26 June 2024

Community Safety and Legal Affairs Committee
CSLAC@parliament.qld.gov.au

By website

Submission on
the *Respect at Work and Other Matters Amendment Bill 2024*

Who are we?

1. This submission is on behalf of, and co-signed by:
    - Archbishop Mark Coleridge, Catholic Archdiocese of Brisbane
    - Bishop Mark Vainikka, Lutheran District of Queensland
    - Pastor Gary Hourigan, State Director, International Network of Churches Qld
    - Pastor Gary Swenson, State Ministries Director, Australian Christian Churches, Qld and Northern Territory
    - Rev. Bruce Moore, Moderator, Uniting Church in Australia, Qld Synod
    - Rev. Stewart Pieper, Executive Officer, Queensland Baptists
    - Bishop Ken Howell, Catholic Diocese of Toowoomba
    - Bishop Keith Joseph, Anglican Diocese of North Queensland
    - Rev. Rob Simpson, Superintendent Minister, Wesleyan Methodist Church, South Qld District
    - Pr. Ron McCormick, Superintendent Minister, Wesleyan Methodist Church, North Queensland District
    - Mr. Kojo Akomeah, Associate Director for Public Affairs and Religious Liberty, Seventh Day Adventist National Office
2. We welcome the opportunity to make this submission and we give consent for this submission to be published. Our contact details are as follows.

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Executive Summary

3. Freedom of religion and freedom of speech have been recognised as fundamental human rights at least since the creation of the Universal Declaration of Human Rights. These rights are articulated in the International Covenant on Civil and Political Rights (ICCPR) and the Queensland *Human Rights Act 2019*.
4. There are a number of elements to the *Respect at Work and Other Matters Amendment Bill 2024* that risk significant impact on religious communities and the freedoms of speech and religion.
5. These concerns all arise from sections of the legislation that go beyond the terms and recommendations of the original Respect@Work report, and introduce novel concepts.
6. In the case of ss 124C and 124D the term "hateful" is introduced, which is not raised in the Respect@Work report, nor is it defined in the legislation. Much religious teaching can be interpreted as "hateful" by those who disagree. These sections also lack the usual protection of "religious" speech (along with academic, artistic, scientific, etc), which provide the balancing of religious freedom found in similar legislation in other jurisdictions.
7. Sections 120 and 131 introduce an overly broad definition of "the basis of sex" which goes beyond the intention of the report. Coupled with the low bar of offense, this risks encompassing legitimate beliefs and debate about the nature of sex and gender. The "positive duty" then risks forcing faith-based institutions to abandon their beliefs, or teach against them, in order to prevent the possibility of this low bar of "harassment".
8. Equally, s 124E prohibits creating a "work environment that is hostile on the basis of sex". Coupled with the broad definition of "basis of sex", this risks encompassing faith-based work places (including churches, mosques, synagogues and temples) operating according to their beliefs on sex, gender and sexuality.
9. Ironically, these problems would increase the harassment for people of faith - opening up individuals and faith groups to complaints, as well as violating the human rights of freedom of religion and speech.
10. These problems have all been created by the interaction of minor changes to the legislation with each other. Accordingly, they are easily remedied with small adjustments that would not impact on the original purpose of the bill – implementing the Respect@Work recommendations.

Recommendations

A. Ensure that ss 124C and 124D do not allow courts to regulate religious teaching by explicitly protecting good-faith religious debate and disagreement.

B. Remove the term "hateful" from s 124C or replace with a clearer term.

C. Add "religious" to the list of public interest activities in s 124C(3)(c) and s 124D(2)(c).

D. Upgrade the bar of offense in s 120 by changing 120(1)(a) to "conduct of a seriously demeaning nature"

E. Amend the legislation to clarify the meaning of "harassment on the basis of sex" so that it does not include:

- statements, discussions and the use of language – religious or otherwise – based on views about the nature of sex and gender
- religious organisations and schools operating in an otherwise lawful way according to their beliefs about sex and gender.

F. Amend the legislation to clarify that the positive duty in s 131 does not prevent religious bodies and schools from teaching their beliefs, or require them to promote values within their organisations that are inconsistent with their doctrines.

