

SECTION 14

FREEDOM OF THOUGHT, CONSCIENCE, RELIGION AND BELIEF

Section 14

- (1) Every person has the right to freedom of thought, conscience, religion and belief, including –
 - (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, in public or in private.
- (2) A person must not be coerced or restrained in a way that limits his or her freedom to have or adopt a religion or belief in worship, observance, practice or teaching.

POLICY TRIGGERS: DO I NEED TO CONSIDER SECTION 14?

You will need to consider s. 14 if you are assessing legislation, a policy or a program where it:

- promotes a particular religion or set of beliefs;
- restricts or interferes with a particular religion or set of beliefs;
- requires someone to disclose his or her religion or belief;
- affects an individual's ability to adhere to his or her religion or belief;
- impinges upon or disadvantages a person because of the person's opinions, thoughts or beliefs on a matter;
- attempts to regulate conduct that will affect some aspect of a person's worship, observance, practice or teaching of his or her religion or belief;
- subjects conduct that is required or encouraged by an individual's religion or beliefs to criminal penalties or fines;
- places an individual in a position where he or she must choose between demonstrating a belief or participating in society;
- prohibits or limits a person's capacity to teach his or her religion or to attempt to convince others by appropriate means to change their religion;
- requires certain types of conduct that may conflict with a person's religion or beliefs;
- compels certain acts that may be inconsistent with a religion or set of beliefs;
- sets dress codes (possibly for safety or hygiene reasons) that do not accommodate religious dress;
- relates to the drafting or application of planning laws in a manner that may make it difficult to establish or operate a place of worship;
- imposes requirements as a condition of receiving a government benefit that prevents a person from adhering to his or her religion or belief;
- restricts the capacity for those under state control (for example, prisoners) to comply with the requirements of their religion;
- requires school children to learn about particular religions or beliefs or to be taught materials that might have the effect of undermining their religious beliefs.

These policy triggers are not comprehensive.

DISCUSSION

Section 14 protects a number of rights with respect to freedom of thought, conscience, religion and belief.

It protects not only a right to entertain ideas or hold positions of conscience and religious and other beliefs (including the right not to have religious beliefs), but also a right to demonstrate one's religion or belief, whether individually or collectively, whether in private or public, and whether through worship, observance, practice and teaching. Note that the right to demonstrate only extends to a person's religion or belief and does not extend to all matters of thought and conscience.

These two forms of protection can be distinguished. The right to freedom of thought, conscience, religion or belief is concerned with the right to *internally* hold certain thoughts, beliefs, or positions; whereas the right to demonstrate religion or belief relates to how a person chooses to *externally demonstrate* his or her religion or belief through a broad range of acts including worship, observance, practice and teaching.

The rights to freedom of thought, conscience, religion and belief

In international human rights law the right to freedom of thought, conscience, religion and belief has been interpreted broadly to include 'freedom of thought on all matters, personal conviction and the commitment to religion or belief'.¹⁰²

The Charter does not define what is meant by 'thought', 'conscience' and 'religion and belief'. The following guidance may be helpful:

'Thought'

The Charter protects the freedom to think freely. This right is likely to include political, philosophical and social thought and to protect against brainwashing and indoctrination by a public authority.

'Conscience'

The notion of 'conscience' is often bound up with religious belief, but international human rights law suggests that the term requires that there be some philosophical basis for a belief to amount to 'conscience'.

An example of the application of this freedom in Canada involved the Correction Service of Canada being ordered to provide a vegetarian diet to accommodate an inmate's non-religious conscientious beliefs.¹⁰³

Note though that the right to freedom of thought and conscience does not imply the right to refuse all legal obligations imposed by law, such as paying taxes,¹⁰⁴ nor does it provide immunity from criminal liability for every such refusal.¹⁰⁵

'Religion'

The UN Human Rights Committee has not defined religion. It has only said that 'religion' should be interpreted broadly to include 'theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief'.¹⁰⁶

102 *UN Human Rights Committee, General Comment 22, Article 18* (Forty-eighth session, 1993), UN Doc. CCPR/C/21/Rev.1/Add.4 (1993), reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, UN Doc. HRI/GEN/1/Rev.6 at 155 (2003) [1].

103 *Maurice v. Canada (Attorney-General)* (2002) 210 DLR (4th) 186.

