



BRRAG

Belmont Resident and Ratepayer Action Group Inc.

"To provide an effective voice for the people of Belmont"

12 November 2020

Justice Ross
Fair Work Commission
PO Box 1994
Melbourne Victoria

Dear Justice Ross

Our organisation contacted a staff member at the Fair Work Commission in regards to an Enterprise Bargaining Agreement that has been registered with the Commission. As the query was related to a legal component within the agreement, he provided your email address and suggested I contacted you directly.

The EBA in question is AG 2004/741 City of Belmont. The particular clause which is of concern is clause 23 located on page 13, Gratuity Payments. There appears to be inconsistency between the EBA and the Local Government Act 2005 (WA). If that is the case, what if anything can be done to correct this?

The City of Belmont has a Gratuity Payments policy which is required under Section 5.50 of the local Government Act and referenced in their policy.

Section 5.50 (3) of the Local Government Act is in regard to the value of the payments not exceeding the amount that is provided in the Regulations:

http://classic.austlii.edu.au/au/legis/wa/consol_act/lga1995182/s5.50.html

The Local Government (Administration) Regulations 1996 Section 19A (1) (b) refers to the amount not exceeding in total of \$5000

http://www6.austlii.edu.au/cgi-bin/viewdoc/au/legis/wa/consol_reg/lgr1996443/s19a.html

The reason that we are asking for some clarification on this is because previously the City of Belmont have advised that

Council Policy does not give legal effect to this condition of service for City staff. This arrangement is given legal standing through the existence of the City's two Certified Agreements which are in turn governed by federal industrial laws.

Over the past five years more than a million dollars has been paid to leaving staff, with two recent cases of \$125 000 and \$45 000 respectively for gratuity payments.

There has been some suggestion that this particular clause may be ultra vires due to the specific

legislation in the Local Government Act 1995 and Regulations.

We can appreciate that the Fair Work Commission would have thousands of EBA's that have been approved over the years. It would be extremely difficult to know every piece of legislation from the different states that may potentially affect an EBA.

We are hoping that you might be able to clarify the position of this particular EBA and advise us accordingly. Having contacted the Fair Work Ombudsman who referred us to the Commission, it is difficult to know who is the best person/s to give advice on this. Obviously we want to see the correct payments made to all staff, but this inconsistency does not seem to be able to be explained to us. If there has been some sort of mistake, we believe it would be proper to see it addressed correctly for the future.

Kindest regards

Committee

Belmont Resident and Ratepayer Action Group Inc (BRRAG)