COMMUNITY SAFETY AND LEGAL AFFAIRS COMMITTEE

Members present:
Mr PS Russo MP—Chair
Mr MA Boothman MP
Ms SL Bolton MP (via videoconference)
Ms JM Bush MP
Mr JE Hunt MP (via videoconference)
Mr JM Krause MP

Staff present:
Ms K O'Sullivan—Committee Secretary
Ms E Lewis—Assistant Committee Secretary

PUBLIC HEARING—INQUIRY INTO THE RESPECT AT WORK AND OTHER MATTERS AMENDMENT BILL 2024

TRANSCRIPT OF PROCEEDINGS

Friday, 12 July 2024

Brisbane

FRIDAY, 12 JULY 2024

The committee met at 1.15 pm.

CHAIR: Good afternoon. I declare open this public hearing for the committee's inquiry into the Respect at Work and Other Matters Amendment Bill. My name is Peter Russo. I am the member for Toohey and the chair of the committee. I would like to respectfully acknowledge the traditional custodians of the land on which we meet today and pay our respects to elders past and present. We are very fortunate to live in a country with two of the oldest continuing cultures in Aboriginal and Torres Strait Islander peoples, whose lands, winds and waters we all share. With me here today are Jon Krause, the member for Scenic Rim and the deputy chair; Sandy Bolton, the member for Noosa, who is appearing via videoconference; Mark Boothman, the member for Theodore; Jonty Bush, the member for Cooper; and Jason Hunt, the member for Caloundra, who is also appearing via videoconference.

This hearing is a proceeding of the Queensland parliament and is subject to the parliament's standing rules and orders. Only the committee and invited witnesses may participate in the proceedings. Witnesses are not required to give evidence under oath or affirmation, but I remind witnesses that intentionally misleading the committee is a serious offence. I remind members of the public that they may be excluded from the hearing at the discretion of the committee.

These proceedings are being recorded and broadcast live on the parliament's website. Media may be present and are subject to the committee's media rules and my direction at all times. You may be filmed or photographed during the proceedings and images may also appear on the parliament's website or social media pages. I ask you to kindly turn your mobile phones off or to silent mode.

CORKHILL, Ms Heather, Principal Policy Officer, Queensland Human Rights Commission

HOLMES, Ms Neroli, Deputy Commissioner, Queensland Human Rights Commission

CHAIR: Good afternoon and thank you for joining us. I invite you to make an opening statement, after which committee members will have some questions for you.

Ms Holmes: Thank you very much, Chair. I also acknowledge the traditional owners of the land on which we meet today and pay respects to elders past, present and emerging. I also pass on apologies from Commissioner Scott McDougall. Unfortunately, he fell unwell last night and is unable to attend today. He extends his apologies to the committee that he cannot be here.

Thank you very much for the opportunity to speak on the Respect at Work and Other Matters Amendment Bill. The commission supports the passage of this bill. The bill promotes the human right of equality through extending protections to groups that are at higher risk of discrimination, strengthening safeguards against hate speech and encouraging systemic and cultural change through the introduction of a positive duty to eliminate discrimination.

In May 2021 the Attorney-General commissioned the Human Rights Commission to undertake a comprehensive review of the Anti-Discrimination Act. Our final report, *Building belonging*, came about after 14 months of in-depth consultation and research. This new respect at work bill has extremely positive aspects. We are pleased to see some of the *Building belonging* reforms being implemented through the bill, in particular the inclusion of a broadly defined positive duty to prevent discrimination and other unlawful conduct, in both the private and the public sectors, and an expanded role for the commission in promoting and encouraging compliance.

The bill also redefines and expands protected attributes, in particular extending protection to people experiencing homelessness or domestic and family violence. It is timely considering Queensland's current homelessness crisis and the surge in domestic violence cases. We also welcome the changes to the vilification laws to strengthen protections against hate speech which follows the work of this committee a couple of years ago.

In our submission, a couple of changes are needed to improve the bill. We have outlined in our submission some high-priority issues necessitating amendments to the bill and I will highlight a couple of those briefly for the committee.

The scope of the compliance functions is very important for the commission. The current compliance functions are too narrow because they are limited to addressing systemic sex discrimination in the workplace. They do not include adequate tools to encourage voluntary compliance, which will be the main focus of the commission in enforcing compliance for the positive duties. We therefore recommend some minor amendments to ensure the commission has adequate capacity to shift its focus to prevention, including to report on compliance investigations and, where necessary, to investigate all forms of serious systemic and unlawful conduct under the act.

We need an express reporting power for positive duty compliance investigations. As noted, we strongly recommended an explicit reporting mechanism for compliance investigations related to the positive duty. Public reporting is very important as it maximises our resources by informing other duty holders about how they can meet their obligations under the new positive duty. Therefore, they have a very broad educative value. It is also important for the transparency and accountability of the commission so it is essential for compliance and the express reporting power to ensure effective implementation.

We also recommend changes to the complaints procedures. When it comes to complaint management, simplification is essential to improve the accessibility to and efficiency of the commission. Variable complaint time limits depending on a complainant's attributes and areas are completely unworkable, will frustrate the process and will tie up the commission, complaint parties and tribunals in red tape. People regularly make complaints that fall across multiple areas and attributes under our Anti-Discrimination Act. We have spoken to the federal Australian Human Rights Commission colleagues about the serious difficulty they had managing confusion and inconsistencies that arose from having different timeframes when their respect at work provisions first went through. After about a year, the Commonwealth Attorney-General agreed that it was a problem and made it two years for all of the contraventions and attributes and areas. We highly recommend that the committee streamline that process so that we do not end up with a whole lot of bothersome red tape and unfairness for people who are trying to access the commission. It is very easily fixed by making it a two-year timeframe for all contraventions. Respondents need to do this to meet their obligations under federal discrimination law in any case.

What is next? We do hope the parliament will move to implementing the full *Building belonging* report, with a complete overhaul of the Anti-Discrimination Act in due course. We look forward to the next phase of reforms and the full realisation of achieving a fair and inclusive Queensland. Thank you, committee.

Ms BOLTON: Can you outline which part of the commission's *Building belonging* report has not been implemented in this bill?

Ms Corkhill: Without having to go line by line through the report, we have observed that, if this bill goes through, 14 out of 46 recommendations have been done because two previous bills made some amendments to attributes.

Ms BOLTON: So between the three bills it is the majority?

Ms Corkhill: The majority is still to come; that is right.

Ms BOLTON: The majority is still to come, so we still have a long way to go.

Ms Corkhill: Absolutely, yes.

Ms BOLTON: In your opening remarks you mentioned protected attributes such as homelessness. Can you give me an example of where this bill is effecting change for the better in relation to that?

Ms Corkhill: Absolutely. I am turning to the *Building belonging* report, which is actually a very long document so bear with me. It might be helpful to actually reference that material. On homelessness, we had quite a lot of submissions to the review in support of that. We had around 20 submissions relating to that topic. We identified that there was a gap in protections for people experiencing discrimination because of their lack of housing stability. One example we heard about was schoolchildren whose families were experiencing homelessness. They were being suspended or excluded because they were unable to maintain a uniform and all the things they needed for their schooling.

We heard about an example in relation to a person who went to a job interview. The person was really nice to them and said, 'Are you living at home?' The person said, 'No.' From that point on, there was a lot of discrimination that occurred and the person did not obtain that job. That person really felt that they were being placed at fault because of their homelessness and they did not receive the job.

There are other situations. For example, we heard about the use of move-on powers. When people have a lot of possessions perhaps sitting on the street, they have been required to remove or dispose of their possessions. There are a whole lot of different situations in private life and in public life.

Another instance that comes to mind was a person who was required to convalesce after an injury. The hospital would not perform the operation until they had a bed to sleep in in order to convalesce. Of course, it was a double-edged sword because they could not obtain a stable place to live so they could not obtain the treatment they needed. That is just a few examples of the sorts of issues we were hearing about.

Ms BUSH: I understand your submission. It sounds like you are principally supportive of this, recognising that not all recommendations have been implemented. There are a couple of minor amendments that you would like to see. One of those is around the complaints procedure and amending clause 29 to change section 138. I can see that there are two timeframes. One is for a period of two years if it is on the basis of sex that is a work related matter and everything else is one year. I think you are saying that you would prefer to see that as a general two-year timeframe for that complaint to be made and that, in fact, in other jurisdictions they have had to make that amendment to make it a simpler process.

Ms Holmes: Yes, that is correct. It is around the implementation of the Sex Discrimination Act and the respect at work amendments in the Commonwealth. Because all of the recommendations were made around one act, they did not take into account other acts such as the Disability Discrimination Act and the Racial Discrimination Act. When the parliament passed it through—I do not know if they did a great deal of consultation with the Human Rights Commission when they passed it—it really meant that one set of attributes was being given two years whereas race or disability discrimination was one year. We are duplicating that problem in Queensland if we pass the law as it is, remembering that our Anti-Discrimination Act is comprehensive. It has all of the attributes in it. It has disability, race, religion, sex, age—all those attributes. It is a bit nonsensical to put in a different provision for sex, especially when people sometimes make complaints that cover both areas. It may be a race and a sex discrimination complaint, or a disability and a sex discrimination complaint. How do we deal with that complaint? Do we make them wait two years?

Ms BUSH: That makes sense.

Ms Holmes: It makes it very unworkable, to be honest with you, and we highly recommend the committee fix the set-up because it will make a very frustrated process for everyone in the commission, including the commission staff, and, really, what a waste of public moneys to muck around with two timeframes.

Ms BUSH: Excellent. I understand, thank you. Your other minor recommendation is providing the commission with express powers to publish reports on investigations. That is not a function of the act as drafted at the moment, and you would like to see that in there so you can use it as a tool for education. Do you want to speak a little more to that?

Ms Holmes: Yes. I think I outlined it in my opening statement. If you do a big piece of work, it is very important that you can use that piece of work to educate other stakeholders in the same industry or similar industries. There is no point doing a large investigation and a compliance report or working collaboratively with someone, as I think the Human Rights Commission did with Bakers Delight. They did a really good sexual harassment report. Bakers Delight, the baking company, came along and said that they thought they had a problem with sexual harassment. It was really a great piece of work that the commission did alongside Bakers Delight, the company. If that had been kept behind closed doors, how would other people in that same industry have ever been able to see the really great initiatives Bakers Delight has taken on board? That is very educative. It is very useful to be able to put that out. It also shows what the work the commission is doing is all about. It is not very helpful to have the commission doing a lot of work that cannot be published and shown to other stakeholders to understand what their duties are and to take very positive actions as a result of that. I think publication of reports is very important.

Ms BUSH: Excuse my naivety, but it sounds like you are saying that you need that kind of express power or function in the act to enliven you to be able to do that.

Ms Corkhill: The only other alternative is we have to negotiate a contract with the duty holder. We do have a current arrangement with the Queensland Police Service, which is looking at some issues in relation to recruitment and retention of women and First Nations and culturally diverse police. That process of negotiating the contract took about nine months. That would just be unnecessary if we had the authority to do that from the outset.

There are reports in Victoria that have been later challenged in court. They have wound up in the Supreme Court because there was not an explicit reporting power in the Victorian act. We have learned from our Victorian colleagues that it is really essential for us to be able to do our job. We heard from duty holders, we heard from small businesses, that they really want a cooperative and collaborative approach to this. If we only end up with the pointy-end powers and we keep using those, we do not think we will get a good outcome here at all—and we do not have the resources to do that. To have it all happen in a cone of silence is incredibly unhelpful.

Ms BUSH: Are there any powers in any other monitoring or oversight bodies who have similar powers and functions that you would point us towards?

Ms Holmes: We have similar powers in the Human Rights Act already. We do publish reports under the Human Rights Act. They are very sensibly drafted so that if there are any adverse comments there is an opportunity—there is a natural justice process before any adverse comments are commented on publicly. If there is an adverse comment, we have to replicate what the person who is disagreeing with the adverse comment says so it is fairly reflected. This is similar to what the Ombudsman does. The Ombudsman does this all the time. It is very customary for compliance agencies to have this power.

Ms BUSH: I think we have a few. We have the Ombudsman, OPG, OPA and—

Ms Holmes: Yes. All of those different agencies have that. It is done sensibly, with full natural justice. If we have compliance done through cooperation, it is unlikely we will have adverse comments very often. We will be much more collaborative and hopefully helping people to raise their standards willingly rather than shaking our finger at them.

Ms Corkhill: I might also add that the exposure draft of the full Anti-Discrimination Act that was released in around March this year already has all of the provisions that we need in it. It is really about picking up that section and replacing it with what is there. There is no additional drafting required to achieve what we are asking for.

Mr KRAUSE: Thank you for your submissions. I note that homelessness is now to be included as a protected attribute. Are there any other attributes, other than those listed in the *Building belonging* report, which you think should be considered to be protected attributes?

Ms Corkhill: We are actually very happy with the results of this bill in terms of the implementation of that aspect in relation to new protected attributes. We think it is very fulsome already, what has already been covered in this bill.

Ms Holmes: The bill does pick up a couple of other attributes, other than homelessness.

Ms Corkhill: I could probably list them, off the top of my head. There is an extension of race to explicitly include immigration, or migration status or caste, as that was not very clear before. There is a change from 'family responsibilities', which was quite a narrow form of attribute, and now it is 'family, carer or kinship responsibility', to create a broader idea of what 'family' includes. We also have the inclusion of physical appearance. We said earlier domestic or family violence. Then there are two in relation to criminal records: one is expunged convictions, so homosexual convictions; and the other is the relevant criminal record. There are a couple that *Building belonging* did not call for, and that is a relevant medical record and potential pregnancy, as we substantially think they are already covered by other attributes, but we do not object to their inclusion.

Mr KRAUSE: How much of a role has the QHRC played in developing this bill with the government?

Ms Corkhill: It has been minimal. We have had a lot to do with the development of the Anti-Discrimination Act exposure draft—I can say that—but we were not consulted in relation to this bill.

Mr KRAUSE: Do you know why you were not consulted in relation to this bill?

Ms Holmes: No.

Ms Corkhill: No.

Mr KRAUSE: I think one of your recommended amendments is to give the commission more reporting powers. You were speaking about that a little earlier.

Ms Holmes: Yes.

Mr KRAUSE: That would be in respect of complaints made under the Anti-Discrimination Act or breaches of human rights?

Ms Holmes: No, it would be about the positive duty aspects of it. Complaints are private. They are very private and only become public once they go to QCAT, the Queensland administrative tribunal, or QIRC. Everything that is complaint-based in the commission is very private because that is the best way of trying to resolve matters, but it is where we are doing the more proactive rather than the reactive work. Complaints are reactive. It is where discrimination has already happened, someone comes to us and we help them try to resolve the complaint. The positive duty is trying to do something that is much more proactive. I mentioned before the Bakers Delight case in Victoria, where Bakers Delight realised that there was a problem in their organisation with sexual harassment and they collaborated with the Victorian commission to investigate how they could improve their whole workplace to try to make sexual harassment not an issue—to prevent it—so that complaints would not be made by employees in the organisation. That is where the reporting comes in, where you are doing the preventive work rather than the reactive work with complaints.

Mr KRAUSE: In that case and the way you envisage this power, would it involve taking specific cases with specific examples of discrimination or failures?

