Industrial Relations and Other Legislation Amendment Bill 2022

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LGAQ

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Industrial Relations and Other Legislation Amendment Bill

Submission to the Education, Employment and Training Committee

11 July 2022

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About the Local Government Association of Queensland (LGAQ)

The Local Government Association of Queensland (LGAQ) is the peak body for local government in Queensland. It is a not-for-profit association established solely to serve councils and their needs. The LGAQ has been advising, supporting, and representing local councils since 1896, enabling them to improve their operations and strengthen relationships with their communities. The LGAQ does this by connecting councils to people and places; supporting their drive to innovate and improve service delivery through smart services and sustainable solutions; and providing them with the means to achieve community, professional and political excellence.

Partners in Government Agreement

In August 2019, the LGAQ on behalf of all 77 Queensland Local Governments signed a three-year partners-in-government-agreement[1] with the State of Queensland.

The Agreement details the key principles underlying the relationship between the state and local governments and establishes the foundation for effective negotiation and engagement between both levels of government.

The agreement acknowledges that local government is the closest level of government to the community, affecting the lives of everyday Queenslanders and acknowledging Local Government as a genuine partner in the Australian government system.

The intent of the agreement was to continue the tradition of working in genuine partnership to improve the quality of life for all Queenslanders to enjoy. By identifying the roles and responsibilities of each party, it provides a solid foundation for effective negotiation and engagement between both levels of government.

The LGAQ is committed to working with the Queensland Government and will continue to be a passionate advocate for councils, to serve our joint jurisdiction for the people of Queensland.

[1] https://www.dlgrma.qld.gov.au/__data/assets/pdf_file/0016/45115/partners-in-government-agreement-2019.pdf

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Executive Summary

The LGAQ welcomes the opportunity to provide feedback to the Education, Employment and Training Committee on the Industrial Relations and Other Legislation Amendment Bill 2022.

Many of the comments in this submission reflect submissions made to the Review Team commissioned by the State to review the current Act.

At the time of enactment of the Industrial Relations Act 2016, the LGAQ on behalf of councils raised several concerns with the legislation as proposed.

The IR Act has posed challenges for councils and has led to a number of disputes as councils and workers came to grips with the changes to their rights under the Act - such as the restrictions on the role workers could play in collective bargaining.

The LGAQ disputes that the Act has increased collaboration between parties and advanced Enterprise Bargaining as the primary mechanism for establishing employment conditions.

Having said that, councils are renowned for their resilience in dealing with changing circumstances and have adapted to the new industrial regime, albeit not necessarily always in the manner intended by the legislation.

In relation to the amendments proposed by the Bill:

- The LGAQ supports the IR Act being amended to address sexual and gender-based harassment but recommends placing greater onus on the perpetrator of sexual harassment being accountable for their behaviour to have better prospects of reducing this unacceptable behaviour than has been proposed.
- The LGAQ would prefer the provisions for dealing with sexual harassment be aligned with similar procedures for dealing with disputes between individuals, such as the existing “stop-bullying” provisions, to avoid overly complicating the matter for workers and employers alike.
- The LGAQ supports sexual harassment being listed as a valid reason for summary dismissal. However, local government would appreciate a clarification clause in the Act confirming that any allegations of sexual harassment would not fall within the definition of “corrupt conduct“ for the purposes of the Crime and Corruption Act and hence not require referral to external agencies for consideration prior to remedial action by a local government employer. This clarification is to mitigate against any risk of a delay in an employer being able to immediately respond to reports of sexual harassment.
- The LGAQ accepts the distinction between registered organisations that are heavily regulated with self-styled industrial associations and the need for the legislation to ensure those distinctions are recognised.
- The Act’s enterprise bargaining provisions, which exclude workers from the bargaining process, have caused concerns for some councils and workers through institutionalisation of the primacy of unions as the sole voice of workers in the enterprise bargaining process. The LGAQ contends the current legislation continues to

disrespect the principle of Freedom of Association and is disappointed the Review Team opted not to address the concerns raised by the LGAQ.

