

## Respect at Work and Other Matters Amendment Bill 2024

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2 July 2024

Community Safety and Legal Affairs Committee

Parliament House  
George Street  
Brisbane Qld 400

By email: [CSLAC@parliament.qld.gov.a](mailto:CSLAC@parliament.qld.gov.a)

Dear Committee Secretariat,

**Submission to the *Respect at Work and Other Matters Amendment Bill 2024***

Basic Rights Queensland welcomes the opportunity to provide comment on the draft *Respect at Work and Other Matters Amendment Bill 2024 (the Bill)*. Basic Rights Queensland (BRQ) and other key stakeholders keen for reform in relation to the state's anti-discrimination legislation have positively engaged in the consultation of the past two and a half years and provided feedback to the draft *Anti-Discrimination Bill 2024* in March of this year (**the draft Anti-Discrimination Bill**). The government's decision to implement change through further amendments to the act has resulted in a phased approach, with not all changes occurring as anticipated. We note the emphasis on the new attributes and workplace measures contained in the Bill and welcome the protection and better accessibility and understanding the passing of these changes will bring to Queenslanders.

**About Basic Rights Queensland**

Basic Rights Queensland Inc. (BRQ) is an incorporated non-profit organisation and community legal centre registered with the Australian Charities and Not-for-profits Commission. In 2022/23 BRQ provided services to more than 3500 Queenslanders most in need.

BRQ provides free information, advice, advocacy, and legal services in Queensland state-wide. BRQ supports vulnerable and disadvantaged people in relation to social security, disability discrimination and to those who experience mental health concerns.

Working Women Queensland (WWQ) is part of BRQ. WWQ provides provide free advice, support and information for vulnerable women in relation to employment related matters, including sexual harassment and discrimination. WWQ employ a team of solicitors, industrial advocates and one social worker who together offer a holistic, interdisciplinary approach. WWQ is the only specialist women's employment service of its kind in Queensland.

### **About the *Respect at Work and Other Matters Amendment Bill 2024***

We note the explanatory notes and the decision of the government to now proceed with a phased implementation of the reforms, with the introduction of the Bill. This submission will set out our responses to the proposed Bill, and the anticipated benefits of the proposed changes and some key recommendations that we believe could still be accommodated in this legislation. We will also outline key issues outstanding from the report *Building belonging: Review of Queensland's Anti-Discrimination Act 1991 (the Building Belonging Report)* and the draft Anti-Discrimination Bill, and the reforms we seek in future phases of legislative reforms to ensure the protection of people in Queensland from discrimination, sexual harassment and other unlawful conduct. BRQ has not been invited to further discussions or consultation in relation to the new Act no longer proceeding. We welcome inclusion in any future forums or consultation in the profound change of approach by the state government.

During her explanatory speech on presenting the Bill to Parliament, The Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence, The Hon. Yvette D'Ath, indicated that the Miles Government

*"remains committed to implementing recommendations made in the Building belonging report and will advance a second stage of reforms after further consultation with specific stakeholders on certain exemptions. It is important that the second stage of reforms considers the approach the Commonwealth takes following the release of the Australia Law Reform Commission report into religious educational institutions and anti-discrimination laws."*<sup>1</sup>

Wide reaching and very public examples of hurtful, damaging and harmful behaviours justified by religious freedoms exemption have occurred in Queensland in recent years and the delay in addressing the much-needed reforms in this area remain a priority and focus. In addition to upholding hetero-normative and binary gendered norms, the religious exemptions have also impacted unfavourably on workers, justifying termination of employment for people undertaking common and widely accepted actions such as remarrying without having had a divorce annulled and accessing fertility treatment.

