Speech By

Tim Nicholls

MEMBER FOR CLAYFIELD

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RESPECT AT WORK AND OTHER MATTERS AMENDMENT BILL; CRIMINAL JUSTICE LEGISLATION (SEXUAL VIOLENCE AND OTHER MATTERS) AMENDMENT BILL

Mr NICHOLLS (Clayfield—LNP) (3.45 pm): In the foreword to the 2020 *Respect@Work* report Commissioner Kate Jenkins noted—

Australia was once at the forefront of tackling sexual harassment globally.

She went on to say—

Women's organisations in Australia began to press for the legal and social recognition of sex discrimination in the early 1970s. This movement built on Australia's ratification of two key international conventions:

- the International Labour Organization's Discrimination (Employment and Occupation) Convention in 1973
- the UN Convention on the Elimination of All Forms of Discrimination Against Women ('CEDAW') in 1983.

She went on to say—

Australia now lags behind other countries in preventing and responding to sexual harassment.

The report went on to state that the AHRC's most recent survey in 2018 showed that sexual harassment in Australian workplaces is widespread and pervasive and one in three people experienced sexual harassment at work in the past five years. I am sure we can all agree that that is a very frightening statistic. It is unacceptable. The report goes on to say—

Sexual harassment is not a women's issue: it is a societal issue, which every Australian, and every Australian workplace, can contribute to addressing.

Workplace sexual harassment is not inevitable. It is not acceptable. It is preventable.

Today we debate whether this bill is the best way to deal with those concerning statistics, among the many others, and whether it does so after due consideration of all of the matters it purports to deal with. I have to say we do so in yet again a Labor government imposed constraint, given that this is a cognate debate and the need to debate two lengthy and serious bills, which are on unrelated issues, in such a very short timeframe. On top of that, the Attorney has circulated amendments, very much at the last minute, to change and clarify the law relating to the strangulation offence because of uncertainty in the original changes and other changes which we now hear will implement what the Attorney herself has only just described as key recommendations of the *Building belonging* report. These amendments relating to key recommendations from the *Building belonging* report are being circulated just prior to lunch and are expected to be passed before this day's sitting is finished without any review by a committee or any chance for stakeholders to make a contribution. We know stakeholders are keen to make a contribution because 37 of them have already made very significant contributions—and I acknowledge the contributions of all of the parties and submitters to the committee in respect to the

respect at work bill. We have amendments that are being proposed today, which implement something from a contested area and where people do have serious concerns, at the last moment on the third last sitting day of a four-year term of the 57th Parliament.

This is not the best parliamentary practice. This is not the way that proper legislation ought to be passed. This is legislation by creep, not legislation by scrutiny and proper passage. Each of the bills included in this cognate debate deserve more than the short timeframe that has been allowed for debate today, especially given the very large number of amendments just circulated this morning, including, for example, amendments to the legislation pertaining to the appointment of reserve judges in the Supreme and District courts which has not been discussed before but is now expected to be accepted by this parliament and passed into law. I would argue very strongly that that is not the way that such significant laws ought to be passed and, as I say, in the case where the appropriate committee has not had the time to do the work necessary and parties have not had the opportunity to make their contribution. As I said in my contribution just after lunch, the only way to stop this chaos and crisis is to change the government on 26 October and show Labor the door in 2024.

The respect at work bill was, amongst other things, formulated in response to recommendations from a number of inquiries. These include the Australian Human Rights Commission's *Respect@Work: national inquiry into sexual harassment in Australian workplaces* report, which I have referred to already; the Legal Affairs and Safety Committee's report on its inquiry into the Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Bill; and the Queensland Human Rights Commission's *Building belonging: review of Queensland's Anti-Discrimination Act 1991*. The bill also amends several other acts as detailed in the explanatory notes.

