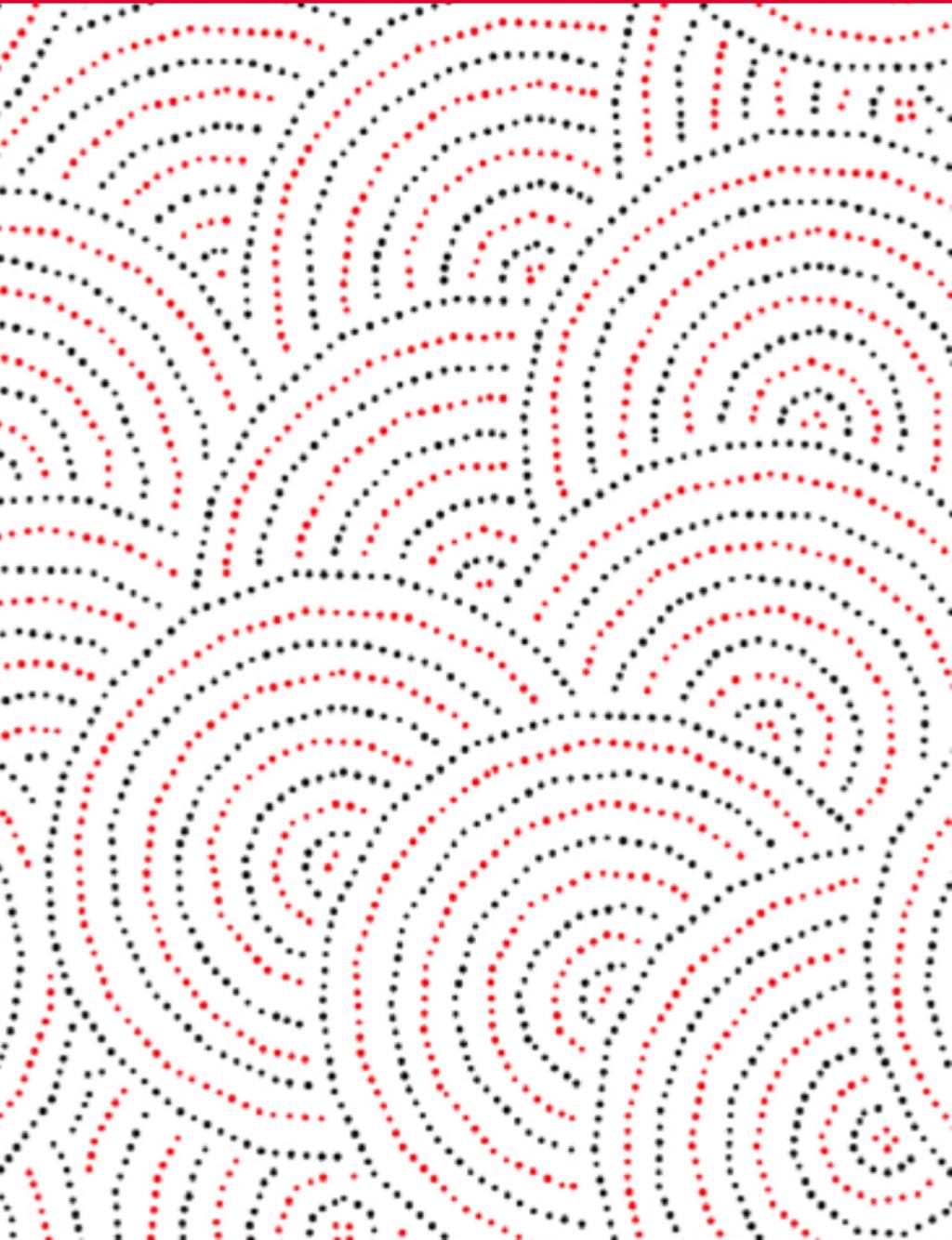


RELIGIOUS FREEDOM

A Guide to Your Rights

AUSTRALIA



“Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.”

—Universal Declaration of Human Rights, Article 18

FREEDOM OF RELIGION AND WORSHIP IN AUSTRALIA

1. What is the right to freedom of religion and worship?

"Freedom of religion, the paradigm freedom of conscience, is of the essence of a free society", according to the High Court of Australia, the nation's highest court. Lower courts have described it as "the freedom of people to adhere to the religion of their choice and the beliefs of their choice and to manifest their religion or beliefs in worship, observance, practice and teaching", and "a fundamental right because our society tolerates pluralism and diversity and because of the value of religion to a person whose faith is a central tenet of their identity". While it is a fundamental right, the High Court has made it clear that "Freedom of religion is not absolute". It is subject to limitations "such as are necessary for the protection of the community and in the interests of social order".

