



Queensland

Improving Workplace Inclusion and Culture Youth Act 2022

Youth Act No. 50 of 2022

A Youth Act to improve workplace inclusion and strengthen workers' rights in Queensland by imposing a positive duty on employers to eliminate discrimination, sexual harassment, and victimisation, expanding leave entitlements, and establishing the right to disconnect.

[Assented to 20 October 2022]



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The Youth Parliament of Queensland enacts—

Chapter 1

Part 1 Preliminary

1 Short title

This Act may be cited as the *Improving Workplace Inclusion and Culture Youth Act 2022*.

2 Commencement

This Youth Act commences on a day to be fixed by proclamation.

3 Main purpose of Youth Act

The main purposes of the Youth Act are to—

- (a) ensure that the scope of employers' responsibilities is extended to consider a wider range of employees' needs that would best protect their welfare; and
- (b) protect employees from unfair working conditions as a consequence of workplace discrimination and vilification; and
- (c) ensure employees from culturally and linguistically diverse backgrounds are not disadvantaged in the workplace in regards to paid cultural leave; and
- (d) ensure employees' have the right to disconnect from work requirements and responsibilities outside designated hours or receive appropriate remuneration for work completed outside of designated hours; and

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- (e) ensure that employees may pursue familial and personal duties to promote the wellbeing of themselves and their families outside of work without work-related stress.

4 Definitions

In this Youth Act—

availability allowance means an agreed 15% increase of an employee's annual salary that requires employees to be available to complete workplace duties and responsibilities outside designated paid hours.

available hours means the hours that the employee may be contacted when they are claiming an availability allowance.

culturally significant event means an event in which an individual participates with a religion or culture and its purpose must not primarily be of a commercial nature.

disconnect means to sever or interrupt the connection between another object, person, or responsibility.

employer-specific appointed person means an employee who is designated through a process determined by the employer as the manager of cultural leave requests.

leave management system means a unique framework developed independently by employers to manage the leave requests of employees, namely the intricacies of cultural leave.

remuneration means the payment entitled to an individual for the service or work that has been provided.

staff coordinator means an employee who is appointed by the employer as the manager of cultural leave requests and related employees' entitlement matters.

Chapter 2 Obligations of Employers

Part 1 Amendment of Anti-Discrimination Act 1991

5 Act amended

This part amends the *Anti-Discrimination Act 1991*.

6 Insertion of new ch 2A

After chapter 2—

insert—

Chapter 2A Positive duty to eliminate discrimination, sexual harassment, and victimisation

Part 1 Positive duty

116A Implementation of positive duty

- (1) The Act promotes equality of opportunity for everyone by requiring persons with a duty under 116B(1) to take positive action to address discrimination, sexual harassment, and victimisation within their workplace.
- (2) This purpose is to be achieved by—
 - (a) mandating a duty of employers to take reasonable and proportionate measures to

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- address discrimination, sexual harassment, and victimisation in the workplace; and
- (b) allowing a complaint under chapter 7 to be made against a contravention of the duty imposed by section 116B; and
- (c) using the agencies and procedures established under chapter 7 to deal with the complaint.

Part 2 Positive duty obligations

116B Upholding a positive duty

- (1) A person that holds obligations under Chapter 2 has a positive duty to address discrimination, sexual harassment, and victimisation in their respective workplace.
- (2) A person for the purposes of s 116B(1) that holds obligations under Chapter 2 may include employers, and providers of education, goods and services, or accommodation.
- (3) A person who has a duty must—
 - (a) take reasonable and proportionate measures to address discrimination, sexual harassment, and victimisation; and
 - (b) promote equality within their organisation.
- (4) A person who has a duty and is taken to contravene subsection (2) may be the subject of an investigation by the Queensland Human Rights Commission under Chapter 7.

116C Criteria for determining whether a measure is reasonable and proportionate

The factors that must be considered in determining whether a measure is reasonable and proportionate include—

- (a) the size of the business or operation and
- (b) the nature of the business or operation and
- (c) the resources available to the business or operation; and
- (d) the business and operational priorities; and
- (e) the practicability and the cost of the measures.