- The LGAQ supports the capacity of an individual Commissioner to arbitrate on enterprise bargaining disputes. However, if decreasing the drawn-out length of time to achieve agreement is the motivating factor for this initiative, then the LGAQ would also advocate for the return of a provision for councils to be able to take a proposed agreement to staff for a vote when an impasse around remuneration increases has been reached.
- In relation to amendments requiring parties to provide gender pay data at the commencement of bargaining, the LGAQ seeks further detail from the State regarding its planned roadmap for using this data to achieve positive gender pay equity outcomes for workers. This requirement will impose resource commitments on councils so for these amendments to be supported, they must be coupled with guidance on how this data will be used for the positive benefit of workers.
- Short-term engagement provisions are adequate for the local government sector and do not need amendment. The proposed amended definition of short-term casuals is unwieldy and open to misinterpretation.
- The LGAQ sees no reason to extend "unfair dismissal" rights to short-term casuals who have worked greater than six months continuous service. This was not a recommendation of the Review Team, nor has any justification for the change been provided other than it reflects the Fair Work Act. The LGAQ has for a long time maintained a preference for legislation to include a definition of casual engagement that is based on the circumstances of the engagement rather than the personal preference of the employee and/or employer.
- The current Queensland Employment Standards (QES) conditions are considered adequate and the LGAQ is not aware of any recent problems within the local government sector that would support any calls for change. Having said that, the LGAQ does not have any objection to the changes proposed on this occasion. However, this support is predicated on the fairness of the change as proposed rather than mere alignment with the National Employment Standards (NES). The LGAQ position is that care should be taken to avoid cherry-picking superior NES provisions so as not to undermine the independence of the Queensland Industrial Relations Commission (QIRC) or the reliance on enterprise bargaining to set appropriate employment conditions.
- The LGAQ supports increasing flexibility for couples to take leave after the birth of a child. However, removal of any gender-specific language from the legislation in relation to maternity and paternity leave may lead to confusion for workers, so the LGAQ would recommend resources be allocated to amend internal processes and systems and to inform staff accordingly. The LGAQ also notes the views of some critics that there may be negative consequences stemming from the amendment as proposed.
- The LGAQ does not oppose expanding the jurisdiction of the QIRC to include coverage of independent couriers.

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Introduction

Local governments hold unique positions as employers. In many communities, local government is one of the biggest, if not the biggest, employers.

The vast majority of employees and their dependents are also constituents of the community, and as such can be instrumental in selecting who leads their council. As residents, employees and their families are recipients of their local council's services and subject to council fees and charges. Elected mayors and councillors live in the same local community as council employees, come into regular contact with employees socially and professionally and are always visible and accessible to council employees as constituents of council.

A council's commitment to advance their community underpins that council's efforts to maintain as large a local workforce as possible and minimise outsourcing of labour and services. Investing in labour locally serves to stimulate the local economy and maximises employment in their community.

Accordingly, this symbiotic relationship between a council and their employees contributes in part to the LGAQ's form position that councils are good employers who value their local workforce, are committed to providing a safe and productive workplace and offer fair and equitable working conditions for staff.

Their commitment to a local workforce is reinforced by the turnover evidence that confirms the most at-risk position within council for an incumbent is that of Chief Executive Officer, who invariably is recruited to the council from outside of the community.

The LGAQ, throughout the recent award modernisation process and consequent industrial legislation review, has prosecuted a position that calls for a modern and contemporary system of industrial relations that is fair and equitable for employees and employers, respects freedom of association for workers, supports an independent Industrial Relations Commission and recognises the role of registered industrial organisations to represent the interests of their members. This has not changed.

