



FACT SHEET:

Right to freedom of thought, conscience, religion and belief

Section 20 of the *Human Rights Act 2019*

Section 20 of the *Human Rights Act 2019* says that:

1. Every person has the right to freedom of thought, conscience, religion and belief, including-

(a) the freedom to have or to adopt a religion or belief of the person's choice; and

(b) the freedom to demonstrate the person's religion or belief in worship, observance, practice and teaching, either individually or as part of a community, in public or in private.

2. A person must not be coerced or restrained in a way that limits the person's freedom to have or adopt a religion or belief.

The Human Rights Act protects the rights of every person to think and believe what they want, and to have or adopt a religion without being influenced to do so. This right includes being able to publically and privately practice their religion as an individual or in a group.

This right is based on Article 18 of the International Covenant on Civil and Political Rights. Australia ratified to this treaty in 1980.

Scope of the right

This right means everybody can think and believe what they want. They can develop their own conscience. They can have or adopt a religion, free from external influence.

This right protects both religious and non-religious belief, so it includes freedom of religion and freedom from religion. It requires the state not to interfere with an individual's spiritual or moral existence.

This right has two parts: a freedom to think and believe whatever you choose, and a freedom to demonstrate your thoughts or beliefs publicly.

This right protects things like:

- organised religious rituals and ceremonies;
- building places of worship or religious teaching;
- publishing and dissemination of religious tracts and texts;
- displaying symbols or wearing particular kinds of clothing;

- observing holidays and days of rest; and
- observing a particular diet or avoiding certain food products.

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

However, under international law, the right to have or adopt a religion is considered to be absolute, while the right to demonstrate that religion can be subject to reasonable limits. On that basis, it is very unlikely that the right to have or adopt a religion would be limited in Queensland.

When this right could be relevant

Section 20 could be relevant to laws, policies, acts or decisions that:

- promote, restrict or interfere with a particular religion or set of beliefs;
- require a person to disclose his or her religion or belief;
- affect an individual's ability to adhere to his or her religion or belief;
- disadvantage a person because of their opinions, thoughts or beliefs;
- attempt to regulate conduct that will affect some aspect of a person's worship, observance, practice or teaching of his or her religion or belief;
- criminalise behaviour that is required or encouraged by a person's religion or beliefs;
- restrict the ability of people under state control (for example, prisoners) to comply with the requirements of their religion;
- restrict the ability of people in the care or control of a public entity to comply with the requirements of their religion;
- compel certain acts that may be inconsistent with a religion or set of beliefs;
- set dress codes (possibly for safety or hygiene reasons) that do not accommodate religious dress;
- impose requirements as a condition of receiving a benefit that prevents a person from adhering to his or her religion or belief;
- require students to learn about particular religions or beliefs, or to be taught materials that might have the effect of undermining their religious beliefs; or
- regulate planning or land use that may make it difficult to use or establish places of religious worship.

Examples

FREEDOM OF RELIGION CONSIDERED IN APPLICATION TO BUILD NEW MOSQUE

(Rutherford & Ors v Hume CC [2014] VCAT 786)

This case involved an application to establish a Shi-ite Islamic mosque in a Melbourne suburb, on land adjacent to a church whose congregation was mostly comprised of people of Assyrian background, many of whom had fled Iraq because of extremist Islamic violence. Hume City Council approved the application to build the mosque. Ten local residents objected on the grounds that the mosque would have a significant detrimental impact on the church community and would diminish the safety of the area. In their review of the Council decision to grant the application, the Victorian Civil and Administrative Tribunal considered the right to freedom of thought, conscience and belief protected in the Charter of Human Rights and Responsibilities.

The Tribunal upheld the Council's permit approval, stating:

"Whilst the followers of one religion may have fled war or persecution overseas, at the hands of extremists from another religion, it would be a poor outcome for planning in Victoria if town planning decisions were made to achieve an outcome that effectively replicates in Australia those same divisions, fear and distrust. Town planning decisions should not set out to separate people, or the use of land, based on ethnicity or religion.

Town planning decisions should reflect Australia's rich and proud history of welcoming all religions, and provide a society where people of different faiths can live, work and worship side-by-side, without fear of threats, intimidation or violence.

There are no adverse amenity considerations or other planning considerations that justify a refusal of the permit."

WOMEN-ONLY SWIMMING SESSIONS HELP UPHOLD FREEDOM OF RELIGION Hobsons Bay City Council & Anor (Anti-Discrimination Exemption) [2009] VCAT 1198 (17 July 2009)

In this case, the Victorian Civil and Administrative Tribunal considered whether to grant an exemption to the *Equal Opportunity Act 1995* to allow women-only swimming sessions. The Centre had undertaken extensive community consultations that indicated that many women in the area were not participating in sport and recreation because of cultural constraints. The Tribunal noted that the rights of women to practice their culture and religion were relevant to this decision. It found that 'it is the exercise of those rights to practice aspects of their culture and religion which makes them unable to swim at the Centre while men are present and so means that use of the pool area is currently barred to them'. The Tribunal granted the exemption.

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