

Submission to National Human Rights Consultation

By

Lisa Baker, Member for Maylands, WA Parliament

This will be a brief submission as I consider that the WA report from the Consultation Committee on the level of support for a WA Human Rights Act is an adequate representation of my position on most issues connected to the development of an Australian Human Right Act.

While providing my general support for the potential benefits that a Human Rights Act could delivered to Australia, and in particular its potential to guide the role and work of government, I do wish to reinforce one aspect of our report that I believe deserves specific attention. At the time of our consultations in WA, the community of WA and myself were in agreement that a Human Rights Act must include economic social and cultural rights as well as civil and political rights. The following brief submission seeks to emphasise this issue while touching on some other areas which I consider to be important in this debate.

In 2007 I was appointed as a member of the Western Australian consultation team that investigated the level of support in Western Australian for a WA Human Rights Act, and more broadly what the government can do to encourage a human rights culture within this State.

In commencing our work we recognized that governments and their departments and agencies need to understand that there are limits on how far they interfere with the rights and liberties of those they govern and serve. The idea that we should aim for a culture of respect for human rights across government is attractive if it means that, as governments act, they are always conscious of the need to avoid infringing the basic rights of those affected.

In NSW and ACT, the states that have HR legislation, law and policy debates refer to human rights considerations. But in other state there is seldom reference to human rights when legislation is scrutinised.

I believe that the legal protection of human rights is very important in limiting what governments can do in their dealings with individuals, minority groups and the community and helps to ensure that governments do not abuse their power. A Human Rights Act will provide governments with a clear understanding that there are limits to their interference with the rights and liberties of those people they are elected to govern and serve. While encouraging a more tolerant and respectful society, a Human Rights Act would set minimum standards for government in its dealing with everyone in the community.

The protection of human rights is central to maintaining a free and democratic society. By protecting human rights we encourage respect for others and thereby promote harmony amongst people of different genders, age groups, races, nationalities, cultures, religions and social and political backgrounds.

In relation to the rights that need protecting, my experience in consulting with Western Australians across the length and breadth of this state, affirms my belief that Economic Social and Cultural rights must be a priority for protection. The separation of rights into civil and political or economic, social and cultural was seen by the community in Western Australian as a division based on financial and resource concerns of government rather than reflecting their preference for protection of rights.

People in Australia face human rights challenges on a daily basis. For example, many of Australia's first nations people live without water, adequate health care, and shelter, families live below the poverty line, youth suicide rates are growing, terrorism suspects are detained without charge, rights to land are extinguished. While the law is only one way to protect human rights, it is an important way.

On the basis of the consultations that I was a part of in WA, I am convinced that Economic Social and Cultural Rights should be included in a Human Rights Act for Australia. The arguments against the inclusion of Economic Social and Cultural rights are less than compelling particularly if a model of HR is pursued that is focused on more of a "dialogue" model of HR protections as described briefly above. In Western Australia the community showed overwhelming support for the inclusion of Economic Social and Cultural rights and it was recognized that some of the most prevalent HR issue in WA relate to Economic Social and Cultural rights that are not being enjoyed by a large number of people and in particular are often not enjoyed by the disadvantaged and marginalized in our society, such as people with disabilities, people with mental health problems, Aboriginal people and the elderly.

The WA Consultation Committee's Report into the Proposed HR Act for WA, provides a detailed description of how Economic Social and Cultural rights can be incorporated into a HR Act in a variety of ways that would minimize the risks that governments associate with their inclusion (WA Human Rights Act, Report of the Consultation Committee for a Proposed Human Rights Act for WA, 4.4. How should Economic Social and Cultural Rights be protected by a Human Rights Act, Page 82 to 88).

In my view, the ideal model for their inclusion would be to treat them in exactly the same way as civil and political rights. Under this model, such rights would be subject to limitations which are reasonable and demonstrably justifiable in a free and democratic society based on human dignity , equality and freedom, in the same way that civil and political rights may be subject to such limitations.

Another model described in the WA Report is a progressive implementation of Economic Social and Cultural rights. Similar to that used by the South African's in implementing their Bill of Rights, human rights may be limited under laws of general application, to the extent that those limitations are reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom. However, it also expressly recognizes that in the case of some Economic Social and Cultural rights, the State's obligation to implementation those rights is a progressive one. For example, the State is required to take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of the rights to "access adequate housing, to health care services, to sufficient food and water and to social security and social assistance". Similarly, in South Africa, the state is required to make further education "progressively available and accessible through reasonable measures" (pg 84).

I therefore urge the National Consultation Committee to favour the inclusion of economic social and cultural rights as well as civil and political rights into a National Human rights Act for Australia.

End.