



FALUN DAFA
ASSOCIATION OF AUSTRALIA INC

Inquiry into the potential for a Human Rights Act for South Australia **Submission to the Social Development Committee, Parliament of South Australia**

16 February 2024

The Falun Dafa Association of Australia appreciates the opportunity to make this submission to the Social Development Committee of the Parliament of South Australia.

While this submission addresses the terms of reference set out in the Committee's call for submissions, we focus on the fundamental human right of freedom of religion, which has occupied us for past 25 years of the persecution of Falun Dafa in China.

We trust the matters presented in this submission will be of assistance for the committee.

About the Association

The Falun Dafa Association is a charitable organisation with volunteer committee members who work in an honorary capacity. The Association helps facilitate free classes to teach Falun Dafa meditation and exercises, and organises large scale activities such as parades and conferences. It also does advocacy work to governments, non-governmental bodies, and media, and supports known practitioners seeking humanitarian protection.

Falun Dafa,¹ also called Falun Gong, is a spiritual practice of self-cultivation in the Buddhist tradition. It includes meditation and gentle exercises and was introduced to the public in 1992 by Mr Li Hongzhi. While indigenous to China, it is now practiced in over 90 countries, including in Australia since 1995.

At the core of Falun Dafa's belief system are the principles of truthfulness, compassion, and forbearance (in Chinese, Zhen 真, Shan 善, and Ren 忍), which are taken as the essential law and characteristic of the universe.

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¹ Based on its theological and moral teachings, Falun Dafa is considered a religion in the West, and conforms to the general description in the Australian Standard Classification of Religious Groups (ASCRG), 1996.

Introduction

In July 2023, the Association made a submission to the Inquiry into Australia's Human Rights Framework, which was conducted by the Federal Parliamentary Joint Committee on Human Rights.

This submission to the Social Development Committee (the Committee) includes parts of the submission made to the above Federal inquiry, which we find are also relevant to a potential Human Rights Act in South Australia.

This submission responds to the Inquiry's terms of reference as outlined by the Committee:

- a) the effectiveness of current laws and mechanisms for protecting human rights in South Australia and any possible improvements to these mechanisms;
 - b) the operation and effectiveness of human rights legislation in other jurisdictions;
 - c) the strengths and weaknesses of adopting a Human Rights Act in South Australia;
 - d) the potential human rights protections in any act;
 - e) the potential implications of any act for the making of laws, courts and tribunals, public authorities and other entities;
 - f) any other related matters.
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a) The effectiveness of current laws and mechanisms for protecting human rights in South Australia and any possible improvements to these mechanisms

The South Australian *Equal Opportunity Act 1984*² describes itself as:

An Act to promote equality of opportunity between the citizens of this State; to prevent certain kinds of discrimination based on sex, race, disability, age or various other grounds; to facilitate the participation of citizens in the economic and social life of the community; and to deal with other related matters.

It prohibits discrimination in employment on the grounds of age, sex, sexuality marital status, pregnancy, race or physical and intellectual impairment, but does not mention religion or prohibit discrimination or vilification on the grounds of religion.

The South Australian *Racial Vilification Act 1996*³ prohibits certain conduct involving vilification of people on the ground of race but does not refer to vilification on the grounds of religion.

We do not believe that the fundamental human right of freedom of religion is adequately protected in South Australia.

The Hon Catherine Branson AC KC, now Chancellor of the University of Adelaide, and former Crown Solicitor of South Australia, barrister, and Federal Court judge, was President of the Australian Human Rights Commission (AHRC) from 2008 until 2012.

