

APPLICATION TO VARY A MODERN AWARD - 2012 REVIEW

Application to vary a modern award (*Fair Work (Transitional Provisions and Consequential Amendments) Act 2009, Part 2 of Schedule 5*)

Applicant

Name:	Western Australian Local Government Association				
	Title <i>[if applicable]</i>	Mr []	Mrs []	Ms []	Other [] specify:
Address:	15 Altona Street				
Suburb:	West Perth	State:	WA	Postcode:	6005
If the Applicant is a company or organisation:					
Contact person:	Simon White	ABN:	28126945127		
Contact details for the Applicant or contact person (if one is specified):					
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Applicant's representative (if any)

Name:				ABN: <i>[If applicable]</i>
Address:				
Suburb:	State:	Postcode:		
Contact person:				
Telephone:	Mobile:			
Fax:	Email:			

- 1. What is the name of the modern award to which the application relates?**
[Also include the Award ID/Code No. of the modern award.]

Water Industry Award 2010 [MA000113]

- 2. What variation(s) are sought?**
[Set out, or attach a separate schedule the variation(s) sought.]

Clause 10.4 – Part-time employees
 Clause 10.5 – Casual Employees
 Clause 19.1 – Leading Hand Allowance
 Clause 19.3 – First aid allowance
 Clause 26.2 – Payment for overtime
 Clause 27 – Annual leave

- 3. Grounds:**
[Using numbered paragraphs, set out, or attach as a separate schedule, the grounds upon which the Applicant relies in seeking such variation(s) and, an outline of the submissions to be made in relation to each ground and an indication of the evidence and other material upon which the applicant will seek to rely.]

As attached.

Date:	2 March
Signature:	
Name:	Simon White
Capacity/Position:	Agent

The application will be published on the Fair Work Australia website and relevant subscribers notified.

FAIR WORK AUSTRALIA

MODERN AWARD REVIEW

Submission of the Western Australian Local Government Association 8 March 2012

Water Industry Award 2010 [MA000113]

1. **Local Government Associations** (“Associations”) mean:
 - 1.1 The Local Government Association of Northern Territory;
 - 1.2 The Western Australian Local Government Association;
 - 1.3 The Local Government Association of Queensland;
 - 1.4 The Local Government Association of New South Wales; and
 - 1.5 The Shires Association of New South Wales.

2. The Associations are pleased to provide the following application to vary a modern award to the Tribunal to assist in reviewing the Water Industry Award 2010 (“the Award”).

Clause 10.4 – Part-time employees

3. The Associations submit that an amendment to subclause 10.4(f) of the Award is necessary to clarify what appears to be a drafting error. It is proposed to alter the subclause to apply the correct award reference and state that:

*“A part-time employee may agree to work up to an average of 38 ordinary hours per week at the hourly ordinary time rate provided the agreement is entered into without duress, in writing and stipulates that hours are to be paid at **hourly ordinary time rates.**”*

Clause 10.5 – Casual Employees

4. The Associations submit that an amendment to subclause 10.5(c) of the Award is necessary to clarify the intended interpretation of the clause.

5. The Associations submit that the phrase “exclusive of the casual loading” in this subclause has caused confusion and uncertainty for water industry employers.

6. The Associations submit that the subclause intends that when casual employees work hours that attract penalties, that the penalties will be calculated without including the casual loading. The Associations submit that the subclause 10.5(c) be amended to state: *“Penalties, including public holiday penalties and overtime, for casual employees will be calculated on the hourly ordinary time rate for the classification in which they are employed. These penalties will be calculated without including the casual loading in the calculation.”*

Clause 19.1 – Leading Hand Allowance

7. The Associations consider that an amendment to subclause 19.1 of the Award is necessary to clarify the intended interpretation of the clause. The Associations submit that the wording of this clause means that this allowance would only be payable during working periods and hence would not be payable during periods of leave.
8. The Associations submit that the intended interpretation of this clause could be clarified by the addition of a new subclause stating:

19.1(b) *“Leading Hand Allowances are not payable during periods of leave.”*

Clause 19.3 – First aid allowance

9. The Associations submit that an amendment to subclause 19.3 of the Award is needed to clarify that this allowance is payable during periods of leave.
10. The Associations submit that the intended interpretation of this clause could be clarified by the addition of a new subclause stating:

19.3(c) *“First aid allowance is payable during periods of paid leave.”*

Clause 26.2 – Payment for overtime

11. The Associations believe that subclause 26.2(d) should be amended to clarify that overtime is calculated on a daily basis.
12. This could be through altering the subclause to state:

“(d) The payment for overtime rates provided in this clause is calculated on the employee’s hourly ordinary time rate, and on a daily basis.”

Clause 27 – Annual leave

13. The Association's submit that the shiftworker definition determined by the Commission for the Award is too broad and incorporates groups of employees that have never been considered shiftworkers. These employees are therefore being compensated through an additional week of annual leave in addition to the penalty rates for working on weekends and public holidays.

14. The Associations submit the definition at subclause 27.2 should be amended to more accurately represent shiftwork in a water industry environment:

27.2 Shiftworkers for the purposes of the NES

- (a) *For the purpose of s.87(1)(b) of the Act, a shiftworker is an employee:*
 - (i) *who works **under a continuous 24 hour** roster and who, over the roster cycle, may be rostered to work ordinary shifts on any of the seven days of the week; and*
 - (ii) *who is regularly rostered to work on Sundays and public holidays.*