Industrial Relations (Fair Work Act
Harmonisation No.2)
Submission 032

Industrial Relations (Fair Work Act Harmonisation No. 2) and Other Legislation Amendment Bill

Submission to the

Legal Affairs and Community Safety Committee

30 October 2013

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 constituent Councils, welcomes the Industrial Relations (Fair Work Act Harmonisation No. 2) and Other Legislation Amendment Bill.

Local Governments across Queensland currently employ in excess of 35,000 employees. Workforce costs constitute one of the biggest outlays of any Local Government Authority and, as such, the effectiveness of the Workforce is a significant contributor to the success of the Council in serving the interests of its community.

Community members need to be satisfied that the expenditure of their dollars (ratepayers dollars) on employment are being utilised in a manner that maximises the return on their investment. To achieve this, Councils as employers need to operate in a contemporary, robust, flexible and relevant Industrial Relations environment.

At a time when Council is experiencing significant pressures on its revenue sources in conjunction with growing demands and expectations of its community, Councils need to be able to compete effectively with its main competitors for talent whilst simultaneously having the capacity to redirect resources and people to alternative roles and duties as business demands warrant.

Key to a contemporary, flexible Industrial framework for the Local Government sector includes the removal of regulatory barriers which resist 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 the modern workforce and to address changing and emerging business demands for Councils.

The reforms to the Industrial Relations environment introduced by this Bill are generally seen to remove practices that restrict the agility of Councils to get on with their business in a timely manner, to facilitate a shift to a more flexible and equitable workplace for employees, to better accommodate the different business needs of different Councils whilst simultaneously accommodating the different circumstances of individual employees, to reduce the administrative complexity associated with being a significant employer and to more strategically position enterprise bargaining as being about negotiations about the employment relationship between employees and employers.

This Bill is regarded as having the potential to contribute positively to the financial sustainability of Councils and to sustaining the long-term employment of their valued workforce.

In relation to these reforms, LGAQ particularly welcomes the:

- Improved alignment with the Fair Work Act
- Award Modernisation
- More focussed Enterprise Bargaining
- Contracts for higher paid employees
- Capacity to pay out excessive annual leave

Background

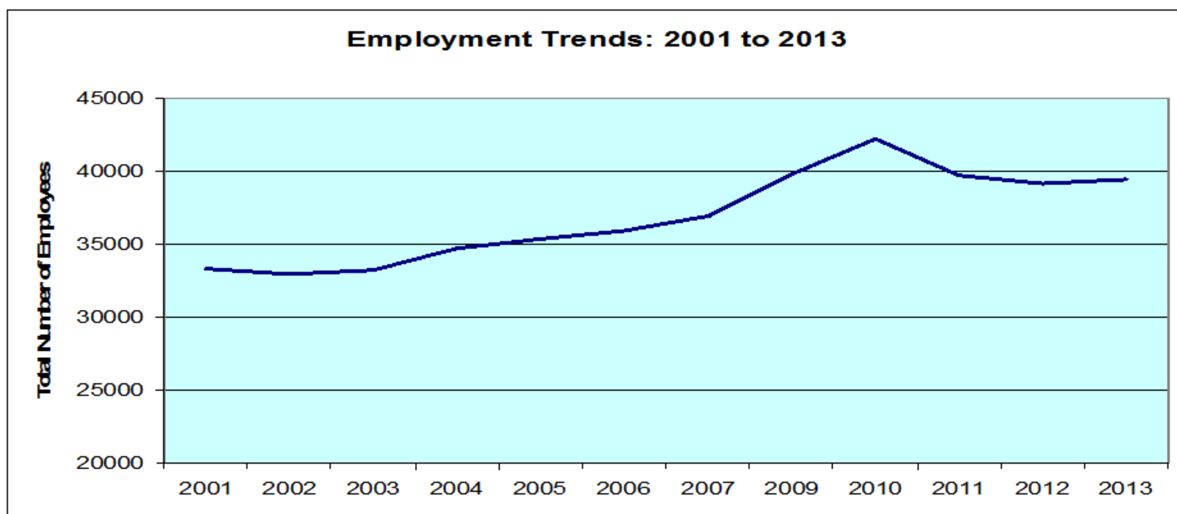
In 2003, the Local Government Association of Queensland launched its 2003-2103 Ten Year strategy for Industrial Relations Reform in Local Government in Queensland. Foremost amongst its objectives were for Queensland Local Government:

- To be working within the one IR jurisdiction (that being the State jurisdiction) as opposed to the then situation of having approximately half of its workforce operating under federal awards and half under state awards
- To have its workforce under a single contemporary state award (as opposed to at that time being covered by a plethora of awards – well in excess of 30) which is suited to the future needs of the Queensland Local Government sector.

At present, Queensland Local Governments are operating solely within the state IR system due to reciprocal state and federal legislation; however various legislation extracting Queensland Local Governments from the federal/national system has been introduced progressively since 2008, and, as a consequence, has led to a high degree of unnecessary complexity, particularly around duplication and overlapping Award coverage.