Ms Holmes: I guess so, if we see a pattern that is coming through. We do measure our data and we watch what is going on. If we did see an industry where bad behaviour was happening, for instance—I think we have already had a lot of discussion in this parliament and also in the federal parliament about horticultural workers experiencing bad behaviour from some people, particularly sexual harassment in some farm work situations—if we saw a whole pattern of behaviour happening, we would probably try to approach the industry peak body to try to get a collaborative arrangement going to say, 'How can we make this industry get better outcomes for its workers, or better outcomes for people that it is employing as subcontractors?' to improve that industry to get better outcomes. We would watch data, but people may approach us. Sometimes complainants do not come to us. There might be something that is happening and we get intelligence from inquiries or other means where people are saying, 'Look, this is a real problem in this area.' If we did some preliminary investigations and thought, 'Yes, there is a problem there,' that is probably when we would step up and start trying to work collaboratively if we possibly could in nearly every situation to try to work out a better way for that industry or workplace to operate.

We would see it as a broader base rather than something specific, unless Bakers Delight or someone like that came to us and said, 'Let's use our workplace.' It would be a very brave thing for that organisation to do but with great outcomes and hopefully a much better workplace where people are much happier and working much more safely and not being sexually harassed. A win-win, basically, is what you would expect from that sort of thing. I do not know if they have done a follow-up from Bakers Delight, but obviously it was an important way of helping that employer improve its systems.

Mr KRAUSE: Would you turn that sort of reporting power on to government as well if they were failing in respect of issues like homelessness and things like that?

Ms Holmes: It is a potential—homelessness. It is discrimination on the basis of homelessness, I suppose. We actually do not yet have a human right that directly says people have the right to have a home. Taking the hospital example, if it was a public hospital that had been saying, 'We are not going to do an operation on you because you have nowhere to recuperate'—if that was a systemic thing rather than an individual, one-off thing and we were repeatedly hearing that government hospitals were refusing to give people necessary medical attention because they had nowhere to recuperate, yes, we of course would.

Mr BOOTHMAN: What happens if someone does not have a house where they can register their address for recuperation? For example, where a cancer patient needs to recuperate after cancer treatment, from my understanding, Queensland Health requires, and asks for, an address of the patient in order for the patient to go back to for healing purposes. Therefore, technically, if Queensland Health does not have an address for that person to go back to, they can say, 'No, we cannot give you treatment until you get a residential address.'

Ms Holmes: I am not sure about that. That is the example we were given in our *Building belonging* report. I could not say if that is correct or not, but, if that was the case, is that a reasonable term or not? It is a form of indirect discrimination probably that people who are homeless do not have somewhere to recuperate, quite obviously. That is a form of indirect discrimination. Is that term that has been imposed by the hospital a reasonable term or not? That is what we would have to look into and find out. Before you do—

Mr BOOTHMAN: It was something I dealt with just a week ago.

Ms Holmes: Did you? It is very problematic for people. That is a form of discrimination, where they are not getting the medical treatment they need, through no fault of their own, because they do not have a home. Is that a reasonable term? It is very hard to recuperate if you do not have a home.

We do know how hard it is to stay healthy when you do not have a home. It would be even harder to recuperate from a big procedure without a home. Maybe there is a great risk of wound infection or other things. That would be a good reason you might do an investigation into that and to fully understand what is going on, and to try to understand it from every stakeholders' perspective, before you came to a conclusion that maybe discrimination was occurring and writing a report about that.

Ms Corkhill: We are already doing quite similar work under the Human Rights Act in relation to government agencies. Just last year we released a human rights review of the practice of stripsearching women in prison, and that has already led to some policy changes. We are working collaboratively with Queensland Corrective Services on an ongoing basis in relation to that matter. We already have some experience under our belt working within that government framework as well.

CHAIR: Thank you for attending. Thank you for your evidence and your written submission.

BRODNIK, Ms Kate, Principal Policy Solicitor, Queensland Law Society (via videoconference)

COOK, Ms Bridget, Senior Policy Solicitor, Queensland Law Society (via videoconference)

CHAIR: Good afternoon and thank you for joining us. I invite you to make an opening statement of up to five minutes, after which committee members will have some questions for you.

Ms Brodnik: Thank you for inviting us to appear at this public hearing today. I begin by acknowledging the traditional owners and custodians of the land on which we meet. I am joined by my colleague Bridget Cook, the senior policy solicitor in our legal policy team. Regrettably, we have not been able to bring along with us today members of our legal policy committee, due to the workload and other commitments. However, should there be any questions from the committee that we are unable to answer we would be pleased to take those on notice.

As stated in our written submission, the bill we are discussing today considers some of the reforms proposed over a number of years following several inquiries into issues concerning sexual harassment and discrimination—and discrimination in all its forms—being the *Respect@Work* report and the recent report by the Queensland Human Rights Commission, the *Building belonging* report. Unfortunately, the bill does not progress all of the reforms from the *Building belonging* report and that were presented in a draft bill for new anti-discrimination legislation that was publicly consulted on earlier this year.

As stated in our written submission, a number of the amendments put forward in this bill would depend on the other amendments proposed and which we understand are to follow in the next stage of reform. Some of our concerns with what is in the bill today depend on what will be in other amendments; for example, the amendments to definitions of discrimination and indirect discrimination. Nonetheless, QLS broadly supports the intention of the bill and we would be pleased to hear from the committee on the technical amendments which we seek, which we set out in our submission.

Mr BOOTHMAN: Your submission spoke about the uniform time limitations for complaints and that you are against the idea. Could you elaborate further on that? Other submitters have stated views contrary to that, but I want to hear your opinion when it comes to that unlimited period and your opposition to it.

Ms Brodnik: I hope there was not any confusion in our submission. Essentially, we oppose the application being limited to the types of complaint. Our reservations in our submission were around the limited extent to which the extended timeframe would apply. For example, if you have an attribute or complaint in the setting outside the workplace, how would that apply? Yes, all of our members are not necessarily on board with an extended complaint timeframe, although the majority of our members note that the timeframe in this piece of legislation is actually relatively short when you consider other timeframes. For example, the timeframe in which you bring a personal injuries claim is three years. We do not necessarily hold a concern about the extension but, rather, that it is not uniform, and that might create some unfairness and some confusion to the parties involved.

Mr BOOTHMAN: My question is about part 4, specifically proposed section 124C, 'Hateful, reviling, seriously contemptuous, or seriously ridiculing conduct'. Subsection (c) states—

> a public act, done reasonably and in good faith, for academic, artistic, scientific or research purposes or for other purposes in the public interest, including public discussion or debate about, and expositions of, any act or matter.

For instance, if we take a faith-based organisation of whatever religion it may be, if you are not a follower of that religion and you hear a sermon that you take offence to, would that be classed as hateful?

Ms Brodnik: I can see if Bridget has any comments on that.

Ms Cook: I would have to take that question on notice, but I do refer to the QLS's submissions, both written and oral, at the Legal Affairs and Safety Committee's inquiry into hate crimes earlier this year. I will have to seek our committee's views on that.

Mr BOOTHMAN: There are clauses in the bill that allow for acts done for academic, artistic, scientific or research purposes. In our society there are a lot of contrary opinions when it comes to academic and artistic purposes but also religion. Do you think that is something that is appropriate to be included in that clause? People will always have a different opinion about matters which may not be seen as hateful to those people but could be seen as hateful to a person who does not agree.

Ms Brodnik: As we have said, these provisions form part of the first stage of reforms following a large volume of work conducted by the Human Rights Commission and contributed to over a number of years by stakeholders. You also need to look at this in the context of human rights, of which there are many and some that are competing from time to time. It might be that those issues are able to be worked out once the reform process is completed. However, you would need to look at it not in isolation within this one provision but in the context of the Anti-Discrimination Act and the Human Rights Act and possibly other legislation that is flowing from these recent inquiries.

Ms Cook: The only thing I would add to that is the other elements of the provision and how they work together in terms of the reasonable person test. I have nothing further to add to Kate's comment.

Mr BOOTHMAN: In the bill that has been left out. There is academic, artistic, scientific or research purposes but there is not religion. Religion does make up a large part of our society and each religion comes with its own opinions and points which may be seen as hateful to another individual. That was my point. I was interested in your opinion, but thank you anyway.

Ms Brodnik: We can certainly seek the views of our Human Rights and Public Law Committee about whether religion ought to be included and come back to the committee.

Mr BOOTHMAN: I appreciate that.

Ms BOLTON: In your submission you put forward that the bill be amended to accommodate intersectionality by recognising that discrimination and vilification may occur based on a confluence of protected attributes. Can you unpack that for me? I am trying to get some context around that and how it could be achieved in this bill.

Ms Cook: There are two parts to the response to this. The QLS supports intersectionality being referenced in the bill. By intersectionality, our Human Rights and Public Law Committee members refer to situations where a person may have more than one attribute and, together with a combination of attributes that that person might relate to, that might cause them to have a unique experience based on those particular attributes—for example, age, race or gender. The way in which the society proposes that the bill seeks to address that is by making specific reference that it could be a combination of attributes or more than one attribute.

Ms BOLTON: I am trying to get my head around this. An example was given earlier in terms of human rights and homelessness becoming a recognised attribute. An example was given of somebody in a job interview. When they were asked whether they live at home they said they did not and ultimately they did not get the job. How do you assess that that was the attribute or the contributor to why the job was not achieved? Going back in time, we have all gone for jobs and been unsuccessful and it was put down to either we were not qualified or someone was better placed and that was it. We did not look at the reason being that we came from a poor school. There was no looking at specific things. I am trying to unpack this because some of this could be subjective. We are reliant on people saying, 'This is the reason I didn't get the job,' or, 'This is the reason I didn't get this or that.' How do we actually move into a space that is not so subjective, because it does impact what we are talking about?

Ms Cook: I understand what you are saying. For instance, it is in some ways relevant to the reasonable person test that is in proposed new section 124C of the bill, 'Hateful, reviling, seriously contemptuous, or seriously ridiculing conduct', in terms of that subjective and objective tension. From a legal perspective, proposed subsection (2) of proposed section 124C contains a reasonable person test which, traditionally, in a legal context, does assume an objective person test rather than the subjectivity that can sometimes be a factor in that example you just gave. I am not sure how I can be of further assistance in terms of the practical applications of this, other than the legal tests that may be applied if these situations are agitated following the passage of the bill.

Ms Brodnik: Part of the reforms considered in the draft bill and from the *Building belonging* report—and a number of stakeholders made submissions on these—are that currently the tests for discrimination and indirect discrimination are not useful and confusing. They currently involve a comparator test, which is not well understood. It also requires you to try to find people who might not be in your position—so who might not be homeless and who might have other situations—and compare how they would have been treated in the same interview. That is why it is confusing. If the definitions that were put forward by stakeholders and recommended in the report are added to the bill, hopefully at some stage that might make that assessment easier. Then if a complainant makes a complaint to the Human Rights Commission it will be determined based on whether there can be found to be unfavourable treatment because of the attribute.

Ms BUSH: The QHRC appeared earlier and recommended that there be an express provision in the act around the publishing of reports, and a read of your submission suggests that you would support that also. Have I read that correctly?

Ms Brodnik: We would support the publication of some reports. Essentially, I think we might disagree with the Human Rights Commission on all of the information that we think should be published compared to what they think should be published. The QLS would not propose that reports from an investigation be published where there has been no adverse finding against a person or where the process is incomplete. I know that there might be a proposal for an undertaking to be published. If that were to be the case, there would need to be very specific information with the publication to outline what an undertaking is—for example, there was no finding of fact in the undertaking and it was agreed to by the relevant parties. Certainly we would not agree with the publication of everything.

Ms BUSH: I understand what you are saying. I think you said in your submission that you would like to see something in there that gives some capacity for the publication of some reports, though?

Ms Brodnik: Yes.

Ms BUSH: Yes, okay, but just to work through what that would look like.

Ms Brodnik: Yes. I think that would need to probably be worked through further, and you certainly would not want to infringe upon the fundamental legal rights or the privacy rights of someone.

Ms BUSH: Yes, okay. Thank you. That is a good qualification to make. They also spoke to trying to clarify that all complaints made on all attributes should have a statutory timeframe of two years, not one and two depending on the attribute. I think you mentioned that also in your submission. Is that correct? Are you of that same view to simplify that process?

Ms Brodnik: Yes, particularly for the reason that we set out in our submission that if you are making a complaint based on more than one attribute, what timeframe applies?

Ms BUSH: Yes, perfect. Thank you. Finally, I was interested in your views around your rejecting clause 70 around the amendments to the Penalties and Sentences Act and just wanted to understand that a bit further. I think your submission essentially says that judges and magistrates potentially already have those powers to make those types of findings of aggravation in their sentencing regime anyway; is that correct?

Ms Cook: Yes. The QLS's position on that is that it is already captured within the current drafting of that section specifically—maybe not expressly but definitely within the discretionary powers.

Ms BUSH: By including something specifically in this bill, does that then further obligate judges and magistrates to have to turn their minds to those features? I guess what I am saying is: if the powers and functions are already there, is there harm then in including it in this bill?

Ms Cook: There may be in the type of drafting that looks like, but we would say that at this point there is probably no need. There is no justification for that as it has already been considered within the discretionary powers at the moment.

Ms BUSH: Roger that. Thank you.

CHAIR: That brings to a conclusion this part of the hearing, but before we move on there is a question on notice: should religion be included in the attributes in section 124C(3)(c) of the Anti-Discrimination Act? If you need that, I am sure the secretariat will send it to you by email if that will help. We would ask you to provide the answer by close of business on Tuesday, 16 July so it can be included in our deliberations. Thank you, Kate and Bridget.

GRAY, Ms Emily, Legal Director, Equality Australia (via videoconference)

CHAIR: Good afternoon and thank you for joining us. I invite you to make an opening statement of up to five minutes, after which committee members will have some questions for you.

Ms Gray: I would like to thank the committee for inviting Equality Australia to appear at this committee to talk about the Respect at Work and Other Matters Amendment Bill. Equality Australia is the leading national organisation that works to ensure equality for LGBTIQ+ Australians. We support the bill and we thank the Attorney-General and her department for all of the work that has gone into it. I will just briefly go over the parts of the bill that we welcome and then discuss briefly some technical amendments that we would like to see made and then a few parts that we believe have been missed opportunities.

First of all, we would like to welcome the expanded and modernised protected attributes which provide protections from discrimination to many people who currently experience it, with grounds including domestic or family violence, irrelevant criminal record and irrelevant medical record, but we in particular welcome the new inclusive attribute of sexual orientation and the discrimination protections for people who have had historical homosexual offences expunged from their records. We welcome very much the improved and expanded provisions against vilification, which includes both incitement and harm-based (indistinct) vilification. We welcome the new positive duty directed at preventing discrimination before it happens and the grounds upon which that can now be undertaken. We welcome improvements in the representative complaints and investigative mechanisms under the Anti-Discrimination Act, so there are many parts of this bill that we very much support and welcome.

There are some technical amendments we would like to see happen that we do not believe would take much. The first of those is in relation to the time limits—and I imagine the people who have appeared before me have mentioned those—in that we note it is a two-year time limit to make a complaint around sex-based discrimination at work and only one year for the other grounds. We believe this creates unnecessary red tape and, in line with the federal anti-discrimination law, would make much more sense for it to be a two-year time limit across all of those attributes, and we believe that would be a very simple amendment. Two years is actually a fairly short time period in general. As you know, the time limit for tort claims and contract claims is generally six years, so two years, we believe, (indistinct) an overly generous time limit. With regard to a minor amendment around expunged convictions for homosexual offences, we would just like to ensure that convictions in other states and territories are also included.

