

Respect at Work and Other Matters Amendment Bill 2024

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Community Safety and Legal Affairs Committee
Email: CSLAC@parliament.qld.gov.au

RE: Respect at Work and Other Matters Amendment Bill 2024

Dear Committee,

Please accept this submission providing feedback on the Respect at Work and Other Matters Amendment Bill 2024. We have concerns in four key areas: the urgent need for vilification protections for sex workers in Queensland, the importance of the repeal of the comparator test for discrimination cases, the ability for community-based organisations like Respect Inc. to make complaints on behalf of sex workers, and for the protection of sex worker complainants' anonymity.

Respect Inc is the state-wide sex worker organisation in Queensland, run by and for sex workers. Our organisation provides a comprehensive health promotion, peer education and community engagement program with offices and sex worker drop-in spaces in Gold Coast, Brisbane and Cairns, and regional outreach to other locations.

Sex workers in Queensland experience excessive levels of vilification and are not currently protected. As a result, sex workers have no recourse to justice. Our joint submission with Scarlet Alliance in August 2021¹ outlines examples of the wide variety of types of vilification sex workers experience and details the urgent need for protections to be extended to cover sex workers.

Immediately following the decriminalisation of sex work, the Northern Territory Government reviewed and made amendments to protect sex workers from **both discrimination and vilification** in recognition of the excessive levels of both these factors impacting sex workers.²

Since the Queensland Parliament Legal Affairs and Safety Committee tabled its Report No. 22, a new attribute 'sex work activity' has been added to s7 of the Anti-Discrimination Act in line with the Building Belonging report recommendation.

The Queensland Government Response to the Legal Affairs and Safety Committee Report No. 22, *Inquiry into serious vilification and hate crimes* on 31 January 2022, indicates that the 'Government is committed to exploring additional attributes protected under these provisions...the recommended expansion of sections 124A and 131A [vilification clauses] to

¹ Respect Inc. and Scarlet Alliance, Australian Sex Workers Association Submission to the Legal Affairs and Safety Committee *Inquiry into serious vilification and hate crimes*.

https://respectqld.org.au/wp-content/uploads/Documents/sub_250821.pdf

² Northern Territory Government, Anti-Discrimination Act 1992, accessed 2 July, 2024.

<https://legislation.nt.gov.au/Legislation/ANTIDISCRIMINATION-ACT-1992>

capture additional attributes will be considered in the context of any broader reforms relevant to attributes recommended by the QHRC.³

An unfortunate outcome of separate processes and timing is that the expansion of vilification protections to cover the 'sex work activity' attribute has not been given the serious consideration it deserves. In this Bill, which expands and updates the list of protected attributes for criminal and civil vilification, we strongly recommend that the vilification protections be extended to also cover 'sex work activity'.

Without protection against vilification, sex workers are treated as an 'easy target' for vilification as individuals and as a group of people in Queensland. Vilification and hate crimes enacted against sex workers go undocumented and unreported.⁴ Not including changes to ensure sex workers are covered by these amendments to vilification and hate crime protections is a major oversight that means sex workers will continue to be targeted both as individuals and as a group, causing harm and extreme safety impacts, both of which will undermine the intention of decriminalisation.

Comparator test

The Anti-Discrimination Act currently relies on the use of the comparator test, meaning that a person must show that they were treated less favourably than another person who does not have the same protected attribute as they do. This requirement has significantly complicated and undermined cases where sex workers have sought justice when experiencing discrimination.

The case *Payne v APN News & Media* (2015)⁵ demonstrates how the application of a comparator test does not support sex workers seeking redress for discrimination. Sex workers are routinely charged more for advertising in the 'personals' section of classifieds pages, set aside for sex work advertisements. Settlements at conciliation for this type of discrimination have not been uncommon. However, the ruling in this case caused the case to fail when it was decided that another advertiser in a different section of the newspaper was not a suitable comparator. Instead, it was suggested that the comparison would need to be made with someone advertising in the 'personals' section who was not a sex worker, and who was charged less. We do not accept that this decision was made with an adequate understanding of the issues. Equally, the case of *Dovedeen Pty Ltd v GK* (2013) demonstrates the impact of arguments over the 'correct' comparator, thus reducing the effectiveness of the Act. Over three hearings, the issue of the comparator was debated ad nauseum to the detriment of fairness and natural justice.

The comparator test has complicated many, non-sex work-related cases. In a Queensland Court of Appeal case heard in 2016, the court had to consider 'whether the appropriate comparison was between the treatment received by a person with a hearing impairment and communication difficulties and that of a person without a hearing impairment and without communication difficulties'.⁶ Clearly, the test creates barriers to addressing discrimination and should be considered as an essential amendment to this Bill.

³ Queensland Government Response to the Legal Affairs and Safety Committee Report No. 22, 57th Parliament - *Inquiry into serious vilification and hate crimes* tabled on 31 January 2022. <https://documents.parliament.qld.gov.au/tp/2022/5722T717-4755.pdf>

⁴ Ibid.

⁵ *Payne v APN News & Media* (2015). QCAT 514. <https://www.qhrc.qld.gov.au/resources/case-studies/lawful-sexual-activity>

⁶ *Woodforth v State of Queensland* (2017) QCA 100. <https://archive.sclqld.org.au/qjudgment/2017/QCA17-100.pdf>

Complaints by organisations

Alongside complaints made by a representative body there should also be an opportunity for an 'interested body' to make a complaint. Community-based organisations like Respect Inc. represent a group of people who are workers, but not in relation to industrial rights. In addition, the value of the approach is significantly reduced if there is still a requirement for the complainant to be named.

Suppression of legal names

Some members of the Queensland community experience such high levels of discrimination, including people living with HIV (PLHIV) and sex workers, that being able to suppress their legal name throughout the entire process is critical.

If you require further information in relation to these matters please contact me via

██████████.

Yours faithfully,

Lulu Holiday
State Coordinator