#### **Requirement for the hypothetical comparator**

A key reform measure that has been consistently raised as a barrier for people seeking justice in relation to discrimination matters is the need to establish a comparator in relation to direct discrimination. A range of communities of people, with one or multiple protected attributes under the

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<sup>1</sup> [https://documents.parliament.qld.gov.au/events/han/2024/2024\\_06\\_14\\_WEEKLY.pdf](https://documents.parliament.qld.gov.au/events/han/2024/2024_06_14_WEEKLY.pdf) - p 2368

act, have raised ongoing concerns about how this *key* factor must be addressed in any reform. The Building Belonging Report highlighted the matter must be addressed for the act to meet its purpose;

*“The current test for direct discrimination requires identification of a hypothetical comparator in the same or similar circumstances to meet the legal test, and this creates technical challenges when applied to a real-life situation. **We were told these issues need to be resolved to ensure that the Act is fit for purpose.**”<sup>2</sup>*

While not contained in the current draft legislation we urgently seek to have this amended and addressed in this initial phase. The draft Anti-Discrimination Bill addressed this issue by broadening the definition of direct discrimination and aligned the definition to the *Disability Discrimination Act 1992* (Cth) (‘DDA’). This fits with the expressed intent to align Queensland discrimination legislation to Commonwealth.

The onus on the complainant to provide a comparator to demonstrate direct discrimination is a significant and acknowledged barrier that we urge be addressed in this first phrase of legislative reforms. This key measure will provide greater clarity in relation to an often misunderstood and key element of discrimination law, and greatly improve understanding, prevention of harm, and access to justice. This measure will create greater protection for *all* the attributes contained in this legislation.

#### **BRQ Recommendation 1**

The draft Anti-Discrimination Bill contained important updates to key definitions that were supported by BRQ [s 13-15]. Importantly these removed the requirement of a comparator when establishing that direct discrimination did occur. We seek that the *Respect at Work and Other Matters Amendment Bill 2024* be updated to include the definitions contained in the draft Anti-Discrimination Bill for, at a minimum:

- a) when does a person discriminate against another person,
- b) direct discrimination and,
- c) indirect discrimination.

#### **New attributes**

BRQ welcomes the addition of all the new attributes and the updating of definitions of attributes to better reflect the communities they seek to support. BRQ especially notes the addition of protection for **homelessness** and **people who are subjected to domestic and family violence**. This recognition of DFV under the state’s ADA will allow access to recourse when they have been employed less than

<sup>2</sup> [https://www.qhrc.qld.gov.au/\\_data/assets/pdf\\_file/0012/40224/QHRC-Building-Belonging.WCAG.pdf](https://www.qhrc.qld.gov.au/_data/assets/pdf_file/0012/40224/QHRC-Building-Belonging.WCAG.pdf) - p 70

twelve months and have been terminated unfairly due to their experiences of DFV (currently discrimination protections only extend to those covered by state legislation).

We welcome the updates to family, carer or kinship responsibilities, and parental status and potential pregnancy provides greater clarity for people. The inclusion of expunged convictions, physical appearance, irrelevant criminal record and irrelevant medical record will address issues that commonly arise, and current legislation do not adequately address.

While we do support each of these inclusions, we believe the intersection of protected attributes must be acknowledged in anti-discrimination law.

### **When a person has one or more attribute**

When introducing the Bill to Parliament, Minister D’Ath indicated the deep impact of intersectional disadvantage. The intent of the Government to ensure the recognition of disadvantage faced by people with one or more attribute, has not been addressed in this legislation, despite reference to it in the First Reading speech for the Bill;

*“These amendments also will serve to align Queensland with similar amendments made to the Commonwealth Sex Discrimination Act. As our Human Rights Commissioner noted in his Building belonging report— ... 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 of discrimination and sexual harassment is profound and not only **devastates the individual** but also has a significant societal impact.”<sup>3</sup>*

The need for the legislation to identify and acknowledge discrimination occurring because of one or more attributes (intersection) was a key issue raised in the Building Belonging Report. This was achieved in the draft Anti-Discrimination Bill through including, in the listed attributes protected by the legislation, a final point which was set out as follows to achieve this important and much-needed recognition that a person may have one or more attribute.

[s 10 (v)] – a combination of 2 or more of any of the above attributes.

