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19 February 2009

Mr John Carter
Committee Secretary
Senate Education, Employment and Workplace Relations Committee
Department of the Senate
PO Box 6100
Parliament House
CANBERRA ACT 2600

Submitted via email: eewr.sen@aph.gov.au

Fair Work Bill 2008

Dear Mr Carter

Messrs Tony Goode and Steve Cooney appeared before the Education, Employment and Workplace Relations Committee on behalf of The Local Government Association of Queensland Inc (LGAQ) on Tuesday 27 January 2008 in Brisbane.

The attached supplementary submission responds to a number of specific issues explored by Senators at that hearing. The responses are summarised below:

- It is suggested that a small business, to which the *Fair Dismissal Code* and 12 month *Minimum Employment Period* apply, be defined as; "Up to 50 Full-time equivalent employees or $20 million turnover per annum," in line with OECD, World Bank and ILO practice, until such time as a comprehensive review of this definition be conducted.

- LGAQ supports continuation of the current provisions of the *Workplace Relations Act 1996* in relation to union "Right of Entry" to workplaces. This has not been an issue for Queensland Local Governments which have established good working relationships with officials from unions with who they regularly have dealings, who observe the courtesy of a prior phone call to advise their intended visits and who do not seek to engage or interrupt people whilst working.

- Access to Employee Records should only occur with the prior approval of the employee concerned. It is nonsense for a law to be enacted which potentially gives multiple unions access to a single employee's records without that employee's permission or knowledge. Open access to employee records by union officials has the potential to lead to disputes and conflict with employees.

- Agreement with part of workforce on the basis of occupational group, geographical location or business unit is provided in the current *Workplace Relations Act* and may be used in complex organisations with multiple sites or diverse business activities, but is not a step towards individual contracts. The provisions of Sections 322(3), 327 and 328 of the *Workplace Relations Act 1996* should be retained in the *Fair Work Bill*.

- Employers should only have to negotiate and deal with one or two principal unions representing the largest groups of employees to be covered by an Agreement or a significant proportion of an employer's workforce (eg more than 20%), and should not be required to provide access or deal with every union that may be entitled to cover one job.

- Low-paid Workplace Determinations are inconsistent with the aim of agreement-making because they are initiated by a union seeking to bargain with multiple employers, progressing to arbitrated outcomes imposed in addition to Minimum Wage Determinations and Modern Awards, which may discourage employers from engaging the least skilled and create social issues and community obligations on Councils, especially in rural and remote areas.

LGAQ supports a workplace relations system that promotes safe, fair, harmonious and productive workplaces. The shift from "making-up disputes" in order to access conciliation and arbitration by a third party to "making agreements" between employees and employers, with unions playing a truly representative role, rather than imposing external union or social objectives into an employment agreement, is a very significant step forward.

LGAQ submits that the time for 'jurisdiction shopping' and competition between unions is ended. Employers, at least in the private sector, should operate in a single national system and only have to deal with one or two principal unions representing their employees. LGAQ retains some reservations about employees of Local Governments not being under the same arrangements as other Queenslanders and Australians. Nevertheless, if local government is to remain in a State system, the *Fair Work Bill* should exclude from its operation when enacted, "Local Government Corporations, Corporations and other entities which are wholly or substantially owned by Local Government in the State of Queensland". This would remove the current uncertainty implicit in industrial relations in Queensland.

LGAQ is concerned at any change that may discourage employment-generating businesses of 15 or more employees from giving some people a chance to prove themselves at work, particularly in the face of economic challenges of the next year or two. The 12-month *Minimum Employment Period* and *Fair Dismissal* process are appropriate for smaller businesses, but the definition of "less than 15 employees" needs review. LGAQ amends its earlier proposal to retain the small business definition of 100 employees or less, and instead proposes that a small business be defined as; "Up to 50 Full-time equivalent employees or $20 million turnover per annum," in line with OECD, World Bank and ILO practice.

