Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill

Submission to the

Finance and Administration Committee

18 May 2015

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

The Local Government Association of Queensland, on behalf of its 77 separate constituent councils, has been anticipating legislation from the incoming Labor Government that might serve to restore some of the Industrial Relations regulation that was amended by the former LNP Government. However, the nature and detail of some of the changes do raise serious concerns with the Association and Councils.

Local Governments across Queensland currently employ in excess of 40,000 employees. Workforce costs constitute one of the biggest outlays of any Local Government Authority 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. 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.

In many communities Councils are amongst the largest, if not the largest, single employer in their communities, and are recognised within their communities 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.

Despite this, annual census data collected from Councils indicates a reduction in the Queensland local government workforce of almost 4,000 jobs between 2010 and 2014. Furthermore, councils have anecdotally informed the Association of further reductions unless Councils can be confident of greater flexibility and efficiency in managing their workforce, and increasing the competiveness of their workforce. Without the changes, LGAQ has calculated this further decrease could be in the vicinity of 1500 jobs over the next couple of years.

Councils are experiencing significant pressures on their revenue sources in conjunction with rising costs and growing demands and expectations of their communities. Councils are under increasing pressures to demonstrate to their communities that they can compete effectively with the private sector, both in terms of service delivery levels and value for money.

A key ingredient to achieving this is the ability for Council to work within a contemporary, flexible industrial framework which does not present unreasonable regulatory barriers and which restrict or stymie Council's ability to redesign work so as to access latent productivity improvements that reside within the adoption and implementation of new technologies, to address the broad and diverse needs of a modern workforce, and to address changing and emerging business demands for Councils. Such industrial environment is also key to aiding Councils in contributing to employment growth, and the facilitation and ongoing development of meaningful and well-paying jobs.

Councils must also be able to operate in an environment of industrial stability in order that Councils can organise and plan their resources to best service their communities without the distractions associated with continual changes and reviews to the regulatory framework in which they operate. Councils, like employees, need to have confidence in the integrity of an industrial system in which they operate in order that they might participate in that framework openly and honestly and confidently. Elements of this Bill serve to undermine that integrity and stability.

Award Modernisation

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 has paved the way for greater equity in employment for local government employees.

Currently 23 councils are 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 goes some way to recognising that a diversity of occupational callings may reside in distinct operational and service delivery areas of councils. This provides the capacity for employment entitlements to be structured in such a way that facilitates the equitable treatment of local government employees who work alongside one another, whilst balancing this against the unique operational needs which are inherent to the diversity of council service delivery areas.

The new modern award is seen by councils as assisting councils in improving 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 addresses and balances the various interests and needs of contemporary local government work.

Historically, Award regulation has had the effect of 'pigeonholing' local government work based on occupational groupings that neither properly reflect the nature of contemporary local government work, nor give genuine consideration to the contemporary operational needs of councils. The outcome was that such award regulation contributed to restricting the agility of councils to get on with their business, in an efficient and effective manner, to better accommodate the different business needs of different operational areas, whilst simultaneously accommodating the different circumstances of individual employees and reducing the administrative complexity associated with being a significant employer.

What also 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 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 proposed review and suggested amendments to the scope and contents of the new award now threaten to require those councils to divert funds currently directed towards employment and servicing the community to further amending their administrative systems.

<u>The current Bill's proposed removal of non-allowable matters and prescribed content from the legislation was expected by Councils and, in themselves, as proposed, cause no anxiety for councils.</u>

However, other elements of the Bill do cause councils significant concern and serve to seriously undermine the confidence of councils in the industrial relations regulatory framework going forward. Concerns of Council include:

1) Some elements of the Bill will give rise to unduly influencing the outcomes of Award Modernisation, and serve to undermine the perceived independence of the Queensland Industrial Relations Commission (QIRC).

2) Some elements of the Bill will unduly give rise to reducing the genuine benefits arising from both the scope and form of the *Queensland Local Government Industry Award – 2014*.

3) Some elements will have long lasting negative implications for the promotion of collective bargaining as a primary and preferred means for regulating conditions of employment.

Of specific and primary concern to LGAQ and Councils with the Bill are:

- S843 – Other variations (to Modern Awards upon early review)

- S844 – Commission may increase the number of Modern Awards
- S847 – Change of nominal expiry date for relevant certified agreement
- S849 – Regulation may vary relevant certified agreement
- S850 – Restriction on certification of agreements or determinations of arbitration

General Submissions

Proposed section 844 - Retrial of the number of Awards in Local Government

LGAQ welcomed the Award Modernisation process of 2014 as a means to thoroughly address what was in Queensland councils' view an untenable and unsustainable system of award regulation and which was highlighted, in part, from the extraction of the local government sector from the federal/national system following local government amalgamation in March 2008.

Queensland councils had historically been covered by both state and federal Awards and Certified Agreements.

On 1 October 2014, the Full Bench of the Queensland Industrial Relations Commission (QIRC) made the Queensland Local Government Industry Award – 2014. This created a single consolidated, industry based Award for the Queensland Local Government sector (not including Brisbane City Council).

A brief history of local government award regulation

The extraction of Queensland local government from the federal industrial system, and concomitant amalgamation of the majority of Queensland councils in early 2008 was followed by a number of unprecedented amendments to the Industrial Relations Act 1999 (IR Act); firstly in 2008 , and again in 2011 .

These amendments had the effect of introducing via statutory feat, various versions of former federal local government awards which had historically operated independently in the federal industrial system prior to their being modernised under the Fair Work Act 2009. These former federal awards became state awards under the IR Act, but were never published or reviewed by the QIRC. Under the Fair Work Act 2009 and national Award Modernisation process, these former federal Awards interestingly were consolidated in 2010, into the national Local Government Industry Award – 2010.

The system of Award regulation applying to Queensland local government prior to it being modernised in 2014 pursuant to the IR Act was marred by uncertainty, inequity, duplication and overlap and unjustifiable complexity. .

