

11 November 2022

Our ref: SS:IL

Email: policy@qls.com.au

Committee Secretary
Education and Employment Legislation Committee
Department of the Senate
PO Box 6100
Parliament House
CANBERRA ACT 2600

By email: [REDACTED]

Dear Committee Secretary

Fair Work Legislation Amendment (Secure Jobs, Better Pay) Bill 2022

Thank you for the opportunity to provide feedback on the Fair Work Legislation Amendment (Secure Jobs, Better Pay) Bill 2022 introduced on 27 October 2022 (**Bill**). The Queensland Law Society (**QLS**) appreciates being consulted on this important piece of legislation.

QLS is the peak professional body for the State's legal practitioners. We represent and promote over 13,000 legal professionals, increase community understanding of the law, help protect the rights of individuals and advise the community about the many benefits solicitors can provide. QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

This response has been prepared in consultation with the QLS Industrial Law Committee, whose members have substantial expertise in this area.

We note the short timeframe the Education and Employment Legislation Committee has to receive submissions and produce a final report. This has prevented QLS from undertaking a comprehensive review of the specific items in the Bill and the issues raised. We have also not been able to review any proposed amendments to the Bill. The absence of comment on a particular matter should not be considered an endorsement by QLS.

Prohibiting sexual harassment in connection with work

QLS supports amending the *Fair Work Act 2009* (**Fair Work Act**) to expressly prohibit sexual harassment in connection with work. We particularly support expanding the prohibition to include sexual harassment of a worker that occurs outside of work. We consider a worker who is subjected to this conduct, regardless of where it occurs should be able to make an application to the Fair Work Commission (**Commission**) under proposed section 527F of the Fair Work Act where there is a connection to their work.

While we support the intent of these amendments, we note the comments at pages 523 to 525 of the Respect@Work report¹ about the practical limitations of the anti-bullying provisions. We consider there should be a review of the amendments to assess their effectiveness, particularly given the comments cited in the report that these applications are difficult to establish, which is also a common problem in sexual harassment matters.

Additional resourcing

The Bill grants the Commission a number of additional powers and obligations, provides for the constitution of new Expert Panels within the Commission, and includes new civil remedy provisions enforceable by the Federal Court or Federal Circuit and Family Court of Australia (Division 2). These amendments will require significant and ongoing funding and other support and resources to achieve the policy objectives.

We have identified a key barrier to workers exercising their rights is a lack of available resources, including under-funded courts and tribunals, which leads to delays and inability for many workers to access legal advice.

QLS calls on the Government to provide appropriate funding and resources to the Commission, Federal Court, and Federal Circuit and Family Court of Australia (Division 2) to allow these bodies to fulfil their additional responsibilities. We also encourage regular reviews to ensure appropriate funding levels are maintained.

Right to legal representation

QLS is concerned that, under the small claims procedure in section 548 of the Fair Work Act, to be amended by the Bill, legal representation continues to be available for small claims proceedings only with the leave of the court, despite the Bill proposing to significantly increase the monetary cap on small claim awards to \$100,000. We are also concerned the proposed dispute resolution procedures for fixed term contracts and flexible work only allow legal representation if permitted by the Commission under section 596 of the Fair Work Act.


It is our members' experience that allowing parties to be legally represented has a positive impact on a proceeding. Legal practitioners often assist a court, commission or conciliator through ensuring their own client understands the issues and in articulating their client's position concisely. Generally, legal practitioners play a constructive role in and are of significant assistance in resolving matters.

We submit representation should be as of right for all small claims proceedings and all disputes before the Commission, and should extend to consent hearings, conciliations and arbitrations (both in the Commission and the relevant court). In particular, claims for larger sums are likely to be more complex than smaller claims, and the availability of legal representation is likely to be of benefit to the Commission or court.

¹ Australian Human Rights Commission, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces* (2020).

Further legislative reform

We note the Bill forms part of wider industrial relations legislative reforms. QLS and our members would appreciate a longer consultation period for future reforms to ensure we have adequate time to consider and comment on such significant legislation.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via 

Yours faithfully



Kara Thomson
President