At the outset, I reaffirm the LNP's commitment to making our communities safer, and that includes having the right legislation in place to ensure people can live together peaceably. All Queenslanders deserve respect, no matter their background or beliefs. Unchecked, vilification, harassment and discrimination tear at the warp and weft of the fabric of our community. Too often we see injury, hurt and violence caused by those who choose to inflame and exploit the seeming differences amongst us while ignoring the great many common threads that bind us.

However, does this mean we must all agree? Of course not. Do we all need to believe the same thing as our neighbours, our work colleagues or even our friends? Of course not. Ought we be able to express our views freely, frankly and in a forthright and, in this place, some might even say theatrical fashion? Of course. Do we want to see freedom of speech, thought and religion unnecessarily curtailed? No, we do not. Do we want honest citizens to fear the heavy hand of the state as it watches over every thought or word spoken? No, we do not. The challenge for this bill and the question that has to be answered is: does it achieve those aims? Does it limit free speech and freedom of belief beyond that which is strictly necessary to prevent serious vilification, discrimination and harassment?

It is claimed by the government that, if enacted, this bill will align Queensland law with that of the Commonwealth pertaining to sexual harassment in the workplace and as recommended by the *Respect@Work* report, with adjustments for Queensland's legal system—that is, Queensland's manner of preparing this legislation. If that were all it did and due consideration to submissions had been had, there would be much more support for the bill. While similar to Commonwealth reforms in many areas, three significant problems arise because this bill goes beyond the recommendations of the 2020 report.

The bill enacts some recommendations of the former Legal Affairs and Safety Committee with which the LNP mainly agrees. We certainly agree with confirming that the immunities that apply to magistrates and District Court judges are the same immunities that apply to Supreme Court judges. We have no objection to the provisions of parental leave under the Magistrates Act 1991. However, we are concerned with aspects of the bill that seek to implement parts of the QHRC's *Building belonging* report. That report recommended a complete rewrite of the Anti-Discrimination Act. The government supported in principle all 120-plus recommendations in that report and committed to introducing a bill to repeal and replace the Anti-Discrimination Act within the current term of government. In fact, the government went so far as to circulate—and has circulated for the past almost 12 months—a draft new bill. Substantial and reasonable concerns to that bill were raised by very many faith groups and Queenslanders from across all denominations. In light of those objections, what we now see is a piecemeal approach that puts parts of that bill and the changes that the *Building belonging* report recommended into this legislation, seemingly leaving out a batch of the recommendations for some future action, presumably in the hope that if re-elected in October the government will be able to bring them in without facing the electoral backlash that they know they would suffer if they had introduced the bill in its entirety.

Today we found out that, as the Attorney-General herself said, some key parts of the *Building belonging* report were not included in the original bill that this House considered and she now proposes will be introduced by amendments and passed later on this afternoon. Again, that will happen outside a normal consultation process. It is a piecemeal approach and one that has engendered significant concern from both supporters and opponents of the proposals. We heard that again from the Attorney-General, who said that today she will move amendments in order to appease or address the concerns of those people who support the changes and want to see *Building belonging* passed in its entirety. We did not hear the Attorney-General talk about any consideration being given in relation to those who have grave concerns about the *Building belonging* report and some of the proposals that it introduces.

The LNP does not support the piecemeal approach to this reform. The latest iteration of reform to the Anti-Discrimination Act really highlights the political cowardice of this government. They are much like their national counterpart, which will not even publicly release their legislation in terms of religious freedom unless they get a carte blanche from the opposition. They have hidden it away, hoping it goes away. They are afraid of the fight. Knowing it is unpopular and facing an election, this government is trying to slip through changes without proper public scrutiny or debate in the dying days of a dying government that has seemingly abandoned its long-held positions.

The LNP has expressed its concerns in the statement of reservation. I will outline some of those a little later. I acknowledge that 37 stakeholders made submissions to the committee. I particularly acknowledge the many good and compassionate groups that support the bill. As I said in my introduction, there are many aspects of the bill that are worthy of support. Other organisations and groups, equally compassionate and equally charitable, also voiced concern about the impact of the bill, particularly on faith-based organisations and institutions. I want to acknowledge all of the parties who made those submissions.