2. What is the right to freedom of belief or conscience?

Freedom of belief or conscience is treated as interchangeable with freedom of religion in Australia. The legal framework for protecting belief is effectively the same as for protecting religious worship, observance and practice. Australian law that protects freedom of belief outside freedom of religion generally applies to political belief or activity.

3. What are the laws that protect religious freedom?

Australian Constitution Section 116 prohibits the Commonwealth from making laws "for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth".

Section 116 generally protects religious freedom at the Commonwealth level, but few statutory laws and High Court decisions directly address it. The High Court has interpreted section 116 narrowly. It is unclear whether the section limits Commonwealth administrative actions. More importantly, no provision of the Australian Constitution limits states or territories from making laws or taking administrative actions under their laws to restrict religious freedom.

Australia is a signatory to the major international treaties that protect human rights, including freedom of religion. However, treaties do not form part of Australian law unless they are expressly incorporated into domestic legislation, and no specific legislation has been passed to give effect to Australia's obligations to protect religious freedom under those treaties.

Queensland, Victoria, and the Australian Capital Territory each have human rights charters that protect freedom of religion. Four of the six states (except New South Wales and South Australia) and all ten territories have anti-discrimination laws that prohibit discrimination on the grounds of religious belief or observance. Finally, the Commonwealth Fair Work Act prohibits discrimination in employment based on religion as well as other grounds. Religious freedom, under these state and territorial charters and laws, is subject to "reasonable" limitations, as interpreted by the courts.



4. What is the official religion of Australia?

Australia does not have an official religion.

5. What can I do when my right to freedom of religion and worship is violated?

Anyone whose right to freedom of religion and worship has been violated can file a complaint with the relevant anti-discrimination body in each of the states and territories, except New South Wales and South Australia. If the complaint cannot be resolved by conciliation, the complainant may commence proceedings in a relevant tribunal.

The Australian Human Rights Commission has the power to conduct an inquiry into religious discrimination in employment or Commonwealth acts or practices. However, such an inquiry may have limited practical value because the Commission's power does not include remedial authority.

RELIGION IN THE PUBLIC SQUARE

6. Can I express my religious views in public?

Yes. In general, Australian law does not prohibit the expression of religious views.

7. Can I share or preach my beliefs to others?

Yes. The right to preach in public spaces, however, may be curtailed by laws of general application, such as requiring a person to obtain a permit. The High Court recognizes in the Constitution the freedom of political communication. The Court has expressly held that reasonable local ordinances requiring a person to obtain a permit before conducting street preaching do not offend the implied freedom of political communication and will not infringe on any right of religious freedom.

8. Can I be part of a religious entity or organization?

Yes. Freedom of association, including associating in religious entities and organizations, is regarded as an important fundamental right in Australia; although, as with freedom of religion generally, there is little express statutory protection.

9. What are the government authorities that regulate religious entities?

The Australian Charities and Not for Profits Commission (ACNC) is the principal government authority that regulates religious entities. It is not necessary for a religious entity in Australia to register as a charity with the ACNC, but it would be unusual for a religious entity not to register because registration provides tax and other advantages.

Religious entities are generally subject to regulation of general application. For example, constructing houses of worship requires planning permission, and religious entities that have employees are generally subject to the same employment and work safety rules that apply to other employers. Additionally, some incidental regulation is specific to religious entities. For example, the Commonwealth Attorney General oversees a list of “recognized denominations” whose clergy are authorized to be marriage celebrants under the Marriage Act.

RELIGIOUS FREEDOM IN THE WORKPLACE

10. What influence does freedom of religion have in the relationship between an employer and an employee?

The Commonwealth’s Fair Work Act and state and territorial anti-discrimination laws, except for New South Wales and South Australia, prohibit discrimination on the ground of religion in employment. Also, the Australian Human Rights Commission can conduct inquiries in response to complaints of religious discrimination in the workplace, as noted above.

11. What is the relationship between religious freedom and working hours?

There is no direct relationship between religious freedom and working hours in Australia. However, Australian anti-discrimination law prohibits indirect discrimination, sometimes referred to as “facially neutral discrimination”. This is where a condition or requirement may appear to be neutral on its face but may detrimentally impact a person’s religious freedom. Such a requirement may be deemed unlawful if it impacts a person’s religious beliefs or observances in an unreasonable way. The courts ultimately decide whether the alleged detrimental condition or requirement is unreasonable.