The intersection of one or more attribute is common and was raised widely through each stage of consultation. We strongly support the inclusion of this as a protected attribute, in addition to the other new attributes provided for in the Bill.

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<sup>3</sup> [https://documents.parliament.qld.gov.au/events/han/2024/2024\\_06\\_14\\_WEEKLY.pdf](https://documents.parliament.qld.gov.au/events/han/2024/2024_06_14_WEEKLY.pdf) - p 2365

*“One of the **most frequently reported issues** to the Review was that people who experience discrimination because of combined grounds are not adequately recognised or protected by the Act.*

*The Review was told that people who experience discrimination because of a cumulative effect of having more than one protected attribute are at **greater risk** of experiencing discrimination, but also find it **harder to bring and prove a claim**.*

*We heard that the current law:*

- **does not sufficiently recognise or protect** people from this form of discrimination
- is structured on attributes that are conceptualised as being separate and distinct, **which does not equate with the way discrimination is experienced**
- does not recognise that discrimination based on multiple intersecting attributes can have a **compounding and amplified impact**. Combined grounds discrimination has been recognised as one of the cultural and systemic drivers of discrimination and sexual harassment.”<sup>4</sup>

*Building belonging*

#### **BRQ Recommendation 2**

BRQ seeks consideration of the insertion of an additional attribute at Clause 7 of the *Respect at Work and Other Matters Amendment Bill 2024*. This additional attribute should be included as the second last attribute and numbered accordingly, with current section 7(q) renumbered as a final attribute accordingly.

The additional attribute should reflect that which was included in the draft Anti-Discrimination Bill

*– a combination of 2 or more of any of the above attributes.*

#### **Creation of positive duty in the workplace**

BRQ supports the inclusion of new prohibitions on harassment on the basis of sex, and subjecting a person to a work environment that is hostile on the basis of sex. BRQ concurs that there is merit in having consistency in sexual harassment (and sex discrimination) provisions across federal, state and territory anti-discrimination legislation and that the proposed changes as contained in the Bill are det out to achieve this consistency with *The Sex Discrimination Act 1984* (Cth) (the SDA) where possible.

The creation of the positive duty is an important element in addressing barriers in the workplace and shifting the onus from the complainant (person who has been harmed) to navigate a complaint or reporting process to cease or remedy the behaviours, to the PCBU recognising the existence of

<sup>4</sup> [https://www.qhrc.qld.gov.au/\\_data/assets/pdf\\_file/0012/40224/QHRC-Building-Belonging.WCAG.pdf](https://www.qhrc.qld.gov.au/_data/assets/pdf_file/0012/40224/QHRC-Building-Belonging.WCAG.pdf) - p 50

discrimination, harmful behaviours and unwelcomed behaviours occurring in the workplace, and ensuring that there are reasonable and proportionate measures in place to prevent harm where possible. These measures are welcomed by BRQ and where upheld and implemented as intended, will assist all employees in workplaces, regardless of their attributes, with healthier and more positive workplaces. We are pleased that the Bill extends this positive duty to all of the protected attributes, and does not only cover sexual harassment and certain types of unlawful conduct on the basis of sex in the workplace.

### **Timeframes**

While BRQ welcomes the changes in the legislation that will allow a complainant to lodge a complaint in relation to an alleged contraventions on the basis of sex, where it is a work-related matter up to two years after the alleged event, we had hoped and anticipated that this extended time frame would apply to *all* complaints under the Act.

The 2-year time frame, in this legislation, *only* applies to a complaint about an alleged contravention on the basis of sex, as defined in schedule 1, that is a work-related matter within the complaint period of two years after an alleged contravention. This is in contradiction to the draft Anti-Discrimination Bill which extended the time frame for making a complaint to 2 years for all complaints under the Act, based on the wide and deep consultation and recommendations of the Building Belonging Report.