With respect to that, I note that the Attorney tabled a letter that she sent to Reverend David Baker. That letter is dated today, 10 September. I repeat: the letter is dated today, 10 September—the day we are debating a bill that has been reviewed by the Queensland Human Rights Commissioner. It is a four-page, dense letter that deals with a number of matters including positive duty, harassment, vilification—that is, matters that were all raised in submissions that the combined churches and others made to the committee back in July. It has taken until now, 10 September 2024, for that response to be provided.

The date, the timing and the actions of this government speak for themselves: amendments moved by lunch on the day that the bill is to be passed and a letter to supposedly address reasonable concerns that have been raised in a sensible and considered fashion by reasonable people who hold genuine beliefs. Those concerns are being answered in this way. It is a disgrace. Members opposite know it is a disgrace and their communities will know it is a disgrace. Whether peoples' kids go to the local Catholic primary school, a Christian Schools Australia school or a mainstream religious school, they all know what this government is up to. The reason we know that is because they have told us that they know. We know that they do not like what is going on and no reasonable explanation has been given to deal with that.

A pattern of concern not properly addressed in the LNP's view and certainly not addressed in a letter sent in the dying days of debate on the bill emerged from the submissions. Concerns frequently raised related to the vilification provisions outlined in part 4 of the bill, relating to the positive duty provisions in chapter 5C, and those surrounding the definition of harassment on the basis of sex in part 3, division 2. In the short time I have, I want to highlight some of those major concerns. In essence, and as University of Queensland constitutional law professor Aroney said in his submission to the inquiry, three problems arise from the sections of the bill that go beyond the recommendations of the *Respect@Work* report. The concern to prohibit harassment on the basis of sex is an important focus of that report. However, by those terms, the report is specifically seeking to prevent discrimination against a woman for being a woman. Many of the submitters said that the bill goes well beyond that requirement.

Here are the problems. The first and core problem concerns the definition of harassment on the basis of sex in proposed section 120 of the bill. The definition consists of three elements. As Professor Aroney points out, there are issues in relation to each of those elements. Perhaps of most concern is the subjective nature of the test and the use of the word 'offended'. In Australian law, the only places where an 'offend' standard is imposed are the Tasmanian and the Northern Territory anti-discrimination acts and the Commonwealth Racial Discrimination Act. It is important to note that, in a number of cases, senior Australian judges have expressed serious concerns about laws that would render it unlawful to cause offence or to offend others. Therefore, simply causing offence or offending others may well be

considered unlawful. International human rights law is careful to limit the scope of hate speech laws to conduct that positively incites individuals to acts of discrimination, hostility or violence. It does not refer or reference 'offend'. That is one problem.

The second problem relates to the positive duty to eliminate harassment on the basis of sex, and it is the requirement to take reasonable and proportionate measures to eliminate harassment. I know the Attorney mentioned part of this in her earlier address to this place. These provisions, in our view, are open to an interpretation that an organisation must adjust its teaching and its practices concerning its beliefs about sexuality, sex and gender, and that could require an organisation to alter its beliefs and teachings which, again, contravenes some international requirements.

The third problem raised by Professor Aroney is the proposed vilification provisions in proposed sections 124C and 124D. Again, I note the Attorney mentioned both of these sections and, in particular, the provisions of 124C regarding hateful, reviling, seriously contemptuous or seriously ridiculing conduct.

