

Australian Human Rights Commission
Freedom of Religion and Belief in the 21st Century

Submission from the NSW Council of Churches

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Executive summary

1. Freedom of religion and belief does not appear to be under serious threat in Australia today.
2. A federal charter or bill of rights, or a federal Religious Freedom Act, is not recommended since adequate means already exist to address alleged breaches of religious freedom including religious vilification.
3. State-sponsored multi-faith dialogue is welcomed provided that such dialogue fully respects the particular religious beliefs and practices of participating faith communities.
4. Discussion and debate aimed at clarifying and defending truth claims with respect to religion should be encouraged.
5. Contributions to public policy debates based on religious convictions and principles should be encouraged.
6. Certain aspects of the AHRC Discussion Paper 1 and associated documents appear to indicate an anti-religious bias.

1. Introduction

The NSW Council of Churches comprises representatives of seven evangelical Christian denominations.¹ The Council exists to:

- promote unity and united action among evangelical churches in NSW;
- encourage fellowship and discussion between member churches;
- support strategies for evangelical outreach, mission and ministry;
- apply biblical and theological principles to contemporary issues;
- engage local, state and federal governments on public policy issues.

For more information visit the website listed above. This Submission addresses aspects of the seven areas that the AHRC report is exploring, and related matters.

2. Evaluation of 1998 HREOC Report, *Article 18: Freedom of Religion and Belief*

The present review of freedom of religion and belief in Australia is conducted by the Australian Human Rights Commission (AHRC, formerly the Human Rights and Equal Opportunity Commission). This project builds on the earlier report *Article 18: Freedom of Religion and Belief* released by HREOC in 1998, and the 2004 report *Religion, Cultural Diversity and Safeguarding Australia*, released by the (then) Department of Immigration and Multicultural and Indigenous Affairs and the Australian Multicultural Foundation, in association with the World Conference of Religions for Peace, RMIT University and Monash University. These reports followed moves by the Hawke Labor Government in 1988 to amend the Australian Constitution in order to, among other reforms, “extend freedom of religion.” The resulting referendum was rejected in every state and territory and by an overall majority of 69.21 per cent to 30.79 per cent.

The 2008 AHRC Review specifically seeks responses to the 1998 HREOC report (hereafter *Article 18 Report*). That report considered the implications of the *International Covenant on Civil and Political Rights 1966* (ICCPR),² which came into force on 23 March 1976, and which was ratified by Australia on 13 November 1980.³ Australia is also a party to the *First Optional Protocol* to the ICCPR,⁴ which provides a process for individuals who claim that their rights and freedoms have been violated to call the State in question to account for its actions.

The *Article 18 Report* was clearly of considerable significance to HREOC and to those persons and agencies seeking human rights law reform in Australia. That it remains so is demonstrated by the fact that the AHRC Discussion Paper released in September 2008 reproduces the list of recommendations from HREOC’s 1998 report in Appendix 1 of the discussion paper. Of central interest to the NSW Council of Churches are recommendations 2.1 to 2.6 calling for enactment of a federal Religious Freedom Act; recommendation 3.15 on coercion in religious belief and practices; recommendation 4.1 on discrimination on the ground of religion and belief; and recommendations 5.1 to 5.4 on incitement to hatred on the basis of religion and belief.

¹ Anglican Church (Diocese of Sydney), Baptist Union of NSW, Christian Reformed Church, Churches of Christ, Fellowship of Congregational Churches, Presbyterian Church, The Salvation Army.

² http://www.unhchr.ch/html/menu3/b/a_ccpr.htm

³ Except for Article 41, which came into force in Australia on 28 January 1993.

