



27 September 2017

Industrial Registrar  
Industrial Relations Commission of NSW

Dear Registrar

### **Notification of Dispute**

This is a notification of dispute pursuant to section 130 of the Industrial Relations Act between depa, an industrial organisation of employees and Local Government NSW, an industrial organisation of employers acting on behalf of councils in New South Wales.

The dispute concerns the development by LGNSW of a document titled "*The Local Government Capability Framework*" which LGNSW has already published on their website and which they intend to be embraced by councils in NSW. The problem is that this initiative, developed without the involvement of the three unions in the industry, relates to, overlaps and potentially conflicts with provisions within the Local Government (State) Award. Similar reservations will apply to enterprise agreements at councils like Wollongong, Newcastle, Lake Macquarie and The Hills which are substantially based upon that Award.

LGNSW has provided two brief sessions for with the unions but the purpose and impact of the proposed Capability Framework is uncertain and confused. While LGNSW acknowledged at the most recent briefing on 31 August that it was important for the unions to be involved in developing clear guidelines about what the document is not intended to do, there remains significant confusion and imprecision about what it is intended to do.

In documents presented on 31 August, slide 3, titled "*Purpose is to support NSW councils to:*" there are six dotpoints, all of which are employment related. Namely:

- *Aligning the workforce with elected members in delivering community outcomes*
- *improving performance and capacity*
- *attracting and retaining highly capable people*
- *providing a shared basis for workforce planning*
- *broader career options*
- *providing a common basis for professional development*

and on slide 9 under the heading "*In a Council where might they start with implementation?*", There are seven dotpoints, and all but one of which are employment related. Namely:

- *Developing capability-based position descriptions*
- *using a capability-based approach to recruitment*
- *performance management based on demonstrating capabilities as as well as meeting task requirements*

- *developing learning and development plans around capabilities*
- *using capabilities as a key basis for workplace planning, and*
- *linking the Code of Conduct to the capability framework.*

LGNSW has provided the complete Framework (28 pages intended to operate for employees and 7 pages intended to operate for councillors) but this document, in the absence of some acceptance and agreement with the unions about its relationship with the historically agreed provisions of the Local Government State Award, can only cause confusion and be misused in the industry.

On 31 August at the most recent briefing, LGNSW advised that the document itself was already in the process of being printed. There has been no consultation, the purpose is unclear (other than satisfying some ideologically obsession to match something done in the State Public Sector) and the historic entitlements and practices enshrined in the Award in areas like performance management, job evaluation and reward, salary systems etc. are all at risk of mismanagement because of this document.

The Unions are sceptical, after our experiences negotiating the 2017 Local Government State Award, that LGNSW will be able to manage and control the use of the Framework once it is in the hands of management and HR with less respect for the provisions of the Award than the industrial parties.

In those circumstances, I ask for the convening of a compulsory conference to allow the Unions and the Commission to be informed by LGNSW of the anticipated effect of their Framework, and its relationship with the Award and the unions, in turn, to examine and challenge those assertions to ensure that the primacy of the Award continues and is not challenged, eroded or quashed by the Capability Framework.

The Introduction to the Final version of the Framework dated July 2017 concludes with the words, *"This is a game changer of which we are very proud"*. While they may be proud, their inability to explain its purpose and limitations and the lack of specificity about what *"game"* is intended to be changed, put at risk employment practices and provisions of the Award established by agreement over decades.

Other parties with an interest in this dispute are the United Services Union, General Secretary Graeme Kelly, [gkelly@usu.org.au](mailto:gkelly@usu.org.au) and the Local Government Engineers Association, Executive Director Gordon Brock, [gbrock@professionalsaustralia.org.au](mailto:gbrock@professionalsaustralia.org.au).

I attach, as part of this notification, email exchanges between depa and LGNSW for background about this union's anxieties and confusion and which I believe are shared by the other unions.

Yours sincerely



Ian Robertson  
Secretary



**From:** Ian Robertson

**Sent:** Friday, 22 September 2017 12:36 PM

**To:** 'Lillian Tiddy' <Lillian.Tiddy@lgnsw.org.au>

**Cc:** 'Stephen Hughes' <SHughes@usu.org.au>; Gordon Brock (gbrock@professionalsaustralia.org.au) <gbrock@professionalsaustralia.org.au>

**Subject:** RE: This morning's presentation on the Local Government capability Framework

Hi Lil

I just received an electronic invitation from your organisation to attend a further meeting, this time with more detail, about the proposed Framework.

I responded to Elfia asking what the proposed timeframe is for the rollout of this thing because when we were there on 31 August, the thing itself was at the printers. So, I'm assuming it's printed now and ready to go and that means it's printed without guidelines, or any clear instruction on what it is, what it isn't, what it's for, what it's not for.