Employees have a right to choose to join a union, but employees should also have a right to expect their pay and personal records will only be shown to a union official if they have given permission. This access has rarely been requested by union officials, and then usually as a threat to intimidate a manager in relation to a dispute or EBA negotiation. If a suspected pay error has been identified by a union official, this is investigated and either corrected or an explanation of the correct payment provided. In these situations, officials have acknowledged that they have had no need to access pay or personnel records.

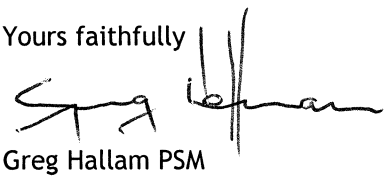
The Bill focuses too much on union rights to enter workplaces, initiate and intrude into bargaining and to gain rights by becoming parties to an agreement in which they may have little other interest than competing for membership. A truly modern system based on agreement making, rather than

disputation and competition for membership, requires a complete review of the way unions and employer associations are formed, managed, determine coverage and operate.

This will be the fifth major change to industrial relations laws at federal level in two decades, and the rate of change has been double for Queensland Local Governments which have been operating in both the State and Federal systems for most of that time. We trust that the Senate and the government will make the necessary changes to the *Fair Work Bill* so that Australian employers, employees and their representative unions and associations, can have a stable but adaptable workplace relations system which can respond to the challenges ahead.

LGAQ has suggested responsible changes which will provide a basis for a more balanced approach to addressing the workplace impacts of the significant environmental, financial, social and demographic issues this country is facing over the next decade.

Yours faithfully



for Greg Hallam PSM
EXECUTIVE DIRECTOR

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Constitutional Underpinning of Industrial Arrangements

The LGAQ sees the primary objective of any workplace relations system, Federal or State, that it promotes safe, fair, harmonious and productive workplaces. We believe that the shift from the constitutional "conciliation and arbitration" power [which requires the creation of a dispute to enable its resolution] to the External Affairs and Corporations powers [which address international obligations and the needs of competitive trading corporations] provide a basis for a more co-operative approach to addressing the workplace impacts of significant environmental, financial, social and demographic issues the country is facing over the next decade.

LGAQ has submitted that some provisions of the *Fair Work Bill* and related structures and processes, remain inappropriately based upon dispute creation as a path to third party arbitration rather than promoting agreements and harmonious relationships at the workplace level.

Local Governments, which are responsible for an increasing range of services to local communities, should be established as autonomous corporations and permitted to trade and contract for service provision. The de-corporatisation of Councils by the Queensland and New South Wales Governments merely to extract them from the application of corporations power to industrial relations jurisdiction by the Commonwealth must be reversed. The Commonwealth should either negotiate referral of powers with the States or provide for local government employers and employees to be excluded from operation of the federal '*Fair Work*' arrangements so they can operate as corporations but exclusively within the State IR system. If a State chooses to retain local government within the State IR system then it must accept responsibility to properly resource and fairly operate the State industrial relations system.

Local government will welcome arrangements which provide certainty and a single jurisdiction for industrial regulation, and which do not impede the commercial and other benefits of being corporations. The Department of Employment and Workplace Relations has acknowledged in its submission that discussions with the States with respect to referral of powers for a truly national IR system will have to address the situation of local government.

LGAQ suggests that, with a truly national IR system, the time of unions "jurisdiction shopping" for a better deal or arrangements more conducive to a particular union has ended. Stuck in one jurisdiction, however, union coverage may need to be reformed along similar industry and occupational lines to the application of Modern Awards, so that competitive behaviour between unions becomes unnecessary.

We need to have structures for the registration and conduct of representatives which reflect the change from dispute creation to agreement making. We need rules which enable employers to build a cooperative long-term relationship with one or two unions representing employees, and not have to deal with multiple and diverse players with external interests. This is why LGAQ has suggested that Schedule 1 of the Workplace Relations Act - Registration of Organisations should be revised.