These problems with Local Government Award regulation pre 2014, was recognised by the QIRC. For example, on 10 May 2013, during its 2013 review of state Awards, a Full Bench of the QIRC, referring to comments made by a former Full Bench in 2010, stated:

5. Local Government Award/s

Another outstanding issue arising from the 2010 Award Review Full Bench was the issue of the Local Government Awards. The previous Full Bench made the following comment in their Report on the outcomes of the 2010 Award Review in respect of this matter:

> *"Local Government Awards have been subjected to considerable conciliation and debate before the Full Bench. A member of the Full Bench conducted numerous conferences with the parties for the purpose of refining many of the differences between them.*
>
> *The finalisation of these matters have been complicated by the fact that some of the major parties to these Awards have differing views as to whether there should be one Award covering Local Governments (with the exception of the Brisbane City Council) or which of the*

> *other individual applications made by various parties should be heard first. Suffice to say, the parties generally are unable to agree on what approach should be taken, hence, the delay in any substantial outcome being reached by the parties during the course of Review before the Commission."*

The conciliation process in this matter was conducted by Commissioner Thompson during the previous Award Review process. It is the view of the Full Bench that this matter be referred back to Commissioner Thompson for a last chance at conciliation before the Full Bench commences to arbitrate those matters that are unable to be agreed between the parties.[1]

The Full Bench was subsequently prevented from determining these matters as part of that review process due to amendments made to the IR Act on 1 December 2013.[2]

It is LGAQ's submission that these well-known difficulties is why Local Government was slated as a 'Priority Industry' pursuant to the Award Modernisation Request of the former Attorney-General and Minster for Justice.

It is also LGAQ's submission that these long standing difficulties which were associated with the way in which a number of former federal pre-modernised local government awards were introduced into the state industrial system, was the reasoning behind paragraph 20. of the former Attorney-General and Minster for Justice's Award Modernisation Request, which stated:

Local Government

> *20. When undertaking the award modernisation process, with regard to the Local Government Sector (excluding Brisbane City Council), the Commission is to give consideration to consolidating the Queensland Local Government Officers Award 1998; the Municipal Officers' Award (Aboriginal and Islander Community Councils) Award 2004; and the Local Government Employees (Excluding Brisbane City Council) Award State 2003 (collectively, the Awards) and creating a new modern Local Government Industry Award covering employers and employees subject to those Awards.*
>
> *21. When undertaking the award modernisation process with regard to the Local Government Sector (excluding Brisbane City Council), the Commission is also to endeavour, where practicable, to review any other awards which underpin Local Government Agreements which nominally expire throughout the first half of 2014, in order that negotiations for the replacement of those agreements can be commenced in a timely manner.*[3]

This brief history preceding the decision by the QIRC to determine the number of Awards to apply to Queensland Local Government during the Modernisation process is important to the consideration of s844 of the Bill, as proposed s844 effectively requires the QIRC to reconsider an outcome of the Award modernisation process which it has already independently considered and determined based on equity, good conscience and the substantial merits of the case having regard to the interest of not only the interested parties, but also the community as a whole.

Furthermore, that decision was made only after an opportunity for open and robust debate and argument was provided to all effected parties.

The Minister's request did request the Commission to consider reducing the number of awards which is patently understandable given the significant number of awards covering local government at that time and the Modern Award Objective of simplifying the industrial relations system for affected parties. It does not suggest to the Commission to adopt a single Modern Award for Local Government – that was a decision of the Commission's own making.

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[1] Statement, Award Review 2013, Queensland Industrial Relations Commission, Full Bench, 10 May 2013 (AR/2013/1), 5.
[2] *Industrial Relations Act 1999, s822*
[3] Request Under Section 140C (1) – Award Modernisation, Jarrod Bleijie, Attorney-General and Minister for Justice, paragraphs 20, 21.

In LGAQ's view, it is difficult to justify that proposed section 844 is about 'restoring fairness' or "about restoring the independence of the Commission" due to some premise about the Commission's diminished capacity to independently determine the number of awards for local government; the only conclusion is that it is about seeking to retrial and potentially change the independently determined outcome of the QIRC because some of the participants did not like the outcome.

Independent reasoning by the QIRC produced a single Award for Queensland Local Government

Firstly, as noted above, whilst paragraph 20. of the former Attorney-General and Minster for Justice's Award Modernisation Request asked the QIRC to "give consideration to consolidating" 3 particular Local Government Awards during the Award Modernisation process, there was a historical context behind this request. It effectively asked the QIRC to give consideration to the subject matter of a long standing dispute about the application of a former pre-modernised federal awards which had been introduced into the state system by statutory intervention.

That consideration, and in particular whether such consideration had merit, and more importantly was consistent with the Modern Award objectives, was left entirely to the QIRC to determine.

Secondly, there was nothing in the former Attorney-General and Minster for Justice's Award Modernisation Request that required or requested the QIRC, whether directly or indirectly, to consider or otherwise produce a single Award for the Queensland Local Government sector outside of Brisbane City Council.

In fact, paragraph 21. of the former Attorney-General and Minster for Justice's Award Modernisation Request and the reference to promptly reviewing other pre-modernisation awards underpinning local government agreements rebuts any assertion that the former Attorney-General and Minster for Justice's Award Modernisation Request required or sought an outcome of a single local government award.

In further support of this assertion on the independence of the Commission is the process adopted by the Commission to review the awards affecting local government. This comprised having an individual Commissioner, in this case Deputy–President Bloomfield with the operational support of an Award Modernisation Team, convene a number of conferences between the parties for the purpose of examining pre-modernised awards and generating draft modern awards. These drafts would ultimately be submitted to a Full bench of the Commission for determination, after hearing and considering submissions from interested parties on the merits or otherwise of the drafts.

In the case of Local Government, DP Bloomfield acknowledged very early after a number of conferences that agreement on the number of awards was not going to be reached and identified that this was a pivotal matter going forward that would need to be resolved early in order that the population of the modern award/s could proceed. Accordingly, DP Bloomfield referred his preference of a single award for local government to a Full Bench who subsequently convened a hearing on this matter where all parties could make their respective cases on this issue.

The reasoning for the ultimate single Award outcome for Queensland local government as a result of the Award Modernisation process can be clearly identified in the Full Bench Decision of Re: Referral pursuant to s140C(1) of the Industrial Relations Act 1999 for a modern award – Local Government [2014] QIRC 089.

