



FACT SHEET:

Freedom of movement

Section 19 of the *Human Rights Act 2019*

Section 19 of the *Human Rights Act 2019* says that:

Every person lawfully within Queensland has the right to move freely within Queensland and to enter and leave it, and has the freedom to choose where to live.

The Human Rights Act protects the right of every person within Queensland to move freely within Queensland, enter or leave Queensland and choose where they will live.

This section is based on Article 12 of the International Covenant on Civil and Political Rights. Australia ratified this treaty in 1980.

Scope of the right

This right means that public entities cannot act in a way that would unduly restrict freedom of movement. It does not force governments to do things to promote the freedom of movement. It does not, for example, mean public transport should be free.

The right to freedom of movement only applies to people who are 'lawfully within Queensland.' People who have overstayed their visitor's visa are not in Queensland lawfully. Neither are those who have entered Queensland despite legal restrictions in another state (for example, a court order not to leave NSW).

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

Right to move freely within Queensland

The right to move freely within Queensland means that a person cannot be arbitrarily forced to remain in, or move to or from, a particular place. The right includes freedom from physical and procedural barriers, like requiring permission before entering a public park or participating in a public demonstration in a public place. The right may be engaged where a public entity actively curtails a person's freedom of movement. This could be done through police 'move on' powers, for example. It could also occur through orders excluding adolescents from a licensed premises, orders made under the *Mental Health Act 2016 (Qld)* or orders that subject a person to strict surveillance or reporting obligations before or when moving.

Right to enter and leave Queensland

The right to be free to enter and leave the state is also protected by section 92 of the Australian Constitution. This guarantees freedom of movement between states, of both goods and people. Restrictions on the right to enter and leave Queensland must be proportionate to a legitimate and sufficiently important government aim under both the Act and the Constitution.

Right to choose where to live

The right to choose where to live may be engaged by laws relating to trespass or protected areas such as national parks. Orders under the *Mental Health Act 2016 (Qld)* or court orders to direct where people on bail or under supervision may live could also engage this right.

When can freedom of movement be limited?

Examples of reasonable restrictions on freedom of movement can be found in case law from Victoria and overseas. They include:

- lawful detention;
- guardianship orders;
- involuntary treatment orders;
- Parole Board orders;
- family violence intervention orders;
- residence conditions on people suspected of terrorist activities; and
- restrictions on leaving the country where judicial proceedings are pending.

When this right could be relevant

Section 19 could be relevant to laws, policies, acts or decisions that:

- regulate the ability of people to be in public spaces;
- involve the laws of trespass;
- restrict the movement of people as part of the criminal process, for example, the imposition of bail conditions;
- allow for an intervention order against a person, or enables their detention;
- limit the ability of a person to choose where to live in Queensland;
- propose surveillance of an individual;
- empower public authorities to restrict people's movement based on national security considerations or in emergencies;
- compel someone to provide information (for example, a subpoena);
- regulate access to land based on quarantine considerations, or on eligibility requirements permit people to be excluded from public land; or
- affect the conduct of public protests.

Examples

There are no case examples from Queensland yet which involve this right. In Victoria, the right to freedom of movement has typically been raised in cases about court orders restricting movement.

SUPERVISION ORDER AFTER PRISON RELEASE NOT UNREASONABLE LIMIT ON RIGHT TO FREEDOM OF MOVEMENT

Secretary, Department of Justice v AB [2009] VCC 1132 (28 August 2009)

A supervision order was placed on a convicted person who had already served his term of imprisonment. This was found to be a reasonable limitation on his freedom of movement because of the risk of him committing another offence.

FREEDOM OF MOVEMENT CAN BE LIMITED IN ORDER TO PROTECT THE RIGHTS OF OTHERS

AC (Guardianship) [2009] VCAT 1186 (8 July 2009)

A young man with a mild intellectual disability was subject to an order which only allowed him to leave his psychiatric facility if accompanied by staff members. It was found that the only less restrictive option – voluntary treatment – was not appropriate given his history of violent outbursts. The order was upheld.

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