In a speech in 2010,⁴ Ms Branson asked, 'Is the human right to freedom of religion and belief adequately protected in Australia?' Ms Branson answered her own question thus:

Arguably it is not:

² <https://www.legislation.sa.gov.au/lz?path=%2FC%2FA%2FEQUAL%20OPPORTUNITY%20ACT%201984>

³ <https://www.legislation.sa.gov.au/legislation/lz/c/a/racial%20vilification%20act%201996/current/1996.92.auth.pdf>

⁴ <https://humanrights.gov.au/about/news/speeches/president-speech-religion-public-square>

although there is limited protection of freedom of religion in Australia's Constitution, it only applies to the federal government and not to the states,

there is a question mark over whether the common law protects religious freedom, and even if it does, it is a weak protection,

there are no federal laws prohibiting discrimination or vilification on the grounds of religion. Apart from discrimination on the grounds of 'ethnic origin' (for example, discrimination against Jewish people), federal law does not make religious discrimination unlawful,

laws regarding discrimination on the basis of religion are inconsistent across Australia's states and territories,

anyone who feels that they have been discriminated against because of their religion, can only make a complaint to the Australian Human Rights Commission if: the discrimination is by the federal government, a federal government authority or someone acting on their behalf or if the problem arose in an employment context. However, even if the Commission finds that there was discrimination on the basis of religion there are limited options to resolve the situation. The Commission can only recommend a remedy. These recommendations are not enforceable, and complaints cannot be heard in court.

Ms Branson ended her speech by saying:

In conclusion, human rights are about building a culture of tolerance and respect.

Another former Australian Human Rights Commissioner, Mr Tim Wilson also spoke of tolerance and respect in a speech, *The Forgotten Freedoms – Freedom of Religion*,⁵ at the Australian Catholic University in May 2014.

Tolerance remains a vital component in the respect for religion, both between faiths, toward those without faith, and from those without faith towards those that do. Tolerance is the end of rights and the beginning of responsibilities.

One of the most disturbing societal trends is the number of people that are happy for individuals to have their faith, but are not prepared to accept that it can be a factor that informs their thinking on matters of public policy.

Tolerance for viewpoints is vital in discussions about the complex intersection of religious freedom and civil rights.

In the following section b) we offer possible improvements for the *South Australian Equal Opportunity Act 1984*, or the *Racial Vilification Act 1996* with regard to the protection of religious freedoms.

b) The operation and effectiveness of human rights legislation in other jurisdictions

The *Religious Freedom Review: Expert Panel Report (2018)* ⁶ noted that as Australia is a party to the International Covenant on Civil and Political Rights, it has a legal obligation under international law to protect freedom of religion.

In 2018 the Panel recommended that New South Wales and South Australia should amend their anti-discrimination laws to make it unlawful to discriminate on the basis of a person's "religious belief or activity".

While not making a recommendation on religious vilification laws, the Panel encouraged the Commonwealth, State and Territory Attorneys-General to cooperate to ensure greater consistency and national coverage with respect to anti-vilification provisions in accordance with our international obligations.

We note that Human Rights Acts/Charters have been enacted in Victoria, Queensland, and the Australian Capital Territory (ACT).

⁵ <https://humanrights.gov.au/about/news/speeches/forgotten-freedoms-freedom-religion>

⁶ <https://www.ag.gov.au/sites/default/files/2020-03/religious-freedom-review-expert-panel-report-2018.pdf>

The Commonwealth, plus every state and the ACT (but not the Northern Territory) have laws that make racial vilification ‘unlawful’ and at times a criminal offence.

In addition, Victoria, Tasmania, Queensland, and the ACT also have laws prohibiting public religious vilification. And since 12 November 2023, the NSW Anti-Discrimination Amendment (Religious Vilification) Act 2023 ⁷ amends the Anti-Discrimination Act 1977 to make it unlawful to, by a public act, incite hatred towards, serious contempt for, or severe ridicule of, a person or group of persons, because of their religious belief, affiliation, or activity.

Victoria and Queensland have materially similar civil and criminal provisions for inciting religious hatred. Tasmania’s legislation provides a civil offence for inciting religious hatred but has no criminal provision.

South Australia appears to lag behind other states in legislating to prohibit religious vilification.

Victoria’s Racial and Religious Tolerance Act 2001

The Racial and Religious Tolerance Act 2001 (RRTA) protects Victorians from hate speech or conduct because of their race or religion. This behaviour is against the law because it can cause profound harm to people and communities.