G. Amend the legislation in S 124E and 124F to clarify that religious bodies and schools teaching their beliefs regarding sex, sexuality and gender is not a "hostile environment"

Religion and speech as human rights

11. Freedom of religion and freedom of speech have been recognised as fundamental human rights at least since the creation of the Universal Declaration of Human Rights. These rights are articulated in the International Covenant on Civil and Political Rights to which Australia is a signatory (ICCPR Art. 18 and 19).

12. In Queensland law, the ICCPR has been implemented in the Human Rights Act 2019:

> **20 Freedom of thought, conscience, religion and belief**
>
> 1. (1) Every person has the right to freedom of thought, conscience, religion and belief, including—
>
>   a. the freedom to have or to adopt a religion or belief of the person's choice; and
>
>   b. the freedom to demonstrate the person's religion or belief in worship, observance, practice and teaching, either individually or as part of a community, in public or in private.
>
> 2. A person must not be coerced or restrained in a way that limits the person's freedom to have or adopt a religion or belief.
>
> **21 Freedom of expression**
>
> 1. Every person has the right to hold an opinion without interference.
>
> 2. Every person has the right to freedom of expression which includes the freedom to seek, receive and impart information and ideas of all kinds, whether within or outside Queensland and whether—
>
>   a. orally; or
>
>   b. in writing; or
>
>   c. in print; or
>
>   d. by way of art; or
>
>   e. in another medium chosen by the person

13. The conditions by which these human rights can be limited are restricted:

> **13 Human rights may be limited**
>
> 1. A human right may be subject under law only to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

14. As discussed below, elements of the *Respect at Work and Other Matters Amendment Bill 2024* introduce limitations of both speech and freedom of religion.

15. Each issue raised below is caused by the interaction of various clauses, and is not part of the stated purpose of the legislation – implementing the Respect@Work report.

16. These interactions and impacts appear to be unintentional results of the drafting process, and it is appropriate that they are identified and corrected at the Inquiry stage.
17. Each issue is easily addressed by minor changes to the legislation that would have little or no impact on the delivery of the stated purpose.
18. As a result, the significant impacts on the human rights of freedom of speech and religion created by these issues are not "reasonable limits that can be demonstrably justified" (c.f. *Human Rights Act 2019* s 13) when weighed against the minor changes needed to avoid them.

Vilification – ss 124C, 124D

"Hateful" conduct

19. S 124C introduces the concept of "hateful" conduct. However, there is no definition given for the term "hateful".
20. The ordinary English meaning of "hateful" includes:
    - arouses hate
    - deserves to be hated
    - full of or expressing hate
    - unpleasant; dislikable; distasteful
21. There is no indication in the legislation which meanings are intended. Without greater clarity the law remains dangerously ambiguous.
22. The terms "hate" and "hateful" do not appear in the Respect@Work report. The inclusion of this broad language cannot be argued to be an implementation of those recommendations.
23. This addition to the list of harms is ambiguous and unnecessary.

"Reasonable person"

24. The definition of a "reasonable person" is shifted to only include members of the affected category. This is a significant change, as what an average Australian, or even a judge, may find "reasonable" is not relevant. Only the offended category gets to decide what is "reasonable".
25. In addition, when considering who is a "reasonable" member of an offended category, there is no guidance as to how broadly or tightly that category is to be defined.
26. For example, what the average "reasonable" Christian finds hateful may be different to a reasonable "Evangelical Christian", or a reasonable member of the "Closed Brethren". Simply by defining the category more broadly or tightly will dramatically change the outcome of what is considered "hateful"

27. It will be up to a judge to decide in any one case how to define the category in question, and how to identify what a "reasonable" member of that category would find "hateful".

Impact on religious discussion, debate and disagreement

28. Given the broad definition of the term "hateful", the scope of what is considered to be hateful varies dramatically between sections of society.

29. Actual harm does not need to have occurred. It is enough that a "reasonable" member of the category would "consider" the conduct hateful, reviling, seriously contemptuous, or seriously ridiculing.

30. This section poses real risks of being weaponized by one religious group against another, and becoming a blasphemy law by another name:

    - Many faiths teach that non-adherents are wrong and are going to hell – would that be considered "hateful" by a member of another faith?
    - Many faiths have sacred leaders, symbols or concepts and they would consider denigrating treatment to be "hateful".