LGAQ submits that the *Fair Work Bill*, together with any Transitional Arrangements, Schedules and Regulations and related Workplace Health and Safety legislation, should be more focussed on arrangements and relationships which promote safe, harmonious and productive workplaces where the principal relationship between employer and employee is respected and enhanced, whilst still ensuring that employees (and employers) have a right to be appropriately represented in agreement making and grievance resolution.

Unfair Dismissal

LGAQ supports the use of proper performance management processes to establish performance standards and behavioural expectations, regularly discuss good and poor performance directly with each employee and to provide employees with warning and encouragement to improve performance or correct misconduct. LGAQ have acknowledged in submissions to previous Senate and State level inquiries that every employee, regardless of the workforce, turnover or profitability of their employer deserves respect and application of the principles of natural justice, that is to be advised of their shortcomings and be given a reasonable opportunity to respond and/or improve performance before disciplinary action or termination is effected.

We support the concept of an easy-to-use *Fair Dismissal Code*, especially for any business that may suffer significant loss of reputation and custom due to misconduct or poor performance by an employee, especially in a public or customer facing role or dealing with a supplier. The government has recognised that smaller businesses lack the resources to administer an extended process. The debate in submissions on this issue seems mostly about the extent of and differences in the *Minimum Period of Employment* before access to *Unfair Dismissal* processes (6 or 12 months), the opportunism of terminated employees to seek additional compensation known as "go away" money, and the genuine fairness of process.

LGAQ strongly supports the 12 month *Minimum Period of Employment* before access to *Unfair Dismissal* and the *Fair Dismissal Code* to apply to employees of small business, especially during this period of economic challenge. This will help to encourage this employment-generating sector to give new employees a reasonable chance to develop skills and to prove their value, contribution and commitment to the employer's business.

LGAQ submits, however, that the definition of a small business, to which the 12 month minimum employment period and *Fair Dismissal Code* will apply, needs to be varied. LGAQ amends its earlier proposal to retain the small business definition of 100 employees or less.

Definition of Small Business

The *Fair Work Bill* defines a *Small Business Employer*, to which the longer 12 month period of employment before access to Unfair Dismissal and the *Fair Dismissal Code* apply, as employing less than 15 employees.

LGAQ has submitted that this number has been chosen arbitrarily and without sufficient objective scrutiny, and that there are other measures of business size and resources which reflect the employer's capacity to tolerate a period of improvement and coaching. Senator Furner referred to a Queensland industrial relations task force which found that most Queensland businesses were small business employing less than 20 employees. It appears that this reference arose from the way the Australian Bureau of Statistics [ABS] defines a small service business.

The Australian Bureau of Statistics [ABS] defines a small business as a service enterprise employing less than 20 people, or a manufacturing enterprise employing less than 100, or a business having total income and/or expenses less than $5m, and generally characterised with capitalisation, principal decision-making and close control by the owners/managers.

A small agricultural business is defined as having an Estimated Value of Agricultural Operations (EVAO) of between $22,500 and $400,000. [Agricultural businesses can have large scale operations with relatively few or no permanent employees, using large numbers of seasonal and itinerant workers to satisfy short term labour needs.]

ABS reports that there were 839,938 employing businesses in Australia in June 2007, of which 755,758 (90%) employed less than 20 employees. These small businesses employed half of the private sector workforce.

One-tenth of all employing businesses had 20 or more employees, including less than 1% of all employing businesses which have 200 or more employees.
The ABS found that 93% of new businesses employ less than 5 employees, and are the least likely to survive and thrive, whereas businesses employing 5-199 staff and businesses with annual turnover above $2m per annum were found to be more likely to survive for more than 4 years.

A Board of Taxation study on Small Business Tax Compliance Costs found that around 93 % of all Australian businesses have turnover of less than $2 million per year, produce around 39 per cent of Australia's industry value added and employ almost half the non-agricultural workforce. Most are engaged in the property and business services, agriculture, construction and retail sectors.

The Australian ABS classification is different from that used by the OECD.