In enacting the IR Act 2016, councils collectively were disappointed and dismayed at the decision of the State Government to use its legislative powers to override the decisions of the independent QIRC in determining the number of awards to cover local government. The LGAQ is unaware of any other jurisdiction to this day where the government has used its statutory power to single out a particular industry and prescribe the number of awards to cover the targeted industry.

Councils were similarly concerned with the government's overriding of the QIRC's decisions to harmonise certain conditions for council employees and reinstate dated and inequitable employment conditions for workers. This willingness to override the decisions of the QIRC has undermined the confidence of councils in the current industrial system.

Having said that, and as has been proven on many occasions, local government is a resilient industry. Local government has adapted to operate within the parameters of the IR Act 2016, however questions remain as to whether the new Act has achieved any significant benefits for councils, their workers, related third parties and the relationships between these stakeholders.

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Response to specific amendments

Sexual Harassment and Gender Based harassment

LGAQ Comment Councils in Queensland are required by existing workplace health and safety laws to provide a safe working environment for employees. This includes an environment where an employee is free from bullying and harassment of any type. Councils, like State Government entities, are bound by a code of conduct that specifically addresses the issue of employee behaviour.

It is hard to envisage that any employee today is unaware that sexual harassment in the workplace is unacceptable, constitutes misconduct and subjects the employee to disciplinary action even dismissal. While the resourcing impact of more regulation on an employer is measurable, there is a question over whether further regulation would lead to any measurable improvement in the behaviour of offenders, current or potential.

Having said that, the LGAQ notes the recommendations arising out of *the 'Respect@Work: Sexual Harassment National Inquiry Report (2020)' (the Respect@Work Report)* and is supportive of any positive regulatory measures that contribute to a safe working environment for workers in Queensland councils

Accordingly, while the LGAQ does believe the current regulatory program for eliminating harassment in the workplace is sufficient, it does not oppose amending the IR Act to expressly prohibit sexual and gender based harassment if this would enhance the protection of vulnerable workers against inappropriate behaviour by other local government workers or third parties related to the work environment.

However, if the legislation is to have material effect, the LGAQ believes the legislation should specifically focus on sexual harassment perpetrators. The legislation should clarify that the responsibility for informing themselves of behaviours that might be captured by the new regulation and the consequences for unacceptable behaviour rests with the individual worker. If the new regulation is to make any difference over and above that of the current regulatory regime, the legislation should not allow for any responsibility for behaviour that is simply unacceptable in any setting to be deflected from the perpetrator onto another party.

Any new regulation should not impose any additional responsibilities onto employers but rather reinforce their obligation to provide a practical mechanism for an aggrieved employee to raise their concern and to respond to those concerns in a sensitive, expeditious and appropriate manner.

Regulation should also not further unnecessarily complicate an already complicated industrial system for employers and workers alike. Employers and workers are reasonably familiar with the current anti-bullying procedures and common sense would support aligning the legislation changes for redressing instances of harassment to those that address bullying. This would minimise confusion, given that some instances of harassment might equally fall within the bullying gambit.

Industrial Matter Inclusion

In support of the above, the LGAQ questions expanding the definition of an industrial matter to include sexual harassment. The explanatory memoranda gives the following explanation for this change:

The definition of an 'industrial matter' (over which the QIRC has jurisdiction for the making of orders etc) is in section 9 of the IR Act.

A list of matters which are considered to be 'industrial matters' is in Schedule 1 of the Act.

The IR Bill proposes to add sexual harassment and sex or gender-based harassment to the list of 'Industrial matters'.

The LGAQ has always understood that an 'industrial matter' is one that affects or relates to the work/rights etc of employers and employees generally - or matters which might lead to dispute about work or rights.

Accordingly, an 'industrial matter' may include a matter affecting only one person if it has the potential to affect others as well, like a safety issue at work, a claim that someone has been discriminated against in a recruitment process, payment of an allowance or overtime, or how leave is granted.

