

IN FAIR WORK COMMISSION

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FWA Matter No.: AM2014/1

2014 MODERN AWARD REVIEW – COMMON ISSUES

**LOCAL GOVERNMENT INDUSTRY AWARD 2010
[MA000112]**

Submissions – Annual Leave

(20 March 2014)

1. Background

1. Local Government Associations (“**LGA**s”) mean:
 - 1.1 Municipal Association of Victoria;
 - 1.2 Local Government Association of Northern Territory;
 - 1.3 Local Government Association of Tasmania;
 - 1.4 Western Australian Local Government Association;
 - 1.5 Local Government Association of South Australia;
 - 1.6 Local Government Association of Queensland; and
 - 1.7 Local Government New South Wales.

2. LGAs are the peak bodies that collectively represent the employer interests of Local Government in each Australian State and the Northern Territory. LGAs also present the views of councils to governments, promoting Local Government to the community and by providing specialist advice and services to the industry.

3. The LGAs provide the following submission to support the inclusion of a provision that allows for the cashing out of annual leave within the existing annual leave provisions in the Local Government Industry Award 2010 (“the LGIA”).

4. The LGAs have sought to provide this submission as we wish to provide the Commission with the opportunity to assess whether this is a common issue that can be dealt with in the proposed Full Bench proceedings.

5. A draft determination setting out the variation proposed is set out below.

2. Context

6. The existing LGIA provisions do not include terms providing for the cashing out of paid annual leave by an employee.
7. Subsection 93(1) of the *Fair Work Act 2009* provides that a modern award may include terms providing for the cashing out of paid annual leave by an employee.
8. Subsection 92(a) of the *Fair Work Act 2009* provides that paid annual leave must not be cashed out, except in accordance with cashing out terms included in a modern award or enterprise agreement or in accordance with an agreement between an employee and an award/agreement free employee under subsection 94(1) of the *Fair Work Act 2009*.
9. A number of employees within the local government sector are not permitted to have paid annual leave cashed out which has created inflexibility for both employees and employers within the local government sector.

3. Outcomes sought by the LGAs

10. The information below constitutes a draft determination setting out the variation proposed. It is only intended to achieve a variation to the LGIA but the LGAs consider that similar submissions may be made in relation to other modern awards.
11. The LGA's propose that a new subclause 25.7 be inserted into the LGIA.
12. The LGA's propose that a new subclause 25.7 provide as follows:

An employer and an employee may agree to the employee cashing out a period of the employee's accrued annual provided:

- (a) the amount of paid annual leave cashed out would not result in the employee's remaining accrued entitlement to paid annual leave being less than 4 weeks; and*
- (b) each agreement to cash out a particular amount of paid annual leave must be a separate agreement in writing; and*
- (c) The employer pays the employee at least the full amount that would have been payable to the employee had the employee taken the leave that the employee has forgone.*