



WESTERN AUSTRALIA FOR HUMAN RIGHTS ACT

Parliamentary Joint Committee on Human Rights

Email: human.rights@aph.gov.au

10 November 2023

Dear Committee Secretary

Re: Response to Question on Notice – Inquiry into Australia's Human Rights Framework

At our appearance before the Committee on 20 October 2023, WA4HRA was asked the following question by Senator O'Sullivan:

Thank you for your time here with us. In relation to WA for a Human Rights Act, going through your submission, I note that it doesn't mention religious freedoms. In the submission from Professors Aroney, Ekins and Dr Saunders, they cite the study of the practical effect of the Victorian Charter of Rights in relation to the freedom of religion. Their submission includes the following:

... the charter of rights has contributed to an environment in which many people of religious faith felt that their freedom to practice their religion was increasingly under threat.

How do you believe a human rights act or a Western Australian version of it would enhance and protect people of faith?

WA4HRA thanks Senator O'Sullivan for the question and dedication to this Inquiry, together with all members of the Committee.

The answer to the question is as follows:

WA4HRA's submission to the Inquiry at paragraph 51.9 notes that a Federal Human Rights Act (**FHRA**) should protect, as a minimum, freedom of thought, conscience, religion, and belief. WA4HRA's position is that this right must also be included, as a minimum, in a Western Australian Human Rights Act (**WAHRA**) to ensure all West Australians enjoy the protection of the right under both State and Federal jurisdiction.

WA4HRA notes that freedom of thought, conscience, religion is contained in article 18 of the International Covenant on Civil and Political Rights (**ICCPR**), article 5 of the Convention on the Elimination of All Forms of Racial Discrimination, and article 14 of the Convention on the Rights of the Child, all human rights treaties to which Australia is a party. More broadly, WA4HRA also notes that the right to freedom of thought, conscience, religion, and belief may also be relevant to:

- the prohibition on discrimination, the grounds for which include religion, in articles 2 and 26 of the ICCPR;



WESTERN AUSTRALIA FOR HUMAN RIGHTS ACT

-
- the prohibition on advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence in article 20 of the ICCPR;
- the right of religious minorities to enjoy their own culture and to profess and practise their own religion in article 27 of the ICCPR;
- the right to freedom of opinion and expression in article 19 of the ICCPR;
- the right to peaceful assembly in article 21 of the ICCPR; and
- the right to freedom of association in article 22 of the ICCPR.

WA4HRA's submission to the Inquiry at paragraph 51.10 also calls for the inclusion of the right to peaceful assembly and freedom of association, freedom of expression, and freedom from discrimination at paragraph 51.2. These rights operate to further augment the rights protection for people of religious faith and enhance the protection of the right to freedom of religion, conscience, and belief.

W4HRA's view is that the inclusion of the right to freedom of thought, conscience, religion, and belief, the right to peaceful assembly and freedom of association, freedom of expression and the right to freedom from discrimination in an FHRA and WAHRA would enhance and protect the rights of people of religious faith in WA through the operation of the following key features from the 'dialogue model' of human rights legislation adopted in the United Kingdom, New Zealand, the ACT, Victoria and Queensland:

- a requirement for public authorities to act consistently with the provisions of the FHRA and WAHRA;
- a duty on courts to interpret legislation consistently with the provisions of the FHRA and WA4HRA; and
- a power for people to initiate a claim if they are alleging a breach of the provisions of the FHRA and WAHRA.

At present, people of religious faith in WA do not enjoy the formal protection of the right to freedom of thought, conscience, religion, and belief. In practical terms, the right would protect matters such as:

- organised religious rituals and ceremonies;
- building places of worship or religious teaching;
- publishing and dissemination of religious tracts and texts;
- displaying symbols or wearing particular kinds of clothing;
- observing holidays and days of rest; and
- observing a particular diet or avoiding certain food products.



WESTERN AUSTRALIA FOR HUMAN RIGHTS ACT

WA4HRA notes Senator O'Sullivan's reference to the submission of Professors Aroney, Ekins and Dr Saunders, where they cite the study of the practical effect of the Victorian Charter of Rights in relation to the freedom of religion. Their submission includes the following: *"the charter of rights has contributed to an environment in which many people of religious faith felt that their freedom to practice their religion was increasingly under threat"*.

It is outside the scope of this response to assess the validity of the conclusion above in relation to the operation of the Victorian Charter of Human Rights and Responsibilities, or to comment on whether that is likely or not to be an environment in which people of religious faith might find themselves under a FHRA or WHRA. WA4HRA is unaware of any concerns from any of its broad membership or the WA community of the kind raised by Professors Aroney, Ekins and Dr Saunders in relation to human rights legislation.

In WA4HRA's view, the legal enshrinement of the right to freedom of thought, conscience, religion, and belief and the overall operation of the 'dialogue' model mechanism would enhance the protection of the right to freedom of religion for people of religious faith under a FHRA and WAHRA. It is this legal infrastructure that best facilitates the potential for real, practical outcomes and remedies for people of religious faith with respect to rights. It is also clear from other jurisdictions that the success of a FHRA and W4HRA depends on many factors, not simply whether the legislation is in place or not. It is the ability and willingness of government to engage in dialogue on bills that would impact on the rights of people of religious faith, public authorities to take the right into account, courts to interpret legislation consistently with that right, and people of faith and religious organisations to take an active role in engaging with the legislation and working to respect and protect the rights of all peoples under a FHRA and WHRA to promote a culture of respect for rights for the benefit of all West Australians.