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Office of the Lord Mayor and Chief Executive Officer
 Chief Executive's Office
 Level 23 266 George Street Brisbane Qld 4000
 GPO Box 1434 Brisbane Qld 4001
 T 07 3403 8888 F 07 3334 0043
www.brisbane.qld.gov.au

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Mr Peter Russo MP
 Finance and Administration Committee
 Parliament House
 George Street
 BRISBANE QLD 4000

Email: fac@parliament.qld.gov.au

Dear Mr Russo

Thank you for inviting Brisbane City Council (Council) to make a written submission to the Finance and Administration Committee (the Committee) for the *Industrial Relations Bill 2016* (Qld) (the Bill).

1. Brisbane City Council's position in brief

Briefly stated, Council submits:

- that the Committee make a recommendation against the Bill
- that the Committee make a recommendation that the Bill be redrafted so as to combine the Bereavement and Compassionate leave types in Chapter 2 of the Bill
- that the Committee make a recommendation that the Bill be redrafted so as to repeal Chapter 4 of the Bill, pertaining to Collective Bargaining and Industrial Action
- that the Committee make a recommendation that the Bill be redrafted so as to repeal Chapter 8 of the Bill, pertaining to General Protections and Adverse Action
- that the Committee make a recommendation that the Bill be redrafted so as to repeal section 530 of the Bill, pertaining to Legal Representation.

We address these submissions in detail below.

2. Context

2.1 Council and its interest in the Bill

Council employs approximately 7500 full-time equivalent employees.

The pay and conditions for employees of Council are predominantly funded through resident rates and other costs associated with public services.

Any increase in cost or impact on productivity associated with the introduction of the Bill has the potential to impact on the residents of Brisbane financially and adversely affect services provided to them.

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2.2 Relevant industrial instruments

Council has an in-term Collective Agreement, the *Brisbane City Council Certified Agreement 2013* (the Agreement). The Agreement expires on 7 October 2016 and Council will soon commence discussions on a replacement Collective Agreement.

There are currently eight Awards that apply to Council and Council employees, namely:

- *Brisbane City Council – Salaried Staff Award 2004*
- *Brisbane City Council – Bus Transport Employees' Award 2003*
- *Brisbane City Council – Construction, Maintenance and General Award 2003*
- *Brisbane City Council – Miscellaneous Workers' Award 2012*
- *Brisbane City Council Plant Operators' Award 2012*
- *Building Trades Public Sector Award – State 2012*
- *Engineering Award – State 2012*
- *Transport, Distribution and Courier Industry Award – Southern Division 2003.*

There is an Award Modernisation process (AMOD) presently underway and before the Queensland Industrial Relations Commission (QIRC). The AMOD process will result in three modern awards applying to Council and Council employees. These include:

- *Brisbane City Council Salaried Staff Award – State 2016*
- *Brisbane City Council Bus Transport Employees Award – State 2016*
- *Brisbane City Council Operations and Trades Employees Award – State 2016,*
(the Awards).

Significant collaborative effort between Council, the relevant Unions and the QIRC has resulted in developing the Awards which reflect the conditions of employment and will apply to employees of Council.

3. The Committee should make a recommendation against the Bill

Council does not support the passage of the Bill as it removes a number of important industrial safeguards for Council and introduces a number of new provisions which have the potential to impact productivity and efficiency in the workplace.

4. Bereavement and compassionate leave (Chapter 2)

In accordance with the Queensland Employment Standards (QES), employees of Council are entitled to bereavement leave, which is outlined in the relevant Awards. The introduction of compassionate leave results in a new leave type. Council is not opposed to the entitlement provided under the new leave type, however, proposes that the Bill be amended to combine bereavement leave and the proposed compassionate leave arrangements into one leave type, that being compassionate leave. Council proposes the following amendment:

Subdivision 3 Compassionate leave

47 Entitlement—employees other than casual employees

- (a) *at least 2 days compassionate leave on full pay on each occasion when—*
 (i) *a member of the employee's immediate family or household dies; or*

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(ii) the employee, or the employee's spouse, is pregnant and the pregnancy ends other than by the birth of a living child; or
(iii) a member of the employee's immediate family or household contracts or develops a personal illness that poses a serious threat to the person's life; or
(iv) a member of the employee's immediate family or household sustains a personal injury that poses a serious threat to the person's life.

(b) if the employee reasonably requires extra time to travel to and from the funeral or other ceremony for the death—an amount of unpaid compassionate leave equal to the time reasonably required for the travel.

This proposed change does not remove a proposed benefit in the Bill, however, it aligns with section 104 of the *Fair Work Act 2009* (Cth), making the administration of compassionate leave less cumbersome for Council and easier to access for its employees. The requisite changes in section, 48(1) of the Bill would also be required.

