Public Health Association of Australia

submission on the status of the human right to freedom of religion or belief

Contact for recipient:
Committee Secretary
Joint Standing Committee on Foreign Affairs, Defence and Trade
A: PO Box 6021, Parliament House, Canberra ACT 2600
E: religionorbelief@aph.gov.au
T: (02) 6277 2313

Contact for PHAA:
Michael Moore – Chief Executive Officer
A: 20 Napier Close, Deakin ACT 2600
E: phaa@phaa.net.au T: (02) 6285 2373
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Introduction

The Public Health Association of Australia

The Public Health Association of Australia (PHAA) is recognised as the principal non-government organisation for public health in Australia working to promote the health and well-being of all Australians. It is the pre-eminent voice for the public’s health in Australia. The PHAA works to ensure that the public’s health is improved through sustained and determined efforts of the Board, the National Office, the State and Territory Branches, the Special Interest Groups and members.

The efforts of the PHAA are enhanced by our vision for a healthy Australia and by engaging with like-minded stakeholders in order to build coalitions of interest that influence public opinion, the media, political parties and governments.

Health is a human right, a vital resource for everyday life, and key factor in sustainability. Health equity and inequity do not exist in isolation from the conditions that underpin people’s health. The health status of all people is impacted by the social, cultural, political, environmental and economic determinants of health. Specific focus on these determinants is necessary to reduce the unfair and unjust effects of conditions of living that cause poor health and disease. These determinants underpin the strategic direction of the Association. All members of the Association are committed to better health outcomes based on these principles.

Vision for a healthy population

A healthy region, a healthy nation, healthy people: living in an equitable society underpinned by a well-functioning ecosystem and a healthy environment, improving and promoting health for all.

Mission for the Public Health Association of Australia

As the leading national peak body for public health representation and advocacy, to drive better health outcomes through increased knowledge, better access and equity, evidence informed policy and effective population-based practice in public health.

Preamble

PHAA welcomes the opportunity to provide input to the Joint Standing Committee on Foreign Affairs, Defence and Trade inquiry into the status of the human right to freedom of religion or belief. The reduction of social and health inequities should be an over-arching goal of national policy and recognised as a key measure of our progress as a society. The Australian Government, in collaboration with the States/Territories, should outline a comprehensive national cross-government framework on reducing health inequities. All public health activities and related government policy should be directed towards reducing social and health inequity nationally and, where possible, internationally.
PHAA Response to the Human Right to Freedom of Religion or Belief Inquiry Terms of Reference

1. The enjoyment of freedom of religion or belief globally, the nature and extent of violations and abuses of this right and causes of those violations or abuses

Australia is a successful democracy and a multicultural, pluralistic and free society. The Australian Constitution, and federal, state and territory laws promote a shared Australian culture of inclusion and respect. Australia is also an immigrant nation that has taken in waves of immigrants and refugees since World War II.

Freedom of religion in Australia is protected by international instruments which Australia has ratified: The 1948 United Nations Universal Declaration of Human Rights, especially article 18\(^1\); the 1966 International Covenant on Civil and Political Rights\(^2\) and the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief\(^3\) and the Convention on the Rights of the Child\(^4\), all of which protect freedom of religion or belief. Although Declarations are not treaties and countries do not have an obligation to observe them, Australia is committed to observing these.

This is a timely enquiry as 2017 marks the 25\(^{th}\) anniversary of the adoption of the 1992 United Nations Declaration on Persons Belonging to National or Ethnic, Religious and Linguistic Minorities\(^5\) and the 10\(^{th}\) anniversary of the United Nations Forum on Minority Issues\(^6\). The Committee is referred to the report of the former Special Rapporteur on Minority Rights with respect to the rights of religious minorities and urged to support the recommendations contained in that report\(^7\). It is unfortunate that neither the 1981 Declaration nor the 1992 Declaration create legally binding obligations. Reliance must therefore be placed on the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child.

Since 1987 reports by the Reports of the United Nations Special Rapporteur on freedom of religion or belief documented that globally there were major violations of human rights in the name of religion due to intolerance, discrimination, prejudice, xenophobia, racism and casteism and a distortion of major religious belief. In Australia, the 2000 report of this Joint Standing Committee on Foreign Affairs, Defence and Trade, Conviction with Compassion: A report on Freedom of Religion and Belief\(^8\), found widespread discrimination. The most recent reports confirm that this discrimination continues to occur in 2017.

Currently, globally we face brutal attacks and persecution of certain minority and indigenous groups and religions – for example:

1. The Rohingya in Myanmar
2. The Yazidi in Iraq
3. The Dalits in India
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4. Indigenous tribes in Honduras and Guatemala
5. The Christian minorities in most of the Middle East, India and Pakistan
6. The Falon Gong in China
7. The Baha’i in Iran

2. Action taken by governments, international organisations, national human rights institutions, and non-government organisations to protect the freedom of religion or belief, promote religious tolerance, and prevent violations or abuses of this right.