There are a couple of bigger deficiencies in the bill that we would like to bring to your attention. We would really like outdated definitions of discrimination to be changed, both indirect and direct discrimination, to bring them closer in line with Commonwealth definitions and definitions in Victoria and the ACT. The existing definitions, as we see it, are difficult to apply and have caused great confusion. In relation to direct discrimination, we suggest removing the comparator and using the unfavourable test, so rather than saying with an attribute less favourably than another person you would simply say unfavourably because the other person has a protected attribute. It is a much simpler test to apply and we believe that would be very easily fixed. In relation to indirect discrimination, we have said that you should change the definition to behaviour which has or is likely to have the effect of disadvantaging the other person because the other person has a protected attribute. Those are two amendments that we think would be really beneficial.

One of the elements that we believe has been missed is for not-for-profit organisations. Many Queenslanders, as you know, rely on services provided to the public by not-for-profit organisations such as clubs and private hospitals et cetera. Federal anti-discrimination laws and most state and territory laws do not have exemptions for not-for-profit organisations as broad as section 46(2) of the act. We recommend narrowing this exemption by making it consistent with Commonwealth laws or at least putting in place a revenue threshold so that it does not apply to large not-for-profit organisations that deliver goods and services to the general public.

It would be remiss of us to talk about this bill without discussing one of the aspects that we believe has been a lost opportunity for reform, and that is section 25 of the Anti-Discrimination Act. We are disappointed that the Queensland government has not proceeded with reforms to section 25. As you know, this provision continues to allow faith-based schools to discriminate against LGBTIQ+ staff and in fact any staff who are supportive of non-discrimination in this area. Many of you may have heard of the Citipointe Christian school case, which was allowed to proceed because of section 25, where parents and students were asked to sign a contract setting out the fact that they all subscribed to behaviour that was not immoral, and the list of things that were immoral were things like homosexuality—bestiality was in the same list, which was highly insulting, obviously—bisexuality and

a whole range of things that parents were required to sign on behalf of their children. The school, as you know, eventually withdrew that requirement after much pressure but then introduced a new contract for teachers to sign stating their adherence to heterosexuality and not engaging in homosexuality. A number of teachers I believe lost their jobs as a result of either refusing to sign that contract or subsequently.

This exemption we believe—section 25—is completely out of step with community standards and it misses one of the major points I think that a lot of this debate misses in that it is not an argument around religion versus the LGBTIQ community. At least a quarter of our community identifies as people of faith. We have people who want to go to religious schools and teachers who want to teach at religious schools where one aspect of their identity happens to be that they might be gay or they might be lesbian or they might be trans. I think pitting the two against each other is really unhelpful and in fact often forces people to deny what is sacred about their identity and sacred about themselves when they are getting in touch with the truth of themselves. I think this sort of 'God versus gays' argument is not helpful, and many of our community are part of the religious community and vice versa. We would like to work closely—and we do work closely—with many religious groups to try and find a way forward productively through what has historically been a very contentious subject. As we know, one in three students and almost two in five staff are employed in private schools—most of which are religiously affiliated—and we would strongly urge that section 25 of the Anti-Discrimination Act is repealed so that schools cannot reach into the private aspect of people's lives and impose those employment conditions that require people to hide aspects of who they are. Thank you for having us and I am happy to take any questions.

CHAIR: Thank you, Emily.

Mr KRAUSE: Emily, was Equality Australia consulted on this bill?

Ms Gray: Consulted on this bill?

Mr KRAUSE: Yes, specifically this bill.

Ms Gray: We did provide a submission to the committee.

Mr KRAUSE: I mean before it was introduced to parliament.

Ms Gray: I will have to take that on notice. I started in this position last Monday, so I will take that on notice. Thank you.

Mr KRAUSE: Okay; I understand. Thank you. I note your reservations about the bill. Do you think it would be better delayed rather than passed in its present form?

Ms Gray: Overall, we support the passage of the bill. There are several aspects of this bill, as I have articulated, that we welcome and will assist anti-discrimination law in Queensland moving forward in a way that helps our community. Removing section 25 from the Anti-Discrimination Act would be a piece of work we would continue to advocate on after this bill is passed. We certainly would not want it to delay the passage of this bill.

Mr KRAUSE: In your submission you state that concepts of direct and indirect discrimination in the Anti-Discrimination Act are difficult to apply and confusing. I wondered if you could elaborate on this for us, please.

Ms Gray: I think we know that having the comparator test with direct discrimination has created quite a large degree of confusion and quite a high bar in terms of being able to establish a comparator. What we propose, which I understand is in line with the Queensland Human Rights Commission, is a much more simple test for direct discrimination; that is, treating somebody else unfavourably because the other person has a protected attribute, rather than trying to find a comparator of someone being treated less favourably than someone else with a similar attribute. It is just a very clunky process to have to go through to establish that discrimination has occurred. It can act as a deterrent for people not being able to bring claims and certainly for those claims to be unsuccessful because a comparator was not able to be found, for example.

In terms of indirect discrimination, again it is looking at having the effect of disadvantaging another person because the other person has a protected attribute. That is the disadvantaging test which is currently used in the Sex Discrimination Act federally. It is basically making it a lot simpler and asking whether, for direct discrimination, someone is being treated unfavourably because of a protected attribute. In relation to indirect discrimination, it is asking whether somebody is being disadvantaged in a way which is unreasonable. It is just looking at very much simplifying those definitions. That would not only make it easier for the bodies administering these complaints but would also make it a lot more accessible and easy for members of the public to understand and access. We are obviously very much in favour of the law being accessible and understandable and comprehensible to as many people as possible, and this is one of the ways we can do that.

Mr KRAUSE: Given the limited time we have, I will pass.

Ms BOLTON: My apologies if you have already covered this somewhere previously. I am just trying to get to the part where you are seeking to limit any exemptions in the bill for not-for-profit organisations. That is in relation to the prohibition on discrimination in the supply of goods and services and that it does not apply to some. Can you give us a bit of clarity on that?

Ms Gray: We feel that this exemption as it is currently drafted is too broad. We do not object to the exemption for not-for-profit organisations per se, but we believe the objection is too broad because it covers multimillion dollar enterprises such as private hospitals, sporting bodies and hospitality venues run by clubs, for example, and those that provide recreational facilities such as clubs and gyms. That is a lot broader than probably was intended by the scope of this exemption. Millions of Queenslanders would access these services on a daily basis, and we do not believe that ones that have such large operating budgets should be able to discriminate.

Ms BOLTON: Are you saying that it should be narrow, based on an income level?

Ms Gray: Yes. The two suggestions we have are either making it consistent with Commonwealth laws or putting in place, as you say, a revenue threshold. Making a cap on what the budget might be for that particular organisation would narrow the scope of the exemption.

Ms BOLTON: I have no further questions.

Ms BUSH: I am just looking at the definitions in sections 10 and 11 of the AD Act and the amendment you are seeking, which I think I understand. Just give me another moment to go through that. Can I just get you to speak to your recommendation around expunged convictions, recognising where other jurisdictions have similar legislation and applying that in a Queensland context? Why do you think that matters and what difference would it make?

Ms Gray: If you have a gay man, for example, who engaged in a consensual gay relationship years and years ago when same-sex relations were criminalised in some states. We are talking about expunged convictions of homosexual records. I think everybody would agree that we should no longer criminalise such activity. We just want to make sure that the clearing of people's criminal records is consistent and across the board; for example, for a Queensland man living in Brisbane who might have a record in New South Wales, that the record is clear both in New South Wales and Queensland.

Ms BUSH: Rather than seeking to have that addressed through each respective jurisdiction, you are suggesting it be streamlined through Queensland legislation and cleared out that way?

Ms Gray: That is correct, so they do not have to go through every separate jurisdiction to get it cleared.

CHAIR: That brings this part of the hearing to a conclusion. There was one question taken on notice: whether Equity Australia was consulted on the bill by the Queensland government before its presentation in the House. Do you need us to send you that by email, too?

Ms Gray: No, I have a note of that. I will provide that response.

CHAIR: Are you able to provide your response by 16 July 2024 so we can include it in our deliberations?

Ms Gray: Yes, I will send that via email.

CHAIR: Yes, please. Thank you for your submissions and thank you for your evidence today.

ARONEY, Professor Nicholas, Queensland Churches Together

BAKER, Reverend David, General Secretary, Queensland Churches Together

CHAIR: Good afternoon. Thank you for joining us. I invite you to make an opening statement of up to five minutes, after which committee members will have some questions for you.

Rev. Baker: Thank you very much. If I may, I might just make a couple of statements and pass over to Nick, he being much more professional in this space. I want to thank you for the opportunity to present today. Our opening comment is that it is apparent that civility in public spaces in our society is declining. Our media is awash with a lack of civility, so we do generally support this bill to set expectations in the public space. We are concerned, however, at the unintended consequences we believe will flow from this bill in terms of freedom of speech and freedom of expression of belief and faith. As it currently stands, we think there are parts of this bill that have the potential to shut down dialogue and robust conversation and could ultimately become counterproductive to the common good. We are concerned about some of the low bars in this bill that will create uncertainty and push a counterproductive resistance that will disturb the harmony of the multicultural, multifaith society we live in. We are supportive of the laws, but we think there are some changes that will avoid some large potential problems for our multicultural, multifaith and very diverse community.

Prof. Aroney: Professor Nicholas Aroney, University of Queensland, professor of constitutional law. Chair and committee, it is a pleasure to be here. Thank you for the opportunity to speak to you. I am just going to expand on what I understand to be the three main concerns being expressed by this group in relation to the bill. The central concern has to do with the definition of harassment on the basis of sex. This bill is seeking to implement the *Respect@Work* report, as I am sure the committee is aware. The focus of that report is on the very serious problem of the harassment of women in the workplace; however, the definitions that have been brought into the bill mean that the bill, if enacted, will go quite a long way beyond that report. That is the first and fundamental thing I would like to point out.

There are three particular concerns that flow from that: the first one is the definition of harassment on the basis of sex. In proposed section 120 the definition consists of three elements. I will make some remarks about each element. The first element refers to engaging in unwelcome conduct of a demeaning nature. These terms are not defined, but it seems to me they will likely be assessed from a subjective point of view. You will hear me say a few times in these brief remarks about whether an objective or subjective test is being applied or would be implemented. Unwelcome conduct and conduct of a demeaning nature are likely to be interpreted in a subjective manner.

The second element of the definition refers to conduct on the basis of particular protected attributes. One of them being introduced, which is not in the *Respect@Work* report, is a sex other than the person has been in the past. Of course this is a very delicate question. If the act defines the concept in that way, it is likely to extend to referring to other persons in a certain way such as by using gendered pronouns that might not be those preferred by the other person, which is sometimes called misgendering. In our society, as the committee would know, there are different views about sex and gender. Some believe that sex and gender, especially gender, are socially constructed and fluid. Others believe they are tied to physical or natal sex. The definition that is being proposed has the potential to effectively prescribe one approach and proscribe the other; in other words, prevent you from expressing pronouns as you wish freely. That is a very significant thing because we should always speak respectfully of other people, but where the policy of law would be to make it unlawful to do so is another matter again.

The third element of the definition goes to the consent of a reasonable person, and it describes conduct 'in circumstances where a reasonable person would have anticipated the possibility that the other person would be offended, humiliated or intimidated by the conduct'. This appears to impose an objective test because it refers to a reasonable person. It will not, in effect, supply an objective test because what is critical is not the reasonableness of the person but what is anticipated or can be reasonably anticipated about the other person being offended. Effectively, it will be a subjective test in practical effect.

Further, as the committee will see, the definition refers to the expression 'the possibility' that the person will be offended. It turns on a bare possibility and not any causal relationship to actual offence, let alone conduct that would be likely to produce offence. The submission is that a simple solution would be to remove the subjective elements and to ensure the law does not have the effect of making it unlawful to speak to people using a particular gendered pronoun and therefore avoiding that problem.

Further, the bill could be improved by the removal of the word 'offend'. That term is used only in a couple of other places in Australian law and those provisions are highly controversial. Senior judges of the Australian High Court have expressed severe and serious concerns about any laws that would render it unlawful to cause offence or to offend others. International human rights law is very careful to limit restrictions on the way people speak to conduct that positively incites individuals to discrimination, hostility or violence. In other words, incitement is a critical element in international human rights standards and the bill will not, in effect, do that. A further solution would be to add an exception that will make clear that harassment on the basis of sex will not include statements of belief, religious or otherwise, about the nature of sex and gender or the use of language in the ways that I have outlined.

The second problem, if the committee could bear with me, has to do with the positive duty to eliminate harassment on the basis of sex. The positive duty in the bill is to take reasonable and proportionate measures to eliminate harassment on the basis of sex, and the bill would also empower the Human Rights Commission to investigate and enforce compliance. These provisions, in my opinion, are open to the interpretation that an organisation must adjust its teaching and its practices concerning its beliefs about sexuality, sex and gender and that this might be tantamount to requiring an organisation to alter its beliefs and its teachings. It is very difficult to see that as being justified under the standards of international human rights law, where governments are simply not permitted to take actions that change people's beliefs. This can be solved, again I think simply, through a clarification that the positive duty does not prevent religious bodies and schools, or other bodies indeed, from teaching their beliefs or require them to promote values within their organisations that are inconsistent with their sincerely held beliefs.

Finally, the third problem concerns the proposed vilification provisions in section 124C. The bill would prohibit conduct that a reasonable person would consider hateful towards, reviling, seriously contemptuous or seriously ridiculing of other persons having particular protected attributes, and the bill defines a 'reasonable person' as a person who has the same age, gender or other protected attribute. While this appears to be, again, to adopt an objective test because it turns on a reasonable person, it narrows the reasonable person to a person having the particular protected attribute in question and not to reasonable persons in general, which is to introduce a test that depends upon a particular identity. While this is understandable, it has to be understood in the context of the concept of hateful conduct that the law would be targeting. Hateful conduct can be interpreted or understood from at least three different perspectives: the perspective of the person who engages in the conduct, the perspective of the person to whom the conduct is directed and the generic perspective of people generally.

Just as it would be one-sided to define hateful conduct by reference only to the perspective of the person who engages the conduct, it would also be one-sided to define it by reference only to the perspective of the person against whom the conduct is directed. That is why the law routinely adopts the reasonable person test, to seek to ensure that neither side in a dispute is favoured, to make sure that the law operates fairly and as objectively as possible.

Again, there would be two simple solutions. The first type would be to remove the subjective element by defining 'reasonable person' without attaching it to a particular identity and, further, to remove the bare reference to hatred which, of course, does not appear in the *Respect@Work* report either. The further solution is to clarify that the exceptions in sections 124C and D would apply not only to acts done for academic, artistic, scientific or research purposes but also for acts done for religious purposes in the context of religious discussion or instruction. I would respectfully draw the attention of the committee to a precedent for this in the New South Wales Anti-Discrimination Act, section 38S(2)(c), which does precisely that: provides for an exception for conduct by nature of a public act done reasonably and in good faith for academic, artistic, scientific, research or—and these are the key words—religious discussion or instruction purposes. Thank you, committee, for your time.