In a February 2021 report on the ABC, ⁸ then Victorian Equal Opportunity and Human Rights Commissioner, Kristen Hilton said the Racial and Religious Tolerance Act was failing to protect those that it was designed to, with only one successful prosecution [since 2001]. Ms Hilton said:

The threshold for meeting the vilification test is simply too high. Someone who has been the object of hate speech or hateful conduct, they have the burden of showing that a hypothetical third party would have been incited to act in a hateful way, by the person who is engaging in that hateful conduct.

It should be about whether the conduct itself was capable of expressing hatred, and if there is an incitement test that it was reasonably likely to incite conduct in another person.

In 2021, a Victorian Parliamentary Inquiry found that the law does not do enough to prevent or address vilification. The Victorian Government plans to strengthen civil and criminal anti-hate laws to effectively protect more Victorians.

Consultation was open from 6 July to 16 October 2023 and feedback received during the consultation stages was to be reviewed and assessed, with reporting back planned for early 2024.

We understand the legal definition of vilification is, ‘behaviour that incites hatred, serious contempt, revulsion or severe ridicule for a person or group of people, because of their race or religion’.

Currently, Victoria’s *Racial and Religious Tolerance Act 2001* ⁹ (the Act) states at Part 2 – Unlawful Conduct:

s8 Religious vilification unlawful:

- (1) A person must not, on the ground of the religious belief or activity of another person or class of persons, engage in conduct that incites hatred against, serious contempt for, or revulsion or severe ridicule of, that other person or class of persons. [Note (2) (a) and (b) not included here]

The Act also includes important qualifications and exemptions accompanying s8, such as s9 Motive and dominant ground irrelevant, s10 Incorrect assumption as to race or religious belief or activity, s11 Exceptions—public conduct, and s12 Exceptions—private conduct.

As South Australia reviews the effectiveness of current laws and mechanisms for protecting human rights, it could do well to consider the above sections 8 to 12 of Victoria’s *Racial and Religious Tolerance Act*, and new provisions that follow from the current review which is due to report in early 2024.

⁷ <https://www.nsw.gov.au/media-releases/new-religious-vilification-laws>

⁸ <https://www.abc.net.au/news/2021-02-26/anti-vilification-inquiry-victoria/13187394>

⁹ <https://www.legislation.vic.gov.au/in-force/acts/racial-and-religious-tolerance-act-2001/011>

c) The strengths and weaknesses of adopting a Human Rights Act in South Australia
d) The potential human rights protections in any act

While a Human Rights Act could significantly improve the protection of human rights in South Australia, including the protection of freedom of religion and belief, there are important caveats.

It is useful to review and assess the origins of what we understand to be human rights today.

Tim Wilson, former Australian Human Rights Commissioner, considers there is a fundamental lack of understanding about human rights because they have been disconnected from their foundational principles. His 2014 speech, *The Forgotten Freedoms – Freedom of Religion*¹⁰ discussed what we know as human rights and development of treaties under the human rights banner and offered four key points.

There are competing views about how we should approach human rights and freedoms. After all, human rights are a political construct.

Sometimes worthy civil rights and social justice aspirations have been elevated to the sacrosanct status of human rights and anti-discrimination has been conflated with human rights.

One. Human rights are not the same as civil rights. Human rights are universal and exist from birth; civil rights are the gift of citizenship.

Two. Human rights are not the same as social justice. Human rights are about uncompromisingly protecting the autonomy of the individual; social justice is broadly about advancing equity.

Three. Human rights are not the same as anti-discrimination. Apart from equality before the law, human rights can actually be about exercising discrimination, such as free association; whereas anti-discrimination is about removing unjust prejudice.

Four. Human rights are not about protecting groups of people. Universal human rights can only exist for individuals, by comparison group rights cannot be extended to everyone.

The four objectives I have outlined are all broadly confused because of the development of treaties under the banner of human rights.

It is understandable that countries sought to internationalise human rights values after the Second World War through treaties. However, this process has disconnected human rights from their origins.

Governments negotiated what human rights are. They are no longer seen as rights of birth. They are now perceived as gifts of government.

And the UN system that has continued to add 'new' human rights to the list has resulted in the dilution of their integrity.

The consequences of this are now being felt in Australian discussions about human rights. Human rights have been debased from their liberal tradition and have been compromised as the socialist tradition has become more pervasive.