However, unacceptable behaviour such as harassment more often comprises individual conduct matters and does not usually affect more than one person, though it is acknowledged that, depending on the conduct, the behaviour may affect one or more complainants and one or more respondents. In our view, individual conduct matters should not be considered 'industrial matters' because they are limited to the people involved and do not affect others.

Bullying is a conduct matter and is not included on the list in Schedule 1. Bullying is not an industrial matter because it is limited to the person(s) who is bullied and the person(s) who is doing the bullying. Bullying has its own provisions under the Act (Chapter 7) separate from the general provisions around industrial grievances.

Breaches of the Code of Conduct of an employer are also individual conduct matters and are not included in the list in Schedule 1. These are considered matters to be dealt with by the employer.

The proposed addition to the IR Act and list of 'industrial matters' names two kinds of conduct:

- sexual harassment; and
- sex or gender-based harassment.

Sexual harassment is similar, in some ways, to bullying and other individual misconduct matters. It is an individual conduct matter limited to the person who is harassed and the person who is doing the harassing. It should not, in our view, be included in the broad category of 'industrial matters' to be dealt with as an industrial dispute.

It is noted that in the federal system, the Fair Work Act now has provisions for sexual harassment complainants to make applications for the harassment to stop. These are similar to the workplace bullying provisions in the FW Act. It is unclear why the Queensland State Government has decided not to follow the Federal Government's lead and instead has decided to treat sexual harassment as just another industrial dispute/grievance.

A sexual harassment complaint relates to individual misconduct and should be able to be dealt with by councils on an individual complaint basis in the same way that bullying complaints are. Councils should have full discretion to investigate these matters and make decisions such as when an employee respondent is stood down. Councils should not have to deal with parties lodging disputes in the QIRC when an employee is upset at being stood down pending an investigation into alleged sexual harassment.

The LGAQ is also concerned that including sexual harassment in the definition of an 'industrial matter' may mean that unions and individual workers will be able to apply to have complaints arbitrated by the QIRC rather than by Council in individual confidential investigation and disciplinary matters.

This action would include sexual harassment complaints in the same category as disputes about overtime, classification levels and collective bargaining to be dealt with under the Commission's general powers – see section 447, when it should be elevated to a separate provision. As stated, it is the LGAQ's view that sexual harassment should be dealt with under separate provisions of the Act in the same way that workplace bullying is.

Sex or gender-based harassment is a new offence. This new offence may be more appropriate as an 'industrial matter' than sexual harassment, but insufficient examples or instances of breaches of this nature have been canvassed for the LGAQ to have any firm view at this time.

Summary Dismissal

The LGAQ supports including sexual harassment being a matter justifying summary dismissal. As indicated above, the LGAQ would prefer the legislation go further and emphasise that it is the behaviour of the perpetrator that should come under scrutiny, and whether the behaviour is such that it warrants termination. Perpetrators should be denied any defence of mitigating circumstances such as environmental factors (evidence where sexual harassment and similar unacceptable behaviours are a common feature in the behaviour of other workers and condoned in the workplace, or whether the employer has provided appropriate training around the unacceptability of sexual harassment). Any existence of these factors brought to the QIRC's attention should not constitute a defence of the unacceptable behaviour of the perpetrator but rather provide justification for the QIRC issuing an order for the employer to address those factors.

Does alleged sexual harassment constitute corrupt conduct?

The LGAQ has expressed concerns to the Review Team and the Department that there may be unintended consequences of including sexual harassment in the definition of misconduct, consequences which would detract from the intent of its inclusion, including unnecessarily delaying the ability for councils to take action against a perpetrator.