31. The uncertainty of what would be considered "hateful", and what measure of the category will be applied in the case of a complaint, risks a chilling effect on reasonable religious disagreement and debate.

Incomplete exemptions to 124C and 124D

32. The new legislation provides no protection for good-faith religious discussion and debate. Sections 124C and 124D include exceptions for:

> a public act, done reasonably and in good faith, for academic, artistic, scientific or research purposes or for other purposes in the public interest, including public discussion or debate about, and expositions of, any act or matter.

33. Religious purposes are not included in this exemption, although they are included in comparable legislation in other States – e.g. *Anti-Discrimination Act 1977 (NSW)* s49ZE

34. In addition, there are no protections available in the exemptions currently provided in the Anti-Discrimination Act. The exemption in s 109(d) would only protect religious institutions (not individuals) and only in situations that was both:

    - in accordance with the doctrine of the religion concerned; **and**
    - necessary to avoid offending the religious sensitivities of people of the religion.

35. To apply this exemption requires the courts to decide what religious teachings are "necessary" to avoid religious sensitivities. This places the courts in the position of deciding theology and regulating religious teaching.

Recommendations

A. **Ensure that ss 124C and 124D do not allow courts to regulate religious teaching by explicitly protecting good-faith religious debate and disagreement.**

B. **Remove the term "hateful" from s 124C or replace with a clearer term.**

C. **Add "religious" to the list of public interest activities in s 124C(3)(c) and s 124D(2)(c).**

Harassment on the Basis of Sex – s 120

36. Section 120 introduces the new category of "harassment on the basis of sex". This section, while apparently designed to protect (for example) a woman from being harassed for being a woman, has been drafted in such a way that it could unintentionally encompass discussion about the controversial issues of the nature of sex and gender.

37. This concept does not exist in the proposed *Anti-Discrimination Bill 2024*, raising the question of why is has been added at the last minute. The new addition creates interactions with the rest of the section that threaten to silence debate and dialogue on the controversial issue of sex and gender.

Broad definition of "basis of sex"

38. It is worth noting that the language of "on the basis of sex" is used frequently in the Respect@Work report. In those terms, the report is seeking to prevent discrimination against a woman for being a woman. In itself, this is a worthy ideal.

39. However, the definition of "basis of sex" has been broadened to permutations of sex that a person is or has been, using language that is not in the original report, nor in the relevant sections of the *Sex Discrimination Act 1984 (Cth).*

40. This broadened definition potentially encompasses discussion, debate and disagreement concerning the controversial issues surrounding biological sex, gender, transitioning etc.

41. Many faiths have views concerning the nature of sex and gender, the roles of men and women, and the appropriate expression of sexual intimacy. These views, while accepted by many, are also considered by others to be hateful, demeaning, or offensive.

Low bar for offense

42. The section uses the very low bar of "conduct of a demeaning nature", where similar legislation in s 124 uses "seriously contemptuous of, or seriously ridiculing". The lack of the adverb "seriously" creates a very low bar.

43. The bar is further lowered with the qualification that the conduct is "in circumstances where a reasonable person would have anticipated the possibility that the other person would be offended…".

44. This is the same bar found in the Sex Discrimination Act 1984 (Cth). However, combined with the broader definition of the "basis of sex", this low bar risks being applied to the

broader societal conversation about the nature of sex and gender – an area which is not part of report and not in the stated scope of the legislation.

Impact on debate and teaching

45. In the broader discussion of sex and gender, positions of belief from both sides can often be defined as demeaning by the other side, and offense is very easy to anticipate on both sides.

46. For example, some activists have declared activities such as “misgendering” (not using the gender a person currently identifies as), or “dead-naming” (using a name they previously used when identifying as another gender), as inherently demeaning. Equally, other activists declare the concept that a man can become a woman to be demeaning to biological women.

47. Without the higher bar of “seriously demeaning”, a wide scope of debate would trigger this legislation, even if unintentional or incidental.

48. Secondly, organisations who hold beliefs about this issue – e.g. faith-based organisations or schools – could be considered to be “harassing on the basis of sex” by consistently teaching their beliefs about sex and gender, in the knowledge that their beliefs – while many people agree with them – can be reasonably anticipated to offend others.

Exemptions

49. The exemptions in s 109 would protect religious institutions, but would not protect individuals teaching and speaking about their beliefs.