You know that the three unions are sceptical about this thing. I keep calling it a thing, because it's still not clear to me what it is. I've now read the comprehensive document you provided which seems to be the complete Capability Framework in its entirety. It is a 37 page document identified as "Final. July 2017" and I don't understand how it can be "final" if you want to keep talking to us about being comfortable with it.

While I can identify some useful stuff within it that might be okay for performance management, I'm sceptical about whether the ascending or incremental steps of capability are logical, measurable or testable. Some of its okay, some of it isn't. But okay for what? I note that on page 4 of your final document under the heading Introduction, the final line reads "This is a game changer of which we are very proud".

Despite the nice syntax of that sentence, what game is proposed to be changed?

I know that sometimes things that are created by mad scientists, like Dr Frankenstein for example, result in something which is difficult to identify and understand. I think Dr Frankenstein's monster falls into that category - although I do prefer Mary Shelley's original idea in the novel rather than Hollywood's approach.

But, on 31 August, the Framework's own Dr Frankenstein was present, seemed to regard the unions (or particularly me, because I was the only one in the room) as largely irrelevant, uncomprehending and, in a way, beneath her. She reckoned she got it through the State Public Sector without trouble (not the advice we get from the public sector unions by the way) and probably thinks she can do it here as well.

We talked about the importance of identifying what this thing is and what it isn't and we haven't done that. If there were going to be some guidelines issued, they should have been incorporated in any final printed document, otherwise the simple instructions about picking up bits from dismembered bodies, sewing them together and using lightning to give them life, will go out to our own vivisectioners, dismemberers and mad scientists, without the moral and human caveats that should accompany the instructions.

In our case, recruitment, appointment, salary progression and performance management and reward under a skills-based and performance-managing and rewarding Award.

I am unwilling to have this document go out without the unions being totally across its purpose and without the document itself identifying explicitly, and to the lowest common denominator, that it has no relationship to obligations under the Award, that the Award has the force of law and will take precedence in any disagreement, that it has no relationship to proper job evaluation, or recruitment where specific technical or professional skills, qualifications and experience are essential to the job rather than a commitment to genetic "capabilities" that all managers may share without the requirement that they possess relevant technical or professional skills, qualifications or experience.

I appreciate your response and I note your vigorous defence of the Framework and what you say to be its value, but I remain sceptical. And I think it telling that nowhere in the document is it endorsed by anyone. What, the President, the Board, the CEO, the industrial staff, your training and development people, know one prepared to put their name on it? Or still fighting about who will get to sign off on this game changer.

Remember the ancient advice, you can spend as much time as you like polishing a turd, but it's still a turd.

I ask you to provide an undertaking that LGNSW will not proceed to launch, distribute or in any other way encourage the adoption of this Framework until such time as the unions are individually and collectively across its purpose and we have very clear, and enforceable understandings about what this thing does and doesn't do.

Regards

Ian Robertson  
Secretary  
depa

Ph: 9712 5255  
[www.depa.net.au](http://www.depa.net.au)

**From:** Lillian Tiddy [<mailto:Lillian.Tiddy@lgnsw.org.au>]  
**Sent:** Thursday, 31 August 2017 5:31 PM  
**To:** Ian Robertson <[ian@depa.net.au](mailto:ian@depa.net.au)>  
**Cc:** 'Stephen Hughes' <[SHughes@usu.org.au](mailto:SHughes@usu.org.au)>; Gordon Brock ([gbrock@professionalsaustralia.org.au](mailto:gbrock@professionalsaustralia.org.au))  
<[gbrock@professionalsaustralia.org.au](mailto:gbrock@professionalsaustralia.org.au)>  
**Subject:** RE: This morning's presentation on the Local Government capability Framework

thanks Ian , Gordon and Stephen for your time this morning and subsequent feedback. It was a challenge to get a common time even with the Award out of the way.

I agree there is much detail in the framework to explain and given the time constraints, the presentation by Jo and Sarah this morning was high level and not into the tin tacks of how the framework and its supporting guidelines/tools could work (the latter are yet to be development as you will have gathered).

LGNSW has developed the framework was developed in response to member demand and also to assist councils to respond to the impending councillor training and pd regulations. We gave an undertaking to keep you and your organisations briefed. I have taken away good pointers from our 2 discussions already including the obligation to consult through committees, and that there is a risk



of councils stripping position descriptions of skills and tech expertise to simplify pay structures. I will feed that into the process.

I will send you the whole framework as promised and I think it would be good idea to take time to go through its content and rationale if we can set some time aside.

