



## **Industrial Relations Bill 2016**

**Submission to the**

**Finance and Administration Committee**

**30 September 2016**

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

## Executive Summary/Introduction

Industrial relations has been a source of considerable attention for local government since 2013. More particularly, over the past 18 months, this attention comprised unwelcome distractions directly attributable to state government intervention. Seemingly, at the bequest of the interests of third parties, this has occurred without regard for the concomitant interests of councils, their workers and their communities. Councils now lack confidence in the state government's regulation and management of the state industrial system and believe the state has demonstrated industrial disregard for the interests and views of councils as key players in the state system.

In this time, the credibility of the Queensland Industrial Relations Commission (QIRC) as an independent tribunal with a capacity to rationally examine, assess and determine industrial matters affecting Councils has been seriously, if not permanently, compromised. Because of recent events, Councils have a level of distrust towards the Government on industrial matters and hold a strong view that a serious chasm exists between government rhetoric on innovation and job creation and simultaneous regulatory actions on industrial matters affecting Councils and their management of the workforce. This disconnect affects the Councils delivery of services to their communities and the cost of those services for the community.

The new system of industrial relations contemplated by this Bill in many areas serve to reinforce these concerns. The current government regularly cites as justification for their actions the alleged extreme industrial relations changes made by the former Newman Government, all of which have subsequently been eliminated, amended or restored with earlier legislation. Under this Bill, the Government promises just as extreme, if not more extreme, changes to the industrial system, albeit these changes promote the cause of trade unions, undermine freedom of association, impose additional costs on Councils and their communities, threatens productivity of councils, and further erodes the independence and decision-making capacity of the Queensland Industrial Relations Commission.

It is considered that the new industrial relations framework proposed by this Bill, on top of the recent industrial forays by the state into direct management of the industrial relations regulatory environment of local government will:

- Lead to further job losses within the local government sector;
- At the very least stifle job creation activities within the sector;
- Impede productivity within the local government sector;
- Increase the risk of additional costs to the community, particularly for rate-payers.

Detailed analysis of these assertions will be provided to the Committee at the public hearing.

The LGAQ on behalf of its 77 constituent councils strongly **recommends this Bill be set aside altogether** or at the very least **be amended** to provide a fair and modern industrial relations system that:

- Appropriately balances both the short and long-term interests of council employers and workers;
- Is contemporary and relevant for a modern local government industry;
- Recognises and respects the rights and roles of workers and employer and employee associations;
- Provides for a resourced, capable and genuinely independent Industrial Relations tribunal.

While there are many specific aspects of the legislation which the LGAQ and councils find offensive to various degrees, this submission focusses on the most serious and significant issues of concern.

## Introduction and Context – Local Government as an employer

Local Governments across Queensland currently employ circa 39,700 employees. Workforce costs constitute one of the biggest outlays of any Local Government and, as such, the efficiency and effectiveness of the Workforce is a significant contributor to the success of the Council in serving the interests of its community. Increasing costs of the workforce directly impacts upon rate rises for the community. Unlike the State Government, which constitutes a single employer, Local Government comprises 77 different employers, with each carrying all the managerial and administrative responsibilities of being a responsible employer.

Councils are amongst the largest, if not the largest, single employer in many communities, and are recognised as good and preferred employers. Councils pay more than reasonable remuneration in relation to their circumstances of their communities with staff enjoying favourable working and employment conditions.

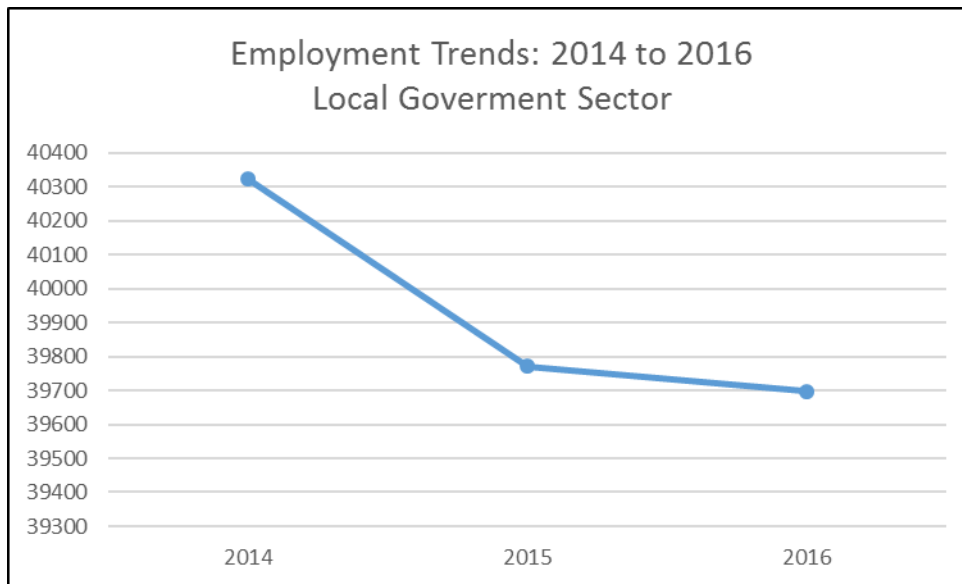
Contrary to claims, trade unions and a labor government do not have a monopoly on caring for and protecting the interests of workers in local government. It is a well-established and accepted maxim that local government is the sphere of government closest to the people. This applies equally to councils' workforces.

Councils and their offices are based in the community in which their workers live and work. Workers are constituents and have a direct say in the election of council members. Mayors and Councillors and Council executive managers live and work in the same location as their workers. The families of Council members, managers and the workforce attend the same schools, shop at the same supermarkets and participate in the same sporting teams.

Unlike the private sector, council as an employer is not driven by a profit factor but motivated by their desire for their local community to be thriving and prosperous. Central to this tenet is maximising the employment of local people by Councils which directly contributes to the local economy by minimising unemployment and ensuring that money spent on labour costs remains in the local economy.

As can be seen from the graphs below, workforce numbers for local government have been steadily declining since 2011 and is reflective of the tightening fiscal environment confronting local government. Indeed, it is this threat of decreasing revenue and rising expenditure costs that has motivated many of the reform initiatives of the sector, including the efforts to reform and modernise the award coverage of local government workers. Regrettably, the positive benefits that were beginning to emerge from this award reform seems destined to be lost due to the return to pre-modernised award conditions because of the direct intervention of the state. It seems the message to organisations from the state is to “be innovative and creative” except in industrial matters where conditions and practices of the 1990s and earlier remain paramount. It is noticeable the term “**back to the future**” features prominently in some recent union celebratory missives to their membership.

Local Councils work very diligently to advance their community and the interests of their community members, including those who work for council. It is disappointing that, when it comes to industrial matters, it seems the state is not willing to assist the councils in these endeavours. The state chooses to ignore the requests for support from Councils in favour of organisations who are external to the community and whom represent a small minority of members of the community.



### **Current Bill**

The first reading by the Minister for Industrial Relations, the Honourable Grace Grace MP, and the concomitant explanatory notes commend the bill and its heralding in of a new era of industrial relations for Queensland. However, while some rules and regulations might be amended, the coverage by the system and the parties remain the same. The motivations and experiential actions of those parties must feature prominently when interpreting or understanding the future regulatory framework envisaged by this bill.

### **New Act**

The LGAQ notes the government's reference to this bill implementing all the recommendations arising out of an independent review of the state's industrial relations laws and tribunals. The LGAQ was a member of the Review group and actively participated in the review; however, it is also important to record that the Group was chaired by a former trade union official, supported by a labour lawyer and was dominated by trade union representatives. Without denigrating the efficacy and capability of the Chair Mr Jim McGowan or his support staff, it is fair to say that the outcomes from the review, as expected, heavily favoured the views and interests of trade unions.