The Organization for Economic Co-operation and Development [OECD] suggests a small enterprise has less than 50 employees and turnover up to EUR 10 Million [AUD 20M].
Small and medium-sized enterprises (SMEs) are non-subsidiary, independent firms which employ fewer than a given number of employees. This number varies across countries. Small firms are generally those with fewer than 50 employees, while micro-enterprises have at most 10, or in some cases 5, workers.

Financial assets are also used to define SMEs. In the European Union, a new definition came into force on 1 January 2005 applying to all Community acts and funding programmes as well as in the field of State aid where SMEs can be granted higher intensity of national and regional aid than large companies. The new definition provides for an increase in the financial ceilings: the turnover of medium-sized enterprises (50-249 employees) should not exceed EUR 50 million; that of small enterprises (10-49 employees) should not exceed EUR 10 million while that of micro firms (less than 10 employees) should not exceed EUR 2 million. Alternatively, balance sheets for medium, small and micro enterprises should not exceed EUR 43 million, EUR 10 million and EUR 2 million, respectively.

http://stats.oecd.org/glossary/detail.asp?ID=3123 referring to OECD, 2005, OECD SME and Entrepreneurship Outlook: 2005, OECD Paris, page 17.

From the International Labour Organization, the 297th session of the International Labour Office Committee of Employment and Social Policy considered a paper on "Business environment, labour law and micro- and small enterprises" which noted the following;

> **1.** There is no single definition of micro-, small and medium enterprises, and employee numbers may not be the sole defining criterion. However, SMEs are generally considered to be nonsubsidiary, independent firms which employ less than a given number of employees. **Small firms are considered to be firms with fewer than 50 employees**, while micro-enterprises have at most ten, or in some country cases, five. Financial assets and turnover are sometimes also used to define SMEs.
> **8.** The World Bank's investment climate surveys - covering more than 26,000 firms in 53 countries - show that ... across all firms surveyed, close to 60 per cent of respondents reported that labour market regulations represented an obstacle (minor, moderate, major). Around 16 per cent report that these regulations are a major obstacle to the operation and growth of their business. However, not all firms are affected in the same way by labour regulations; ...[however] **firms of 20-100 employees are the ones most severely affected [by labour market regulations]**.

[OECD, 2002: *Small and medium enterprise outlook*. [pp1-4]
http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_gb_297_esp_1_en.pdf

Internationally, small businesses which employ up to 50 employees report the greatest compliance cost per employee and that labour regulations impact them more severely than do other groups of employers. [This is not to say that this sector should be exempt from labour laws, as micro enterprises may be in some Asian countries, but that the impact of regulation and costs of compliance on employment generation should be considered by governments when drafting relevant laws.]

Small businesses employ half of the Australian workforce, generate more new jobs each year than larger businesses, and are more adaptable and innovative than larger organisations. Key stakeholders are closer to customers and suppliers and employees, and can generally make decisions without escalating an issue to higher levels of managerial authority.

Small businesses which increase employment and continue to operate for more than 4 years are more likely to continue to operate and provide sustainable and increasing employment opportunities. *Fair Work* laws should therefore not discourage employers from increasing their workforce beyond 15 or 20 employees or increasing turnover beyond $5 million per annum, as this could have the impact of discouraging business growth and survival, and sustainable employment.

LGAQ supports the *Fair Dismissal Code* and the *Minimum Employment Period* of 12 months for small business. We recommend that the Senate and Government consider emerging international practice, and define small business as those which employ up to 50 full-time equivalent employees on an annualised basis[1] and/or have an annual turnover [greater of revenue or costs] of not more than $20 million [EUR 10 million].