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Currently, the Crime and Corruption Act requires councils to refer complaints or reports of corrupt conduct to the Crime and Corruption Commission (CCC). The definition of corrupt conduct (our underlining) is :

Clause15

Meaning of corrupt conduct

(1)Corrupt conduct means conduct of a person, regardless of whether the person holds or held an appointment, that—

(a)adversely affects, or could adversely affect, directly or indirectly, the performance of functions or the exercise of powers of—

(i)a unit of public administration; or

*(ii)*a person holding an appointment*; and*

(b)results, or could result, directly or indirectly, in the performance of functions or the exercise of powers mentioned in paragraph (a) in a way that—

(i)is not honest or is not impartial; or

(ii)involves a breach of the trust placed in a person holding an appointment, either knowingly or recklessly; or

(iii)involves a misuse of information or material acquired in or in connection with the performance of functions or the exercise of powers of a person holding an appointment; and

(c)would, if proved, be—

(i)a criminal offence; or

(ii)a disciplinary breach providing reasonable grounds for terminating the person's services, if the person is or were the holder of an appointment.

Council chief executive officers must apply the law as it reads and refer complaints or reports of corrupt conduct to the CCC.

When a sexual harassment complaint is received, it is important the matter be addressed immediately.

Including sexual harassment in the definition of misconduct may influence CEOs to consider or be advised that a reported matter might be required to be referred to the CCC and are then required not to action such a complaint until the CCC has assessed it and authorised them to do so. An adopted "rule of thumb" when it comes to complaints is, if in doubt, refer the complaint.

Referring such a complaint to the CCC generally would see a delay of at best a month but experience suggests much longer before a council can address the matter (even knowing the chances of the CCC referring the matter back to council to deal with is around 100 per cent).

However, a council also needs to manage the welfare of the complainant and respondent once the complaint comes to light.

The legislative changes are intended to assist complainants, but delays will invariably add further stresses for the complainant as well as for the respondent.

Allegations of sexual harassment demand immediate action and it is doubtful anybody (reviewers or state government) envisaged a process that facilitates a drawn-out process for councils or the affected parties. If the State is committed to including sexual harassment in the definition of misconduct, the LGAQ would seek to include an additional clause that clarifies that this form of misconduct is not considered to be corrupt conduct for the purposes of the Crime and Corruption Act and is to be addressed as an industrial issue.

While the State might opine that the legislative amendments will not change the referral situation as it currently stands, councils now rarely refer complaints of sexual harassment to the CCC as the definition of misconduct does highlight the type of offences that might be referred (theft, fraud etc). Instead, councils would normally act on sexual harassment complaints immediately and decisively due to their nature and to address their duty of care to the affected employees. While not all sexual harassment complaints result in dismissal, CEOs do not have the capacity to make an initial assessment to determine the probability of dismissal, but must simply refer a matter to the CCC.

If the State holds a view, as they have indicated in discussions, that sexual harassment complaints do not warrant referral as a rule and this legislation does not amend that position and therefore clarification is not required in the legislation, the LGAQ believes a statement to this effect in the Committee report would be of significant assistance to councils and provide confidence to CEOs that they have no legislative obligation to refer such matters to any external agency.

Other comment

The LGAQ also notes that Section 320(2)(b) is a new sub-clause that expands the list of what needs to be considered when the Commission decides whether a dismissal is harsh, unjust or unreasonable in an unfair dismissal application (application for reinstatement).

i. 2(a) provides certainty regarding misconduct that is work-related (connection with employment) but not necessarily at the workplace.

ii. 2(b) sets up two categories of conduct to be taken into account – conduct that was either wholly or partly:

- ‘unlawful’ ; or
- ‘sexual harassment/sex or gender-based harassment’.

Sexual harassment is unlawful already (Anti-Discrimination Act 1991 Qld and Sex Discrimination Act 1884 (Cth)). Therefore, it seems superfluous to make it a separate category, thus implying that this kind of conduct is not itself unlawful.

Registered Organisations

LGAQ Comment: As a registered employer organisation, the LGAQ is well aware of the extensive regulatory and resource burdens placed upon industrial organisations to be registered, and subsequently maintain registration, with the QIRC. To date, the LGAQ has had

no dealings with unregistered industrial associations but can understand the concern where unregistered associations are given the same license to represent members/clients on all matters that fall within the remit of registered organisations.