Mr KRAUSE: Professor, it sounds to me like you were concerned that the provisions may criminalise misgendering, as you termed it, and also perhaps infringe upon people's freedom of thought in respect of matters of gender. Is that a fair call?

Prof. Aroney: Yes, perhaps not criminalise but make unlawful.

Mr KRAUSE: Were you referring to section 18C of the Commonwealth Equal Opportunity Act?

Prof. Aroney: I was alluding to section 18C of the Racial Discrimination Act.

Mr KRAUSE: I am sorry; my mistake. I know that there has been a lot of discussion around that over the years and various cases about it. You have largely touched on concerns for religious people and organisations in respect of the introduction of the new prohibition on harassment on the basis of sex. Is there anything you have not told us already that you would like to add in that context?

Prof. Aroney: With the consent of the committee, I could make a comment on the comparator question if the committee would be interested in that?

Mr KRAUSE: Yes.

Prof. Aroney: I have followed the discussion and debate on that topic over recent years. It seems to me that, with all due respect, it has been misconceived because it seems to me that if you apply a test or lay down a test in law that is asking whether somebody treats a person in a certain way because of something, all of the meaning is in the 'because of'. It is not rationally possible to assess whether certain conduct is a consequence of something or is because of something without asking what would have been the case if that other thing had not been the case. In other words, inevitably and logically, it is unavoidable that a comparator in that abstract sense has to be engaged in the reasoning process. I emphasise that is an abstraction because it need not turn on identifying an actual person who falls into that category, but it is not conceptually viable or logical or rational to think that one can avoid that rational process of reasoning in comparing what would have been the case had something been the case or something else had been the case.

Mr KRAUSE: It was something that triggered in my mind when I was listening to the submission from Equality Australia. Professor, I want to ask about concerns you may have in respect of the ability of religious schools or institutions to comply with their positive duty obligations under this bill while conducting their activities.

Prof. Aroney: Introducing a positive duty is a major step, of course, because it can involve or will involve, one would expect, the Human Rights Commission in assessing these things and it would require organisations to undergo internal change. That is why I drew the attention of the committee to the question whether the law would have the practical effect of requiring organisations to, in fact, alter their beliefs. What I alluded to earlier is that in international human rights law, under article 18 of the International Covenant on Civil and Political Rights, what is made clear is that religious freedom per se is not an absolute right in the sense that one cannot simply say, 'I engage in certain conduct and it is religious and, therefore, you cannot prohibit it,' because certain conduct could be motivated religiously and nevertheless be subject to legal sanction. What the international covenant makes very clear is that belief—what people believe—cannot be touched at all by the law and by government. That is sacrosanct.

The way in which belief is attacked, as it were, historically nonetheless is by forcing people to engage in activities that amount to a repudiation of their belief. I do not know whether any committee members are aware of the book and the movie called *Silence*, which tells the story of the awful treatment of Catholic Christians in Japan several centuries ago. The way in which the believers were forced to recant their belief was that they were forced into undertaking acts that were sacrilegious as a way of forcing them to turn away from their beliefs. In my submission, therefore, laws that place positive duties on human beings to do certain things can be tantamount to, in fact, requiring them to act so contrary to their beliefs that it would involve a denial of their beliefs.

Ms BUSH: I grew up in a faith-based home. I have read the act and the submissions and I felt they were fairly consistent with those views of wanting to uphold the dignity and respect of others. I am a little curious about your contribution and what it is exactly that you want to be able to do that you feel you will not be able to do as a result of this bill?

Prof. Aroney: With all due respect, I have not been addressing what I want to do.

Ms BUSH: Or your members?

Prof. Aroney: I have just been addressing an analysis of the bill and what its legal effect would be for the persons it would affect.

Ms BUSH: So it would not have any material effect on your members, then?

Prof. Aroney: I do not know whether Reverend Baker wants to say anything.

Rev. Baker: My sense in reading the bill is that the effect would be—and I use the term—a sword of Damocles. That is, it would create an anxiety and a fear because of some of the low bars that are in the bill and the potential role of the Human Rights Commission. It would create a space where people of faith are not sure where they stand any longer in terms of being able to articulate their faith and their beliefs about the human being. We think some changes could be made in this bill, as Nick has alluded to, that could actually create more confidence for this society, which is multifaith and a highly diverse society. The phrases around the Human Rights Commission being able to assert these obligations that are articulated in the act do create a nervous environment for people of faith who live out beliefs that are consistent with their tradition and their story. The other issue is that some of the offences are such a low bar that they could be drawn into allegations of offending without intending to by simply stating what they believe about the human person.

Ms BUSH: Are you speaking in relation to sex and gender particularly?

Rev. Baker: Generally, yes.

Ms BUSH: If this bill is about capturing the essence of societal views and upholding those, is there not perhaps another way, which would be to look at maybe some changes within some of the churches around how they adapt?

Rev. Baker: It is not only Christian faith; it is quite a number of faiths. I would argue, too, that there are people in the scientific community who also hold views around sex and gender that are inconsistent with other people's views in this society. Our position would be that these views should be allowed to exist and robust dialogue around these views should be allowed, because we actually discover deeper truths together as a human community by that dialogue. We are concerned that some of the bars in this legislation are set so low that it will actually inhibit a free and open discussion about these matters.

CHAIR: That brings to a conclusion this part of the hearing. Thank you for your written submission and thank you for your attendance today.

DALTON, Ms Eloise, Director, Working Women Queensland, Basic Rights Queensland

SPALDING, Ms Penny, Special Project Officer, Basic Rights Queensland

CHAIR: Good afternoon. I invite you make an opening statement of up to five minutes, after which committee members will have some questions for you.

Ms Dalton: Thank you very much for the opportunity to come here this afternoon. We are pleased to speak to our submission and to the committee. Basic Rights Queensland is an incorporated, non-profit organisation and community legal centre. In the 2022-23 year, Basic Rights Queensland provided services to more than 3,500 Queenslanders in need. We provide advice, advocacy and legal services statewide for vulnerable and disadvantaged people, and we provide these in relation to matters involving social security, disability discrimination and mental health concerns. Basic Rights Queensland was formerly known as the Queensland Welfare League. The Working Women Queensland team merged in under the umbrella of Basic Rights Queensland in 2018 and it is part of Basic Rights Queensland.

Through our holistic and interdisciplinary approach, we have a team of solicitors, industrial advocates and social workers, and we provide information and support for vulnerable, non-unionised women in relation to employment related matters, including sexual harassment and discrimination. We triage our clients to ensure our services are directed to those most in need, and we are the only specialist service of our kind in Queensland.

Ms Spalding: We note, and it has been well established, that there is a dire need to modernise and make significant changes to the state's anti-discrimination legislation. BRQ and other key stakeholders have enthusiastically engaged in deep consultation in relation to the need and why, and there are clear and consistent concerns and recommendations in relation to this draft bill. We need to ensure some of those key recommendations from the *Building belonging* report by the Queensland Human Rights Commission are enacted and, by all indications, many of us engaged in that long consultation process thought that these much needed changes were imminent, especially in that they were included in the draft act.

We are deeply concerned about the potential of this bill to create a two-tier approach to anti-discrimination protections and processes in Queensland which is somewhat ironic, given the intent and purpose of our anti-discrimination legislation. We note the submissions from the associate professor at Bond's Faculty of Law, Dr Alice Taylor, and other key experts in discrimination law matters such as the Human Rights Commission and CLCs across Queensland, including Caxton Legal Centre, the LGBTI Legal Service, the Aboriginal and Torres Strait Islander Legal Service and ourselves. These are all services that are in the grip of the day-to-day work and practicality of this legislation, and they are working with the people this act seeks to protect, support and provide justice to. Many of these concerns are also shared across the community sector and workers, noting the submission made by QCOSS as well, and other community groups.

Today we wish to highlight these widely felt and deeply held views in relation to the notion of a person having more than one attribute, the notion that intersectionality exists, the complaint timeframes, the requirement for the hypothetical comparator and the creation of cost of duties. We will focus on those key elements in addition to a point about vilification. Within the phased approach that has been determined by the government now, it is our strong hope that the consistent and widely held concerns be considered by this committee and remedied in the bill.

Ms Dalton: Turning to more than one attribute, our submission highlights the need for the recognition of the intersectional nature of discrimination by recognising that discrimination can be based on more than one ground or combined grounds. There is wide acceptance that intersecting forms of discrimination and harassment are not currently recognised and acknowledged under the act and that this needs to change. The *Building belonging* report indicated that this was one of the most commonly raised issues. We note the following excerpt from the report was quoted by the Attorney-General when she introduced this bill in parliament—

> … the stigma, hurt, and harm caused by discrimination and sexual harassment can have severe consequences for individuals, particularly people with multiple protected attributes, who experience intersectional disadvantage. We know that the impact … is profound and not only devastates the individual …

We would echo that this is a common issue for our clients and things we see constantly. It is not clear when somebody comes to our service whether they were discriminated against on the basis of one or multiple grounds. We would recommend that the listing of attributes in this bill recognise discrimination on the basis of a combination of two or more attributes.

We are pleased that the bill introduces and addresses new protected attributes and does provide much needed updates to language and definitions. We suggest that it would be efficient to include the reform in relation to intersectionality in this bill. Inserting that small change would have a profoundly positive and real impact on some of the most vulnerable and in-need Queenslanders that we see.

Ms Spalding: I would like to talk to the need to remove the comparator. As highlighted in our submission, this is one of the most needed and potentially impactful reforms that is required for our act. Many stakeholders, as I have already said, share our view, especially the community legal centres. The *Building belonging* report indicated that this issue needed to be resolved to ensure the act was fit for purpose. We urge this committee to recommend that this be addressed in the first phase of implementation of the reforms, and this measure will provide a direct improvement to the application and practicality of discrimination law. It will positively impact all forms of direct discrimination and provide coverage then for all of the attributes that the act provides for.

The definition of 'less favourably' places the onus on the complainant to then additionally prove that they have been treated less favourably than another person without the same attributes. This additional hurdle creates too high a bar and it is the most vulnerable who are impacted and then do not have accessibility to the law. The phased-in approach has been determined and it is now our strong hope that this consistent and widely held view be considered and remedied in this bill.

Ms Dalton: Turning to the timeframes for making a complaint, while the expansion of the timeframe for making complaints from one year to two is very welcomed, at the moment only applying to an alleged contravention on the basis of sex in relation to a work related matter is too narrow and we believe that those timeframes for all complaints need to be expanded to two years. For our clients, there are so many barriers to them making complaints, and creating a confusing system with different timeframes will make matters worse for complainants, respondents and advocates. For complaints alleging sex related contraventions, workers should have the two-year period. This recognises that there are many other workplace internal processes that may influence and delay a decision to make a complaint, but we would say that that also extends to other forms of discrimination such as discrimination on the basis of race, age or impairment. We need clarity and confidence in this legislation and we believe that adopting the longer timeframe aligns with federal processes and gives that consistency and clarity for complainants and respondents alike. We call for that single time limit of two years for all attributes and all areas.

The introduction of a positive duty in this bill is, again, a very welcomed step in creating harmony between federal and state legislation. Many of our clients will benefit from the dual preventive and protective impacts of a positive duty. However, as with the timeframes for complaint, limiting this important measure in relation to a specific attribute in a specific area will create confusion and inconsistency, and it may well reduce the effectiveness of the proposed reforms. Given the intersectional nature of discrimination, a positive duty in relation to all areas and all attributes is something that we call for. It would provide consistency in the complaint process for complainants and respondents. It would also give clarity to the public. Education and understanding of these reforms are really pivotal in ensuring they are successful, and we think a consistent approach would be useful there, so we do welcome legislation that provides that clarity and hope the bill can extend the positive duty wider than it is currently.

Ms Spalding: In relation to the positive duty in religious organisations as employers, I would also like to make the point and draw the committee's attention to the submission made by the QIEU, the Queensland Independent Education Union. Having represented the teaching and other educational workers in this state in religious educational institutions for the last 100 years, I think they are well placed to make comment on this. Their submission included case notes that showed how that exemption is applied to not permit justice for workers who have experienced unfair workplace treatment, treatment that is not consistent with our National Employment Standards or the industrial relations employment standards in Queensland, but are able to do so, or the person does not have recourse, because of these exemptions. Those case studies include that people have had their employment terminated because they have become pregnant when not married or they have been removed from their employment because they have undertaken IVF. There was also the case highlighted by a deputy principal in a school who had his employment terminated because he was remarrying and his first marriage had not been annulled by the church. That does not align with community standards, and it is our concern and certainly the concern of the QIEU, which for 100 years has represented workers in these systems, that that exemption stops people being able to access commonly held and widely accepted workplace conditions.

I would like to now talk to our last point, and that is around our submission's request that sex work be included in the vilification laws. The recent decriminalisation of sex work in Queensland was a measure that gave greater protection and a safety framework for workers who undertake sex work—extremely vulnerable members of our society. When the Northern Territory decriminalised sex work, they immediately also included sex work in their discrimination and vilification laws.

The consideration of the additional vilification inquiry undertaken by this committee was undertaken prior to the Queensland Law Reform Commission's inquiry into the decriminalisation of sex work, so at that time sex work was still criminalised in Queensland. I note that Respect Inc. and other sex-work organisations have repeatedly called for the inclusion of sex work in these laws and do so again in their submission to this process. They are frequently exposed to prevalent underprotected forms of hate speech and online targeting of them in communities, and they report that individual workers are often targeted by outing them online and whole groups on social media are formed and crop up all the time with the intent of vilifying this group.

It has been unfortunate that the *Building belonging* report was not able to consider the vilification recommendations of sex workers because of the inquiry into sex work. This committee, when reviewing the vilification laws, was not able to consider it because sex work was not yet decriminalised. There is now a very vulnerable cohort of people who experience this form of public vilification. We do not accept it on the basis of people's religions or other attributes or faith and we should not accept vilification because of someone's employment. We believe that there is the opportunity for this government, now that sex work has been decriminalised, to now consider these recommendations from the *Building belonging* report to look at the new attributes and reconsider it. It has just been that that process has not allowed the timing of the due consideration and now would be an opportune time to do so. We are happy to take any questions on our submission or our presentation today.

CHAIR: We basically took up all of the time with your oral submission.

Ms BUSH: It was a good submission.

CHAIR: Yes.

Ms Dalton: We would be very happy to take any questions on notice, if that would be useful, and provide the information at a later time.

CHAIR: I think we will be okay, but it was a very fulsome—

Ms Spalding: Sorry—sorry, not sorry.

CHAIR: It was very fulsome and also we have your written submission. You are right: if anything comes up when we are doing our deliberations, the secretariat can shoot you off an email.

Ms Dalton: Thank you very much.

CHAIR: Thank you for your attendance.

Ms Spalding: Thank you. We appreciate it.

BOL, Mr Beny OAM, President, Queensland African Communities Council

CALDERA, Ms Amandhi, Youth Mentor and Administration Officer, Queensland African Communities Council

GEBREMEDHIN, Mr Girmay, Community Relations Officer, Queensland African Communities Council

JATO, Mr Denis, Acting Program Coordinator, African Youth Support Council, Queensland African Communities Council

OKOTH, Mr Samoko Jayo, Cultural Lore Elder, Queensland African Communities Council

TSHIBANGU, Ms Belleange, Vice-President, Queensland African Communities Council

CHAIR: I welcome representatives from the Queensland African Communities Council. You were here for part of what happened previously. We always offer people making submissions five minutes, but some people do not seem to hear the five-minute part and the last submitters spoke for their full 20 minutes. How you want to manage it, Beny, is up to you, but if you would like the committee to be able to ask you questions I just want to foreshadow that. I will not limit you. I invite you to make an opening statement of up to five minutes, after which committee members will have some questions for you.