⁴ <http://www.unhchr.ch/html/menu2/8/oppro.htm>

Enactment of a Religious Freedom Act (Rec. 2.1 – 2.6). The NSW Council of Churches does not support the enactment of a Religious Freedom Act or similar legislation purported to safeguard religious freedom in Australia. The Council is of the view that the ICCPR (specifically Articles 18 and 19), and existing state and federal laws regarding defamation and sedition, are sufficient to protect religious freedom. The enactment of federal or state legislation, including bills and charters of rights, which seek to reflect part or all of ICCPR Articles 18, 19 and 20 are unnecessary, would be subject to judicial interpretation and application, and would result in unintended consequences inimical to religious freedom. Further, the Council recommends that any state or federal limitations or restrictions on the fundamental human right to religious freedom should strictly follow the limitations provisions set forth in ICCPR and the Siracusa principles.⁵

Coercion in religious belief and practices (Rec. 3.15). The NSW Council of Churches opposes both political and religious coercion. The Council would welcome an opportunity for multi-faith dialogue facilitated by the federal Attorney-General's Department to examine the question of methods and evidence of coercion in religious belief and practice and how parliamentary democracies should respond to such coercion, provided that such dialogue was conducted in an environment which fully respected the particular religious beliefs and practices of participating faith communities. The Council recognises that certain beliefs and practices of a faith community will necessarily be incompatible with those of another faith community, and opposes moves by the state or its agencies to encourage or introduce any officially sanctioned interfaith or multifaith religion in Australia.

Discrimination on the ground of religion and belief (Rec. 4.1). Freedom of religion is a fundamental human right. As noted above, the NSW Council of Churches opposes enactment of state or federal legislation purported to protect freedom of religion and belief in Australia. Recent experience indicates that, where religious anti-discrimination legislation is in force in Australian jurisdictions, the outcome is not religious freedom but excessive restriction on religious freedom. Freedom of expression and freedom of association are also in danger of erosion through the apparently unintended consequences of religious anti-discrimination legislation. The legal and personal costs associated with religious anti-discrimination hearings and appeals are extremely onerous and serve to further restrict religious freedom.⁶ Human rights charters in Victoria and the ACT, and religious anti-vilification legislation in Victoria, Queensland and Tasmania, all possess counterproductive intent or facilitate undesirable outcomes with respect to religious freedom.

If a federal religious anti-discrimination bill were to be introduced in Australia, the Council would seek where possible to uphold the ICCPR limitations provisions and the Siracusa principles, and recommend appropriate parliamentary review instruments.

Incitement to hatred on the basis of religion and belief (Rec. 5.1 – 5.4). The NSW Council of Churches affirms the place of defamation laws in Australian jurisdictions but opposes moves to enact legislation seeking to prohibit defamation of religion on the ground that such legislation would excessively restrict freedom of expression and public scrutiny and critique of religious beliefs and practices; and on the ground that defamation law properly protects the reputations of individual persons and not religious (or political) institutions or movements.

⁵ UN Commission on Human Rights, *The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*, 28 September 1984. E/CN.4/1985/4, available at <http://www.unhcr.org/refworld/docid/4672bc122.html>

⁶ Note, in particular, *Catch the Fire Ministries Inc. & Ors v Islamic Council of Victoria Inc.* [2006] VSCA 284 (14 December 2006), available at <http://www.austlii.edu.au/cases/vic/VSCA/2006/284.html>

The Council views with concern Recommendation 5.3 in the *Article 18 Report* which specifically recommends religious vilification exemptions for acts done reasonably and in good faith for artistic, academic or scientific purposes. The absence of any specific reference to acts done reasonably and in good faith for *religious* purposes suggests that there may be an anti-religious bias and, ironically, an anti-democratic bias on the part of those directly responsible for proposing the recommendations. Such a recommendation arguably does not promote religious freedom but rather religious censorship. If a bill based on this recommendation were to be tabled, representatives of various faith communities (especially Jewish, Christian and Muslim faith communities) would no doubt insist that no exception clauses be included which permitted the media and entertainment industry and academics to ridicule or slander their religious beliefs and practices.

