WOMEN SPEAK AUSTRALIA

SUBMISSION TO THE STRATEGIC REVIEW OF QUEENSLAND'S HUMAN RIGHTS AND ANTI-DISCRIMINATION FRAMEWORK

Part C – Review of the Respect at Work and Other Matters Amendment Act 2024

25 October 2026

ABOUT WOMEN SPEAK AUSTRALIA

Women Speak Australia (WSA) is an independent national women's rights advocacy organisation. We advocate for the protection of women's sex-based rights, safety, privacy, dignity and equality, including in law, public policy, employment, sport, healthcare and the provision of services. We also advocate for the protection of children.

Our work is grounded in the recognition that biological sex is a material characteristic with legal, social and practical significance. Women and girls have particular rights and interests that require recognition and protection, including in relation to bodily integrity, pregnancy and motherhood, privacy, safety and access to single-sex spaces and services.

WSA supports effective protection against unlawful discrimination. However, anti-discrimination legislation must be clear, proportionate and workable. It must protect people from genuine discrimination without creating unnecessary uncertainty, imposing unreasonable obligations or undermining legitimate distinctions and decision-making.

INTRODUCTION AND SCOPE OF THIS SUBMISSION

WSA welcomes the opportunity to contribute to the Strategic Review of Queensland's human rights and anti-discrimination framework.

This submission addresses Part C of the Discussion Paper, concerning the uncommenced provisions of the Respect at Work and Other Matters Amendment Act 2024 and their proposed amendments to the Anti-Discrimination Act 1991 (Qld).

Our submission focuses on the potential unintended consequences of the proposed provisions, particularly where they introduce uncertain concepts, broaden the scope of prohibited conduct or create additional obligations and liabilities for employers and other organisations.

WSA considers that anti-discrimination legislation should remain focused on preventing unlawful discrimination through clear and consistently applicable legal standards. It should not be expanded in ways that make ordinary decisions about employment, safety, suitability and the operation of organisations unnecessarily difficult.

We also emphasise that recognising biological sex as a protected characteristic is important to the effective protection of women and girls. Legal definitions and provisions must preserve the ability to recognise sex where it is relevant, rather than conflating sex with gender identity or other concepts.

Our responses to the discussion questions are set out below.

PART C – REVIEW OF THE RESPECT AT WORK ACT

C1. Does the phrase "equality of opportunity" require any amendment?

WSA supports retaining the existing expression "equality of opportunity" and does not support replacing or supplementing it with the expression "equitable outcomes".

Equality of opportunity is an established and understandable principle. It requires people to have fair access to opportunities without unlawful discrimination. It does not require identical outcomes, nor does it prevent reasonable distinctions where those distinctions are relevant and justified.

The expression "equitable outcomes" is less precise. It risks shifting the focus of the Anti-Discrimination Act from preventing discrimination to pursuing particular social or demographic outcomes. This could introduce uncertainty about the purpose and interpretation of the Act and place pressure on organisations to achieve particular outcomes rather than provide fair opportunities. The Discussion Paper itself records the criticisms made of the subjective nature of "equitable outcomes" during the parliamentary process.

This distinction is particularly important where biological sex is relevant to privacy, safety, bodily integrity, pregnancy, maternity, sport and the provision of single-sex services. Equality of opportunity must not be interpreted as requiring the removal of legitimate sex-based distinctions and protections.

We note that the Building Belonging Report did not recommend the introduction of the expression "equitable outcomes". WSA considers that the existing focus on equality of opportunity is clearer and more appropriate.

C2. Are there any unintended consequences of introducing a prohibition on harassment on the basis of sex?

WSA does not support the proposed new prohibition on harassment on the basis of sex in its current form.

The proposed prohibition extends beyond sexual harassment to conduct that is said to demean a person because of their sex or characteristics generally associated with that sex. This is a substantial expansion of the law and raises questions about the boundary between unlawful harassment, disagreement, criticism and legitimate discussion.

The proposal is particularly concerning in the absence of a clear definition of sex. Biological sex is an objective characteristic and should not be conflated with gender identity, gender expression or other subjective concepts. Without clarity, the provision risks creating uncertainty about what conduct is prohibited and whose rights and interests are being protected.

WSA considers that, where the Act refers to sex, it should mean biological sex: female or male.

- **Female sex** means the sex of an adult human whose sex development followed the female reproductive pathway, characterised by development of ovarian tissue and organisation of the reproductive system towards the production of ova, whether or not reproductive function is intact.
- **Male sex** means the sex of an adult human whose sex development followed the male reproductive pathway, characterised by development of testicular tissue and organisation of the reproductive system towards the production of sperm.
- **Sex-development pathway** means the biological pathway by which an individual's reproductive system and gonads develop as ovarian or testicular, including in circumstances involving a variation or disorder of sex development.
- **Biological sex** is determined by reproductive biology and the sex-development pathway, not by gender identity, social role, physical appearance, legal sex marker, birth certificate, passport or other administrative classification.

