



Diversity Council Australia Ltd

Customs House, Level 3  
31 Alfred Street, Sydney NSW 2000  
Email: [admin@dca.org.au](mailto:admin@dca.org.au)

SYDNEY OFFICE Phone: (02) 8014 4300

MELBOURNE OFFICE Phone: (03) 9067 8000

ACN 006 898 406 • ABN 64 421 748 342

16 December 2021

Committee Secretary  
Senate Legal and Constitutional Affairs Committee  
[legcon.sen@aph.gov.au](mailto:legcon.sen@aph.gov.au)

## Religious Discrimination Bill 2021 and related bills

Dear Committee Secretary,

Thank you for the opportunity to provide a submission in response to the *Inquiry into Religious Discrimination Bill 2021 [Provisions]; Religious Discrimination (Consequential Amendments) Bill 2021 [Provisions] and Human Rights Legislation Amendment Bill 2021 [Provisions]*.

Diversity Council Australia (DCA) is the independent not-for-profit peak body leading diversity and inclusion in the workplace. We have a wealth of experience providing advice to our members on the business benefits of diversity and inclusion.

DCA strongly supports individuals being protected from discrimination and harassment because of their religious belief and we proactively support our members in creating workplaces where religious belief is afforded the same dignity and respect as other attributes of a person's identity.

However, we are concerned that the proposed legislation goes beyond protecting people from discrimination on the basis of religion and instead also extends to eroding other important anti-discrimination protections.

We believe that this legislation, as drafted, should not be passed and the structure of any laws to prevent religious discrimination should be the same as other anti-discrimination legislation, and should not provide additional positive rights that allow new discrimination against other people.

Please feel free to contact myself or \_\_\_\_\_, on \_\_\_\_\_ or \_\_\_\_\_, should you require any further information about this matter.

Yours sincerely

**Lisa Annese**  
Chief Executive Officer

<b>I. ABOUT DIVERSITY COUNCIL AUSTRALIA.....</b>	<b>3</b>
<b>II. POSITIONING .....</b>	<b>5</b>
<b>The importance of taking an intersectional approach.....</b>	<b>5</b>
<b>A note on binary language used in this submission .....</b>	<b>5</b>
<b>III. SUMMARY .....</b>	<b>6</b>
<b>IV. BACKGROUND.....</b>	<b>7</b>
<b>Timeframe for consultation is inadequate .....</b>	<b>7</b>
<b>Previous DCA Submissions on this issue .....</b>	<b>7</b>
<b>V. DCA’S RESPONSE TO PROPOSED LEGISLATION .....</b>	<b>11</b>
<b>Clause 12: Statements of belief .....</b>	<b>11</b>
<b>Clause 15: Discrimination on the ground of religious belief or activity—qualifying body conduct rules .....</b>	<b>14</b>
<b>The Bill will interfere with the ability of organisations to foster inclusive cultures, which will be bad for business.....</b>	<b>15</b>
<b>VI. CONCLUSION &amp; RECOMMENDATIONS .....</b>	<b>16</b>
<b>VII. DCA’s INCLUSION@WORK INDEX 2021-2022 .....</b>	<b>17</b>
<b>DISCRIMINATION &amp; HARASSMENT.....</b>	<b>24</b>
<b>VIII. ENDNOTES.....</b>	<b>30</b>



# I. ABOUT DIVERSITY COUNCIL AUSTRALIA

## Who we are

Diversity Council Australia (DCA) is the independent not-for-profit peak body leading diversity and inclusion in the workplace. We provide unique research, inspiring events and programs, curated resources and expert advice across all diversity dimensions to a community of member organisations.

## DCA's Membership covers over 20% of the Australian workforce

DCA's prestigious group of 1000 members is drawn from business and workplace diversity leaders and includes some of Australia's biggest employers. Our membership reaches over **20%** of the Australian labour market.

## About our members

- 1000 member organisations, including almost 40 ASX100 Listed companies.
- Our members are drawn from across the corporate, government and not-for-profit sectors and vary from small to large workforces in size.
- Our founding members include ANZ, AMP, BHP, Boral, Coles, IBM Australia, Myer, Orica, Rio Tinto and Westpac.

DCA's Members are listed on our website here: <https://www.dca.org.au/membership/current-dca-members>.

## Our belief, vision and mission

- Our **belief** is that diversity and inclusion is good for people and business.
- Our **vision** is to create a more diverse and inclusive Australia.
- Our **mission** is to encourage and enable Australian organisations to create diverse and inclusive workplaces.

## What we do

DCA, formerly known as the Council for Equal Opportunity in Employment Ltd, was established in 1985 as a joint initiative of the Australian Chamber of Commerce and Industry and the Business Council of Australia to demonstrate the business community's commitment to equal opportunity for women.

Our focus since then has expanded to cover all aspects of diversity in employment, reflecting changes in practice to embrace all areas of the diversity of human resources.

DCA is not government funded - its income is generated from membership fees, sponsorships and services to business/employers.

## Our Research

DCA works in partnership with members to generate ground-breaking evidence-based diversity and inclusion resources that enables Australian organisations to fully leverage the benefits of a diverse talent pool.

- **DCA research is grounded in the contributions of people with lived experience.** DCA projects use expert panels, focus groups, think tanks and surveys to make people with lived experience central to the project findings.
- **DCA resources are ahead of the curve.** They establish leading diversity thinking and practice, enabling Australian organisations to re-imagine and reconfigure the way they manage talent in today's dynamic operating environments.
- **DCA resources drive business improvement.** They are high impact, driving business improvement through providing evidence-based guidance on how to fully leverage the benefits of a diverse talent pool.
- **DCA resources are practice focused.** They respond to the information needs of industry leaders and the people they employ.
- **DCA resources speak to the Australian context.** DCA projects generate leading diversity thinking and practice that speaks to Australia's unique and distinctive institutional, cultural and legal frameworks.
- **DCA resources considers all diversity dimensions.** The full spectrum of diversity dimensions are investigated including age, caring responsibilities, cultural background and identity, disability, Aboriginal and/or Torres Strait Islander status, sexual orientation, gender identity, intersex status, social class and work organisation.



## II. POSITIONING

### The importance of taking an intersectional approach

Intersectionality refers to the ways in which different aspects of a person's identity can expose them to overlapping forms of discrimination and marginalisation.

It is therefore critical when drafting and implementing anti-discrimination legislation that legislators, policymakers and those implementing such policies, understand intersectionality, and take an intersectional approach to implementing such policies.

### A note on binary language used in this submission

DCA recognises that gender does not only exist in binary categories and that many people do not identify or fit comfortably with these labels. We acknowledge that there are people whose experiences and identities cannot be captured by this binary language.

However, this submission sometimes uses binary language. This occurs because using binary language is sometimes necessary to convey the gendered nature and dynamics of society, and these categories have very real effects on people's lives.

### DCA's Multi-faith Guidelines

DCA's [Creating Inclusive Multi-Faith Workplaces](#)<sup>1</sup> resource helps workplaces move away from simply 'accommodating' the needs of their multi-faith employees, towards making workplaces inclusive for everyone in Australia's increasingly religiously diverse workplaces.

The resource is designed to provide guidance to Australian workplaces about how to deal with a range of common faith-related queries, and also to provide workplaces with principles to help balance issues where conflicting rights might intersect.



### III. SUMMARY

DCA strongly supports individuals being protected from discrimination and harassment because of their religious belief (or no belief) and we proactively support our members in creating workplaces where religious belief is afforded the same dignity and respect as other attributes of a person's identity.

However, DCA is concerned that this proposed legislation, as drafted, could stop Australian employers fostering inclusive cultures, eroding any business benefit derived from inclusion.

DCA believes the bill goes beyond protecting people from discrimination on the basis of religion and undermines protections afforded under other anti-discrimination legislation.

DCA would like to express our disappointment in the inadequate consultation period given the importance of the bill and the complexity of its interactions with other anti-discrimination protections.

Due to the short timeframe for consultation on these Bills, we were unable to consult with our members on this legislation. This has meant we are not able to comment in this submission on certain sections of this legislation which we believe could have detrimental impacts on the ability of organisations to foster inclusive cultures. However, DCA has previously made submissions to a number of other relevant inquiries, and throughout this document we draw on the information we have previously gathered from our membership on these issues.

