

## Respect at Work and Other Matters Amendment Bill 2024

**Submission No:** 26  
**Submitted by:** LGBTI Legal Service Inc  
**Publication:** Making the submission and your name public  
**Attachments:** See attachment  
**Submitter Comments:**



2 July 2024

Community Safety and Legal Affairs Committee  
[cslac@parliament.qld.gov.au](mailto:cslac@parliament.qld.gov.au)

**By email**

Dear Chair

PO Box 3467  
South Brisbane BC QLD 4101

P: 07 3124 7160  
E: [mail@lgbtilegalservice.org](mailto:mail@lgbtilegalservice.org)  
W: [www.lgbtilegalservice.org.au](http://www.lgbtilegalservice.org.au)

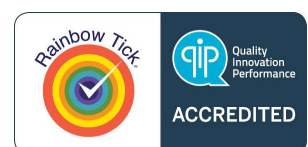
ABN 17 702 067 509

## Respect at Work and Other Matters Amendment Bill 2024

Thank you for the opportunity to provide a submission to the Community Safety and Legal Affairs Committee's (the **Committee**) inquiry into the Respect at Work and Other Matters Amendment Bill 2024 (the **Bill**). Our comments relate to amendments to the Anti-Discrimination Act 1991 (Qld) (the **Act**), amended by the Bill, and necessary and overdue improvements to the Act that could be easily achieved with very simple and commonsense amendments to the Bill.

**The LGBTI Legal Service** is a not-for-profit statewide specialist community legal service established by and for the LGBTIQ+ community in Queensland. We are the only LGBTIQ+ community-controlled legal service in Australia and the only legal service (across community legal, legal aid, and private law firms) to have achieved Rainbow Tick accreditation, an independent evidence-based assessment of an organisation's capability to provide culturally safe, accessible and inclusive services to LGBTIQ+ people. We regularly advise clients in discrimination law and – to the greatest extent that our scarce resources allow<sup>i</sup> – represent clients who require additional support to access justice and/or whose matters are of strategic or systemic importance.

Like many other community organisations, we provided our expert input into the extensive consultative process to review Queensland's 30-year old anti-discrimination law framework that informed the Queensland Human Right's Commission's Building Belonging report<sup>ii</sup>, and culminated in a new draft Anti-Discrimination Bill which was released for public consultation in March this year. We coordinated a detailed collaborative submission to that draft bill on behalf of the LGBTQ+ sector in Queensland, the result of many hours of volunteer labour from our under-resourced community organisations.<sup>iii</sup> Collectively, thousands of hours of careful consideration and lived experience stories have been invested in this open democratic consultation process by community organisations and members of impacted communities, often unpaid or on underpaid staff members' overtime. It is disheartening that these generous offerings have not been reciprocated by the Government following through on their commitment to "introduce a bill to repeal and replace the Anti-Discrimination Act 1991 within the current of Parliament".<sup>iv</sup> For LGBTQ+ communities, the breaking of this news in June, marked and celebrated in many parts of Australia as Pride Month has been particularly dispiriting.



Whilst honouring this investment by the community sector and reaffirming the sector-wide call to deliver on vital holistic and overdue anti-discrimination law reform, we nonetheless support the majority of the Bill presently before Parliament.

## Elements supported

We welcome:

1. The **prohibition of harassment on the basis of sex** (cl 18 of the Bill) and **subjecting a person to a work environment that is hostile** on the basis of sex (cl 22 of the Bill)
2. The **expansion and clarification the protected attributes** (cl 7 of the Bill) in particular the updated language reflected in the attribute sexual orientation (replacing the outdated terminology in the existing attribute of sexuality), and the protection of people who have had historical homosexual offences expunged from their records, and improved definition of physical appearance to capture features that are a characteristic of other protected attributes such as race and gender identity
3. The **improved and expanded protections against vilification** (cl 21 of the Bill, replacing Chapter 4, Part 4 of the Act) which clarify the scope of vilification based on an attribute (proposed s 124A) and includes both an incitement and harm-based test for vilification (proposed 124C and 124D)
4. The inclusion of a **positive duty** to take reasonable and proportionate measures to eliminate discrimination, sexual harassment, vilification and victimisation
5. Improvements in the **representative complaints and investigative mechanisms**

## Improvements needed

We recommend the following amendments to close loopholes and give effect to the intention of the Bill.

6. **Improving definitions of discrimination** (ss 10 and 11 of Act)

The Bill not only aims to implement reforms to sexual harassment in line with the Respect at Work reforms, but rightly sees enhancing protections against discrimination as a vital part of effective reform to provide both effective prevention and redress for people who experience harassment on the basis of sex.

However, the Bill is working with outdated and increasingly unworkable definitions of discrimination. Building Belonging highlighted how the existing definitions of direct and indirect discrimination are confusing and difficult to apply.<sup>v</sup> Currently, complainants seeking to demonstrate direct discrimination must prove that the treatment they received was less favourable than another person without the attribute in question, in circumstances that are the same or not materially different. This requires a comparison between the treatment of a person because of a protected attribute and the treatment of a real or hypothetical person without the attribute – the ‘comparator’. This test is ‘artificial, contrived and creates barriers to justice’, and the many difficulties arising from the definition have been comprehensively covered in Building Belonging.<sup>vi</sup>

A failure to update the definitions of discrimination will undermine the effectiveness of the reforms. It will also make it more complex and costly for organisations to identify discrimination and then comply with the positive duty to eliminate discrimination.