That Full Bench consisted of two Deputy Presidents and a Commissioner. A copy of that decision has been attached to this submission for the Committee's reference (**Annexure A**).

The reasoning leading to the single local government modern award decision can be succinctly summarized by reference to the flowing paragraphs as extracted from that decision:

How many awards - the options

[5] Currently, employees of Local Government authorities in Queensland are covered by some 30 awards.

[6] The Award Modernisation Team (AM Team), after consulting with the major parties, recommended that there be one award.

[7] The major parties contended for different outcomes.

[8] The Local Government Association of Queensland (LGAQ) supported the AM Team's proposal that there be one award.

[9] The Association of Professional Engineers, Scientists and Managers Australia sought the making of three awards:

- *one for officers and "indoor staff";*
- *one for building, engineering, maintenance employees; and*
- *one for employees currently covered by the Local Government Employees' (Excluding Brisbane City Council) Award - State 2003.*

[10] The Queensland Services Union, the Automotive, Metals, Engineering, Printing and Kindred Industries Union, the Electrical Trades Union, the Plumbers and Gasfitters Employees Union, the Queensland Nurses Union and United Voice jointly submitted that there should be three awards:

- *one for white collar employees;*
- *one for building, engineering, maintenance, nursing and children's services employees; and*
- *one for all other blue collar employees.*

[11] The Australian Workers' Union proposed that there be no fewer than two awards:

- *one for white collar employees; and*
- *at least one award for outdoor employees.*

[12] The Construction, Forestry, Mining and Energy Union Queensland's proposal was for three awards:

- *one for tradespersons;*
- *one for white collar employees; and*
- *another for non-trades based staff not employed in a white collar capacity.*

[13] The AM Team's recommended award has its genesis in the Local Government Award 2010, made by the Australian Industrial Relations Commission (AIRC) as part of the federal award modernisation process.

[14] The AIRC reduced a large number of awards that had operated throughout local government areas across Australia to the one Local Government Award 2010.

[15] Currently, the federal award operates in the states of Victoria and Tasmania, as well as the Northern Territory. The LGAQ suggested that in Western Australia the greater majority of local governments also operate under or in accordance with that award.

[16] New South Wales has the one award for local government in that state. It is the Local Government (State) Award 2010

[18] The gravamen of the unions' submissions is that there are significant differences between the awards currently covering "white collar" and "blue collar" employees, and to a lesser, but still significant, extent, insofar as "blue collar" staff are concerned, between building, engineering and maintenance staff on the one hand, and "external/field staff" on the other.

Consideration and conclusion

[22] In our view, the federal approach should be followed unless there are cogent reasons not to do so. The federal award was made in 2010 after a thorough review, during which all interested parties had an opportunity to participate. The apparent problems with the making of one award that have been articulated in these proceedings would no doubt be similar to those that pertained in the states and territories covered by the 2010 federal award.

[23] Although we invited those who opposed the making of one award to identify any practical difficulties that have arisen since the making of the single federal award for local government, none of them did so.

[24] We acknowledge that the terms of the federal and Queensland legislation and the terms of the federal and Queensland ministerial requests are not identical. However, we are of the view that, to the extent compatible with the legislation, award coverage for local government in Queensland should be complementary to that for the federal and New South Wales awards; at least insofar as the number of awards for the industry is concerned.

[25] It will be a matter for the actual award making process to determine if, how, and to what extent, existing entitlements should be disturbed.

[26] It is for these reasons that we decided that there be one award governing the terms and conditions of employees in local government in Queensland.[4]

It is important to also point out that upon remittance to the Full Bench subsequent to a successful appeal to the Industrial Court by the Queensland by the Independent Education Union of Employees, regarding the reasoning behind the Full Bench's decision to include early childhood teachers under the Queensland Local Government Industry Award – State 2014, the Full Bench continued to decline to make a separate Award for such occupational grouping.

Proposed s844 undermines the integrity and faith in the independence of the QIRC

As can be clearly demonstrated, the decision creating a single Queensland Local Government Industry Award – 2014 was independently determined by the QIRC after a fair opportunity for input being granted to all interested parties.

Whilst it is no secret LGAQ supported a single Award, the Full Bench determined that to be the better outcome based on the substantive merits of the case and by reference to the Modern Award Objectives, and more specifically, to the general practice of award regulation of local government across Australia.

It is difficult not to conclude that re-trialling the question of the number of Modern Awards to apply in Local Government pursuant to a new s844, would only likely lead to a different outcome where the current Minister, by variation to the Award Modernisation request, heavily influenced that decision by requesting or directing a different outcome to occur.

In such case, LGAQ would argue that such outcome is clearly not about 'restoring fairness' or "restoring independence to the Commission". Given the significance of Award Modernisation to the Local Government sector, and consequently the broader communities they serve, such intervention will significantly undermine the credibility of the QIRC to be seen as an independent body which can make decisions based on equity, good conscience and the substantive merits of the case, not only for persons immediately concerned, but more importantly, for the community as a whole.

Conclusion: LGAQ has serious concerns about the intent and application of s844. Objectively considered, the QIRC independently, on merit and without undue influence determined that only one modern award should apply to the Queensland Local Government sector. This outcome is consistent with the situation applying to most local governments across Australia.

[4] Re: Referral pursuant to s140C(1) of the Industrial Relations Act 1999 for a modern award – Local Government [2014] QIRC 089

The LGAQ can see no reason for the inclusion of new section 844 proposed by the Bill unless it is the intention of the Government to override the independent reasoning of the Commission on this issue. Councils believe that concerns with the number of awards, as with the contents of the modern awards, can be clearly dealt with during the scheduled modern Award reviews.

Recommendation: It is recommended that proposed s844 be removed from the Bill.

Proposed s843 – Retrial of Modern Award content (other than required or non-allowable)

The LGAQ maintains concerns about the nature and intent of proposed s843, given that there is already legislatively capacity for the QIRC to vary a modern Award pursuant to s140G of the Industrial Relations Act 1999 to ensure the Modern Award objectives continue to be met.