In this submission we raise a number of issues with specific areas of the legislation:

Specifically, that:

- Clause 12 overrides existing anti-discrimination protections, which is unprecedented
- Clause 12 privileges religious speech above the rights of other people in a workplace
- A 'statement of belief' could be used as a smokescreen for harassment, homophobia, sexism, ableism or some other form of prejudice
- The standard of what is an unreasonable, unacceptable statement of belief is excessive
- Clause 12 could have a significant impact on businesses
- Clause 12 will make it more difficult for people to make discrimination claims
- Clause 12 is unclear in its application.
- It is unclear why a professional association should have different rules to that of an employer (Clause 15), and we suggest that a professional association should not be subject to such a prohibition, as this does not appear in any other federal discrimination laws.
- The Bill will interfere with the ability of organisations to foster inclusive cultures, which will be bad for business.

#### **Recommendation**

This legislation, as drafted, should not be passed and the structure of any laws to prevent religious discrimination should be the same as other anti-discrimination legislation, and should not provide additional positive rights that allow new discrimination against other people.

## IV. BACKGROUND

### Timeframe for consultation is inadequate

DCA would like to express our disappointment in the inadequate consultation period given the importance of these Bills and the complexity of their interactions with other anti-discrimination protections.

Due to the short timeframe for consultation on these Bills, we were unable to consult with our members on this legislation.

This has meant we are not able to comment in this submission on certain sections of this legislation which we believe could have detrimental impacts on the ability of organisations to foster inclusive cultures. This includes, but is not limited to:

***Clause 8: Certain conduct by religious hospitals, aged care facilities, accommodation providers and disability service providers that is not covered by section 7***

***Clause 11: Conduct in relation to employment by religious educational institutions—overriding certain State and Territory laws.***

However, DCA has previously made submissions to a number of other relevant inquiries, and throughout this document we draw on the information we have previously gathered from our membership on these issues.

### Previous DCA Submissions on this issue

In 2019 and 2020, DCA made submissions in response to the initial and second exposure drafts of the proposed *Religious Freedom Bills*.

In both those submissions we raised concerns that this proposed legislation could have a negative impact on the ability of businesses to foster inclusive cultures. While we note that the current legislation has been amended since these exposure drafts, there are some provisions that have been retained that we continue to be concerned by.

#### **Second Exposure Draft - Religious Freedom Bills (January 2020)**

In our submission in response to the *Second Exposure Draft*, we noted our concerns with how the proposed religious freedom legislation would treat a 'statement of belief'.

While emphasising our support for anti-discrimination protections for people of faith, or no faith, we were concerned that the proposed drafts could have a negative impact on the ability of workplaces to foster inclusive cultures.

*DCA strongly supports individuals being protected from discrimination and harassment because of their religious belief and we proactively support our members in creating workplaces where religious belief is afforded the same dignity and respect as other attributes of a person's identity.*

*However, DCA remains concerned that this proposed legislation could stop Australian businesses fostering inclusive cultures, eroding any business benefit derived from inclusion.*

***By continuing to include a section which enables the override of federal, state and territory discrimination protections, this legislation creates standard for protection for “a statement of belief” that goes beyond typical federal discrimination protections and which privileges religious interests over the interests of other Australians (e.g. a person's race, including colour, national or ethnic origin or immigrant status; sex, pregnancy or marital status and breastfeeding; age; disability; or sexual orientation, gender identity and intersex status).***

*This is an unprecedented intrusion into other jurisdictions by protecting expression of religious speech over acts of discrimination and creates different standards for statements of belief.*

Furthermore, we noted that the proposed rules around ‘statements of belief’ could be complicated for workplaces, and could mean that types of behaviours currently prohibited would not be unlawful, creating a complex situation for workplaces to manage.

***The proposed legislation also introduces complex rules when people make statements based on religious belief or about religion.***

***Under the Bill ‘a statement of belief’ could be used as a smokescreen for harassment, homophobia, sexism, ableism or some other form of prejudice, provided the person making the statement claims that it was made in “good faith”.***

*This shifts the focus from the recipient’s perspective and their right not to be discriminated against and prioritises the intent of the perpetrator and their right to religious freedom.*

*What’s more, employers will not necessarily know, and cannot ask, whether employees hold particular religious beliefs. It will be much harder to respond appropriately to interpersonal workplace conflict where divergent views are expressed.*

*Under other anti-discrimination law, intent is not relevant but rather how the behaviour is experienced. Under this draft, if the intention is in good faith, then it is lawful. As we stated in our previous submission, this is inconsistent with other Commonwealth anti-discrimination legislation and so in effect stipulates that religious expression is more important than other forms of identity.*

*Again, we would emphasise that a standard discrimination bill, designed along the same lines of existing Australian laws, could protect people of faith and without faith, without taking away existing protections or introducing complex and untested rules, that will be difficult for business to manage.*



## **Exposure draft - Religious Freedom Bills (October 2019)**

In our response to the initial exposure drafts of the Religious Freedom Bills in October 2019, we stated that:

*We strongly believe that people shouldn't be discriminated against because of their faith, and workplaces should be creating multi-faith inclusive environments.*

*However, we do not believe that the exposure drafts in their current form appropriately balance protection from discrimination on the basis of religion with other human rights, and in fact, have the effect of privileging religious expression (whether genuinely held or used as a justification for other forms of prejudice) over other rights at work.*

*Under this proposed legislation, women and LGBTIQ+ people could be discriminated against on religious grounds, and international evidence shows that this is harmful.*

We also emphasised that DCA members are not supportive of legislation that would create exceptions to existing anti-discrimination protections for LGBTIQ+ people:

*DCA members have repeatedly told us (in previous consultations) that they do not support the introduction of additional exemptions that allow further discrimination against LGBTIQ+ people.*

*In their current form, the proposed laws would give new privileges to people of faith that allow them to infringe on the rights of LGBTIQ+ people and their families, while overriding existing protections from discrimination for others.*

In particular, DCA was concerned that the proposed laws could stop Australian businesses fostering inclusive cultures, which would be damaging to business:

*This proposed legislation would make it difficult for large employers to promote an inclusive culture or achieve their mission by requiring reasonable employee conduct rules on religious expression outside of work hours.*

*This would impair organisational efforts to implement diversity and inclusion policies.*

*There is strong evidence that inclusion is good for business and DCA's strong view is that these proposals are not good for workplace inclusion and therefore not good for business.*

*DCA's Inclusion@Work Index 2017-2018<sup>2</sup> research shows that inclusion matters to Australian workers – it fuels team performance and boosts employee satisfaction, success and security, while also minimising the risk of harassment and discrimination.*

*Therefore, laws that are damaging to inclusive workplace cultures would have a negative impact on business needs, and could actually increase discrimination, which is surely counter to the aims of the exposure drafts.*

### *9. Concerns relating to the over-ride of State Laws*

*The proposed bill waters-down state-based protections for women, LGBTIQ+ community, racial minorities and people with disability, as well as discrimination on the basis of breastfeeding, parenting or family responsibilities.*

Most concerningly, we noted that the proposed legislation would give licence to a wide range of potentially harmful and offensive statements to be made by religious people, contributing to hostile, unsafe or non-inclusive workplaces:

*Under the Bill 'a statement of belief' could be used as a smokescreen for harassment, homophobia, sexism, ableism or some other form of prejudice.*

*Under proposed Section 41 of the bill, statements of belief will not constitute discrimination under commonwealth, state or territory anti-discrimination law unless the statement is 'malicious, would or is likely to, harass, vilify or incite hatred or violence against another person or group'.*

*Given that there is no 'test' to determine that a particular view is 'genuine' or even a core tenant of a religion, comments that are 'genuinely held' and 'in good faith' could be used arbitrarily and with ill intent. It also does not take into account that the impact of any comments or behaviour is (under other discrimination laws) in the 'eye of the beholder'.*

*In practice, this means that individuals could use their religion as a cover for comments that are homophobic, sexist, racist, or ableist.*

## V. DCA'S RESPONSE TO PROPOSED LEGISLATION

DCA welcomes the opportunity to make a submission on this proposed legislation.

DCA strongly supports individuals being protected from discrimination and harassment because of their religious belief (or no belief) and we proactively support our members in creating workplaces where religious belief is afforded the same dignity and respect as other attributes of a person's identity.

However, DCA is concerned that this proposed legislation, as drafted, could stop Australian employers fostering inclusive cultures, eroding any business benefit derived from inclusion.