Councils will have many opportunities and entry points to engage with the framework and its tools or not at all - they can't of course avoid the Award. From the outset my position has been the framework is not linked to the Award and does not evaluate positions. I think it's important for me to develop advice / guidance around what councils must do to comply with the Award and what to look for in their HR systems, evaluations, policies , applications of our/ any framework to ensure compliance, and as I said this morning I would talk to you about that. If councils are struggling now or making the errors that Gordon has pointed out, it's not because we are developing an industry specific framework and contemporary guides and hr tools I would have thought. The object of the 5 guides/tools that relate to staff is to be practical. I see value in getting good tools out to assist councils, minimise their reinventing the wheel and take the opportunity to refresh/remind them about those industrial /workplace obligations that haven't changed.

Perhaps we can discuss the framework and slides 3 and 9 and esp with an industrial midset when you had a chance to look over it in more detail?

Kind Regards

LILLIAN TIDDY  
**DIRECTOR – MEMBER SERVICES**  
**LOCAL GOVERNMENT NSW**

T 02 9242 4147 M 0409 786 813  
[LILLIAN.TIDDY@LGNSW.ORG.AU](mailto:LILLIAN.TIDDY@LGNSW.ORG.AU)  
LGNSW.ORG.AU



**National Local Government Human Resources Conference**  
**15 - 17 November 2017**  
**Luna Park, Sydney**

**From:** Ian Robertson [<mailto:ian@depa.net.au>]  
**Sent:** Thursday, 31 August 2017 3:11 PM  
**To:** Lillian Tiddy  
**Cc:** 'Stephen Hughes'; Gordon Brock ([gbrock@professionalsaustralia.org.au](mailto:gbrock@professionalsaustralia.org.au))  
**Subject:** This morning's presentation on the Local Government capability Framework

Good afternoon, Lil.

I have absolutely no idea what the capability framework is or why LGNSW thinks it's a good idea. This embarrassing ignorance is despite an hour with you and yours briefing the unions on what you are doing and the timeframe in which you are doing it.

I am alarmed that no one at the meeting was able (capable?) to answer my questions in a way which didn't sound like jargon worthy of an episode of Utopia - last night's episode of Utopia, to be precise. Last night poor old Rob Sitch was asked to review the Defence Green Paper for the Prime Minister and, having read it with two of his senior analysts, no one had any idea what it meant.

It turned out that it meant there should be a massive increase in funding of the Armed Forces to protect Australia's trade routes but our major trading partner is China and the perceived threat in the region, obtained only through intense cross examination, was in fact China. Which meant that the plan was to increase spending to protect the trade route to China from China.

I am happy, for the purposes of trying to understand this exercise to put to the side that of all the people who were consulted in the industry, HR managers, general managers "over two hundred elected and professional people from 75 councils", etc., there hasn't been any consultation other than an earlier briefing and the briefing today with the unions.

I find this alarming because a substantial amount of what appears to be happening here is employment related.

On slide 3 which is titled "Purpose is to support NSW councils to:" there are six dotpoints, all of which are employment related. Namely:

- Aligning the workforce with elected members in delivering community outcomes
- improving performance and capacity
- attracting and retaining highly capable people
- providing a shared basis for workforce planning
- broader career options
- providing a common basis for professional development

and on slide 9 under the heading "in a Council where might they start implementation?", There are seven dotpoints and all but one of which are employment related. Namely:

- Developing capability-based position descriptions
- using a capability-based approach to recruitment
- performance management based on demonstrating capabilities as well as meeting task requirements
- developing learning and development plans around capabilities
- using capabilities is a key basis for workplace planning, and
- Linking the Code of Conduct to the capability framework

in Utopia last night, every time the poor bastards from the Infrastructure Authority asked experts who were involved in the development of the Defence Green Paper a question, the response was a glib piece of jargon from the Paper itself, which in turn no one could understand.

I am alarmed at the prospect of how this will be dealt with and managed in the industry and I know you recognise the importance of quarantining whatever this thing may be from legal obligations under the Award.

But, just as you have to do explain to your industrial staff what all this stuff means, and as you will put this out there and try to sell this Capability Framework to councils, until you can actually explain what it is in a simple, jargon-free way, this could roll out as an absolute disaster.

I spoke to Gordo about this this afternoon. At the earlier briefing he had raised the same examples of Mid-Coast and Clarence Valley that he did today. On neither occasion did he get an explanation he understood.

I would like to see LGNSW reconsider the rollout. It should go on hold. If you can't explain to us what it is and why you think it's a good idea, other than explaining it is the "glue" that will stick everyone together (!) you will have no hope of explaining it to your Industrial staff and those you want to embrace it in the industry won't understand it either. It means of course they will embrace it and use it for nefarious purposes.

I've copied Gordo and Stephen into this because I think this is a real risk to how we manage work in the industry and in the absence of a lack of capability to explain what it is and why, think you shouldn't proceed any further until you can.

Imagine trying to explain it to a member of the Commission!

Regards

Ian Robertson  
Secretary  
depa

Ph: 9712 5255  
[www.depa.net.au](http://www.depa.net.au)