Balanced with this is recognition of the rights of individuals and employers to join alternative organisations without forfeiting the rights and protections afforded to workers of a robust industrial relations framework. The current IR framework might benefit from further review into options for QIRC intervention where it can be demonstrated that a significant number of workers or employers have legitimate reasons to challenge the efficacy of their registered industrial organisation and the value they receive for their membership.

The LGAQ would request the Government ensure :

- there is no unintended consequence technically for the LGAQ (and other registered industrial organisations if relevant) which by its constitution and title refers to itself as an Association whilst maintaining its status as both a registered industrial organisation and as a company registered with ASIC; and
- that the changes would not require or encourage the Industrial Registrar to seek registered organisations resubmit their registration details, amended or otherwise, to the Registry or require any change to their approved constitutions as a result of these changes. Or put another way, that current registered organisations should be able to retain their registration status automatically and not require any additional activities to maintain that status.

Queensland Employment Standards entitlements

LGAQ Comment In relation to comparing Queensland Employment Standards (QES) under the IR Act with the NES under the Fair Work Act, the LGAQ is concerned whenever parties choose to cherry pick specific entitlements rather than look at the overall entitlements available for workers within each jurisdiction.

Moreover, any additional entitlement for employees provided through legislation will further undermine the confidence in the QIRC role as arbiter of employment conditions and the role of enterprise bargaining in establishing localised employment arrangements.

In that regard, and in its submission to the review team, the LGAQ did not consider that any QES standard required modification to align with the federal system. However, it did propose clarification on some of the entitlements might assist parties in their application and avoid conflict.

For example, the QES pertaining to the annual leave grant of twenty (20) days could be amended to include clarification that an employee's grant cannot exceed 20 days or 20 times the average weekly hours as prescribed, regardless of the working arrangements of the employee (5 day week or compressed work week such as in a 9 day fortnight, 19 day month or other agreed flexible arrangement).

The clause could include explanation similar to that outlined in the personal leave provisions (see notes at Section 40 (3)) and in accordance with the recent Mondelez High Court ruling on what constitutes a day. The LGAQ notes the Review team opted to ignore this request.

In relation to the specific changes to the QES proposed by the Bill, the LGAQ holds no specific objections to the changes, but this support is predicated on the merits of each specific change rather than mere alignment with the NES.

Casual employment arrangements

The IR Act is considered to contain sufficient protections and suitable arrangements for genuine short term and fixed term workers. Recent court cases have clarified areas of confusion and any changes to the IR Act, if any, should reflect those rulings by the courts.

The LGAQ strongly urged the Review Team to support the insertion of a statutory definition of a casual worker that identifies the work circumstances that would constitute casual employment. The LGAQ would support legislation that requires that any casual conversion clause, whether in legislation or in an award, endow a casual worker with a right to request conversion to permanent status through a review of their circumstances of employment to determine whether the circumstances have changed so that they no longer meet the casual definition and that tenured employment would be a more suitable engagement.

Circumstances of the working arrangement, not a worker's or employer's preference, should determine the nature of the contract of employment.

The LGAQ opposes the amendments to the definition of a short-term casual worker as proposed and understands that the intention of the change is to provide casual workers employed for more than six months continuous and regular service access to unfair dismissal protections. The LGAQ has examined the report from the Review Team and, despite discussing it as an option, the reviewers did not specifically recommend this change. Moreover, in contrasting this definition with that of the federal legislation, the LGAQ believes the state definition to be more unwieldy and open to confusion.

