

FACT SHEET:

Right to recognition and equality before the law

Section 15 of the *Human Rights Act 2019*

Section 15 of the *Human Rights Act 2019* says that:

1. Every person has the right to recognition as a person before the law.
2. Every person has the right to enjoy the person's human rights without discrimination.
3. Every person is equal before the law and is entitled to the equal protection of the law without discrimination.
4. Every person has the right to equal and effective protection against discrimination.
5. Measures taken for the purpose of assisting or advancing persons or groups of persons disadvantaged because of discrimination do not constitute discrimination.

This right is based on Articles 2, 16 and 26 of the International Covenant on Civil and Political Rights. Australia became a party to this treaty in 1980.

Note: Under the Act, all rights may be subject to reasonable limits (section 13). The nature of the right is relevant when considering what is reasonable.

Scope of the right

The right to recognition as a person before the law is absolute, and under international law, cannot be limited under any circumstances.

Essentially, it ensures legal rights - for example, the equal right to enter into contracts or access government services. In some countries, certain groups (such as women or particular ethnic groups) are denied this.

The right to enjoy other human rights free from discrimination provides for all people to have the same rights and to deserve the same level of respect. This means that laws, policies and programs should not be discriminatory. It also means that public entities should not apply or enforce laws, policies and programs in a discriminatory way.

Discrimination is defined by the *Anti-Discrimination Act 1991 (Qld)*, and is unlawful when based on:

- age;
- breastfeeding;
- family responsibilities;
- gender identity;
- impairment;
- lawful sexual activity;
- parental status;
- political belief or activity;
- pregnancy;
- race;
- relationship status;
- religious belief or activity;
- sex;
- sexuality;
- trade union activity;
- association with, or relation to, a person identified on the basis of any of the above attributes.

Subsection 3 refers to the enforcement and administration of the law. It provides the right of legal personality, meaning every person is equal before the law and entitled to equal protection of the law. It is closely linked to the principle of non-discrimination.

Subsection 4 reflects the essence of human rights: that every person holds the same human rights simply because they are human. People do not need to have a particular characteristic or belong to a special group to hold human rights.

Special measures

Section 15(5) of the Act states that measures taken to assist or advance people disadvantaged because of discrimination, cannot themselves be considered discrimination. This allows for what are sometimes called 'special measures'. Some examples of special measures could include, for example:

- programs addressing the disadvantage experienced by many Aboriginal and Torres Strait Islander Queenslanders;
- employment programs for people with disabilities, a group which has been traditionally under-employed.

Examples

There are no case examples involving this right in Queensland. The following examples are from Victoria, where the same right is included as Section 8 in the Charter of Human Rights and Responsibilities Act 2006.

INTERSECTION OF THE RIGHT TO EQUALITY AND ANTI-DISCRIMINATION LAW (Lifestyle Communities Ltd (No 3) (Anti-Discrimination) [2009] VCAT 1869 (22 September 2009))

Lifestyle Communities Ltd runs aged care facilities. It sought an exemption from the Equal Opportunity Act 1995 (Vic) to enable it to provide places only to people aged over 50. The Victorian Civil and Administrative Tribunal (VCAT) ruled that the exemption was not justified as a reasonable limitation on the right to equality before the law. VCAT's ruling found there was no reason to exclude all applicants under 50, and that the company's proposal was based on stereotypes.

MEASURES TO ADVANCE PEOPLE EXPERIENCING DISCRIMINATION NOT A BREACH OF RIGHT TO EQUALITY FOR OTHERS (Parks Victoria (Anti-Discrimination Exemption) [2011] VCAT 2238 (28 November 2011))

In another case, Parks Victoria wanted to advertise for and employ Indigenous people to care for Wurundjeri country. VCAT found that the purpose of the activity was to provide employment opportunities to Indigenous people, to increase the number of Indigenous people employed by Parks Victoria, to provide opportunities for connection and care for the Wurundjeri country by its traditional owners, and also for the maintenance of the culture associated with the country. The Tribunal was satisfied that the measure was proportionate because at the time the application was made only 7.6 per cent of Parks Victoria's workforce was Indigenous. Limiting the employment opportunity to Aboriginal people was found to be a reasonable limitation on the right to equality of other groups.

Examples of when this right could be relevant in practice

The actions of public entities can both promote and limit rights.

Section 15 could be relevant to activities that:

- provide for the delivery of an entitlement or service to some groups but not others;
- assist or recognise the interests of Aboriginal and Torres Strait Islander persons or members of other ethnic groups;
- have a disproportionate impact on people who have one or more protected attributes under the Anti-Discrimination Act 1991 (for example, sex, race, age or disability);
- deal with any of the human rights set out in the Act in a discriminatory way (for example, limits to freedom of expression if people have engaged in trade union activity);
- set age brackets that are expressed as protective measures, graduated entitlements (for example, driver licensing), or statements of legal capacity (for example, voting);
- establish eligibility requirements for access to services or support (such as legal aid);
- contain measures which aim to assist people who have been socially, culturally or economically disadvantaged;
- take steps to lessen or remove conditions that have disadvantaged specific groups within society (sometimes called positive discrimination);
- regulate access to building, roads, transport, schools, housing and hospitals;
- affect information and communications services including electronic services;
- regulate access to education, healthcare, the justice system, courts, or voting;
- provide for mobility aids, assistive devices and technologies designed for people with disabilities;
- set standards or guidelines for access to facilities and services to ensure access for people with disabilities.