

Respect at Work and Other Matters Amendment Bill 2024

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Submitted by: The Australian Muslim Advocacy Network Ltd (AMAN)
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RESPECT AT WORK AND OTHER
MATTERS AMENDMENT BILL 2024

SUBMISSIONS FROM THE AMAN FOUNDATION LTD

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

1. INTRODUCTION

The Australian Muslim Advocacy Network Ltd (AMAN) works to prevent the harms of systemic racism, online hatred and Islamophobia through policy engagement and law reform. AMAN has set up an AMAN Foundation to carry out its harm prevention work, including making submissions like these.

AMAN Ltd was highly involved in the progression of the Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Act 2023, which commenced on 29 April 2024.

2. RECOMMENDATIONS

(a) AMAN supports the introduction of a positive duty and recommends clarifying that this duty is to be implemented in a way that maximises all human rights and freedoms listed in the Queensland Human Rights Act, including religious freedom.

(b) AMAN recommends extending this positive duty in relation to discrimination and harassment on the basis of a person's religion and race.

(c) AMAN recommends that its 'dehumanising material' definitions be used as a starting point for education guidance for employers on understanding the difference between vilifying discourse and human rights advocacy/legitimate free speech (**ANNEXURE A**). These definitions apply to all groups of humans based on protected characteristics.

(d) AMAN recommends strengthening protections for people with disability by creating a standalone requirement to make reasonable adjustments, as recommended in the Building Belonging Report.

(e) AMAN draws attention to the following recommendations of the Queensland African Community Council submission:

(i) Provide a minimum requirement threshold of diversity of executive leadership workforce in an organisation that the government funds to deliver services to socially complex multicultural communities. This will ensure that diverse perspectives or ideas are incorporated into the organisation's decision-making processes that affect policy outcomes for diverse communities across the state.

(ii) Reduce the burden on individual complainants to address systemic racial discrimination by providing the Queensland Human Rights Commission with broad inquiry functions to investigate systemic racial and other discrimination, including harassment, bullying and examination of witnesses, and to be able to impose penalties for non-compliance when conducting an inquiry.

3. DISCUSSION

4.1 Commissioner Investigations into failure to practice “Positive Duty”

The Respect@Work Report recommended amending the Sex Discrimination Act (Cth) (SD Act) to introduce a positive duty on all employers to take reasonable and proportionate measures to eliminate sex discrimination, sexual harassment and victimisation, as far as possible (recommendation 17).

This recommendation has been implemented in section 47C of the SD Act, which provides that ‘an employer or a person conducting a business or undertaking ... must take reasonable and proportionate measures to eliminate’ certain types of unlawful conduct by or against certain persons.

The Queensland Anti-Discrimination Act (AD Act) does not currently impose an equivalent duty requiring persons to take active steps to eliminate, or prevent, conduct which is unlawful under the Act. There is an incentive under the Act for a person to take reasonable steps to prevent their workers or agents from contravening the Act to benefit from the defence to vicarious liability proceedings under section 133 of the Act. However, the Act places the burden of enforcing the right to equality on the person who has been the subject of unlawful conduct through making a complaint.

The Respect@Work Report identified the key benefit of a positive duty as shifting the burden from individuals making complaints to employers taking proactive and preventative actions. The Building Belonging Report similarly recommended the introduction of a positive duty in order to shift the focus of Queensland’s anti-discrimination law towards preventing discrimination, sexual harassment and other unlawful conduct (recommendation 15.1).

The Bill amends the AD Act to introduce a new positive duty that requires duty holders to take reasonable and proportionate measures to eliminate discrimination, sexual harassment, harassment on the basis of sex and other objectionable conduct as far as possible.

AMAN supports the introduction of a positive duty and recommends clarifying that this duty is to be implemented in a way that maximises all human rights and freedoms listed in the Queensland Human Rights Act, including religious freedom. This is particularly important in religious institutions like religious schools that must maintain the religious ethos and teachings

as part of their holistic care and formation of the student's identity. Under international law, the exercise of religious freedom is a freedom exercised by individuals and people in the community together. Providing a safe space for the expression of Islamic identity is also critical to the well-being of Muslim children, in particular, Muslim teenage girls, who suffer much higher rates of mental health issues due to the impacts of racism and stigmatisation.

AMAN also recommends extending this positive duty in relation to discrimination and harassment on the basis of a person's religion and race. This need has been highlighted in the past eight months when workplaces have adopted restrictive policies in relation to human rights or health-based advocacy/support for Palestinians on the basis that it makes others in their workplaces uncomfortable. This approach has been very different from how workplaces expressed support for Ukraine and Ukrainians and showed a clear double standard. AMAN has heard directly that Palestinian workers have been told to keep their heads down and avoid making a deal about such restrictions, even since the provisional rulings of the International Court of Justice concerning the Genocide Convention. This infringes on the recognition, enjoyment and exercise of equality before the law and the principle of each person being equal in worth and dignity. Given the public atmosphere of defaming Palestinian supporters as Antisemitic, hateful or terroristic and the fear that they will be further persecuted rather than supported, many workers have suffered in silence. However, the impacts of racial discrimination without recourse have been debilitating and will be long-term. We need to shift the burden of racism from individuals to those with the most power and control over workplace culture.

We encourage Queensland employers to cultivate workplaces that are aware and resistant to dehumanising material (**ANNEXURE A**). The definitions provide protection to all human groups based on protected characteristics and are therefore resilient to changes in discourse.