We urge the Committee to revisit the Building Belonging report and adopt the definitions of discrimination recommended therein.

In the alternative, it is possible, without adopting the whole of the consultation draft Bill's definition of discrimination, to achieve significant improvement through a very simple technical amendments, by replacing 'less favourably' with 'unfavourably', and a requirement to provide that discrimination was 'one of the reasons' for the treatment. In relation to indirect discrimination, the test should be redefined as a test of 'disadvantage', requiring complainants to demonstrate that a term 'unreasonably disadvantages' them.

7. **References to attributes must be brought into the definition of discrimination** (cl 21)

The Bill introduces provisions protecting people who are subject to vilification, sexual harassment and a hostile work environment on the basis of characteristics associated with protected attributes. However a failure to provide equivalent protections against discrimination on this basis will leave Queenslanders vulnerable to discrimination and further victimisation resulting from unlawful vilification experienced.

As presently drafted, a person could be subjected to online vilification on the basis of characteristics or stereotypes associated with a protected attribute and a doxxing (revealing a person's private personal details) and a coordinated campaign to 'out' them to their workplace, that results in them being disadvantaged in or dismissed from their employment. For example, a heterosexual cisgender high school teacher might go out for a social event with friends which involves dressing up in drag, images are shared online accusing them of being a 'paedophile' or 'groomer' on the basis of false and harmful stereotypes levelled with LGBTQ+ drag performers, and their occupation and place of work disclosed. Whilst they *might* be able to bring a vilification complaint against their abusers (provided that they can identify the individual/s behind the online vilification), less favourable treatment by their employer would likely not be able to form the basis of a discrimination complaint.

8. **Make time limits consistent across all attributes** (cl 29 of the Bill, s 138 of the Act)

The Bill's Explanatory Notes acknowledge 'the complex reasons which may account for an applicant's delay in making a sexual harassment complaint'. Building Belonging noted that *both* discrimination and sexual harassment "can cause trauma or psychological distress which can mean it takes a longer time to disclose".<sup>vii</sup>

The embedding of two different timeframes makes it complex and confusing for victims of harassment to understand and exercise their rights in relation to harassment which is based on multiple grounds, such as women of colour, disabled women and trans and gender diverse women. The bifurcation of these inseparably intersectional experiences of harassment, embedded in a two-tier system of protection with two different time limits will make it more complex and costly for both complainants and respondents, legal and advocacy services, commissions, courts and tribunals alike to navigate.

Two years is already a comparatively short limitation period by comparison to other causes of action (in most civil causes of action, are between three and six years), and the difference between the time limit for making a complaint to the Queensland Human Rights Commission under the Queensland Act (1 year) compared to the Australian Human Rights

Commission under federal anti-discrimination laws (2 years) already adds unnecessary complexity.

We recommend making the 2-year time limit consistent for all complaints to the Commission under the Anti-Discrimination Act.

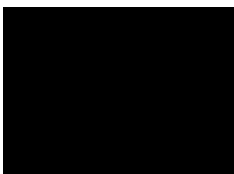
9. **Close inappropriate loopholes for large not-for-profits** (s 46(2) of the Act)

Section 46 of the Act permits discrimination by non-profit organisations when providing goods and services. This has been interpreted widely to include private hospitals, sporting bodies, hospitality venues run by clubs, and likely includes aged care, disability and other vital social support and public services<sup>viii</sup> funded by or contracted out by Government. That large institutions such as the Wesley Hospital are exempt from the Act, or that an aged care or disability services provider or a local RSL club could refuse to provide services to gender diverse, Aboriginal and Torres Strait Islander people, people with disability or any number of vulnerable Queenslanders who are otherwise protected by the Act is anathema to the diversity and inclusion that are features of contemporary Queensland.

**Contact**

We would welcome the opportunity to provide further comments or evidence including presenting before the committee at the Public Hearing.

Yours sincerely



Jo Sampford

Director and Principal Solicitor

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<sup>i</sup> LGBTI Legal Service's core funding is sufficient to employ a single solicitor to provide a statewide specialist service. LGBTI Legal Service is one of more than 150 accredited community legal centres who collectively turn away more than 350,000 seeking legal help each year due to inadequate resources. Independent reviews of legal assistance funding have recommended that LGBTIQ+ people are included as one of the priority populations for legal assistance funding – see further [Community Legal Centres Australia, State of the Sector 2022-23](#), and the [Independent Review of the National Legal Assistance Partnership 2020-25](#).

<sup>ii</sup> [Queensland Human Rights Commission \(2022\) Building Belonging: Review of Queensland's Anti-Discrimination Act 1991](#).

<sup>iii</sup> LGBTIQ+ community organisations are historically - and continue to be - chronically underfunded, receiving just 5c out of every \$100 of philanthropic funding – see further Report by Aurora and Give Out, [Where are the Rainbow Resources? Understanding the funding needs of the LGBTIQ+ community sector in Australia](#).

<sup>iv</sup> [Final Government Response to the Queensland Human Rights Commission's Report Building Belonging – Review of Queensland's Anti-Discrimination Act](#), page 2, Item 1.1

<sup>v</sup> Building Belonging, pp 88-89, 92-93.

<sup>vi</sup> Building Belonging, *ibid*.

<sup>vii</sup> Building Belonging, p 155

<sup>viii</sup> Building Belonging, p 351.