5. Collective Bargaining and Industrial Action (Chapter 4)

5.1 Collective Bargaining

At the completion of the AMOD process, Council will commence bargaining for a replacement Collective Agreement.

The proposals contained within the Bill have a potential to impact on Council and the bargaining process, which has already been delayed by AMOD continuing beyond original expectations.

Council's upcoming Collective Bargaining should be supported by transitional arrangements that allow bargaining to occur under the current arrangements in the event the bargaining process extends beyond proclamation of the Bill.

5.2 Bargaining Award

It appears the intent of a bargaining award is to set wage rates and incorporate safety net conditions into one instrument for an occupational based award which has one employer. This is distinct from Awards which may cover a large classification of employees across multiple employers or government agencies where an enterprise agreement is more suitable. The Bill does not propose a precise method for determining which stream to follow, however sets collective bargaining as the foundation to occur before a decision is made.

Despite Council being one employer with multiple awards, it is possible that some employee organisations may seek to enter into a bargaining award where they are a distinct occupational group of employees. Creating a system that results in an Award safety net being increased through bargaining, as opposed to an outcome controlled by an independent body such as the QIRC, has the potential to result in greater complexity during Collective Bargaining.

Further, and as outlined previously, Council has been participating in the AMOD process which has been ongoing for over two years. Through this process, Council and the Unions have narrowed down the provisions to be contained in the Awards. Council does not support a system which results in a significant shift from the current modern Award safety net.

5.3 Industrial Action

The changes to protected industrial action in the Bill are significantly different to the current protected action ballot order process and the period of time in which industrial action can be taken. The proposed changes lack clarity and suggest that protected industrial action will be accessed easier and more prominently than in the past.

Given the Explanatory Memorandum states "It also provides that taking protected industrial action is a right of negotiating parties, subject to requirements, as part of the collective bargaining process", Council seeks greater clarity on the changes to these provisions, particularly in the following areas.

- What is the democratic process for employee organisations to follow outlined in the Bill?
- What ability is there for an employer to contest a ballot of employees?
- How do the Good Faith Bargaining requirements interact with the application for protected industrial action provisions in the Bill?
- If a party is not bargaining in accordance with the good faith bargaining requirements of the Bill, what ability does the QIRC have to no provide an order for protected industrial action?
- What "requirements" is the Explanatory Memorandum referring to in relation to the right of negotiating parties taking protected industrial action?

The limited information contained in the Bill demonstrates the under-regulated process being proposed for accessing protected industrial action. Without this clarity, Council does not support the inclusion of them in any proposed legislation.

Consistent with 5.1, Council's upcoming Collective Bargaining should be supported by transitional arrangements that allow bargaining to occur under the current arrangements in the event the bargaining process extends beyond proclamation of the Bill.

6. General Protections and Adverse Action (Chapter 8)

Council does not support the inclusion of General Protections and Adverse Action provisions in the Bill. Council is concerned with impact the provisions are having within the Federal system and the potential impact these provisions will have on Council if implemented in the State system.

The rise in adverse action claims under the *Fair Work Act 2009* (Cth) is a concern to Council. The reverse onus of proof would result in Council being considered guilty of having taken adverse action until it can prove its innocence. The onus is on the employer to prove the action was not related to that workplace right. While Council maintains it will comply with all requirements of the proposed legislation and that as an employer it refrains from infringing on employee workplace rights, the inclusion of such provision would place extra burden on Council administratively and financially, given the reverse onus of proof requirements.

Further to this, the Bill allows employees to pick and choose between actions based on likelihood of success, and allow avenues for recourse where employees potentially would have been barred from recourse under the unfair dismissal laws.

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7. Legal representation in the Queensland Industrial Relations Commission

The Explanatory Memorandum states:

In regard to strengthening Queensland's industrial tribunals, the Bill...amends legal representation arrangements to be the same as those in the Fair Work Commission which means representation by a lawyer or other paid agent in the commission is permitted based on how unfair it would be not to allow representation. Legal representation is not permitted in enterprise bargaining arbitration matters.

Legal representation in the QIRC, particularly at arbitration, is necessary to ensure that parties follow common law principles of procedural fairness. Council supports the changes for legal representation for matters before the QIRC at conciliation, aimed at resolving a matter prior to requiring the QIRC to arbitrate. However, the higher standard and burden on demonstrating compliance with legislation, industrial instruments and common law at arbitration, requires the specialist experience of legal professionals.

Council's position on legal representation during arbitration extends to matters before the QIRC during collective bargaining.

8. Conclusion

As outlined above, Council does not support the passage of the Bill without important amendments, the repeal of Chapter 2, the provisions outlined in this submission for Chapter 4 and the repeal of Chapter 8, and other associated provisions of the Bill outlined in this Submission.

Yours sincerely

Colin Jensen
CHIEF EXECUTIVE OFFICER

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