The report also identified a number of strong objections to the recommendations from employer representatives in the review group. It is noted that the Government chose to ignore or disregard every one of those objections without investigation or, to our knowledge, any genuine consideration of their validity or otherwise.

No genuine consultation on the report occurred with the LGAQ or councils prior to the decision by Cabinet to implement all the recommendations. It is also noted that the Bill goes much further than merely implementing the recommendations of the chair of the Review Group.

The bill proposes that a new Act be created to better reflect the changed jurisdiction of the state system. As only the state public service and local government industry is now covered by the state system, it makes eminent sense to have the system reflect this new circumstance and in principle is supported by the LGAQ.

### **Local Government's coverage by the state system**

The LGAQ on behalf of its member councils have always contended that Local Government had no particular preference on jurisdiction (state or federal) and was content to remain in the state system, given that Local Government was borne out of state legislation. However, this preference has always been premised on the conditions that:

- The jurisdiction maintained an adequately resourced and genuinely independent industrial relations tribunal;
- The jurisdiction represented a contemporary and modern industrial relations system;
- The jurisdiction respected the role of industrial organisations and rights of the individual;
- The system recognised the primacy of bargaining in establishing employment conditions.

These conditions have been conveyed to incoming governments on both sides of the political spectrum.

Until recently, and while there were elements the Association believed needed reforming, the LGAQ was reasonably comfortable the state system met these conditions. Until recently, Local Government could rely on the independence of the industrial relations tribunals. Until recently, Local Government could rely on the state to maintain a system of industrial relations and leave specific industrial matters to the industrial system to rectify appropriately and independently.

Unfortunately, this is no longer the case. While the current Commission has the complete confidence of local Government as an independent tribunal, there is a genuine concern the Tribunal's capacity to be independent has been significantly compromised by Government intervention and decree.

Recent and successive state governments have demonstrated an appetite to concern themselves less with regulating a fair and balanced industrial relations system and more with imposing themselves directly in determining industrial conditions to the exclusion of the independent umpire, the Queensland Industrial Relations Commission. In this regard, the LGAQ is concerned the state has at times confused its role as an employer of the public service and regulator of the Industrial relations system that services the public service. Unfortunately, Local Government as the other major stakeholder in the state IR system has been caught up in this conundrum.

Even more disturbingly, successive state governments have deliberately acted to cut short and/or amend certified agreements made between employers and employees/unions; agreements that were entered into willingly and lawfully by parties. The political and industrial expediency of this approach has permanently undermined any confidence that a party can have in the integrity of future agreements. The fact that the state, as an employer, and unions, as employee representatives, were complicit in this activity further undermines any confidence that this was a one-off occurrence.

In addition, recent actions of the State Government to restrict the independence of the Commission on award related matters, has further eroded the confidence of the Local Government sector that the interests of Councils as employers will be considered fairly and objectively within the state industrial relations jurisdiction. Councils are concerned that unions are increasingly less willing to pursue industrial relations outcomes through the regulated industrial relations system in favour of seeking political intervention of a sympathetic government willing to utilise its legislative powers and considerable resources to achieve desired outcomes of unions. This level of reform generates a residual concern that the next state government will introduce its own reforms, thus exposing Local Government to further operational disruption and industrial uncertainty.

It is for these reasons that the local government sector is reassessing its preferences for jurisdictional coverage. Recent events raise the spectre of an ongoing maelstrom of legislative changes and reform whenever there is a change of state government. In these extremely challenging times for Local Government, Councils need certainty in industrial relations to allow them and their workers to get on with their core business of servicing their community; councils need certainty to achieve their aims of maintaining a local workforce; Councils need certainty that the current industrial relations system recognises its interests as a major employer in many of the communities throughout Queensland. That certainty no longer exists.

Councils also need to operate in an industrial system that does not diminish its capacity to compete for talent in its workforce and able to compete commercially in its capacity to deliver services to their communities. Without an independent tribunal, and a modern and contemporary industrial relations system, that capacity is compromised.

While the taskforce did consider the jurisdictional coverage for local government, it was a very cursory consideration and did not adequately consult with affected local governments nor conduct any reasonable analysis of options. Before this Act commences, the state should, in a collaborative and transparent manner, work with local government to determine what jurisdiction would best serve the interests of councils, their workers and the communities which they serve.

## Recommendation

*It is recommended that the Bill be set aside while the state consult with the local government sector on local government's possible referral to the federal system.*

If however, the state is still committed to including local government in the state system, the Act should clearly reflect the following characteristics:

- Employers in this system are spheres of government and are heavily regulated in areas of governance, accountability and prescription of role
- Workers of these employers are also customers and constituent stakeholders
- The state is both regulator of the industrial system and employer of the biggest worker base i.e. public service
- Local government is committed to a local workforce and is a significant employer in their communities
- The state is a single employer whereas local government constitutes 77 employers.

Accordingly, when examining this Bill, it should be evident how these circumstances are reflected. If this legislation is indeed to cover the local government sector, the Act needs to better recognise the unique features of local government and the role of local government as an employer. To deliver its legislative and community-demanded charter and to retain a local workforce, Councils as organisations must be sustainably viable, particularly given the vertical imbalance that occurs as a result of councils only being able to raise 3% of all taxation revenue. Yet, it is not evident anywhere in the legislation where the interests of Councils as employers are protected or advanced.

The Fair Work legislation prescribes that its object

*..... is to provide a balanced framework for cooperative and productive workplace relations that promotes national economic prosperity and social inclusion for all Australians by:*

*(a) providing workplace relations laws that are fair to working Australians, **are flexible for businesses, promote productivity and economic growth** for Australia's future economic prosperity and take into account Australia's international labour obligations; and*

*(b) ensuring a guaranteed safety net of fair, relevant and enforceable minimum terms and conditions through the National Employment Standards, modern awards and national minimum wage orders; and*

*(c) ensuring that the guaranteed safety net of fair, relevant and enforceable minimum wages and conditions can no longer be undermined by the making of statutory individual employment agreements of any kind given that such agreements can never be part of a fair workplace relations system; and*

*(d) assisting employees to balance their work and family responsibilities by providing for flexible working arrangements; and*

*(e) enabling fairness and representation at work and the prevention of discrimination by recognising the right to freedom of association and the right to be represented, protecting against unfair treatment and discrimination, providing accessible and effective procedures to resolve grievances and disputes and providing effective compliance mechanisms; and*



(f) achieving productivity and fairness through an emphasis on enterprise-level collective bargaining underpinned by simple good faith bargaining obligations and clear rules governing industrial action.

The interests of business (our emphasis above) is clearly articulated and it is evident from the ensuing clauses what the competing forces are that need to be balanced. Contrast this with the objects and purposes of the Bill:

*Clause 3 The main purpose of this Act is to provide for a framework for cooperative industrial relations that—*

*(a) is fair and balanced; and  
(b) supports the delivery of high quality services, economic prosperity and social justice for Queenslanders.*

The proposed legislation then supports the objects with the following provisions in clause 4.