DCA believes the bill goes beyond protecting people from discrimination on the basis of religion and undermines protections afforded under other anti-discrimination legislation.

### Clause 12: Statements of belief

Of particular concern to us as a workforce diversity and inclusion organisation, is *Clause 12: Statements of belief*.

#### **Clause 12 overrides existing anti-discrimination protections, which is unprecedented**

Clause 12 of the Religious Discrimination Bill 2021 states that:

*A statement of belief, in and of itself, does not:*

- (a) *constitute discrimination for the purposes of any of the following:*
  - (i) *this Act;*
  - (ii) *the Age Discrimination Act 2004;*
  - (iii) *the Disability Discrimination Act 1992;*
  - (iv) *the Racial Discrimination Act 1975;*
  - (v) *the Sex Discrimination Act 1984;*
  - (vi) *the Anti-Discrimination Act 1977 (NSW);*
  - (vii) *the Equal Opportunity Act 2010 (Vic.);*
  - (viii) *the Anti-Discrimination Act 1991 (Qld);*
  - (ix) *the Equal Opportunity Act 1984 (WA);*
  - (x) *the Equal Opportunity Act 1984 (SA);*
  - (xi) *the Anti-Discrimination Act 1998 (Tas.);*
  - (xii) *the Discrimination Act 1991 (ACT);*

- (xiii) *the Anti-Discrimination Act (NT); or*
- (b) *contravene subsection 17(1) of the Anti-Discrimination Act 1998 (Tas.); or*
- (c) *contravene a provision of a law prescribed by the regulations for the purposes of this paragraph.*

The clause overrides all federal, state and territory anti-discrimination law to make 'statements of belief' immune from legal consequences under those laws. This override of existing anti-discrimination protections is unprecedented and will have the effect of weakening existing anti-discrimination protections, including on the grounds of race, religion, sex, marital status, disability, sexual orientation, gender identity or intersex status.

In practice, it will mean that Australians will lose discrimination protections in the workplace to accommodate the religious beliefs of people who may make discriminatory statements against them.

### **Clause 12 privileges religious speech above the rights of other people in a workplace**

As detailed in our previous submissions, by enabling the override of federal, state and territory discrimination protections, this legislation creates standard for protection on the basis of religion which privilege religious interests over the interests of other Australians (e.g. a person's race, including colour, national or ethnic origin or immigrant status; sex, pregnancy or marital status and breastfeeding; age; disability; or sexual orientation, gender identity and intersex status). Essentially, this privileges religious speech above the rights of other people.

### **A 'statement of belief' could be used as a smokescreen for harassment, homophobia, sexism, ableism or some other form of prejudice**

While we note that the intention of this clause is to ensure "*that a person may express their religious belief in good faith and the mere statement in and of itself is not discrimination*", exempting certain conduct from existing anti-discrimination protections could give licence to a wide range of potentially harmful and offensive statements to be made by religious people contributing to hostile, unsafe or non-inclusive workplaces.

### **The standard of what is an unreasonable, unacceptable statement of belief is excessive**

Under Clause 12:

- (2) *Subsection (1) does not apply to a statement of belief:*
  - (a) *that is malicious; or*
  - (b) *that a reasonable person would consider would threaten, intimidate, harass or vilify a person or group; or*



(c) *that is covered by paragraph 35(1)(b).*

This is a different test to what exists on other anti-discrimination legislation (by comparison, Section 18C of the *Racial Discrimination Act* prohibits speech that ‘*offends, insults or humiliates*’ a person based on their race) which allows for religious speech to be protected and privileged above other speech. It also places a higher burden of proof for individuals who have been discriminated against on religious grounds.

### **Clause 12 could have a significant impact on businesses**

There could be significant costs if businesses are unable to prevent employees from making a ‘statement of belief’ that harasses or discriminates against another person.

DCA’s *Inclusion@Work Index 2021-2022*<sup>3</sup> shows that workers experiencing discrimination and/or harassment at work in the last 12 months report their team is significantly less likely to:

- Look for new ideas to solve problems
- Be willing to work extra hard to help their team
- Work effectively together
- Provide excellent customer service

These workers also report significantly lower wellbeing compared to those who do not experience exclusion. Workers experiencing discrimination and/or harassment at work in the last 12 months report being:

- Less satisfied with their job;
- More likely to look for another job with a new employer; and
- More likely to feel their workplace has a negative or very negative impact on their mental health.

Workers experiencing discrimination and/or harassment were **2.5 times more likely to leave their employer in the next twelve months** than those not experiencing discrimination and/or harassment.

DCA’s research<sup>4</sup> also shows that we do not have to personally experience discrimination and harassment for it to diminish performance and wellbeing – even witnessing harassment significantly impacts performance, satisfaction, security, and mental health.

### **Clause 12 will make it more difficult for people to make discrimination claims**

Clause 12 will create complexity with state and other federal anti-discrimination laws, making it more difficult for employers and employees to deal with discrimination claims in the legal system.

We are concerned that where a respondent claims a ‘statement of belief’ exemption in a discrimination matter, this matter would be unable to be heard in state or territory tribunals, as these tribunals are not able to consider federal laws. These matters would instead have to be heard in state or federal courts.

The cost of litigation in these courts means that bringing a discrimination claim will no longer be accessible for many people. For those who can afford it, it means that employers and employees would be involved in more lengthy and costly processes than would have been available to them in state or territory tribunals.

**DCA believes that this undermines an important benefit of state and territory anti-discrimination frameworks, that they are relatively affordable and accessible.**

### **Clause 12 is unclear in its application**

The Bill is unclear in a number of ways:

- While statements that are malicious, that harass, threaten, intimidate or vilify, or which encourage serious offences, will not be protected, the line between statements that are allowed and those that are not remains unclear.
- The bill defines religious conformity loosely. It allows people to make certain statements they consider to be religiously based (even if no one else with the same religion agrees with their interpretation).
- Whether a statement is 'made in good faith' is subjective. It focuses on the person stating the belief and not about the impact on the person experiencing the statement. As we note in our earlier submissions, *"Under other [Australian] anti-discrimination law, intent is not relevant but rather how the behaviour is experienced. Under this draft, if the intention is in good faith, then it is lawful. As we stated in our previous submission, this is inconsistent with other Commonwealth anti-discrimination legislation and so in effect stipulates that religious expression is more important than other forms of identity."*

### **Clause 15: Discrimination on the ground of religious belief or activity—qualifying body conduct rules**

Clause 15 of the Bill provides that:

(1) *A qualifying body discriminates against a person on the ground of the person's religious belief or activity if:*

(a) *the qualifying body imposes, or proposes to impose, a condition, requirement or practice (a qualifying body conduct rule) on persons seeking or holding an authorisation or qualification from the qualifying body that relates to standards of behaviour of those persons; and*

(b) *the qualifying body conduct rule has, or is likely to have, the effect of restricting or preventing the person from making a statement of belief other than in the course of the person practising in the relevant profession, carrying on the relevant trade or engaging in the relevant occupation.*

The effect of clause 15 is that a professional association cannot discipline a member of that association for making a statement of belief. It is unclear why a professional association should have different rules to that of an employer, and we suggest that a professional association should not be subject to such a prohibition, as this does not appear in any other federal discrimination laws.

## The Bill will interfere with the ability of organisations to foster inclusive cultures, which will be bad for business

DCA believes that the legislation as drafted will interfere with employers' abilities to create safe and inclusive work environments for everyone within their organisation.

As outlined above, the Bill could essentially give licence to a wide range of potentially harmful and offensive statements to be made by religious people contributing to hostile, unsafe or non-inclusive workplaces. As well as creating complex legal situations for employers, this would also have an impact on the ability of workplaces to foster inclusive cultures which our research shows has significant business benefits.

What's more, our *Inclusion@Work Index 2021-2022*<sup>5</sup> research also reveals that there are significant costs for organisations that have non-inclusive cultures.

Non-inclusion significantly increases risk of discrimination and harassment, reduces team performance, and impacts employee wellbeing.

### **Non-Inclusion Increases RISK**

Our research shows that working in non-inclusive teams, with non-inclusive managers, and in non-inclusive organisations significantly increases your risk of experiencing discrimination and/or harassment while at work.

For employees, this can harm wellbeing and mental health. For organisations, this can risk costly lawsuits and loss of organisational reputation.

