday, there is an additional day on the following Monday, and where it is a Sunday there is an additional day on the following Tuesday).

*South Australia - Holidays Act 1910 (SA).*

Section 3(2)(b) – Days fixed as holidays (26 December)

Section 3A - Anzac Day

*Western Australia - Public and Bank Holidays Act 1972 (WA)*


Second Schedule

*Queensland - Holidays Act 1983 (Qld)*

Section 5(2) – Bank holidays

12. The parties were asked to clarify how clause 18.5 interacts with clause 8.2 (d). It is the submission of the Associations that there is no conflict between clause 18.5 and clause 8.2 (d). It is the submission of the Associations that clause 8.2 (d) relates to employees working an accrued rostered day off system, where the public holiday falls on their accrued day off. The clause provides for the next working day off, or another day by agreement. The Associations submit that clause 18.5 relates to employees on a 7 day a week rotating roster (not on an accrued rostered day off system) where the rotating day off falls on a public holiday. The clause provides for an additional days pay or an additional day off by agreement.
13. It is the submission of the Associations that employees engaged on a 7 day a week rotating roster may be on an accrued rostered day off system. If a public holiday fell on a day off it would then need to be determined if it was accrued rostered day off or a rotating day off as to whether clause 18.5 or 8.2 (d) applied.
14. The Associations note that the exposure draft has not included any of the amendments handed down in the Commissions determination on 23 December 2015 [PR575440].

15. The Associations have not identified any other technical and drafting issues relating to the exposure draft.



.....  
**Adam Dansie**  
Manager, Industrial Relations  
Local Government and Shires Association  
of New South Wales

On behalf of the Associations

Date: 14 April 2016

## SCHEDULE 1

### Submission of the combined Local Government Associations

#### Local Government Industry Award 2010 ("LGI Award:)

#### Public Holidays

---

##### **New South Wales**

The Associations submit that clause 18.3 applies in New South Wales. The *Public Holidays Act 2010* (NSW) provides for additional public holidays on New Year's Day, 25 December and 26 December when a public holiday falls on a weekend.

##### **Northern Territory**

The Associations submit that clause 18.3 has the potential to apply in the Northern Territory, under the *Public Holidays Act* (NT), where an additional public holiday is declared.

##### **Queensland**

The Associations submit that clause 18.3 does apply in Queensland under the *Holidays Act 1983* (QLD).

Section 5(2) of the Act provides where another day is substituted as a holiday in respect of New Year's Day, Anzac Day or Christmas Day both that day and New Year's Day, Anzac Day or Christmas Day as the case may be shall be bank holidays.

##### **South Australia**

The Associations submit that clause 18.3 has the potential to apply in South Australia, under the *Holidays Act 1910* (SA), where an additional public holiday is declared.

##### **Tasmania**

The Associations submit that clause 18.3 does not apply in Tasmania, under the *Statutory Holidays Act 2000* (TAS).

##### **Victoria**

The Associations submit that clause 18.3 has the potential to apply in Victoria, under the *Public Holidays Act 1993* (VIC), where an additional public holiday is declared.

##### **Western Australia**

The Associations submit that clause 18.3 applies in Western Australia, under the *Public and Bank Holidays Act 1972* (WA).

The Act provides in the 'second schedule' that when a public holiday falls on the weekend the following Monday is also a public holiday.