*The main purpose of this Act is to be achieved primarily by—*

*(a) supporting a productive, competitive and inclusive economy, with strong economic growth, high employment, employment security, improved living standards and low inflation; and  
(b) promoting high-performing, apolitical State government and local government sectors that are responsive to democratically-decided priorities and focused on the delivery of public services in a professional and non-partisan way; and  
(c) promoting and facilitating security in employment and consultation about employment matters, technological change and organisational change; and  
(d) providing for a fair and equitable framework of employment standards, awards, determinations, orders and agreements; and  
(e) promoting productive and cooperative workplace relations including by recognising mutual obligations of trust and confidence in the employment relationship; and  
(f) providing for a guaranteed safety net of fair, relevant and enforceable minimum employment conditions through the Queensland Employment Standards; and  
(g) ensuring wages and employment conditions provide fair standards in relation to living standards prevailing in the community; and  
(h) promoting collective bargaining, including by—  
(i) providing for good faith bargaining; and  
(ii) establishing the primacy of collective agreements over individual agreements; and  
(i) preventing and eliminating discrimination, bullying and other unfair treatment in employment; and  
(j) ensuring equal remuneration for work of equal or comparable value; and  
(k) promoting diversity and inclusion in the workforce, including by providing a right for employees to request flexible working arrangements to help balance their work and family responsibilities; and  
(l) supporting employees experiencing domestic and family violence by conferring leave entitlements and protection from discrimination; and  
(m) encouraging fairness and representation at work, and the prevention of discrimination, by recognising the right to*

*freedom of association, the right to organise and the right to be represented; and*  
*(n) encouraging representation of employees and employers by organisations that are registered under this Act; and*  
*(o) being responsive to emerging labour market trends and work patterns; and*  
*(p) providing for effective, responsive and accessible mechanisms to support negotiations and resolve industrial disputes; and*  
*(q) establishing an independent court and tribunal to facilitate fair, balanced and productive industrial relations; and*  
*(r) assisting in giving effect to Australia's international obligations in relation to labour standards.*

*Examples of ILO conventions ratified by Australia—*

- *the Freedom of Association and Protection of the Right to Organise Convention, 1948, No. 87*
- *the Right to Organise and Collective Bargaining Convention, 1949, No. 98*
- *the Equal Remuneration Convention, 1951, No. 100*
- *the Discrimination (Employment and Occupation) Convention, 1958, No. 111*
- *the Employment Policy Convention, 1964, No. 122*

The LGAQ generally believes the provisions in clause 4 are repetitive on occasion and far too prescriptive and extensive in some areas. Notwithstanding, the LGAQ does not intend to pursue these concerns at this juncture. However, while arguably these supporting clauses do reference productivity and economic growth, their reference is to the general Queensland economy and do not focus on local governments as businesses and organisations in their own right. The Bill, in a similar vein to its rightful support for promoting the interests of employees and employment generally, should also directly support the business interests of councils and council employers generally.

**Recommendation** It is recommended that, at the very least, object clause 3 should provide for a third sub- clause to the effect of

*(c) "supports the efficient and effective operations of public sector and local government organisations and their business and operational interests"; and*

Clause 4 should then include a new sub-clause (c) to the effect of

*(c) Supporting the financial sustainability of local government authorities*

Councils regularly effect specific strategies to maximise the employment of local workers and the changes above will contribute in a small way to ensuring the new legislation supports councils in these efforts. Without these inclusions, the new act fails to recognise the reality of local government in Queensland and its need to operate in a manner that promotes its sustainability as an employer of a local workforce, particularly given the ever increasing scrutiny placed on councils by the Queensland Audit Office with regard to long-term financial sustainability.

Further, the term balance is raised in both the fair work legislation and the main purpose of the Queensland Bill. The LGAQ believes that while it is evident in the Fair Work Act what competing interests are to be balanced, it is far less clear in the Queensland Bill. Indeed, local government readers of the proposed legislation believe the interests of local councils as significant employers are excluded from consideration in determining the appropriate balance as required under the Act. It is suggested that the insertion of the above recommended clauses will go some way to assuage those concerns and ensure the sustainability interests of Councils, and consequently the employment interests of their current and future workforces, are recognised.



## Co-operative industrial relations

As with the fair work system, there is considerable reference to the term “co-operative industrial relations”. Indeed, the main purpose of the Bill as prescribed in clause 3, is to “*provide for a framework of co-operative industrial relations*”

The term co-operation is defined in the dictionary as “*the action or process of working together to the same end or for common purpose and benefit*”.

While the intent might be sound, the recent industrial tensions between Councils and the state suggest that in the current environment this represents an unattainable goal other than at a very superficial level.

Councils have expended considerable resources and efforts participating in a state initiated award modernisation process and subsequent review. Throughout this process, Councils were required to operate within the legal and industrial frameworks operating at the time. Local government invested considerable resources and time in firstly designing and then presenting their propositions supported by considerable argument and evidence to the independent arbiter, the Queensland Industrial Relations Commission. Local government was successful in achieving some desired outcomes and unsuccessful in others and accepted the decisions of the independent umpire.

However, due to their dissatisfaction with the decisions of the Commission, despite being given equal opportunity to present cogent argument and evidence, unions sought direct intervention from the state.

The Government subsequently legislated for a further review, with which Councils again fully cooperated and again demonstrably showed their willingness to accept the judgment of an independent umpire whose determination was made on the evidence and arguments presented. Again, the Minister intervened and put in place further processes to ensure an outcome that ultimately delivered the outcomes sought by the unions.

On initial review, this legislation continues that trend of ignoring the interests of councils as employers and the role of the independent umpire, as evidenced by the direction to the Register to create three awards. As a result, the espoused purpose of “cooperative industrial relations” is viewed with suspicion and forthrightly rejected by councils as achievable and even genuine.

Any suggestion that the Commission will be the arbiter of agreements is now taken to mean that the Commission will make independent decisions on matters of dispute between councils and unions on the understanding that the government may intervene should those decisions be unacceptable to the unions. This is not cooperative industrial relations and as such, this proposed legislation should be set aside until such time as the necessary level of trust and faith in the system has been restored within the parameters of the existing legislation.

Councils and staff have now learned that certified agreements reached by consent between councils and workers, and even with unions as signatory, will continue until their agreed-upon expiry date UNLESS the government rules otherwise at which time the agreements may be cut short or amended by the government.

Simply put, this is not an environment in which to promote co-operative industrial relations. This is an environment based on mistrust, where threats of co-operate or else exist, either real or perceived. It is for this reason that the LGAQ believes this Bill should not be passed and efforts should instead be channelled into the current system and incrementally trying to restore or recreate a system where there is certainty for all parties, where the interests of all parties are recognised, where the state remains true to its role as regulator of the industrial system and allows the independent and expert tribunal determine the number and coverage and content of awards after careful analysis and scrutiny of relevant evidence and supporting arguments relating to the awards. The state should play no role when the content of specific local government awards are under consideration.

In the event the committee does not support discontinuing with the legislation, then the changes put forward by the LGAQ are considered necessary if there is to be any genuine cooperation between the parties going forward.

## Productivity

In isolation, some of the additional benefits for workers might sound reasonable in the face of cogent arguments. However, each of these bear a cost for the employer and will ultimately impact upon the productivity of Councils which in turn will lead to additional costs for the community. The additional benefits in the bill for workers include:

- 10 days Domestic and family violence leave on full pay
- 10 days personal carers leave to care for victims of DFV.
- 2 days compassionate leave per employee
- Easter Sunday being declared a public holiday
- Introduction of a general protections and bullying jurisdiction.

While councils might be able to accept these additional entitlements in isolation, collectively they impact upon the council's bottom line with additional costs ultimately worn by the rate-payer. Given the costs for Councils of the proposals, more detailed justification for their inclusion is considered necessary.

### Domestic and Family Violence inclusions

The objections of the LGAQ to the 10 days DFV leave were outlined in the report from the Review Chair that was considered by the Minister and cabinet. In summary, the LGAQ did not oppose the notion of paid leave per se for DFV victims; we did however challenge the logic of responding to this invidious behaviour by relief in the form of an industrial entitlement. The LGAQ argued that this approach might impede the holistic level of care that an employee might need to assist the employee address their DFV situation. Having said that, the LGAQ accepts the inevitability of its adoption due to its being a recommendation of the Bryce report and the Government's commitment to implement all of the recommendations of the report.