In the statement of reservation, LNP members noted that the bill's amendments to the vilification provisions exceed the recommendations of the LASC report. We expressed concerns that proposed section 124C would alter the usual broad application of the objective test by shifting to a more subjective approach and exceeds the recommendations in that report. The proposed section defines a reasonable person as a person 'who has the same age, gender identity, impairment, race, religion, sex, sex characteristics or sexual orientation as the other person or members of the group'. Whilst at the surface level this might appear to be an objective test by reference to the reasonable person, it narrows the definition of a reasonable person. It is not the reasonable person at large who has traditionally been described as the passenger on the second back seat of the Clapham bus—and in many other ways in Australian law that is a normal, ordinary, careful and thoughtful person in the Australian community; it is narrowing it down to a particular set of people, and that is the subjective part of it because it introduces those requirements of having the same age, gender, identity, impairment, race and other attributes that I described. It introduces a test that depends on a particular identity.

The shift to a subjective approach would open the provision up to diverse interpretations. For example, individuals have varying levels of sensitivity to offensive conduct and the interpretation of what constitutes vilification could differ widely, even if assessed by judging from a person or group who have that particular attribute. Proposed section 124C also references conduct that a reasonable person would consider hateful.

A number of organisations in their submissions raised concerns that hateful conduct can be interpreted differently from different perspectives, and this is particularly so given a reasonable person here is someone, again, with a particular protected attribute in question and not to the reasonable person in general. The government noted that this new harm-based provision has been formulated to represent the higher threshold of seriousness for the conduct to be captured under the provision—I note that the Attorney mentioned that—and that the drafting adopts a threshold recommended by the Victorian Legal and Social Issues Committee. It does not negate the fact that the provision is potentially unclear and that the government has not addressed stakeholders' concerns about the subjective use of the word 'hateful'. There has been no clear statement by the government about how it will ensure that the terminology will not be weaponised against religious and faith-based organisations.

Quite simply, if the government does not intend it to affect those organisations, it could easily have adopted the language of New South Wales—that is, by including a religious discussion or instruction purposes exemption in proposed section 124C(3), which is the exemption provision which, again, the Attorney referenced in her contribution to the debate. That provides that an exemption applies for 'a public act, done reasonably and in good faith, for academic, artistic, scientific, research ... or for other purposes in the public interest, including discussion or debate about and expositions of an act or matter'.

It would have been so simple to put it in there to address the concerns of faith-based organisations, if it were the government's intention to include a religious discussion or instruction purpose, but the government has chosen not to do so. The government could also address the subjective element in proposed section 124C(2), which is the reasonable person test, without attaching it to a particular identity and remove the simple reference to hatred, which does not appear in the *Respect@Work* report either.

There are other matters in relation to positive duty and the proposed implementation of recommendation 17 of the *Respect@Work* report, which recommends amending the Sex Discrimination Act at the Commonwealth level to introduce a positive duty on all employers to take reasonable care as far as possible. There are many differing stakeholder views on 'positive duty', and those concerns are covered in many of the submissions that were made.

One of those concerns is that the duty would force religious schools and organisations to have policies at odds with fundamental beliefs and doctrines, particularly on matters related to marriage, gender and sexuality. A fuller debate and discussion in relation to those matters would have, I think, reassured those organisations about the import and effectiveness of those provisions. Some of those religious organisations supported the implementation of a positive duty to allow for religious freedom which they argue is important in religious institutions such as religious schools that must maintain their religious ethos. Both sides of the argument are taking place with respect to that. Both sides of the argument arguably have the same objective—that is, religious freedom. Further debate and clarity as to what the effects would be if a positive duty were implemented would be beneficial to all the parties. A simple solution would be for the bill to clarify that a positive duty does not prevent religious bodies and schools or others from teaching their beliefs. Again, the government has not taken this on board.

The LNP members have expressed their concerns in their statement of reservation. We have expressed concerns regarding the actions, conduct and words that are lawful or may otherwise give rise to litigation. There is currently uncertainty which poses challenges to those at all levels of society, including individuals, businesses and community organisations.

Others will cover the issue of equitable outcomes, which I note the Attorney has also addressed in her contribution. The subjective nature of equitable outcomes and the unknowability raise concerns. The legal ambiguity which may be created would make it difficult for individuals, businesses and courts to interpret and apply the law consistently. It is a pity that the government has made such a hash of this bill. Had it been more considered, less ideological and more in line with the original reports it purports to introduce, it would have led to better legislation, in the LNP's view.

