

IN FAIR WORK COMMISSION

FWC Matter No.: AM2017/38

APPLICATION TO VARY A MODERN AWARD

Application to vary a modern award (*Fair Work Act 2009*, ss.157-160)

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

Further Submissions

(12 January 2018)

Applicant:

Name:	Local Government Association of New South Wales (on behalf of State and Territory Local Government Associations)		
	Title <i>[if applicable]</i> Mr [] Mrs [] Ms [] Other [] specify:		
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If the Applicant is a company or organisation:			
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1. This further submission is made by the Local Government and Shires Association of New South Wales (“**LGNSW**”) on behalf of State and Territory Local Government Associations. The submission arises from an application by LGNSW to the Fair Work Commission (“**FWC**”) on 30 August 2017 to vary clause 20.4 of the *Local Government Industry Award 2010* (“**LGI Award**”). Clause 20.4 of the LGI Award deals with default superannuation funds under the award.

Following the receipt of the LGAs initial submissions, the Modern Awards Team prepared a memo dated 7 December 2017 for the consideration of Commissioner Johns. This further submission is filed in response to the memo issued which considered whether the FWC has the jurisdiction to make the variations sought in the application.

2. In this submission, Local Government Associations (“**LGAs**”) means the following organisations:

- 2.1 Local Government and Shires Association of New South Wales (“**LGNSW**”)
- 2.2 Municipal Association of Victoria (“**MAV**”)
- 2.3 Local Government Association of Queensland (“**LGAQ**”)
- 2.4 Local Government Association of Northern Territory (“**LGANT**”)
- 2.5 Local Government Association of Tasmania (“**LGAT**”)
- 2.6 Western Australian Local Government Association (“**WALGA**”); and
- 2.7 Local Government Association of South Australia (“**LGASA**”).

Removal of the reference to ‘Quadrant Superannuation Scheme’

3. The LGAs sought to remove the reference to ‘Quadrant Superannuation Scheme’ under clause 20.4 of the LGI Award on the basis that it ceased to exist as of 1 December 2015.

4. It has been acknowledged by the Modern Awards Team in the memo that this proposed change could be made within the scope of section 160 of the *Fair Work Act 2009* (Cth) ("**FW Act**").
5. On this basis the LGAs propose that the FWC exercises its power to make this variation and remove Quadrant Superannuation Scheme from the list.

Removal of the reference to 'Local Super'

6. Following a successor fund transfer of members of Local Super to Statewide Super, the LGAs sought to remove the reference to 'Local Super' in subclause 20.4 (h) of the LGI Award and replace it with a reference to 'Statewide Super'.
7. In response to this proposal, the Modern Awards Team made the recommendation that the FWC does not have the jurisdiction to remove Local Super from the list and replace it with Statewide Super, within the scope of sections 157-160 of FW Act.
8. It was highlighted that Statewide Super could not be added to clause 20.4 of the LGI Award outside of the 4 yearly review of default super funds under section 156A of the FW Act.
9. In response to this recommendation, the LGAs submit that Local Super has continued to exist as a division of Statewide Super and is no longer referred to by this name. On this basis the FWC has jurisdiction under section 159A of the FW Act to vary a default superannuation fund to reflect a change in name, outside the 4 yearly review.
10. This argument is consistent with the position put forward by Statewide Super in their submissions. I refer you to 'Annexure A' of this submission.
11. In the event that the FWC is inclined to accept the recommendations of the Modern Awards Team, the LGAs propose that the FWC makes no variation to delete Local Super from the list of default super funds under the LGI Award.

Outcome

12. The LGAs consent to the current matter being determined by the FWC on the papers. We also have no objection to an oral hearing should the FWC wish to discuss the issue further with interested parties.

12 January 2018

Fair Work Commission
11 Exhibition Street
MELBOURNE VIC 3000

AM2017/38 – Application to vary the Local Government Industry Award 2010

1. We refer to the application by Local Government NSW on behalf of the combined State and Territory Local Government Associations (jointly the LGA) to vary clause 20.4 of the Local Government Industry Award 2010 (**LGI Award**) by deleting the reference to “Local Super” in subclause 20.4(h) of the LGI Award and replacing it with a reference to “Statewide Super”.

Background

2. Local Super was listed in clause 20.4 of the LGI Award when the modern award was made on 4 December 2009.
3. On 1 July 2012 “Local Super” merged with “Statewide Super” with the merged fund using the trading name “Statewide Super”. As a result of the merger, members of Local Super were transferred to Statewide Super through a successor fund transfer.
4. Statewide Super (formerly Local Super) has been meeting the superannuation needs of most local government employees in South Australia and the Northern Territory since 1984. Approximately 25,000 local government employees currently rely on Statewide Super for their superannuation needs.

Transition to MySuper

5. On 30 December 2013 the Commission reviewed the default superannuation funds named in the LGI Award to ensure that they offered a MySuper product. As a result of that review, Local Super was removed from clause 20.4 of the LGI Award.
6. Upon application by Statewide Super in early 2014, the Commission subsequently exercised its corrective powers pursuant to s.160 to *reinstate* Local Super within clause 20.4 of the LGI Award (on the grounds that it offered a MySuper product via Statewide Super as its successor fund).

Recommendation

7. Statewide Super recommends that the Commission either:
 - 7.1. accepts the LGA application in full and varies the LGI Award to replace “Local Super” with “Statewide Super” using its power under either:
 - 7.1.1. s159A(1)(a) (change in the name of a fund) (based on the fact that pursuant to the *Local Government (Superannuation Scheme) (Merger) Amendment Act 2012*, Local Super has continued in existence as a division of Statewide Super but is no longer referred to by that name); or
 - 7.1.2. s160 (removing ambiguities) (based on the fact that Statewide Super is already included on the list of default funds in the LGI Award by virtue of being Local Super’s “successor fund” and the Commission is therefore not required to **add** a new fund); OR
 - 7.2. makes no variation to the LGI Award with respect to Local Super (and therefore allows contributions to continue to be made to Statewide Super as the successor of Local Super).
8. If the Commission elects to take the latter approach, we ask that the LGI Award is varied to replace “Local Super” with “Statewide Super” when the Commission undertakes its 4 yearly review of default funds. The change would allow employers to more easily understand their obligations to employees (without having to be aware of the 2012 merger).

Yours sincerely



Kristyn Verrall

General Counsel & Company Secretary