



Australian Federation
of Islamic Councils

**To: Western Australia Law Reform
Commission**

**Re: Review of the Equal Opportunity Act
1984 (WA)**

**Submissions made by
The Australian Federation of Islamic
Council on behalf and in cooperation
with the Islamic Council of Western
Australia**

Law Reform Commission

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Australian Federation of Islamic Councils

*The peak body for Australian Muslims representing
State and Territory Islamic Councils and Societies*



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The Australian Federation of Islamic Councils (AFIC)

The Australian Federation of Islamic Councils (AFIC) is the peak Muslim body in Australia and an umbrella organisation for Muslims across Australia supporting and enlightening not just Muslims but the whole of Australia for over 57 years. Our objective is to establish and sustain a brighter and harmonious Australia. The aim is to help the people stand united despite their differences in race, gender, nationality, and religion. AFIC's membership are from all the ethnicities that make up Australian societies including Anglo Australians. It is this diversity that equips AFIC to be in the forefront of inclusive community organisations not only in Australia but in the world.

AFIC consists of nine (9) state and territory councils that represent over 200 grass-root organisations nationally. AFIC's representatives, staff and volunteers all focus on promoting and maintaining unity, community collaboration and cohesion. AFIC has helped establish and maintain crucial institutions and initiatives that have come to symbolise the Australian Muslim experience. AFIC has built 9 Islamic schools to aid and educate Muslim youth all around Australia. Our mission is to stand with the community and build pathways and opportunities to aid men and women of all ages to flourish.

AFIC was the first Australian organisation to institute the position of "Mufti of Australia" to unite Australian Muslims and endow them with orthodox and peaceful spiritual direction and leadership. As the peak Muslim body in Australia, AFIC continues to sponsor and support mosques and Islamic centers all around Australia and subsidizes the salaries of Muslim Imams in many remote and emerging areas throughout Australia.

AFIC has and continues to diligently work to represent the Muslims of Australia and promote better understanding and relationships between Australian Muslim and the broader Australian society. AFIC follows the teachings of our blessed prophet Muhammad, peace, and blessings upon him, in solidifying the fact that all persons are equal, and diversity is to be embraced, protected, and enjoyed.

AFIC aims to encourage and foster:

1. A community that is prepared to collaborate and support its constituents.
2. The concepts of equality and unity in the hearts and minds of all persons of religious and non-religious backgrounds and to put an end to discrimination and segregation.
3. Community cohesion and respect for all persons regardless of their religious beliefs and practices.

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Our vision is to serve and inspire Australian Muslims and the wider Australian community to build a resilient society that is free of discrimination, racism, and extremism. All persons are to be respected and have equal rights to practice their beliefs without fear of discrimination or alienation.

In working towards an Australia that refuses to give in to discrimination and segregation, we help individuals to develop the confidence to come together, communicate and understand each other. Consequently, the Australian community will be enriched.

In coordination with the Islamic council of Western Australian, we hereby enclose our submission in response to the Review of the *Equal Opportunity Act 1984 (WA)*. We welcome any opportunity to provide oral submissions with respect to any issues arising from our submission or provide any additional information.

Acknowledgement

The *Equal Opportunity Act 1984 (WA)* (henceforth will be referred to as the 'act') has provided much needed protections for the people of Western Australia from being discriminated against. However, the legislation lacks in its protection as there are some types of discrimination that are not adequately addressed. The community in WA would benefit if these matters are addressed and society is given appropriate protection.

We would like to take this opportunity to acknowledge the efforts of the Western Australia Attorney General and Law Reform Commission in putting forth the discussion paper about a review of the *Equal Opportunities Act 1984 (WA)* and giving stakeholders the opportunity to address the need for reform.

The purpose of AFIC's submission

In this submission, AFIC continues to take the role of exemplary corporate citizen and seeks to look out for the interests of Australia as a whole and the interests of Muslim Australians.

AFIC believes that for a society to prosper, it must give all its constituents equal opportunities to access government services, education, healthcare, and employment. AFIC believes that all Australians must be accorded equal freedoms under law and that we as a nation must create a safe environment that is free of discrimination for all Australians to express themselves and freely explore new literary, economic, scientific, and intellectual frontiers. AFIC believes that diversity paves the way for many perspectives and opens countless new possibilities to pioneer and become a more successful and prosperous nation.



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Submissions on the following Grounds

AFIC acknowledges that under section 3 of the Act, its purpose is to:

- (a) to eliminate, so far as is possible, discrimination against persons on the ground of sex, marital status or pregnancy, family responsibility or family status, sexual orientation, race, religious or political conviction, impairment, age, publication of relevant details on the Fines Enforcement Registrar's website or, in certain cases, gender history in the areas of work, accommodation, education, the provision of goods, facilities and services and the activities of clubs; and
- (b) to eliminate, so far as is possible, sexual harassment and racial harassment in the workplace and in educational institutions and sexual harassment and racial harassment related to accommodation; and
- (c) to promote recognition and acceptance within the community of the equality of men and women; and
- (d) to promote recognition and acceptance within the community of the equality of persons of all races and of all persons regardless of their sexual orientation, religious or political convictions or their impairments or ages.