The LGAQ would request the Committee recommend the deferral of this amendment to allow for further clarification to be provided on the following:

- Why this amendment was included without a recommendation from the Review Team and what problems have been reported that this amendment is expected to redress.
- Under what circumstances can casual employees seek reinstatement under the amendment. For example, do they have to be long-term casuals who have continuous and systemic employment or true casuals who have spasmodic employment with the same employer over a period exceeding six months.
- Is there risk casual employees might be put off by employers prior to reaching a six month landmark to avoid the risk of an unfair dismissal claim.
- If a long-term casual has opted not to seek or accept permanent employment after six months, what is the value of their having access to unfair dismissal after six months.
- Could the definition be better drafted to ensure consistent interpretation and application by users.

Collective bargaining framework

LGAQ Comment One of the regular council observations coming out of the recent five-year State Government embargo on bargaining was a general confirmation that the initial benefits

of bargaining for employers had run their course. Many councils expressed a view that staff and councils were not adversely affected by the embargo and that the absence of the normal conflict that arises during bargaining had been positive for staff-council relations. Many questioned the need for bargaining at all. This was confirmed with a series of meetings with Council CEOs across the state whose collective view included that:

- EB had become nothing more than agreements over a wage rise and little else other than some ambit claims from unions, designed to advance their interests with little regard for local circumstances.
- EBs often introduced conflict where previously there was no conflict due to the combative nature of the exercise.
- EBs take far too much time to finalise, often due to the limited availability of union staff due to their other commitments.
- While a certified agreement (CA) is intended to be for a finite time, it seems that once a matter has been included in the terms of an agreement, it is expected to continue ad infinitum unless it can be negotiated out in a future agreement.

Note: These views were shared by CEOs who reported good relationships with their local union organisers, as well as those who reported conflict.

Union membership varies across councils and ranges with reported membership ranging between 35+ per cent to 0 per cent. Most of these councils with zero or minimal membership report that local administrative arrangements seem to suit council and staff alike and question the value of enterprise bargaining as a formal mechanism.

The LGAQ remains a vocal opponent of the current regime which precludes non-union staff from inclusion in bargaining on conditions that affect them personally. Section 165 effectively excludes employee certified agreements and non-union involvement in negotiations. Recent QIRC rulings support that those negotiations remain the sole province of employer representatives, unions, and their members. The banning of non-union workers from involvement in bargaining and the ban on employee collective agreements in the view of the LGAQ and its members:

- Offends the Freedom of Association convention.
- Is counter-intuitive to the objective of the IR Act which prescribes that collective bargaining is the primary basis for deciding wages and employment conditions:
- Fails in its efforts to promote membership of an industrial organisation through forcing employers and non-union members to consider alternative ways of establishing employment conditions.
- Fails in the Act's objective to promote collaborative industrial relations.

In summary, from a local government point of view, the changes to the collective bargaining framework prescribed in the legislation have not delivered on its primary agendas. The LGAQ has seen no evidence to support that the changes have benefited local government workers in real terms or have led to an improved take-up of enterprise bargaining across the sector.

As equally problematic as the exclusion of non-union workers from bargaining for many employees and employers is the circumstance where employees might be denied an opportunity to indicate their agreement or otherwise for the final "Agreement " that prescribes

their working conditions. By way of explanation, when a CA goes to arbitration for hearing on a particular matter for example, wage increases, the arbitration outcome results in the full CA being made as a determination, without employee ballot, despite the arbitration being only about a single matter within the CA. The LGAQ supports the need for arbitration as a last resort when negotiations fail to achieve agreement but contends the process should be amended to allow the full agreement to be referred back to staff for consideration with all parties advising staff the matter that was arbitrated on, as well as the results of the arbitration. If this is unacceptable, the final product of the QIRC should be relabelled to indicate its mandated imposition rather than be promoted as an instrument of "Agreement".