104 *JP v. Canada*, Human Rights Committee, Communication No. 446/1991, UN Doc. CCPR/C/43/D/446/1991 (8 November 1991) [4.2].

105 *Westerman v. The Netherlands*, Human Rights Committee, Communication No. 682/1996, UN Doc. CCPR/C/67/D/682/1996 (3 November 1999).

106 *UN Human Rights Committee, General Comment 22, Article 18* (Forty-eighth session, 1993), UN Doc. CCPR/C/21/Rev.1/Add.4 (1993), reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, UN Doc. HRI/GEN/1/Rev.6 at 155 (2003) [2].

This suggests that 'religion' does not just refer to traditional institutional religions but also to new religions. In other contexts, the High Court of Australia has also adopted a broad interpretation of the notion of religion.¹⁰⁷

Any religion practised in Victoria is likely to be covered by this section. If you are unsure about whether a particular collection of ideas or practices can be characterised as a religion, you should consult Australian law on the subject.¹⁰⁸

The Charter does not only protect 'reasonable' religious beliefs: all religious beliefs are *prima facie* protected.¹⁰⁹

'Belief'

Article 18(1) of the ICCPR provides that the right to 'freedom of thought, conscience and religion' includes a freedom to adopt a religion or belief of one's choice and a freedom to demonstrate religion or belief in worship, observance, practice and teaching. The implication is that 'belief' is an aspect of 'thought, conscience and religion.'

The UN Human Rights Committee has not defined what is meant by 'belief'. It has, however, made clear that the right to freedom of thought, conscience and religion encompasses a broad range of beliefs including religious and non-religious beliefs, such as atheism, agnosticism, and scepticism about religious matters.

Scope of these rights

The scope of the right to freedom of religion and belief is outlined in the following points:

- It protects the right to *have* a religion or belief of one's choice. This is closely linked to the right to freedom of thought and conscience.
- It protects the right to *adopt* a religion or belief of one's choice. This means that people have the right to change their religion or belief, including a right to leave their religion or convert to another religion.
- It protects freedom *from* religion or certain beliefs. This means that the government cannot be seen to impose religion or take sides in matters of religion or belief.
- It protects the right to demonstrate one's religion or belief, whether individually or in community with others, whether in public or private. This right is discussed further below.

Positive or negative obligation?

In international human rights law, the right to freedom of thought, conscience, religion and belief have generally been regarded as primarily negative obligations requiring a nation state to exercise restraint from interference with this right, rather than imposing positive duties on the nation state.

However, the state may be obliged in some circumstances to intervene to protect this right, for example where to fail to do so may lead to a 'seriously offensive attack on religious sensitivities'.¹¹⁰ This may include appropriately drafted laws prohibiting religious vilification. In order to protect religious freedom in this positive sense, restrictions will sometimes be required to be placed on freedom of expression.

107 *Church of New Faith v. Commissioner of Pay-Roll Tax (Vic)* (1983) 154 CLR 120.

108 See for example, Butterworths, *Halsbury's Laws of Australia*, 21 Human Rights, '4 Civil and Political Rights' [81]; *Church of New Faith v. Commissioner of Pay-Roll Tax (Vic)* (1983) 154 CLR 120.

109 See *R v Secretary of State for Education and Employment and others, ex parte Williamson and others* [2005] UKHL 15, *Police v Razamjoo* [2005] DCR 408 (NZ).

110 *Otto-Preminger Institute v. Austria* (1995) 295 Eur Court HR (ser A); (1995) 19 EHRR 34.

These circumstances may include, for example:

- the publication of offensive portrayals of religious worship;¹¹¹
- where private individuals instigate a campaign of harassment against a church or religious group;¹¹²
- broadcasting a film ending with a violent denunciation of a particular religious group;¹¹³ and
- any of the above in relation to a person's belief (which may be non-religious).

Right to demonstrate religion or belief

As noted above, s. 14 also protects the right to *demonstrate* one's religion or belief. The scope of this right relates only to religion and belief and does not extend to freedom of thought or conscience.

The right to demonstrate one's religion or belief encompasses a broad range of acts and has both individual and collective aspects. It means that a public authority must not prevent a person from demonstrating his or her religion or belief either alone or with others and either in private or in public. It is for the individual persons to determine whether they wish to demonstrate their religion or belief in public or private; for example, the government cannot force them to worship in private.

