



**FACT SHEET:**

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# Right to privacy and reputation

## Section 25 of the *Human Rights Act 2019*

Section 25 of the *Human Rights Act 2019* says that:

A person has the right –

- (a) not to have the person's privacy, family, home or correspondence unlawfully or arbitrarily interfered with; and
- (b) not to have the person's reputation unlawfully attacked.

The Human Rights Act protects rights to privacy and reputation.

This right is based on Article 17 of the International Covenant on Civil and Political Rights. Australia ratified this treaty in 1980.

### Scope of the right

The scope of the right to privacy is very broad. It protects personal information and data collection, for example. It also extends to a person's private life more generally, so protects the individual against interference with their physical and mental integrity, including appearance, clothing and gender; sexuality and home.

This right protects the privacy of people in Queensland from 'unlawful' or 'arbitrary' interference. Arbitrary interference includes when something is lawful, but also unreasonable, unnecessary or disproportionate.

The protection against an attack on someone's reputation is limited to unlawful attacks. This means attacks that are intentional and based on untrue allegations.

While the right to privacy is very broad, it must be balanced against other rights and competing interests. Like all rights in the Act, the right to privacy and reputation can be limited where it is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

### When this right could be relevant

Section 25 could be relevant to laws, policies, acts or decisions that:

- involve surveillance of people for any purpose (such as closed-circuit television, CCTV);
- involve collection, storage, use or publication of personal information and how that information is accessed, used or disclosed;
- regulate information held on a public register;
- restrict access by people to their own personal information;

- provide for sharing of personal information across or within agencies;
- involve powers of entry, search, seizure, confiscation or forfeiture;
- allow personal information to be published - for example, results of surveillance, medical tests, electoral roll;
- provide for a compulsory physical intervention on a person such as a DNA, blood, breath or urine test; forced medical examination; or corporal punishment;
- provide for treatment or testing of a patient without his or her consent;
- involve a professional duty of confidentiality;
- change or create any confidentiality provisions or secrecy provisions relating to personal information;
- provide for mandatory reporting of information (including disclosure of convictions, injury or illness), or by professionals reporting abuse, for example, doctors about patients or teachers about students;
- regulate a person's name, private sexual behaviour, sexual orientation or gender identification;
- involve the interception, censorship, monitoring or other regulation of mail or other communications;
- relate to handling personal information for research or statistics;
- recognise or fail to give legal recognition to close or enduring personal relationships;
- provide for the removal of children from a family unit or a family intervention order;
- regulate tenancy or eviction;
- regulate a state-run care facility or mental health service;
- regulate standards, consultation and procedures operating in respect of public housing;
- authorise compulsory acquisition of a home or regulate planning or environmental matters that may affect a person's home.

## Example

There are no examples from Queensland yet, but this right has been tested interstate and internationally.

### **COURT-ORDERED URINE TESTING NOT A BREACH OF RIGHT TO PRIVACY** **(*R v Wayne Michael Connors* [2012] ACTSC 80 (28 May 2012))**

This case in the ACT questioned whether bail conditions were a breach of a person's right to privacy. Mr Wayne Connors was awaiting trial in the ACT for aggravated robbery. He was released on bail with the condition that he submit to urine testing to check for illicit drug use. Mr Connors argued that the requirement was a breach of his right to privacy under the ACT's Human Rights Act 2004. The Chief Justice of the ACT Supreme Court found it was not a breach. His ruling recognised that bail conditions like this did limit people's right to privacy, and that there was a danger of them being enforced in a way that was unfairly oppressive. However, in this particular case he ruled the limitation was reasonable, lawful, and 'demonstrably justifiable'.

This factsheet is not intended to be a substitute for legal advice.