

Respect at Work and Other Matters Amendment Bill 2024

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Community Safety and Legal Affairs Committee

Via email: CSLAC@parliament.qld.gov.au

Our Reference: SUB24/0472

Respect at Work and Other Matters Amendment Bill 2024

Dear Committee,

The QNMU thanks the Community Safety and Legal Affairs Committee (the Committee) for the opportunity to provide feedback to the *Respect at Work and Other Matters Amendment Bill 2024* (the Bill).

The QNMU is Queensland's largest registered union for nurses and midwives, representing over 74,000 members. The QNMU is also affiliated with the Queensland Council of Unions (QCU), with which we share common values. The QNMU has liaised with QCU and other QCU-affiliated unions regarding reforms arising from the Australian Human Rights Commission (AHRC, 2020) landmark *Respect@Work* Report following its inquiry into workplace sexual harassment. We endorsed the QCU submission responding to the consultation draft *Anti-Discrimination Bill 2024* (published earlier this year) and we endorse in principle the QCU submission to this Bill.

The QNMU understands that the Queensland Government intends the Bill to be the first stage of its Anti-Discrimination (AD) legislative reforms. The QNMU emphasises key points with respect to the Bill which are of particular relevance to our members. We also identify opportunities for improvement in the next term of parliament.

As the vast majority of the QNMU's members are women (approximately 90%), the QNMU is a strong advocate for advancing gender equity in the workplace. The QNMU strongly supports the amendments proposed in the Bill that respond to the *Respect@Work* Report recommendations. This includes the introduction of new prohibitions on:

- Harassment on the basis of sex in the area of work and
- Creating a hostile work environment on the basis of sex.

We also support the introduction of a positive duty which incorporates all protected attributes and areas of life, consistent with the Queensland Human Rights Commission (QHRC, 2022) *Building Belonging* Report recommendations. This positive duty will require persons who have an obligation not to engage in unlawful conduct under the *Anti-Discrimination Act 1991* (AD Act) to eliminate, as far as possible, discrimination, sexual harassment, harassment on the basis of sex and certain other objectionable conduct by taking reasonable and proportionate measures.

The QNMU supports the inclusion of new protected attributes on which discrimination may be based and updates of definitions and terms used in existing attributes.

- ‘Irrelevant medical records’ included as a protected attribute. This will provide greater protection from situations where a person’s medical record is used as a basis for treating them unfairly, unless the medical record is relevant to the situation. The QNMU’s members frequently report being asked intrusive questions about their medical history in job interviews, where gaining employment is often contingent upon compliance with requests made through the interview process. Employees will generally be reluctant to make an individual complaint regarding requests for medical records given an offer of employment (or ongoing employment) may be contingent upon their compliance with the request.
- The QNMU commends the inclusion of a new positive duty in relation to irrelevant medical records (and all protected attributes). We consider it critical that the education functions of the QHRC be strengthened to ensure employees are informed about this new obligation to not to request irrelevant medical records.
- The QNMU has represented many members who have been directed to provide their employer with full access to all medical information held by their treating medical practitioner. Members from non-English speaking backgrounds in particular report they are not confident in refusing these requests. The QNMU represents many Assistants in Nursing from non-English speaking or culturally diverse backgrounds who report fear of not being offered (or continuing in) employment if they refuse these requests.
- The QNMU recommends the proposed new provisions be further strengthened to make it clear to both employers and employees what ‘irrelevant medical record’ means, by way of definition of ‘irrelevant’.
- The definition of ‘trade union activity’ has been adapted from a definition of ‘industrial activity’ in the *Industrial Relations Act 2016* (Industrial Relations Act) and captures activities in relation to registered industrial organisations.

The QNMU also supports amendments to the AD Act which:

- Allows a registered employee union to make a representative complaint about an alleged contravention that is a work-related matter. Achieving greater consistency with recent amendment to the Industrial Relations Act, these AD Act amendments will ensure that those who may be an agent or who may represent a party for work-related complaints are limited to agency by employee and employer organisations that are registered. The amendments to the Industrial Relations Act were made to ensure that employees’ and employers’ industrial interests are effectively represented by entities subject to regulation under the Industrial Relations Act, rather than unregulated entities who are not required to fulfil the level of governance duties under that legislation.
- Entitles a person to make a complaint within two years of a ‘contravention on the basis of sex’ that is also a work-related matter.