Mr Bol: Thank you, Chair and members of this committee, for the opportunity to appear before you today in relation to our submission to the Respect at Work and Other Matters Amendment Bill. This legislative reform sits at the heart of everything we aspire to be in the 21st century. We believe that it is about the core and universal values that we all share as human beings—dignity, respect and inclusion. Our aspirations as a society are not enough if we do not take the necessary steps to establish and build policy and legal mechanisms that effectively underpin the very institutions and systems that shape our lives every day so we can live in a dignified, respectful and inclusive society. This requires leadership—leadership that is driven by passion, compassion, courage, vision and, at times, sacrifices for the sake of a better future for all of us.

People like myself are here today before you in Australia with the rare opportunity to express my views freely, work hard to realise our aspirations and potential for a second chance in life that would have been impossible in the places where we came from because of the lack of leadership and failure of institutions of governance. The founding leaders of this part of the world have made that possible for me and others through the creation of democratic institutions, but these institutions require ongoing improvement in order to accommodate growing and inevitable complex diversity that equally comes with complex policy challenges and requires different perspectives and skills from all of us to make things better.

The simple changes we are asking today from you, the government and the parliament, to improve this bill are about dignity, inclusion and respect for all in a manner that improves our lives, and our institutions and systems are equally ready to embrace the diversity that we bring to our way of life. We are asking that the bill be improved to include the protection of all of the other defined attributes in the *Building belonging* report 2022 by the Queensland Human Rights Commission. We are also asking for inquiry powers of the commission to address the systemic and structural discrimination and racism in the workplace; change the test for both indirect and direct discrimination in workplaces in order to effectively tackle systemic racism and discrimination; make it easier to prove systemic and structural discrimination and racism in the workplace; and mandate some minimum diversity in terms of the threshold in executive roles across organisations and agencies that the government funds to deliver critical social and other services to multicultural communities to ensure a power balance on the table where decisions are made and resources allocated to support and empower diverse, vulnerable and newly emerging Australians. Thank you.

CHAIR: Thank you, Beny.

Mr BOOTHMAN: I was looking at the fourth page of your submission to the committee where you talk about reducing the burden on individual complaints to address systemic racial discrimination. Can you highlight what you perceive the burdens would be? Can you explain that to the committee?

Mr Bol: The burden would be to ask the person to provide all of the necessary evidence, witnesses, place and everything. If we can make sure the positive duty also covers race then there is the potential that we would be in a position where employers will take the preventive or proactive measures that that would have to prevent the individual from having to go through all of the painful processes to prove that discrimination has taken place.

Mr BOOTHMAN: Okay.

CHAIR: Beny, do you think it is possible that the positive duty obligations could be expanded beyond the workplace?

Mr Bol: Yes, basically we believe that is possible, but I would suggest focusing on the workplace because for the newly emerging communities such as the African community and other multicultural communities economic empowerment is so important. The opportunity for people to realise their potential without any barriers is great in addressing all of the other issues that we face in society. If we are going to have an inclusive and fairer society, economic empowerment is so important, but at the moment it is hard to see someone from a certain minority making their way to a position of leadership, unless you are very lucky to have someone in a position of leadership that believes in you and builds you up. I have seen that across Australia, where very few stories of success from certain backgrounds can easily be linked to a very decent leader in that organisation believing in you to not only give you the opportunity but also empower you and give you the resources you need to succeed in your role. Other than that, it is so hard to see people making their way, despite all of their qualifications and experiences.

Ms BUSH: Thank you for coming along. One of your recommendations is around the test around direct and indirect discrimination. Others have mentioned changing the threshold of that to reflect the words 'less favourably' rather than that comparator test. Is that something you would also recommend?

Mr Bol: We support that.

Ms BUSH: With regard to your first recommendation around enabling the QHRC to look at more systemic issues, some other submitters have spoken about the need for the Human Rights Commission to be able to publish some of their findings on some of their inquiries and reports. Is that something that you think would assist in creating that greater transparency and broader systemic recommendations?

Mr Bol: I support that. The first thing is to broaden the attributes and most importantly include race. The other thing I would like to say—and I mentioned it somewhere there—is that we tend as a society to talk a lot about speaking against discrimination and racism, but nobody actually talks about responsibility. Who is responsible for that? If we do not find institutions or individuals taking responsibility then there will be no accountability and nothing will change.

For me as a leader and as a person, I do believe every single person in the position of leadership across different sectors has a prime responsibility in addressing systemic discrimination and racism. That is why this bill can create that unique opportunity to empower people across different sectors. I am not talking about just the public institutions; this includes the community sector and the private sector as well to make sure people are empowered.

At the moment you find that the better person who could potentially address the issue, who could passionately talk about addressing racism or discrimination or talk about inclusion, does not know they are actually responsible. They think that responsibility belongs to the government or the public sector, but any person in the position of leadership has the responsibility to change this, and that is what we are asking for.

Ms BUSH: Part of this bill places a positive obligation on employers to do more to resolve and stamp out systemic vilification. I assume you are supportive of those aspects and perhaps—I think you say it in here—you think that should go further, to other leadership positions? Are you happy with those aspects of the bill?

Mr Bol: I am happy with those. I spent a significant amount of time working with the Queensland Human Rights Commission going through all of those processes. My biggest worry was to look at the bill and then the positive duty did not include the rest. That was my initial reaction and I support everything else.

Ms BUSH: Thank you. I understand. Thank you for all your work, Beny.

CHAIR: Could you expand on what you just said for the committee, please?

Mr Bol: About the positive duty?

CHAIR: Yes, that it did not extend to race.

Mr Bol: When I first looked at the bill I could see that the positive duty in terms of workplace discrimination only covers sex; it does not include race. Our initial reaction was to make sure that discrimination in the workplace in terms of positive duty also includes race.

CHAIR: Do I understand from your submission that is a suggested amendment to the legislation?

Mr Bol: Yes, and it would be a very simple amendment. It does not require a lot of work to include that. It is just a matter of including race under that. There would then be the same powers or functions that are being asked of the Queensland Human Rights Commission. We support all of them.

CHAIR: We are back on track in terms of time. Does anyone have any questions for the panel before we move on? Do you have your opening statement in writing?

Mr Bol: Yes, I can hand it over to you.

CHAIR: Do you mind providing that to Emma or Hansard?

Mr Bol: Yes, I will do that.

CHAIR: We have two minutes remaining. Is there anything else that anyone wants to add before we close?

Mr Bol: Maybe we will ask our youth team to add something.

Ms Tshibangu: I have been working with QACC for the past two years and was previously the program coordinator. I am very pleased to be given this opportunity to even voice these concerns and bring up submissions that will potentially—and I am hoping—make it into legislation. During my time working with these young people I have seen countless moments where discrimination based on race has been very evident but has not been seen or portrayed as such in detention centres when young people have been forced to move detention centres based purely on their appearance. When looking into detecting or eliminating other potential reasons they were moved, there has been nothing else apart from it being their appearance or skin colour and association with aggression.

In recent research that we have taken the liberty to conduct, with the support of various universities and research, we have identified that 100 per cent—and I will get Denis to explain a little bit—of students and parents have experienced racism through the education system. That is not captured in any other research that we have come across, and 100 per cent in any type of research is unheard of and very much should concern everybody in this room.

Mr Jato: The research had significant findings. Like Beny said, there is a need for responsibility so we can hold people accountable for certain things that happen. As a community we are working. We have already seen where we have a role to play as an African community with our children and schools particularly. We are hoping that if all of us take hold and vote in this whole struggle it will contribute to reducing disengagement, which is what has been making our young people engage in issues that are not acceptable by law. We are looking forward to the changes in this bill that could help us make a better society.

CHAIR: Thank you for coming along. There is one positive thing that I want to express to the panel. Beny spoke and answered a lot of the questions, but I hope he helped you understand this is not such a bad forum to come along and contribute to. It was quite inventive of you, Beny, to bring everybody along to show them how the committee system works in the Queensland parliament. Thank you for coming along. I know that not all of you had a chance to address us. You are very welcome at any time to make any submissions. It does not necessarily have to be on any particular bill. Always feel that you can contribute. Thank you for your evidence today and thank you for your written submission.

CASTLEY, Ms Christine, Chief Executive Officer, Multicultural Australia

IYER, Ms Kalpalata, Research and Advocacy Manager, Multicultural Australia

CHAIR: Thank you for joining us. Would you like to make an opening statement of up to five minutes? Then the committee will have some questions for you.

Ms Castley: Thank you very much for the opportunity to provide a submission to this important hearing and inquiry. Multicultural Australia is committed to creating welcome, inclusion and belonging for all. We do this through client service delivery, employment programs, community development programs, advocacy, cultural capability training including in workplaces, and community events to create social cohesion and connection. We work with individuals, families, communities, business and government.

Our active engagement in community across Queensland in metropolitan, regional and rural communities means that we are acutely aware of the key pressures and issues, including racism and discrimination, facing local communities, especially culturally diverse communities. We actively engaged in the review and consultation processes around Queensland's Anti-Discrimination Act 1991 leading to the *Building belonging* report. The committee will also recall that we were strong advocates for amendments to the Criminal Code to strengthen protections around serious vilification and hate crimes. Our priority is to ensure the strongest possible legal protections to ensure every person in Queensland is able to live safely and peacefully as our community continues to grow ever more diverse.

Our commitment to engage in these processes is motivated by what we see as the very real experiences of discrimination, racism, vilification or violence faced by many of the clients and communities we come into contact with on a day-to-day basis. These experiences of discrimination, racism and harassment can be in workplaces including through difficulties in securing or retaining employment, or racist attitudes from managers, co-workers or clients. They can be in public spaces, where many of our people experience name-calling, physical violence or racist graffiti; in the media, particularly social media, and other forms of public communication; and also in accessing services, for example, discrimination in the housing and rental market or in schools, with racism and bullying by peers.

The processes to seek recourse against acts of discrimination are not easy to navigate for many people. Most community members tell us that these can be overly intimidating, formal and complex and there is genuine fear and apprehension in lodging complaints. A lack of knowledge and inconsistency around availability of supports, including translator and interpreter services, to assist in this process makes it harder.

Multicultural Australia welcomes the bill's intent to eliminate discrimination, sexual harassment, vilification and victimisation. We particularly support the clauses which introduce expanded and modernised protected attributes, including expanding the definition of 'race' to include immigration or migration stratus; the improved protections against vilification to include both an incitement and a harm-based test; and the introduction of a new positive duty to prevent discrimination before it happens.

We would like to be clear that we support the passage of the bill but we would also like to express our concern that the bill is more limited in scope than the consultation draft anti-discrimination bill 2024, released earlier this year, which would have much more comprehensively implemented the Queensland Human Rights Commission's *Building belonging* recommendation. Although this bill implements important reforms, it also represents a missed opportunity to implement a holistic modernisation of Queensland's anti-discrimination legislation.

Our concerns around the bill include the following. Firstly, this bill introduces inconsistencies into the Anti-Discrimination Act as it is focused only on sex-based contraventions at work, over and above other protected attributes. We are concerned this has the potential to undermine the benefits of the current Queensland Anti-Discrimination Act, which consolidates all protected attributes in the one piece of legislation, in contrast with, for example, federal anti-discrimination laws, which are currently segregated by attribute. We note that the *Respect@Work* report strongly emphasised the intersectional nature of workplace sexual harassment. It is often the case that a course of conduct in the workplace will include a combination of sexual harassment with other unlawful treatment, for example race, faith, gender, sexuality or ability. For many migrant women these forms cannot be separated, but the effect of the bill is to create a separation of protections. One very real practical implication is that the processes for complaints are made less clear by the introduction of different time limits for different attributes in different circumstances.

We support the amendments in the bill that provide a time limit of two years to make a complaint if a contravention relates to a sex-based work related matter; however a one-year time limit remains for other attributes. This inconsistency is likely to cause confusion and frustration for complainants and the complaint body, particularly in instances where conduct or an allegation involves, for example, both sex discrimination and another form of discrimination—for example, if it is both racist and sexist. On this, we support the Queensland Human Rights Commission's recommendation to this inquiry to amend clause 29 of the bill so it changes the wording of the current section 138 to allow a person to make a complaint within two years of the alleged contravention of the act for any of the protected attributes under the act.

The further issue relates to clause 25 of the bill, which we strongly support as an important reform to impose a positive duty on persons to eliminate discrimination and sexual harassment. This is preventive and allows for systemic improvements. Again, for consistency and equality of protection, we support expanding the duty to include all of the attributes.

The regulatory mechanisms to support compliance with the positive duty are also important, but we think the bill dilutes recommendations from the *Building belonging* report in relation to the full suite of tools that should be given to the commission to support compliance. In particular, it omits giving the Queensland Human Rights Commission express power to conduct voluntary reviews and provide advice to duty holders on action plans, which undermines the opportunity for a responsive regulatory framework. It also does not expressly allow the commission to publish a report about investigations into compliance with the positive duty, despite this being allowed for sex contravention investigations.

We also note and support a number of submissions advocating for amendments to the definitions of direct and indirect discrimination to provide clarity and bring them in line with definitions in the Commonwealth and other states and territories. In this respect we support the very practical amendments proposed in Equality Australia's submission.

Finally, the availability of the protections sought by the bill need scaffolding and community support for success. We ask that the committee consider a clear recommendation to government to ensure sufficient effort and resources are allocated to support the successful implementation of the bill, increase community awareness and educate individuals and organisations so they understand their responsibilities and rights under the law.

I conclude by emphasising that the legislative reforms introduced by this bill are important and we hope the committee will recommend the bill be passed, albeit with some amendments. We note that, while government supported in principle all recommendations of the *Building belonging* report, the bill effectively implements 14 of the 46 recommendations from that report. This is a measure of the work that still needs to be done. It can be done without too much further delay because there has already been extensive consultation on the recommendations in the *Building belonging* report and the subsequent draft bill that was released for public consultation earlier this year. I am happy to take any questions on this submission or our submission to the inquiry.

Mr KRAUSE: I do not have any questions. Thank you for your submission and your opening statement.

Ms BUSH: A lot of what you have provided is commensurate with the submissions of others. I will just summarise those. A lot of submitters have given us feedback around the simplification of the timeframes of complaints, expanding them all to two years. People have spoken about the need to have QHRC able to publish their reports and make recommendations based on that, so I think that has been captured. You have agreed as well with the expunged convictions submissions and including sex work as a protected attribute now that it is decriminalised. I note there are also other tranches of this work coming through. Is it your view that could fit within this particular bill at this point?

Ms Castley: It should have been. There was a draft bill released, so the drafting is there. We note that the Attorney-General indicated on introduction that it would be subject to further consultation. Our view is that there has already been extensive consultation and that adequate work has already been done for policy decisions to be made to inform the legislation. We certainly would not want this bill to be held up. We emphasise again that we think these reforms are important and the bill should be recommended for passage, but we note the importance of that next stage progressing because the consultation work has been done and, quite simply, decisions need to be done to progress the work.