50. It is more complicated if employment is involved, for instance in the case of a faith-based institution speaking about its beliefs and an employee taking offense. It is plausible that could be in the “work or work-related area” and hence not protected.

51. Schools and other education facilities – including higher education – are not protected by s 109.

52. In regards to higher education and theological institutions, s 109 provides protection for

    - the training or education of people seeking ordination or appointment as priests, ministers of religion or members of a religious order; or
    - the selection or appointment of people to perform functions in relation to, or otherwise participate in, any religious observance or practice”

53. This may not provide enough protection for theological institutions that are training people for non-ordained ministry to teach what they believe.

Recommendations

D. **Upgrade the bar of offense in s 120 by changing 120(1)(a) to "conduct of a <u>seriously</u> demeaning nature"**

E. **Amend the legislation to clarify the meaning of "harassment on the basis of sex" so that it does not include:**

- **statements, discussions and the use of language – religious or otherwise – based on views about the nature of sex and gender**
- **religious organisations and schools operating in an otherwise lawful way according to their beliefs about sex and gender.**

Positive duty to eliminate harassment – s 131

54. The Bill introduces a "positive duty" to take steps to remove unlawful discrimination or harassment.

55. The Anti-Discrimination Commissioner is empowered to investigate any organisation that they suspect is not carrying out the positive duty and to enforce that duty through a tribunal.

56. As with harassment, the language in this amendment is different from the language in the Anti-Discrimination Bill 2024 in that it introduces the concept of "harassment on the basis of sex". This raises the same concerns as described above, but with the additional positive requirement to prevent this harassment.

57. As with the harassment on the basis of sex, it is unclear whether a faith-based organisation teaching their beliefs about sexuality, sex and gender, and other similar issues would be considered "harassment".

58. Accordingly, a positive duty to prevent that "harassment" would effectively be forcing a religious institution to stop teaching what they believe, and might force them to promote positions contrary to their doctrines.

Exemptions

59. It is unclear if the exemption in s 109 would apply to the positive duty for churches or other faith organisations, or if the positive duty would be considered to fall under the "work or work-related area" exception in s 109(2).

60. Schools and other education facilities – including higher education – are not exempted by s 109.

61. In regards to higher education and theological institutions, s 109 provides protection for

- the training or education of people seeking ordination or appointment as priests, ministers of religion or members of a religious order; or
- the selection or appointment of people to perform functions in relation to, or otherwise participate in, any religious observance or practice"

62. This may not provide enough protection for theological institutions that are training people for non-ordained ministry.

Recommendation

F. Amend the legislation to clarify that the positive duty in s 131 does not prevent religious bodies and schools from teaching their beliefs, or require them to promote values within their organisations that are inconsistent with their doctrines.

Hostile Work Environments – s 124E

63. The Bill also introduces a new category of "Work environment that is hostile on the basis of sex".

64. The bar of offense is "a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the conduct would create a work environment that would be offensive …"

65. As with s 131 above, the vague definition of "basis of sex", combined with the low bar of offense, risk encompassing faith-based organisations teaching and operating according to their faith regarding sex, gender and sexuality. It is easily "anticipated" that some people will consider main-stream religious teaching to be "offensive".

66. Applying the relevant circumstances of s 124F, a faith leader teaching through their scriptures and addressing sexuality when it arises would fulfil (b) and (c) of the relevant circumstances. The only defence available to a faith community facing this accusation is the vague "any other relevant circumstance".

67. An employee who took a role with a faith-based institution, fully cognizant of the institutions' beliefs, could subsequently change their own views and then find these teachings "offensive", and make a claim of a "hostile work environment".

68. Without clarification of "relevant circumstances", there is no certainty for faith-based organisations that they will not be accused of (or indeed found guilty of) creating a "hostile work environment" simply for teaching their faith.

Exemptions

69. As with s 131 above, the exemptions in s 109 are unlikely to protect faith-based organisations, because a "hostile work environment" is likely to fall under the "work or work-related area" exception in s 109(2).

70. Equally, faith-based schools and higher education institutions (including theological colleges) are unprotected.

Recommendation

G. Amend the legislation in S 124E and 124F to clarify that religious bodies and schools teaching their beliefs regarding sex, sexuality and gender is not a "hostile environment"

71. We thank the Committee for the opportunity to submit.

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