The socialist approach to human rights can be seen as a framework of equal rights - the right to work, the right to education, the right to housing, the right to health, the right to leisure, recreation, and so on.

The classical liberal approach to human rights is narrow and underpins people exercising their freedom. It protects individuals against the abuse of power by government, believes that people own their own lives and the pursuit of their enterprise, while ensuring they do not harm others.

e) The potential implications of any act for the making of laws, courts and tribunals, public authorities and other entities

In a 2014 article in *The Guardian*, *The Case Against Human Rights*,¹¹ Eric A. Posner, professor of law at the University of Chicago examines the potential implications of enacting human rights laws.

¹⁰ <https://humanrights.gov.au/about/news/speeches/forgotten-freedoms-freedom-religion>

¹¹ <https://www.law.uchicago.edu/news/eric-posner-case-against-human-rights>

The central problem with human rights law is that it is hopelessly ambiguous. The ambiguity, which allows governments to rationalise almost anything they do, is not a result of sloppy draftsmanship but of the deliberate choice to overload the treaties with hundreds of poorly defined obligations.....The sheer quantity and variety of rights, which protect virtually all human interests, can provide no guidance to governments. Given that all governments have limited budgets, protecting one human right might prevent a government from protecting another.

Politics of protecting religious freedoms

Simon Rice, now a Professor of Law at Sydney University, has referred to a reluctance to legislate against religious vilification in an article titled, *Protecting Against Racial (or Religious?) Vilification*.¹²

This reluctance is hard to explain as a matter of principle, and may be a largely political view – elected governments seem more concerned about electoral (and commentators’) backlash than about establishing benchmarks for respectful, human rights compliant behaviour. The feared backlash would be based in large part on a claim for “freedom of expression” (popularly called “free speech”), but that term is commonly – perhaps wilfully for some – misunderstood.

It seems that it will take unusual courage these days for a government to legislate, and to take the same stand against religious vilification as has already been taken against racial vilification. Whether the States and Territories pass such laws is a matter of politics and will. The Commonwealth government is in a different position, because it has clear and unfulfilled obligations under the International Covenant on Civil and Political Rights.

Importance of religious vilification laws

The purpose of religious vilification laws is protecting people against harm. Vilification can result in real injury, including damaging mental trauma, to the people impacted.

However, balancing this important protection against other human rights protections, such as freedom of expression, can be a complex issue facing governments today.

While anti-vilification laws are a constraint on freedom of expression, such constraints are unremarkable. Freedom of expression in Article 19 of the Universal Declaration of Human Rights¹³ contains limitations, while Article 29 recognises limits on a person’s freedom in order to secure respect for the rights and freedoms of others.

There is also a claim that the right to offend is an inalienable part of religious freedom, or freedom of speech. This may seem reasonable, given that every religious text and tradition may seem offensive to followers of other religions, as each has different foundations and teachings. And the key to respectful co-existence of people of different religions, or no religion, is tolerance.

Barrister and academic Dermot Feenan’s 2006 paper on *Religious Vilification Laws - Quelling fires of hatred?*¹⁴ in *Austli Alternative Law Journal*, examines Victoria’s Racial and Religious Tolerance Act 2001.

It is arguable that aspects of the Act and cases decided under the legislation fail on a human rights analysis. While the objects of the legislation are adopted in pursuit of a legitimate objective, the scope of the offence suffers from over-breadth..... the Victorian legislation includes not only ‘hatred’ but ‘serious contempt for, or revulsion or severe ridicule’. Moreover, judicial interpretation serves to fuel concern that the Act may be invoked for a lower threshold of harm than is proportionate to the violation of the right to free expression.

No doubt some of the opposition to religious vilification law represents a backlash from those fearful that dominant orthodoxies will be challenged, as was the case with sexual harassment or racial vilification laws. Nor should it be forgotten that assumed equality of free speech when vulnerable groups are not equally placed to express their views, simply replicates inequality and allows harmful expression.