### **Non-Inclusion Diminishes PERFORMANCE**

Workers in non-inclusive teams are 11 times less likely to report that their team is **highly effective**, and 10 times less likely to indicate their team is **innovative** than workers in inclusive teams.

Workers in non-inclusive organisational climates are 8 times less likely than workers in inclusive organisations to report that their team is **innovative**.

### **Non-Inclusion Reduces WELLBEING**

Employees in non-inclusive teams, with non-inclusive managers, and in non-inclusive organisational climates are significantly less satisfied and successful, more likely to leave their organisation, and to report work negatively impacts their mental health compared to those with inclusive teams, managers, and organisational climates.

## VI. CONCLUSION & RECOMMENDATIONS

DCA strongly supports individuals being protected from discrimination and harassment because of their religious belief (or no belief) and we proactively support our members in creating workplaces where religious belief is afforded the same dignity and respect as other attributes of a person's identity.

However, DCA is concerned that this proposed legislation, as drafted, could stop Australian employers fostering inclusive cultures, eroding any business benefit derived from inclusion.

DCA believes the bill goes beyond protecting people from discrimination on the basis of religion and undermines protections afforded under other anti-discrimination legislation.

In this submission we raise a number of issues with specific areas of the legislation:

Specifically, that:

- Clause 12 overrides existing anti-discrimination protections, which is unprecedented
- Clause 12 privileges religious speech above the rights of other people in a workplace
- A 'statement of belief' could be used as a smokescreen for harassment, homophobia, sexism, ableism or some other form of prejudice
- The standard of what is an unreasonable, unacceptable statement of belief is excessive
- Clause 12 could have a significant impact on businesses
- Clause 12 will make it more difficult for people to make discrimination claims
- Clause 12 is unclear in its application.
- It is unclear why a professional association should have different rules to that of an employer (Clause 15), and we suggest that a professional association should not be subject to such a prohibition, as this does not appear in any other federal discrimination laws.
- The Bill will interfere with the ability of organisations to foster inclusive cultures, which will be bad for business.

### **Recommendation**

This legislation, as drafted, should not be passed and the structure of any laws to prevent religious discrimination should be the same as other anti-discrimination legislation, and should not provide additional positive rights that allow new discrimination against other people.



## VII. DCA's INCLUSION@WORK INDEX 2021-2022



DCA's *Inclusion@Work Index* is a nationally representative survey of 3,000 Australian workers repeated biennially to map and track inclusion in the Australian workforce over time.

Since 2017, DCA has conducted three Inclusion@Work indexes and each time the findings demonstrate inclusion is much more than a 'feel good' exercise. It creates a better work environment that is good for businesses and people.

This research found that workers in inclusive teams are:

- 4 times less likely to leave their job in the next 12 months
- 10 times more likely to be very satisfied
- 4 times less likely to feel work has a negative or very negative impact on their mental health.
- 5 times less likely to experience discrimination and/or harassment
- 11 times more likely to be highly effective than those in non-inclusive teams
- 10 times more likely to be innovative
- 6 times more likely to provide excellent customer service
- 4 times more likely to work extra hard

However, there is a lot at stake where workplaces are not inclusive.

Non-inclusion significantly increases risk of discrimination and harassment, reduces team performance, and impacts employee wellbeing.

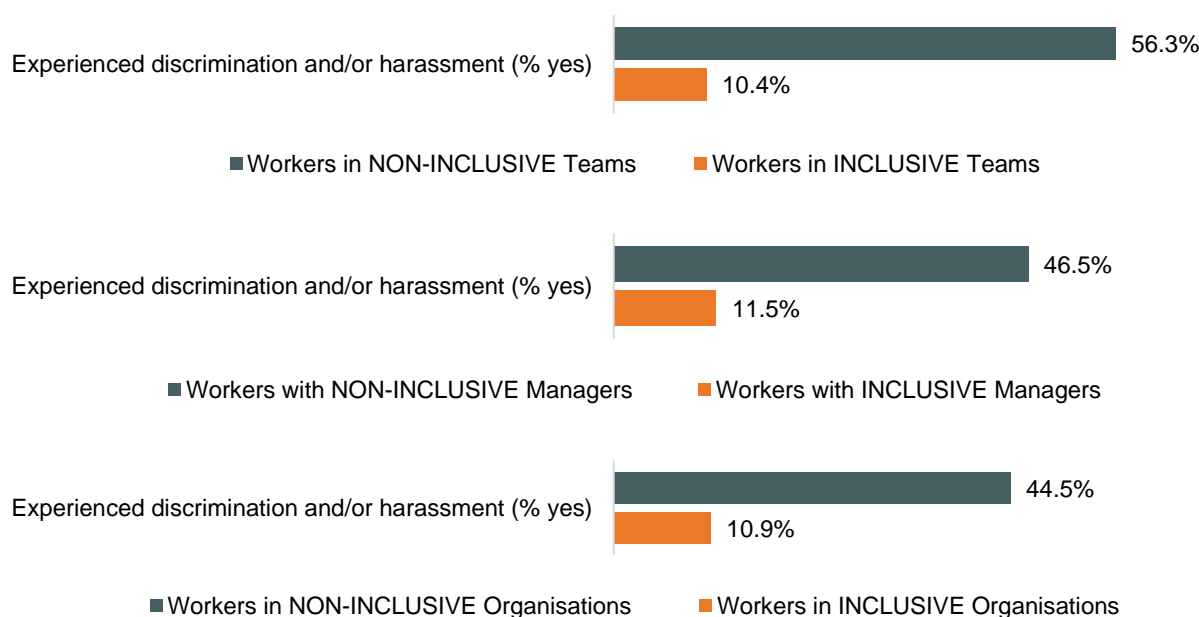
## Non-Inclusion Increases RISK

Our research shows that working in non-inclusive teams, with non-inclusive managers, and in non-inclusive organisations significantly increases your risk of experiencing discrimination and/or harassment while at work.

For employees, this can harm wellbeing and mental health. For organisations, this can risk costly lawsuits and loss of organisational reputation. Specifically, our results show:

- workers in **non-inclusive teams** are 5 times more likely to report experiencing discrimination and/or harassment at work compared to those in inclusive teams (56% in non-inclusive teams compared to 10% in inclusive teams)
- workers with **non-inclusive managers** are 4 times more likely to report experiencing discrimination and/or harassment at work compared to those with inclusive managers (47% with non-inclusive managers compared to 12% with inclusive managers)
- workers in **non-inclusive organisations** are 4 times more likely to report experiencing discrimination and/or harassment at work compared to those in inclusive organisations (45% in non-inclusive organisations compared to 11% in inclusive organisations).

Figure 1: Impact of Team, Manager and Organisational Inclusion on Discrimination and/or Harassment Experience



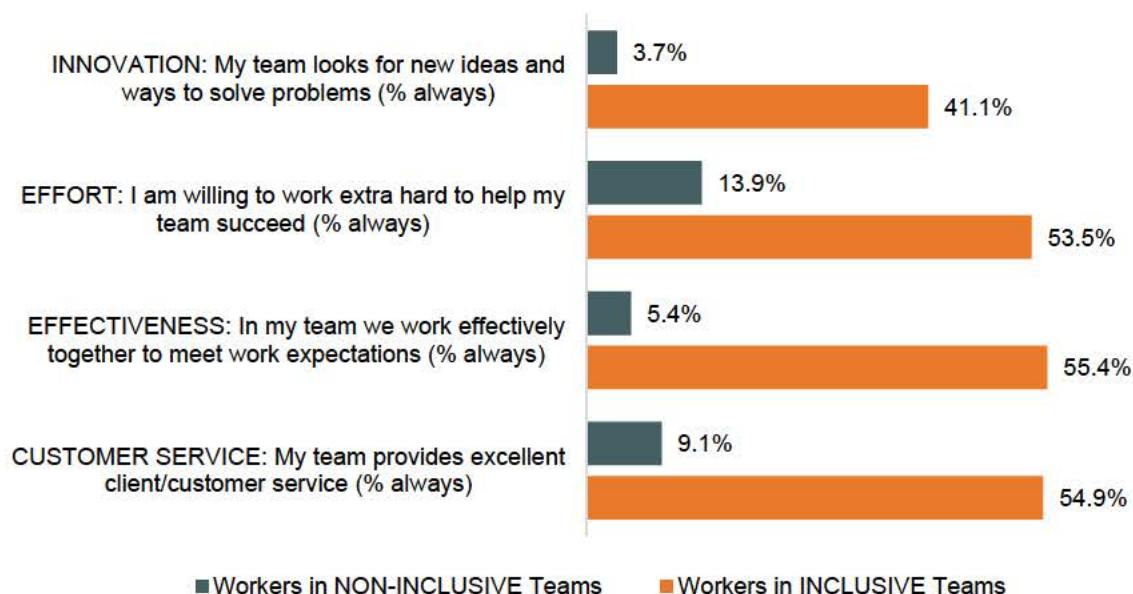
## Non-Inclusion Diminishes PERFORMANCE

Workers in non-inclusive teams are 11 times less likely to report that their team is **highly effective**, and 10 times less likely to indicate their team is **innovative** than workers in inclusive teams.