The Council further views with concern Recommendation 5.4 on the ground that it appears to identify religious vilification with racial hatred, and implies that alleged religious vilification should be addressed by “civil remedies similar to those provided for in the racial hatred provisions of the Racial Discrimination Act 1975 (Cth).” Such identification is unwarranted and inappropriate, principally on the ground that race and ethnicity are genetically determined whereas religious affiliation, although often influenced by family of origin and culture, is fundamentally a matter of choice which may be restricted or denied. This is one of the reasons why freedom of religion appears in the Universal Declaration of Human Rights.

3. Religion and the State – the Constitution, roles and responsibilities

Definition of religion. In 1983 Australian High Court Justices Mason and Brennan found that, “for purposes of the law, the criteria of religion are twofold: first, belief in a supernatural Being, Thing or Principle; and second, the acceptance of canons of conduct in order to give effect to that belief.”⁷ This definition adequately expresses the core features of religion while avoiding the lack of exactness and universalisability of many sociological definitions.

The Australian Constitution. The Australian Constitution refers only fleetingly to religion.⁸ The provisions of Section 116 apply only to the Commonwealth (not to the states and territories), do not imply “a wall of separation” between religion and the state, and do not prohibit the provision of federal financial assistance to educational and benevolent activities, and activities promoting the advancement of religion, conducted lawfully by religious organisations. The intent of Section 116 was to prohibit the establishment of a state religion (such as the Church of England in Britain). The NSW Council of Churches is confident that the present Australian Constitution provides adequate support for freedom of religion. The Australian Government should protect freedom of religion by conscientiously adhering to those international human rights declarations, conventions and treaties which it has ratified. There is no warrant for the enactment of bills or charters of rights, or for legislation such as the proposed Religious Freedom Act, in Australian jurisdictions.

Criticism of a “fundamentalist religious lobby.” The NSW Council of Churches views with concern the comments apparently made by the Race Discrimination Commissioner, Mr Tom Calma, to ABC radio following the launch of the present AHRC review.⁹ Mr Calma indicated that there was evidence of “a growing fundamentalist religious lobby, in areas such as same-sex relationships, stem-cell research and

⁷ *Church of the New Faith v Commissioner of Pay-Roll Tax (Vic)* [1983] HCA 40; (1983) 154 CLR 120, para. 17.

⁸ See <http://www.aph.gov.au/Senate/general/constitution/index.htm>, and especially section 116.

⁹ <http://www.abc.net.au/news/stories/2008/09/17/2366511.htm?section=justin>

abortion,” and advocated striking a balance “between the freedom to practice a religion and not pushing those beliefs on the rest of society.” Such comments appear to betray an anti-religious bias on the part of the AHRC, a bias evident in the 2004 report, *Religion, Cultural Diversity and Safeguarding Australia*.¹⁰ It is to be hoped that the freedom to hold particular religious beliefs, and the freedom to pursue and advocate canons of conduct in order to give effect to those beliefs (including public critique of proposed legislation and regulation, and lobbying of politicians and relevant bureaucrats) are not restricted or curtailed by the national human rights watchdog. A healthy and progressive democratic polity is served by vigorous intellectual and critical debate, not by measures aimed at restricting legitimate debate or the right of certain minority groups to engage in such debate.

Undue influence. Undue influence exerted by religious organisations on a state possessing democratic institutions would presumably occur only when the influence takes on a criminal component (such as bribery, blackmail or sedition). Undue influence exerted by the state over religious organisations would occur when the state sought to interfere with the lawful internal rules and conventions of the religion, or when the state imposed laws denying freedom of conscience, freedom of expression, freedom of association, and/or freedom of religion. A legislated national charter of rights, or a Religious Freedom Act, would not effectively protect these freedoms for reasons outlined in section 2 above.

Roles and responsibilities. All individuals and groups in Australia should uphold freedom of religion, including the right to not hold religious beliefs, as a fundamental human right and a major contributor to a free and democratic society. Those societies which have severely restricted or outlawed religious freedom (such as the USSR, Nazi Germany, China, North Korea, Kampuchea, and certain contemporary Islamic states) have been among the most repressive and undemocratic societies, and the locus of significant human rights abuse.