¹² <https://rightnow.org.au/opinion/protecting-against-racial-or-religious-vilification/>

¹³ <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

¹⁴ <http://classic.austlii.edu.au/au/journals/AltLawJl/2006/37.html>

Example of a vulnerable group suffering harmful expression

In July 2020 the ABC, Australia's national broadcaster published programs that claimed to scrutinise Falun Gong (Falun Dafa) depicting its beliefs and teachings as dangerous, divisive, cult-like, intolerant and prohibiting medical treatment. Subsequently, Falun Gong practitioners in Australia who have fled political persecution as refugees, have experienced misunderstanding, revulsion and harm because of their religious belief, and exacerbation of the trauma they had experienced when persecuted in China.

Would the ABC run a news series on the "dangerous" religious beliefs and cultural practices of Uyghur Muslims? Like Falun Gong, Uyghur Muslims hold conservative views on sexuality. Yet such a program would, rightly, never be published due to the religious intolerance it would exhibit, and the violation of individuals' rights to practice their faith without secular dissection and fear of vilification.

The ABC's Editorial Policies at section 7 on Harm and Offence,¹⁵ state in part:

The ABC broadcasts and publishes comprehensive and innovative content that aims to inform, entertain and educate diverse audiences. Innovation involves a willingness to take risks, invent and experiment with new ideas. This can result in challenging content which may offend some of the audience some of the time.

We believe that the no media, including the ABC should be allowed to "take risks, invent and experiment" where the impact of such journalism is to vilify and cause distress, mental trauma and harm to Falun Dafa practitioners in Australia and around the world - particularly in China, where ABC's programs have been used by the Chinese Communist Party to validate its persecution of millions.

Victorians who practice Falun Dafa have made an application for unlawful religious vilification to the Victorian Civil and Administrative Tribunal, under the Racial and Religious Tolerance Act (RRTA) 2001, which is ongoing.

On 10 February 2022, Prime Minister Anthony Albanese made a statement on Religious Discrimination Legislation¹⁶ which included:

We don't want to see anyone treated unfairly. We are a diverse nation and we need to respect every Australian for who they are. Sadly, discrimination on the basis of faith is all too real. It might be a Muslim woman or a Sikh man being vilified on the streets because of what they are wearing. It might be a group of Jewish or Christian students being attacked because of their faith.

Labor is committed to ending this vilification and discrimination.

A future Labor government will: prevent discrimination against people of faith, including anti-vilification protections.

The person the Prime Minister is referring to could also be a Falun Dafa practitioner.

f) Any other related matters

The heart of human rights

The 1776 US Declaration of Independence is known as the first formal statement by a nation's people asserting their rights, including to choose their own government. The Preamble includes the statement:

that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness.

Unalienable rights endowed by the Creator. Life is not created by man, or human beings. Life is given or bestowed by the Creator. Human beings can do many things. They can kill and take away a life, but they cannot create Life.

¹⁵ <https://www.abc.net.au/edpols/7-harm-and-offence/13643992>

¹⁶ <https://anthonyalbanese.com.au/media-centre/statement-on-religious-discrimination-legislation>

People will no doubt agree that human life should be protected. Who would want to be killed, or for their children, or relatives to be killed?

We all want liberty, to be free, within the various contexts of what it means to each person, along with social constraints of how we may impact others.

Some may pursue happiness by seeking earthly pleasure, accumulating wealth and material goods, or seek the absence of suffering.

Some may find happiness in simply surviving in life and hoping for a good future for their children.

Some may find happiness that comes from cultivating kindness, a peace of mind that arises through self-knowledge and finding one's place in the universe.

A foundation of human rights that acknowledges the Creator, imbues in people a respect for the sanctity of life, and respect for fellow human beings. It becomes a person's inner self that truly guides their actions; seeing that hurting others will also hurt oneself. It is more than compliance with an external human law.

Human rights in China

With today's global engagement, and our multicultural society, Australia is not isolated and human rights in other countries impacts us here.

Communist ideology in China denies the existence of God or supernatural beings, dictates that religions are human creations, and that individual human rights are only a Western construct.

Following the devastating impact of the Cultural Revolution from 1966 to 1976, there was a brief period in the late 1980s where China appeared to be opening. Traditional aspects of Chinese culture such as qigong (energy exercises) were accepted and promoted by the Chinese Communist Party (CCP).