The LGAQ is disappointed these issues, and other concerns raised with the enterprise bargaining framework to the Review Team, were not addressed. Those other issues included:

- An easier mechanism for termination of a CA after nominal expiry date.
- Changes to the Protected Industrial Action provisions.
- Concerns regarding the power of a single union to prevent an agreement going to the affected staff for a ballot despite all other parties support for a ballot;
- Mechanisms for taking a proposal to staff for consideration where negotiations have been drawn out for an extended period e.g. in excess of six months
- A request for the legislation to be strengthened to support that any term within an agreement is only in force for the life of that agreement.
- Concerns being forced to the bargaining table does little to engender co-operative industrial relations between parties.

Gender-pay equity data

The LGAQ believes there should be a review of the applicability and relevance of the equal remuneration for equal work provisions (Section 204) given the classification structure system utilised by local government.

The LGAQ believes further detail is needed from the State regarding how it plans to ensure the provision of gender pay data will achieve positive gender pay equity outcomes for workers.

This requirement will impose resource commitments on councils in preparing data and associated affidavits for certification of Cas, so for these amendments to be supported, they must be coupled with guidance on how this data will be used for the positive benefit of workers.

There is minimal evidence to explain what problem the legislative provisions were intended to address in the local government sector, and even less information on what the Commission is seeking from councils to address the yet-to-be identified problems. The QIRC has been complimentary on the nature and quality of data supplied by the LGAQ during certification proceedings but there is no evidence to suggest the provision of the data as it stands does anything other than generate additional work for no return for councils and their workforce.

There is no hard evidence to justify that the supply of the data at the beginning of the negotiation process will lead to better outcomes. Providing data to parties who are charged with negotiating best outcomes for existing workers and employers, and who may or may not

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possess the necessary data analytic skills to leverage the data to achieve 'pay equity", also raises questions as to what outcomes are expected from the legislative amendments.

The LGAQ also notes that the Explanatory Memoranda indicates that the information required to be disclosed is only as 'reasonably requested'. However, the language of the proposed statute indicates a requirement the parties 'must' obtain and disclose' without reference to a request.

The question also has been asked as to whether this provision allows employers to request from unions data on their union membership of the workforce of that particular employer and the gender diversity of the membership.

The LGAQ requests the legislation be amended to reflect the intention as expressed in the explanatory memorandum.

Contact Details

Please contact Tony Goode, Workforce Strategy, via email [redacted] or phone [redacted] should you wish to discuss any aspect of this submission.

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Appendix

LGAQ Policy Statement

The LGAQ Policy Statement serves as a definitive statement of the collective voice of local government in Queensland.

The relevant policy positions of local government in the context of workforce and pertinent to this review include:

4.1 Human Resource Management

4.1.1.5 Local government is committed to creating and supporting an open and supportive environment that promotes equity and fairness and encourages full participation by all.

4.2 Industrial Relations

4.2.1 Workplace Reform

4.2.1.1 Local government supports an enterprise-based workplace relations system that utilises enterprise bargaining and individual flexibility agreements to align workplace conditions and practices with the business and interests of councils and their workforce.

4.2.2 Industrial Relations System

4.2.2.1 Local government is best served by a strong industrial system operating in a single jurisdiction and is contemporary, robust, and supported by a well maintained and independent Industrial Relations Commission.

4.2.2.2 Local government supports freedom of association.

4.2.2.3 Local government strongly supports a single industry award to ensure consistency and equity for employees and ease of administration for councils.

4.2.2.4 Unfair dismissal laws must protect employees from unfair dismissal without unreasonably hindering management's prerogative to separate employees who fail to reach the necessary performance standards and breach acceptable standards of behaviour.

4.2.3 Enterprise Bargaining

4.2.3.1 Local government acknowledges the role that enterprise bargaining plays within the current industrial relations framework and the potential benefits that might

flow for council and workers from mutually agreed arrangements between councils and their workforces.

4.2.3.2 Local government recognises the right of councils to bargain directly with employees.

4.2.3.3 Local government recognises the right of employees to be represented during bargaining, whether by direct representation, workers' representatives, or a union.

4.3 Occupational Health and Safety

4.3.1.1 Local government supports the provision of healthy and safe working environments