



The Charter of Human Rights and Responsibilities

> Section 19 – Right to protection of cultural rights

Scope of the right

The right to culture provides for people to practise and maintain shared traditions and activities. It allows for those belonging to minority groups to enjoy their own culture, to profess and practise their own religion and to use their own language (in private and in public), as well as to participate effectively in cultural life.

The second part of section 19 focuses on the rights of Aboriginal persons regarding their cultural institutions, ancestral lands, natural resources and traditional knowledge.

This right puts an onus on public authorities to adopt measures for the protection and promotion of cultural diversity, enabling people from diverse communities to engage freely and without discrimination in their own cultural practices and take appropriate measures or develop programs to support minorities or other communities, including migrant communities, in their efforts to preserve their culture.

Case examples

- A local council considered cultural rights when making a decision about the use of community facilities for religious worship, and decided to extend the hours of availability to accommodate a range of different faith groups
- The cultural rights of Aboriginal Victorians were taken into account in the development of the *Traditional Owner Settlement Act 2010* and agreement-making between the state and traditional owner groups
- Cultural rights were a key theme in the Wulgunggo Ngalu Learning Place, a residential diversion program for adult Koori males. The program was established to help address the over-representation of Aboriginal people in the state's criminal justice system. The focus on cultural rights recognised the importance of residents connecting or reconnecting with their culture.

Some examples of where cultural rights have been raised in international cases include:

- a Sikh man being asked to bare his head for an ID photo (*Singh v France*, UN Doc CCPR/C/D/102/18767/2009)
- a man from a Russian-speaking minority in Latvia was forced to spell his name a certain way on official documents (*Raihman v Latvia*, UN Doc CCPR/C/100/D/1621/2007)
- a Peruvian alpaca farmer whose traditional way of life was threatened by government waterway diversions (*Poma v Peru*, CCPR/C/95/D/1457/2006)
- where traditional reindeer husbandry in Finland was threatened by logging permission (*Länsman v Finland*, CCPR/C/83/D/1023/2001)
- when a Canadian of indigenous background was denied the right to live on a reservation (*Lovelace v Canada*, CCPR/C/13/D/24/1977).

Examples of when this right could be relevant in practice

The actions of public authorities can both promote and limit rights.

Section 19 could be engaged by activities that:

- limit the observance of any religious practices
- address discrimination based on attributes including race or religion
- restrict the capacity for persons to declare or make public their affiliation 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 Aboriginal persons or members of an ethnic group to take part in a cultural practice, or otherwise interferes with their distinct cultural practices
- regulate the conduct of commercial activities on the traditional lands of Aboriginal persons
- 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
- may interfere with the relationship between Aboriginal people and land, water and resources
- impose or coerce individuals 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
- license or provide a restriction on the preparation and serving of food.

Section 19 of the *Charter of Human Rights and Responsibilities Act 2006* says that:

- (1) 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 his or her culture, to declare and practise his or her religion and to use his or her language
- (2) Aboriginal persons hold distinct cultural rights and must not be denied the right, with other members of their community –
 - (a) to enjoy their identity and culture; and
 - (b) to maintain and use their language; and
 - (c) to maintain their kinship ties; and
 - (d) to maintain their distinctive spiritual, material and economic relationship with the land and waters and other resources with which they have a connection under traditional laws and customs.

This section is based on Article 27 of the International Covenant on Civil and Political Rights, a treaty to which Australia became a party in 1980. However, unlike Article 27, section 19 is not limited to minority groups. Section 19 also specifically highlights Indigenous cultural rights, which have been recognised as distinct in more recent human rights instruments and cases.

Under the Charter, all rights may be subject to reasonable limits (section 7(2)). The nature of the right is relevant when considering what is reasonable.



**Victorian Equal Opportunity
& Human Rights Commission**

Need more information?

Contact the Commission:

Enquiry Line 1300 292 153 or (03) 9032 3583
 Fax 1300 891 858
 TTY 1300 289 621
 Email enquiries@veohrc.vic.gov.au
 Website humanrightscommission.vic.gov.au

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