




Speech By  
**Peter Russo**  
MEMBER FOR TOOHEY

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**ANTI-DISCRIMINATION (RIGHT TO USE GENDER-SPECIFIC LANGUAGE)  
AMENDMENT BILL**

 **Mr RUSSO** (Toohey—ALP) (5.53 pm): I rise in the House to oppose the Anti-Discrimination (Right to Use Gender-Specific Language) Amendment Bill 2018, introduced by the member for Traeger from Katter's Australian Party on 19 September 2018. In this speech in opposition to the bill I draw on a number of sources, including evidence that was provided to the Legal Affairs and Community Safety Committee in respect of this bill. In my view, this legislation is unnecessary and, rather than protecting citizens from discriminatory conduct, is likely to be harmful to vulnerable persons. The legislation will not enhance the Anti-Discrimination Act 1991 but, rather, will undermine the important policy objectives of that beneficial legislation.

I observe that a written submission from then anti-discrimination commissioner—now the Human Rights Commissioner—submits to the effect that the bill is neither necessary nor warranted and is beyond the objectives of the Anti-Discrimination Act set out in the preamble, in particular paragraph 6(c) in which parliament has recognised the following—

- (c) the quality of democratic life is improved by an educated community appreciative and respectful of the dignity and worth of everyone.

The bill's objectives, as stated in the explanatory notes, are: to protect an individual's right to use traditional gender based language; and to protect businesses and other organisations from disadvantage in the provision of facilities and services that exclusively recognise gender as either male or female. However, the reality is that the protection of the use of gender-specific language has the potential to be divisive and is inconsistent with the contemporary objectives of fostering an inclusive society.

The anti-discrimination commissioner, now the Human Rights Commissioner, directed the legal affairs committee's attention to the submissions made by the Caxton Legal Centre to the effect that the promotion of a right to use gender-specific language is likely to expose those people who are transgender, gender diverse or intersex to increased discrimination. The commissioner went on to say that the bill's proposal to remove the reasonableness test from the elements of indirect discrimination would be highly problematic as it would remove the ability to consider the context in which discrimination is alleged. The commissioner emphasised that the proposal to remove the reasonableness test from indirect discrimination across all of the attributes would have a profound impact on discrimination laws and the ability of the courts ultimately to weigh up and balance rights and responsibilities. I respectfully share the commissioner's views.

In the course of the hearing before the legal affairs committee, the commissioner was asked how the objectives of the bill can be seen by all Queenslanders, rather than inciters, as being worthy and to comment on whether the bill goes against the objectives it purports to support. The commissioner responded that the bill—

... would create a new attribute in the act that would create a right for people who have used gender-specific language to bring a complaint against another person or entity that they say has discriminated against them on the basis of that attribute. The Katter bill would potentially expose vulnerable people such as those who are transgender and those who are gender diverse or intersex

to increased discrimination, because if people think they have a right to use gender-specific language willy-nilly they may not appreciate the niceties of when that language actually does stray into prohibited territory that is covered by sexual harassment, vilification and sex discrimination under the act.

The commissioner expressed the view—

After having read the transcript of the evidence provided by the member for Traeger, it does not seem that there is a legitimate or a serious concern within the community that would justify making substantial, and, quite frankly, radical changes to the Anti-Discrimination Act.

Similarly, in response to a question from the member for Mirani, Mr Andrew, as to whether there would be an interest in undertaking a probe into the University of Queensland to understand if discrimination is happening, the commissioner answered—

I think if there was overwhelming evidence presented to the commission that a group of people were vulnerable because of a particular attribute, the commission has certain investigative powers but, frankly, on the evidence that is currently before this committee I think it unlikely that that would be the case.

The commissioner was asked to comment on the notion advanced by the member for Traeger that the current situation, pre bill, is political correctness gone mad and that he wanted to protect some of his constituents who may believe they are not doing anything wrong by using gender-specific language, and whether there is an alternative approach that could be adopted or whether it was simply that the context referred to by the member for Traeger simply did not exist. The commissioner responded—

I will try to answer your question as best as I can. I think there are a number of different contexts that the member for Traeger was referring to. One seemed to be addressing gender-diverse people by a pronoun that is not the preferred pronoun of that person. There seemed to be an expression by the member that, whilst people were happy to do that, they did not want to be forced to do that. I think that seemed to be the nub of what he was trying to get to. I guess what I would say to that is: there needs to be greater public awareness, and perhaps the commission has a role in this, in explaining to the public the potential impact of misdirected language on people who are vulnerable. What we saw with the gay marriage debate was a group of people who were already highly vulnerable being exposed to a public debate which, in effect, questioned the validity of their lifestyle. What we saw from that was a huge impact on people's mental health. In fact, this is a public health issue as much as it is a legal and social policy issue. Suggesting that it should be optional for people to respect the gender choice of individuals when in fact that may create psychological harm is problematic.

With respect, the commissioner has identified the problem with clarity and precision and that the bill, which would make respecting the gender choice of individuals optional, may be problematic, including in its capacity to create psychological harm. The legislation, as it stands, does not purport to police every aspect of our lives or our engagement. That is an important thing to recognise in giving perspective to the current debate. The act protects 16 attributes, including, amongst other things, sex, family responsibilities and gender identity, but for discrimination to be unlawful it must happen not only on one of those grounds but also on one of the various areas of activity under the act. Generally, those areas of activity are public areas of activity—for example, work, education and receiving goods and services.

The discrimination also needs to fall within at least one of the two types of discrimination in the act to be regarded as unlawful—that is, direct discrimination and indirect discrimination. As Ms Bell, Principal Lawyer at the Anti-Discrimination Commission Queensland, explained to the committee—

Direct discrimination is if someone does something because of your attributes—'I'm not going employ that person because she's a female' or 'she's of an age where she might have children and have to take time off work'. Indirect discrimination happens when someone imposes a term, a requirement or a condition that you cannot or find it difficult to comply with because of your attributes.

The point of mentioning all of this is to bring perspective to this debate. The current act operates only in certain circumstances. The legislature here, and in many other places in Australia and across the world, has sought to strike a proper balance between aspects of conduct which need to be regulated against discrimination and those which are not the proper purview of regulation. The act, in its current form, strikes a proper and considered balance. The proposed bill does not.

Further, the bill, if passed, would create an inconsistent approach to regulation of discriminatory conduct in Queensland compared to the Commonwealth. Although it is not always necessary or desirable for Queensland legislation to be completely in sync with its Commonwealth equivalent, in this case the inconsistency would represent a substandard legislative model for Queensland, and the likelihood of court rulings needing to be made that the Commonwealth legislation prevails over the Queensland legislation to the extent of the inconsistency. I oppose this bill.