'Worship'

Religious worship means ritual and ceremonial acts giving direct expression to religious beliefs. For example:

- building of places of worship;
- using ritual formulae and objects;
- displaying symbols;
- observing holidays and days of rest.

The UN Human Rights Committee has provided guidance on the meaning of 'observance'.¹¹⁴

Observance includes:

- ceremonial acts;
- dietary regulations;
- wearing distinctive clothing; and
- participating in rituals associated with particular life stages.

It will also include the use of a particular language customarily spoken by a group.

'Practice or teaching'

The expression 'practice or teaching' is likely to include acts covered by the concept of observance but may also include acts by religious groups integral to the conduct of their basic affairs, such as choosing religious leaders and teachers, establishing religious schools, and preparing religious texts and publications.¹¹⁵

111 Ibid.

112 *Church of Scientology v. Sweden* [1979] ECC 511.

113 *Otto-Preminger Institute v. Austria* (1995) 295 Eur Court HR (ser A); (1995) 19 EHRR 34.

114 *UN Human Rights Committee, General Comment 22, Article 18* (Forty-eighth session, 1993), UN Doc. CCPR/C/21/Rev.1/Add.4 (1993), reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, UN Doc. HRI/GEN/1/Rev.6 at 155 (2003) [4].

115 *UN Human Rights Committee, General Comment 22, Article 18* (Forty-eighth session, 1993), UN Doc. CCPR/C/21/Rev.1/Add.4 (1993), reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, UN Doc. HRI/GEN/1/Rev.6 at 155 (2003) [4].

REASONABLE LIMITS

As with all of the human rights protected in the Charter, the rights in s. 14 may be subject to reasonable limitations that can be demonstrably justified in a democratic society in accordance with s. 7 of the Charter.

Among the rights protected in s. 14, limitations have only been accepted in international human rights law on the right to demonstrate religion and belief. They have not been accepted in relation to the right to have, and to adopt, a religion of one's choice or to hold opinions without interference.

Limitations on the right to demonstrate religion and belief have been justified by reference to public health, public safety and the protection of the rights of others.

Some examples that have arisen in international cases of reasonable limitations on the right to demonstrate one's religion or belief are:

- A Sikh man was dismissed from his job with a Canadian state railway company after refusing to wear safety headgear. He argued that the dismissal violated his right to demonstrate his religion by wearing a turban. The Canadian Government maintained that the restriction on his freedom to demonstrate his religion was a justified measure for public health and safety. The UN Human Rights Committee accepted the Canadian Government's argument.¹¹⁶

- In certain contexts, limits on the rights of teachers or students to wear religious apparel or symbols in state schools has been upheld,¹¹⁷ but in other contexts such restrictions have been said to be a violation of religious freedom. (Any restrictions in Victoria on religious apparel in government schools would need to be justified under s. 7.)
- A prisoner who was dangerous and violent was not permitted to be present for communal worship in prison, although he was given private access to a chaplain.

An example from New Zealand involved a person who was a Seventh Day Adventist appealing a sentence of periodic detention which required him to attend a program on a Saturday morning (his Sabbath). Although attending the program would have been contrary to his religious beliefs, the court held that the limitation on his right was reasonable and there was no breach of his right to demonstrate his religion or belief.

If you think your policy, program or legislation may be a limitation on the rights protected in s. 14, it is important that you examine the specific circumstances when applying s. 7 to determine if the limitation is reasonable. Consult Part 2 of these Charter Guidelines for further guidance on s. 7.

116 *Singh Binder v. Canada*, Human Rights Committee, Communication No. 208/1986, UN Doc. CCPR/C/37/D/208/1986 (28 November 1989).

117 *Dahlab v. Switzerland* (2001) v. Eur Court HR 447 (ser A). See also *Leyla Sahin v. Turkey*, Application No. 44774/98 (Unreported, European Court of Human Rights, Grand Chamber, 10 November 2005) which also involved the issue of whether a prohibition on wearing the *hijab* violated the right to manifest one's religion.