Ms BUSH: I think the amendments to the definitions of direct and indirect have been fairly well captured today.

Ms Castley: Yes.

Ms BUSH: Can you help me understand the intersectionality issue? Some submissions seem to indicate it is captured, or it was at one point but it has been removed. Does it stand as a definition in this bill?

Ms Castley: I think the concern is about the sex attribute being the only one that has been the subject of workplace harassment and then the positive duty, which we think creates confusion in the process. I would just reiterate my earlier point: you will often get courses of conduct that will have more than one dimension, so a person who seeks recourse to go and make a complaint will, if there is more than one attribute—for example, on the basis of your sex but also your race or another one of the attributes which is not captured by workplace protections—almost have to go down a path of different avenues. It could also cause difficulties for whichever complaint body is dealing with it in terms of trying to understand or navigate how to deal with it. We are saying that your intersectional attributes cannot be separated for you as an individual when, if you are seeking recourse, the bill actually separates those attributes and causes you to go down different pathways. We would also argue that including all of the attributes in the positive duty, as well as in the respect at work protections, actually would make it easier for employers and workplaces to comply with the legislation because it would create consistency within the act. This creates internal inconsistencies within the act in terms of treating certain attributes differently from others.

Ms BUSH: I understand. Thank you, that is very clear. My mind is trying to think about what a solution would be. Would it be that you would expand and include all of the protected attributes—

Ms Castley: That is right.

Ms BUSH:—under the positive obligation under—

Ms Castley: Correct. That is right. That would be consistent with what was in the draft bill—

Ms BUSH: Under chapter 5.

Ms Castley: That is right, the chapter 5 amendments. It would make it simpler for employers as well to know what they have a positive duty in relation to. I also want to emphasise the point we make around the regulatory mechanisms that are given to the Human Rights Commission around voluntary reviews and actions. I would say that we are an advocate for multicultural communities, but I am also an employer. In order for me to comply with legislation, we will often seek to actively proactively engage with regulators in terms of agreeing to voluntary reviews because we want to seek continuous improvement and fix those issues before they become a strict compliance or enforcement issue, so it opens up the avenues for the process to work much better for all of the parties this legislation applies to.

Ms BUSH: My mind is doing that thing where it recognises there is more work coming on this, but we do not want to create a bill that will create confusion for the sector. Where do you think that sits currently?

Ms Castley: We think the way the bill is drafted actually takes a significant step forward in terms of introducing protections, and that is why we have been quite explicit in saying that we hope the committee will recommend that the bill be passed. Side by side with that, we also just want to say that the work has been done. There does not need to be significant delay. There in fact is an urgency to make sure we continue on this path to reform, to ensure the legislation has the best possible impact and is implemented in the best possible way going forward.

CHAIR: Christine, you were here when Beny was talking about how the bill seems to only deal with one aspect; it does not deal with race. Are you able to comment on that?

Ms Castley: I think that is consistent with what we are saying. Beny specifically spoke about the attribute of race. The attribute of race, of course, is a really important piece, but within the remit of the act there is a list of positive attributes that are defined, and these protections—the positive duty and the right for recourse for harassment at work—should apply to all of those attributes which are already defined and identified in the act.

CHAIR: So it is not necessary to make a specific amendment, as Beny was asking, to reflect there is that attribute of race?

Ms Castley: Race is one of the protected attributes, but it is not there right in the bill in terms of the positive duty and expansion in terms of harassment at work. It only applies in relation to sex. The scope of the act currently has a number of protected attributes. These amendments are taking it one step forward in terms of sexual harassment at work. We are saying that those protections apply equally not only to other attributes that are already identified in the act, including race, but also to all of those other attributes which the bill already has in this space. We also welcome the amendments because

the bill does also improve the definitions of protected attributes to modernise the provisions in the act. That is very welcome and an important step forward. I think what Beny was talking about, which we do support, is including those other attributes. He mentioned race specifically. Race is one of those attributes that is already in other parts of the act. We are talking about simply making the act internally consistent.

CHAIR: By including it.

Ms Castley: In these new protections in chapter 5, yes.

Mr KRAUSE: Were you consulted specifically about this bill by the government?

Ms Castley: Not specifically. Obviously there was a draft bill that was put out earlier this year as a broader part in which we engaged. During the *Building belonging* report we also engaged with the Queensland Human Rights Commission as part of that review process.

Mr KRAUSE: Not this bill?

Ms Castley: Not as far as we are aware, no—the previous version, yes.

Mr KRAUSE: The previous version?

Ms Castley: The broader version that was released in February or March, the anti-discrimination draft bill.

CHAIR: Talking about the actual sections of the act, Jonty just pointed out to me that we do not specifically need to say race; we just need to identify all of the other attributes.

Ms Castley: Currently where it talks about sex as the attribute which has the protection, you simply say 'the protected attributes under this act'.

CHAIR: Thank you for your written submissions and coming along today to give evidence. We are just going to take a short adjournment for about five minutes before we move on to the next witness.

KAISER, Mr Joey, Coordinator (Campaigns and Strategy), Australian Workers' Union of Employees, Queensland

SCHINNERL, Ms Stacey, Secretary, Australian Workers' Union of Employees, Queensland

SEARLE, Ms Emily, Campaigns Officer, Australian Workers' Union of Employees, Queensland

CHAIR: Welcome. Thank you for joining us. I invite you to make an opening statement of up to five minutes, after which committee members will have some questions for you.

Ms Schinnerl: Thank you, Chair and committee members. I am here today because the AWEQ represents nearly 20,000 workers in various industries across the public and private sectors. Among our membership are thousands of workers in Queensland's public hospitals. Those workers work in a variety of roles, including as security officers, wardspeople, cleaners, food services workers, groundspeople, mental health nurses, clinical assistants—and the list goes on. Those workers are subject to incredibly high levels of violence in the workplace. Recent data provided by Queensland Health to the *Courier-Mail* in May suggests that Queensland Health is on track to record over 45 assaults on hospital staff per day in the 2023-24 financial year. That data also showed that violence in our hospitals is escalating, with some hospital and health services on track for increases of up to 50 per cent in workplace assaults compared to the previous financial year. The violence that our frontline health staff are facing ranges from verbal abuse, punching, kicking and spitting to deliberate exposure to hepatitis and other infectious diseases and stabbing with knives and other improvised weapons.

In the context of this significant violence, I begin this submission by saying that the AWUEQ supports the introduction of an aggravation in the Penalties and Sentences Act for perpetrators who commit violence against a person in their workplace. Every worker deserves to come home at the end of their shift the same way they started it, and every worker is entitled to be safe at work. We believe that this new aggravation will help deter instances of violence across every industry and workplace in both the public and private sectors. We congratulate the SDA and their members for their successful advocacy in this space over many years.

While it is wholly appropriate to introduce this aggravation, we believe that the government could go a step further and introduce amendments to the Criminal Code 1899 to clarify the scope of the crime of serious assault and its application to Queensland Health security officers and other operational staff within the hospital and health services. Like all health staff, Queensland Health operational staff, such as security officers, cleaners, wardspeople, food services officers and the like, are exposed to an inordinately high amount of occupational violence. Section 340 of the code provides for a crime of serious assault against offenders who assault public officers while that officer is performing a function of their office. This section acts as a powerful deterrent against assaulting certain public servants whilst they are engaged in the course of their duties. As it is currently written, the section contains some very specific provisions and examples relating to police officers, child safety officers, correctional officers and employees of the Queensland Ambulance Service.

In Queensland Health workforces and the department more generally, there has long been confusion about whether or not assaults perpetrated against certain employees are covered by section 340 of the code. We believe that this confusion stems from a very high rate of assault in the workplace and very few charges of serious assaults are being laid on perpetrators who commit that violence against staff. Those workers are directly hired Queensland Health employees who are health service employees under the Hospital and Health Boards Act 2011, which is included in the definition of 'public officer' as it relates to the crime of serious assault under section 340. The under-utilisation of this section as it relates to operational workers employed by Queensland Health would indicate that the current wording of the section does not clearly capture those workers, despite the incredibly high prevalence of violence in the workplace. We believe that this is leading to police opting to not utilise the section to charge offenders despite constant cases of assault that would appear to meet the requirements of serious assault under the code.

The AWUEQ is unapologetic in the belief that offenders who perpetrate violence against public servants in the course of their duty should face the full extent of the law and that the current rate of violence in our public hospitals is an embarrassment on our society and requires serious action. The AWUEQ submits that the bill should be amended to clarify the scope of section 340 of the code to make it clear that the crime of serious assault extends to offenders who assault Queensland Health operational workers who are assaulted while they are performing their duties. In our view, most people

accept that clinicians are being captured by section 340 and are recognised as health service employees. However, operational staff, for one reason or another, are more often than not viewed very differently. I am going to leave my comments around the Criminal Code and move to some very general comments around the sentencing component.

With regard to the anti-discrimination element, the AWUEQ is broadly supportive of the measures being introduced by the government. We believe that no worker should suffer harm or injury as a direct result of their job, especially when the harm or injury is being occasioned on a worker with malicious intent due to the immutable characteristic that that worker holds. However, we do believe that these amendments need to be backed up with clear guidelines for three broad areas: a definition of sexual harassment, some guidelines that deal with the gathering of evidence and also some guidelines around the making of decisions regarding the standard of proof in any given situation.

Many workplaces struggle with how to recognise sexual harassment, and the evidence required for a balance of probabilities decision can lead to confusion and uncertainty in addressing workplace sexual harassment claims. Some potential strategies to achieve this are contained within our submission to the committee. On that basis, I am going to leave my comments at that, Chair and committee. We are happy to take questions.

Mr BOOTHMAN: Stacey, you certainly make very good points when it comes to safe workplaces for our health workers. You talked about workplaces struggling to recognise sexual harassment. In your submission the AWU states that we should 'ensure that investigators conducting sexual harassment investigations are trained to recognise the complexities'. What do you feel that training should entail for those investigators?

Ms Schinnerl: Until we resolve some of the guidelines on which they should be focusing, it is a bit difficult to really talk to what the training should involve. However, what is abundantly clear through our experience with some of the more inexperienced investigators is that they do not truly understand what sexual harassment is. If you cannot identify it or clearly identify it or rely on some criteria, it is really difficult for both the alleged perpetrator and the victim to work through the issues. In the absence of guidelines, which will hopefully come out of this legislation, it is really challenging to see how victims will be appropriately protected as well as the course of natural justice rolled out. Once these guidelines are clear and the legislation is resolved, I can see a very easy scenario where those investigating these matters can be well equipped to make sure everyone is well looked after throughout the course of these investigations.

Mr BOOTHMAN: In your position, do you see more employers becoming a lot more aware of what is going on in workplaces to curtail potential sexual harassment? Do you feel that people are getting better at dealing with it or is it still stagnating, which is why the investigators need to be trained?

Ms Schinnerl: We are having varying experiences. A lot of the time it depends on the size of the business that we are dealing with as well. Quite often, smaller operators are ill equipped in terms of having the right people in place or the right resources to deal with these issues. I think there is a general societal shift and awareness that these types of issues are at the forefront of a lot of people's minds. I still think there is a problem with employers being able to understand how to tackle them. I think there is a general acknowledgement that there is an obligation to protect workers in this regard, but I am not always seeing, particularly with those smaller employers, the ability to deal with it.

Mr BOOTHMAN: How would you envisage a smaller employer being able to deal with it? What would your suggestion be?

Ms Schinnerl: I think there needs to be a broad, sweeping educational piece that can be rolled out at the state level. I am not necessarily laying responsibility for that on any one government department, for example. However, in order for employers to uphold their legal requirements to keep workers safe at work—and this is also linked to their general requirements under the Work Health and Safety Act—I think the educational programs need to absolutely be stepped up.

Mr HUNT: I have a quick question. I suspect I might know the answer but I would like to give you the chance to ventilate a little further. With regard to workplace violence, what difficulties do you have with the idea of leaving things up to judicial discretion?

Ms Schinnerl: Sometimes we do not even get that far, truthfully—particularly insofar as it relates to our members who are experiencing occupational violence in Queensland Health. We are not even getting to the judiciary, because these workers are not afforded the ability to lay charges because they do not know they can. So much of this in terms of resolution will also be an educational piece on behalf of Queensland Health.

The difficulty when we are dealing with Queensland Health as an employer is that the issue of workplace health and safety is siloed to individual HHSs. There is the absence of an overarching responsibility driven by the corporate office. When we are talking about specifically occupational violence in Queensland Health, I think the frustration from our perspective is that section 340 is there to protect these workers now. What is not there is a broad awareness that that is available to workers who are the victim of occupational violence.

More generally, when we are talking about clinicians and frontline health workers, it is very easy to naturally think of doctors and nurses, but people do not often think about the security officers or the kitchen staff who go to a room to deliver a meal who are subject to occupational violence. Again, the educational piece that goes with this is so significant. I would like to say that I have frustrations with the judicial element but we just do not get that far.

Mr HUNT: Sometimes you have frustration with the outcome if it gets as far as the judiciary but often it will not even meet that threshold and it will not even get to the judiciary?

Ms Schinnerl: No. I had a conversation with Queensland Health because at the end of the day we were getting conflicting advice from the department itself. Parts of the department were saying section 340 applies to the entire workforce and others were saying, 'No, it does not.' When I put to Queensland Health, 'Do you have any examples of any recent cases where you believe section 340 has been enlivened for any of the instances of occupational violence?' they could not recall any matters that made it that far.

Mr HUNT: That was my next question. Do your members, even those who are aware, have confidence in the process?

Ms Schinnerl: No, I do not believe so. That is why we need the clarification in section 340—that it is clear and that it does apply to these workers. Keep in mind, too, that when we are talking about instances of occupational violence in the state's hospitals quite often you will have a number of classifications of workers involved in a single violent incident. Not only will you have the doctor and the nurse, and potentially members of the public; you will have the security officer and maybe a wardie. Again, we seem to recognise that doctors and nurses are protected, but there are a significant number of other workers who support the health system who simply do not receive that automatic recognition.

CHAIR: That brings our time to a conclusion. There were no questions taken on notice. Thank you for your written submission and thank you for your attendance today.

POWER, Mr Justin, Secretary, Shop, Distributive and Allied Employees Association, Queensland Branch

CHAIR: Thank you for joining us. I invite you to make an opening statement of up to five minutes, after which committee members will have questions for you.

Mr Power: I come to speak today specifically in relation to the proposed changes to the Queensland Penalties and Sentences Act 1992 which are contained within the bill and to support those measures. The SDA in Queensland has strongly supported the proposed changes to section 9 where the presumption of aggravation is imposed when a physical act or offence of assault is against a person whilst performing their role at work.

In 2016 the SDA began the 'No One Deserves a Serve' campaign to raise awareness of the abuse of retail and fast-food workers by some customers. Very sadly, at the time many retail workers thought being abused was just a part of working in those industries, with the 'customer is always right' mentality. If you ask most Australian parents whether it is all right for their children to be abused by customers when their children are working in retail, the answer is of course going to be, 'No, it is not acceptable.'

During the pandemic our members and those workers determined to be essential workers—essential to making sure Queenslanders were fed; essential to making sure Queenslanders had basic sanitary, medical and equipment supplies such as masks, hand sanitiser and toilet paper—were essential to keeping Queenslanders supplied and supported which in turn helped maintain good public order in some very challenging circumstances. Retail workers were stoic in their continued engagement and service to the public during the rapid spread of a virulent communicable virus where the more you were exposed to the public the more you were likely to contract it.

