



Right to Freedom of Thought, Conscience, Religion and Belief (s.14)

Section 14 of the *Human Rights Act 2004* says that:

1. Everyone has the right to freedom of thought, conscience and religion. This right includes—
 - (a) The freedom to have or to adopt a religion or belief of his or her choice; and
 - (b) The freedom to demonstrate his or her religion or belief in worship, observance, practice and teaching, either individually or as part of a community and whether in public or private.
2. No-one may be coerced in a way that would limit his or her freedom to have or adopt a religion or belief in worship, observance, practice or teaching.

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 right is divided into a freedom of personal autonomy (a freedom to think and believe whatever you choose) and a freedom of manifestation (to demonstrate your thoughts or beliefs publicly).

The first kind of freedom has been held to be absolute at international law and can not be limited in any circumstances (see UN Human Rights Committee, General Comment 22). However, it is accepted that the freedom to manifest your beliefs externally may be limited – especially where it has the potential to have a negative impact on others.

The kinds of manifestations which would be protected by section 14(1)(b) include things like:

- Organised religious rituals and ceremonies;
- Building places of worship or religious teaching;
- Publishing and disseminating religious tracts and texts;
- Displaying symbols or wearing particular kinds of clothing;
- Observing holidays and days of rest;
- Observing a particular diet or avoiding certain food products.

Examples

In order to be recognised, a belief, whether religious or conscientious, must satisfy a number of conditions. It must: (1) Be genuinely held; (2) Be a belief and not an opinion or viewpoint based on the present state of information available; (3) Be a belief as to a weighty and substantial aspect of human life and behaviour; (4) Attain a certain level of cogency, seriousness, cohesion and importance; and (5) Be worthy of respect in a democratic society, be not incompatible with human dignity and not conflict with fundamental rights of others: see *R v AM* [2010] ACTSC 149 (15 November 2010).

In international cases considering similar provisions, the right has been found to protect:

- Religious education that provides a pluralistic view of religion and does not proselytise;
- A right to a certain diet in State-run institutions (for example, vegetarian, Halal or Kosher); and
- A student's right to wear a Sikh kirpan (ceremonial dagger) under his clothes at school.

On the other hand, the right has been found not to protect:

- A Canadian Sikh railway worker's preference to refuse to wear protective headgear due to its incompatibility with his turban (it was found to be a reasonable safety measure);
- A tax evader who claimed that he shouldn't have to pay tax if it went to funding the military (since he was a conscientious objector);
- Another conscientious objector who was charged with the criminal offence of insubordination because he objected to the loss of autonomy experienced during military service;
- Private schools in South Africa which claimed it was consistent with their Christian beliefs to impose physical discipline on students; and
- Fox-hunters in England whose 'belief' in the sport did not go beyond a desire to hunt for recreation.

Examples of when this right could be relevant in practice

The actions of public authorities can both promote and limit rights. Section 14 could be engaged by activities that:

- Promote, restrict or interfere with a particular religion or set of beliefs;
- Require a person to disclose his or her religion or belief;
- Affect an individual's ability to adhere to his or her religion or belief;
- Impinge upon or disadvantage a person because of the person's opinions, thoughts or beliefs;
- Attempt to regulate conduct that will affect some aspect of a person's worship, observance, practice or teaching of his or her religion or belief;
- Subject conduct that is required or encouraged by an individual's religion or beliefs to criminal penalties or fines;
- Restrict the capacity for those under state control (for example, prisoners) to comply with the requirements of their religion;
- Compel certain acts that may be inconsistent with a religion or set of beliefs;
- Restrict the capacity for those in the care or control of a public authority to comply with the requirements of their religion;
- Set dress codes (possibly for safety or hygiene reasons) that do not accommodate religious dress;
- Impose requirements as a condition of receiving a benefit that prevents a person from adhering to his or her religion or belief;
- Require students to learn about particular religions or beliefs or to be taught materials that might have the effect of undermining their religious beliefs;
- Regulate planning or land use that may make it difficult to use or establish places of worship.



**ACT HUMAN RIGHTS
COMMISSION**

Australian Capital Territory

PH: (02) 6205 2222

TTY: (02) 6205 1666

WEB: www.hrc.act.gov.au

EMAIL: human.rights@act.gov.au