The PHAA would like to draw the Committee’s attention to the following recommendation made in the 2000 Joint Standing Committee on Foreign Affairs, Defence and Trade Inquiry report: Conviction with Compassion: A Report on Freedom of Religion and Belief. Recommendation 6

The Committee:

- Notes the valuable work done by the United Nations in extending and protecting freedom of religion and belief;
- Calls on the Australian Government to continue its support for the work of the United Nations in this area, and
- Further calls on the Australian Government to continue to encourage other nations, in both multilateral forms, and as part of its bilateral relationships, to support the United Nations actively in its work of protecting freedom of religion and belief.

The PHAA believes this recommendation should be reaffirmed by the current Inquiry.

3. The relationship between the freedom of religion or belief and other human rights, and the implications of constraints on the freedom of religion or belief for the enjoyment of other universal human rights

Human rights are complex and cannot be considered in isolation. The human rights framework requires attention to the social, cultural and political context which gives rise to human rights violations, as well as concern for the rights of individuals. A major contributor to contemporary violations of the right to freedom of religion and freedom of belief is the rise of xenophobia and various forms of ‘tribalism’ (based variously on nationality, ethnicity, religion or cultural tradition). For example, the treatment of the Rohingya in Myanmar, the hostilities between Shia and Sunni in the Middle East, and the BJP election win in Uttar Pradesh all reflect this kind of fear and suspicion of ‘the other’ and leads to violations of the right to freedom of religion and belief. These violations in turn give rise to violations of other basic human rights, in the form of segregation, violence and war.
Collective insecurity (economic and existential) contributes to xenophobia and sectarianism, particularly when it is manipulated for political ends. Xenophobia and sectarianism (and racism and sexism) fragment and divide diverse constituencies who are in various ways the victims of rising economic inequality. The dynamic of insecurity, xenophobia and demagoguery needs to be opposed by a move towards solidarity across difference and a politics which promoted this.

The discourse of universal human rights, including freedom of belief, is part of a wider tradition which can be usefully referred to as the Enlightenment tradition. This tradition, which includes a valuing of democratic principles as well as human rights, has lost some traction during the 20th Century and more recently, with what some argue are failures of democracy, at the national and global levels, in the era of globalisation.

PHAA argues for a reconsideration of the issues of the ‘freedom of belief’ in terms of a recognition of the importance of difference, and democratic principles (including the collective decision making based on respectful dialogue to those parameters of certain corporate activity, currently protected from democracy by the principle of economic freedom and impunity).

The PHAA would like to draw the Committee’s attention to the following recommendation made in the 2000 Joint Standing Committee on Foreign Affairs, Defence and Trade Inquiry report: Conviction with Compassion: A Report on Freedom of Religion and Belief.

**Recommendation 5**

*The Committee recommends that the Australian Government continue to take every opportunity, in both multilateral forms and in its bilateral relationships, to promote the universality and indivisibility of all human rights, specifically the right to freedom of religion and belief.*

Recognition of the universality, indivisibility and interdependence of all human rights, economic, social and cultural, and civil and political, strengthens respect for rights individually. For example, the right to health is promoted when the right to freedom of religion and belief is respected. The opportunity should be taken to reaffirm this recommendation.

4. **Australian efforts, including those of Federal, State and Territory governments and non-government organisations, to protect and promote the freedom of religion or belief in Australia and around the world, including in the Indo-Pacific region.**

The PHAA would like to draw the Committee’s attention to certain recommendations made in the 2000 Joint Standing Committee on Foreign Affairs, Defence and Trade Inquiry report: *Conviction with Compassion: A Report on Freedom of Religion and Belief.*
**Recommendation 1**

_The Committee recommends that the Australian Government continue to encourage and support the work of the Human Rights and Equal Opportunity Commission, and ensure that the resources with which it is provided allow it to carry out its work in relation to freedom of religion in timely, efficient, effective and appropriate ways._

As noted in the UN reports referred to above, the status of freedom of religion and belief is fragile and requires constant political awareness in the face of international hostility and complexity. It is vital that the Australian Human Rights Commission address religious freedom as a human right and from a rights based participatory approach that is inclusive of all Australians.

Australia cannot champion human rights in the region without respecting, promoting and fulfilling human rights at home. It is critical to any effort of Australia with respect to freedom of religion and belief that the work of the Australian Human Rights Commission be fully supported.

**Recommendation 8**

_The Committee recommends that the Australian Aid continue and extend the programs that assist international non-government organisations to protect freedom of religion and belief._

PHAA notes, with regret, that the current incarnation of Australian Aid does not include protection of freedom of religion and belief in its program priorities. The mandate of Australian Aid should be broadened to include funding to support protection of freedom of religion and belief in the Indo-Pacific region. We enlarge upon this and other matters in our discussion below.