Alignment with the Fair work Act

Local Government in Queensland currently employs in excess of 35,000 employees.



There are 73 Local Government employers spread across Queensland. To fulfil their roles, Councils employ a range of professional, managerial, technical, administrative, trade and general employees across approximately 400 different occupational groups. Attracting and retaining talented staff in Council, particularly in remote and rural locations, is at the same time essential and challenging.

With such a diverse group of employees, Local Government competes for talent against the private sector, the federal government, the state government and other local governments. Councils simply do not have the dollars to compete effectively on remuneration on every occasion and have necessarily learnt to be resilient, innovative, responsive and flexible in their efforts to have a capable workforce.

To be able to remain competitive, Local Government welcomes the contribution towards a “level playing field” that the alignment of the proposed legislation with the Fair Work Act may bring. An additional advantage to aligned Industrial relations environments is that experience has shown that employees from outside of local government, whether from Queensland or interstate, are more likely to consider Local Government as a potential employer if they are comfortable that the Industrial relations framework operating in our sphere of government is one with which they are familiar or at least not dissimilar to that to which they are accustomed.

In particular, the introduction of Queensland Employment Standards, similar to those which exist at the federal level, will provide the level of protection for minimum employment standards that exist at

present, will contribute to the simplification and hence understanding of the IR system for employees and employers alike, and provide an easier benchmark for comparative purposes with other jurisdictions.

Award Modernisation

LGAQ welcomes the Award Modernisation process and looks forward to achieving a reduction in the number of overlapping awards affecting local government as well as improved certainty on the comprehension and application of those awards that ensue from the modernisation process.

The current award system applying to the Queensland Local Government sector is simply untenable in its current form, most notably due to the former state government introducing via statutory feat a number of pre-modernised federal Awards as Awards of the QIRC pursuant to current s125 of the Industrial Relations Act 1999. This was done without regard for the current system of Awards under the QIRC's jurisdiction, the QIRC's jurisdiction, or the fact that all federal Awards at the time were subject themselves to an Award modernisation process.

The result was overlap in award coverage, and the imposition of provisions which where inequitable, restrict the redesign of work, and in LGAQ and our members view do not suit the contemporary or future needs of the Queensland Local Government sector.

Having a simpler and more transparent award coverage with consistent standard employment conditions (such as hours of work, penalty rates, leave etc) as well as work classifications on common work value indicators is considered to be in the interests of employers as well as employees.

LGAQ has for some time indicated its intent to seek a single award for most, if not all, local government employees and has previously lodged an application with the Industrial Relations Commission seeking such an outcome. LGAQ welcomes these award modernisation reforms which will allow the Association an avenue to argue the merits of its quest for a single award.

LGAQ participated in the Award Modernisation process in the federal system that resulted in a single award for local government. This was achieved through the efforts of the various state Local Government Associations, the affected unions and with the Assistance of the Fair Work Commission.

LGAQ supports the principle underpinning Award Modernisation that the purpose of awards is to provide a safety net of fair terms and conditions for employees with employers and employees relying on local negotiation of certified agreements to establish employment conditions reflective of the circumstances of the employer and employees. This legislation is consistent with that view.

Individual Flexibility Agreements

The Association also welcomes the facility for Individual Flexibility Agreements similar to those that are provided for in the Fair Work Act. The ability to attract and retain staff as well as provide a supportive and collaborative work environment often requires a tailored approach to employee benefits, remuneration and working arrangements.

A "better-off overall" test coupled with the requirement to reach mutual agreement on the terms of such flexibility provision will ensure employees are not exploited in any way whilst individual employees whose circumstances would benefit from a more flexible approach to their employment arrangements are able to tailor arrangements to better suit the own personal circumstances

Employers would be more willing to accommodate the requests of individuals seeking the enhanced flexibility if the arrangements did not impose additional costs on the employer.

Streamlined Enterprise Bargaining

While maintaining its strong support for enterprise bargaining as the prime determiner for establishing employment conditions for employees, LGAQ is very much aware of the strong claims of "*EB fatigue*" which has been emanating from Councils over recent years.

Few councils, if any, relish enterprise bargaining coming around again as more often than not, it leads to conflict where conflict did not previously exist, there is very little positive outcomes by way of productivity for Councils, and it can seem to drag on for considerable periods of time and mostly not at the desire or instigation of councils nor its employees. In short, there seems to be much more input going into the process for outcomes realised.

Simply put, the system had to change.

The introduction of non-allowable matters and restricting content of certified agreements to wages and matters linked directly to the employment relationship will provide for greater focus during the bargaining process on these issues with the potential for better outcomes in the relationship for employees and employers. It also has the prospects of realigning the focus to more on the outcomes of bargaining than on the process of bargaining. LGAQ supports that matters involving third parties can be accommodated by agreement between the Council and the relevant third party or in some cases by Council policy.

