



**FACT SHEET:**

# Right to education

## Section 36 of the *Human Rights Act 2019*

Section 36 of the *Human Rights Act 2019* says that:

1. Every child has the right to have access to primary and secondary education appropriate to the child's needs.
2. Every person has the right to have access, based on the person's abilities, to further vocational education and training that is equally accessible to all.

The Human Rights Act protects the right of every child to access primary and secondary education appropriate to their needs. It also says that every person has the right to have access, based on their abilities, to equally accessible further vocational education and training.

This right is based on Article 13 of the International Covenant on Economic, Social and Cultural Rights. However, the rights protected in section 36 are narrower than the rights protected in Article 13. Australia became ratified this treaty in 1975.

## Scope of the right

Section 36 is intended to be consistent with *Education (General Provisions) Act 2006* and to provide rights in relation to public education service delivery. Private and non-government schools are not required to comply with the Act.

Like all rights in the Act, the right to education 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.

Internationally this right has been interpreted as requiring that education be accessible to all people without discrimination. Section 15 of the Act states that all rights included in the Act are intended to be enjoyed by all people 'without discrimination'.

The wording 'appropriate to the child's needs' concerned advocates in the debate over the Bill. They argued that this phrase could be used to justify different standards for children with a disability. The Department of Justice and Attorney-General responded to these concerns. They stated that, in addition to s15 of the Act specifying that all rights are intended to be enjoyed by all people without discrimination:

*"Clause 12 of the Bill clarifies that the human rights included in the Bill are in addition to other rights and freedoms included in other laws. This means that provisions in the Anti-Discrimination Act 1991 will continue to operate to protect vulnerable Queenslanders from unfair discrimination."*

Subsection 2 relates to 'further vocational education and training'. The Act does not specify what type of tertiary education or training this may extend to. The phrase 'based on the person's abilities' implies that this right does not guarantee access to education where a person does not already satisfy eligibility requirements – for example, prior study or a certain level of academic achievement.

## When this right could be relevant

This right could be relevant to laws, policies, acts or decisions that:

- limit access to schools by children or young people with disabilities, such as failure to provide wheelchair access;
- introduce fees for education that, while applying to everyone, discriminate against people on low incomes;
- favour sharp disparities in spending policies resulting in differing qualities of education for persons residing in different geographic locations, including for example school closures;
- provide inferior educative materials to children of diverse cultural backgrounds;
- fail to tailor education and its mode of delivery for students such as migrants, refugees, working students, students with children, students in detention, homeless students and students with disabilities.

## Examples

No examples exist yet in Queensland.

### ***Head of Department, Department of Education, Free State Province v Welkom High School and Another Case (CCT 103/12) [2013] ZACC 25 (10 July 2013)***

In this case, the Constitutional Court of South Africa ruled that the exclusion of pregnant students from schools violated their right to education and equality.

### ***Ali v United Kingdom – 40385/06 [2011] ECHR 17 (11 January 2011)***

The European Court of Human Rights found that excluding a student from school during the investigation of a serious criminal offence was a reasonable limitation to their right to education.

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