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3rd July 2024

Committee Secretary
Community Safety and Legal Affairs Committee
Parliament House
George Street
Brisbane Qld 4001

By email: cslac@parliament.qld.gov.au

Dear Committee Secretary,

Re: Consultation on the Respect at Work and Other Matters Amendment Bill 2024

Thank you for the opportunity to provide comments on the Respect at Work and Other Matters Amendment Bill 2024 (**Respect at Work Bill**). We are disappointed that despite the extensive work that has been undertaken and progress made over the last 3 years to replace the existing *Anti-Discrimination Act 1991* (**A-D Act**) with an improved and modernised Act, including completing consultation on the Anti-Discrimination Bill 2024 (**A-D Bill**), the Queensland Government has elected not to proceed with enacting the A-D Bill within this term of government, contrary to its commitments to do so. Whilst the Respect at Work Bill contains important reforms and we broadly support those reforms to be made, it appears that the Bill would, if enacted, implement only 14 of the 46 recommendations contained in the Queensland Human Rights Commission's Report, *Building Belonging: Review of Queensland's Anti-Discrimination Act 1991*. With an election looming in October this year, this leaves critical reforms, including many which will assist Aboriginal and Torres Strait Islander communities, up in the air. We would thus strongly encourage the Queensland Government to fulfill its commitment to pass the A-D Bill within this term of government.

Preliminary consideration: Our background to comment

The Aboriginal and Torres Strait Islander Legal Service (Qld) Limited (ATSILS), is a community-based public benevolent organisation, established to provide professional and culturally competent legal services for Aboriginal and Torres Strait Islander

peoples across Queensland. The founding organisation was established in 1973. We now have 25 offices strategically located across the State. Our Vision is to be the leader of innovative and professional legal services. Our Mission is to deliver quality legal assistance services, community legal education, and early intervention and prevention initiatives which uphold and advance the legal and human rights of Aboriginal and Torres Strait Islander peoples.

ATSILS provides legal services to Aboriginal and Torres Strait Islander peoples throughout Queensland. Whilst our primary role is to provide criminal, civil (including, child protection and domestic violence) and family law representation, we are also funded by the Commonwealth to perform a State-wide role in the key areas of Community Legal Education, and Early Intervention and Prevention initiatives (which include related law reform activities and monitoring Indigenous Australian deaths in custody). Our submission is informed by over five decades of legal practise at the coalface of the justice arena and we, therefore, believe we are well placed to provide meaningful comment, not from a theoretical or purely academic perspective, but rather from a platform based upon actual experiences.

Introductory comments

The Queensland Attorney-General commissioned the Queensland Human Rights Commission (QHRC) to undertake a review of the A-D Act in May 2021. The review undertaken by QHRC was the first proper review of the A-D Act since it was enacted 30 years prior. It goes without saying that the review was much needed to ensure that our anti-discrimination laws adequately reflect modern community standards and needs. In undertaking the review, QHRC consulted with the community, public and private sectors, peak bodies, non-profits and faith organisations, and these consultations culminated in the Report, *Building Belonging: Review of Queensland's Anti-Discrimination Act 1991*, which was delivered on 29 July 2022 (**Building Belonging Report**). The Building Belonging Report contained 46 recommendations aimed at strengthening protections against discrimination, refining key concepts within the legislative framework, expanding its scope to include prevention obligations and streamlining the complaints process. The Building Belonging Report was tabled in Parliament in September 2022 and, in April 2023, the Queensland Government committed to supporting all of its recommendations in principle including introducing a bill to repeal and replace the current A-D Act within the current term. In April this year, the A-D Bill was drafted and put out for consultation. ATSILS, along with many other key organisations, undertook detailed legal analysis of the A-D Bill and made comprehensive submissions thereto.

It appears that the Queensland Government has now moved away from its commitment to enact the A-D Bill during this election term, instead opting to introduce into Parliament the Respect at Work Bill which contains what it refers to as Stage 1 of the reforms to the anti-discrimination framework, with Stage 2 promised to follow. The Respect at Work Bill implements approximately 14 of the 46 recommendations contained in the Building Belonging Report. With an election on our doorstep and very limited Parliamentary sitting dates left, this leaves critical reforms, including many which will assist Aboriginal and Torres Strait Islander communities, in limbo.

We strongly urge the Queensland Government to fulfill its commitment to pass the A-D Bill within this term of government. Staying the current course will mean that crucial progress, and a great deal of work and careful consideration undertaken by key stakeholders, will be lost and that would be a shame given how close we are to transformative and comprehensive reform.

Comments on the Bill

If, despite our concerns, the Queensland Government decides to stay its current course by not repealing and replacing the A-D Act in this term of government and, instead, enacting 'Stage 1' of the reforms via the Respect at Work Bill, then we offer our broad support to the passage of the Respect at Work Bill subject to the Queensland Government providing an election commitment to enacting the critical reforms contained in 'Stage 2' should they be successful in the upcoming election.

We have had the opportunity to review QHRC's submission with respect to the Respect at Work Bill and we broadly concur with their submissions.

In addition, we would like to make the following specific submissions.

We support the proposed amendments in the Bill which would introduce new protected attributes under the A-D Act including "homelessness", "irrelevant criminal record" and "subjection to domestic or family violence". We also support the proposed amendment of the existing attribute, "family responsibilities", to "family, carer or kinship responsibilities" which would mean that individuals that have responsibilities to others that are outside of their immediate family have equal protection to those that have responsibilities to their immediate family members. As kinship systems are fundamental social structures within Aboriginal and Torres Strait Islander communities, expansion of this protected attribute to expressly refer to kinship responsibilities is welcomed. However, we are concerned that the Respect at Work Bill does not include recognition of intersectional discrimination or harassment (as it did in the A-D Bill). Many Aboriginal and Torres Strait Islander individuals experience

intersectional discrimination (i.e., on the basis of two or more protected attributes, such as, race and gender or race and disability; or race, gender and disability, etc.). It is integral that recognition of intersectional discrimination be included in the legislative framework coupled with the ability for complainants to make a complaint on one or more grounds.

We also support the following proposed amendments in the Respect at Work Bill:

- (a) the additional prohibitions of harassment on the basis of sex and subjecting a person to a work environment that is hostile on the basis of sex;
- (b) the new harm-based vilification provision and extended attributes that would be protected from vilification; and
- (c) the new positive duty to take proactive steps to prevent discrimination, sexual harassment, vilification, etc., however, we note that these should be accompanied by the full suite of enforcement powers that were recommended in the Building Belonging Report to have the best chance of fully realising the policy objectives behind this reform.

We are concerned that this suite of legislative reform will not include the following key reforms that were contained in the A-D Bill:

- much needed amendments which would streamline QHRC's complaints process and make the process simpler and more accessible for complainants, especially those with literacy and/or cognitive challenges;
- reform of the legal tests relating to impairment, direct and indirect discrimination;
- a standalone duty to make reasonable adjustments for disability;
- much needed improvements to the process/regime that governs prisoners making complaints under the A-D Act; and
- the opportunity to revise the affirmative measures regime (and particularly, from our perspective, to embed self-determination and co-design into the regime).

We thank you for the opportunity to provide feedback on the Bill.

Yours faithfully,

Shane Duffy
Chief Executive Officer