Part 2 Workplace Education and Training

7 Anti-discrimination education and training

- (1) Employers with 10 or more employees must annually provide at least 2 hours of government-approved anti-discrimination workplace education and training.
- (2) Training contents must include—
 - (a) the illegality of discrimination;
 - (b) how to identify and report workplace discrimination; and
 - (c) strategies to foster a safe and inclusive working environment such as—
 - (i) preventing misgendering; and
 - (ii) understanding and accepting different cultures.
- (3) Supervisors and managers must undergo additional anti-discrimination training which, at minimum, outlines their

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specific responsibility to eliminate discrimination and promote equality.

- (4) An employer who fails to meet the minimum education and training requirements may be the subject of an investigation by the Queensland Human Rights Commission.

8 Mental health awareness education and training

- (1) Employers with 10 or more employees must annually provide at least 2 hours of government-approved mental health education and training.
- (2) Training contents must include—
 - (a) how to identify mental health hazards within the workplace and mental health cases among employees; and
 - (b) strategies to balance work and life; and
 - (c) how to access mental health support.
- (3) Supervisors and managers must undergo additional mental health training which, at minimum, outlines specific strategies to support employees' mental health.
- (4) An employer who fails to meet the minimum education and training requirements may be the subject of an investigation by the Queensland Human Rights Commission.

Chapter 3 Leave and other entitlements

Part 1 Cultural Leave

9 Employee entitlement and eligibility

- (1) This section applies to all employees, regardless of their cultural or religious background, who are required by custom to attend a ceremony or *culturally significant event*.
- (2) A full-time or part-time employee is entitled to request up to 5 days of paid cultural leave each year of employment to engage in culturally significant events.
- (3) A full-time, part-time, or casual employee may request, through the *employer-specific appointed person*, an additional 2 days of unpaid leave at any time throughout a year that the employee is employed.
- (4) These 7 days of leave cannot be accrued throughout the employee's years of service.
- (5) Leave entitlements under this section are in addition to the cultural leave for Aboriginal or Torres Strait Islander people outlined in the *Industrial Relations Act 2016*.

10 Employer obligations

- (1) An employer must not question an employee taking cultural leave as to what activities they will engage in during such periods of leave.
- (2) Section 10(1) does not apply to the staff coordinator.
- (2A) The staff coordinator is responsible for ensuring that employees who claim cultural leave are doing so within the scope of their entitlements and are permitted to inquire as to the cultural significance and nature of the employee's activities during their period of leave.

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- (3) The employer must reasonably support the employees who are taking cultural leave.
- (4) The staff coordinator must keep all matters of cultural leave strictly confidential.
- (5) When considering an employee's cultural leave request, the staff coordinator must take into account—
 - (a) whether allowing the employee to take cultural leave at the requested time will be of detriment to the business operations; and
 - (b) whether the request was placed with reasonable notice prior to the commencement of the proposed leave; and
 - (c) whether the employee's reasons for requesting cultural leave constitute a culturally significant event and are reasonably within their entitlements.
- (6) The employer must notify the employee of the outcome of the leave request during business hours within reasonable notice of the employee's requested period of leave.

11 Employee obligations

- (1) The employee must give the employer reasonable notice when applying for cultural leave.
- (1A) For cultural customs associated with funerals or other such unpredictable events, reasonable notice must be adjusted accordingly to allow for sudden and urgent cultural leave requests.
- (2) The employee must request cultural leave through the company's *leave management system*.
- (3) The employee must supply the employer with the reason for taking the leave and the period that the employee estimates they will be absent through the leave management system.

12 Leave management system

- (1) Each company must have a structured leave management system in place with a staff coordinator that handles any requests, grievances, and arrangements regarding cultural leave.
- (1A) The staff coordinator is an additional managerial position under the leave management system and is entitled to a negotiated increase in pay in accordance with their position requirements.
- (2) The operation of this system is at the complete discretion of the employer, however, it must include a staff coordinator who—
 - (a) nominates themselves for the position; and
 - (b) keeps the reason for and duration of all employees' cultural leave or denied leave requests confidential and recorded for at least 5 years following the date of the leave granted.

