

Factsheet: Protected human rights

Human rights in Queensland

The *Human Rights Act 2019* (the Act) protects fundamental human rights that are recognised in international covenants, including:

- International Covenant on Civil and Political Rights (ICCPR)
- Universal Declaration of Human Rights (UDHR)
- United Nations Declaration on the Rights of Indigenous People (UNDRIP)
- International Covenant on Economic, Social and Cultural Rights (ICESCR).

The human rights protected under the Act are not absolute. This means that the rights may be limited to protect the rights of others, or to address public policy issues of significant importance.

This factsheet provides a summary of the rights protected under the Act. You can also find plain language descriptions of the rights (in English, Simplified Chinese, Vietnamese and Torres Strait Creole) at www.forgov.qld.gov.au/humanrights.

Civil and Political Rights

Right to recognition and equality before the law

Section 15 | Articles 16 & 26 ICCPR

Every person has a right to recognition as a person before the law and to enjoy their human rights without discrimination.

The right to equality and freedom from discrimination is a stand-alone right, but also permeates all human rights.

The right reflects the essence of human rights: that every person holds the same human rights by virtue of being human and not because of some particular characteristic or membership of a particular social group.

Discrimination includes direct and indirect discrimination on the basis of a protected attribute within the meaning of the *Anti-Discrimination Act 1991*.

Right to life

Section 16 | Article 6 ICCPR

Every person has the right to life and the right not to be arbitrarily deprived of life. The right imposes substantive and procedural obligations on the State to take appropriate steps and adopt positive measures to protect life.

Protection from torture and cruel, inhuman or degrading treatment

Section 17 | Article 7 ICCPR

This right prohibits three distinct types of conduct: torture; cruel, inhuman or degrading treatment or punishment; and medical or scientific experimentation or treatment without consent.

The right imposes positive obligations on the State to adopt safeguards to ensure that torture, cruel, inhuman or degrading treatment or punishment does not occur.

Torture involves a very high degree of suffering that is intentionally inflicted. Cruel and inhuman treatment also involves a high degree of suffering, though not necessarily intentionally inflicted. Degrading treatment is focused less on severity of suffering but on humiliation.

In matters involving medical or scientific experimentation or treatment, the individual concerned must give consent and that consent must be freely given without pressure or force of any kind.

Freedom from forced work

Section 18 | Article 8 ICCPR

Persons should not be subject to conditions that violate individual dignity and exploit human productivity.

A person must not be held in slavery or servitude, which are practices of extreme expressions of power that human beings can possess over other human beings, representing a direct attack on bodily integrity and security, human personality and dignity.

A person must not be made to perform forced or compulsory labour, but note the exclusions such as: work or service required under a court order, work or service that forms part of normal civil obligations.

Freedom of movement

Section 19 | Article 12 ICCPR

Every person lawfully within Queensland has the right to move freely within Queensland, enter or leave Queensland, and choose where they live.

The right places an obligation on the State not to act in a way that unduly restricts the freedom of movement. The right should be protected through government restraint, rather than through taking positive steps to promote the freedom of movement (such as, for example, providing free public transport). However, the right does require the State to take positive steps to ensure that the freedom of movement is protected from interference by both public and private parties.

Freedom of thought, conscience, religion and belief

Section 20 | Article 18 ICCPR

This right encompasses the right of everyone to develop autonomous thoughts and conscience, to think and believe what they want and to have or adopt a religion, free from external influence, and to demonstrate the religion or belief through worship, ritual, practice and teaching.

The concepts of ‘religion’ and ‘belief’ have been interpreted relatively broadly so as to include mainstream and alternative religions and beliefs. There is no requirement in the right that the religion or belief have any ‘institutional characteristics’ or practices associated with traditional or mainstream religions.

The right to demonstrate a religion (whether individually or collectively) encompasses a broad range of rights including engaging in worship, observance, practice and teaching.

The right also includes the right of, and extends protections to, people who choose not to have, adopt or practise any religion or belief.

Freedom of expression

Section 21 | Article 19 ICCPR

This right protects the right of all persons to hold an opinion without interference and the right of all persons to seek, receive and express information and ideas (including verbal and non-verbal communication).