Having different limitation periods for contraventions based on where they occurred, and defining the type of contravention, fails to recognise the intersectional nature of discrimination, and the barriers to justice and confusion many cohorts most affected by discrimination experience in accessing information and advice. This amendment to the complaints process will create further confusion for trauma impacted individuals and, although this is a positive change, may make processes less effective or accessible. We note that time limitations in other jurisdictions dealing with *workplace* matters are not limited to 1 year. Under the Bill, a worker discriminated against on the basis of race must complain within one year, however if the discrimination occurs on the basis of sex, they would have two years to complain.

*“The 1-year timeframe in Queensland is much shorter than the limitations for the tort of personal injury (three years), other torts or contract (six years), or the general protections breaches under the Fair Work Act 2009 (six years).”<sup>5</sup>*

### BRQ Recommendation 3

BRQ strongly supports the extension of the time frame for making a complaint under Queensland anti-discrimination legislation to two years in the *Respect at Work and Other Matters Amendment Bill 2024*. Extending the time frame to two years for all complaints recognises the barriers and delays people face when accessing the complaint process and obtaining legal information and advice.

The two-year time frame for all matters was set out in the draft Anti-Discrimination Bill and would provide consistency and simplicity in complex legislation, and also provide a more compassionate and trauma-informed lens to the complaint process.

### Other workplace matters

A key focus of this legislation is the impact of discrimination in the workplace. BRQ seeks consideration of further workplace matters in the current stage of reforms.

***Reasonable adjustments for people with disability; on return to work / access to secure employment and access to workplace.***

Under the *Disability Discrimination Act*, a duty to make reasonable adjustments is owed to people with disability in all areas.<sup>6</sup>

While the workplace adjustments varying across states in territories, BRQ notes that in Victoria, the duty only relates to people with disability in relation to employment, education, and the provision of goods and services.

Alongside people with a permanent disability, many workers experience significant injuries and illnesses (in and out of their workplace) that may be temporary or impermanent, and they also experience hardship and different treatment on attempting to return or returning to their workplace. Clarity and guidance materials are needed to improve the support, health and workplace experiences of people with permanent and temporary impairments who require reasonable adjustments in the workplace.

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<sup>5</sup> [https://www.qhrc.qld.gov.au/data/assets/pdf\\_file/0012/40224/QHRC-Building-Belonging.WCAG.pdf](https://www.qhrc.qld.gov.au/data/assets/pdf_file/0012/40224/QHRC-Building-Belonging.WCAG.pdf) - p 156

<sup>6</sup> [https://www.qhrc.qld.gov.au/data/assets/pdf\\_file/0012/40224/QHRC-Building-Belonging.WCAG.pdf](https://www.qhrc.qld.gov.au/data/assets/pdf_file/0012/40224/QHRC-Building-Belonging.WCAG.pdf) - p 120



This initial phase of discrimination law reform that focuses on workplace measures, should also include a definition or provision such as was provided under section 12 of the draft Anti-Discrimination Bill – What is a reasonable accommodation for a person with a disability?

#### **BRQ Recommendation 4**

That a definition of what is a reasonable accommodation for a person with a disability be included in the *Respect at Work and Other Matters Amendment Bill 2024*.

#### ***Assistance animals (in workplace)***

BRQ's submission to the draft Anti-Discrimination Bill outlined our support for the broader included definition of 'assistance animal' in alignment with s 9(2) of the DDA. This would allow more Queenslanders to train their animals to perform identifiable tasks and behaviours to assist in alleviating the effect of the disability, with the too-often prohibitive costs in the current accreditation process.

#### **BRQ Recommendation 5**

That there be consideration of a more expansive and inclusive definition of assistance animals in the *Anti-Discrimination Act 1991 (Qld)* and that amendments are aligned with s 9 (2) of DDA.

#### ***Vilification***

BRQ welcomes the legislation widening and strengthening the grounds on which the law provides recognition and protection against vilification on the grounds of age, gender identity, impairment, race, religion, sex, sex characteristics or sexual orientation. We believe that vilification on the ground of sex work should also be recognised in Queensland legislation. The recent decriminalisation of sex-work in Queensland by the government recognised the deeply held stigma and discrimination experienced by sex-workers, in all facets of their lives.