Interfaith understanding and inclusion. The position of the NSW Council of Churches with respect to interfaith matters is well articulated in the following statement, “Guidelines for relations with other religions,” passed unanimously at a Council meeting on 2 September 2008:

We confess with sorrow that members of other faith communities have at times encountered a lack of welcome and respect, and even a spirit of racism, from some churches and Christians.

1. Personal relations

- (a) We commend our Gospel witness by expressing respect and friendship toward the leaders or representatives of other religions.
- (b) We seek to model Christian character and diplomacy in all relationships.

2. Dialogue

- (a) We encourage an active academic interest in the history, teachings and practices of other religions, seeking first to understand, then to be understood.
- (b) We recognise the importance of formal dialogue between different religious communities with the purpose of improving relationships and mutual understanding.
- (c) We oppose any pressure toward syncretism in worship, doctrine, mission and union.

3. Worship

- (a) We recognise the democratic and pluralist nature of Australian society, and the long-standing principle of religious freedom.

¹⁰ For example, see pages 73, 94.

- (b) We affirm that the integrity of worship of different faiths, including our own, must be respected and not compromised; therefore we believe that interfaith gatherings which meet specifically for worship are ambiguous and inappropriate.
- (c) We recognise that there are civic and political occasions where our common humanity requires us to stand alongside others as religious leaders or representatives.
- (d) We respect established conventions relating to ceremonial robes and the use of religious symbols.
- (e) We recognise that, where a public event is convened on the premises of a particular religious community, the protocols of that community should be respected.

4. Evangelism

- (a) We affirm our biblical responsibility to share the Christian Gospel with people of other religions, and of no religion, in culturally sensitive and non-coercive ways.
- (b) We encourage all churches and Christians to engage in sensitive evangelism that involves a meaningful dialogue which listens as well as speaks, and an authentic witness which testifies by words and actions the love of Christ and the salvation which is found in Christ alone.
- (c) We acknowledge that people of other religions may seek to proselytize Christians; and respect the right of such people to share their faith in culturally sensitive and non-coercive ways.

5. Social issues

- (a) We commend, where appropriate, joint action with other religions to achieve economic, social and racial justice, offering a Christian perspective on all public issues.
- (b) We respect the right of religious communities to establish and maintain suitably accredited faith-based schools and other educational institutions.
- (c) We respect the right of religious communities to place suitably accredited faith-based chaplains in schools and other public institutions and in workplaces.¹¹

4. Security issues in the aftermath of September 11, 2001

Subversion of democratic institutions. The Christian churches in Australia have not been directly affected by legislative changes in response to the terrorist attacks on the United States in 2001 and subsequent terrorist events. However, onerous laws intended to apprehend terrorists or protect Australian citizens from terrorist activities may lead to a diminution of the rights and freedoms to which Australians have grown accustomed. Further, in addition to instilling terror, militant Islamists may seek to erode human rights undergirded by the Judeo-Christian tradition, subvert democratic institutions and the rule of law, and exploit democratic traditions until those traditions cease to be useful to their cause.

Vilification. Christians are urged to seek and preach peace with all people; to welcome refugees and asylum seekers to their communities who have been displaced for political and religious reasons; and to understand other faiths, particularly Islam, and develop friendly relations with persons of other faiths. Accordingly the NSW Council of Churches seeks peaceful relations with members of other faith communities, and welcomes discussion and debate aimed at clarifying and defending truth claims with respect to religion. Religious anti-vilification legislation is an inappropriate instrument to promote religious tolerance and goodwill, and it is not the place of an administrative tribunal, nor a secular judge, to pass rulings on matters of religious belief. Substantive matters of dispute on religion should be addressed in the same manner as matters of dispute on politics are addressed, with recourse to defamation law if necessary as a last resort.