Full-time HR Adviser

Senator Boyce enquired about the number of Queensland Councils which employ a full-time HR manager. Of 74 Councils, only 32 have at least one full-time HR manager/officer and these councils have more than 300 employees serving resident populations of more than 15000. 38 of the remaining 42 Councils, including 12 Aboriginal Shire councils, support less than 6000 residents in very large or remote areas, and undertake work on contract to the Queensland Government. Most of these Councils have small workforces of much fewer than 100 employees[2] where the Chief Executive or the senior business or operational manager personally undertakes recruitment, workplace relations and other HR responsibilities in much the same way as a small or medium business operator.

Principal Unions

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[1] 50 employees x 38 hours x 52 weeks = 98800 ordinary time working hours, including casuals but excluding additional hours worked and paid as overtime

[2] It has been suggested that the size of the workforce is reflected in the availability of a full-time HR Officer who can advise on fair process for managing poor performance and terminations. Business process reviews often suggest a starting point for larger organisations is one full-time equivalent (FTE) HR person [excluding Payroll and Safety officers] for every 100 employees. Most of the Queensland Councils that do not have a full-time or dedicated HR Officer have workforces much smaller than 100 employees

In LGAQ's initial written submission, specifically in Recommendation 8, it was proposed that employers should only have to bargain with one union that has the majority of members in an occupational group or part of the business or a "principal union which represents a significant proportion of [an employer's] workforce (eg more than 20%)." In the appearance before the Committee this reference to 20% of the workforce apparently was confused with the proportion of the Australian employed workforce who choose to be union members, also about 20%. [3]

LGAQ apologises to Senator Boyce and the committee for any confusion and hope that the following comments will provide clarification.

Queensland local governments undertake a broad and varied range of activities including town planning, road construction and maintenance, water (and waste-water) treatment and distribution, libraries and community centres, infant and community health services including immunisations, swimming pools and sporting centres, parks and gardens, collection of refuse and recyclables, child and aged care services, as well as their internal financial, asset and human resource management processes.

Whilst the Queensland Services Union [also known as a branch of the Australian Services Union] and the Australian Workers Union have the majority of members in the administrative and operational workforce respectively, there are another 10-12 unions which each have a very small number of members in many councils[4]. When it comes time to negotiate a new Agreement, for example, these other unions demand participation for both an organiser and workplace delegate.

Some Councils already find themselves trying to negotiate with 20 (or more) representatives of unions with coverage of only a few jobs each, outnumbering representation from two Principal Unions representing many times the total [council-employed] membership of these other unions and with coverage of hundreds of jobs.

The LGAQ submits that this does not encourage genuine bargaining and Agreement-making. Instead it maintains a structural basis for dispute- creation. Unions not representative of the majority and with no interest in the continuing viability of a business, harmonious workplace relations or benefits

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[3] In his introductory comments to the Committee on Tuesday 27 January 2009, Mr Cooney on behalf of LGAQ, stated that;

> "We note that 100 per cent of employee who will be subject to the new fair work system will be employed by an employer, but less than 20 per cent will choose to be members of a union. The question then arises as to why unions should be given almost unfettered access to workplaces and personnel records of employees who have chosen not to be members of those organisations."

[4] Queensland Councils have regularly dealings with Australian/Queensland Services Union [QSU], Australian Workers Union [AWU], and occasionally with Transport Workers Union [TWU], Metal/Manufacturing Workers Union [AMWU], Construction, Forestry, Mining and Energy Union [CFMEU] or its State counterpart Federated Engine Drivers and Firemen's Association [FEDFA]. Brisbane City Council has frequent dealings with the Rail, Tram and Bus Union [RTBU]. Other unions represented in EBA negotiations include Electrical Trades Union [ETU], Plumbers and Gasfitters Employees' Union [PGEU], Liquor, Hospitality and Miscellaneous Union [LHMU] and Builders' Labourers Federation [ABCEBLF-Q]. The Association of Professional Engineers, Scientists and Managers [APESMA] and Australian Nursing Federation [ANF] or Queensland Nurses Union [QNU] have members but rarely have contact with councils.

for employees can disrupt and delay good-faith bargaining by representatives of the majority, purely for profile of the minority union.[5]