*“Respect Inc and Australian Sex Workers Association expressed concern about vilification of sex workers online: The online vilification of sex workers is **prevalent, under-protected, unreported** and can take many forms.*

*Individuals can target workers by ‘outing’ them online, **identifying their address** and advertisements and publicising this information to the workers’ family and friends and the broader community.*

*This is done to mobilise ‘contempt’ against the sex worker and can be exacerbated if the worker is also a parent, carer or a worker in another industry (such as education or child care) or because of their gender or sexuality.*

***Online vilification** of sex workers also takes the form of groups of people, including so-called ‘radical feminists’ targeting sex workers ridiculing them for their choice of work, referring to their children and that they know where the person lives.*

*There are also countless facebook groups that crop up with the **intent of vilifying sex workers.***<sup>7</sup>

The inclusion of sex work as a ground for vilification in the community requires due consideration. The terms of reference for the QLRC’s review into Sex Work in Queensland did not provide for vilification, so made *no* recommendations in relation to sex work and vilification and hate crimes. It was also determined that the QLRC not consider the vilification of sex workers due to the LASC report into vilification and hate crimes, and that the LASC forum was best to consider the experiences of sex workers and vilification.

*“Rec 4.137 - Many submissions also suggested changes to the vilification provisions in the Act. These provisions were separately reviewed by a Parliamentary Inquiry that reported in January 2022.”*<sup>8</sup>

Queensland Law Reform Commission - *A decriminalised sex-work industry for Queensland*

The LASC’s *Inquiry into serious vilification and hate crimes and the Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Bill 2023* received submissions and recommendations to protect sex workers from vilification. However, as at the time of the report and inquiry, the majority of sex work remained *outside of the law* and so there was little scope for the government to act on these submissions and recommendations.

With the recent decriminalisation of sex work by the state government and the inclusion of lawful sexual activity as a protected attribute in the ADA, there is now the opportunity to include sex work in vilification laws. This would recognise the unique nature of sex work, and the social attitudes and disparaging language commonly used to describe sex work in the community.

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<sup>7</sup> <https://documents.parliament.qld.gov.au/tp/2022/5722T26.pdf> - p 11

<sup>8</sup> <https://www qlrc.qld.gov.au/ data/assets/pdf file/0003/763383/qlrc-report-80-a-decriminalised-sex-work-industry-for-queensland-vol-1-.pdf> - p 104

The deep stigma against sex work and the associated harassment of sex workers is unlike other professions and work. Since antiquity, sex workers have received social, moral, and religious judgement, scorn, and isolation. The barrier of the law, stigma and prejudice has meant many sex workers have experienced profound barriers to accommodation, health services, legal assistance and discrimination protections.

While other areas of vilification and hate crimes focus on people's physical attributes, faith or cultural attributes and sex work refers to employment type, it does not lessen the reality that vilification and hate speech occurs against sex workers frequently, and many people felt emboldened to do so given that the law did not offer protection to sex workers. Given the commitment of the government to decriminalise sex work, it is strongly supported by BRQ that sex workers are also protected from vilification and hate crimes.

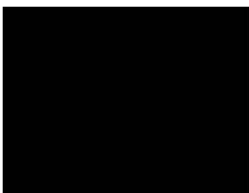
**BRQ Recommendation 6**

In addition to the grounds covered by the vilification provisions in the *Respect at Work and Other Matters Amendment Bill 2024*, BRQ seeks the additional ground of sex work be included.

We look forward to further development of the government's planned reforms in discrimination law, and a more fulsome review of the *Anti-Discrimination Act 1991(Qld)*. While the act will no longer be replaced within this term of government as anticipated, we welcome the positive changes that are contained in the Bill.

If you would like further information or would like to discuss the submission, please contact Penny Spalding on [REDACTED] or [REDACTED]

Yours sincerely



Basic Rights Queensland

Eloise Dalton

Director WWQ