WSA does not consider that a new and broadly framed prohibition is necessary to address genuine harassment. The proposed provision risks creating uncertainty and discouraging legitimate discussion about sex, gender identity and the protection of women's rights. The Building Belonging Report did not recommend this prohibition, and the Reviewer's preliminary view is that those concerns are well-founded.

C3. Are there any unintended consequences of introducing a prohibition on subjecting another person to a work environment that is hostile on the basis of sex?

WSA does not support the proposed prohibition on subjecting another person to a work environment that is hostile on the basis of sex.

The proposed test is broad. It would apply where a reasonable person would anticipate the possibility of an offensive, humiliating or intimidating environment. This formulation risks capturing conduct that is not directed at a particular person and may not amount to harassment in the ordinary sense.

There are also practical questions about responsibility. A workplace environment can be influenced by many people, including employees who have limited authority or control over workplace policies and conduct. The proposal may expose employers and individuals to uncertainty about when liability arises and who is responsible.

The provision could also have a chilling effect on legitimate workplace discussions about biological sex, gender identity, women's rights, single-sex facilities and workplace policies. Employees should not be deterred from raising legitimate concerns or expressing lawful views simply because another person finds those views uncomfortable or disagreeable.

WSA considers that the concerns identified by the review about the breadth and operation of this provision are well-founded. The proposed prohibition should not proceed.

NEW ATTRIBUTES

WSA does not support the further expansion of protected attributes under the Anti-Discrimination Act.

An attribute under the Act is a characteristic listed in section 7 on the basis of which discrimination is prohibited. The most coherent attributes are those that are largely immutable or outside a person's control, such as sex, age, race and impairment. Not every personal circumstance, historical matter or social difficulty needs to become a protected attribute.

Expanding the list increases uncertainty, complaint volume and conflicts with other legitimate interests, including workplace safety, suitability assessments and the operational needs of employers.

The proposed new attributes should not be introduced. Existing protections are sufficient to address genuine discrimination without continually broadening the scope of the Act.

C4. Are there any unintended consequences of introducing the new attribute "irrelevant criminal record"?

WSA does not support introducing irrelevant criminal records as a new protected attribute in the proposed form.

The proposed definition extends beyond convictions to include unfinalised charges, charges that have been withdrawn or dismissed, acquittals, infringement notices and other matters.

These circumstances are not equivalent and should not be treated as though they establish the same facts.

Employers and organisations must be able to make reasonable assessments of suitability, particularly in positions involving children, vulnerable people, financial responsibilities, security or positions of trust. The relevance of a criminal history will depend on the nature of the role and the circumstances of the individual case.

The proposed test of whether a criminal record is "directly relevant" to a particular situation is also likely to generate uncertainty. It may expose employers to complaints when they make legitimate decisions based on safety, risk or the requirements of a position.

WSA recognises the importance of rehabilitation and supports appropriate protections for spent convictions and records that have been lawfully expunged. However, these matters should be dealt with through the relevant legislation and existing safeguards. They do not justify creating a broad new protected attribute that may restrict reasonable suitability assessments.

C5. Are there any unintended consequences of introducing the new attribute "expunged conviction"?

WSA does not support introducing expunged conviction as a separate protected attribute under the Act.

WSA recognises the historical circumstances that led to the introduction of expungement schemes and the importance of ensuring that people are not unfairly disadvantaged by convictions that have been formally expunged.

However, the legal effect of an expungement should be addressed through the legislation that provides for it. Creating an additional protected attribute under the Anti-Discrimination Act is unnecessary and risks duplicating existing protections.

The appropriate approach is to respect the legal consequences of an expungement under the relevant legislation, rather than continually expanding the list of protected attributes.

C6. Are there any unintended consequences of retaining the present definition of "irrelevant medical record"?

WSA does not support introducing irrelevant medical records as a new protected attribute.

The proposed concept of medical information that is not "directly relevant" to a particular situation is uncertain and may create difficulties for employers and other decision-makers.

Employers sometimes need access to relevant medical information to assess whether a person can perform the inherent requirements of a position, whether workplace adjustments are required, and whether there are legitimate work health and safety considerations.

This does not mean that employers should have unrestricted access to private medical information or be permitted to discriminate unlawfully. It means that decisions must be made with regard to the actual requirements and circumstances of the role.