**Asylum Seekers**

The majority of persons seeking asylum in Australia in recent years have come from Muslim majority countries including Iran, Pakistan, Bangladesh, Afghanistan, Iraq and Burma. PHAA questions whether there would have been arbitrary detention in an offshore “processing” centre, had the asylum seekers been socially conservative Roman Catholics or Anglicans. This is reinforced by the recent enthusiasm displayed by the Australian Government when offering fast tracked resettlement to Syrian Christians. The PHAA questions how decisions such as these, which appear to display discrimination on the grounds of religion, are viewed by other Governments in the region. The recent debates on Section 18c of the Racial Discrimination Act add to the perception that Australia does not demonstrate a willingness to practice respect for religious belief.
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The Rohingya Community

The Rohingya Muslim minority in Myanmar has been described as being subject to a ‘Silent Genocide’. Australia should facilitate processing of applications for refugee status, urge Myanmar to grant full citizenship to the Rohingya, and support Myanmar and Bangladesh to respect the rights of the Rohingya to openly practice their religion. As with Syrian Christians, the Rohingya in Myanmar should have their applications for refugee status fast-tracked irrespective of whether they arrive by boat or are processed elsewhere.

Divisive Leadership

The PHAA urges the Committee to include a recommendation in its report that disavows the notion that there is any inherent link between Islam and terrorism. The Committee should condemn any politician who refers divisively (expressly or implied) to any religious or ethnic group for the purpose of political gain.

Discrimination on the basis of religion

PHAA notes that the Racial Discrimination Act does not outlaw discrimination on the grounds of religion, only ethnic origin (although that has been interpreted to include certain religions). This should be remedied by expanding the scope of the Act or creating a new Act that specifically addressed those matters addressed in Article 18 of the International Covenant on Civil and Political Rights: the freedom to have or to adopt a religion or belief, to manifest this religion or belief in worship, observance, practice and teaching. As with most human rights, the right to practice one’s religion may be subject to reasonable limitations. As the Committee would be aware, the grounds for limiting rights are also set out in Article 18. Any limitations must be prescribed by law and be necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.

Support for Human Rights Defenders and Statutory Human Rights Bodies in the Indo-Pacific Region

Human rights are indivisible, interrelated and interdependent. Freedom of religion and belief are intimately linked with other human rights including the right to privacy, the right to found a family, freedom of expression, the right to information and so on. The protection of these and other rights depends on there being individuals and groups active in communities, able to speak out in defence of these rights, and statutory authorities with investigative powers, and the ability to enforce rights. Without these capacities and enforceable remedies, any claim that a State respects freedom of religion is hollow.
PHAA suggests that human rights defenders and government bodies from the following countries in the Indo-Pacific region be prioritised for support from Australian Aid and through international diplomacy: Myanmar, China, Indonesia, Pakistan and Vietnam.

Rights of Women, the Girl Child, and People of Diverse Sexuality and Gender

The discussion of the right to freedom of religion must acknowledge the tensions that exist between established religion and the rights of women, female children and people of diverse gender and sexuality. As noted, the right to freedom of religion may be limited. It is recommended that discrimination against women, female children, and people who are not heteronormative in sexuality or gender be prohibited even where that discrimination is grounded in religious belief.

The meaning of equality

The meaning of equality changes with societal changes. At the time of writing in 1948, the declaration of human rights did not interrogate what counted as a good life for a woman living in a fundamentalist religious community or what may constitute a family or the implications of drafting a rights document in a male voice. It has taken the communities not included in this rights vision to draw attention to these failings. What is critical is not formal equality but the recognition of difference and how to give proper attention to it.

The key challenge for law as it applies to freedom of religion and belief is to be cognisant of lives lived differently from our own, and how to ensure that all lives are welcomed, how social and practical hindrances to the wellbeing of all can be removed, and when it is justifiable to impose legal limits to the expression of difference.

There needs to be appropriate and reasonable checks on freedom of religion and belief in Australian law to:

- Protect the vulnerable
- Protect freedom of speech but understanding when this constitutes hate or vilification
- Protect public safety in gathering to practice or worship
- Protect against practices of female genital mutilation, child marriage, and slavery
- Protect gender rights
- Prevent fundamentalism and distortion of religion.

In a multicultural society such as Australia, freedom of ‘religion’ should not relate to only the majority religion or belief. It means freedom to choose any religion and beliefs and also to change between these. In an increasingly diverse society, Australians need a greater awareness of other religions, ethnicities, festivals, celebrations and practices as personal beliefs and religion have been shown to have strong links to individual well-being.
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Conclusion

PHAA supports the broad directions of the inquiry into the status of the human right to freedom of religion or belief. However, we are keen to ensure that the rights and freedoms of all people are protected, in line with this submission. We are particularly keen that the following points are highlighted:

- Australia is a successful multicultural society, but must be vigilant in protecting human rights
- Major violations of human rights, in the name of religion continue to occur globally and in Australia
- The Australian Government has a vital role to play through supporting the Australian Human Rights Commission and policies which do not discriminate or perpetuate violations of human rights.

The PHAA appreciates the opportunity to make this submission and the opportunity to contribute to the protection of human rights and freedom of religion or belief.

Please do not hesitate to contact us should you require additional information or have any queries in relation to this submission.

Michael Moore BA, Dip Ed, MPH
Chief Executive Officer
Public Health Association of Australia

Jaya Dantas, PhD, MA, FPHAA
PHAA Convenor
International Health SIG

David Legge, MD, FRACP
PHAA Convenor
Political Economy of Health SIG

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References