However, the same cannot be said for the extension of access to 10 days personal leave to support DFV victims regardless of any relationship between the employee and victim. If an employee opts to support an injured relative, they currently have access to personal leave for these purposes. We would contend that the care and support for any other person should be the responsibility of the state or if an employee wishes to provide this support for a non-relative, then they may access their annual leave or even take leave without pay. The Council and ultimately the local community should not bear such a cost.

**Recommendation: *That the entitlement to personal leave to care for a victim of DFV be removed from the legislation.***

### Compassionate leave

The provision of an entitlement to take up to 2 days compassionate leave per occasion to visit a person gravely ill and at risk of death is justified on the premise it is in the Fair Work Act. If every local government employee only accesses this leave once in any year, the cost to local government would conservatively be in the vicinity of \$26 million dollars. This cost would ultimately be borne by community rate payers. Employees may currently access their personal leave to attend such hospital visits.

It is noted that compassionate leave has existed in the state public service for some time and there may well be minimal costs accordingly for the state. The same cannot be said for local government.

**Recommendation: *That the entitlement to compassionate leave under the Queensland employment Standards be removed.***

### Easter Sunday being declared a public holiday

Easter Sunday as a public holiday will incur additional costs for councils albeit this will be spasmodic as not every council will have people working on that day. The costs will come primarily from recall to duty situations which will affect every council and may prompt councils to remove people from being on call and outsource any emergency repairs for that day. That will have a negative impact on the community, on Council and on workers.

**Recommendation: *That the current arrangements for Easter Sunday remain unchanged.***

#### Introduction of a general protections and bullying jurisdiction

Again, it seems the justification for these new jurisdictions extends to their being in the Fair Work Act. These inclusions will add additional administrative burdens onto Councils when employees choose to exercise their rights under these jurisdictions.

Local government questions the motivations and justifications for the inclusion of these protections. To the best of our knowledge, there has been no suggestion of the incidence of bullying or unfair treatment reaching a height in local government that requires further intervention. There has been no evidence proffered to support that the remedies available to address these matters in local government are not being effective.

The Queensland Government's own Guide to Better Regulation - August 2016 offers that "unnecessary, excessive and ineffective regulation and red tape can hinder innovation and productivity, stifle economic growth and have unintended outcomes." It also opines that "a key element in achieving these objectives is ensuring regulation does not impose unnecessary burdens on business and the community."

The LGAQ does not believe that a sufficient case has been made that these interventions are necessary or warranted in local government. Further, no efforts have been made to ensure these regulations do not impose unnecessary burdens on local government..

If bullying or unfair treatment is a problem in the state public service, then surely the state as the employer is best positioned to redress the matter.

At the very least, before imposing such additional burdens on Councils, good policy regulation would demand that, as per its own guidelines, the state should:

- Establish a case for action exists before addressing a problem
- Consider a range of options and assess their benefits and costs

This to our knowledge has not occurred with the result being that a new level of administration is to be introduced without any evidence to suggest it will lead to better outcomes for those intended to benefit.

Adverse action provisions appear to largely mirror the FW Act provisions. However the definitions are in our view confusing as a result of their drafting. The reverse onus of proof is very concerning. It offends the common law presumption of innocence and undermines confidence in the judicial process. The provision should be amended and the presumption of innocence restored. Further, it is unreasonable to expect an employer to carry the burden solely and the employee have no burden or onus whatsoever in bringing a claim. This will result in unmeritorious claims being brought and local governments having to bear the financial cost of defending these claims which will impact their ability to provide services to their communities.

The bullying provisions are a duplication of remedial intervention and interfere with the important role of Worksafe Queensland. There is a risk that workers safety will be adversely impacted by this encroachment into responsibility for the safety of Queensland workers.

The QIRC is not set up to regulate safety. The bullying provisions in the FW Act have resulted in very few orders being made and no evidence has been presented to support that its inclusion has improved the safety of workers.

Also, on face value, this provision offends the rules of estoppel and allows for an abuse of process with workers being able to simultaneously pursue actions under the Work Health and Safety Act 2011 and the IR Act. This is also likely to lead to confusion as to which state entity plays the lead role in any bullying complaint.

Local government supports the protection of workers from bullying but submits the existing legislation provides good protection for workers. To the best of our knowledge, only a couple of bullying orders have been forthcoming from the Fair Work tribunal and it is questionable whether the benefits have warranted the investment or whether an alternative strategy might have been more worthwhile.

At the very least we submit that the provisions should be amended to permit a worker to bring a bullying complaint under one law not both. To have two state government entities investigating the same conduct is inefficient as it duplicates the process and is likely to hamper the effectiveness of any investigation. It will also drive up employer costs.

Also, if the government opt to continue with these protections, then Councils contend that, in the interests of fairness, the same standards of accountability should apply to all parties in the state industrial relations system. It is a common complaint from council staff of being intimidated or bullied by trade union officials and representatives, whether during enterprise bargaining negotiations or general council visits. Many of these complaints have been generated by junior staff alleging harassment and threatening behaviour by organisers attempting to secure union membership. If there are to be additional protections for employees imposed upon councils in relation to bullying and other such inappropriate behaviours, then the protections should be extended to adverse actions by trade union representatives against individual employees and council managers representing Council. Naturally, any reasonable action by a trade union representative should be exempted from prosecution.

#### **Recommendations:**

***That the clauses (chapters 7 and 8) relating to bullying and general protections be removed.***

***That if the government is not inclined to delete these provisions as per the recommendation above, then the provisions be redrafted to ensure that employees of Councils are also offered protection from bullying and unacceptable and inappropriate behaviour of union officials, organisers and representatives. Further that an individual employee or the employer on behalf of an individual employee should be authorised to take such action against an agent of the union.***

***That the legislation be amended to prevent workers and other entities pursuing simultaneous or similar claims from more than one jurisdiction.***

***That the legislation be amended to restore the presumption of innocence for respondents of such allegations until proven otherwise.***

#### Productivity – Dragged out bargaining

While on the topic of productivity, the provisions in the Act providing for conciliation and arbitration only where no agreement can be reached and only after prescribed timelines have elapsed is expected to cost Councils hundreds of thousands in costs and hundreds of hours of down time which will result in higher costs for rate-payers. There will be times when impasses between bargaining parties are achieved very early and denying parties the opportunity to seek assistance from the Commission immediately does not serve the interests of Councils, workers or the community which is expecting the efficient and effective delivery of council services.

***Recommendation: That clauses be amended to allow for any party to seek the immediate assistance of the Commission at any time where an impasse in bargaining occurs and the party is satisfied that further bargaining or time lapse will not reasonably change the position of either party. Further if the Commission is of the view that further bargaining will not resolve***

***the issue, the matter may at the instigation of the Commission be referred immediately to arbitration.***

#### Anti-discrimination (S295)

It is understood that it is the intention of the government for all discrimination matters relating to employment be dealt with by the Queensland Industrial Relations Commission. Councils have expressed concerns that these changes, albeit motivated by good intentions, might result in considerable confusion for workers and employers alike, particularly where the extent of a discrimination allegation might extend both within and outside of the workplace environment.

The risk is that the insertion of the anti-discrimination provisions into this Act, despite this subject already being adequately covered by other Queensland and Commonwealth laws, might allow employees to pursue multiple legal claims in different jurisdictions for the same alleged conduct. There is also concern that the role of the different institutions now charged with dealing with anti-discrimination matters might become confusing for workers and employers as well. Double dealing or extra administration associated with working across jurisdictions will drive up costs for local government and impact its ability to serve the community as well as naturally drive up costs.