These workers are significantly less likely than workers in inclusive teams to report that their team excelled at:

- **innovating** (4% for workers in non-inclusive teams versus 41% for workers in inclusive teams)
- **working hard** (14% versus 54%)
- **working together effectively** (5% versus 55%), and
- **customer/client service** (9% versus 55%).

Figure 2: Impact of Non-Inclusive Teams on Team Performance



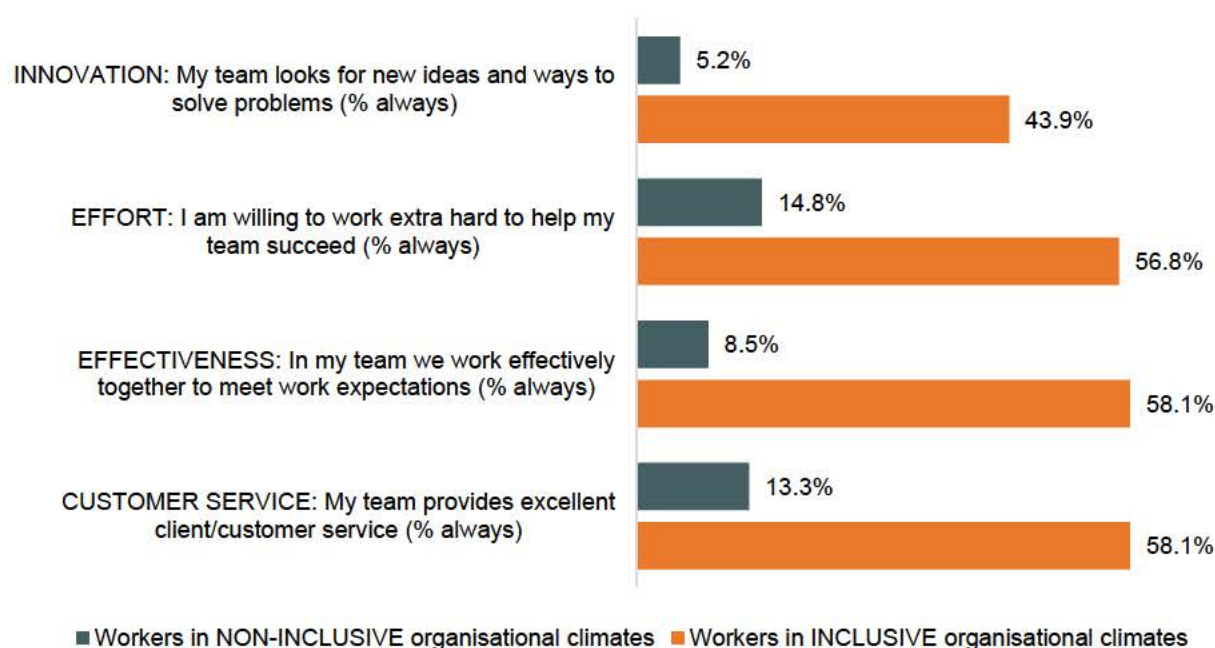
### Inclusive Organisations

Working in a non-inclusive organisation also diminishes performance. Workers in non-inclusive organisational climates are 8 times less likely than workers in inclusive organisations to report that their team is **innovative** – only 5% of workers in non-inclusive organisations indicate their team is always innovative versus 44% of workers in inclusive organisations.

Again, a comparable trend is evident for **effort** (15% non-inclusive organisations versus 57% inclusive organisations), **team effectiveness** (9% versus 58%), and **customer/client service** (13% versus 58%).



Figure 3: Impact of Non-Inclusive Organisational Climate on Team Performance



### Non-Inclusion Reduces WELLBEING

Employees in non-inclusive teams, with non-inclusive managers, and in non-inclusive organisational climates are significantly less satisfied and successful, more likely to leave their organisation, and to report work negatively impacts their mental health compared to those with inclusive teams, managers, and organisational climates.

#### Inclusive Teams

- **Satisfaction.** Workers in non-inclusive teams are 10 times less likely than their colleagues in inclusive teams to report being very satisfied with their job (6% of workers in non-inclusive teams versus 61% of workers in inclusive teams).
- **Success.** Workers in non-inclusive teams are also 2.5 times less likely to be recognised and supported. In the past 12 months, less than a third (31%) of workers in non-inclusive teams received constructive performance feedback, versus 83% of workers in inclusive teams.
- **Security.** These workers are also 4 times more likely to leave their current employer - 38% of workers in non-inclusive teams are very likely to look for another job compared to only 8% of workers in inclusive teams.
- **Mental health.** Being in a non-inclusive team is also linked to work having a negative impact on mental health. Workers in a non-inclusive team are 4 times more likely to feel work has a negative or very negative impact on their mental health (70% of workers in non-inclusive teams compared to 16% in inclusive teams).





Figure 4: Impact of Non-Inclusive Teams on Wellbeing

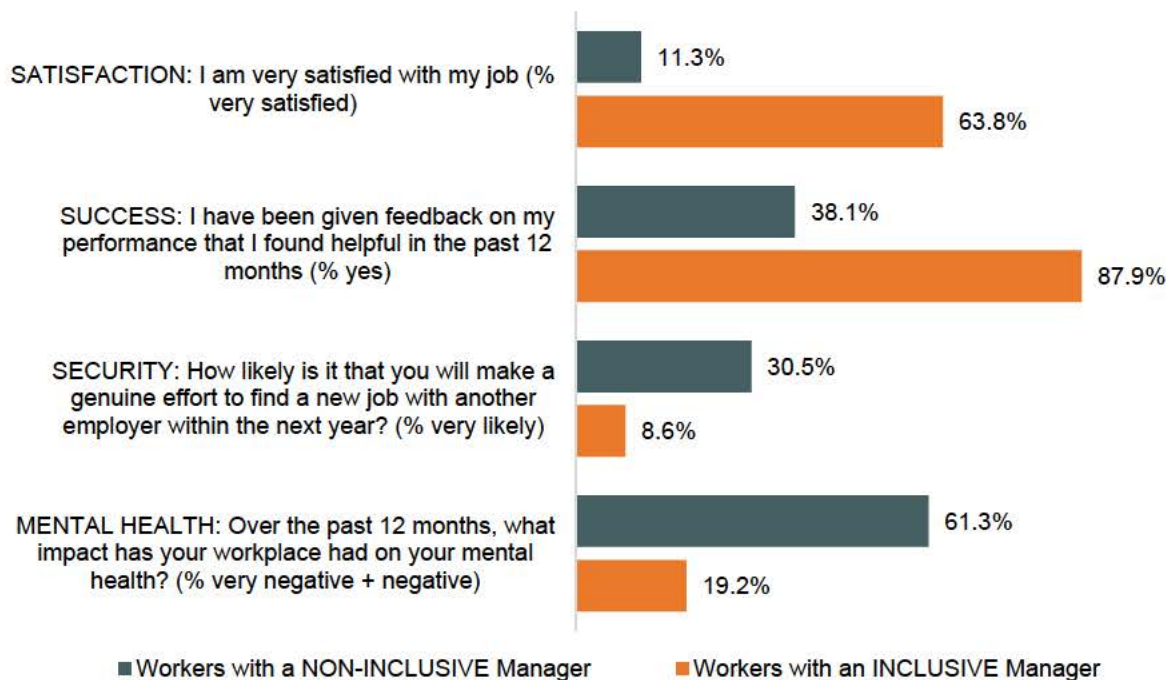
### Inclusive Managers

Having a non-inclusive manager also significantly reduces employee satisfaction, success, and security.

