

Respect at Work and Other Matters Amendment Bill 2024

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AWU Submission to the 57th Queensland Parliament's Community Safety and Legal Affairs Committee

Respect at Work and Other Matters Amendment Bill 2024

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Public Hearing: The AWUEQ would like to participate in the public hearing of the Committee on Friday 12th July 2024.

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Protecting Staff from Violence and Holding Offenders to Account

Context

The Australian Workers' Union of Employees, Queensland (AWUEQ) are making this submission to the 57th Queensland Parliament's Community Safety and Legal Affairs Committee regarding the Committee's inquiry into the *Respect at Work and Other Matters Amendment Bill 2024* (the Bill).

The Australian Workers' Union represents thousands of workers in Queensland public hospitals across a variety of roles. This includes security officers, wardspeople, cleaners, food services workers, groundspeople, mental health nurses, clinical assistants and more.

Our members in Queensland's public hospitals are currently subject to intense and escalating rates of violence.

That is why our members have been campaigning for Queensland Health to adopt the common sense measures we need to reduce violence in Queensland Health facilities. The measures being proposed by the workforce include enforceable laws to deter assaults and hold perpetrators to account.

New aggravating sentencing factor in the *Penalties and Sentences Act 1992*

The AWU supports, in the strongest possible terms, the introduction of an aggravation in the *Penalties and Sentences Act 1992* 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 deserves 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 Shop, Distributive and Allied Employees' Association (SDA) and their members for their successful advocacy in this space over many years.

Clarity on s340 of the *Criminal Code 1899* as it relates to Queensland Health security officers and operational staff

While the Parliament considers a new aggravation for assaulting a worker while they are performing their work, we believe that consideration should also be given to clarifying the scope of s340 of the *Criminal Code 1899* (the Code) as it relates to Queensland Health security officers and operational staff.

This section of the Code provides for a crime of 'serious assault' against offenders who assault, among a range of other circumstances, public officers while that officer is performing a function of their office.

This section acts as a powerful deterrent against assaulting certain public servants while they are in the course of their service. As it is currently written, the section contains specific provisions and examples relating to police officers, child safety officers, correctional officers and employees of the Queensland Ambulance Service.

There has been confusion in the Queensland Health workforce about whether assaults occasioned on certain employees are covered by s340 of the Code. This confusion is being caused by a very high rate of assault in the workplace, with very little charges of 'serious assault' laid on perpetrators who commit violence against staff.

Like all health staff, Queensland Health operational staff, like security officers, cleaners, wardspeople and kitchen staff, are exposed to an inordinately high amount of violence in the workplace. This violence can range from punching, kicking and spitting to deliberate exposure to hepatitis and stabbing with knives and improvised weapons.

A recent survey undertaken by our union of over 1,200 Queensland Health workers in 114 facilities across the state found that around 70% of workers have been assaulted or witnessed an assault in the workplace. Despite this intense and escalating violence, the experience of these workers has been that perpetrators are not being charged with 'serious assault' under s340 of the Code.

These 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' in s340.

The underutilisation 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 include these workers, despite the incredibly risk of violence in the workplace.

We believe that this is leading to police opting to not utilise this section to charge offenders, despite near-weekly cases of assault that would appear to meet the requirements of a crime 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. The current rate of violence in our public hospitals is an embarrassment to our society and requires serious action.

The AWUEQ submits that the Bill should be amended to clarify the scope of s340 of the Code to make it clear that the crime of 'serious assault' extends to offenders who assault Queensland Health operational workers (e.g. security officers, wardspeople, cleaners, food services workers) while they are performing their work.

Security officers in particular are in need of this clarification - our members who work in security believe that the deterrent that a clarified s340 would provide could help them avoid assault in the workplace.

The AWUEQ would like to attend the public hearing of the Committee on 12th July 2024 to provide more context for this matter.

Anti-Discrimination Reforms

Introduction

The AWUEQ is one of the nation's oldest and largest blue-collar trade union, representing tens of thousands of working men and women and their families. We have a very diverse membership in an array of industries, including but not limited to, public health, disability services, local government, manufacturing, youth justice, construction, non-government agencies and other employment covered by the *Fair Work Act 2009* and the *Industrial Relations Act 2016*.

As a union that represents many members in many industries across Queensland, one of our primary concerns is the health, safety, and well-being of our members, addressing how their employment conditions, codes of conduct, policies, and overall well-being are affected in the workplace by the implementation of the first stage of reforms to Queensland's anti-discrimination laws under the *Respect at Work and Other Matters Amendment Bill 2024* (The Bill).

Therefore, we strive to proactively support our members as we believe no individual should suffer harm or injury as a direct result of their job and that our members are adequately protected and that their health, safety and well-being is prioritised in all aspects of their employment.

Our members' health, safety and well-being in the workplace will potentially be affected by the proposed changes to the Bill.