In the short time left to me, I turn now to the criminal justice legislation bill, another very important piece of legislation. The bill implements the third major tranche of the legislative reforms arising from the recommendations made by the Women's Safety and Justice Taskforce in its two reports. The LNP has, of course, supported the work done by that taskforce and has supported the recommendations in those two reports; however, that does not mean it is uncritical of the way the government is implementing the changes that have been made.

The bill will implement the government's response to the taskforce recommendations relating to sexual violence and women and girls as accused persons and offenders. These are recommendations 42, 53, 54, 57, 60, 75, 79 and 149 of report two. It also introduces the standalone offence of sexual acts with a child aged 16 or 17 under one's care, supervision or authority and introduces a second limb to the existing course of conduct offence of repeated sexual conduct with a child.

It is intended that these amendments will provide a protective function for young people over the age of consent—that is, the age of 16—but under the age of 18. Recommendations 27 to 29 of the Royal Commission into Institutional Responses to Child Sexual Abuse included that states and territories should review any position of authority offences, such as what we are looking at today, applying in circumstances where the victim is 16 or 17 years of age and, if the offences require more than the existence of the relationship of authority—that is, that it is abused—amendments should be made so that the existence of the relationship is sufficient. It becomes a standalone matter. There is no further requirement that it be abuse; it is just the fact that there is a relationship that makes it the offence. As the Attorney has pointed out, all other Australian jurisdictions have criminalised this type of conduct. We support this move.

I note that QSAN support the bill, especially the provisions relating to the rights of special witnesses, the videorecording of evidence for re-use and expert evidence in sexual violence matters, and strongly support the tendency and coincidence amendments. The Queensland Indigenous Family Violence Legal Service similarly support the legislation, as do DV Connect. The QFCC support amendments to the inadmissibility of admissions made by prisoners in programs, the inclusion of the new offence of sexual acts with a child under one's care, the amendments to the Evidence Act and the extension of the duration of non-contact orders.

While there were objections raised by some submitters—notably the Law Society, which strongly opposes the new offence provisions—on balance, and subject to ongoing monitoring of its operation, the LNP accepts the proposed changes, as I indicated. Acknowledging that the bill does implement considered recommendations of the taskforce, it is still important to take note, we believe, of the very real concerns of Legal Aid Queensland, the Bar Association and the Law Society. Each of these organisations raised serious issues, particularly around the proposed changes to the Evidence Act and the admissibility of tendency and coincidence evidence as well as similar fact or propensity evidence. I know that my colleague the member for Currumbin has some very strong views in relation to the admission of similar fact and tendency evidence as well. She may wish to make a contribution about it.

As I have said a number of times in debate about changes to the evidence laws in Queensland, this is often a contested area and, as a field of law, can be quite complex and time consuming. Notwithstanding that, it needs to be carefully considered as there are real issues of prejudice to an accused that must be taken into account when considering the ease of admissibility of highly prejudicial material, which tendency and propensity evidence can often be. Having noted the submissions and the department's response, in our view this is an area that will need to be monitored to ensure it operates as intended.

I also note the amendments that the Attorney foreshadowed she will be moving which seek to clarify strangulation laws following a High Court decision that, if my memory serves me correctly, came down in December last year. I note the Attorney's reference to a review of the offence of strangulation to the Queensland Law Reform Commission to ensure it operates as intended.

Given the concerns raised above about the respect at work bill, the short time for consideration and debate in the public realm, its rushed and incomplete nature, especially around the *Building belonging* measures, the amendments that have been introduced late in the consideration of this bill and the unwillingness of the government to consider some simple clarifying amendments, the LNP will not be supporting that bill. In respect of the criminal justice legislation bill, the LNP will not be opposing that bill.