Whilst the objective of the act provides protection across all areas of everyday life, it can be further enhanced to provide more detail oriented safeguards in areas of discrimination that need further support. This is particularly necessary regarding grounds of race, religious or political conviction and immigration status. Given the questions raised in the Discussion paper, we submit the following:

Religious or Political Conviction

1. Should the protections for religious or political conviction be defined or clarified?

Legislation always bears the brunt of being misunderstood when terminology is not appropriately defined and left to the imagination. This leaves grounds for multiple 'supposed' definitions to be created by one's own discretion, which is generally a biased observation. For the Equal Opportunities Act to be effective the words 'religious' and 'political conviction' should be defined by the act, so that we can understand the scope and context in which it applies. However, it is also important that the scope of the definition is not too restrictive which could affect the meaning of the words. Thus, it is a matter of a balancing act to ensure that yes, the words should be defined but they should leave some room for discretion (but not too much room that it overrides the meaning).



Currently, the act does not define religious or political conviction. It only states at section 54 (3) that:

(3) It is unlawful for an employer to discriminate against an employee on the ground of the employee's religious conviction by refusing the employee permission to carry out a religious practice during working hours being a practice —

(a) of a kind recognised as necessary or desirable by persons of the same religious conviction as that of the employee; and

(b) the performance of which during working hours is reasonable having regard to the circumstances of the employment; and

(c) that does not subject the employer to any detriment.

For a reasonable person to understand what religious conviction means in these circumstances, it is vital that the legislation provides a definition as to what religious conviction means.

2. Should the protections for religious or political conviction expressly include religious and political beliefs and activities?

Expressly including religious and political beliefs and activities within the ground of religious or political conviction helps to determine what falls within this provision. Similarly, it aligns itself with the Anti-Discrimination Laws, a person should not be discriminated against based on their religious affiliation. Therefore, a person's own personal beliefs and lawful activities should be protected within the ground of religious or political conviction.

It is necessary that the words "beliefs" and "activities" should be defined within the legislation. They should also be defined using their ordinary definition as follows.

Belief: something one accepts as true or real; a firmly held opinion

Activity (activities plural): action, including words, that a person or a group does or has done.

3. Should the protections for religious or political conviction expressly include religious appearance or dress?

Whilst mostly religious appearance or dress is noticeable and is recognisable as such by many people. The inclusion of religious appearance or dress under the ground of religious or political conviction should only be for the purposes of clarity.



It would be difficult to state each religious dress for each religious group within the act itself, so it would be more appropriate to align it with a definition that interrelates with the religious and political beliefs and activities as stated above. This means that appearance or dress falls within the meaning/notion of belief and activities.

Race

1. Should the protections for race discrimination be broadened in the Act and, if so, how?

Race is defined in the Equal Opportunities Act 1984 (WA) as:

“Race includes colour, descent, ethnic or national origin or nationality and the fact that a race may comprise 2 or more distinct races does not prevent it being a race for the purposes of this Act”.

The definition of race should include religion or “ethno-religious” groups. However, there should be a clear definition to include people who identify with a faith but have different nationalities. In making this suggestion, we propose to go one step further from the NSW Anti-Discrimination law and ensure that “ethno-religious” has the desirable definition enshrined in the Act.

Immigration Status

1. Should immigration status be included as a Ground?

The definition of race discrimination is restrictive in that it does not extend to those who are immigrants, there is no explicit definition stating that immigrants fall within the scope of being protected based on their visa status. Many immigrants face discrimination and are not familiar with the laws that protect them.

The Act should be amended to include an explicit ground that individuals of a migrant background or status are also protected under this act. This could mean linking the definition to fall within race discrimination above or creating an entirely separate ground to protect them.

However, the definition should be reasonable as there may be instances where it is lawful to discriminate based on a migrant’s status, just as it is lawful in some instances to discriminate based on gender. For example, the Women’s Domestic Court Advocacy Program hires only females to work within this framework as it is run for females who have experienced or are experiencing domestic violence. In this instance discriminating based on gender is lawful.



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Act needs to include clear Penalties/Remedies

The Act does not provide stakeholders with remedies in the circumstances that the legislation is breached. In many cases where people have been at the centre of derogatory comments or discrimination based on religious affiliation, it is up to these individuals who have been subjected to such vulgar behaviour to bring a claim against the other party. There is no set process where police can prosecute or investigate these claims.

Therefore, AFIC and ICWA propose that the Act sets out relevant penalties and remedies for victims of discrimination and that a necessary tribunal or commission is set up to deal with breaches regarding discrimination, racial or religious vilification. An appropriate government instrumentality, perhaps similar to the Fair Work Commission, must be established to review these complaints and organise mediation or issue penalties without the victim having to undergo legal expenses to uphold a law that inevitably requires competent legal counsel.

We thank the Law Reform Commission for the proposed bill and for considering our submissions and look forward to working with the WA government to help create a society free from religious vilification, injustice, and discrimination.

Yours Faithfully

Dr. Rateb Jneid
President AFIC