Part 2 Menstrual Leave

13 Employee entitlement and eligibility

- (1) Full-time and part-time employees who menstruate are eligible to take up to 12 days of paid leave per year and they must not take more than 2 days of leave each time.
- (2) Employees do not need to present a medical certificate to take menstrual leave.
- (3) If an employee wishes to extend their menstrual leave so that it goes beyond 12 days in one year, the employee must be allowed unpaid leave.

14 Employer obligations

- (1) Menstrual leave applies to all those who menstruate.

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- (2) The employer-specific appointed person must not discriminate against an employee's request for menstrual leave based on their gender.
- (3) Employers must be discreet about employees taking menstrual leave and ensure privacy for the employee.

Part 3 Reproductive Leave

15 Employee entitlement and eligibility

- (1) All employees, including long-term casual, part-time, and full-time employees, who plan to or have undergone abortion procedures are entitled to a minimum of 5 days paid leave.
- (2) All employees, including long-term casual, part-time, and full-time employees, who have suffered a miscarriage are entitled to a minimum of 5 days paid leave.

16 Employer obligations

- (1) Employers must ensure that, if requested, employees are granted privacy before, during, and after their reproductive procedure or miscarriage leave.
- (2) It is at the discretion of the employer to extend leave beyond the minimum requirement of 5 days.
- (3) A long-term casual, part-time or full-time employee recovering from a reproductive procedure or miscarriage may request a long-term mental health support plan, which may include—
 - (a) flexible working hours; and
 - (b) financial aid for counselling sessions.

Part 4 Right to Disconnect

18 Employees' right to disconnect from the workplace

- (1) Employees have the ability to *disconnect* from workplace requirements and responsibilities outside designated hours or receive appropriate *remuneration* for work completed outside of designated hours.
- (2) Employees have the right to not be contacted outside of hours by employers and colleagues in regards to workplace requirements and responsibilities.

19 Eligible employees

- (1) An employee is entitled to disconnect from work and work-related responsibilities or is eligible for appropriate remuneration if they are considered a full-time or part-time employee.
- (2) An employee is considered full-time if the employee—
 - (a) is on an annual salary; and
 - (b) is completing at least 38 hours of weekly employment unless specified otherwise by the employer.
- (3) An employee is considered a part-time employee if the employee—
 - (a) has an hourly pay rate;
 - (b) works fewer than 38 hours of weekly employment; and
 - (c) is a permanent employee or has a fixed-term contract with an employer.

20 Exceptions from the right to disconnect from the workplace

- (1) The right to disconnect and remuneration for work completed outside of hours must not be claimed or expected from

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persons who are casual employees or on a form of educational employment.

- (2) An employee is considered casual if the employee has—
 - (a) a fixed contract; and
 - (b) no fixed weekly hours; and
 - (c) an hourly pay rate.
- (3) Employment is considered education if the employee is completing a—
 - (a) Registered Queensland Part-Time Apprenticeship; or
 - (b) Registered Queensland Full-Time Apprenticeship; or
 - (c) Registered Queensland Part-Time Traineeship; or
 - (d) Registered Queensland Full-Time Traineeship.

21 Remuneration for employees

- (1) An employee has the right to turn down requested work responsibilities and duties outside designated paid hours.
- (2) Appropriate remuneration may consist of—
 - (a) Bonuses and availability allowances for full-time employees; or
 - (b) Payment of 100% of their hourly wages for any services or requirements requested by the employer undertaken outside designated paid hours for part-time employees.
- (3) For the purpose of this section ***bonus*** means a payment of 100% of the employee's hourly wage for each hour work has been completed outside designated paid hours.

22 Availability allowances

- (1) An employee may claim an ***availability allowance*** if offered by the employer.

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- (2) The employee is not obligated to take an availability allowance.
 - (3) The employer must not pressure the employee into taking the availability allowance.
 - (4) The availability allowance may be negotiated by both parties.
 - (5) An employee must not turn down workplace responsibilities or duties requested by employers during available hours unless—
 - (a) the employee is medically exempt from doing so; or
 - (b) the employee gives a two weeks notice for their unavailability; or
 - (c) part of the assigned overtime falls in excess of the maximum 9 hours and 30 minutes allowed for an individual employee's working day.
 - (6) An agreed availability allowance may be terminated by either party if—
 - (a) a two weeks notice is given before the date of the allowance termination; or
 - (b) the employee is terminated from employment effective immediately; or
 - (c) either the employee or employer has failed to fulfil their agreed obligations to a reasonable capacity.