With the exception of matters that were either required or non-allowable pursuant s71M, 71MA or 71MB or Chapter 2A of the Industrial Relations Act 1999, the content of the Queensland Local Government Industry Award – 2014 was determined on the basis of the Modern Award objectives, including that the award it provide a minimum safety net of employment conditions that is fair and relevant.

Additionally, in determining the content of the Queensland Local Government Industry Award – 2014, the QIRC was governed by s320 (3) of the Industrial Relations Act – 1999, which relevantly provides:

> *Also, the commission or Industrial Magistrates Court is to be governed in its decisions by equity, good conscience and the substantial merits of the case having regard to the interests of—*
>
> *(a) the persons immediately concerned; and*
> *(b) the community as a whole.*

It is LGAQ's submission that the QIRC would be unlikely to materially change the content of the Queensland Local Government Industry Award – 2014, outside of that which is currently required or non-allowable, merely on the strength of the minor amendments to s71ND of IR Act proposed by the Bill. The outcome of Award Modernisation was pursuant to the Modern Award Objectives subject to the test of 'fairness', and in LGAQ's view, the outcome was not unjust. In particular all parties were given adequate opportunity to participate.

Further, LGAQ sees no need for the inclusion of new section 843 proposed by the Bill, given the operation and scope of current section 140G of the IR Act, unless there is an intention that the Minister will be subsequently directing or requesting the Commission to make changes to the *Local Government Industry Award – State 2014* and/or other Modern Awards, pursuant to s140C or s140CA of the IR Act as some parties to the award were not satisfied with the Commission's independent decisions.

It is LGAQ's submission that with respect to the content of the Queensland Local Government Industry Award – 2014, outside of those matters either required or non-allowable, that the outcomes of local government Award Modernisation did not lead to any material unfairness or any substantial reduction in employment conditions, unless such outcome was determined independently by the QIRC to be fair and such provisions were otherwise inconsistent with the Modern Award Objectives – which remain largely unchanged under the presented Bill.

Like any consolidation process, there are some examples where a narrow entitlement may have been lower or less beneficial under the *Queensland Local Government Industry Award – 2014* compared to that which was contained in a specific provision under a pre-modernisation award. However, there are also examples of entitlements that resulted in an increase or more beneficial outcome in comparison to conditions which existed under the pre-modernisation award.

By way of supporting Local Government's contention that the system for determining and populating modern awards was robust and fair, LGAQ refers to the views and comments expressed by Deputy

President Bloomfield (head of the Award Modernisation Team) during a conference where he stated in response to a comment or request from a party at the conference:

> *"I hear what people are saying about in their feedback and around the conference table about diminution in employment conditions, but can I just indicate that the present request, which is in the hands of the Commission, is very, very, very and I use those three words quite deliberately similar to the award modernisation request which was issued to the Federal Commission by former Prime Minister Gillard, when she was the Minister For Employment and Industrial Relations. And at that time it was the Labor Government in power decided that the needs of government, needs of industry, and the needs of the country were such that awards needed to be modernised. In recent days, I came across an article, more so by accident than anything else, in which the former Prime Minister said that the objective of towards modernisation was to make was to streamline awards, make them simpler to understand and to apply to make Australia more competitive and to reduce the overall compliance cost burden on employers.*
>
> *She also indicated that the process of award modernisation was that awards would be made from scratch. In other words, an award may comply with the request rather than existing awards not amended and adjusted to suit the ideals set out in the ministerial request. Indeed, she said that the award modernisation process was not one which should lead to pre modernisation awards being brought and these are her words kicking and screaming, in her words into the 21st century.*
>
> *Now, as much as those who sit on my left (unions) have complained about the process over the last 15 months, can I suggest to them that had the AMOD team, headed by myself, adopted the view taken by the Fed Commission, then what you would see in your exposure draft would be significantly different; would not contain a number of the provisions which were reflected in the exposure draft; in fact, it would be a completely unrecognisable document compared to the existing awards, and, more particularly, to the exposure drafts which have been issued. And, in reality, if anyone wanted to complain about the award modernisation process being undertaken in Queensland, it's the group on my right,(sic. Employer groups) and previous groups who sat on my right, because, in reality, compared to the additions which similar organisations in other States have to operate under, they are being placed at a significant disadvantage."*[5]

Where certain pre-modernisation entitlements were not included or encompassed in the *Queensland Local Government Industry Award – 2014*, , that decision was only made after a fair opportunity was afforded to interested parties to raise objections, and to have those objections properly considered, tested, and subsequently determined via a fair independent hearing of the QIRC. For example refer to *Re: Application for Amendment of the Queensland Local Government Industry Award - State 2014* [2015] QIRC 052**.**[6]

Additionally, in the circumstances where some pre-modernisation arrangements were not included in the Queensland Local Government Industry – Award 2014, the QIRC implemented fair and reasonable savings and/or transitional provisions, by way of either specific provision to the Queensland Local Government Industry Award – 2014, or otherwise by way of specific tailored order of the QIRC.[7]

LGAQ acknowledges that while there was some consolidation and recasting of the application of certain allowances under the modern Local Government Industry Award – 2014, in comparison to the many different pre-modernisation awards, this was necessary to ensure such allowances continued to be relevant to disabilities affecting contemporary local government work, and to also ensure that the Modern Award met the objective of being simple and easy to understand.

[5] Transcript, Award Modernisation Conference, Queensland Industrial Relations Commission.

[6] *Re: Application for Amendment of the Queensland Local Government Industry Award - State 2014* [2015] QIRC 052**.**

[7] *Re: Application for Amendment of the Queensland Local Government Industry Award - State 2014 [2015] QIRC 071.*

By way of example to the comments made above, whilst a new 'Local Government Industry Allowance' was created under the *Local Government Industry Award – State 2014*, which consolidated a significant number of former disparate and overlapping allowances contained in a number of pre-modernisation awards, such consolidation process was protected by the ability for the QIRC to make preservation orders to protect any affected employee's take home pay.[8]

In the alternative, many local government employees were made significantly better off pursuant to the allowance arrangements under the Local Government Industry Award – 2014. Where that occurred, no transitional arrangements were implemented to assist Councils adjust any associated increases in wages costs flowing from those improvements; these automatically flowed on to Councils subject to the particular Modern Award provision.

