



FACT SHEET:

Right to protection of families and children

Section 26 of the *Human Rights Act 2019*

Section 26 of the *Human Rights Act 2019* says that:

1. Families are the fundamental group unit of society and are entitled to be protected by society and the State.
2. Every child has the right, without discrimination, to the protection that is needed by the child, and is in the child's best interests, because of being a child.
3. Every person born in Queensland has the right to a name and to be registered, as having been born, under a law of the State as soon as practicable after being born.

The Human Rights Act includes rights to the protection of both families and children. Families are recognised as the fundamental unit of society and are entitled to protection. Every child has the right, without discrimination, to the protection that is in their best interests as a child. Every person born in Queensland has the right to a name and to registration of birth.

These rights are based on Articles 23(1) and 24(1)-(2) of the International Covenant on Civil and Political Rights. Australia ratified this treaty in 1980.

Scope of the right

These rights extend to more than non-interference; they are a guarantee of institutional protection of the family and positive measures for the protection of children by society and the state.

Like all rights in the Act, the rights to the protection of families and children can be limited where it is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

Protection of families

This right is also supported by the right to privacy in section 25 of the Act. This prohibits a public entity from unlawfully or arbitrarily interfering with a person's family.

If the term 'family' is interpreted consistently with international law it should be interpreted broadly, extending to different cultural understandings of family and small family units with or without children. The term 'family' has been interpreted broadly in Victoria, where the same protection exists in the Charter of Rights and Responsibilities Act 2006.

Laws or policies that allow for the removal of a child from a family unit or the incarceration of a parent need to be considered in light of sections 25 and 26 of the Act.

Protection of children

The Act recognises that children are entitled to special protection. It recognises that children are more vulnerable because of their age. 'Child' is not specifically defined in the Act, but is broadly understood to be someone under 18 years of age.

Children are entitled to all of the rights in the *Human Rights Act 2019* (except in certain cases, for example the right to vote under section 23(2a)).

The right to protection of families and children means that the government should adopt special measures to protect children. It also means the best interests of the child should be taken into account in all actions affecting a child. What will be in each child's 'best interests' will depend on their personal circumstances.

Right to a name and registration of birth

This right obligates the State to ensure registration services are available. It is intended to operate alongside the *Births, Deaths and Marriages Registration Act 2003*. It doesn't require the state to take active steps to register a birth or name a child if the parent does not lodge a registration.

When this right could be relevant

Section 26 could be relevant to laws, policies, acts or decisions that:

- affect the law regarding close or enduring personal relationships or fail to give legal recognition to these relationships;
- affect any aspect of care of children, including children cared for by parents, guardians, informal carers, children in out-of-home care, children with a disability, parents or carers with a disability;
- relate to treatment of children in the criminal process;
- relate to family violence;
- affect adoption or surrogacy;
- provide for the separation and removal of children from parents or guardians or other adults responsible for their care;
- regulate family contact for those in the care of public authorities or enables intervention orders to be granted between family members;
- affect the welfare of children within the family or state care;
- regulate family contact of prisoners or others in involuntary state care;
- create a regime for giving children access to information about biological parents when the child has been adopted or born using assisted reproductive technology.

Examples

YOUNG GIRL PROTECTED FROM GIVING EVIDENCE AGAINST HER ABUSERS

A young Victorian girl had been abused. Her advocates used the Victorian Charter of Human Rights and Responsibilities Act, and in particular the right to the protection of family and children, to argue that she shouldn't be required to give evidence against the alleged perpetrators. They said that this right should be given proper consideration when determining whether a young person should be required to provide testimony. As a result the girl was not required to give evidence.

Source: Fitzroy Legal Service, cited by Human Rights Law Centre.

MOTHER FREE TO CARE FOR HER DAUGHTER

A Victorian woman with cerebral palsy was at risk of having her child taken from her by Child Protection because of concerns about her ability to care for her daughter. The woman relied on the right to protection of families and children as well as the right to equality before the law. The woman was then given the opportunity to demonstrate her ability to care for her daughter and her daughter remained in her care.

Source: Leadership Plus: Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006.

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