For example, if an employer requires all employees regularly to work on Sundays and that requirement detrimentally impacts employees whose religious observances cause them to refrain from work on Sundays, the requirement could constitute unlawful indirect termination, unless it is determined to be reasonable. The question of reasonableness could depend upon factors such as the size of the employer’s workforce and whether there are employees without the same religious observance who could perform the Sunday work.

12. Can I wear religious clothing to work or refuse to wear part of a uniform because of my religious beliefs?

Requiring employees not to wear religious symbols or clothing or to wear part of a uniform that offends an employee’s religious sensitivity could potentially constitute indirect discrimination, depending on whether it is determined to be reasonable, as noted above.

Employees should notify their employers in a timely manner of any needs or special circumstances that arise due to religious beliefs or practices. This allows the employer to be aware of such circumstances and honor the religious freedom of employees more adequately. Employers and employees should work to reconcile possible conflicts associated with work requirements that could detrimentally impact an employee’s religious beliefs or practices.

RELIGIOUS FREEDOM IN SCHOOLS

13. Can there be religion classes in public schools?

Yes.

14. Is it mandatory for students to attend religious education or religious observances in their schools?

No. The rules vary with each state and territory. For example, Section 32 of the Education Act in New South Wales, Australia's largest State, allows for "special religious education" in government schools. Section 33 provides that no child is required to receive general or special religious education if the parent objects. Section 33A provides that if a parent objects to a child receiving special religious education and it is reasonably practicable for the school to provide special education in ethics as an alternative, the child is entitled to receive special education in ethics.

15. Can students refrain from attending school or scheduled school activities because of their religious beliefs?

The rule varies by state and territory. For example, the New South Wales Education Act requires children of compulsory school age to attend school. Parents can be prosecuted if their children fail to attend. Several exceptions to this rule exist, including where the child is being home schooled, or where the child cannot attend school due to a medical condition, accident, or unforeseen event. Religious belief is not listed as an exception.

Whether a child can refrain from attending scheduled school activities for religious reasons would be an issue of potential indirect discrimination discussed above, that is, whether the attendance requirement is reasonable given the student's religious beliefs and practices. Parents or children should notify school authorities in a timely manner of any needs or special circumstances that arise due to religious beliefs or practices so that accommodation could be considered.

16. Can students modify school uniforms because of their religious beliefs?

In most Australian states and territories, policies regarding student school uniforms in public schools exist at the school level. These policies are subject to the legal principle of indirect discrimination, discussed above. State and territorial laws that require student uniforms consistently authorize school principals to grant exemptions from a dress code requirement in “a matter relating to the religious beliefs of the student or the student’s family”.

MILITARY AND PUBLIC SERVICE

17. Is there mandatory military or public service, and if so, are there any religious exemptions?

No. Australia does not have mandatory military or public service.

RELIGION AND JUSTICE

18. Can I refrain from taking an oath in legal proceedings because of my religious beliefs?

Yes. Although the laws vary, Australian states and territories consistently allow a person to make an affirmation in place of an oath. The consequences for giving false evidence are the same whether the person made an affirmation or took an oath.

19. Can judges make decisions based on their religious beliefs?

No.

20. Is there any protection for statements made in confidence to religious leaders?

In the courts of the Commonwealth and in jurisdictions that have adopted the “Uniform Evidence Law” (New South Wales, Tasmania, Victoria, Australian Capital Territory, and the Northern Territory), a member of the clergy may refuse to divulge the existence or content of a religious confession. To qualify as a religious confession, a communication must have been made to the clergy member in their professional capacity and in accordance with the teachings of the relevant religious denomination as to what constitutes a “confession”. The confession is not protected if it was made for a criminal purpose. Several states and territories now require a member of the clergy who learns of child sexual abuse through a confession to report that abuse. This change was influenced by recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse, issued on December 15, 2017.

The law does not give the penitent person who made the confession the privilege to refuse to provide evidence about the confession. Some aspects of evidence law of general application, such as the right to remain silent, may protect a confession from being admitted into evidence.

RELIGIOUS FREEDOM IN INTERNATIONAL LAW

In addition to local protections for religious freedom in individual countries, there are also different international instruments or legal documents that protect this right. In 1948, the right to freedom of religion and conscience was introduced by the Universal Declaration of Human Rights. Since then, there have been different covenants and conventions that establish and develop this right at the international level.

What protections do I receive under international law?

International instruments establish that all people are equal before the law, regardless of their religion. These laws also state that no one may be discriminated against on the basis of religion. This is an offense against human dignity and is condemned as a violation of human rights and fundamental freedoms.

What freedoms do these international instruments include?