For example, in the case of plumbers and plumbing maintenance staff employed by local governments under the pre-modernised Building Trades (Public Sector) Award – State 2012, the following table provides a comparison in entitlements:

Building Trades (Public Sector) Award – State 2012	***Local Government Industry Award – State 2014***
5.2.31 *Work under unpleasant conditions* - Employees engaged in cleaning covered drains, cleaning septic tanks, on live sewer work involving personal contact with live or raw sewerage, shall be paid at the rate of time and a-quarter.	(h) **Live sewer work allowance** (i) Employees engaged on live sewer work or cleaning septic tanks shall, during ordinary hours, be paid at the rate of time and a-half for all time so engaged. During overtime or on week-ends or public holidays employees shall be paid one-half of the ordinary hourly rate in addition to the relevant overtime, week-end or public holiday rate for all time engaged on live sewer work. (iii) Employees who are on any day required to carry out work in connection with the release of blockages in sewerage lines, septic tanks and connections thereto shall be paid not less than 4 hours at the appropriate rates. (v) For the purposes of this clause, **live sewer work** shall mean work carried out in situations where there is direct personal connection with sewage. The term shall also include work in connection with septic tanks and cleaning of mechanical plant if such plant is contaminated with sewage. Where personal connection with a sewer or septic tank is blocked by a disc, plug, valve, water seal or other means, the live sewer rate shall not apply.

Conclusion– LGAQ has concerns that proposed s843 will give rise to a situation where Modern Award content which has already been litigated, will be subsequently and unduly altered by Ministerial Request or Direction with limited or no scope for the QIRC to act independently. Moreover, conditions will be "cherry-picked" so as to amend provisions seen as less beneficial to some

[8] *Re: Making of a modern award – Queensland Local Government Industry Award – State 2014 [2014] QIRC 149, [152] (f).*

employees whilst conditions considered to be advantageous to some employees will be ignored. This can only serve to add additional financial pressures on already struggling Councils and risk further job loss for employees.

Such outcome would further undermine the integrity and perception of the QIRC to act as an independent body in the interest of equity, good conscience and the substantial merits, and in particular in consideration of the broader community.

There is scope via s140G of the current IR Act for the QIRC to vary a Modern Award, either at its own initiative, or pursuant to an application by a relevant party, to ensure a Modern Award continues to achieve the Modern Award objectives.

Recommendation: That section S843 be deleted from the Bill

Existing Certified Agreements

The LGAQ and member Councils express their strongest possible objections to the proposed Sections 847 and 849 of the Bill which effectively amend or have potential to amend certified agreements that are still in force and have been entered into willingly by councils and staff or unions. The high level of disdain for and rejection of these transition provisions extend across Local Government and not merely to those councils affected by the provisions.

The capacity of a third party (who is not a party to the agreement) to, post-certification of an agreement, arbitrarily cut-short an agreement which has been freely entered into and struck in accordance with the prevailing Queensland laws is totally repugnant to the very construct of enterprise bargaining. Of equal repugnance is the capacity of that third party to, at their discretion, amend in any way they so choose a provision of an agreement and subsequently bind the parties to the agreement to that amended provision regardless of their agreement or otherwise with the amendment.

A fundamental principle in Industrial Relations that bargains struck lawfully and voluntarily will be honoured by the affected parties should be recognised and respected. 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.

It opens the door to a view by employers that expiry dates to an agreement no longer need be respected and can be changed at any time by a third party without regard for the consequence for the employer. It also facilitates an environment of threat, either real or perceived, to councils that failure by Council to agree to a demand by another party will result in that party simply seeking legislative direction for the Council to comply.

This Bill stipulates the primacy of awards and collective bargaining as the mechanisms to regulate conditions of employment. These transition provisions are the antithesis of this in that they indicate that collective bargaining is being redefined as being between employers and employees/unions but with the added rider that the Government might at any time without reason and in any way they so wish amend a collective bargaining outcome.

A fundamental tenet of the ALP Government's policy platform reads: *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 transition arrangements directly breach this policy statement.

It is also somewhat innocuous that the very principle, and Council's commitment to that principle, that unions relied upon (i.e. for parties to respect existing bargains) to delay or defer bargaining up until this time is now being legislatively compromised presumably at their request. It is innocuous that this principle of respecting agreements has been relied upon by the unions to retain the applicability of preferred provisions of continuing agreements is now being compromised in order to vary conditions in current agreements.

The dishonouring of agreements struck lawfully and in good faith is unprecedented in local government.

Apart from the principle-based rejection of these transition provisions, the Government should also recognise the significant amount of investment by councils and other parties into the making of current agreements. Local Government fails to understand how it can be considered to be in the public interest to now negate the capacity for councils and affected parties to reap the returns from that investment, as well as require a duplication of that outlay in resources in order to create a new agreement. This additional red-tape and outlay of resources distracts the Council from its business of servicing the community and diverts resources from employment and service delivery outcomes.

Councils under the threatened agreements also express their frustration that they are bound by earlier pay increases without necessarily being able to reap the benefits from the latter parts of their agreements. They are frustrated that their future bargaining capacity is compromised by the pay-level rises they had already agreed to in their current agreement which potentially become a starting point for other parties when negotiating future pay increases arising out of a fresh agreement. This is manifestly unfair on councils and, conversely, may even lead to worse outcomes for employees which LGAQ notes the Government has acknowledged but which Local Governments believe to be unreasonable for employees.

Finally, it is also considered disrespectful to the council officers and employees who were involved in the negotiation of the agreement, and to the employees who voted in favour of the agreement (up to 96% in some cases) for Government to now reject their efforts in making that agreement. Any suggestion that this is somehow in the interests of those employees who were not able to think logically for themselves or understand the environment in which they were operating demeans the capacity and capability of those Local Government workers.

