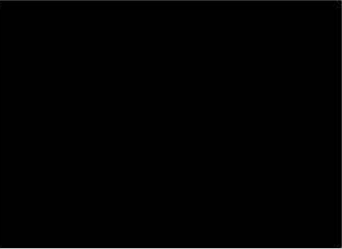
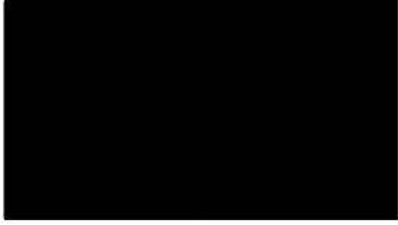


Respect at Work and Other Matters Amendment Bill 2024

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Submitted by: Alice Taylor
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1 July 2024

Community Safety and Legal Affairs Committee
Queensland Parliament
2A George Street
Brisbane City Qld 4000

Dear Community Safety and Legal Affairs Committee

Respect at Work and Other Matters Amendment Bill 2024

This submission is made with respect to the Respect at Work and Other Matters Amendment Bill 2024 ('Respect at Work Bill'). I am an Assistant Professor at Bond University, and I am an expert in discrimination law, having published extensively on discrimination laws from a comparative perspective.

I previously submitted to both the Queensland Human Rights Commission's Review of the Anti-Discrimination Act 1991 (Qld) and to the Queensland Department of Justice and Attorney-General's consultation on the Anti-Discrimination Bill 2024 as part of the Australian Discrimination Law Experts Group ('ADLEG'). I coordinated and provided written contributions to both of those submissions.¹ The ADLEG submission was cited extensively in the Queensland Human Rights Commission's Building Belonging Report.²

I remain committed to the broader reforms proposed by the Queensland Human Rights Commission, which were included in the Anti-Discrimination Bill 2024. Regarding the current Respect at Work Bill, I support the following aspects:

¹ Australian Discrimination Law Experts Group (ADLEG), *Submission No 97 to the Queensland Human Rights Commission, Review of Queensland's Anti-Discrimination Act* (1 March 2022) <https://www.qhrc.qld.gov.au/data/assets/pdf_file/0008/38519/Sub.097-Australian-Discrimination-Law-Experts-Group-ADLEG_Redacted.pdf>, Australian Discrimination Law Expert's Group (ADLEG), *Submission in response to the Queensland Department of Justice and Attorney-General Anti-Discrimination Bill 2024 Consultation* (22 March 2024).

² Queensland Human Rights Commission, *Building Belonging: Review of Queensland Anti-Discrimination Act 1991* (July 2022). The ADLEG submission to the QHRC was referenced 180 times throughout the Report.

- Introduction of positive duties on duty-bearers to prevent discrimination and harassment.³
- Introduction of new attributes for protection.⁴
- New definitions for sexual orientation, family, carer or kinship responsibilities, parental status, pregnancy or potential pregnancy, race, and trade union activity.⁵
- Strengthened vilification provisions.⁶

All of these amendments have been previously recommended by members of ADLEG in their submissions. Outlined below are areas in which there could be improvements made to the Bill.

Purpose of the Anti-Discrimination Act 1991 (Qld)

Currently, cl 25 of the Bill, which introduces positive duties to the Anti-Discrimination Act 1991 (Qld), refers to the duty's purpose as one 'to promote, as far as possible, the achievement of substantive equality.'⁷ This will be the only reference to 'substantive equality' in the Act and could lead to the erroneous assumption that the positive duty provisions are the only provisions in the Act designed to support and promote substantive equality, while the non-discrimination, harassment, and vilification provisions have a more limited focus.

Presently, cls 4(1) and 5(1) of the Respect at Work Bill amend the long title and the preamble of the Anti-Discrimination Act 1991 (Qld) to refer to the Bill's purpose as to promote equal opportunity and equitable outcomes.⁸ I suggest amending the preamble and the long title to also refer to substantive equality. This change would be consistent with the broader legislative approach adopted elsewhere in Australia regarding the purpose of anti-discrimination law,⁹ academic work on discrimination law,¹⁰ and create internal consistency for the amendments in the Respect at Work Bill.

The preamble and the long title should reflect that the broad objectives of discrimination law are to promote substantive equality. Clear objectives are important because, as I have written previously, it is only if we are clear about the purpose of anti-discrimination laws that we can assess whether and to what extent these objectives have been achieved.¹¹

I **recommend** that cls 4(1) and 5(1) be amended so that the Anti-Discrimination Act 1991 (Qld) long title and preamble refer to substantive equality.