Post the pandemic, in 2023 we surveyed SDA members nationally regarding customer abuse. Some 4,600 members responded—the largest response rate we have ever had—58 per cent having experienced abuse in the last 12 months. Eighty-nine per cent said they had been verbally attacked and almost 10 per cent had experienced a combination of verbal and physical abuse or assault. We then compared those results to our 2021 survey. Whilst some forms of abuse were static in their levels and some were shown to have declined levels of physical abuse, assault had increased from eight per cent of respondents in 2021 to 12.5 per cent of respondents and retail workers in the 2023 survey.

In recent years the SDA has received hundreds of calls by members—in particular, in relation to being threatened with or actually physically assaulted; being verbally abused during the pandemic by customers for enforcing public health directives; being abused when doing bag checks or security checks; being abused when stock or operational issues which they have no control over arise, including not enough registers or registers being closed; being threatened with or actually assaulted by spitting or coughing from customers; and being repeatedly harassed, either verbally or physically, by specific customers to the point that some employees have sought transfers to other locations rather than remaining where a repeat offender continues to abuse them in their workplace.

A 19-year-old worker was violently attacked in Woolworths at Clifford Gardens in Toowoomba. That made the media. The incident occurred in front of other customers, who looked on in horror as the young worker struggled with the abusive customer. Whilst it is unclear what prompted the incident, it suggested that the worker had requested the customer to vacate the store moments prior to the incident. The incident is now a matter of police investigation, but the reality is that there was a young worker placed at risk partly because there was not sufficient disincentive for the member of the public to rethink their act of violence before they perpetrated it.

Further, last year a retail supermarket worker was stabbed while they stocked shelves in the pet food aisle in a store in Perth. A woman was restrained and escorted from a Darwin Woolworths after allegedly verbally abusing and lunging at staff. An Alice Springs store was locked down after a young boy entered wielding a machete. At a local supermarket, which is quite literally just around the corner from our offices, a number of staff members were threatened with violence by a customer. That customer then waited just outside of the workplace for one of those staff members to finish their work for the day and leave and then assaulted them, beating them quite badly and leaving them with a number of broken ribs.

Anything that will serve as a disincentive from abusing retail and fast-food staff and anything that will make a member of the public think twice before assaulting a check-out operator or taking out their frustrations on a shelf filler is a welcome piece of legislation. Our specific support for the bill is to support retail and fast-food workers, but to the extent that the proposed legislation in this bill will help protect

all employees and workers in their workplace we are equally supportive of that. All workers—and I think this builds on the comments from the previous speaker—deserve the right to go to work, serve the public and feel safe while they do it and go home in one piece.

We and our members do not seek to have significant numbers of customers incarcerated—in fact, we hope that none are—but we seek to have them behave and to think twice before they abuse a worker. Nor are we naive that, if they cannot control themselves and do assault a retail worker, or any worker for that matter, just trying to serve the public and feed their own family, then perhaps they do need a little time thinking about their behaviour at the government's pleasure.

In summary, the SDA Queensland branch supports the changes to the Penalties and Sentences Act contained within the bill. Also, although it is not contained within the scope of this bill, we are equally supportive of the government's extension of Jack's Law to shopping centres for similar reasons. We still think there is more to do in this space to help protect all workers, and specifically public-facing retail and fast-food workers, but we certainly think this bill and the legislative changes contained within it are a step in the right direction.

Mr BOOTHMAN: In your opening statement you spoke about some harrowing cases involving your members and you talked about disincentives. Can you allude to what you believe would be an appropriate disincentive that would say to these individuals that this type of behaviour towards a person who is simply going about their daily lives—as you said, earning money for their family or to live in a house, or whatever it may be—is completely unacceptable? What do you think an adequate disincentive would be and how do you think it will protect your members?

Mr Power: When we first started the 'No One Deserves a Serve' campaign, anecdotally we saw an initial drop in this sort of abuse. I think what has happened is that the public has maybe grown a bit of awareness that, without any teeth to what will happen to them if they abuse a retail staff member, the disincentive is not there. This legislation and perhaps some public prosecutions as a result of this legislation will drive the public to rethink their behaviour in the retail space.

I think one of the other things that could be done is that in the Northern Territory they have enhanced laws to ban customers who behave aggressively from the store. That is something that maybe we would pursue later on down the track. My understanding is that one of the difficulties with the ability to ban customers from stores in Queensland is that under the legislation you have to be able to identify the person by name. Of course, if you are serving the public and it is a customer you have no way of being able to identify them.

To answer your question, the key to all of this is that there have to be some very public outcomes which help the public realise what the consequences may be for them. Building on that, if we could get some cooperation from the retailers as well to put some signage up at the entrance to the store outlining the potential consequences for abusive behaviour, that would draw it to people's attention as they enter the premises—very similar to what I notice a lot of hospitals have.

Mr BOOTHMAN: For repeat offenders—as you have alluded to, there are certain individuals out there in society who do not get the message the first time and do not get the message the second time. What would you see as a disincentive for them if they are a nuisance, a continual pest? You gave an example about an individual coming armed to a shop. That is beyond unacceptable.

Mr Power: That is why we see this legislation as so valuable. In our experience, with the exception of the extreme end of physical offences—like the very sad circumstances at Bondi Junction—what we often see is: if a customer physically offended against a staff member and if that were to end up in the courts then they would likely end up with a fine and then for a second offence a larger fine and then for a third offence a larger fine. In answer to the question, 'What do you think we need to see with the repeat offenders?,' I think this legislation achieves that by increasing the chance that a second or third offence will actually end in jail time for the worst offenders.

Mr HUNT: You talked about measures that were specifically tailored to protecting retail workers. Is the totality of what you are asking there banning them from the shops or do you have other ideas or suggestions in mind that are specifically tailored to protecting retail workers?

Mr Power: This legislation is one of the important changes. As I mentioned before and as you alluded to, there is the potential change to be able to ban customers from the store on threat of trespass if they re-enter and therefore arrest them if they come back. The third measure that we would like to see would probably be the reinstalling of police beats in a lot of the major shopping centres. That does not help our members working in standalone bottle shops or standalone retailers or strip malls, so to speak. Certainly where there are large concentrations of retail we would like to see the return of police beats.

Mr HUNT: Have you talked to the QPS about that request?

Mr Power: We have raised that with the QPS through some round tables that we had between representatives of the QPS, the retailers themselves and representatives of retail workers, yes.

Mr HUNT: How do you think your members are receiving the changes around sexual harassment and the need for that to be addressed more fulsomely? Do you think that is being effectively addressed as it stands now?

Mr Power: We have not really spoken to that part of the bill, but I think any enhanced legislation that better protects any worker from harassment of a sexual nature is a step forward. I think the onus on the employer to positively protect those employees is a step forward. This was not the subject that we were raising today, but what I can tell you is that in the survey we did in 2023 we added extra questions that we did not ask in 2021. One was about sexual abuse in the retail area. Just to be clear, I am using the term 'sexual abuse' but the way it related in that survey was 'abuse of a sexual nature', so it would have encompassed anything from being repeatedly asked out after you made it very clear that you were not interested all the way through to the worst-case scenario. I do not have the numbers but, interestingly, we found that that had risen a little bit and some of that was coming from the customers as well.

Quite disturbingly—and this is some work we are going to be doing following on from that—the most targeted group in retail and fast-food was women between the ages of 18 and 24. Quite disturbingly, the next most targeted group was women under the age of 18 being targeted for abuse of that nature by customers in their workplace. The short answer to the question is: anything that puts a positive obligation on the employer to inform people, to educate people and to put roadblocks in the way to prevent sexual harassment from happening in the workplace is absolutely a positive move and an improvement, as far as we and our members are concerned.

Ms BUSH: Thank you, Justin, for all of the work that you do. It is fantastic. My question is a little bit left field but it is definitely in line with your submission. I have a lot of victims of crime reach out to me for a variety of reasons, because of my background and the work I have done. There is a theme of young workers, but certainly retail workers, who are assaulted or even psychologically damaged—I am thinking of bottle shops where people come in and grab spirits and leave. A few have said to me that there is a theme of their employers not encouraging them to make WorkCover claims which then prevents them from accessing the financial assistance scheme or that the organisation is treated as the victim, not the individual worker, and that then precludes them from accessing financial assistance to recover from that act of violence. This is something I have observed and I thought I would take the opportunity to test that with you—whether that is something you have noticed or hear about from your members.

Mr Power: Again, it is probably outside the scope of this bill. There is probably another legislative change that we might seek later on down the track. I am sorry, but this feeds into the question that you are asking. There are a number of employers that discourage people from making WorkCover claims when they have been injured in the workplace. This is whether it is as a result of a customer assault or as a result of any form of injury. One of the things they do is offer an alternative to a WorkCover claim. They will say, 'If you don't put in a WorkCover claim, you have access to five physiotherapy sessions which we will pay for up-front. If you go down the road of WorkCover, then you have to put in the application. We don't pay for anything until your application is successful. This is going to be a much neater and tidier resolution.' In some of the worst cases, what then happens is the person ends up with a permanent injury and, because there are statutes of limitations in that legislation, by the time they put in a WorkCover claim they are out of time to do it, even though they have ended up with a permanent injury.

I said that we would be looking at some changes to other legislation down the road. One of the things we found out recently is that, under the Queensland legislation in relation to having to report injuries in the workplace, an employer is only required to report the injury to the regulator if it is a compensable injury. The way that has then been interpreted is that it only has to be reported if the person went to see a doctor. If the person does not go and see a doctor, if the person goes down the road of physiotherapy or alternative therapies, what happens is that the injury itself never has to be reported. It also skews the numbers which relate to whether the employer is providing a safe workplace in the first place.

You would like to think employers had these alternatives in place to support people while their WorkCover claim is pending, but why they discourage people from putting in a WorkCover claim I do not know. The short version is, yes, it happens. Yes, it is a problem and it actually hides the real numbers of injuries in the workplace as well.

CHAIR: Thank you, Justin, for coming in. That concludes this part of the hearing.

KING, Ms Jacqueline, General Secretary, Queensland Council of Unions

TOSH, Mr Nate, Legislation and Policy Officer, Queensland Council of Unions

CHAIR: Good afternoon. Thank you for joining us. I invite you to make a five-minute opening statement, after which committee members will have some questions for you.

Ms King: Before I start, I acknowledge the traditional owners of the lands on which we are meeting here this afternoon—the Turrbal and the Yagara peoples—and pay my respects to their elders past and present. I thank the committee for the opportunity to appear here today.

I initially place on record our appreciation for the work of the department but also for the Attorney-General's office in bringing this bill to the parliament. As a member of the Queensland Council of Unions, I was on the reference group for the review of the Anti-Discrimination Act back in 2021 which resulted in the *Building belonging* report, which was tabled in parliament in September 2022.

Our submission, which is before the committee today, I would like to acknowledge has been well informed by our affiliate unions, of which there are 28, representing around 400,000 union members in Queensland. Many of those members face either sexual harassment or discrimination related matters in their work on an ongoing basis. This is an area we are very familiar with as a representative of workers.

While the Anti-Discrimination Act is a broad-based piece of discrimination law at the state level, work related discrimination law is also covered by a number of federal discrimination laws, the most predominant in terms of work related discrimination being the Sex Discrimination Act and the Disability Discrimination Act, as well as the Fair Work Act and the Queensland Industrial Relations Act in terms of general protection laws and discrimination in those fields. On that basis, we believe that it is important that we ensure there is as much consistency as possible in the principles that underpin all of those forms of law as they relate to work related discrimination for both employers and employees.

The QCU supports the introduction of the respect at work bill as the first stage of reforms arising out of the 2021-22 review. While there are many other recommended reforms in the *Building belonging* report—and there are a number of those that are introduced in this bill—we acknowledge that there are a range of reforms that key stakeholders are not in agreement with, nor do we have sufficient time to work our way through. I will cite, for instance, the religious occupations exemption process which was recommended in *Building belonging*. We have referred to that in our report.

I will just note very quickly that, since the 2022 recommendations, the Australian Law Reform Commission subsequently made further recommendations late last year which have been considered in the Commonwealth jurisdiction for a religious discrimination bill and which consider, as I have mentioned before, the overlap between federal law and the Fair Work Act in particular. I think some of those issues that have come out of there need to be put on the table in terms of where we head to from here. We have outlined in our submission what our view is that we have reached in deep consultation with the Independent Education Union, which covers quite a wideranging number of union members who work in faith-based schools.

The respect at work bill includes a number of key reforms that arose from the Australian Human Rights Commission seminal *Respect@Work* report, which was conducted in 2020 by then commissioner Kate Jenkins. Disappointingly from our perspective, the *Building belonging* report did not include a number of its key recommendations, among two of which were the introduction of two new offences, being a sex-based harassment offence and a hostile work environment on the basis of sex offence, which has subsequently been adopted by the Commonwealth parliament and included amendments to the Sex Discrimination Act. As I said before, while we acknowledge that the Anti-Discrimination Act is more broad ranging in its application to protected attributes than the Sex Discrimination Act is, this does not mean that sexual harassment offences and the law should not be updated to provide stronger protection, in particular for those employees who face harassment of this nature.

We know from *Respect@Work* that there is an unacceptable number of Australian employees who continue to face sexual harassment in their workplaces. The 2020 *Respect@Work* report included a survey of 10,000 Australian people that was conducted in 2018. Four years later, in 2022, there was a further survey which was conducted through the Australian Human Rights Commission. They were very similar, essentially finding that one in three workers experienced workplace sexual harassment in the previous five years. The 2022 report says that half of those incidents are repeated and, of those, half are ongoing for more than one year, meaning they are more likely to be systemic-based harassment and not one-off incidents. The same report also identified that sexual harassment itself

costs the Australian economy $3.8 billion—and that is based on 2018 figures—much of which is in lost productivity but also legal fees, replacement of staff fees and all of the other things that go along with that.

From our perspective, to say that we are facing an epidemic in terms of sexual harassment in workplaces is to understate the facts. It is something that continually comes up in the private sector, the public sector, blue collar, white collar—no matter the industry you work in. It may evidence in different forms, but it certainly is there in the majority of workplaces. We have made a number of recommendations in our submission, at pages 9 to 11, in terms of the number of key recommendations that we think could be addressed in this bill and/or for a further stage of reforms. I am happy in a minute to take questions on those matters, but before I finish there are a couple of points that I would like to refer to.

The first is the introduction in the bill of the positive duty for a duty holder. This is separate to the general positive duty. We would like to see a standalone positive duty for a duty holder to make a reasonable adjustment in relation to a person who has an impairment or a disability, and these were part of our submissions that we had previously made to the Human Rights Commission. We think this is a much needed reform in the Queensland legislation. It would make our legislation also consistent with the Commonwealth Disability Discrimination Act and, importantly, override a current Queensland Supreme Court decision of the case of Chivers—and we referred to that in our submission.

Simply put, in terms of a positive duty in terms of impairment or disability, it simply should be that a duty holder would be required to consider what are the inherent requirements of a particular position and employment situation of a particular job and consider whether they could make a reasonable adjustment or an accommodation and weigh those two things up, and provided the accommodation does not impose an unjustifiable hardship on the employer then the positive duty would mean that the employer would be required to do that. That is the position as it currently relates to the law in terms of the Disability Discrimination Act.