Local Government argues that exiting agreement should be honoured and allowed to run their natural course. In relation to previously non-allowed matters, the LGAQ would not oppose directing the parties to the agreement to consider additional clauses relating to these non-allowable matters and where consent is reached, providing for the QIRC to register the amendments to the certified agreement. Where consent is not reached, the QIRC could play a mediation and arbitration role.

Having made these submissions, and iterating our strong objection to this interference with existing agreements, if the government is committed to legislate to introduce a new expiry date prior to the agreed-expiry date of current agreements, then the new nominal expiry date should be set as the 19th of September 2016 which is 6 months past the scheduled date of the local government elections. The reason for this request need not be expanded upon at this time.

Recommendation 1): It is recommended that the proposed sections S847 and S849 be deleted from the Bill.

In the event that S847 and S849 are retained, the following comments are made:

Technical problems with subsection 847 (2)

LGAQ perceives a number of problems associated with the operation of proposed subsections 847 (2) and (4).

Subsection 847 (2) of the Bill provides:

> *(2) On variation day, the nominal expiry date for the relevant certified agreement is taken to be the earlier of-*
>
> *(a) the day that is 3 months after the variation day; or*
>
> *(b) if an earlier day is prescribed for the expiry by regulation, the prescribed day.*

Note – See section 164 (2) (a) in relation to the continued operation of the relevant certified agreement after its nominal expiry date

Section 164 of the IR Act provides:

164 When a certified agreement is in operation

(1) A certified agreement starts operating when it is certified.

(2) The agreement continues to operate until—

(a) after its nominal expiry date, it is replaced by another certified agreement; or

(b) it is terminated under section 158, 171, 172 or 173; or

(c) it expires under subsection (3).

(3) A certified agreement expires at the end of the day that is 3 years after the nominal expiry date for the agreement unless it is sooner replaced by another certified agreement or terminated.

The LGAQ has concerns that whilst a relevant certified agreement referenced under s847 (2) of the Bill cuts short the 'nominal expiry date' which was agreed to by the parties, it continues to operate, hence its terms are legally enforceable, by virtue of s164 (2) of the IR Act. Compare s164 (3) of the IR Act, where a certified Agreement 'expires' (hence no longer operates) 3 years after the 'nominal expiry date'.

In its current form, section 847 of the Bill provides for an unjust situation to arise where a local government had made commitments under the Certified Agreement (for example commitments to wage increases) which would take effect under the certified agreement post the earlier 'nominal expiry date' imposed under s847 (2) of the Bill. That is, it is unclear whether these commitments dated to take effect after the newly imposed nominal expiry date will apply, whilst the agreement continues to operate pending its replacement by a new agreement.

Such situation is unjust because proposed s847 (3) of the Bill prescribes that the parties to the agreement are taken to have begun bargaining at the time of the newly imposed 'nominal expiry date'. Hence, an employee or union party may recommence bargaining and pursue claims for additional entitlements (including additional wage increases), and all the while would be protected if engaging in industrial action in pursuit of those claims, whilst on the other hand the employer remains compelled to provide all the benefits and future commitments flowing from the existing certified agreement.

Such situation places the employer at a significant disadvantage when negotiating the new agreement. A deal is a deal, and if a local government on behalf of its community are compelled to have to return to the table and renegotiate an agreement already negotiated and settled in good faith, then it should not be compelled to have to honour any commitments which would have otherwise arisen after the newly imposed nominal expiry date'.

Conclusion:– In its current form, section 847 will possibly lead to an unjust outcome, disadvantaging the employer covered by a relevant certified agreement where commitments to improvements in benefit (for example wages) arise post the 'imposed' nominal expiry date are taken to continue to operate.

Recommendation:- To avoid the chance of such injustice, and in particular any confusion regarding application of s164 of the existing IR Act, a new subsection s847 (4A) should be inserted which prescribes:

(4A) Notwithstanding the continued operation of a relevant certified agreement pursuant to section 164 (2) (a), a provision in a relevant certified agreement which would have the effect of improving a benefit, whether to the employer or employees advantage, and which would have taken effect after the nominal expiry date prescribed by section 847 (2), is not enforceable.

Technical problems with subsection 847 (4)

Subsection 847 (4) of the Bill attempts to prescribe who the 'proposed parties' are for the purpose of bargaining a new certified agreement taken to have commenced under subsection 847 (3), due to the artificially 'imposed' nominal expiry dated prescribed by subsection 847 (2) of the Bill.

In particular subsection 847 (3) of the Bill states:

(4) *For subsection (3) (a), the proposed parties to the proposed agreement are-*

(a) each party to the relevant certified agreement; and

(b) an employee organisation that could have been bound by the relevant certified agreement under section 166 (2).

Proposed 847 (3) is wholly inconsistent with sections 142 (1) and 143 the current IR Act in that there is no scope under Chapter 6 of the IR Act for 'parties' to a certified agreement to be both the employer and employees and additionally one or more employee organisations. In particular, section 142 (1) of the IR Act prescribes:

142 Who may make certified agreements

(1) 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.

Section 143 of the current IR Act then prescribes:

143 Proposed parties to be advised when agreement is proposed

(1) This section applies when a person (the proposer) proposes to make a certified agreement.

(2) The proposer must give each of the following persons a written notice (a notice of intention) of the proposer's intention to begin negotiations for the agreement—

(a) the other proposed parties to the agreement;

A party to a specific certified agreement under section 143 of the IR Act can only be either employees, and the employer, or alternatively, one or more employee organisations and the employer. It can't be both.

Hence, to the extent that the requirements of section 143 of the IR Act are taken to be satisfied, as is being prescribed by proposed s847 (3) and (4) of the Bill, there is no scope for a certified agreement to be made between 'employees' and one or more 'employee organisations' and the 'employer', pursuant to Chapter 6 of the IR Act.

The parties to a certified agreement must be, on the one hand the employer and one or more employee organisations, or on the other hand, the employer and employees. In the latter case, an employee organisation may seek to be bound (but not a party) to an agreement made between the employer and employees pursuant to section 166 (2) of the current IR Act, if the employee organisation satisfies the QIRC of the requirements outlined under section 166 (2).