The review itself notes that the gaps identified in this area have either been addressed or are insignificant. WSA agrees that a new protected attribute is not necessary.

C7. Are there any unintended consequences of retaining the new attribute "a combination of two or more of any of the above attributes"?

WSA does not support creating a separate protected attribute based on the combination of two or more attributes.

The proposed amendment risks introducing an additional and undefined category of protection when section 8(2) already addresses discrimination involving one, two or more attributes and their combined effect.

A new catch-all attribute is unnecessary and may create confusion about the relationship between the existing provisions and the proposed amendment.

The Act should remain clear and workable. WSA considers that the existing provision is sufficient and that no additional attribute should be introduced.

C8. Should the definition of "homelessness" be repealed?

WSA supports removing the proposed definition of homelessness from the Act.

The inclusion of the word "adequate" in the proposed definition creates uncertainty because adequacy is subjective and may depend on individual expectations and circumstances. It risks extending the definition beyond people who are homeless or without secure accommodation.

WSA does not support introducing homelessness as a protected attribute. Housing insecurity and homelessness are serious social issues, but they are more appropriately addressed through housing, welfare and support policies rather than by continually expanding anti-discrimination legislation.

C9. Are there any unintended consequences from retaining the other new or amended attributes?

WSA does not support introducing the remaining proposed attributes in the form contemplated by the review.

Subjection to domestic or family violence

WSA recognises the seriousness of domestic and family violence and the disadvantages that victims may experience in employment, accommodation and other areas of life. However, the seriousness of a social problem does not automatically mean that a new protected attribute under the Anti-Discrimination Act is the appropriate response. Existing legal protections and targeted support measures should be considered before creating additional obligations and potential liabilities for employers and organisations.

Potential pregnancy

WSA does not support potential pregnancy as a new protected attribute. The proposed definition extends beyond actual pregnancy to include a person's capability, expressed desire or perceived likelihood of becoming pregnant, as well as undergoing assisted reproductive treatment. This is a broad and complex category that could create uncertainty about the circumstances in which an employer or other decision-maker may be found to have discriminated. Pregnancy-related discrimination should be addressed through existing protections. The proposed expansion is not justified.

Sexual orientation

WSA does not support the proposed expansion of the definition of sexual orientation without clear evidence of a gap in existing protections. The proposed definition is broader than the existing terminology and introduces concepts relating to attraction and intimate or sexual relations with people of different, the same or more than one gender. The implications of this change need to be clearly established before it is incorporated into the Act. The Act should use clear and legally workable definitions. WSA does not consider that the proposed amendment has been adequately justified.

Family, carer and kinship responsibilities

WSA does not support expanding this attribute in the proposed form. People have a wide range of family, caring and kinship arrangements. While these responsibilities can be significant, employers must retain reasonable discretion to organise work, allocate duties and assess whether an individual can meet the requirements of a position. A broad expansion could make ordinary workplace decisions more difficult and increase uncertainty about the extent of an employer's obligations. Existing protections and reasonable workplace arrangements should be relied upon rather than introducing a further broad attribute.

Physical appearance

WSA does not support introducing physical appearance as a protected attribute. The proposed definition covers a wide range of characteristics, including weight, size, height, birthmarks, scars and other features of a person's face or body. This is an exceptionally broad category and could bring ordinary decisions about employment, presentation, suitability and workplace requirements within the scope of discrimination complaints. The proposal also raises difficult questions about the distinction between physical characteristics that are outside a person's control and those that may be altered or changed. It is not clear that the proposed attribute would provide a sufficiently certain or workable legal standard. WSA considers that physical appearance should not be added as a protected attribute.

CONCLUSION

Women Speak Australia supports an Anti-Discrimination Act that provides clear and effective protection against genuine unlawful discrimination. However, the Act must also be coherent, proportionate and workable.

The proposals considered in Part C risk expanding the Act beyond that purpose. Several introduce broad or uncertain concepts, while others duplicate existing protections or create potential conflicts with legitimate decision-making by employers and organisations.

The Act should not become an instrument for regulating every personal circumstance, social disadvantage or individual characteristic. Nor should employers be placed under increasingly uncertain obligations that make reasonable decisions about safety, suitability and the operational requirements of their organisations more difficult.

WSA's position is that the proposed amendments should not proceed. The existing framework should be strengthened through clarity, consistency and effective application of its established protections, rather than through continual expansion of protected attributes and new forms of liability.

The central purpose of anti-discrimination law should remain the prevention of unlawful discrimination while preserving legal certainty, fairness and the ability of individuals and organisations to make legitimate decisions.

Submitted By:

Dr Elizabeth Caballero

Retired GP

President, Women Speak Australia