

## **Legal strength in freedom to wear burka**

By The Canberra Times

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Much has been written and debated recently on women wearing Islamic dress in public. In France a parliamentary inquiry is being held into whether the burka should be banned. Religious symbols, such as veils, have been banned to protect secularism in French government offices and schools since 2004. In some countries, women have been subjected to compulsory dress codes in the past, such as the Taliban in Afghanistan, and now in Iran, where a long black coat (known as the abaya) must be worn by women. It is timely to summarise the discrimination and human rights issues and ACT law in this area. Cases where women are oppressed or coerced into wearing headdress or other religious clothing are unacceptable and could be unlawful, if accompanied by threats such as domestic violence. It is important not to generalise and say all women who choose to wear modest clothing as part of practising their religious

beliefs are "complicit in their own oppression". Our cultural values of equality and tolerance include freedom to exercise your religion. Section 116 of the Australian Constitution explicitly provides that the Commonwealth shall not legislate to establish any religion, impose any religious observance or prohibit the free exercise of any religion. Also no religious test can be required to qualify for government office. In the ACT, two pieces of legislation protect this right. The ACT Discrimination Act 1991 makes it unlawful to treat someone unfavourably in public life because of a range of protected attributes, including their religious belief. It includes discriminating against someone because of an absence of religious belief also. Public life includes a range of

activities, including the provision of goods or services, such as medical centres, and how people are treated in workplaces and educational institutions. In practice, this means someone cannot be refused service at a nightclub because of the colour of their skin, or refused a job because of their gender, or not being served at a shop because of their religious dress. Any individual or organisation seeking to impose a "ban" on wearing the burka in public would be committing unlawful discrimination.

It remains open to the Legislative Assembly to enact such a ban through legislation, but, in doing so, the ACT Government has to act in accordance with the ACT Human Rights Act 2004. One of the rights protected in the legislation is section 14, freedom of religion. The Act has a number of safeguards to protect such

rights. These include requiring the interpretation of laws consistently with these rights, and that the ACT Government state when it introduces new laws if they are consistent with human rights. This does not prohibit laws limiting human rights, but limits must be reasonable and proportionate to the outcome sought. If the ACT Government tried to enact a "burka ban", it would need to show that to do so was connected to some reasonable outcome and the limit was the minimum required to

achieve that aim. The right to freedom of religion is derived from Article 4 of the International Covenant on Civil and Political Rights. Countries that have ratified this are obliged to make no exceptions even in war and public emergencies. In considering this

article, the United Nations Human Rights Committee found in the case of *Hudoyberganova v Uzbekistan* (931/2000) that female students' rights were violated by being suspended from their educational institution for wearing a headscarf. It appears the purpose of such a ban would be to prevent some women being forced to wear clothing that covers their face and body, against their will. Another reason might be security grounds, but there is no evidence that armed robberies have been perpetrated in Australia by people wearing burkas. Some have compared the requirement to remove motorcycle helmets in banks with a burka ban a better analogy is the freedom that Christian nuns have to wear religious habits. To take away part of the right to practise religion from all women of Islamic faith

would be an unreasonable and disproportionate limit on that right. Some women also wear traditional clothing to protect themselves from sexual harassment, and as a political statement of their rejection of Western objectification of women's bodies. A ban could also be counter-productive if it prevented women from leaving home, thereby disengaging them from public life. The fact that the community is having this debate demonstrates the strength of protecting human rights in legislation. It means we have a mechanism through which to assess a proposal, in this case the proposed banning of religious dress, against those rights common to us all. Dr Helen Watchirs is the ACT Human Rights and Discrimination Commissioner. "Should we ban the burka?", a free public lecture hosted by The Canberra Times and the Australian National University, today at 12.30pm, Coombs Lecture Theatre, Fellows Road, ANU. Bookings: 61254144 or [events@anu.edu.au](mailto:events@anu.edu.au)

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