



Submission to

Senate Education and Employment Legislation Committee

*Sex Discrimination and Fair Work (Respect at
Work) Amendment Bill 2021*

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submission

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Introduction

The Queensland Nurses and Midwives' Union (QNMU) thanks the Senate Education and Employment Legislation Committee for the opportunity to comment on the *Sex Discrimination and Fair Work (Respect at Work) Amendment Bill 2021* (the bill).

Nursing and midwifery is the largest occupational group in Queensland Health and one of the largest across the Queensland government. The QNMU is the principal health union in Queensland covering all classifications of workers that make up the nursing and midwifery workforce including registered nurses (RN), registered midwives, enrolled nurses (EN) and assistants in nursing (AIN) and students who are employed in the public, private and not-for-profit health sectors including aged care.

Our more than 67,000 members work across a variety of settings from single person operations to large health and non-health institutions, and in a full range of classifications from entry level trainees to senior management. The vast majority of nurses and midwives in Queensland are members of the QNMU. As the Queensland state branch of the Australian Nursing and Midwifery Federation, the QNMU is the peak professional body for nurses and midwives in Queensland.

The QNMU believes all nurses and midwives have the right to work in a safe and healthy workplace environment and to perform their work without risks to their physical and psychological health and safety.

We consider that a zero-tolerance approach to any form of sexual harassment or discrimination in the workplace should be adopted. As such, we support the proposed amendments to the bill, which include changes to the *Fair Work Act 2009* (FW Act), the *Sex Discrimination Act 1984* (SD Act) and the *Australian Human Rights Commission Act 1986* (Cth) (AHRCA).

The QNMU endorses the position and recommendations of the Australian Council of Trade Union (ACTU) as provided in their submission.

We express general support for the bill and wish to raise the following considerations.

Proposed amendments - Sex Discrimination and Fair Work (Respect at Work) Amendment Bill 2021

Miscarriage Leave

The QNMU supports the expansion of compassionate leave entitlements to include miscarriage as a permissible occasion to access up to two days of paid leave. Research indicates the significant psychological impacts of pregnancy loss via miscarriage and the likelihood of experiencing post-traumatic stress (PTS) (Farren et al., 2020). In our view, this amendment will provide the much-needed recognition for women and their spouse or de facto partner to have the necessary time to grieve after experiencing a miscarriage.

Whilst the QNMU commends this legislative change, we encourage further expansions to the entitlements for compassionate leave for miscarriage, such as offering access to a longer period of paid leave. In our view, this would promote better outcomes and support for women and their spouses or de facto partners after miscarriage, as well improving the physical, psychological and cultural health and safety of workplaces.

The bill provides leave entitlement for the spouse or de facto partner of the employee but fails to account for alternate relationships such as a former spouse, former de facto partner or surrogate. The QNMU considers the need to expand the scope of who can access the entitlement.

Protections for public servants

The QNMU expresses support for expanding the scope of the SD Act to include all members of parliament recognised by the *Members of Parliament (Staff) Act 1984*. In our view, this will strengthen the SD Act and provide greater consistency in line with other federal anti-discrimination laws.

Stop Sexual Harassment order

We support amending the existing anti-bullying provisions to enable the Fair Work Commission (FWC) to make 'stop orders' for sexual harassment. A stop sexual harassment order would not however, be available in cases where it is deemed that there is no risk of harassment occurring again. For instance, a stop order would not be available if the person who harassed the worker is no longer employed at the workplace. The QNMU questions this limitation, as there would be no means for the FWC to make an order for compensation in such a circumstance. Harassment can occur in many forms outside of the work environment and can persist after an employee is no longer employed at the workplace. We recommend that the scope of stop orders for sexual harassment be expanded to consider conduct 'in connection' with work.

Prohibition on Sex-Based Harassment

The proposed amendments include that a person can be harassed on the grounds of their sex or a characteristic that pertains to the sex of a person. We support this change as it will provide greater clarity and redress for sex-based harassment, as conduct that is unlawful and separate from sexual harassment.

Unfair Dismissal

The QNMU endorses amending s387 of the FW Act to clarify that sexual harassment can be a valid reason for dismissal. This change will provide greater transparency and protection for employers that sexual harassment constitutes fair and justified dismissal.

Victimisation

The QNMU is supportive of the inclusion that any victimising conduct can form the basis of a civil action for unlawful discrimination, in addition to a criminal complaint. We provide no further comments.

References

Farren, J., Jalmbrant, M., Falconieri, N., Mitchell-Jones, N., Bobdiwala, S., Al-Memar, M., Tapp, S., Van Calster, B., Wynants, L., Timmerman, D., & Bourne, T. (2020). Posttraumatic stress, anxiety and depression following miscarriage and ectopic pregnancy: a multicenter, prospective, cohort study. *American journal of obstetrics and gynecology*, 222(4), 367–367. <https://doi.org/10.1016/j.ajog.2019.10.102>