**Recommendation That the anti-discrimination provisions be removed at this time until the administrative details of how the system might work can be determined and settled prior to the proposed jurisdictional change for dealing with discrimination matters in the workplace.**

#### **Right of Entry – Clause 348 - (ROE)**

Many of the provisions outlined under the ROE clauses Right of Entry -Clause 348 -(ROE) are similar to, or are reflected under the Fair Work Act 2009, Chapter 3, Parts 3-4. However a very noticeable and poignant difference relate to the notice requirements of a union official before entering an employer's premises.

The Fair Work Act 1999 prescribes:

- *Section 487 (3) – An entry notice must be given during working hours at least 24 hours, but not more than 14 days, before entry.*
- *Section 491 – The permit holder must comply with any reasonable request by the occupier of the premises for the permit holder to comply with an occupational health and safety requirement that applies to the premises.*

This Bill before the Committee purports to generate an industrial framework based on co-operative industrial relations. Having union representatives drop in unannounced and ignorant of security and safety circumstances relevant to the employer's premises does NOT promote an environment conducive with cooperative industrial relations.

The absence of an obligation to give notice has resulted in reports of people unknown to staff and security personnel being seen trying to access council premises. For a range of reasons, security is growing in significance for councils and authorising individuals who are not staff and do not have appropriate security cards to access council premises is a cause of concern. Advance notice ensures access and reduces security considerations and tensions.

Secondly, local government has an obligation to protect employees and industrial officers from unsafe circumstances. An obligation on industrial officers to comply with workplace and health and safety requirements of an employer's premises is rational, protects the individual and does not inhibit an industrial officer from performing their role. The safety risks are exacerbated where the unannounced attendance of an authorised industrial officer leads to the industrial officer entering a workplace before the employer can provide the industrial officer with a proper safety induction if and where appropriate. Advanced notice of entry is eminently sensible and promotes co-operation and safety.



The LGAQ acknowledges the many responsible union officials who do provide councils with advanced notice. In these cases, favourable outcomes are generally reported by all parties whereas resentment is often a lingering and pervasive outcome from unannounced and intrusive visits.

#### Recommendation:

***That section 348 to section 354 be amended to include a requirement that union officials***

- ***Unless for an emergency or where it is impractical in the circumstances, be required to give a council employer 24 hour's notice prior to entering their workplace for the purposes prescribed in this section;***
- ***The union officials must comply with any reasonable request by the occupier of the premises for the official to comply with an occupational health and safety requirement that applies to the premises.***

Provisions similar to the Fair Work provisions are supported.

As stated, the absence of these minimal requirements represents the antithesis of co-operative industrial relations.

#### The making of three local government Awards

Page 3 of the explanatory notes refer to the Bill's enabling of the Registrar to partition the Local Government Industry Modern Award into three awards based upon occupational divisions identified in the Award Modernisation Variation Notice issued by the Minister in June 2016. The note goes on to misleadingly claim this is an administrative function only and is done to assist employers and worker by making the document more user-friendly for each occupant division.

This action by the government to in effect specifically prescribe name, number and contents of an award for a singled-out industry is unprecedented and completely unacceptable to local government. For that matter, it is proffered that it would be unpalatable for any industrial relations professional with any respect for, and appreciation of, a fair and balanced industrial relations system.

The hundreds of thousands of dollars and the years of labour that has been expended by local government in their efforts to achieve and retain a single award (including the constant representations to government even as recently as the day of the tabling of the Bill opposing any return to multiple awards) puts pay to the blatant lie that this action is, in any way, to assist employers.

The shift to a single local government industry award was welcomed by councils as it simplified the award regulation of employment obligations and responsibilities and paved the way for greater equity in employment for local government employees.

23 councils have been subject to the new local government modern award. Being structured as an industry Award, rather than different occupationally focused Awards, the new local government modern Award went a long way to recognising the diversity of occupational callings that resided in distinct operational and service delivery areas of councils.

The new modern award was seen by councils as assisting their capacity to remove the regulatory and administrative complexity of applying significant numbers of disparate award arrangements to distinct operational areas, and importantly, in a manner that addressed and balanced the various interests and needs of contemporary local government work.

While the direct interventions of the minister already threatens the benefits of the modern award, and with the modernisation of industrial regulation of local government replaced in favour of a return to the pre-1990s era of regulation to the detriment of job growth and worker satisfaction, this action of returning to multiple awards under the guise of administrative activity does represent the final straw for many councils in their understanding of who regulates the industrial relations system – the government elected to represent the interest of all Queenslanders or the state government who dances to the tune of trade unions on industrial matters.

There are numerous reasons for advancing the retention of the current single award. These include:



- The number of Awards that should apply to the Queensland Local Government (other than Brisbane City Council) has been subject to independent consideration by a full bench of the Queensland Industrial Relations Commission (QIRC) on 2 separate occasions under both LNP and ALP legislation. Firstly in 2014, and again in 2015. It can be safely said, a full bench of the QIRC considered this question independently on both occasions, based on merit and after extensive submissions from affected parties, evidence from witnesses called by the parties and analysis of hundreds of pages of submissions, data and information about local government and their workforces and concluded a single award was the most appropriate for addressing the needs of councils and their workers.
- Local Government in every state (other than South Australia who is yet to undergo award modernisation) as well as in the federal system are covered by a single award. If the argument by the state for supporting Easter Sunday as a public holiday is to bring it into line with other states, then surely the state should support a single award for local government in Queensland to bring it into line with other states.
- Shifting to three awards from the initial 18 awards provides little administrative benefit to Councils as, prior to Award modernisation, in excess of 85% of all local government employees outside BCC were captured by two primary Awards, with around 95% captured by 4 primary Awards. In fact, the LGAQ would prefer to have the Government restore the number to 15 awards, provided the main 4 awards were left as a single modern award rather than three (3) awards created reflecting those main four awards.
- Shifting to three awards will add significant administrative costs to Councils and undermine further confidence in the industrial relations system in Queensland. At least 23 councils have adjusted their payroll and HRIS systems to reflect the single award. Formal correspondence of the changes have been provided to every employee, given that the shift to one award changed their employment contracts with councils. Returning to three awards requires the allocation of additional resources to re-allot staff to the relevant award, adjustments to software systems to accommodate the changes to the one award and the issue of amended contracts to all staff.
- Regardless of how it is explained, any shift away from the single award to legislatively introduce the three awards openly sought by unions in the latter QIRC hearing will be received cynically by Councils and employees as the government pandering to a small lobby group interested in their own welfare at the expense of councils and local employment. In our knowledge, nowhere in the history of industrial relations in Australia has a state or federal government dictated the number and coverage of awards to operate within a specific industry.
- A single award is conducive with adoption of new technologies and work flows. A very significant and growing proportion of work does not lend itself to traditional occupational groupings, for example blue vs white collar, and may be a blend of both, or may resemble neither.

The redesign of traditional work around new technologies is fundamental to the local government sectors' capacity to improve productivity and to deliver on what is a growing demand for services within their respective communities, whilst the capacity to levy rates and other income streams continues to diminish.

Separate awards which are cast along artificial lines, act as a barrier, both practically and culturally, to the redesign of more productive types of works that would naturally be a combination of work which may be regulated under separate awards, or may not be neatly slotted into one category of work or another. On face value, it seems hypocritical and somewhat ignominious to promote innovation in business whilst imposing restrictions through the mandating of historical and dated industrial practices.

- A single Award leads to fairer outcomes for diverse Local Government staff.

