




Speech By
Hon. Yvette D'Ath

MEMBER FOR REDCLIFFE

Record of Proceedings, 14 July 2020

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

 **Hon. YM D'ATH** (Redcliffe—ALP) (Attorney-General and Minister for Justice) (5.40 pm): I rise to speak against the Anti-Discrimination (Right to Use Gender-Specific Language) Amendment Bill 2018. The bill would amend the Anti-Discrimination Act 1991 to: prohibit discrimination on the basis of the use of gender-specific language; expand the current definitions of 'direct discrimination' and 'indirect discrimination' in the Anti-Discrimination Act to include specific examples in relation to the use of gender-specific language; and prevent a person from treating, or proposing to treat, an entity, being a provider of services or facilities, that does not accommodate persons who are not, or do not identify as, male or female, less favourably than another entity that accommodates such persons.

The bill is inconsistent with the objectives of the Anti-Discrimination Act and with fundamental legislative principles. The bill will have a negative impact on certain members of the community, including those who are transgender, gender diverse or intersex. I note that the Legal Affairs and Community Safety Committee recommended that the bill not be passed. I support that recommendation.

The purpose of the Anti-Discrimination Act is to promote equality of opportunity for everyone by protecting them from unfair discrimination. That is achieved by prohibiting direct and indirect discrimination against a person on the basis of certain protected attributes, including sex, age, race, impairment, religious or political beliefs or activities, gender identity, sexuality and family responsibilities. The protected attributes in the Anti-Discrimination Act have been included to promote equality of opportunity for everyone by protecting them from unfair discrimination in certain areas of activity and from sexual harassment and certain associated objectionable conduct by making discrimination, harassment, vilification and victimisation unlawful in Queensland. Those protected attributes are recognised in various international human rights instruments. The use of gender-specific language is not a right that is recognised in the international human rights instruments to which Australia is a signatory. To expand the current operation of our anti-discrimination legislation, compelling evidence of injustice and discrimination would be required.

The member for Traeger has sought to provide some anecdotal evidence, but also notes the bill's central purpose is to initiate a discussion about our use of gendered language. In order to progress that conversation, I would invite supporters of this bill to specifically articulate what it is that they want to be able to say that they cannot say now.

The bill would give protection to an entity, including businesses and other organisations—a concept that would be highly unusual in the context of human rights generally and the Anti-Discrimination Act, which protects individuals from discrimination. That would be a fundamental shift and, indeed, an expansion of the application of anti-discrimination legislation. As the Queensland Human Rights Commission, formerly known as the Anti-Discrimination Commission Queensland, noted in its submission to the committee, it is individuals who have human rights and receive protection from discrimination under the act.

The bill would protect deliberate and persistent misgendering of a person, which is something that could cause significant harm to a vulnerable group the Anti-Discrimination Act seeks to protect. The Caxton Legal Centre submitted to the committee that where someone mistakenly misgenders a person it is unlikely that unlawful discrimination will have occurred. Deliberate misgendering can be detrimental to the mental health of transgender and gender-diverse individuals. It undermines the dignity and human rights of gender-diverse people. The committee noted that it is not entirely clear how the provisions of the bill would work in practice. In particular, the Queensland Human Rights Commission had concerns that the provisions omitted the tests of proportionality and the reasonableness tests that are a feature of Queensland's pre-existing anti-discrimination framework. The omission of those tests will mean that individuals who are employers could find themselves in court for seeking to enforce commonsense codes of conduct.

The Queensland Human Rights Commission does not support the bill. It submitted to the committee that the bill may be inconsistent with the Commonwealth Sex Discrimination Act 1994. Protecting the use of gender-specific language is not something that has been raised with the commission in any of its information, complaint handling and community engagement services.

This bill goes against everything that the government has sought to do since coming to office. We have a proud history of recognising and supporting diversity in our community, the LGBTIQ community, and brought in the Human Rights Act. It is important that we maintain the work that we have already built on and not take that backwards. I believe the bill before us tonight would be taking us backwards. I do not think that there have been sufficient grounds to support the need for this bill. If people want to have the conversation, by all means they should have the conversation. However, you do not start a conversation by first changing the law. You have the conversation first. You find the evidence to support the need to change laws and then you bring that law before the parliament. It is for all those reasons that I oppose this bill.