While the QNMU considers the introduction of the Bill to be a positive first step, we consider there are also missed opportunities for the establishment of greater protections for Queenslanders. We also outline opportunities to strengthen Queensland’s legislation, either by making amendments to this Bill or through the introduction of additional amendments in future.

Positive duty to protect against a ‘sexually hostile’ work environment

The QNMU reiterates a recommendation included in QCU’s (2024) Anti-Discrimination Bill submission that Queensland’s legislation could be strengthened by introducing an offence of creating

a 'sexually hostile' working environment (as distinct from, and in addition to the new prohibition of 'creating a hostile work environment on the basis of sex'. The AHRC (2022, p. 459) report described a sexually hostile workplace as where "one sex is made to feel uncomfortable or excluded by the workplace environment. Factors that point to a sexually hostile workplace may include the display of obscene or pornographic materials, general sexual banter, or innuendo and offensive jokes". The QNMU therefore recommends an additional positive duty on employers to eliminate conduct, communication, and the distribution or dissemination of material that is sexually explicit, offensive, suggestive and/or violent (thereby creating a 'sexually hostile work environment' which differs from a 'workplace environment that is hostile on the ground of sex').

The QNMU has recently represented members who have experienced very serious sexual harassment and assault in their workplace, a very large government agency. The employer failed to investigate the complaint or stand down the alleged perpetrator; the perpetrator continued to work alongside the complainant, causing the complainant significant fear, and causing her to endure a sexually hostile environment. Sexual violence against women is a scourge on our communities; the QMNU considers it timely to introduce a specific offence of permitting a sexually hostile work environment.

Positive duty to make reasonable adjustments for workers with an impairment

The QNMU (2022) and QCU (2022, 2024) have previously recommended that the introduction in the AD Act of a positive duty on employers to make reasonable adjustments for employees with an impairment would provide significant support for workers who might otherwise experience discrimination. Similar provisions have been made in Section 20 of the *Equal Opportunity Act 2010 (Victoria)* and in the federal *Disability Discrimination Act 1992*. The introduction of this type of obligation would address the consequences of *Chivers v State of Queensland (Queensland Health) [2014] QCA 141 ('Chivers')*. The findings in *Chivers* allows employers to claim that (for example) the ability to work a 24/7 shift pattern (including night duty) is a genuine operational requirement for nurses. Where this exemption is made out (under the current Act), a finding of unlawful discrimination cannot be made, including in situations where an employer has made no effort to explore reasonable adjustments for employees with an impairment. A positive duty to make reasonable adjustments would require employers and employees to work together and ask first 'How can we make this work?'

Option for work-related discrimination complaints to be referred directly to Queensland Industrial Relations Commission

The QCU (2024) in its submission responding to the draft AD Bill 2024 illustrated the significant time delays that people making work-related complaints are often re-traumatised when they are required to re-tell their story multiple times (particularly in sexual harassment and sex discrimination matters). The QNMU recommends that amendments are made to enable complainants to refer their matter directly to the QIRC to conciliate and hear all work-related discrimination complaints directly, without need to apply to QHRC first. Legislating this option would be consistent with an increasing focus on trauma-informed and victim-centred approaches.

In 2023 the Public Sector Commission introduced a new Sexual Harassment Directive for Public Sector agencies. This Directive required state government agencies to adopt a trauma-informed and person-centred approach to sexual harassment in the workplace. The QNMU recommends that any new legislation creates pathways for complaints that lessen any additional trauma for complainants in workplace sexual harassment complaints.

The QNMU reiterates our support for key aspects of the Bill. We have also identified opportunities for improvement and seek commitments to a second stage of reforms in the next term of parliament. We would be happy to discuss our recommendations with the Committee. Teresa Chase, Industrial Officer – Servicing, can be contacted on Ph [REDACTED] and [REDACTED].

Yours sincerely,

[REDACTED]

Sarah Beaman
Secretary