Local Government is distinct operationally from the public service where the state government is the single employer of hundreds of thousands of employees. Outside BCC, the local

government industry employs approx. 30 000 employees across 76 separate employers, in well over 250 different jobs/callings. Job occupations and categories vary significantly between Councils depending on community demands and geographical location. Despite this, of those 76 employers, only 16 employ more than 500 workers with 25 employing less than 100 workers. Local Government work is place- based. Employees of diverse callings will work alongside each other day to day to deliver community services. Local Government employees compare themselves with others in the same workplace, rather than on the basis of similar work performed at other Councils. Local Government Employees maintain the same responsibilities under the Local Government Act 2009, s13, regardless of occupation. Fairer outcomes, in the sense of greater levels of standardisation and equity of award entitlement have a better chance of being achieved under a single Award, then under multiple Awards which develop independently and have proven historically to deliver inequitable outcomes. An examination of the historical awards (which reflect the proposed awards) stand as testament to this.

- A single Award will facilitate better compliance. Having a single Award document with greater standardisation, better aids compliance, particularly for smaller remote Councils without dedicated or experienced HR staff or sophisticated payroll systems. What should not be discounted are the significant administrative savings that the shift to a single award will ultimately bring to councils. The State Government would be well aware of the Human Resource system costs for an organisation (i.e. the health payroll scenario) to both operate within, as well as fund the costs of an upgrade to, a complicated, overlapping and inconsistent regulatory system of conditions of employment.

Councils subjected to the new award have already made significant investments in the administrative shift to the new award. The shift to multiple awards now threaten to require those councils to divert funds currently directed towards employment and servicing the community to further amending their administrative systems.

- Future Award coverage based on historical primary Local Government Awards coverage is unreasonable.

Future award coverage based on Officers vs Employees as reflected under the two primary awards historically applying to 85% of the Local Government employees is based on an award system developed under separate industrial jurisdictions with limited regard to one another. Those primary instruments maintain significant inequities, whilst simultaneously overlap in coverage with respect to significant areas of local government work. Such coverage will reintroduce an award system that is unclear in its application, cause unnecessary tensions between the haves and have nots, and has proven to be to the detriment of enterprise bargaining where much of the bargaining over the last 10 years has focused on rectifying inequalities between instruments, rather than being about productivity outcomes.

- A single award breaks down barriers leading to a more diverse workforce. The officer's award (white collar) has historically been regarded as an award covering women whilst the employees and trades awards (blue collar) are regarded as covering men. The shift to the single award has the effect of removing much of these perceptions about work stereotypes including gender equity and will lead to greater diversification of the local government workforce.
- A single award leads to improved enterprise bargaining outcomes. Multiple awards lead to agreements being drawn up along award lines due to the operating preferences of third parties. The nature of Council and how staff identify themselves within councils promote either a single enterprise agreement, or agreements based on functional or geographical criterion e.g. aquatic centres, early childhood centres, depots covering all employees in that centre regardless of occupation.

The shift to a single award was intended to save jobs, facilitate equity for existing and future workers, modernise work practices and employment arrangements, facilitate administrative savings and enhance the security of employment for local government workers. The government has already undermined the beneficial job outcomes achieved thus far from the award modernisation process and this latest requirement to return to a system of multiple awards will serve to further reduce Council's capacity to maintain a local and viable workforce.

Against this plethora of reasons for retaining a single award, the Government justifies its decision to legislate on the scope, number and coverage of awards for local government (something which it has not done for the public service) :

- To assist employers (which as demonstrated is blatantly misrepresentative of reality as employers clearly don't want this assistance as it won't help them)
- Because a number of "stakeholders" have asked them to.

Furthermore, the power to create and populate awards has traditionally been the responsibility of the Industrial relations Commission. This subterfuge to bypass the QIRC under the guise of it being an administrative function merely serves to undermine any semblance of fairness and balance in the system and the independence and authority of the QIRC as the central industrial tribunal.

## Recommendation

**That the section enabling the Register to partition the Local Government Industry "pre-modern" Award into three awards be removed from the Bill.**

## Existing Certified Agreements

The LGAQ notes the transitional clause which would in effect prematurely conclude any agreements reached and certified under section 147A of the existing Act. This serves to further undermine any semblance of truth to the notion that:

- The new act promotes cooperation between parties; and
- The act promotes the primacy of collective bargaining for setting employment conditions.

This intervention, on top of previous actions, to cut short agreements between willing parties sends the message:

- Freedom of Association comes at a cost for workers who choose to exercise their right not to join a union or vote to support a lawful action that does not meet the agreement of the union
- Workers and Councils should not rely on or plan their futures on conditions and provisions contained in agreements entered into lawfully as the government may opt to sever or amend those agreements at any time.

A long-recognised fundamental principle in Industrial Relations that bargains, struck lawfully and voluntarily, will be honoured by the affected parties can no longer be relied upon. If third parties can regulate to change agreements that have been struck and agreed to by employers and workers in accordance with the enabling law, then all future bargaining will be approached with scepticism as to their level of certainty and necessary compliance.

A tenet of the ALP Government's policy platform read: *Clause 4.41 Industrial Relations – Queensland State Labor Policy Platform 2014 - Labor will ensure that workers have the security of knowing that the terms and conditions of employment mutually agreed to by themselves and their employers will not be unilaterally extinguished or modified while in force.* These arrangements directly breach this policy statement.

Cutting short existing agreements:

- Represents a waste of investment by councils and other parties into the making of the agreement.
- Requires further investment by Councils, the cost of which is ultimately worn by rate-payers
- Disrespects council officers and employees who were involved in the negotiation of the agreement, and to the employees who voted in favour of the agreement.

It is considered this government would benefit from some deliberate action to demonstrate their recognition of the principle of respecting agreements. Deleting this section would go some way towards this.

## Recommendation

**That the transitional clause effectively cutting short agreements entered into pursuant to section 147A of the Industrial relations act be removed from the Bill.**

### Collective Bargaining

The LGAQ raises the following three issues with the proposed Chapter 4 Collective Bargaining.

The first relates to changes made to who may make Certified Agreements at clause 165 of the Bill. The LGAQ notes that the structure of proposed clause s165 differs from that which exists under s142 of the Industrial Relations Act 1999 (IR Act), and which has not changed since it first came into operation back in August of 1999.

Section 142 of the IR Act states:

*142 Who may make certified agreements?*

*A certified agreement may be made between—*

- (a) on the one hand, the employer; and*
- (b) on the other hand—*

*(i) 1 or more employee organisations that represent, or are entitled to represent, any employees to whom this chapter applies and who are, or are eligible to be, members of the organisation; or*

*(ii) the employees, at the time the agreement is made, to whom this chapter applies.*

In contrast, proposed clause s165 of the Bill states:

*165 Whom may make agreements?*

*A certified agreement may be made between*

- (a) An employer; and*
- (b) Either-*
  - (i) 1 or more employee organisations that represent, or are entitled to represent, any employees, of the employer who are, or are eligible to be, members of the organisation; or*
  - (ii) If subparagraph (i) does not apply, the employees of the employer at the time the agreement is made.*

The inclusion of the words at the beginning of subparagraph (ii), **“If subparagraph (i) does not apply”** (our emphasis), has in our view, the potential to radically change the meaning of current s142 of the IR Act, in such a way that means a Certified Agreement may only be made between an employer and employees of the employer, where there is no union who may represent those employees (because of a lack of union coverage), even if such union/s has no employee members of the employer, but nonetheless has representational rights.

In the LGAQ’s view, this has the potential for Unions to monopolise enterprise bargaining under the proposed Bill, regardless of wishes of workers or Councils.