KEY POINTS TO REMEMBER

- Section 14 protects:
 - the right to hold certain thoughts, positions of conscience and religious and other beliefs;
 - the right not to have religious or other beliefs;
 - the right to change religious and other beliefs; and
 - the right to demonstrate one's religion or belief, whether individually or collectively, whether in private or public or whether through worship, observance, practice and teaching.
- This section has a broad scope. 'Thought' includes political, philosophical and social thought. 'Conscience' refers to beliefs with some philosophical basis.
- The expressions 'religion' and 'belief' should be interpreted broadly to include theistic, non-theistic and atheistic beliefs.
- A public authority may be obliged in some circumstances to intervene to protect these rights. Examples of when this may be required are discussed above.
- The right to demonstrate one's religion or belief relates only to religion and belief and does not extend to thoughts or conscience. It means that a public authority must not prevent a person from demonstrating his or her religion or belief either alone or with others, either in private or in public.
- The scope of the right to demonstrate one's religion or belief is broad. It applies to a range of acts including observance, worship, practice and teaching. These terms are not defined in the Charter although guidance is provided above on what they mean in the international sphere.

- The rights protected by s. 14 may be limited in accordance with s. 7. However, note that in international human rights law, limitations have only been permitted in respect of the right to demonstrate one's religion and belief. It may be more difficult than usual to justify a limitation on the other rights protected in s. 14.
- You may be required to balance the right in s. 14 with that in s. 15 (freedom of expression) since the effect of a particular method of opposing or denying religious beliefs through speech may violate the right protected in s. 14.

MEASURES TO IMPROVE COMPLIANCE

- Develop links with religious leaders of communities that commonly use public services and consider whether certain staff might benefit from information sessions about the teachings and practices of religious groups.
- Examine dress codes developed by a public authority (for example, in legislation, manuals, guidelines or school rules) to ensure that they accommodate religious beliefs;
- Scrutinise legislation, policy and programs to ensure that they do not interfere with the rights of people to:
 - attend worship;
 - have access to religious leaders in a confidential setting;
 - if in state detention, be given food that complies with their religious requirements or other beliefs (and also the need for variation, nutrition and quantity);
 - be allowed to wear clothing that complies with their religion and to maintain a personal appearance (for example, beard or dreadlocks) that complies with their religion.

This will be particularly relevant in contexts where the public authority exercises a high degree of control over individuals, for example, with respect to prisoners, public authority employees and people in state care.

- Planning laws that govern the building, extension etc. of places of worship should be reviewed to ensure that they do not discriminate between religious buildings and other buildings or between places of worship for one religion and other religions.
- Where school curricula in government schools require that students are taught about religions, care should be taken to ensure that a diverse range of religions are taught and that the style of teaching is neutral rather than proselytising. Consideration should be given to whether students should be allowed to not attend these classes if attending would conflict with their religious beliefs.

RELATED RIGHTS AND FREEDOMS

If your legislation, policy or program raises an issue under s. 14, you should also consider the following rights:

- the right to equality (s. 8);¹¹⁸
- the right to freedom of expression (s. 15);
- the right to enjoy one's culture (s. 19).

HISTORY OF THE SECTION

Section 14 is modelled on article 18 of the Covenant.

Similar rights exist in comparative law. Refer to Appendix H for further information.

BIBLIOGRAPHY

Case Law

1. *Church of New Faith v. Commissioner of Payroll Tax (Vic)* (1983) 154 CLR 120.
2. *Church of Scientology v. Sweden* [1979] ECC 511.
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7. *JP v. Canada*, Human Rights Committee, Communication No. 446/1991, UN Doc. CCPR/C/43/D/446/1991 (8 November 1991).
8. *Singh Binder v. Canada*, Human Rights Committee, Communication No. 208/1986, UN Doc. CCPR/C/37/D/208/1986 (28 November 1989).
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Other Sources

10. Butterworths, *Halsbury's Laws of Australia*, 21 Human Rights, '4 Civil and Political Rights' [81].
11. *UN Human Rights Committee, General Comment 22*, Article 18 (Forty-eighth session, 1993), UN Doc. CCPR/C/21/Rev.1/Add.4 (1993), reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, UN Doc. HRI/GEN/1/Rev.6 at 155 (2003).

¹¹⁸ You should also consider the application of the *Equal Opportunity Act 1995* (Vic.).