



FACT SHEET:

Cultural rights

Section 27 of the *Human Rights Act 2019*

Section 27 of the *Human Rights Act 2019* says that:

All persons with a particular cultural, religious, racial or linguistic background must not be denied the right, in community with other persons of that background, to enjoy their culture, to declare and practise their religion and to use their language.

The Human Rights Act states that all people with particular cultural, religion, racial and linguistic backgrounds have a right to enjoy their culture, declare and practice their religion, and use their language in community with other people of that background.

This section is based on Article 27 of the International Covenant on Civil and Political Rights. Australia ratified this treaty in 1980.

The Human Rights Act also protects the distinct cultural rights of Aboriginal and Torres Strait Islander peoples at section 28 of the Act.

These rights are complemented by freedom of religion and expression, which are protected in sections 20 and 21 of the Act.

Scope of the right

This section promotes the right to practise and maintain shared traditions and activities. It is also aimed at the survival and continued development of cultural heritage.

It allows for people of particular backgrounds to:

- enjoy their own culture;
- profess and practise their own religion;
- use their own language (in private and in public); and
- participate effectively in cultural life.

The cultural rights of all people with a particular cultural, religious, racial or linguistic background are protected. Such people may or may not be a member of a minority group, in the sense of being in a group with numerically fewer members or members who are in a subordinate position compared with those in the rest of the community.

The protection of being able to enjoy rights to culture ‘in community with other persons of that background’ is an important part of section 27. This is because enjoying one’s culture is intertwined with the capacity to do so in connection with others from the same cultural background.

Like all rights in the Act, cultural rights can be limited, but only 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 27 could be relevant to laws, policies, acts or decisions that:

- limit the observance of any religious practices;
- address discrimination based on attributes including race or religion;
- restrict people's ability to declare or make public that they belong to a particular racial, religious or cultural group;
- limit or prohibit communication in languages other than English, including through the provision of information;
- prevent people using their language in community with others;
- limit the ability of members of an ethnic group to take part in a cultural practice, or otherwise interferes with their distinct cultural practices;
- restrict the provision of services or trade on religious holidays;
- regulate access to public spaces including libraries, museums, sports facilities;
- regulate cultural or religious practices around the provision of secular public education;
- impose or coerce people to do something that interferes with their distinct cultural practices, for example, wear clothes that differ from their traditional cultural attire;
- regulate traditional medical practices; or
- license or provide a restriction on the preparation and serving of food.

Examples

There are no Queensland examples yet, but some from Victoria are below.

CULTURAL RIGHTS PROTECTED BY REVOCATION OF GUARDIANSHIP ORDER

A woman had been moved by her guardian into a residential facility. The facility had no workers who spoke her language, understood her cultural and religious beliefs or would prepare food in a way which was required by her religion. The woman and her family wished for her to stay primarily with them in her family home. The woman's advocates argued that the decision was in breach of the Victorian Charter of Human Rights and Responsibilities Act, namely protection of families and children, cultural rights and the right to freedom of religion. The resulting decision of the tribunal was that the guardianship be revoked.

Source: Public Interest Law Clearing House: Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006 (Case Study 77).

RECOGNITION OF CULTURAL RIGHTS LED TO SUPPORT INSTEAD OF EVICTION

An Aboriginal woman lived in housing owned and leased by a non-Aboriginal community organisation. A condition of her tenancy was that she was required to engage with community services. After her nephew died she went back to her country for a couple of weeks of 'sorry business'. When she returned she started receiving warnings to engage with services, however she wasn't able to do so because she was overwhelmed with family responsibilities, trauma and grief.

A possession order was made and the police came to her door with a warrant. Her advocates made an application for an urgent review and stay. They argued that the community organisation had failed to engage with the woman's cultural rights and the rights of her grandchild and family members in their eviction process. These rights are protected in the Victorian Charter of Rights and Responsibilities. As a result the community organisation withdrew their possession application and engaged an Aboriginal support service.