Union officials tend to concentrate on larger Councils in coastal centres, especially those cities where an official is based. The small workforces and remoteness of many Queensland Councils means that they are rarely visited by a union official, and recent experience with EBAs negotiated locally with workforce representatives or union delegates has been that a union may apply to the QIRC to be party to an agreement it has had no role in developing. Whilst the *Fair Work Bill* requires that a union has been involved in the bargaining process to request being made party to an Agreement, the recent experience of Blackall-Tambo Regional Council and Richmond Shire Council demonstrated that the Queensland Industrial Relations Commission will accept such a request without consideration of the will of the majority of employees who voted for an Employee Collective Agreement, developed without the involvement of union officials at the request of the majority of employees.

It is also worth noting in this context that unions have different coverage rules and arrangements in different States, and for the same activity undertaken by public and private sector employers. For example; Child care provided in the private sector is covered by the Australian liquor, Hospitality and Miscellaneous Workers Union [LHMU], whereas the Australian Services Union (QSU in Queensland] has coverage of the same callings employed by local government and the Community and Public Sector Union [QPSU in Qld] may have coverage if the activity is undertaken by the State government. The Rail, Tram and Bus Union [RTBU] covers bus drivers employed by the Brisbane City Council but the Transport Workers Union [TWU] covers bus drivers employed by private companies, even though the activity is the same and both groups of employers are contracted to the State Government through Translink.

Other submissions have already commented that *Fair Work Australia* will be swamped with requests for "Representation Orders" as 'modern awards' open up the field to any union with potential coverage of one job. In Queensland local government, the CFMEU [FEDFA] claims coverage of any employee who holds a plant operators certificate, regardless of the fact that the employee may already be a member of the AWU, which has a broader coverage in local government. As far as we can ascertain, Queensland is the only State where the CFMEU/FEDFA has members directly employed in local government.

Schedule 1 of the *Workplace Relations Act*, which will transition to the *Fair Work Act*, must be revised or a process established to ensure that the overlapping coverage of various unions, arising especially from the transitional registration of State registered unions, is addressed.

Under the *Fair Work Bill*, unions with little or no membership amongst an employer's workforce can enter premises, engage employees in conversation or recruitment activity, inspect records, demand bargaining rights and become party to an Agreement. An employer should only have to bargain and provide access to a union which represents or has coverage of significant proportion of the total workforce, or relevant business unit or location.

Low-paid determinations.

As noted in its initial written submission, LGAQ fails to see how a Determination imposed on a number of employers of 'low-paid' employees can be in the interests of promoting enterprise level bargaining, workplace flexibility and productivity. If the Modern award provides for flexibility in the arrangement of working hours, part-time and casual work, as well as minimum pay rates, penalties

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and leave provisions that cannot be undermined, we fail to understand the purpose of low-paid multi-employer bargaining and imposed determinations. We are concerned that this will increase unit labour costs for employers on top of the Minimum Wage Determinations and Modern Award reviews undertaken by *Fair Work Australia*.

LGAQ is concerned that an unintended outcome of such Determinations will be unwillingness by employers to maintain employment levels and offer unskilled people a chance to engage in the labour market. This will then create unemployment and community issues which often fall to Councils to resolve, especially in smaller and more remote locations. These elements in less populated regions can often be hidden amongst the macro statistics dominated by larger centres. A small number of unskilled, unemployed and disengaged people can have a significant impact in a community of a few hundred people, yet away from the cities and larger centres can be neglected by Federal and State governments which focus on addressing issues affecting more people in higher density population centres.

Union Right of Entry

Senators asked if there had ever been a dispute about a union official exercising a right of entry. LGAQ surveyed councils regarding three aspects; Access to meet with employees in the workplace or mealroom, access to employee records and use of right of entry under State workplace health and safety laws.