Inclusive managers value differences, seek out ideas from a diversity of staff, treat everyone fairly, and deal with inappropriate behaviour. In contrast, non-inclusive managers reduce their staff's:

- **satisfaction.** Workers who report to a non-inclusive manager are 5 times less likely to be very satisfied with their job than someone who reports to an inclusive manager (11% versus 64%)
- **success.** Workers with non-inclusive managers are also half as likely to be recognised and supported. In the past 12 months, only 38% of workers with non-inclusive managers received constructive performance feedback compared to 88% of workers with inclusive managers
- **security.** These workers are 3.5 times more likely to leave their current employer in the next year (31% of workers with non-inclusive managers were very likely to look for another job compared to only 9% of workers with an inclusive manager), and
- **mental health.** Having a non-inclusive manager is also linked to work having a negative impact on mental health – those with non-inclusive managers were 3 times more likely to feel work has a negative or very negative impact on their mental health (61% non-inclusive compared to 19% inclusive).

Figure 5: Impact of Non-Inclusive Managers on Wellbeing

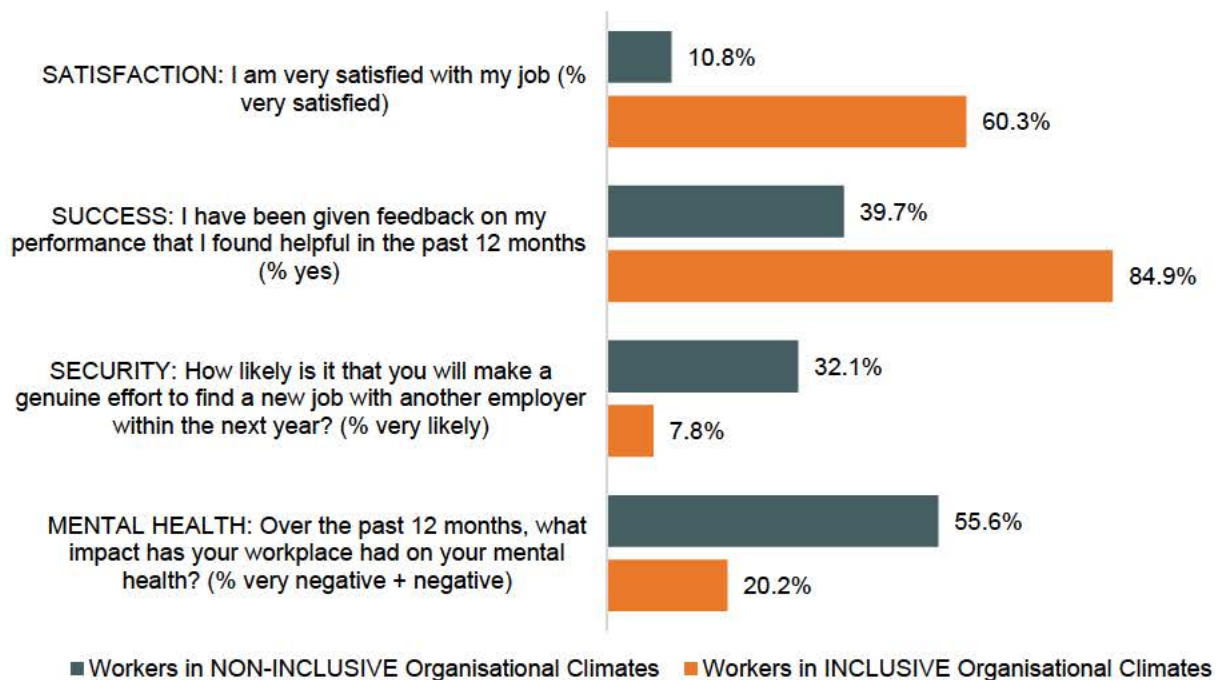


### Inclusive Organisations

Working in a non-inclusive organisational climate also has a significant negative impact on employee satisfaction, success, and security.

- **Satisfaction.** Workers in non-inclusive organisational climates are 5 times less likely to be very satisfied with their job than someone working in an inclusive organisational climate (11% versus 60%).
- **Success.** Workers in inclusive organisational climates are at least half as likely to be recognised and supported. In the past 12 months, 40% of workers in non-inclusive organisations received constructive performance feedback versus 85% in inclusive organisations.
- **Security.** These workers are 4 times more likely to leave their current employer in the next year (32% of workers in non-inclusive organisations were very likely to look for another job compared to only 8% of workers in inclusive organisations).
- **Mental health.** Workers in non-inclusive organisations are also 3 times more likely to feel work has a negative or very negative impact on their mental health (61% of workers in non-inclusive organisations compared to 19% of workers in inclusive organisations).

Figure 6: Impact of Non-Inclusive Organisational Climate on Wellbeing





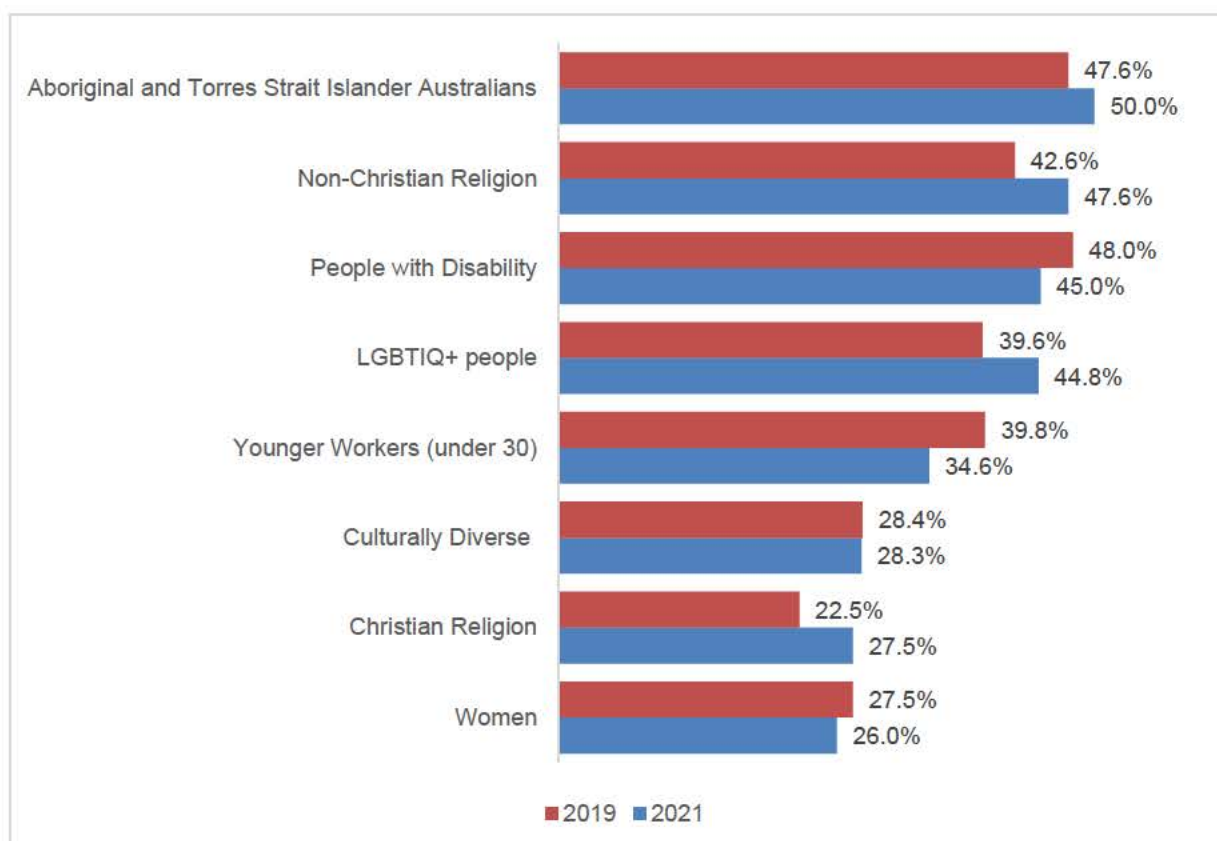
## DISCRIMINATION & HARASSMENT

Our research shows that Australian workers from minority groups are significantly more likely to experience discrimination and/or harassment at work compared to workers from mainstream or majority groups.