¹¹ http://www.nswchurches.com/Resources/Policy/P0802_Relations_with_other_religions.pdf

Islam a unique case. With respect to Islam, it is important to understand that many Arabic people in Australia are Christians, and that many Australian Muslims are peace-loving, non-fundamentalist and non-radical in the practice of their faith. At the same time, it is important to understand that Islamic fundamentalism (or radicalism) is different in nature and intent from so-called Christian fundamentalism. Islam is not, in its pure form, a religion of peace with respect to “infidels” such as Christians. In addition, the common Western distinction between religious and political institutions, and between religious convictions and political action, is not apparent in Islam.

5. The interface of religious, political and cultural aspirations

The place of “religious voices” in policy debates. Reasoned debate and diversity of opinion are important contributions to the health and progress of a democratic society. The NSW Council of Churches views with concern the insertion of the question in the AHRC Discussion Paper, “Is there a role for religious voices, alongside others in the policy debates of the nation?”¹² The perspectives and contributions of “religious voices” have always been an important element in Australia’s democratic tradition, and must be safeguarded. If there is any suggestion that “religious voices” ought not to contribute to policy debates in Australia, the NSW Council of Churches would be most interested to learn which particular religious voices are to be silenced, and the reasons for such an attack on freedom of conscience, freedom of speech, and freedom of religion. It would be appalling if such an attack on fundamental human rights in a democratic polity were to be launched or encouraged by the Australian Human Rights Commission.

6. Religion, cultural expression and human rights

“Diverse” sexuality. Almost all religious traditions, and certainly those Christian faith traditions which lie at the heart of the member churches of the NSW Council of Churches, hold a socially conservative view of sexuality and marriage in comparison to the norms and trends of contemporary Australian society as indicated by statistical and media reports. The NSW Council of Churches does not regard the Discussion Paper questions, “How is diverse sexuality perceived within faith communities?” and “How can faith communities be inclusive of people of diverse sexualities?” as relevant to the subject of freedom of religion and belief, unless the AHRC is thereby defining sexuality as a cultural right in potential conflict with an allegedly subsidiary right to freedom of religion. The Council maintains that freedom of religion is a fundamental and inalienable right of the same order as the right to life and other civil and political rights.

Discrimination in employment. The NSW Council of Churches acknowledges the right of every individual to pursue a sexual identity and to engage in lawful sexual practices. However, Christians who accept the Bible as the supreme authority for faith and conduct will normally identify certain sexual practices and social arrangements as inappropriate on the basis of biblical teaching, traditional wisdom and experience. Religious organisations (e.g. churches, schools, hospitals, theological colleges) possess the right to pursue their religious activities according to conscience. Any action by the state that has the effect of restricting or curtailing these rights, such as imposing requirements or restrictions on employment, is an abrogation of both religious freedom and freedom of association. Rules pertaining to the employment of staff by a religious organisation ought to be considered on similar grounds as employment of staff by a political organisation.

¹² Tom Calma, *Freedom of Religion and Belief in the 21st Century: Discussion Paper* (Sydney: AHRC, 2008), p. 9.

7. Conclusion

The NSW Council of Churches is of the view that freedom of religion and belief does not appear to be under serious threat in Australia today. A federal charter or bill of rights, or a federal Religious Freedom Act, is not recommended since adequate means already exist to address alleged breaches of religious freedom including religious vilification. State-sponsored multi-faith dialogue is welcomed provided that such dialogue fully respects the particular religious beliefs and practices of participating faith communities. In particular, discussion and debate aimed at clarifying and defending truth claims with respect to religion should be encouraged. Contributions to public policy debates based on religious convictions and principles should also be encouraged. Finally, certain aspects of the AHRC Discussion Paper 1 and associated documents appear to indicate an anti-religious bias which is regrettable on the part of an institution charged with upholding human rights. The Council is unconvinced of the necessity for the present AHRC review, and would be interested to learn how many complaints have been received by the AHRC since 1998 on the grounds of denial of religious freedom, and the nature of such complaints.

The NSW Council of Churches makes this submission respectfully and welcomes the opportunity to engage further with the AHRC on these important matters in stakeholder meetings, public hearings, and further submissions.

Rod Benson
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