Conclusion: s847 (4) presents an outcome in which s142 and Chapter 6 of the IR Act does not contemplate or permit.

Recommendation - Subsection 847 (4) should be removed from the Bill.

Right of Entry – authorised industrial officer

Section 372 Right of Entry – authorised industrial officer, proposal to either amendments or omit of sections 372, 372A, 372B and s373 of the current IR Act.

Many of the provisions outlined under sections 372, 372A and 372B of the IR Act are very similar to, or are reflected under the *Fair Work Act 2009*, Chapter 3, Parts 3-4. In particular 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.*
  - *Refer section 372A (2), IR Act, which prescribes:*

    (2) The officer must give the employer or the employer's representative a written notice (an entry notice)—

    (a) during the employer's business hours; and

    (b) at least 24 hours, but not more than 14 days, before the 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.*
  - *Refer section 373 (13), IR Act, which prescribes :*

    373 Rights of authorised industrial officer after entering place

    (13) The employer or employer's representative may give the officer a direction to take, or not take, stated action if the employer or employer's representative is satisfied the direction is reasonably necessary to discharge the employer's duties under the Work Health and Safety Act 2011.

Each of these obligations currently existing under the IR Act (as also exists under the *Fair Work Act 2009*), will be removed by the Bill due to the omission of sections 372A and amendments to section 373.

Whilst the proposed amendments/omissions do restore the provisions operating under the IR Act prior to it having been amended by the Industrial Relations (Fair Work Act Harmonisation) and Other Legislation Amendment Act 2012, the former provisions did present problematic outcomes.

Firstly, the proposed amendments removing the obligations noted above mean that there is no obligation on an authorised industrial officer to give advanced notice to the employer prior to seeking entry to the employer's workplace. Because of the nature of security arrangements in local government workplaces, where a person whom is authorised to grant security permission on behalf of the employer to an authorised industrial officer is not available at the time the authorised industrial officer decides to attend to the workplace, it is not always the case that an authorised industrial officer can, practically, gain access that Council workplace.

Advance notice allows arrangements to be made in advance of the authorised industrial officer's attendance so that these situations do not arise.

Secondly, the power provided under current subsection 373(13) of the IR Act is one that allows local governments to protect employees and industrial officers from unsafe circumstances. The power is limited to employer's duties under the *Work Health and Safety Act 2011* (Qld) which decreases the liability of a health and safety incident occurring in the workplace.

It is a great concern that removing s 373(13) may put industrial officers at risk of injury while on local government property and expose councils to litigation if an injury occurs.

Such situation is further 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.

Recommendation: That section 372 Right of Entry – authorised industrial officer of the Bill be amended:

1) **to continue the current obligations outlined pursuant to sections 372A (2) of the IR Act – by way of inserting those provisions as subsection 372 (1A) to the Bill, and**

2) **that s373 (13) under the current IR Act continued to be retained as section 373 (13) to the Bill.**

SUMMARY OF RECOMMENDATIONS

- It is recommended that proposed s844 be removed from the Bill.
- That section S843 be deleted from the Bill
- It is recommended that the proposed sections S847 and S849 be deleted from the Bill.
- To avoid the chance of such injustice, and in particular any confusion regarding application of s164 of the existing IR Act, a new subsection s847 (4A) should be inserted which prescribes:

  (4A) Notwithstanding the continued operation of a relevant certified agreement pursuant to section 164 (2) (a), a provision in a relevant certified agreement which would have the effect of improving a benefit, whether to the employer or employees advantage, and which would have taken effect after the nominal expiry date prescribed by section 847 (2), is not enforceable.

- Subsection 847 (4) should be removed from the Bill.
- That section 372 Right of Entry – authorised industrial officer of the Bill be amended:

  1. To continue the current obligations outlined pursuant to sections 372A (2) of the IR Act – by way of inserting those provisions as subsection 372 (1A) to the Bill, and
  2. That s373 (13) under the current IR Act continued to be retained as section 373 (13) to the Bill.

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION:	*Re: Referral pursuant to s 140C(1) of the Industrial Relations Act 1999 for a modern award - Local Government* [2014] QIRC 089
PARTIES:	**Local Government Association of Queensland** **Queensland Services Union of Employees** **Association Of Professional Engineers, Scientists And Managers, Australia, Queensland Branch, Union Of Employees** **Electrical Trades Union Of Employees, Queensland** **Automotive, Metals, Engineering, Printing and Kindred Industries Industrial Union of Employees, Queensland** **Queensland Independent Education Union of Employees** **Construction, Forestry, Mining & Energy, Industrial Union of Employees, Queensland** **The Australian Workers' Union of Employees, Queensland** **United Voice Industrial Union of Employees**
CASE NO'S:	MA/2014/88 MA/2014/91 MA/2014/93 MA/2014/94 MA/2014/95 MA/2014/96 MA/2014/97 MA/2014/98
PROCEEDING:	Determination of the number of modern awards in Local Government
DELIVERED ON:	23 May 2014
HEARING DATE:	21 March 2014 28 March 2014 (Written Submissions) 8 April 2014

MEMBERS:	Deputy President O'Connor Deputy President Kaufman Industrial Commissioner Neate
ORDERS :	**1. The full bench orders that a single award be created for Local Government.**
CATCHWORDS:	AWARD MODERNISATION - request from Minister to Commission - Local Government as a priority industry/occupation - appropriate number of modern awards in relation to Local Government - coverage of modern awards for Local Government - coverage of Federal modern award for Local Government - one modern award to be made - Industrial Relations Act 1999 ss 140BA, 140BB, 140C
CASES:	*Industrial Relations Act 1999* ss 140BA, 140BB, 140C *Re: Referral pursuant to s 140C(1) of the Industrial Relations Act 1999 for a modern award - Health* [2014] QIRC 088 *Award Modernisation - Decision - re Stage 4 modern awards* [2009] AIRCFB 945
APPEARANCES:	Mr B. Green, for the Queensland Services Union of Employees Mr J. Martin, for the Queensland Council of Unions; Mr B. Watson, for the Australian Workers Union of Queensland Ms K. Inglis, for the Electrical Trades Union of Employees, Queensland, and for the Australian Manufacturing Workers Union, and (at 21 March 2014 hearing) for Plumbers and Gas Fitters Union Queensland, Union Employees Mr J. Spriggs, for the Queensland Independent Education Union Mr D. Pullen, for the Association of Professional Engineers, Scientists and Managers, Australia Queensland Branch Union of Employees Ms L. Booth, for the Queensland Nurses Union of Employees Ms K. Badke, for the United Voice Industrial Union of Employees, Queensland Mr R. Rule, for Together Queensland, Industrial Union of Employees Mr A. Cousner, for the Construction, Forestry, Mining and Energy, Industrial Union of Employees, Queensland Mr S. Blaney, for the Local Government Association of Queensland

