

**Submission**

Anti-Discrimination (Right to Use Gender-Specific Language) Amendment Bill 2018

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I wish to make a contribution to consideration of the Anti-Discrimination (Right to Use Gender-Specific Language) Amendment Bill 2018.

After reviewing the explanatory notes and transcripts from Mr. Robbie Katter's briefing on the purpose of this Bill, I remain unsure of its rationale or utility, other than to provide an avenue for ongoing discrimination against members of the LGBTIQ+ community.

This submission will address several themes and issues raised by proponents of the Bill, and also consider the Bill in relation to related Bills and legislation in other jurisdictions.

**Forced Language & Penalties**

The most common theme raised, in both the explanatory notes and Mr. Katter's briefing, relates to theoretical punishments and penalties that may be applied for using incorrect gendered language.

The Bill purports to be addressing the issue of average Queenslanders finding it impossible to keep up with the range of gender options, pronouns and lexicon in contemporary use. The Bill takes the 'problem' a step further and suggests that there is a 'systemic' discriminatory issue in which people who either make mistakes in their choice of language, or actively choose to subvert these rules, are reprimanded or penalised in some way.

For example, Katter refers to students of the University of Queensland whose assessment was marked down for using gendered phrasing like "mankind" or "workmanship"<sup>1</sup>. The problem with framing this issue as one of systemic discrimination against people who use gendered language is that it glosses over the misuse of language to make an argument about social progressivism and political correctness.

In multiple statements made by The University of Queensland and in articles written by its staff<sup>2</sup> it was concluded that students were not being marked down because of a political agenda against 'traditional' use of language, but rather because it was factually incorrect to use these statements in formal writing and, in practical use, reinforce discrimination towards various demographic groups.

This example also reflects many of the other scenarios the Bill is purported to address. Whilst it might be wrong to arbitrarily reprimand an employee for not using specific language, if such a topic has not been formally conveyed to the employee, such as through verbal or written communications about the workplace culture or Code of Conduct, it is fair to correct an employee for using language that is untrue and belittling about others.

**Burdens on Business**

Based on another oft-raised argument relating to autonomy and the right to refuse service, the proponents of the Bill argue that there should be protections in law for businesses providing services to not be discriminated against if they are either unwilling or unable to accommodate non-binary or non-gendered customers. Katter suggests this as a preventative measure to stop businesses and clubs from being forced into expensive upgrades or accommodations<sup>3</sup>, and the Bill attempts to achieve this end by expressly prohibiting decision making based on gender-specific practices or language, and would prohibit lobby groups from protesting against discriminatory practices of

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<https://www.couriermail.com.au/news/queensland/queensland-government/queensland-unis-under-fire-for-marking-down-students-who-use-gender-language/news-story/a27ac0d43045b3be36153d7cb3d1e1b8>

<sup>2</sup> <https://shorthand.uq.edu.au/small-change/words-are-deeds/>

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<http://www.parliament.qld.gov.au/documents/committees/LACSC/2018/Anti-DiscriminationGender2018/trns-pb-ad-29Oct2018.pdf> - pg3

companies who will not make those accommodations<sup>4</sup>. This would have a significant impact upon organisations that look to confront discriminatory practices, and would stifle social change and community education as a whole.

On the converse, the Bill explicitly leaves out similar protections for business that provide gender-neutral service delivery, suggesting that while there is apparently an injustice that is so significant as to require the suppression of some civil and commercial rights, it does not extend to protecting the opposite point of view, effectively enshrining in our discrimination act a way to discriminate against certain businesses and leaving it out of step with the *Sex Discrimination Act (Cwth) 1984*<sup>5</sup>.

During the briefing, Mr. Katter was asked several times about consulting the Anti-Discrimination Commissioner, or the LGBTQ+ community, and said that he had not done that consultation. It would seem that just even a cursory glance by either would have prevented this sort of incongruity within the drafting.

### **Anti-gender discrimination laws in other jurisdictions**

The *Sex Discrimination Act (Cwth) 1984* sets out that discrimination on the basis of gender identity is unlawful<sup>6</sup>. The expectation that is set on companies is that it take 'reasonable steps' to accommodate the requirements of its employees and customers.

This is functionally similar to much more 'controversial' legislation, such as Canadian Bill C-16<sup>7</sup> which added gender identity, as a defined group, to the Canadian Human Rights Act and Criminal Code so that discrimination could be considered unlawful, and that active discrimination against the group could be considered an aggravating factor in committing a crime. The controversy around the Canadian Bill stemmed from a small number of activists and academics, with Jordan Petersen being the most prominent, who argued that the law would force him into pronoun use for transsexuals that didn't follow their biological sex because to do otherwise could be considered a hate crime<sup>8</sup>. Many constitutional lawyers arguing that this claim was inaccurate<sup>9,10</sup> and since the law was passed just over a year ago there is no evidence that anyone has been arrested, charged or fined for failing to comply with its standards.

### **Conclusions & Reflections**

I don't wish those who are reading this to come to the conclusion that those who casually use binary gendered language should be punished. Our collective lexicon is changing as our culture progresses and, individually, our vocabulary is continually adapting to the culture of our community, workplace or other organisation. It can take some time for new patterns of language to become a natural part of our phrasing. Occasionally we get it wrong, which can be awkward for both the speaker and the subject, or the person doing the correcting, but generally no harm is intended. Katter's Bill, however, is deliberate in perpetuating harm by both providing an avenue for discrimination and by preventing a civil response to that discrimination. This Bill represents, maybe not the worst of such knee-jerk reactions, but it fails to help anyone either in adapting to social change or changing language use, nor does it show a basic level of respect for people in vulnerable demographic groups. The Bill also creates an unnecessary divide between different geographic communities, despite Mr. Katter's insistence that it does not, and it would undermine the cultural standards of communities and organisations across the state, and may have the effect of undermining parts of the various codes of conduct adopted by schools, business, government bodies and other institutions.

I hope proponents of this Bill consider the many people, much more learned and experienced than myself on these issues, that have contributed to the debate and really consider the impact of their language on people. I want those people to consider not adherence to some nebulous doctrine of political correctness, but to being mindful of people around us and of our community in general, and make it hopefully a slightly better place for everyone.

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<sup>4</sup> <http://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2018/5618T1376.pdf>

<sup>5</sup> <https://www.humanrights.gov.au/our-work/sex-discrimination/about-sex-discrimination>

<sup>6</sup> <https://www.humanrights.gov.au/employers/good-practice-good-business-factsheets/sex-discrimination>

<sup>7</sup> <https://www.parl.ca/DocumentViewer/en/42-1/bill/C-16/first-reading>

<sup>8</sup> <https://sencanada.ca/en/Content/SEN/Committee/421/lcjc/29ev-53339-e>

<sup>9</sup> <https://www.bbc.com/news/world-us-canada-37875695>

<sup>10</sup> [https://www.vice.com/en\\_ca/article/qbnamx/no-the-trans-rights-bill-doesnt-criminalize-free-speech](https://www.vice.com/en_ca/article/qbnamx/no-the-trans-rights-bill-doesnt-criminalize-free-speech)