- **Freedom of thought, conscience, and religion.**

This freedom includes freedom of thought on all matters, freedom to hold beliefs, freedom of commitment to religion or belief, and freedom of personal conviction. It does not allow any limitations on the freedom to have or adopt a religion or belief of one's choice. No one can be compelled to reveal his or her thoughts or adherence to a religion or belief.

- **Freedom to change religion or beliefs.**

All people have the right to leave their own religion or belief and to adopt another, or to remain without any belief at all. The use of physical force, penal sanctions, policies, or practices to force a person to adopt, change, or maintain a certain religion or belief is prohibited.

- **The freedom to manifest and profess your own religion or beliefs, individually and collectively, both publicly and privately.**

Everyone enjoys the right to peacefully manifest and share one's religion or belief with others without being subject to the approval of the state of another religious community. This right is not limited to members of registered religious communities. Moreover, registration should not be compulsory for religious communities or organizations in order to enjoy their rights.

- **The freedom to manifest your religion through teaching, practice, worship, and observance.**

The freedom to manifest religion or belief in worship, observance, practice, and teaching includes a broad range of acts:

- Worship and observance extends to ritual and ceremonial acts giving direct expression to belief, as well as various practices integral to such acts, including the building of places of worship, the use of ritual formula and objects, the display of symbols, and the observance of holidays and days of rest.
- Practice and teaching of religion or belief include acts integral to the conduct by religious groups of their basic affairs, such as the freedom to choose their religious leaders, priests, and teachers; the freedom to establish seminaries or religious schools; and the freedom to prepare and distribute religious texts or publications.

- **The freedom of parents and guardians to have their children or pupils receive religious or moral education that is in accordance with their own convictions.**

Children enjoy the right to have access to religious education in accordance with the wishes, religious beliefs, or convictions of their parents or guardians. Likewise, children should not be forced to receive religious instruction that is contrary to the wishes of their parents or guardians. In accordance with the principle of the best interests of the child, the State should encourage an atmosphere of religious tolerance in schools and promote respect for pluralism and religious diversity.

Are there any limitations to these freedoms?

Yes. There are some limitations that are given by law, and their purpose is to protect public safety, order, health, morals, and the fundamental rights and freedoms of others. However, restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner.

FINDING COMMON GROUND

As people, we have the freedom to choose, share, and live what we believe. We generally hold our religious freedoms and beliefs dear as guiding principles in our lives. Just as we value our own religion and beliefs, we should highly value all people's rights to religious freedom and belief. Knowing the importance of these freedoms, how can we share the principles of freedom of religion in our communities? Is there a way to find common ground when we interact with people holding different beliefs?

The following strategies may allow you to find common ground in your community:

BECOME INFORMED

Before you can protect the religious beliefs of yourself or others, it is important to be informed and understand the rights and basic principles of freedom of religion. This brochure contains some relevant information with regards to your rights and the basics of freedom of religion. Seek to stay aware of changes in religious freedoms by watching developments that affect these freedoms in the news.

LISTEN TO ALL SIDES

Listen and show concern for other people's religions and sincere beliefs. Even if you disagree with the beliefs, or convictions of another, seek to understand and to be respectful of his or her perspective. People's words, beliefs and actions are influenced by many factors. You should be sensitive to the feelings of others as you explain and pursue your positions, and you should ask that others not be offended by your sincere religious beliefs.

PRACTICE CIVILITY

In order to live as a community with differences of opinion and beliefs, it is critical to know how to debate and not just what to debate. Your communications on controversial topics should not be contentious. All people should treat one another with civility and respect while striving to be accurate and fair. When your positions do not prevail, you should accept unfavorable results graciously and civilly. Remember to reject persecution of any kind, including persecution based on race, ethnicity, religious belief or non-belief, and differences in sexual orientation.

PROMOTE TOLERANCE

People must be able to peaceably live together while having differences. To live peaceably does not mean you need to abandon your positions; rather, it means you should strive to live peacefully with others who do not share your values or accept the teachings upon which they are based. Strive to teach values and standards of behavior to those around you without having them distance themselves or show disrespect to any who are different.

BUILD TRUSTED RELATIONSHIPS

Build trusted relationships in your community among people of diverse opinions. You will be better able to protect the rights of others in a way that benefits everyone as you get to know more people and as those people come to understand each other's beliefs. Concentrate on what you have in common with your neighbors and fellow citizens. Then, as you work together, speak out for religion and the importance of religious freedom.



GO-**HRE**

GENEVA OFFICE
FOR HUMAN RIGHTS
EDUCATION