It was in this window, that Falun Gong was first taught publicly in China in 1992 by Mr Li Hongzhi, and it was registered with the government's China Qigong Research Association. Falun Gong had renewed people's traditional connection to Heaven and spirituality; to find the divine essence within through meditation and self-cultivation and aligning one's life with the principles of the universe, or the Way.

In 1998, the CCP's own survey found that Falun Gong was practised by over 70 million people in China. Hardliners in the CCP could not tolerate the popularity of such a traditional practice, as it was the opposite of communist ideologies of control. In July 1999 the CCP began its violent campaign to eradicate Falun Gong, which continues today.

Before 1949 and the impact of the CCP, China had a long history of Taoist and Buddhist teachings, and Confucian texts that emphasised moral and ethical principles.

Although different from a Western concept of human rights, they did serve a similar role of considering others, rather than just oneself, and were not enforced as such, but adopted voluntarily as a way of living in harmony. This concept of harmony linked earthly life to Heavenly realms.

"The Book of Documents (Shujing) or Classic of History," is one of the Five Classics of ancient Chinese literature, dating to the sixth century BC. It encapsulates the Chinese people's traditional relationship with Heaven:

Heaven sees as our people see; Heaven hears as our people hear. Heaven is compassionate towards the people. What the people desire, Heaven will be found to bring about. Heaven loves the people, and the Sovereign must obey Heaven.

The traditional Chinese understanding of people's rights is linked to the relationship of Heaven overseeing human life on earth. Western concepts of human rights are also linked to Heaven under the various teachings of Judeo-Christian religions.

In essence, Western and traditional Chinese human rights have a similar inviolable foundation—respect for the Creator and guidance from divine realms.

Concluding remarks

Freedom of expression does not mean that anyone or any media can publicly cause offence or harm to anyone, anywhere, whenever they like.

While some legal advocates, academics or media may make the case for freedom of expression to be the prime or overriding human right, it does not make it right.

They may say that passing religious vilification laws can create more problems than they solve. They may suggest non-legal mechanisms, like education, community programs, or conciliation to foster religious tolerance, rather than the use of the adversarial legal system. That may work in some situations of dispute where both parties are amenable.

However, the world is very complex today. Many Australians, many people in South Australia come from other parts of the world where they have suffered terribly because of authoritarian regimes where human rights are not protected or are interpreted at the whim of such regimes.

Today there are also incentives to move away from the traditions and responsibilities of objective journalism. The intersection of powerful media and competition in online content and social media focuses on money, controversy, clicks and viewing numbers.

With that focus in media anyone can become a victim, particularly vulnerable people who suffered torture or persecution under authoritarian regimes, and now living in, for example, South Australia.

This is where a type of religious vilification laws such as RRTA are helpful. They may not be perfect. But if there is no such attempt to protect vulnerable people from the harm of religious vilification, which can damage people tremendously who have already suffered trauma and psychological damage as survivors of persecution, then it is worse.

The current climate of social responsibility is diminishing. The respect for religious belief is diminishing under the secularization of powerful forces in society through media and social commentary, which also impacts political decision making. It leaves people very vulnerable if there is no attempt to protect them from religious vilification.

We would say it is important to include legislation like RRTA in South Australia and then the process of interpreting those laws is crucial – to establish a solid framework of how to assess the rights of vulnerable victims of religious vilification.

It means understanding the essence of human rights. It becomes an assessment of what type of society are we protecting, what values, morals and ethics are we protecting.

The human right of freedom of expression is not absolute. How you protect or balance the different rights is crucial in a just society where it is important to achieve a fair and caring outcome to protect vulnerable people, not powerful interests.

Recommendations

If a South Australian Human Rights Act is implemented, it should specify how the freedom of religious belief and protection from religious discrimination or vilification are protected under South Australian law.

If South Australia does not implement a Human Rights Act with above inclusion for religion, then we hope the South Australian Parliament will amend the *Equal Opportunity Act 1984* and/or the *Racial Vilification Act 1996* to include provisions for the protection from religious discrimination or vilification in accordance with the latest provisions in the *Victorian Racial and Religious Tolerance Act 2001*.