Ms K. Allen, for the Automotive Metals Engineering Printing and Kindred Industries Industrial Union of Employees Queensland (at 21 March 2014 hearing)

Reasons for Decision

[1] In early February 2014, pursuant to s 140C(1) of the *Industrial Relations Act 1999* (the Act), the Attorney-General and Minister for Justice, the Honourable Jarrod Bleijie, requested that the Vice-President of the Queensland Industrial Relations Commission undertake award modernisation in accordance with the terms of the Request.

[2] This decision deals with "Local Government", one of the priority industries/occupations identified in the Request.

[3] At the conclusion of hearings on 8 April 2014, the full bench announced that it had decided that there should be one award for Local Government in Queensland. These are our reasons for that decision.

[4] These reasons should be read together with our reasons relating to "Health".[1] In those reasons we set out the nature of the award modernisation process and the role of the Commission in modernising awards.

How many awards - the options

[5] Currently, employees of Local Government authorities in Queensland are covered by some 30 awards.

[6] The Award Modernisation Team (AM Team), after consulting with the major parties, recommended that there be one award.

[7] The major parties contended for different outcomes.

[8] The Local Government Association of Queensland (LGAQ) supported the AM Team's proposal that there be one award.

[9] The Association of Professional Engineers, Scientists and Managers Australia sought the making of three awards:

- one for officers and "indoor staff";
- one for building, engineering, maintenance employees; and
- one for employees currently covered by the *Local Government Employees' (Excluding Brisbane City Council) Award - State 2003.*

[10] The Queensland Services Union, the Automotive, Metals, Engineering, Printing and Kindred Industries Union, the Electrical Trades Union, the Plumbers and Gasfitters

[1] *Re: Referral pursuant to s 140C(1) of the Industrial Relations Act 1999 for a modern award - Health* [2014] QIRC 088

Employees Union, the Queensland Nurses Union and United Voice jointly submitted that there should be three awards:

- one for white collar employees;
- one for building, engineering, maintenance, nursing and children's services employees; and
- one for all other blue collar employees.

[11] The Australian Workers' Union proposed that there be no fewer than two awards:

- one for white collar employees; and
- at least one award for outdoor employees.

[12] The Construction, Forestry, Mining and Energy Union Queensland's proposal was for three awards:

- one for tradespersons;
- one for white collar employees; and
- another for non-trades based staff not employed in a white collar capacity.

[13] The AM Team's recommended award has its genesis in the *Local Government Award 2010*, made by the Australian Industrial Relations Commission (AIRC) as part of the federal award modernisation process.

[14] The AIRC reduced a large number of awards that had operated throughout local government areas across Australia to the one *Local Government Award 2010*.

[15] Currently, the federal award operates in the states of Victoria and Tasmania, as well as the Northern Territory. The LGAQ suggested that in Western Australia the greater majority of local governments also operate under or in accordance with that award.

[16] New South Wales has the one award for local government in that state. It is the *Local Government (State) Award 2010.*

[17] Because of constitutional limitations on the jurisdiction of the federal commission and uncertainty as to what local government entities are constitutional corporations, the reach of the *Local Government Industry Act 2010* is unclear. We have not received any submissions on the status of the referral by any states referring power in respect of local government to the Commonwealth. However, we note that the AIRC in its decision of 4 December 2009,[2] at [135] stated that the major parties appeared to accept that, over time, the practical effect of the making of a modern federal award for local government would be that the terms of the modern award would come to determine the award safety net in a growing proportion of the local government industry in Australia.

[18] The gravamen of the unions' submissions is that there are significant differences between the awards currently covering "white collar" and "blue collar" employees,

[2] *Award Modernisation - Decision – re Stage 4 modern awards* [2009] AIRCFB 945.

and to a lesser, but still significant, extent, insofar as "blue collar" staff are concerned, between building, engineering and maintenance staff on the one hand, and "external/field staff" on the other.

[19] The unions noted that employers and employees in the local government sector have recognised and bargained along occupational divisions - officers/internal, trades/building, engineering, maintenance, nursing and children, and field staff/external.

[20] Of major concern to the unions is the potential for a reduction in the terms and conditions of employment of some groups of employees should a single award be made.

[21] In particular it was noted that white collar employees generally work a 36.25 hour week, whereas blue collar workers generally work a 38 hour week. Differences between, for example, the two groups' entitlement to ordinary hours of work, personal leave, annual leave and long service leave were also noted, as were the differences between the classification methods of the two groups.

Consideration and conclusion

[22] In our view, the federal approach should be followed unless there are cogent reasons not to do so. The federal award was made in 2010 after a thorough review, during which all interested parties had an opportunity to participate. The apparent problems with the making of one award that have been articulated in these proceedings would no doubt be similar to those that pertained in the states and territories covered by the 2010 federal award.

[23] Although we invited those who opposed the making of one award to identify any practical difficulties that have arisen since the making of the single federal award for local government, none of them did so.

[24] We acknowledge that the terms of the federal and Queensland legislation and the terms of the federal and Queensland ministerial requests are not identical. However, we are of the view that, to the extent compatible with the legislation, award coverage for local government in Queensland should be complementary to that for the federal and New South Wales awards; at least insofar as the number of awards for the industry is concerned.

[25] It will be a matter for the actual award making process to determine if, how, and to what extent, existing entitlements should be disturbed.

[26] It is for these reasons that we decided that there be one award governing the terms and conditions of employees in local government in Queensland.