

**Islamic Council of Western Australia**

**Equal Opportunity Act 1984 - Western Australian**

**SUBMISSION**

**To the Law Reform Commission of Western Australia  
On the Equal Opportunity Act 1984 (WA)**

**NOVEMBER 2020**

## **INTRODUCTION**

The Islamic Council of Western Australia (ICWA) appreciates the opportunity to make submissions on possible amendments to enhance and update the Equal Opportunity Act 1984 (WA) (the Act) that was purposed by the Law Reform Commission of Western Australia.

## **OBJECTIVE OF THE ACT**

Equal opportunity is a notion that should capture the essence of equality amongst all persons without artificial barriers, prejudice or preference. It is essential especially in modern societies that have vast cultures, religions, ethnicities, races and genders.

The objective of the Act is to safeguard equality, fairness and justice in public spheres such as employment, education and access to public services in Western Australia (WA). Its object is to eliminate unfair discrimination, sexual harassment and other types of objectionable conduct in all public and to some extent, private spheres of society.

The Act is an instrument in guiding, managing and facilitating the rules to sustain equality amongst all persons. It provides specific remedies in response to discrimination based on sex, marital status, pregnancy, sexual orientation, family responsibility or family status, race, religious or political conviction, impairment, or age.

Other objectives of the Act include the elimination 'so far as possible,' of sexual and racial harassment in areas such as the workplace, educational institutions and accommodation.<sup>1</sup>

The ICWA is a faith-based Muslim not for profit organisation. As a faith institution, we have chosen to narrow our focus on the areas of the Act to which we would have a better understanding and connection. That being Part IV, discrimination on the ground of religious or political conviction.

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<sup>1</sup> s 3(b), the Act.

## SUBMISSIONS

THE ICWA makes the following recommendations:

- 1) Division 3, s 44 of the Act:
  - a. We note that s 44(a) states that an educational authority only should accept a person's application it does emphasis equality in assessing the applications.

Example:

- Students applying for high schools in WA all have the right to apply to any school they deem suitable. However, behind the scenes, the school has an uncensored discretion in evaluating the applications and selecting the student based on their race or religion.
- This is the same with job applications. All persons have the right to apply but studies have shown that employers shortlist applicants based on their name which can at times reveal their race and/or religion, their residential address and to a lesser extent their age and marital status.

### Recommendation

The ICWA recommends that this section incorporates a clearer approach in promoting the recognition, acceptance and equality of all races regardless of their religious or political convictions.

- 2) Part IV – Division 1
  - a. s 53
    - i. Section 53(1)(b) & (c) refer to a 'characteristic' without clarifying the definition of the term 'characteristic' leaving the term open for interpretation.

### Recommendation

We recommend that the term characteristic incorporate religious dress, behaviour and practices. This may be achieved by including a definition of characteristic in s4 of the Act, Terms used.

- ii. Also, the use of the word 'generally' is inadequate as it suggests that the 'characteristic' has to be prominent in that particular religion and socially accepted for it to be protected.

Example:

- Islam states that a woman and a man should adhere to a certain dress code but this is not prominent amongst all Muslims. Further, it is essential to note that culture also influences dress code. The fact that a certain religious 'characteristic' is not prominent should not be a grey area for employers to prevent a person from practising that aspect of their religion. That dress code or practise should be permitted and protected by law so long as it is appropriate for the workplace.

b. s 53(2)(a)

- i. The wording, 'substantially higher proportion of persons' limits discriminatory behaviour to be behaviour that discriminates against persons only in regards to a popular practice amongst persons of a certain religious or political conviction.
- ii. The wording should not only focus on popular practices as there are practices associated with a religion that may or may not be practised by the majority, 'higher proportion.'

3) Division 2

a. s 54 of the Act:

- i. This section fulfils its purpose by emphasizing the offering of employment or the termination of employment based on their religious and/or political conviction.
- ii. There is also a sufficient reference for an employer allowing the employee to perform their religious practice during working hours.

#### 4) Division 3

##### a. S 61

- i. There is no reference in this section to an educational institution acting unlawfully by refusing the student permission to carry out their necessary or desirable religious practices during school hours. In the context that the practice is reasonable and does not cause the institution any loss or disadvantage.

#### Example:

- In a public school, there are either no or at most limited facilities for students to fulfil their religious obligations and pray. A key example is Muslims students fulfilling their five daily prayers with one of those prayers falling within school hours. Students should feel comfortable to speak up and request the time and facilities to pray as long as it does not disrupt their or their fellow students' education. This can be done by giving them access to an empty room during the lunch break or immediately after school or both.

#### Recommendation:

In these circumstances, students should not be subjected to discrimination but encouraged to speak up about their religious needs and be supported by their peers, teachers and the overall institution.

#### 5) Division 4

##### a. s 66

- i. We appreciate that certain private institutions are formed for a specific purpose, for example, a Catholic, Anglican, Jewish or Muslim school are created with the purpose of producing a particular environment with certain obligatory behaviour and certain taboos. We understand that employing a person who does not believe in, or scoffs at what is sacrosanct to the institution is bound to have occasions where he or she will either purposely or inadvertently undermine important ethos of the institution. This is an important exclusion and protection for these institutions. Having said that, these institutions will always be

compelled by scarcity to employ individuals from outside their flock. Where such an employee has worked “faithfully” for the institution without undermining its faith ethos, this employee deserves protection should a closed-minded fundamentalist decide to remove this employee for no reason other than not being a member of the flock.

- ii. Eliminating discrimination in all its forms in both public and private spheres is laudatory. There are numerous recorded incidents where an old and helpless person was mistreated, assaulted and/or abused in private spheres such as nursing homes. In some cases, this mistreatment can be linked to race or religion. The act should incorporate additional protection from such eventualities.

- 6) Our final point concerns the word ‘detriment’ that is used throughout the Act with a great deal of discretion to be applied to the definition of the term. The Act does not clarify what acts or behaviours would cause detriment nor the extent of the disadvantage that would be categorised as a ‘detriment.’

Recommendation:

- We recommend the inclusion of a definition for the word ‘detriment’.

**CONCLUSION**

Equal opportunity must be focused on creating a safe, inclusive and respectful environment for all persons in all public spheres. The aim is to prevent, recognise and respond to discrimination and harassment in all its forms. Equality of opportunity means that everyone must have the same opportunities in accessing goods and public services, in the workplace, in education, in health care and in all services. Further, it extends to respecting people’s differences and allowing persons to practice their religion freely without discrimination or harassment so long as it does not cause detriment to the workplace or educational institutions.

The ICWA would like to thank the Law Reform Commission for the opportunity to make submissions, we welcome any opportunity to speak to this submission. We commend the commission for allocating resources to this very significant matter and hope that all recommendations and concerns be taken on board in the better interests of WA.

On behalf of: The Islamic Council of Western Australia