Aboriginal and/or Torres Strait Islander workers reported the highest levels of exclusion. With 1 in 2 reporting experiencing some form of discrimination and/or harassment in the past year, they were twice as likely as non-Indigenous workers to have experienced discrimination and/or harassment at work in the last 12 months (50% compared to 23%).

Workers from a non-Christian religious background (48%), workers with disability and LGBTIQ+ workers (both 45%) reported significantly higher levels of experience of discrimination and/or harassment, compared to Christian workers (28%), workers with no religion (23%), workers without disability (22%), and non-LGBTIQ+ workers (23%).

Figure 7: Proportion Who have Experienced Discrimination and/or Harassment in Past Year



### Discrimination and Harassment Reduce Performance and Wellbeing

Discrimination and harassment are not just costly and damaging for organisational reputation, but for worker performance and wellbeing too. Workers experiencing discrimination and/or harassment at work in the last 12 months report their team is significantly less likely to:

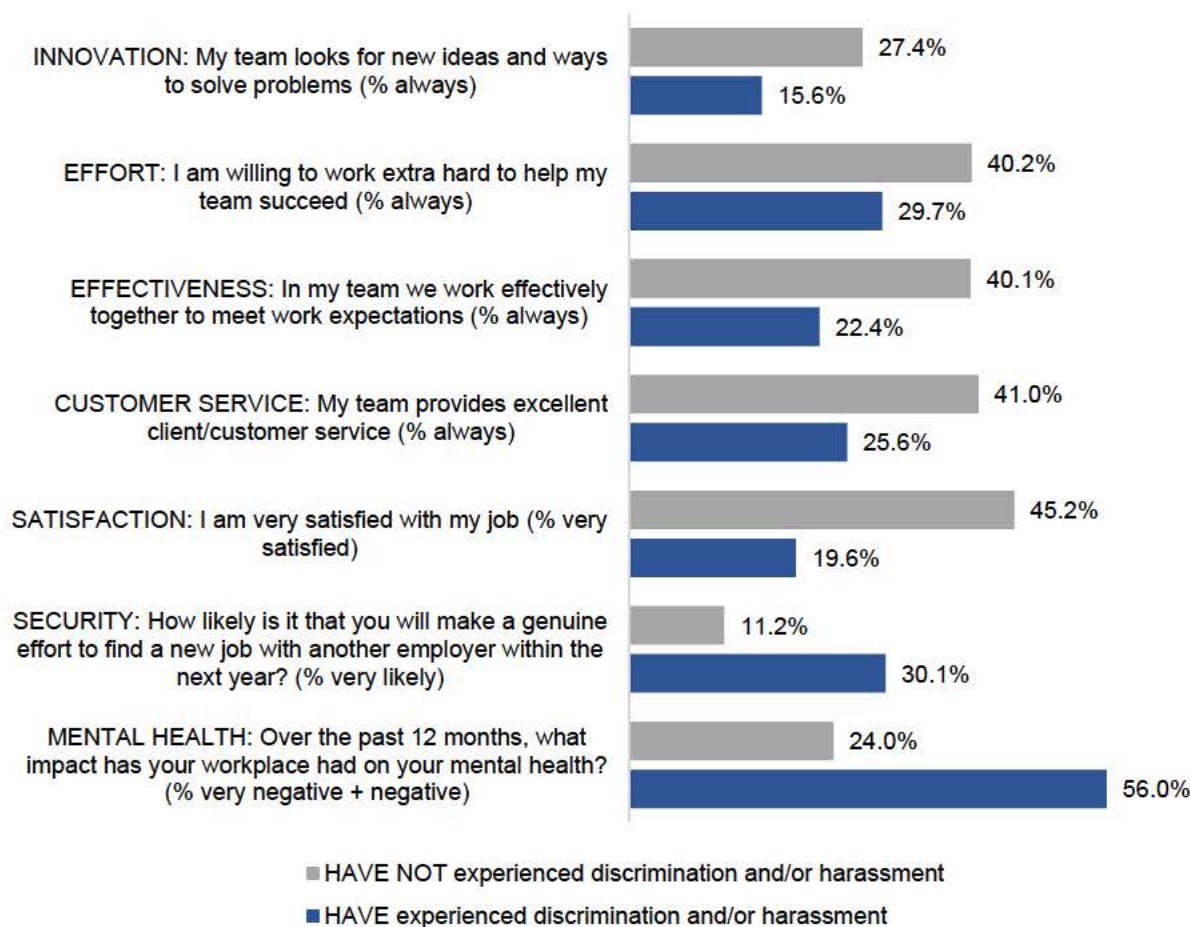


- **Look for new ideas to solve problems** (16% of respondents who experienced discrimination and/or harassment at work are in a team always looking for new ideas compared to 27% of respondents who had not experienced discrimination and/or harassment)
- **Be willing to work extra hard to help their team** (30% who have experienced discrimination and/or harassment compared to 40% who have not experienced)
- **Work effectively together** (22% for those who have experienced discrimination and/or harassment compared to 40% who have not experienced), and
- **Provide excellent customer service** (26% for those who have experienced discrimination and/or harassment compared to 41% who have not experienced).

These workers also report significantly lower wellbeing compared to those who do not experience exclusion. Workers experiencing discrimination and/or harassment at work in the last 12 months report being:

- **Less satisfied with their job** (20% very satisfied for those who have experienced discrimination and/or harassment, versus 45% very satisfied for those who have not experienced discrimination and/or harassment)
- **More likely to look for another job with a new employer** (30% very likely to look for a new job for those who have experienced discrimination and/or harassment compared to 11% who have not experienced), and
- **More likely to feel their workplace has a negative or very negative impact on their mental health** (56% of those who have experienced workplace discrimination and/or harassment reported work having a negative or very negative impact on their mental health compared to 24% of those who have not experienced discrimination and/or harassment).

Figure 8: Impact of Discrimination and/or Harassment on team Performance and Wellbeing



These everyday exclusionary behaviours are impacting businesses and people. In fact, when comparing differences in impact, exclusionary behaviours can be just as (or more) damaging as discrimination and harassment. Considering worker turnover, for example:

- Workers experiencing discrimination and/or harassment were 2.5 times more likely to leave their employer in the next twelve months than those not experiencing discrimination and/or harassment.
- Workers who report always being ignored by people at work or treated as if they do not exist were 5 times more likely to leave their employer in the next twelve months than those never experiencing this.

Australian workers indicating they are always ignored by people or treated as if they do not exist at work also report their team is significantly less likely to:

- **Look for new ideas to solve** (19% of respondents always ignored by people at work are in a team always looking for new ideas compared to 37% of respondents who are never ignored at work)
- **Be willing to work extra hard to help their team succeed** (28% of those always ignored compared to 50% for those never ignored at work)

- **Work effectively together** (21% for those always ignored compared to 52% for those never ignored at work), and
- **Provide excellent customer service** (25% for those always ignored compared to 54% for those never ignored at work).

These workers also report significantly lower wellbeing compared to those who never experience being ignored at work. Those who indicated they are always ignored by people at work or treated as if they do not exist reported being:

