

ATHEIST FOUNDATION OF AUSTRALIA INC

(Est. 1970)

Private Mail Bag 6

Maitland SA 5573

AUSTRALIA

Email: info@atheistfoundation.org.au

Web: <http://www.atheistfoundation.org.au>

Phone: (08) 8835 2269

International: + 61 8 8835 2269

Submission to the National Human Rights Consultation

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- 19. Should we have a Community Charter instead of a Human Rights Charter?**
- 20. How should the Australian Government respond to the Commission's recommendations, such as those contained in Commission reports that are tabled in Parliament?**

1. Human Rights Charter

- [a] The Atheist Foundation of Australia considers it essential that all Human Rights be explicitly stated in a Charter because although a number of rights are at present recognised and protected by common law; these rights can be restricted or removed by legislation at any time.
- [b] A **Human Rights Charter** will lift the burden at present shouldered by politicians who are frequently torn between human rights, the interests of pressure groups, and a natural desire to garner votes.
- [c] A **Human Rights Charter** must apply only to individuals. It must not emulate laws which permit companies, consortia, and other organisations to be treated as if they are individuals. This means a company or organisation can not claim they have suffered an abuse of their right; only affected individuals can do that. However, individuals must have the right to pursue companies, businesses and organisations if their rights are abused.
- [d] **There must be no exceptions to these rights**, no matter what historical precedents exist. Every resident of every age in Australia must be protected, and every employer, organisation, business, company or government must obey the charter with no exceptions. Exceptions will bring the charter into disrepute.
- [e] An Australian **Human Rights Charter** must override all relevant State legislation and require a referendum in order to be amended.
- [f] Under Federal discrimination laws, people may not be treated less favourably in public life because of their sex, marital status, race, age or because they have a disability. **The term ‘public life’ needs to be defined** if it is used in a **Human Rights Charter**. Does it mean anyone whose job exposes them to the public such as a shop assistant, worker in a government agency, teacher or other employee in any school including religious schools? Does it include the employees of religion-owned businesses such as hospitals, schools, rental accommodation, retirement homes, manufacturing and food companies, op shops, welfare and employment agencies? Respite centres? Why is the term used at all? It would seem to suggest that these rights do not exist in private or in the home. **We suggest that human rights should not depend on where an individual is, nor by whom they are employed; they should be applied everywhere, at all times.**

2. International law

- [a] When Australia becomes party to an international human rights treaty, that treaty should automatically become part of Australian law as part of a **Human Rights Charter**, and be enforceable in Australia. At the moment it is incorporated with changes into domestic legislation. This makes it easy for the Australian government to ignore U.N. treaties and recommendations.

3. Australian Parliament

- [a] The Australian Parliament should be a major player in respecting, protecting and promoting human rights, and the parliamentary scrutiny process should be expanded to enable committees to provide guidance to Government departments, legislative drafters, and policy advisers on human rights issues.
- [b] When introducing Bills, Government Ministers should indicate how a Bill is, or is not, compatible with Australia’s human rights obligations as written in an Australian **Human Rights Charter**.

- [c] To assist in this an Australian Government Parliamentary Secretary for Human Rights should be appointed to ensure that human rights are given more prominence.
- [d] Policy development by Government departments would be improved if there was a formal process to assess the human rights implications of new policy proposals.
- [e] Government departments, through their Ministers, should report to Parliament on their procedures and safeguards for protecting human rights in their decision-making processes.

4. Children and young people's rights

- [a] The Australian Constitution prohibits the Commonwealth from making any law establishing any religion or **imposing** any religious observance; however, it does not prevent State Governments from imposing religious instruction – too often indoctrination – on students even in state schools. This places state governments 'above' the Commonwealth. In most cases it is fair to say that this religious instruction is imposed, because parents are rarely informed they have the option of withdrawing their children; the pupils are given the impression they will lose grades if they don't attend; and there is no alternative program planned for students who do not attend! Worse; taxpayer-funded religious schools make religious indoctrination a compulsory subject. It is a basic human right for a person to be permitted to make up their own mind about what to believe and disbelieve, but childhood indoctrination of a religion almost always prevents children from making that choice. This abuse of their rights must be redressed in any **Human Rights Charter**.
- [b] Clubs and organisations should not be permitted to discriminate against children who disbelieve in supernatural forces. This letter is typical of many received from worried parents regarding Wolf Cubs and Scouts.

“At the end of each Cub meeting the leader, asks the pack to take off their hat, hold it on their heart and to say the lords prayer. The Cub prayer is then said by all the Cubs as well.

Last Wednesday my son, without notice, didn't remove his cap on the instruction of the leader and was quickly asked if he had a problem with that, he replied “I don't believe in God so I don't pray”. He was instructed to remove the cap and although he had a right to his beliefs he should say the words as it would not hurt him. He followed the instruction and the night ended there.

You might imagine the gasp that went through the crowd of parents waiting to pickup their boys, as for me, I felt very proud and apprehensive as to what that statement will do to his future with the Cubs and Scouts that he loves to attend.”

(Note –The parents complained to the group leader and then to the state scouting body, and the AFA interceded on their behalf; to no avail. The child sadly resigned from the Cubs.)

- [c] Children have the right to be born to parents who want them and are able to take care of them and love them. For this reason it is essential that the right to pregnancy termination be written into any **Human Rights Charter**, so prospective parents cannot be forced to continue with a pregnancy when they know they will not be able to care properly for the child.
- [d] Children must have the right to comprehensive education about sex and sexuality, contraception and family planning, love and desire, and the responsibilities of parenthood. Without such information, their future success with relationships, marriage and child rearing will be unnecessarily difficult.

