



Rights of Minorities (s.27)

Section 27 of the *Human Rights Act 2004* says that:

Anyone who belongs to an ethnic, religious or linguistic minority must not be denied the right, with other members of the minority, to enjoy his or her culture, to declare and practise his or her religion, or to use his or her language.

Note: Under the Act, all rights may be subject to reasonable limits (section 28). The nature of the right is relevant when considering what is reasonable.

This factsheet is not intended to be a substitute for legal advice.

Scope of the Right

This section is based on Article 27 of the International Covenant on Civil and Political Rights, a treaty to which Australia became a party in 1980.

The rights of minorities provides for people to practise and maintain shared traditions and activities. It allows for those belonging to minority groups to enjoy their own culture, to profess and practise their own religion and to use their own language (in private and in public), as well as to participate effectively in cultural life.

This right puts an onus on Public Authorities to adopt measures for the protection and promotion of cultural diversity, enabling people from diverse communities to engage freely and without discrimination in their own cultural practices and take appropriate measures or develop programs to support minorities or other communities, including migrant communities, in their efforts to preserve their culture.

Examples

There have been no cases in ACT courts which have examined in detail the rights of minorities under section 27 of the *HR Act*.

The Victorian *Charter of Human Rights and Responsibilities Act 2006* includes a similar protection for minority groups. This right led a local council to consider the cultural rights of minority groups when making a decision about the use of community facilities for religious worship. After consideration, they decided to extend the hours of availability to accommodate a range of different faith-groups.

Some examples of where cultural rights have been raised in international cases include:

- A Sikh man being asked to bare his head for an ID photo (Singh v France, UN Doc CCPR/C/D/102/18767/2009);
- A man from a Russian-speaking minority in Latvia was forced to spell his name a certain way on

official documents (Raihman v Latvia, UN Doc CCPR/C/100/D/1621/2007);

- A Peruvian alpaca farmer whose traditional way of life was threatened by government waterway diversions (Poma v Peru, CCPR/C/95/D/1457/2006);
- Where traditional reindeer husbandry in Finland was threatened by logging permission (Länsman v Finland, CCPR/C/83/D/1023/2001);
- When a Canadian of indigenous background was denied the right to live on a reservation (*Lovelace v Canada*, CCPR/C/13/D/24/1977).

Examples of when this right could be relevant in practice

The actions of public authorities can both promote and limit rights. Section 26 could be engaged by activities that:

- Limit the observance of any religious practices;
- Address discrimination based on attributes including race or religion;
- Restrict the capacity for persons to declare or make public their affiliation to a particular racial, religious or cultural group;
- Limit or prohibit communication in languages other than English, including through the provision of information;
- Prevent people using their language in community with others;
- Limit the ability of Aboriginal persons or members of an ethnic group to take part in a cultural practice, or otherwise interferes with their distinct cultural practices;
- Regulate the conduct of commercial activities on the traditional lands of Aboriginal persons;
- Restrict the provision of services or trade on religious holidays;
- Regulate access to public spaces including libraries, museums, sports facilities;
- Regulate cultural or religious practices around the provision of secular public education;
- May interfere with the relationship between Aboriginal people and land, water and resources;
- Impose or coerce individuals to do something that interferes with their distinct cultural practices, for example, wear clothes that differ from their traditional cultural attire;
- Regulate traditional medical practices;
- License or provide a restriction on the preparation and serving of food.

ACT Human Rights Commission

Ph: (02) 6205 2222

TTY: (02) 6205 1666

www.hrc.act.gov.au

human.rights@act.gov.au