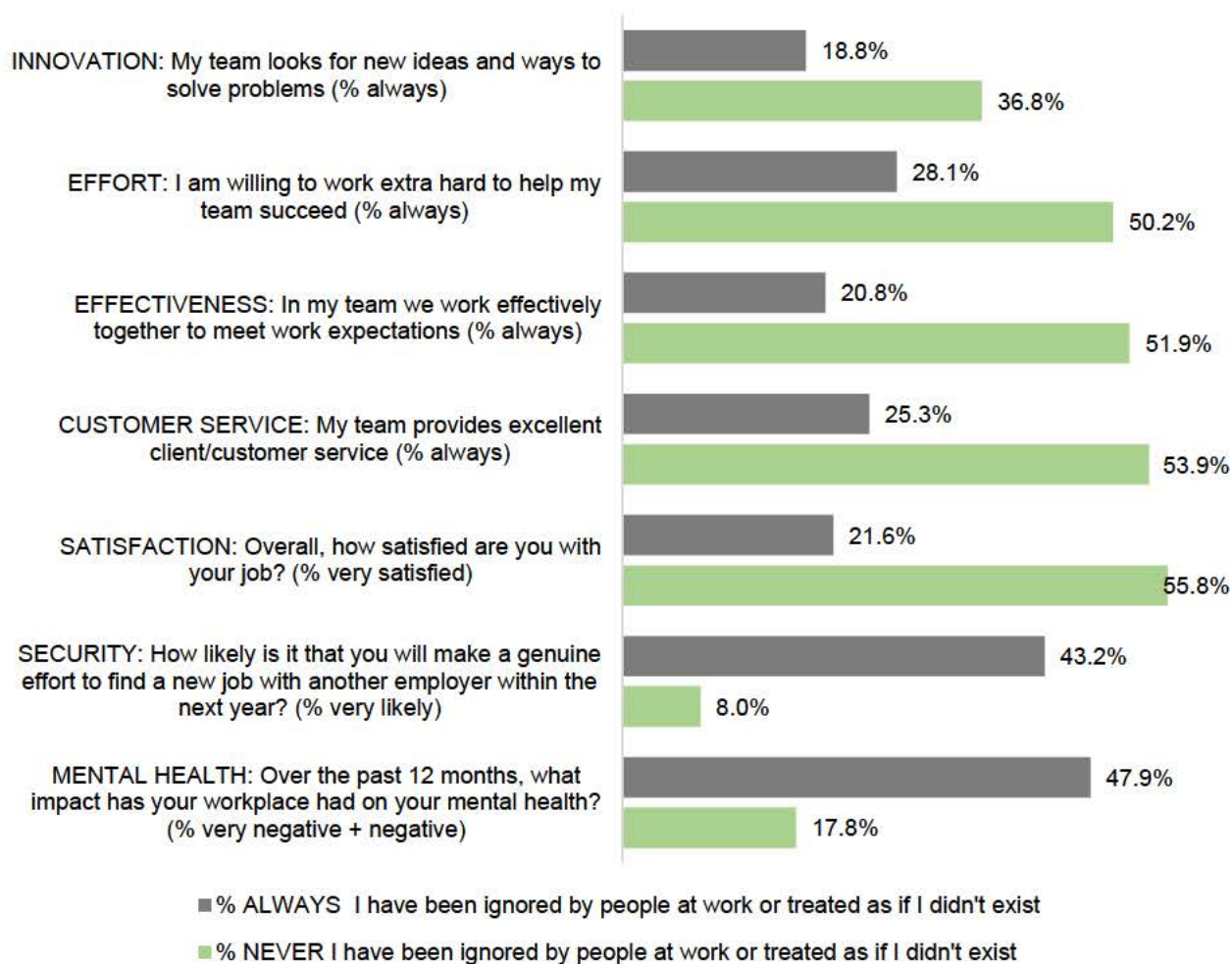
- **Less satisfied with their job** (22% of those always ignored at work are very satisfied compared to 56% of those never ignored at work)
- **More likely to look for another job with a new employer** (43% of those always ignored at work are very likely to look for a new job compared to 8% of those never ignored at work)
- **More likely to feel their workplace has a negative or very negative impact on their mental health** (48% of those who are always ignored at work report work has a negative or very negative impact on their mental health compared to 18% of those who are never ignored at work).

A comparable trend is also evident for the exclusionary behaviours of not receiving opportunities/privileges others received, being left out of work social gatherings, and having people make assumptions about abilities.





Figure 9: Impact of Being Ignored by People at Work on Team Performance and Wellbeing



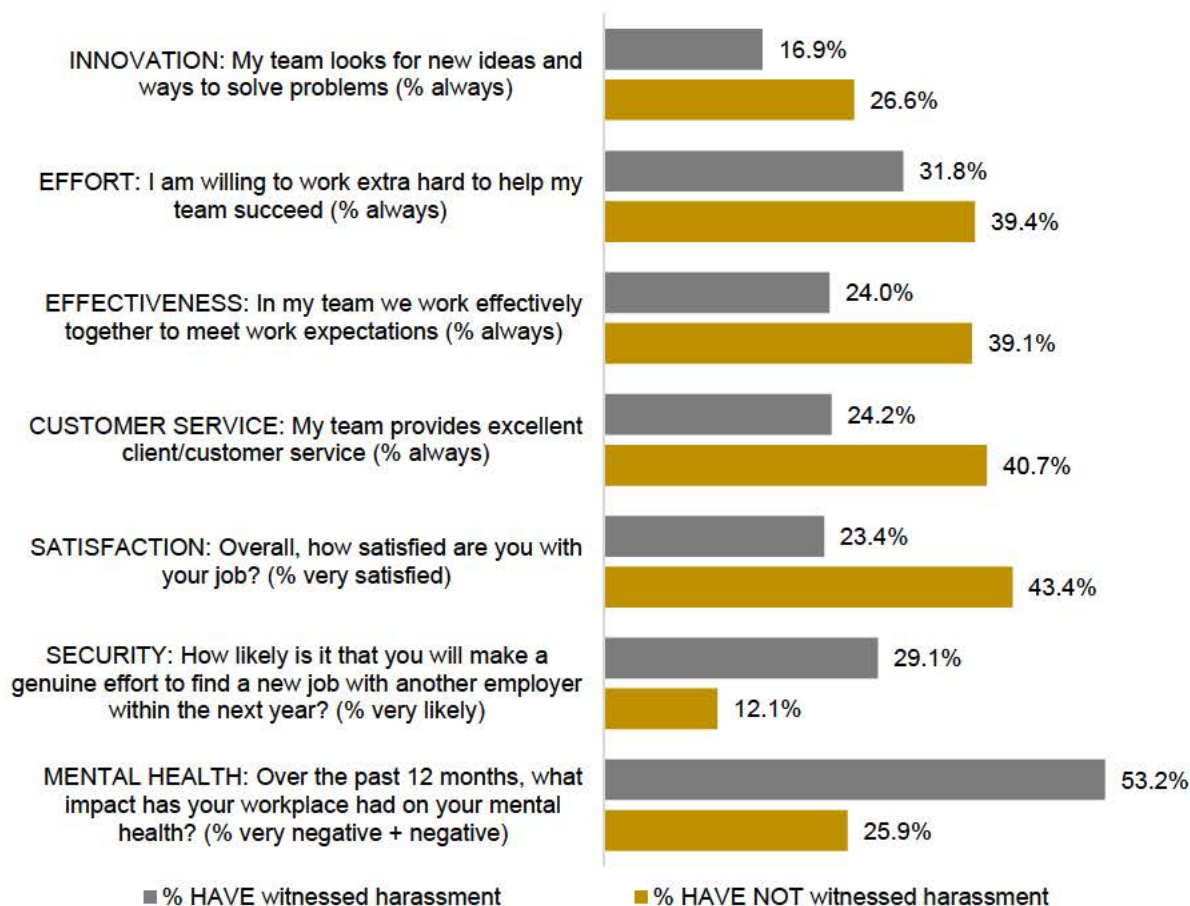
**Witnessing harassment also impacts performance and wellbeing**

We do not have to personally experience discrimination and harassment for it to diminish performance and wellbeing – even witnessing harassment significantly impacts performance, satisfaction, security, and mental health (see below).





Figure 10: Impact of Witnessing Harassment on Team Performance and Wellbeing



## VIII. ENDNOTES

---

<sup>1</sup> Diversity Council Australia, *Creating Inclusive Multi-Faith Workplaces*, Sydney, Diversity Council Australia, 2019, accessed at: <https://www.dca.org.au/research/project/creating-inclusive-multi-faith-workplaces>.

<sup>2</sup> Diversity Council Australia (O'Leary, J. and Legg, A.) *DCA-Suncorp Inclusion@Work Index 2017-2018: Mapping the State of Inclusion in the Australian Workforce*, Sydney, Diversity Council Australia, 2017, accessed at: <https://www.dca.org.au/research/project/inclusion-index>.

<sup>3</sup> Diversity Council Australia (O'Leary, J. and D'Almada-Remedios, R.) *DCA Inclusion@Work Index 2021-2022: Mapping the State of Inclusion in the Australian Workforce*, Sydney, Diversity Council Australia, 2021, accessed at: <https://www.dca.org.au/research/project/inclusionwork-index-2021-2022>

<sup>4</sup> *DCA Inclusion@Work Index 2021-2022: Mapping the State of Inclusion in the Australian Workforce*, accessed at: <https://www.dca.org.au/research/project/inclusionwork-index-2021-2022>.

<sup>5</sup> *DCA Inclusion@Work Index 2021-2022: Mapping the State of Inclusion in the Australian Workforce*, accessed at: <https://www.dca.org.au/research/project/inclusionwork-index-2021-2022>.