Queensland Councils have, in the most part, established good working relationships with officials of a few unions with whom they regularly deal, and access to workplaces has been available when requested to any accredited official with legitimate business without unions having to enforce a legal right of entry. Issues tend to have arisen only when an official has sought to establish a profile or to compete with another established union for membership, to "put on a performance" in front of members, to intimidate a management representative or when arriving without prior notice and seeking to interrupt work.

Access to meet with employees in the workplace or mealroom

Queensland Councils recognise the rights officials have under current federal and state laws, and have established good working relationships with a few union officials they deal with on a regular and occasional basis. Officials who contact Council a day or more beforehand and request access to a Council office, depot or workplace are given ease of access to meet with employees where this will not interrupt essential work and meetings are facilitated with appropriate venues provided.

Councils reported that some officials, however, can be quite resistant to management attempts to limit access to office areas during work hours or to requests for meetings during peak work times [eg QSU officials expect freedom to walk around clerical workstations and interrupt staff; LHMU official wanting to address venue staff during set-up or performance times.]

All unions with legitimate business have equal access to council managers, workplaces and employees, although in some cases QSU, AWU and some other officials are frequent visitors better known to managers and staff. Where Council premises have security card access for staff, union officials who are regular visitors are generally grouped with authorised contractors and given a daily use access card which gives them reasonable access but must be returned at the end of the visit.

Officials generally extend the courtesy of advising Councils of their intended visit, especially when they are travelling to rural areas or where they are an infrequent visitor. Some Councils, however, have begun to enforce prior notice requirements following inappropriate actions by some union officials which have resulted in complaints from employees about their right to feel safe, free of intimidation and able to undertake their duties without interruption in their workplace.

Most council managers advise that they have not been threatened because access is generally provided. Threats have been reported when an official has sought access at an inconvenient time without prior notice, or when harassing an employee about membership who "just wants to be left alone".

Union Access to Employee Records

When an enquiry about pay or a grievance is presented to a council it is investigated and corrected or explained. Therefore, it is very rare for a union official to legitimately seek to use rights of access to pay or personnel records in Queensland local government. There have been situations reported, however, where officials involved in other issues, such as EBA negotiations or introducing themselves as a new official and seeking to build profile and membership, have claimed access to inspect records as a right with no prior notice, no specific breach or grievance or simply as a threat or intimidatory behaviour. In these circumstances, councils have been advised to report the behaviour initially to the State Secretary of the union and if necessary to the Commission Registrar.

During EBA negotiations it is not uncommon for unions to request lists of employees, occupations, classifications and home addresses so they can advise them of the benefits of union membership, provide reports on the status of negotiations or verify ballot processes. Whilst some councils will provide lists of employees by classification or occupational group, the release of home addresses and other personal information is protected, although this has lead to arguments about right of access to records in some cases. Allowing the use of employer email systems for distribution of union newsletters and reports re EBA negotiations etc has removed the need for other employee contact details to be provided, and allows the employer to require that there be no derogatory or inappropriate comments about individuals or management generally.

The use of independent providers for EBA ballots has (to some extent) overcome requests from unions for lists of employees and addresses.

Right of Entry under Workplace Health & Safety Laws

Councils report that, with one exception, union officials have not used their rights of entry under State WH&S laws, probably because they are afforded reasonable access without the need to enforce Right of Entry under Industrial or WH&S laws.[6] Councils reported that Union officials generally demonstrated little interest in inspecting workplaces for safety, even if an incident had been reported. Consultation, reporting and investigation processes are well established, workplace safety is given priority by management and there is little to be gained for the union in seeking to use this avenue to increase profile and membership.

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[6] The one instance reported was of a new CFMEU Official who, after leaving a meeting with Council management on an unrelated matter, came across a group of Council employees performing work beside the road and attempted to use his WH&S right of entry to enter a "roped-off area" where excavation work was underway in order to speak with workers. The employees were mostly AWU members, well-versed in the safety requirements of their jobs and focussed on completing the emergency task. The CFMEU official lodged a complaint with the State Government Office of Workplace Safety regarding denial of access. The complaint was rejected when an explanation was provided.