23 Available hours for shift workers and part-time employees

- (1) The employee must be given 2 hours' notice prior to a shift.
- (2) The employee may claim double time for the two hours of notice and waive the notice.
- (3) The available hours are 5 hours prior to the start of a shift and up to 7 hours after the shift ends.
- (4) Employees are required to have a minimum of 10 hours of non-contact time between each day's shifts.

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- (5) An employee may turn down a shift if they have given notice that they will not be available during that day.
- (6) An employee may turn down a shift if they are given less than 3 hours' notice of the start of a shift.

24 Full-time right to disconnect

- (1) A full-time employee has the right not to be contacted outside designated paid hours regarding workplace duties and responsibilities, except if—
 - (a) the employer is in receipt of an availability allowance;
or
 - (b) no response or read certificate is required; or
Example—
 - a newsletter may be sent after hours as no read receipt or response is required.
 - (c) it is in regards to workplace health and safety; or
 - (d) it is in regards to a critical workplace emergency that—
 - (i) causes harm to an employee or other persons; or
 - (ii) causes damage to property; or
 - (iii) is a time-sensitive issue that must not be solved by other members of staff; or
 - (iv) is caused or directly linked to the employee's duties.
- (2) A full-time employee must not be required or expected to complete work outside of their role's hours unless—
 - (a) the work was not requested or expected by the employer;
 - (b) the work was not completed in a reasonable time frame during designated paid hours; or
 - (c) the employee is in receipt of an availability allowance.

- (3) A full-time employee has the right to receive remuneration for any work that is completed outside of designated work hours if it—
 - (a) is not a customary expectation or a practical requirement of the job; or
 - (b) is a customary document but due to increased workload it was not able to be completed within the usual allotted time frame; or
 - (c) is a regular expectation that repeatedly takes more time than is allotted for it.

25 Part-time right to disconnect

- (1) A part-time employee has the right not to be contacted with the request of a response outside designated paid hours regarding workplace duties and responsibilities, except—
 - (a) it is in regard to workplace health and safety; or
 - (b) it is in regard to a critical workplace emergency that—
 - (i) causes harm to an employee or other persons;
 - (ii) causes damage to property;
 - (iii) is a time-sensitive issue that must not be solved by other members of staff; or
 - (iv) caused or directly linked to the employee's duties.
- (2) An employee must not be requested to come in before the commencement of their designated shift without remuneration provided.

26 Distinction between individual and corporate breaches of the right to disconnect

- (1) The individual is responsible for the communication unless the communication—

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- (a) is required by the regular duties or superiors to send the message; and
 - (b) was sent as part of the regular duties or was ordered to be sent by superiors.
- (2) If the individual is not responsible for the communication then the organisation is at fault unless—
- (a) the message that was required to be sent was sent by the employee at the incorrect time; or
 - (b) the message was sent with malicious intent to the organisation or a member of the organisation.

27 Breaches to the right to disconnect by employers and superiors

- (1) Employers must not punish or pressure employees into further responsibilities or duties outside designated work hours if they have not implemented availability allowances.
- (2) Employers must not unreasonably contact employees outside designated paid hours if they have not implemented availability allowances.
- (3) Employers must remunerate employees for work outside designated hours on the immediate pay cycle after they are notified or aware of such work.
- (4) An employee may appeal if any issue is identified, each time a complaint is levelled with an individual or institution a warning will be issued, and after two warnings, in 3 months, legal action may be taken.
- (5) An action against the employer or a colleague under this section may not be brought after the expiration of 3 months from the date on which the cause of action arose.

28 Breaches to availability allowance by employees

- (1) Employees in receipt of availability allowance must respond to all communication attempts by their employer within a reasonable time frame during available hours.
- (2) Employees in receipt of availability allowances are expected to complete all tasks and responsibilities outside designated work hours unless they are entitled to the exceptions stated.
- (3) The employer must keep records of the breaches to availability allowances and must sufficiently inform the employees of their recorded breach.
- (4) An employer may have grounds to reasonably dismiss an employee that has repetitively breached the conditions of their availability allowance.