

SUBMISSION
TO
THE PROPOSED WA HUMAN RIGHTS
ACT



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Thank you for the opportunity to provide input into the proposed WA Human Rights Act. The Ethnic Disability Advocacy Centre (EDAC) is the peak community based advocacy organisation representing the rights and interests of people with disabilities from culturally and linguistically diverse backgrounds (CaLD) and their families. This group constitutes a significant proportion of the population and includes the full range of disabilities and a large diversity of cultures from all sectors of the community.

1. Should WA have a Human Rights Act?

The preferred action is for the States to encourage the timely development of a national Human Rights Act. However, in the absence of a national Human Rights Act, this State should take the initiative.

2. What rights should be protected in a WA Human Rights Act?

People with Disabilities

The rights of disadvantaged minority groups such as people with disabilities, CaLD communities and Aboriginal communities should be protected.

The WA Human Rights Act should be cognisant of relevant ongoing developments in the United Nations and support/seek their inclusion in the State Act. In this instance we refer specifically to the United Nations Convention on the Human Rights of People with Disabilities. It is essential that the legislation **explicitly** protect the human rights of people with disabilities.

Protecting Cultural Diversity

Whilst we support the inclusion of civil and political rights, economic, social and cultural rights should not be omitted, or their inclusion deferred to a later time. We recommend that they be included from the outset. In particular in the current climate, the multicultural character of Australian society needs to be positively strengthened and guaranteed.

It is essential that the legislation also **explicitly** protect not just individual rights but also ancillary collective rights. **We do not agree with the Government's preferred approach that the Act apply only to individual rights.**

Although individual human rights are, and probably need to continue to be decisive in the limiting case, people do enter into interpersonal, family, social and cultural arrangements that are supplementary to their individual rights and these rights also need protection.

In a multicultural society like Western Australia, its WA Charter of Multiculturalism is a declaration of our acceptance that cultural diversity is valued and cultural rights are to be protected.

There are examples where the individualism of the United Nations Declaration of Human Rights, unqualified by explicit protection of the associated rights of families and cultures for example, has resulted in an erosion of support to family, community and cultural care/protection. The outcome of rights, other than individual rights, not being explicitly mentioned, is that only individual rights are considered, and the rights of partners, families, carers, and cultural communities are not taken into account since there is no explicit requirement for them to be considered. However, each are important elements contributing significantly to acceptable, effective and sustainable care/service provisions. Where service providers are looking to minimise what they need to do – as with continually under-funded not-for-profit non-government community organisations, and as with profit-maximising private care businesses – the natural human **rights** and **responsibilities** of partners, families, carers, and cultural communities are excluded in the provision of service to individuals.

The explicit protection of ancillary collective human rights has the potential to provide legislative and educative support to the valuable process of participation, inclusion and substantive equality.

Responsibilities

The right to exercise natural human responsibilities also need protection. Most importantly, the Act should be more than a bottom line reactive instrument for the defence of human rights where they are in breach. It should actively promote education and support for human responsibilities as the most effective and preferred route to securing human rights.

It is important, to avoid any downside of the Act serving to encourage the culture of ‘all rights and no responsibilities’.

There are precedents to this in the provisions for people to voluntarily relinquish various rights, or for society to withdraw rights from people who demonstrate their incapacity or intent to exercise the natural human responsibilities expected in contemporary societies – such as institutionalisation, detention, incarceration and mandatory treatments or attendance of rehabilitation programs. These provisions should be supported in principle in the Act, but as necessary default options secondary to active enabling support by the Act of positive responsibilities, both individual and collective.

In service provision, for example, this Act could provide encouragement for planning that prioritises working with and supporting individual as well as family, community and cultural systems of responsibility. This will also assist recovery from the direct individual care provision that has marginalised and excluded responsibility practices that are an essential part of the living fabric of all cultures that make up multicultural Australia.

3. What form should a WA Human Rights Act take?

An Act that is binding on all other legislation, on all persons and all organisations, in all circumstances.

It should have a form that has and requires explicit, demonstrable, active, practical linkage into all policies and practices in all domains.

It should be in a language accessible to all and to common sense understandings, so as to provide for public confidence and not be subject to the uncertainties of legal interpretation.

There should be the provision for public mechanisms for accessing the provisions for complaint under the Act so that legal costs do not prohibit its use particularly by those at greatest risk and disadvantage and hence most likely to have cause for seeking protection under the Act.

This means substantive support to mediation services and, in default, guarantee of a better quality and availability of assisted legal service than is currently the case – especially to people with special needs or deemed ‘at risk’.

