



Environmental  
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Office

Western Australia (Inc)



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Your Ref:

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Mr Fred Chaney AO  
Consultation Committee for the Proposed Human Rights Act  
C/- Public Affairs Branch  
Department of the Attorney General  
GPO Box F317  
Perth WA 6841

Dear Mr Chaney,

**EDO and Conservation Council WA Joint Submission – Human Rights Bill 2007**

Thank you for the opportunity to provide input into the WA Human Rights Draft Bill 2007. The EDO and Conservation Council of WA support the introduction of a Human Rights Act in WA. We have taken this opportunity to present a joint response to the Draft Bill and the Human Rights for WA Discussion Paper 2007, and in particular to present a response to Question 2, which is relevant to the inclusion of environment related human rights.

When the Australian Capital Territory reviewed its *Human Rights Act 2004* in June 2005 the EDO (ACT) developed a detailed submission, particularly in relation to international developments. To avoid duplication we have referred to that document in our submission and attach it for your information.

**What rights should be protected in the WA Human Rights Act?**

The successful protection of human rights is dependent upon the sustained health of the natural environment. Without this foundation, there would be no society in which to ensure rights. Recent developments in international human rights law illustrate the increasing recognition of the indivisibility of all human rights, which include those related to the environment<sup>1</sup>. In WA, pressing environmental challenges such as climate change, water shortage and environmental degradation directly effect the operation of fundamental civil and political rights (known as 'primary' rights) because of the potential threat that they pose to ongoing human health and liberty.

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<sup>1</sup> See the attached EDO (ACT) Submission for an overview of international developments at p.9

Although the Government is of the view that the inclusion of ‘secondary’ rights, which include economic, social, cultural and potentially environment related rights, would be out of step with other Australian jurisdictions, it should be acknowledged that integration of these rights with the more readily recognised civil and political ones would be in line with international jurisprudence that increasingly reflects the indivisibility and interdependence of all rights<sup>2</sup>.

The international non-governmental organization Earthjustice summarised the constitutional recognition of environmental rights in a submission to the UN Commission on Human Rights in March 2005:

“Numerous constitutions of the nations of the world guarantee a right to a clean and healthy environment or a related right. Of the approximately 193 countries of the world, there are now 117 whose national constitutions mention the protection of the environment or natural resources. One hundred and nine of them recognize the right to a clean and healthy environment and/or the state’s obligation to prevent environmental harm. Of these, 56 constitutions explicitly recognize the right to a clean and healthy environment, and 97 constitutions make it the duty of the national government to prevent harm to the environment. Fifty-six constitutions recognize a responsibility of citizens or residents to protect the environment, while 14 prohibit the use of property in a manner that harms the environment or encourage land use planning to prevent such harm. Twenty constitutions explicitly make those who harm the environment liable for compensation and/or remediation of the harm, or establish a right to compensation for those suffering environmental injury. Sixteen constitutions provide an explicit right to information concerning the health of the environment or activities that may affect the environment.”

For example, the French Constitution now includes environmental rights. Since 2005 these have been highlighted in the Constitution’s preamble and are specifically set out in the Constitution’s Environmental Charter which outlines ten Articles that articulate the link between life, health and the environment.<sup>3</sup> The South African Constitution also provides a good example of a comprehensive declaration of primary, secondary and environment related rights. Section 24 of the Bill of Rights states that;

*Everyone has the right to an environment that is not harmful to their health or well-being; and to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that prevent pollution and ecological degradation; promote conservation; and secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.<sup>4</sup>*

### **How could environmental rights be included?**

There are several ways that environmental related human rights could be included in the Human Rights Act. Firstly, it could include certain key rights, such as the right to water and the right to a clean natural environment.

The UN Committee on Economic, Social and Cultural Rights has recognised water as a pre-condition for the enjoyment of several human rights, including the right to life, the right to food, to adequate housing and to the highest attainable standard of health.<sup>5</sup> The right to water would recognise the need to secure sufficient quality and supply and ensure the sustainability of the resource, which has particular relevance in WA’s drying climate.

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<sup>2</sup> See the EDO (ACT) submission at p.4.

<sup>3</sup> The French Constitution including the Environment Charter can be viewed at <<http://www.assemblee-nationale.fr/english/8ab.asp>>

<sup>4</sup> Chapter 2, Constitution of South Africa.

<sup>5</sup> For further discussion on this see the EDO (ACT) submission at p.10

The right to a clean environment is established in the UN Draft Declaration of Human Rights and the Environment, principle 2 and states that all persons have the right to a secure, healthy and ecologically sound environment. The principle is defined as universal, interdependent and indivisible to other civil, cultural, economic, political and social rights<sup>6</sup>. Including this right would ensure the community's protection from an environment that is harmful to people's health and wellbeing. The right to a clean natural environment is connected to the right to health - Article 25 of the Universal Declaration of Human Rights states that everyone has a right a standard of living adequate for the health and well-being of himself and his family.

Environment related human rights could be recognised within basic civil and political rights already included in the Bill, such as the right to life and the right to privacy, however European examples<sup>7</sup> have shown that this ancillary recognition falls short of ensuring satisfactory protection of environment related rights, as courts will have a wide discretion where rights are not specifically codified.

In the face of growing concerns of climate change and environmental sustainability, WA should take steps towards acknowledging environment related human rights and consider including them as a part of a more comprehensive Human Rights Act that, consistent with international developments and best practise, integrates secondary rights as indivisible to primary ones.

If environmental related human rights are not specifically codified in the Human Rights Act, the Bill should be amended to require that any review of the Act (once in force) by the Minister includes consideration of environment related human rights. The statutory review requirement could be similar to the one included within the ACT Human Rights Bill in 2004 which required a review after the first year of operation to consider "whether environment-related human rights would be better protected if there were statutory oversight of their operation by someone with expertise in environment protection".<sup>8</sup>

The EDO and Conservation Council of WA believe that the creation of a Human Rights Commission with a particular focus on and specific goals relating to environmental rights would best ensure the development of a modern and comprehensive Act. Where a Commission is given powers under the Act (be that a Human Rights Commission or one integrated with the Equal Opportunities Commission) it should be required to examine the performance of the Human Rights Act along side other jurisdictions and inquire into developments in international human rights law, including specific research into developments of environment related rights.

Once more, the EDO and Conservation Council of WA are pleased to have the opportunity to comment on the Draft Bill and strongly support the introduction of a Human Rights Act in keeping with the developments in other States. However, it is vital that the Act is also consistent with contemporary international standards and it should therefore be designed to evolve and change in order to reflect the indivisible nature of primary and secondary human rights, including environment related rights. If initially only civil and political rights are acknowledged, then the statutory review process should specifically provide that the inclusion of environment related rights be regularly considered.

Yours sincerely,

Nicola Rivers  
Solicitor  
Environmental Defender's Office

Chris Tallentire  
Director  
Conservation Council of WA

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<sup>6</sup> For the full text of the UN Draft Declaration of Human Rights and the Environment, see Attachment A of the EDO (ACT) submission at p.17.

<sup>7</sup> See the EDO (ACT) submission at p.7 (including footnote reference).

<sup>8</sup> Section 43 Human Rights Act 2004. This clause expired on 1 January 2007 as the one year review had been conducted, but can be viewed in the 2004 version of the Act.