The *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces Report* (Respect@Work Report), published by the Australian Human Rights Commission in March 2020, aimed to identify the extent of sexual harassment in Australian Workplaces, its impact on employees and to provide recommendations for addressing and preventing sexual harassment in the workplace. The Respect@Work Report also recommended several changes to the *Commonwealth Sex Discrimination Act 1984*. Those 55 recommendations include:

- Develop guidelines, policies and procedures for employers, policymakers and governments on preventing and responding to workplace sexual harassment.
- Encourage employers to take a proactive approach to preventing sexual harassment.
- Develop a framework for employers and employees that includes the reporting and handling complaints of serious incidents.
- Provide a new scheme for unions and other representative groups to make complaints about alleged unlawful workplace conduct on behalf of individuals.

- Develop guidelines, policies and procedures for bystander intervention in preventing workplace sexual harassment.
- Evaluate the effectiveness of measures aimed at preventing and responding to work-related gendered violence, including sexual harassment.
- Consistency across federal and state jurisdictions in terms of sexual harassment provisions in anti-discrimination statutes.
- Providing training for employees on what constitutes sexual harassment and how to respond.
- Implementing disciplinary measures for perpetrators of sexual harassment.

The Respect@Work Report also provided a comprehensive understanding of the prevalence and nature of sexual harassment in Australian workplaces and identified the impact on employees, including their psychosocial health and well-being. Additionally, the Queensland Human Rights Commission's *Building Belonging Review of Queensland's Anti-Discrimination Act 1991 Report July 2022* made 10 recommendations for reforms to improve the Act and enhance protections against discrimination. The report recommendations included:

- Improving complaint handling processes
- Increasing transparency and reporting around discrimination statistics
- Increasing education and awareness-raising efforts

The AWUEQ supports changes in the workplace, workplace policies and frameworks that will work towards a more supportive workplace with increased transparency and improved functions to create a culture of respect and dignity in Australian workplaces, where all employees feel safe, valued, and supported.

Key Concerns and Supports

The AWUEQ deals with various complaints of sexual harassment across all levels of the workplace, and as such we've observed a surge in reporting of sexual harassment by employees. This trend is amplified by the widespread use of social media and, at times, open to public scrutiny. The ease of access to social media platforms and the increased scrutiny from the public eye have contributed to a more complex landscape of sexual harassment. As a result, it's essential for workplaces to adapt their policies and strategies to effectively address these evolving issues and provide a safe and respectful environment for all employees.

The AWUEQ is concerned that if there is lack of a systematic approach with clear guidelines, that occasionally our members will be wrongly vilified because of a sexual

harassment report without a form of redress. A structured approach should assist in providing a safe, secure and respectful environment for all employees. Currently, many workplaces struggle with how to recognise sexual harassment and how to appropriately deal with sexual harassment in the workplace.

The blurring of lines between the criteria for determining sexual harassment and the evidence required for a balance of probabilities decision can lead to confusion and uncertainty in addressing workplace sexual harassment claims.

This ambiguity can be problematic, as it may affect the effectiveness of prevention and response strategies, as well as the well-being of individuals who have experienced sexual harassment. To address this issue, it is essential to establish clear guidelines and procedures for defining sexual harassment, identifying evidence, and making decisions about the balance of probabilities. Here are some potential strategies:

- Develop a clear and concise definition of sexual harassment that outlines the types of behaviour that constitute harassment, including verbal, non-verbal, and physical conduct.
- Establish specific guidelines for gathering and evaluating evidence in sexual harassment cases. This could include:
 - Types of evidence considered relevant (e.g., eyewitness testimony, emails, texts, social media messages)
 - Weighting of evidence (e.g., credibility of witnesses, consistency of accounts, value of prior friendship)
 - Standard of proof (e.g., balance of probabilities, reasonable person standard)
- Ensure that investigators conducting sexual harassment investigations are trained to recognise the complexities of workplace sexual harassment and are equipped to gather and evaluate evidence effectively.
- Establish clear procedures for making decisions about the balance of probabilities, including:
 - Criteria for determining whether the evidence supports or refutes a claim
 - Consideration of any conflicting evidence or mitigating circumstances
 - Role of expert witnesses or psychological professionals in evaluating evidence

- Ensure that all parties involved in the process (investigators, decision-makers, employees) understand the criteria and processes used to determine whether an incident constitutes sexual harassment. Clear communication throughout the process can help reduce uncertainty and promote trust.
- Provide ongoing training and support for employees, managers, and investigators on workplace sexual harassment prevention, recognition, and response. This can include workshops, webinars, and online resources.

By establishing clear guidelines and procedures for defining sexual harassment, gathering evidence, and making decisions about the balance of probabilities, we can all help create a safer and more respectful workplace environment for everyone.

The AWUEQ believes that this is a reasonable approach to ensuring a safe, secure and respectful environment potentially free of sexual harassment.