4. How should a WA Human Rights Act require human rights to be protected?

Three levels seem essential:

- the up-front **promotion of positive human rights**;
- organisations having **standards, policies and practices for the monitored implementation and also protection of human rights** in all that they do;
- the **default legislative safety net for recourse to legal protection and redress** in instances where it is felt that there has been a breach of those human rights.

5. Who should be required to comply with the human rights recognised in a WA Human Rights Act?

Everyone: individual, collective and corporate, community and government. We do not agree that the private sector be omitted, especially in this era of increasing privatisation of services by the Federal Government, States and Local Governments. We recommend that the private sector be included and right from the outset.

The WA Human Rights Act should be written such that it legislatively overarches all other Acts, policies and practices in the State – that all other legislation be subject to the Act and be required to demonstrate its compliance to the Act.

For example, in the services sectors, Quality Assurance, Continuous Quality Improvement, Services Standards and ‘best practice’ Guidelines, should refer to the Act as their legislative context and be congruent with it.

A specific example is the Disability Services Standards. The Disability Services Commission (DSC) in WA recently introduced a new Standard 9 *Protection of Human Rights and Freedom from Abuse and Neglect*. The Ethnic Disability Advocacy Centre (EDAC), funded by the Disability Services Commission,

produced a practical complementary working document/instrument *CaLD Perspectives on the Disability Services Standards* to promote the protection and inclusion of cultural diversity in service provision.

This project publication also recommended that 'Human Rights' should not be 'just tacked on' as the ninth Standard along with 'Freedom from Abuse and Neglect', and that the *Disability Services Standards* be revised to position Human Rights as an overarching concept to which each and all of the other Standards are to be considered and be required to be demonstrably compatible with.

Also recommended was the transition to legislatively prioritising a positive promotional approach to human rights, complementary and additional to the continuation of the necessary bottom-line current safeguards approach to addressing breaches of human rights.

6. What should happen if a person's human rights are breached?

There should be the usual **complaint procedures** and **legislative avenues** to test and address alleged breaches of human rights.

Importantly, in a **constructive systemic advocacy** sense, any human rights complaint, or class of such of complaints, should also be investigated to seek opportunities to improve positive proactive promotional initiatives to alleviate the grounds for the appearance of such complaints and turn the situation around to a valued positive outcome, - and not just for those directly involved but also for all others in society who could be potentially affected.

There should be a default option also, so that individuals, government, community or private organisations refusing to cooperate to improve their compliance with the legislation, can be held accountable by way of significant penalty.

7. If WA introduced a Human Rights Act what wider changes would be needed?

Importantly it should be introduced as overarching legislation, so that a consequent process required would be to examine **all other legislation**, State and Commonwealth legislation applying to the State, to bring each into line with the WA Human Rights Act – and that relationship in each case be documented in explicit guidelines in a form(s) suitable to assist both educational promotions and legal determinations.

It would also be desirable that there be a requirement that the **standards, policies and practices** of all organisations be reviewed, by each organisation, to develop demonstrable compliance with the new Act.

An example of this process is the Disability Access Plan and the Disability Services Standards, which are required to be incorporated effectively in the written policies, practices and procedures of all agencies receiving government and/or disability services funding.

Also, in line with the positive promotional responsibilities approach to human rights that is advocated here, that the Human Rights and Equal Opportunities Commission be funded for ensuring ongoing active promotion of human rights in both formal **educational, professional** and **community** domains to ensure that the concept of human rights is continually tested and developed across the full range of practical contemporary contexts.

8. What else can the Government and the community do to encourage a culture of respect for human rights in WA?

A 'culture of respect' for human rights is a necessary first step, however for anything to be respected it must be seen, and immediately relevant. Human rights must be explicit in a practical sense in people's lives. They need to issue from a degree of comfortable informed openness with human rights and from mutual understanding, so that human rights are actually valued. Human rights need to be valued in a real and applied sense, not just as ideals, the rhetoric of which has no observable bridge of application in everyday living. This necessitates explicit and informed positive inclusion throughout the practicalities of daily life.

This implicates the recommendations made above, for active grounded practical initiatives that translate human rights into the decision making and values of everyday life. Examples have been given of how a 'culture of respect' can be developed in practical ways in care services domains.

Do you have further comments about human rights laws for WA?

The Act should explicitly recognise the UN Convention on the Rights of Persons with Disabilities, and recommend its Ratification by the Federal Government.

Similarly the Act should explicitly recognise, along with the Charter of Multiculturalism (WA), such Declarations or Conventions of the United Nations that support cultural rights.

The Act should attribute to itself the function of being the framework for informing, promoting and ensuring that Human Rights, including those above, are reflected in all State legislation, standards, policies, principles, guidelines and practices – to apply to all that are current and henceforth all that are new.