At lunchtime today I was catching up with a friend who is a lawyer who does workplace law, and their comments about this particular issue were that they will not go near the Anti-Discrimination Act; they will not use it because of the Chivers decision. It is completely misinterpreted. It is the law in Queensland, but it is not an application of what would be sitting in the Disability Discrimination Act, so consistency in that space would be useful, along with everything that we have said in our submissions. We have always said to the Human Rights Commission, like we would say to any regulator or to any tribunal if this is within their remit, that there is lots of public guidance material to help guide people on how to actually apply the law, whether you are a small business or a large business et cetera.

There are two more things I wish to highlight before questions. The first is that we think there should be an amendment made to the attribute of pregnancy or potential pregnancy to also include where a person is seeking fertility treatment. This is something that has come up because of the religious occupations exemption, and we have referred to that. This is something that happens in faith-based schools currently but not just in those sectors, and we think it is something that should be addressed. We know that currently one in six Australian couples experience some form of fertility issue and that one in 18 babies are now being born through fertility treatment—through IVF, IUI et cetera—and from our perspective it simply does not make any sense that we do not actually extend that attribute, as a new attribute, to those people who are seeking fertility treatment.

The last thing I want to say is that I noted, in some of the written submissions and I think in one of the previous oral submissions that was given here this afternoon, some commentary about the positive duty in general. I refer the committee to clause 25 of the bill which inserts new sections 131H(1) and section 131I(1), which will apply the positive duty to all attributes of discrimination, sexual harassment, harassment on the basis of sex or other objectionable conduct which includes victimisation and vilification. Our reading of the way that is drafted is that it applies to discrimination, sexual harassment, sex-based harassment and other forms of objectionable conduct. Our understanding in liaison with the Attorney-General's office is that that is the actual intent of the bill.

We would also seek and support the AWU's submissions in terms of support for public guidelines, in particular around a positive duty. It is something that is new. The Australian Human Rights Commission is doing similar things in this space in terms of the Sex Discrimination Act. I think it is also useful to have better guidance material around what is sexual harassment, what is sex-based harassment and what is, for example, a hostile workplace environment on the grounds of sex. We note that in the public sector there is now a public sector directive that applies for sexual harassment, which I think goes to the member for Theodore's questions earlier around defining and providing more

guidance to people. Certainly in the public sector we have found the need to be quite explicit about the processes and for departments to have policies that are consistent with that directive, to have contact officers for people to seek information about what is sexual harassment.

The big thing that seems to be lacking in a lot of areas is the training component. We are strong advocates for training and education. Certainly across industry there has been probably too much focus on just training and online training. It is regarded as a tick-and-flick exercise. It is online. You do your induction training; you do something about sexual harassment. I think what needs to happen is the introduction of some fairly deep-seated cultural change type programs. However, most employers are simply not equipped to do that; they need assistance with that. That involves public guidance material and assistance, whether that is through the Human Rights Commission or, as with an overlap here, with the health and safety regulator. They also have a role in this space and also work with the Australian Human Rights Commission. There are a number of different bodies and tribunals, including SafeWork Australia, that have done some good stuff in this space, but being able to bring that forward and having something that is adaptable for different types of workplaces would be useful. Thank you.

Mr KRAUSE: Thank you, Ms King, for your opening statement. I note on around page 55 of your submission there is some discussion about faith-based schools and institutions and the Australian Law Reform Commission's work in that respect. That goes on for three or four pages, and then I note the recommendation of the QCU that there be further consultation with stakeholders around that with regard to a religious occupations exemption in Queensland. There is a draft discrimination bill that was circulated by the Attorney-General's department earlier this year.

Ms King: Yes.

Mr KRAUSE: There is the Commonwealth work. Is the QCU's position in line with the draft anti-discrimination bill?

Ms King: No.

Mr KRAUSE: Thank you. It was not quite clear from the four or five pages what you were getting at, but I take it it is more in line with some work that the Commonwealth has been doing, and that is why you are going for more consultation?

Ms King: I think there needs to be a communication process where people can come together a little bit more closely. The 2022 *Building belonging* report basically recommended that there should be reasonable and proportionate limitations applied through that. You could drive a bus through that. For any employer or a faith-based school, or for a faith-based school employee, you simply do not know what that means. You are, in effect, having to rely upon taking every single case to the Human Rights Commission to have it determined. Our position, which is supportive of the Independent Education Union—this is their position—is that after the release of the ALRC report it did start to look at things more around preference of employment, so preference of employment in an initial instance. I will give the example that I generally tend to give in this case, which is: I have a Catholic background looking for a job as a maths teacher. I am applying for a maths teaching role at a Catholic school. Mr Tosh here, who is not Catholic, is applying for the same job. All things being equal, I should be preferred for the job because of my faith.

The problem that we found in terms of individual employees—and it appears to be increasing in recent years and is also what the IEU submitted in their evidence to you—is that the discrimination that is occurring is occurring after the point of employment. I raised the issue about people seeking IVF treatment. It is occurring when someone is applying for sick leave, and in what would otherwise be a confidential matter for sick leave they are being questioned about why they are taking that sick leave and the answer is, 'I am getting IVF treatment, which is why I need to be a little bit flexible with the leave,' and they are being terminated as a result. Most of those employees are not likely to make a complaint to the Human Rights Commission. They end up with a settlement of compensation under a deed. There are those types of complaints that are happening that we do not think are appropriate where it is not a matter within the public domain; it is a private matter of the individual in that example that I have given.

Other examples that have been given include someone who has been divorced who has invited other staff members at the same school to attend the new wedding, and a school principal has made a decision to terminate employment because the person has not received an annulment on the first marriage. Again, these are not matters that are being discussed in front of schoolchildren, nor members of the school community; it is a matter of private discussions amongst some of the staff.

Those are the things, in terms of ongoing issues with religious exemptions and whatnot, which are probably better regulated through a code of conduct. We are not saying that people can go and stand up publicly and decry the faith of a school; that is not our position whatsoever. Those things are

better regulated by a code of conduct which is a written document, which is applied fairly and consistently and is not at the individual discretion of a school principal, based on an individual circumstance that may occur in one school but not occur in the same faith-based school at another location. They are the problems that seem to be happening, and I do not believe that *Building belonging* gave enough thought to some of those issues that are happening. I think the ALRC process, while it has been ongoing, while it has some problems or issues with it, has at least tried to tease out some of those issues.

Mr KRAUSE: Just briefly, the QCU's position is somewhere between the present position and the draft discrimination bill provision?

Ms King: I think it is fairly clear in here that we want further consultation, but our position is that we think there should be preferences granted so that you can give preference at the point of employment, and then anything after that, which is separate to that, is all covered by a code of conduct.

Ms BUSH: Thank you, Jacqueline, for a very comprehensive written and verbal submission. I am interested in your recommendation around a positive obligation for employers to make reasonable adjustments and whether you feel that could be something that could be inserted into this bill or whether more consultation would be required. You mentioned it already stands in the disability act. Can you explain that a bit more?

Ms King: It certainly is a recommendation of *Building belonging*, and I believe it would apply across the board to any duty holder. I am only speaking on behalf of our sphere, which is work related discrimination, but I am not suggesting that it should be limited to that, either. I think the drafting of it could be picked up from the anti-discrimination bill which was circulated earlier in the year and inserted, and it would make it consistent to the extent possible with the Disability Discrimination Act. It would provide a lot of surety for people moving forward. In work related discrimination, as I said before, we do not use the Anti-Discrimination Act as advocates for workers in this space; it is just not a place to go to. Having some level of consistency would assist. It is a better jurisdiction if we can access it, but the law would need to change, if I could put it that way.

CHAIR: Thank you for your written submission and thank you for your evidence here today. That brings to conclusion this part of the hearing.

NORMAN, Mr Rob, Queensland State Director, Australian Christian Lobby

CHAIR: Good afternoon. Thank you for joining us. I invite you to make an opening statement of up to five minutes, after which committee members will have some questions for you.

Mr Norman: Thank you, Chair and committee members, for allowing me to present to this public hearing. Today I represent almost 50,000 Queensland supporters of the Australian Christian Lobby. As background to this opening statement, I am an ordained minister of religion and have previously pastored a church in South Australia for 27 years.

This bill represents the most blatant attack on religious freedoms and freedom of speech I have seen in any Australian jurisdiction. The Respect at Work and Other Matters Amendment Bill 2024 would make the Chinese politburo blush. If passed, we risk churches being forced underground, Christian schools closing and homeschooling booming. Churches, Christian schools, Christian business owners and Christian individuals are clearly in the crosshairs of this bill.

The teachings of the Bible have formed the basis for Christian morality and ethics and shaped western civilisations for 2,000 years. This bill seeks to repress Christian theological thought and speech whilst promoting gender ideology as the new moral standard by which we live. For centuries the church has preached a biblical view regarding marriage and sexuality that is clearly incompatible with continually changing opinions about gender identity and sexual orientation. Usually when a bill introduces serious consequences for any sector of society we refer to these as unintended consequences; however, it must be said that this bill appears to have the very clear intention of suppressing biblical Christian belief and the expression of that belief.

Firstly, the bill broadens the grounds for discrimination to include sexual orientation as a protected attribute. The trend to continuously introduce new protected attributes into law under a regime that suppresses criticism and respectful debate on the basis of thousands of years of religious history should deeply disturb thinking people.

Secondly, the bill introduces a new positive duty that requires duty holders to take 'reasonable and proportionate measures to eliminate discrimination, sexual harassment, harassment on the basis of sex and other objectionable conduct as far as possible'. Who knows what 'objectionable conduct' is? Is it when an employee leaves a book about the Christian view of sexuality in the lunch room?

Thirdly, the bill lowers the threshold for vilification to unacceptable levels. What is 'hate speech'? What is 'likely to incite'? These definitions are subjective and the only benefits they carry are for the activists who will launch claims against churches, religious schools and individuals. Do these definitions mean that if a pastor preaches or posts a message to social media that 'sex outside of marriage is a sin and marriage is the exclusive union between one man and one woman to the exclusion of all others entered into for life' they risk legal action? What about the reading of Romans 1 in a public church service or a Christian school assembly? This is a text that condemns unnatural sexual acts. Is this a message that is likely to offend, humiliate or intimidate? These definitions are unacceptably vague.

Fourthly, the bill prohibits hostile work environments. Is a hostile work environment a church or a Christian school that asks its employees to live according to their evangelical view of scripture? Since when did the state become the arbiter of Christian theology?

Fifthly, the bill inserts a new definition of 'harassment on the basis of sex', which is defined as 'engages in unwelcome conduct of a demeaning nature in relation to another person'. What does that mean? What about—

engages in the conduct on the basis of—

...

... a sex the other person is presumed to be, or to have been at any time, by the person engaging in the conduct; or

Does that mean if someone uses the wrong pronouns they can be prosecuted? One could be forgiven for thinking this bill was derived from *The Communist Manifesto* of Karl Marx and Friedrich Engels.

Laws prohibiting discrimination or vilification or which impose a positive duty should not be enacted to require an affirmation of beliefs which are contrary to those which an individual or institution actually believes or to allow legal action to be taken on the basis of conflict between one ideology or belief system and another. If this bill is passed into law, religious institutions will be required to either compromise their deeply held beliefs regarding sexuality and marriage, which a small majority will do, or, more likely, church leaders, churches and religious schools will be subjected to a costly barrage of claims.

The Australian Christian Lobby strongly recommends the Respect at Work and Other Matters Amendment Bill 2024 be rejected in full. At the very least, the government should submit it to the Queensland public as part of their election platform.

Mr KRAUSE: Thank you for your submission and for your statement as well. I noted you were present at this public hearing during the Queensland Council of Unions' evidence just prior to this.

Mr Norman: Yes.

Mr KRAUSE: I asked a couple of questions about their view on the religious institutions discrimination. You heard their answer: more consultation but also a preference at the point of employment. They were not supportive of the draft discrimination bill submitted by the Attorney-General's department earlier this year. Can you give me your view about their position and ACL's position?

Mr Norman: There is going to be a wide variety of opinions on this topic and we certainly acknowledge that. At the end of the day, you can keep adding protected attributes, which we foresee will probably happen as views on sexuality and gender change, which has obviously happened and is happening on an ongoing basis. There is an unending number of future introductions of protected attributes that will bring additional problems.

The problem with this particular bill is that it introduces a framework that accommodates any kind of change in the future. It might seem offensive, but there are people who are propagating the argument that minor-attracted identity is an acceptable form of sexuality or sexual identity, or sexual orientation. That is offensive to me. It is probably offensive to everyone in the room. If we rewind this argument five to 10 years, we would not be sitting here now talking about what we are on the basis of sexual orientation and gender identity any more or less than we would have back then. Things are changing.

We think the framework for this bill is flawed. Without a comprehensive act, if you like, a religious discrimination act, this bill will have devastating results on churches, Christian schools and Christian individuals. That forms the guts of our argument. That would be my response to the union people who appeared before me.

Mr KRAUSE: You also spoke about what you consider to be a very low threshold for the hate speech provisions in the bill. You gave a couple of examples about where you consider there might be a fear or a concern of people being prosecuted or to have legal action taken against them for preaching their faith and the principles of their faith. For example, would you have concerns that in a Christian school teaching the Ten Commandments might be subject to that sort of action in the future?

Mr Norman: That is a good point. One of the commandments speaks about adultery, so I guess that would be offensive to people who have an open view of sexuality. Even more than that, there are many scriptures in the Bible that even a plain reading of could be offensive. That is where we are heading with this: the simple reading of scripture in a public context could offend somebody. The wording of this bill is so loose that there is a very real risk of the Queensland Human Rights Commission having an overflow of claims and probably needing to double or triple their staff to accommodate that, not to mention the cost of defence that religious people would have to face. We think it is a crazy extension of the current act and that it warrants a religious discrimination act before this is ever enacted.

Mr KRAUSE: When you say 'a religious discrimination act', do you mean an act to protect the rights and freedoms of people who hold religious beliefs?

Mr Norman: Correct—inalienable rights. Obviously we are not the only religion in the world. Religions have views that are based on particular holy texts. If people hold to those views and preach them as Christianity—and a big part of it is the preaching of the gospel—that could land you in deep trouble. In a country like Australia, that is ridiculous. This is happening in China. We have a situation—

CHAIR: I will pull up there. Did you take the piece of legislation that you are discussing today to get any legal advice on it?

Mr Norman: Our submission was prepared by a lawyer, yes. We have certainly had legal advice.

CHAIR: Thank you.

Mr BOOTHMAN: I asked the Queensland Law Society about proposed new section 124C when it comes to a public act done reasonably, and there was no inclusion of religion. Proposed subsection (c) of the bill states—

a public act, done reasonably and in good faith, for academic, artistic, scientific or research purposes ...

Do you feel that religion should also be included in this clause?

Mr Norman: Absolutely at a minimum, yes. There are still multiple risks, but it definitely should be included.

CHAIR: Thank you for your evidence today. That concludes the hearing. Thank you to everyone who has participated today and all those who helped organise this hearing. Thank you to the wonderful secretariat staff. Thank you to our Hansard reporters. A transcript of these proceedings will be available on the committee's webpage in due course. I declare the public hearing closed.

The committee adjourned at 4.58 pm.