Harassment on the basis of sex

While I welcome the inclusion of a prohibition on sex-based harassment, I suggest that the terms of the prohibition be broadened for consistency with both the Australian Human Rights Commission's ('AHRC') Respect@Work Report and the current prohibition on sexual harassment within the *Anti-Discrimination Act 1991* (Qld).

³ Respect at Work and Other Matters Amendment Bill 2024 (Qld) ('Respect at Work Bill') cl 25.

⁴ Ibid cl 7

⁵ Ibid.

⁶ Ibid cl 21.

⁷ Ibid cl 25, s 131H(1)(b).

⁸ Ibid cls 4 and 5.

⁹ See eg, *Sex Discrimination Act 1984* (Cth) s 3 and *Equal Opportunity Act 2010* (Vic) s 3.

¹⁰ See eg, Alice Taylor, *Interpreting Discrimination Law Creatively* (Hart Publishing, 2023).

¹¹ Alice Taylor, 'The Conflicting Purposes of Australian Anti-Discrimination Law' (2019) 42(1) *University of New South Wales Law Journal* 188.

This would be consistent with the recommendations of the AHRC in their Respect@Work Report.¹² In the *Sex Discrimination Act 1984* (Cth), the areas in which sex-based harassment is prohibited are the same as the areas in which sexual harassment is prohibited.¹³ The reason for this is to ensure clarity and consistency throughout the Act so that both sex and sexual harassment are prohibited in all areas of life in Queensland.

The current amendments in the Respect at Work Bill are more restrictive than those in the federal *Sex Discrimination Act 1984*, and sex-based harassment would be prohibited in fewer areas at the state level than at the federal level.¹⁴ The proposed amendments prohibit sex-based discrimination at work and in other work-related areas. This means that unlike under the Commonwealth Act, harassment on the basis of sex is not explicitly prohibited in education, the provision of goods and services, provision of accommodation, land, clubs, and laws and programs.

By only prohibiting sex-based harassment in work-related areas, the approach adopted in the Respect at Work Bill is narrower than that adopted at the Commonwealth level. This means that the Queensland amendments are not consistent with the Commonwealth approach and not consistent with Recommendation 26 of the Respect@Work Report.¹⁵

I **recommend** that sex-based harassment be prohibited under the same terms as sexual harassment in Queensland, which would provide for consistency and ensure strong protection from harassment in all areas of life in Queensland.

Timeframes for Complaints

Clause 29 of the Respect at Work Bill creates new time limits for the making of complaints to privilege persons complaining of contraventions on the basis of sex compared to other claimants. Complaints relating to contraventions on the basis of sex that are work-related have to be made within 2 years, while complaints relating to all other attributes continue to have a one-year time limit.¹⁶ This amendment creates a two-tiered system in which some complainants are given additional time not granted to other complainants. This amendment gives the impression that people making sex-based complaints in a workplace setting have more difficulty in making complaints within the specified time-frame than people making other complaints. There is no evidence to support such an assumption.¹⁷

The two-tiered system gives the impression that sex-based complaints are of a more serious nature than race discrimination, disability discrimination, or pregnancy discrimination (amongst other attributes). All discrimination is serious, and this should be reflected in the manner in which complaints are made and assessed.

I **recommend** that the Respect at Work Bill be changed to provide a 2-year timeframe for making complaints for all complaint types rather than only sex-based complaints.

¹² Australian Human Rights Commission, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces* (2020) Recommendation 16.

¹³ *Sex Discrimination Act 1984* (Cth) ss 28F-28L.

¹⁴ *Ibid.*

¹⁵ Australian Human Rights Commission, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces* (2020) Recommendation 26.

¹⁶ *Respect@Work Bill* cl 29 and Explanatory Notes *Respect@Work and Other Matters Amendment Bill*, 34

¹⁷ Queensland Human Rights Commission, *Building Belonging: Review of Queensland Anti-Discrimination Act 1991* (July 2022) 155-156.

Compliance with Other Laws

Clause 13 replaces s. 106 of the *Anti-Discrimination Act 1991* (Qld) to allow for discrimination to comply with state or Commonwealth legislation or an order of a Court or Tribunal. Current s. 106 confines the provision to state legislation or court and tribunal orders which were in force prior to the introduction of the provision. The current approach in s 106 is preferable because it aligns with the understanding and obligation that the state government and courts and tribunals should not discriminate in legislation or orders. This is consistent with the obligations under the Queensland *Human Rights Act 2019* and the fundamental legislative principles that legislation should have regard to the rights of individuals, including the right to non-discrimination.

I **recommend** that cl 13 be omitted.

I am happy to answer any questions about the submission or other related issues, or to provide further information on any of the areas covered.

Dr. Alice Taylor

Assistant Professor
Faculty of Law
Bond University
14 University Drive,
Robina QLD
Email: [REDACTED]