In the Local Government sector, there are numerous unions who would collectively be eligible to cover all callings of local government work. On the above interpretation, such outcome may mean that it was not possible for employees, who had chosen not to be represented by a union, to organise themselves and negotiate a Certified Agreement with their employer, because there would always be a union who has eligibility to represent those employees, despite those employees freely choosing not to be a member of such union.

Such a situation would be, in our view, contrary to the State Government’s obligations to conform to ILO Conventions relating to freedom of association, insofar that employees could not freely choose to collectively negotiate with their employer other than through a union, of which they may freely choose

not to associate with. The LGAQ suggests such situation is also not consistent with the objects of the Bill, particularly at proposed subclauses 4 (k) and (r).

If LGAQ is wrong in its interpretation of the intention of proposed clause 165, then to remove doubt, we see no reason why the wording under current s142 of the IR Act cannot remain in the form which has existed under the IR Act since 1999 given this language is well understood. There has been no policy reason raised why this language would not continue to serve both employers, employees and Organisations well into the future.

#### **Recommendation:**

***That proposed clause 165 of the Bill be replaced with the current wording which exists under section 142 of the IR Act as has been outlined above.***

The second matter that the LGAQ takes issue with is the insertion of a new definition at proposed clause 168 of the Bill, prescribing whom is a “negotiating party”. This definition compels parties, possibly against their will, to negotiate upon the mere notification of an intention to negotiate by another party.

Proposed s168 of the Bill states:

*Negotiating party means –*

- a) *A person who is negotiating under this chapter; or*
- b) *A person who has received a notice of intention under section 169 and refuses to negotiate, other than a person in relation to whom section 170 applies.*

The LGAQ has particular concern with subclause (b) of the definition which includes a negotiating party is a person who has merely received a notice of intention under proposed clause 169 but has refused to negotiate with the proposer.

This definition is important to the overall interpretation of Chapter 4 to the Bill as a ‘negotiating party’ is subject to a range of obligations, and is compelled by the Bill to act in a particular way. For example, at proposed clause 173 to the Bill, a ‘negotiating party’, is compelled to attend and participate in bargaining meetings, disclose relevant information and respond in a timely way and give reasons for the parties response to proposal made by other parties. Additionally a ‘negotiating party’ can be compelled under the Bill to attend conciliation conferences before the Queensland Industrial Relations Commission about matters proposed by the other party, and those matters may then be subject to arbitration and made binding on the party.

In LGAQ’s view, such obligations should not be imposed on either party against their will as a “negotiating party” merely on account of the serving of a notice under clause 169 of the Bill. For example, under the Bill, notice under proposed clause 169 may be served by a union who is eligible to represent employees of the employer, but has no employees as members. In such instance, this would make the employer a negotiating party even where the employer had refused to enter into negotiation with that union, irrespective of why that refusal was given. For example, the employer may have chosen to refuse because it intended to negotiate directly with its employees as a whole as per previous agreements, rather than through the union proposer, of which employees have freely chosen not to join. Similarly, the employer may have refused to negotiate with the union because the majority of employees of the employer may have chosen to negotiate directly with the employer, rather than the union. Notwithstanding this, upon the serving of the notice by that union, upon the employer’s refusal, the employer becomes a bargaining party, and is compelled to bargain with that union about a certified agreement under proposed clause 173 of the Bill, and further, could have matters arbitrated against them.

The LGAQ questions how such situation leads to a fair and balanced agreement making framework, nor how it will support a fair and equitable framework of agreements as is reflected at clauses 3 and 4 of the proposed Bill, as the Bill’s purpose.

#### **Recommendation:**



**That clause 168 – Negotiating parties be amended so parties are not identified as a bargaining party and compelled to bargain by the mere serving of a notice of intention to bargain, and to achieve this, subparagraph (b) of the definition of who is a ‘negotiating party’ be deleted**

A third matter that causes Councils concern is that the Bill removes section 147A under the current IR Act.

Section 147A effectively allows an employer who has engaged in negotiations with a union/s to seek a vote of a valid majority of its employees to be covered by a proposed agreement, after having commenced negotiations with an eligible union/s for such proposed agreement, but where the union has not indicated support or approval of the employer’s proposal.

Typically section 147A is applied to situations where a union, often acting independently to employees whom any proposed agreement will cover, may not agree or does not support a proposal put forward by the employer, but where the majority of employees of the employer to be covered by that proposal do support it.

In such circumstance, section 147A provides that the majority employee vote takes precedence over a union’s objection, and the employer may seek the certification of that proposed agreement upon a valid majority vote in support of the proposal of those employees to be covered by it, notwithstanding the union’s objection to the proposal.

Certification is of course subject to the employer demonstrating it has otherwise complied with the requirements and protections contained under the IR Act for the purpose of certification. Additionally, a union party may still seek to be bound to that Agreement at certification post a valid majority vote – if they choose.

Current s147A is intended to limit minority groups represented by a third party from having the power of veto by refusing to support an agreement initially proposed by a union, over such proposals put in reply by the employer during such negotiations, that otherwise have the majority support of employees that will be covered by such proposals. The LGAQ maintains that current s147A is an important element in ensuring a fair, balanced and democratic framework of agreement making exists for employees and employer subject to the IR Act.

The inclusion of s147A is also consistent with the principles of Agreement making under the Fair Work Act 2009, in that it is ultimately the majority of employees that determine whether a proposed Agreement is made. Removing the right of employees to exercise a vote to determine whether they wish to accept an employer proposal is antagonistic to the very essence of what fair industrial relations should represent. Employees are the people ultimately affected by the contents of the agreement and they should retain the right to have their voice heard rather than being denied access to certain conditions due to the bargaining tactics of and because of a requirement for third parties to give their approval regardless of the majority’s wishes.

#### **Recommendation:**

***That section 147A of the current IR Act be retained under Chapter 4 of the new Bill, with the necessary adjustments as to references. Section 147A of the IR Act currently states:***

***147A Employer may ask employees to approve proposed agreement being negotiated with employee organisation***

- (1) *This section applies if—*
  - (a) *the parties to a proposed agreement are an employer and 1 or more employee organisations;*
  - and*
  - (b) *the agreement is not a project agreement.*
- (2) *The employer may request the employees who will be bound by the proposed agreement to approve it.*



- (3) *The request must not be made until after the peace obligation period has ended.*
- (4) *In making the request, the employer must comply with section 144(2)(a) and (b).*
- (5) *If a valid majority of the employees approve the proposed agreement—*
  - (a) *the employer may apply to the commission for certification of the agreement under division 2;*
  - and*
  - (b) *the agreement is taken to be made by—*
    - (i) *the employer; and*
    - (ii) *the employees at the time the agreement is made.*

*Note—*

*See section 142(b).*

- (6) *For section 156, if, in negotiating a proposed agreement—*
  - (a) *a step was taken by the employer, or an employee organisation mentioned in subsection (1), to comply with a requirement under this Act; and*
  - (b) *the employer or employee organisation, as applicable, complied with the requirement as it applied to the proposed agreement;*

*the requirement is taken to have been complied with as it applies to the agreement made between the employer and the employees.*

*Example—*

*For paragraph (a), the step taken was that the employer, or employee organisation, gave a notice of intention under section 143(2).*

*For section 156, section 143(2) is taken to have been complied with for the agreement made between the employer and the employees.*

- (6A) *If the commission is satisfied a valid majority of the employees approved the agreement, section 156(1)(c) does not apply to the extent it requires the commission to be satisfied the agreement is signed by or for all the parties.*
- (7) *Subsection (5) does not prevent an employee organisation mentioned in subsection (1) being bound by the agreement under section 166(2).*
- (8) *If the full bench, or the commission, has jurisdiction to arbitrate the matter under subdivision 3, this section stops applying and anything being done under this section ends.*
- (9) *Making a request under subsection (2) does not, of itself, constitute a failure to negotiate in good faith as required under section 146.*

#### Objectionable terms - Clause 301

Put simply, the purpose and intention and meaning of this clause is unclear and confusing. The LGAQ is unsure what the clause is expected to address.