ANNEXURE A

(1) Dehumanising material is the material produced or published, which an ordinary person would conclude, portrays the class of persons identified on the basis of a protected characteristic (“class of persons”) as not deserving to be treated equally to other humans because they lack qualities intrinsic to humans. Dehumanising material includes portraying the class of persons:

(a) to be, or have the appearance, qualities, or behaviour of

(i) an animal, insect, filth, form of disease or bacteria;

(ii) inanimate or mechanical objects; or

(iii) a supernatural alien or demon.

(b) are polluting, despoiling, or debilitating an ingroup or society as a whole;

(c) have a diminished capacity for human warmth and feeling or to make up their own mind, reason or form their own individual thoughts;

(d) homogeneously pose a powerful threat or menace to an in-group or society, posing overtly or deceptively;

(e) are to be held responsible for and deserving of collective punishment for the specific crimes, or alleged crimes of some of their “members”;

(f) are inherently criminal, dangerous, violent or evil by nature;

(g) do not love or care for their children;

(h) prey upon children, the aged, and the vulnerable;

(i) was subject as a group to past tragedy or persecution that should now be trivialised, ridiculed, glorified or celebrated;

(j) are inherently primitive, coarse, savage, intellectually inferior or incapable of achievement on a par with other humans;

(k) must be categorised and denigrated according to skin colour or concepts of racial purity or blood quantum; or

(l) must be excised or exiled from public space, neighbourhood or nation.

(2) Without limiting how the material in section (1) is presented, forms of presentation may include,

(a) speech or words;

(b) the curation or packaging of information;

(c) images; and

(d) insignia.

Intention component

If the above definition was used as a standalone civil penalty, it should be complemented by an intention component:

in circumstances in which a reasonable person would conclude that the material was intended to portray the class of persons as not deserving to be treated equally to other humans or to incite hatred, serious contempt or severe ridicule toward the class of persons.

Adding an intention element may make enforcement more difficult and may not be necessary, especially if the definition is used as part of a legal framework where there are already intention components or exceptions available.

How did we develop this working definition?

AMAN developed this working definition after spearheading a study of five information operations online ([Abdalla](#), [Ally](#) and [Jabri-Markwell](#), 2021). The first iteration of this definition was published in a joint paper with UQ researchers (Risius et al, 2021). It continues to be developed with input received from researchers, lawyers and civil society.

Possible dehumanising conceptions are surfaced through research and then tested against [Haslam](#)'s frame of whether it deprives a group of qualities that are intrinsic to humans.

If a subject is dehumanised as a mechanistic form, they are portrayed as ‘lacking in emotionality, warmth, cognitive openness, individual agency, and, because [human nature] is essentialized, depth.’ A subject that is dehumanised as animalistic, is portrayed as ‘coarse, uncultured, lacking in self-control, and unintelligent’ and ‘immoral or amoral’ (258).

Some conceptions are found to fall outside the frame of dehumanisation but could still qualify as vilification or discrimination, for example, using anti-discrimination laws.

The three categories of dehumanising comparisons or metaphors in Clause (a) are drawn from [Maynard and Benesch](#) (80), and fleshed out with further examples from tech company policies (refer to Meta for example).

Clause (b) is derived from Maynard and Benesch (80).

Clause (c) is derived from [Haslam](#) (258).

Clauses (d) and (e) are elements of dangerous speech that Maynard and Benesch refer to as ‘threat construction’ and ‘guilt attribution’ respectively (81). However, [Abdalla, Ally and Jabri-Markwell’s](#) work shows how such conceptions are also dehumanising, as they assume a group operates with a single mindset, lacking independent thought or human depth (using Haslam’s definition), and combine with ideas that Muslims are inherently violent, barbaric, savage, or plan to infiltrate, flood, reproduce and replace (like disease, vermin)(15). The same study found that the melding and flattening of Muslim identities behind a threat narrative through headlines over time was a dehumanisation technique (17). Demographic invasion theory-based memes (9) or headlines that provided ‘proof’ for such theory (20) elicited explicit dehumanising speech from audiences.

Maynard and Benesch write, ‘Like guilt attribution and threat construction, dehumanization moves out-group members into a social category in which conventional moral restraints on how people can be treated do not seem to apply’ (80).

Clauses (f), (h), (i) are drawn from the ‘Hallmarks of Hate’, which were endorsed by the Supreme Court of Canada in *Saskatchewan (Human Rights Commission) v. Whatcott* 2013 SCC 11, [2013] 1 S.C.R. 467. These Hallmarks of Hate were developed after reviewing a series of successful judgements involving incitement of hatred to a range of protected groups. These clauses were tested using Haslam’s definitional frame for the denial of intrinsic human qualities.

Clauses (f) (‘criminal’) and (g) are drawn from harmful characterisations cited in the Uluru Statement of the Heart.

Clauses (j) and (k) are drawn from AMAN’s observations of online information operations generating disgust toward First Nations Peoples. Disgust is a common effect of dehumanising

discourse. These clauses were tested using Haslam's definitional frame for the denial of intrinsic human qualities.

Clause (l) was drawn from Nicole Asquith's Verbal and Textual Hostility Framework. (Asquith, N. L. (2013). The role of verbal-textual hostility in hate crime regulation (2003, 2007). Violent Crime Directorate, London Metropolitan Police Service.) The data and process used to formulate this Framework is exceptional. Reassuringly, this research had surfaced examples that were already captured by this Working Definition of Dehumanising Material.

This working definition is a work in progress. AMAN welcomes feedback as it continues to be developed.

Updated 15 July 2023