5. Freedom of expression

[a] Advertising. Either everyone has the right to advertise [conditional on following the law;] or no one has the right. Public companies should not have the right to pick and choose what advertisements they will display on their busses and public billboards. If a company permits advertisement for sexy lingerie, biblical quotes, or holidays in Tasmania, it must also accept advertisements such as the Atheist Foundation of Australia slogan: “*Atheism: celebrate reason.*” No public company should have the right to discriminate and prevent open and free discussion and communication on the grounds of religious belief, affiliation, or lack thereof.

6. Employment

[a] The Commonwealth may not impose religious observance on citizens, **therefore, neither may employers**; otherwise they are placing themselves above the Commonwealth! Every seeker after employment should have the right to be appointed to a position if they are the best qualified. The only case in which religious belief or observance could be a requirement for employment is when an objective observer would agree it is an **indisputably integral part of the job description**. Such a case could, in our opinion, only be made for priests, ministers of religion, imams, rabbis and other preachers practising in government-recognised religious ceremonies.

The following letter is typical of far too many received by the Atheist Foundation of Australia.

“I currently am not allowed to teach in most private schools across Western Australia unless I declare faith and a devotion to the church. One ‘Teacher Required’ advert this week says, ‘Regular church attendance a must!’ I live with my husband; we are both atheists and proud, but I have to hide any non religious feelings in order to remain employed. Teaching for me is about growth and a search for knowledge; without it we are like sheep going through the gate with a dog on your heels.”

7. National Human Rights Legislation

[a] The Atheist Foundation of Australia deems it essential that legislation to create a **Human Rights Charter** be enacted as soon as possible. To this end the commission should set a time frame for both a referendum and the setting up of such a Charter.

8. Civil and Political Rights

[a] A carefully constructed **Human Rights Charter** will protect individuals from the misuse of political power, and recognise every individual’s right to participate in their country’s political process.

[b] A good Human Rights Charter will ensure:

[i] The right to freedom from discrimination.

[ii] The right to equality before the law.

[iii] That no individual, group, company or organisation has more rights than others.

Currently, government approved organised religions are granted tax-free status for all their operations, placing an inequitable burden on honest taxpayers. This gives these organisations an unfair advantage in competitive commercial operations such as hospitals, social services, educational establishments, food companies such as Sanitarium, and so on. It is grossly unjust that organised religions should make untaxed profits of several billions of dollars annually,

and receive gigantic government subsidies to run their businesses, yet remain unaccountable and pay no tax.

[iv] That everyone is treated equally with no concessions based on historical precedents or customs that no longer have relevance.

9. Human Rights not guaranteed by present laws

According to Australia's present anti-discrimination laws, individuals may not be treated less favourably in public life because of their sex, marital status, race, age, or because they have a disability. **These laws do not forbid the unfavourable treatment of Atheists and other unbelievers, nor do they mention sexual orientation.** These are grave omissions. Therefore:

- [a] A **Human Rights Charter** must declare it illegal to discriminate against people who have no faith in supernatural phenomena, and no belief in a god or gods.
- [b] A **Human Rights Charter** must declare that no organisation, no matter what beliefs they hold or what dogmas they follow, may discriminate against people of sexual orientations other than heterosexuality, regardless of historical precedent.

10. Complaints

- [a] We suggest the creation of a Human Rights Ombudsman heading a single Commonwealth anti-discrimination office that would cover the four existing areas of unlawful discrimination, as well as any new areas of unlawful discrimination included in a **Human Rights Charter**.

11. How to enact

- [a] The Australian Constitution should be amended to include a **Human Rights Charter**. The wording of the referendum to accomplish this must be drawn up by disinterested parties to avoid manipulation of public opinion, as it is claimed occurred with the referendum on a republic.
- [b] The referendum should not be conducted at the same time as other elections, to avoid confusion with party politics.
- [c] Any changes to a **Human Rights Charter** once enacted and enshrined in the Constitution, should require a referendum.

12. Which human rights should be recognised in any national human rights Act?

- [a] The United Nations Declaration of Human Rights should form the basis, with the addition of those rights the committee charged with enacting the legislation deem valid, such as those suggested in this submission.

13. Who should be obliged to respect human rights set out in any national human rights Act?

- [a] The Australian Government, all arms of the police, members of the Armed forces, businesses, clubs of all sorts, religious organisations and individuals... in other words, every resident of Australia with no exceptions.

14. How should any national human rights Act deal with breaches of human rights?

[a] Through normal legal channels once a breach has been deemed probable by the ombudsman or other appointed authority.

15. Should a national human rights Act recognise an individual's responsibility to respect the human rights of others?

[a] Yes, with no exceptions.

16. What should the role of courts be in protecting the human rights set out in any human rights Act?

[a] They must uphold individual rights, decide on the evidence whether any human rights have indeed been breached, and pass judgement on offenders.

17. Should the jurisdiction of the Commission be expanded to enable it to inquire into and conciliate a broader range of human rights complaints?

[a] Yes.

18. Should the commission have a greater role in scrutinising legislation for human rights compatibility?

[a] Yes.

19. Should we have a Community Charter instead of a Human Rights Charter?

[a] No. a Community charter is too easy to change.

20. How should the Australian Government respond to the Commission's recommendations, such as those contained in Commission reports that are tabled in Parliament?

[a] They should act on the recommendations.

The Atheist Foundation of Australia would like to thank the National Human Rights Consultation Committee for conducting this National Human Rights Consultation.

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ATHEISM is the acceptance that there is no credible scientific or factually reliable evidence for the existence of a god, gods or the supernatural.