



**FACT SHEET:**

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# Right to freedom of expression

## Section 21 of the *Human Rights Act 2019*

Section 21 of the *Human Rights Act 2019* says that:

1. Every person has the right to hold an opinion without interference.
2. Every person has the right to freedom of expression which includes the freedom to seek, receive and impart information and ideas of all kinds, whether within or outside Queensland and whether-
  - (a) orally; or
  - (b) in writing; or
  - (c) in print; or
  - (d) by way of art; or
  - (e) in another medium chosen by the person.

The Human Rights Act protects the right to freedom of expression. This includes the right to hold and express an opinion and to seek out and receive the expression of others' opinions. Ideas and opinions can be expressed orally, in writing, in print, by way of art or in another way chosen by the person.

This right is based on Article 19 of the International Covenant on Civil and Political Rights. Australia ratified this treaty in 1980.

This right is connected to and complementary to cultural rights (sections 27 and 28) and freedom of thought, conscience and religion (section 20).

### Scope of the right

The right to freedom of expression protects the right of people to hold and express an opinion. This applies even if those opinions are unpopular, or disturbing. It covers opinions expressed through speech, art, writing, broadcasting, online, and more. It also allows people to seek and receive other people's opinion, so you have rights both as a speaker and as a member of an audience.

Like all rights in the Act, the right to freedom of expression 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. Hate speech and pornography may qualify as expression. Even expression which is unpleasant can still be expression. However, this form of expression can be lawfully limited if it is justifiable in accordance with section 13.

## Right to hold an opinion

Section 21 of the Act says that every person has a right to hold an opinion without interference. The UN Human Rights Committee has clarified that this means that no person should be subject to discrimination or victimisation because of any actual or perceived opinions that they hold.

In addition, no one should be coerced into holding or abandoning an opinion.

Under international law, the right to hold an opinion is an absolute right. This means it cannot be limited in any circumstance.

## Right to freedom of expression

This is the freedom to seek, receive and impart information and ideas of all kinds, whether within or outside Queensland.

The right to freedom of expression protects almost all types of expression, as long as it conveys or attempts to convey a meaning. This is judged by its impact on reasonable members of the public who are exposed to it, without knowing the purpose of the person who expressed it.

However, not all forms of expression are protected. Expressions which involve violence, for example, or criminal damage to someone else's property, are not protected by this right, regardless of whether they convey meaning or not. While the concept of freedom of expression is very broad, the way people can exercise it can be limited.

Commercial communication might qualify as expression, although the right to freedom of expression is given to human beings and not corporations. Commercial expression has been found to be less important than social or political expression. Limitations on it have therefore been more easily justified.

## The right to seek and receive information

The right to freedom of expression also incorporates a right to freedom of information. In particular, it includes a right to access government-held information.

## When this right could be relevant

Section 21 could be relevant to laws, policies, acts or decisions that:

- regulate the manner, content and format of any public expression (for example, the contents of a speech, publication, broadcast, display or promotion). Examples could include requiring prior approval for public protest or restricting where protest activity can take place;
- censor materials or require that they be reviewed or approved before being published;
- compel someone to provide information (for example, a subpoena);
- impose a dress code;
- regulate or restrict an individual's access to information (including access to material on the internet); or
- attach criminal or civil liability to publications of opinions or information.

## Examples

No examples yet exist in Queensland, but this right has been tested in Victoria and in the ACT.

### **EXPRESSION THAT DAMAGES THIRD PARTY PROPERTY NOT PROTECTED** **(*Magee v Delaney [2012] VSC 407*)**

In this case, Mr Magee had painted over an advertisement in a bus shelter. He intended this to be a protest against the global advertising industry. He was charged and convicted of property damage. Mr Magee appealed this decision. He asked the Supreme Court to consider how the criminal charges intersected with his right to freedom of expression under the Victorian Human Rights Charter. The Supreme Court found that the painting over of the advertisement was an expression, as it was capable of conveying a meaning. However it also found that damage to a third party's property (or a threat of such damage) is not protected. It found the right to freedom of expression is subject to lawful restrictions reasonably necessary to respect the property rights of other persons (irrespective of whether those persons are human beings, companies, government bodies or other types of legal entities). The Court also found that the criminal offence of intentionally causing property damage was a lawful restriction on the right to freedom of expression, for the protection of public order.

### **PROTESTING IN PUBLIC SPACES** **(*Victoria Police v Anderson & Ors (Magistrates Court, 23 July 2012)*)**

In this case, people had gathered outside Max Brenner's Chocolate Bar in a Melbourne shopping complex, to protest the political and social interests of the store. They were charged with trespassing after QV management and Victoria Police asked them to leave and they refused. The Magistrates' Court dismissed the trespass charges. It found that the protestors had gone to the complex to hold a political demonstration, which they had a right to do. The Court said that to find the protestors guilty of trespass would not be compatible with their right to freedom of expression.

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