#### **Recommendation**

**That this clause be re-written with plainer English to ensure the meaning and intent of this clause is clear to practitioners.**

## Registered Organisations

The LGAQ acknowledges and welcomes the changes to the regulations relating to industrial organisations.

The LGAQ does however note that while the Annual and Mid-Year Financial Disclosure Statement requirements have been removed, there is still a reference to the 'financial disclosure statement' in section 782 (of the new act) that probably needs to be removed as there is no reference to a financial disclosure statement anywhere else in the reporting section.

In relation to the existing exemption for the accounting obligations, the wording in the new legislation appears to be the same. It is our understanding that organisations would not need to reapply as there is no mention of having to apply again. Clarification would however be appreciated.

The LGAQ is pleased to see the inclusion of a Gifts and benefits minimum amount threshold of \$150. This will eliminate the resource-intensive practice of staff having to record every pen, pencil or coffee provided or given in order to demonstrate compliance with the cumulative threshold of \$500.

The Association welcomes the changes to the financial management training timeframes and the inclusion of the capacity for an exemption for relevant qualifications, professional membership or sufficient relevant experience. It is suggested that the Act would benefit with more prescription to ensure the regulator for this area fully appreciates the intention of the scope for exemption.

The Association notes the new requirement to maintain a Material Personal Interests Disclosure Register but this causes no concern, given our considerable experience with the issues of conflict of interest and Material personal Interest.

S781 requires the Annual Financial Report after audit be sent to all members or 'published in a journal'. While arguably this wording might allow for publication on a website, to avoid any confusion, it is suggested the clause be amended to clarify that publishing the report on the organisation's website which is accessible to all members would suffice as compliance with this requirement.

S764 - Requirement for preparation of Annual Operating Report – is on first read a new requirement. It is suggested that the clause should be rewritten to ensure that including this report as part of the existing annual report would comply with this requirement.

It is noted that the obligation to present an audit report to a meeting remains but the term general meeting is also used but not defined in S782. It is suggested that this section would benefit from rewording to clarify that presentation at an annual general meeting would comply with this requirement.

## SUMMARY of recommendations

As raised above, local government at this time holds a high level of distrust towards the state government's management of the industrial relations system regulating the local government industry. The prospects of achieving the proposed objectives of the new Act within this environment would be enhanced by much more rigour in the cost-benefit analysis of many of the proposed changes that prima facie impact detrimentally on Councils as employers and aspirants to maximising their local workforces.

## Recommendations

1. **That the Bill be set aside while the state consult with the local government sector on local government's possible referral to the federal system of industrial relations.**
2. **That the Bill be set aside until such time as the necessary level of trust and faith in the system has been restored within the parameters of the existing legislation.**

If however, the state is still committed to including local government in the state system, there are a number of amendments proposed. These comprise the following recommendations:

3. **Clause 3 relating to the main purpose of the Act should provide for a third sub- clause viz:**  
  
*(c) “supports the efficient and effective operations of public sector and local government organisations and their business and operational interests”;*
4. **Clause 4 should then include a new dot point (c) to the effect of**  
  
*(c) Supporting the financial sustainability of local government authorities*
5. **That the additional entitlement to personal leave to care for a victim of DFV be removed from the legislation.**
6. **That the entitlement to compassionate leave under the Queensland employment Standards be removed.**
7. **That the current arrangements for Easter Sunday remain unchanged.**
8. **That the clauses (chapters 7 and 8) relating to bullying and general protections be removed.**
9. **That if the government is not inclined to delete these provisions as per recommendation 8 above, then the provisions be redrafted to ensure that employees of Councils are also offered protection from bullying unacceptable and inappropriate behaviour of union officials, organisers and representatives. Further that an individual employee or the employer on behalf of an individual employee should be authorised to take such action against an agent of the union.**
10. **That chapters 7 and 8 include a clause to prevent worker and other entities pursuing simultaneous or similar claims from more than one jurisdiction.**
11. **That chapter 8 be amended to restore the presumption of innocence for respondents of such allegations until proven otherwise and remove the reverse onus of proof which has already been identified as offending the Legislative Standards Act.**
12. **That chapter 4 –Collective Bargaining – division 1 be amended to allow for any party undergoing bargaining to seek the immediate assistance of the Commission at any time where an impasse in bargaining occurs and the party is satisfied that further bargaining or time lapse will not reasonably change the position of either party. Further if the Commission is of the view that further bargaining will not resolve the issue, the matter may at the instigation of the Commission be referred immediately to arbitration.**
13. **That the anti-discrimination provisions be removed at this time until the administrative details of how the system might work can be determined and settled prior to the proposed jurisdictional change for dealing with discrimination matters in the workplace.**
14. **That Chapter 9 Division 5 Right Of Entry – Authorised Officers be amended to include a requirement that union officials unless for an emergency or where it is impractical in the circumstances, be required to give a council employer 24 hours notice prior to entering their workplace for the purposes prescribed in this section;**
15. **That Chapter 9 Division 5 Right Of Entry – Authorised Officers be amended to include a requirement that union officials must comply with any reasonable request by the occupier of the premises for the official to comply with an occupational health and safety requirement that applies to the premises.**

16. That the section enabling the Register to partition the Local Government Industry “pre-modern” Award into three awards be removed from the Bill.
17. That the transitional clause effectively cutting short agreements entered into pursuant to section 147A of the Industrial Relations Act be removed from the Bill.
18. That proposed clause 165 – *Who may make certified agreements* of the Bill be replaced with the current wording which exists under section 142 of the IR Act.
19. That clause 168 – *Negotiating parties* be amended so parties are not identified as a bargaining party and compelled to bargain by the mere serving of a notice of intention to bargain, and to achieve this, subparagraph (b) of the definition of who is a ‘negotiating party’ should be deleted .
20. That section 147A of the current IR Act which allows workers to demonstrate their support or otherwise for a proposed agreement offer be retained under Chapter 4 of the new Bill, with the necessary adjustments as to references and to ensure the representational rights of an individual is not removed.
21. That clause 301 *Objectionable Terms* be removed or at least re-written with plainer English to ensure the meaning and intent of this clause is clear to practitioners.
22. The LGAQ notes that while the Annual and Mid-Year Financial Disclosure Statement requirements have been removed, there is still a reference to the ‘financial disclosure statement’ in section 782 (of the new act) that probably needs to be removed as there is no reference to a financial disclosure statement anywhere else in the reporting section. (technical matter only)
23. That the transitional provisions be reworded to make very clear that industrial organisations whom already have exemption in relation to their accounting obligations would not need to reapply. (clarification matter only )
24. That the Act be more prescriptive in relation to the capacity for an exemption from financial management training for relevant qualifications, professional membership or sufficient relevant experience to ensure the regulator for this area fully appreciates the intention of the scope for exemption. (clarification only)
25. That S781 which requires the Annual Financial Report after audit be sent to all members or ‘published in a journal’ be amended to clarify that publishing this information on the organisational website satisfies this criterion. (clarification only)
26. That S764 - Requirement for preparation of Annual Operating Report – be rewritten to ensure that the inclusion of this report as part of the existing annual report would satisfy this requirement.
27. That S782 be reworded to ensure the term Annual general meeting would suffice as a meeting or general meeting for the purposes of the obligation to present an audit report to a meeting.