The prescribed timelines for achieving an agreement are welcomed also at this time to assist in heralding in the new system of bargaining. There is no doubt that protracted and drawn-out bargaining applies stressors on the relationship between Council and its employees and has been used at various times by unions and councils alike to achieve a preferred outcome. However, given the earlier reference to EB fatigue as well as the current financial stressors on Councils and employees, it is considered that the advantages of earlier resolution of certified agreements at this time outweigh the benefits of the current *Laissez-faire* regime of bargaining. The reliance on the independent Queensland Industrial Relations Commission for both conciliation and, if necessary, arbitration, would mitigate against any concerns about lost advantages of various parties. The capacity of the Commission to extend the time-lines where satisfactory progress is being made between the parties supports the proposition that an outcome agreed between the affected parties will always be more palatable than an imposed outcome and thus still allow and encourage genuine bargaining by the parties.

Contracts for higher paid employees

Local Governments have agitated for some time to allow higher level managers to choose to opt out of award coverage pursuant to the arrangements that exist for Chief Executive Officers and certain Executive Managers. The motivators for the agitation have primarily been:

- A concern that Councils were relying on managers to represent their interests in enterprise bargaining who were also covered by that Agreement. This lead to a possible real or perceived conflict of interest when these people were directly or indirectly impacted upon the outcome of the bargaining.
- Certain senior roles rely upon personal effectiveness as much as they do upon job value and the current system does not provide easily for contractual recognition of the individual's value to the organisation.
- The fluidity of the job market required certain incentives to be able to be added to a particular person during a particular time. The current contractual arrangements were not developed to reflect such arrangements.

Accordingly, the option for offering contracts to individuals in such circumstances may be availed upon by some councils in certain situations.

Capacity to pay out excessive annual leave

The adoption of this provision similar to that which exists is the Fair Work Act is welcomed. From the outset, the Association wishes to emphasise that Councils recognise the need for employees to take regular leave. The benefits of employees taking a well-earned respite from work on regular occasions are well known to all and appreciated by Councils who encourage people to take their leave.

It is always the preferred option for Councils to take regular breaks as they accrue the leave to spend time with their families and so on. However, there is a growing number of employees who, for reason best known to themselves, opt not to take their leave as it falls due, choosing instead to allow it to

accumulate. As well, there are Councils, again for reasons unchecked, which have opted not to exercise their discretion and direct employees to take leave when employees have refused to apply.

The result is that a number of Councils now have a situation of a considerable number of employees who have accumulated a significant amount of untaken leave which represents a significant financial liability for the council. Moreover, this liability compounds as the leave is ultimately paid out at the current rate of remuneration of the employee and not at the rate of remuneration at the time of the leave falling due. Hence the liability increases with each annual pay rise and/or promotion of the employee.

Current Council administrations have inherited situations where the liability is such that an enforced regiment of mandated leave would still needfully extend over such a protracted period of time that it would impact negatively on the operations of the Council.

Allowing for Councils and employees to reach an agreement about an amount of accrued leave being paid out whilst still leaving an acceptable leave balance for "recreational" purposes will minimise the Council financial liability over time, ensure employees receive recognition of their leave accruals and still provide for employees to take suitable time off from work.

Councils and employees can then enter arrangements to better manage future leave entitlements to avoid the current situation.

Other issues

The opportunity is taken to raise a number of minor points. It is accepted that some of these matters exist in the current Industrial Relations legislation and have for some time without serious challenge. However, it is considered that some minor changes might avoid enquiries and confusion that does appear on these matters from time to time. In this regard:

Clause 71EE(2)(b) This provides that a person receiving higher remuneration then usual before proceeding on annual leave receives the higher rate when on leave. This is a long-standing cause of dispute in some councils where an employee who might be relieving for a short-term before going on annual leave argues that they should be compensated at the higher level. This is manifestly unreasonable for the employer where the receipt of higher pay is for a short period. A more reasonable approach is that where an employee is receiving higher pay and has been for a period of 12 months or more prior to proceeding on leave is entitled to receive the annual leave at the higher level. Similar arrangements should apply for payment of long service leave.

Clause 71FE (2) On face value, allowing a short-term casual employee access to 2 days leave each time might over any one year provide a superior entitlement (for example, if taking the entitlement on 10 occasions) to that of a long-term casual employee (maximum of 10 days leave).

Clause 71 GS(2) – Provides that a person may only make the one application to work part-time during a 12 month period. This raises the question whether a request to vary or make minor changes to an earlier application is regarded as a "new" application and therefore "not allowed". It is suggested that a note or example of what is or is not an application would avoid disputation in the work environment.

Clause 71 IA (4) - While acknowledging the catch-all (i) *any other relevant matter*, it is considered that the addition of an extra consideration such as ()*the availability of alternatives for addressing the operational requirements on the public holiday.* This would s not advantage the employee or employer over the other and is seen as a legitimate consideration in such circumstances.

Clause 71KE (b) The requirement that the job is no longer required to be done by anyone will cause confusion for some employers. It is considered that an example of what is or is not a "job" for the purposes of this clause would assist, particularly in situations where the role being performed by a person is now being done in a different way or spread out across different people.