The right to hold an opinion is considered a fundamental component of an individual’s privacy, requiring absolute protection without external influence.

This right is central to the fulfilment of other rights such as cultural rights and freedom of thought, conscience and religion.

Peaceful assembly and freedom of association

Section 22 | Articles 21 & 22 ICCPR

The right to peaceful assembly upholds the rights of individuals to gather together in order to exchange, give or receive information, to express views or to conduct a protest or demonstration.

The right is expressly limited to peaceful assemblies that do not involve violence. It covers both the preparing for and conducting of the assembly by the organisers and the participation in the assembly.

Not every assembly of individuals is protected by this right – ‘assembly’ in this context means the intentional, temporary gathering of several persons for a specific purpose.

The freedom of association protects the rights of individuals to join together with others to formally pursue a common interest – for example, political groups, sporting groups and trade unions. It includes the freedom to choose between existing organisations or to form new ones.

Taking part in public life

Section 23 | Article 25 ICCPR

This right affirms the right of all persons to contribute to and exercise their voice in relation to the public life of the State. It ensures that all persons have the opportunity to contribute to the political process and public governance.

A key aspect of the right to take part in public life is the right to vote and to be elected to public office. This right is restricted to ‘eligible persons’ in recognition that there are commonly accepted exceptions to universal suffrage such as children, non-Queensland residents and certain prisoners.

The right to vote does not include as a corollary the right not to vote.

Property rights

Section 24 | Article 17 UDHR

This right protects the right of all persons to own property (alone or with others) and provides that they must not be arbitrarily deprived of their property. The right does not provide a right to compensation.

Privacy and reputation

Section 25 | Article 17 ICCPR

The right to privacy protects the individual from unlawful or arbitrary interferences and attacks upon their privacy, family, home, correspondence (written and verbal) and reputation.

The scope of the right to privacy is very broad. It protects privacy in the sense of personal information, data collection, and correspondence, and also extends to an individual’s private life more generally.

Only lawful and non-arbitrary intrusions may occur upon privacy, family, home, correspondence and reputation.

The protection against attack on reputation is limited to unlawful attacks – that is, it prohibits attacks on a person’s reputation that are unlawful and intentional, based on untrue allegations.

Protection of families and children

Section 26 | Articles 23(1) & 24(1) ICCPR

This right entitles families to protection by both the State and society. It also recognises that children have the same rights as adults, but with additional protections according to their best interests and the fact that they are children.

The right also includes the right to a name and to birth registration.

The broad term ‘families’ recognises that families take many forms and accommodates the various social and cultural groups in Queensland whose understanding of family may differ.

Cultural rights – generally

Section 27 | Article 27 ICCPR

Cultural rights are directed towards ensuring the survival and continued development of the cultural, religious and social identity of minorities.

It affirms the right of all persons to enjoy their culture, to practise or declare their religion and to use their language, either alone or with others who share their background.

It is concerned with protecting a person from being denied the right to enjoy their culture, religion or language.

Cultural rights – Aboriginal people and Torres Strait Islander peoples

Section 28 | Articles 8, 25, 29, & 31 UNDRIP

This right protects the rights of Aboriginal peoples and Torres Strait Islander peoples to culture.

It explicitly protects the right to live life as an Aboriginal person or Torres Strait Islander who is free to practise their culture. They must not be denied certain rights in relation to traditional knowledge, spiritual practices, language, kinship ties, relationship with land and resources, and protection of the environment.

Right to liberty and security of person

Section 29 | Article 9 ICCPR

This right entitles all persons to liberty of the person, including the right not to be arrested or detained except in accordance with the law.

The right to security means that all reasonable steps must be taken to ensure the physical safety of those who are in danger of physical harm. The right to security applies independently of the right to liberty and applies whether or not the individual is detained. It includes bodily and mental integrity, or freedom from injury to the body and mind.

The concept of detention includes not only detention in a prison but all forms of detention, including detention for the purposes of mental illness or medical treatment, as well as detention in a range of facilities such as mental health facilities, hospitals, disability services or other types of detention facilities.

Humane treatment when deprived of liberty

Section 30 | Articles 10(1) & 10(2)(a) ICCPR

This right recognises the particular vulnerability of persons in detention and intends to ensure that they are treated humanely. It generally complements the right to be free from torture and cruel, inhumane and degrading treatment or punishment.

The right to humane treatment when deprived of liberty applies not only to persons detained under the criminal law but also to persons detained elsewhere under the laws and authority of the State (for example, in an approved mental health facility).

The right means that individuals who are detained should not be subject to any hardship or constraint that is in addition to that resulting from the deprivation of their liberty (that is, a person who is detained should retain all their human rights subject only to the restrictions that are unavoidable in a closed environment).

It includes specific rights for persons who are detained without charge or who are on remand without conviction – requiring that they be segregated during detention from persons convicted of an offence (except where reasonably necessary) and that they be treated in a way that is appropriate for a person who has not been convicted. These rights follow naturally from the presumption of innocence.

Fair hearing

Section 31 | Article 14(1) ICCPR

This right affirms the right of all individuals to procedural fairness when coming before a court or tribunal. It applies to both criminal and civil proceedings, and guarantees that such matters must be heard and decided by a competent, impartial and independent court or tribunal.

The right also provides that all aspects of a trial should be public. However, these open justice principles have been limited in the sense that a court or tribunal may exclude the media or general public if it is in the public interest or in the interests of justice to do so.

What constitutes a ‘fair’ hearing will depend on the facts of the case and will require the weighing of a number of public interest factors including the rights of the accused and the victim (in criminal proceedings) or of all parties (in civil proceedings).

Rights in criminal proceedings

Section 32 | Article 14 ICCPR

This right explicitly protects the right to be presumed innocent until proven guilty.

It also provides a set of specific rights to be afforded to accused persons in criminal trials, and includes specific provisions applicable to children charged with criminal offences and preserving the right of appeal for convicted persons.

Children in the criminal process

Section 33 | Articles 10(2)(b) & 10(3) ICCPR

This right recognises that young persons that become involved in the criminal justice system deserve special protections by virtue of their age.

An accused child must not be detained with adults and must be brought to trial as quickly as possible. A convicted child must be treated in a way that is appropriate for their age.

Right not to be tried or punished more than once

Section 34 | Article 14(7) ICCPR

This right upholds the rule against double jeopardy – that is, that a person should not be taken to court or punished more than once for an offence of which they have already been convicted or acquitted. The right applies only to criminal offences (and not civil proceedings).

Retrospective criminal laws

Section 35 | Article 15 ICCPR

This right is aimed at protecting people from being unfairly and harshly penalised in situations where there has been a change in the criminal law since the time they committed the offence. In these situations, a person is not liable to punishment that is more severe than that which existed at the time of the offence.

Similarly, if the penalty for the offence is reduced at law after the offence is committed, but before the person is sentenced for the offence, the person is entitled to the reduced penalty.

It also protects people from being found guilty of an offence for an action which was not an offence at the time it was committed. The right does not extend to prevent retrospective changes that do not form part of the penalty or punishment of an offender, or to changes in procedural law (for example, shifts in trial practice or changes to the rules of evidence).

The criminal law must be sufficiently accessible and precise to enable a person to know in advance whether his or her conduct is criminal.

Economic, Social and Cultural Rights

Right to education

Section 36 | Article 13 ICESCR

The right to education has two limbs.

The first provides the right of every child to primary and secondary education appropriate to the child's needs. The second limb provides the right to have access, based on a person's abilities, to further vocational education and training that is equally accessible to all.

The right to education encompasses key elements of availability, accessibility, acceptability and adequacy.

Human Rights

Respect · protect · promote

Right to health services

Section 37 | Article 12 ICESCR

The right to health services does not mean the right to be healthy. Rather it refers to the right to access a variety of goods, facilities and services necessary for a person to be healthy. This recognises that a person's capacity for full health can be limited by biological, environmental and socio-economic factors, and by an individual's personal choices.

The right to health services encompasses key elements of availability, accessibility, acceptability and adequacy.

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