



Human Rights Act Factsheet:

Freedom of Association

What is Freedom of Association?

The right to freedom of association protects the right of every person to join a group to share their ideas, express their views publicly and support their common interests. It is a fundamental human right.

When people exercise their freedom of association, it allows them to come together in groups to express other rights, such as political, cultural and social rights. The United Nations has highlighted some examples of how people exercise their right not freedom of association. These include:

- Forming advocacy groups and expressing political opinions
- Making art in groups and other social activities
- Carrying out religious practices or other beliefs
- Forming and joining trade unions and cooperatives

Freedom of association is often connected with the right to peaceful assembly, which is the right to come together in groups to peacefully protest or demonstrate on an issue that is important. An example would be when people come together to protest against war or demonstrate against an unjust law.

Together, these rights are particularly important in making sure that groups who have come together for a political reason are allowed to advocate in public for important changes to the law. Many democratic rights in Australia have only been won after years of hard work and protests by people who were exercising their right to peaceful assembly and their right to freedom of association, coming together and advocating for these rights.

What is the problem in Australia?

Freedom of association is protected by the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

Although Australia has signed both these covenants, freedom of association is not generally recognised or protected in Australian law. Some jurisdictions in Australia including Queensland, Victoria and the ACT have their own Human Rights legislation but only people in those jurisdictions are covered. This means not everyone in Australia has equal access to freedom of association.

Many Australian laws limit freedom of association. Because the freedom of association is such an important civil right, we must be very vigilant to make sure that this right is not carelessly put at risk. While some limits on freedom of association are allowed, there must be an important reason for doing so. Any laws that introduce limits to the freedom of association must be very carefully considered before being imposed. Restrictions on the freedom of association must be both necessary and proportionate. However, laws can also be used to restrict freedom of association in a way that is unreasonable.

For example, in 2022, the NSW Government changed the Crimes Act to criminalise any damage or disruption to a major bridge, tunnel, road, train station, port or public and private infrastructure. The law was specifically meant to prevent climate protesters but is so broad that it could cover almost any type of protestor. Anyone charged under the new offences risk being fined up to \$22,000 or sentenced to jail for up to two years.

While freedom of association in the workplace is protected by the Fair Work Act 2009, there are still many restrictions, particularly when workers decide to take industrial action, like going on strike. If unions or other groups in the workplace who are seeking better working conditions do not follow very strict and lengthy legal procedures for taking industrial action, their actions will not be protected and they are at risk of being disciplined or being fired by their employer. Unions can also be fined or worse if they can be shown to have encouraged unprotected industrial action by their members. Public sector workers and their unions may face very severe penalties face even more restrictions if they try to take industrial action when trying to take industrial action due to laws that prevent essential public services being disrupted.

How could an Act help?

An Australian Human Rights Act would mean that lawmakers would need to consider freedom of association before introducing new laws and whether those new laws limit people's rights and freedoms.

A Human Rights Act would help Parliament draft legislation that respects the freedom of association. It also helps the community become more aware of their right to associate freely and to better recognise when their freedom of association is being restricted in a way that is unreasonable.

By aligning with international human rights standards, a Human Rights Act would not only protect freedom of association but also reinforce Australia's commitment to other fundamental human rights. This means there would be stronger protections for all individuals, including people in marginalised communities.

A Human Rights Act would provide a clear and enforceable way for individuals to join and form organisations, such as community advocacy groups and trade unions, without undue interference. This protection would enable individuals to challenge laws that unreasonably limit their freedom of association.

Examples

1. A man in Queensland received NDIS supports and had a criminal history that meant he was subject to a supervision order. This is a type of court order that specifies what someone living in the community who has committed a crime can or cannot do. Supervision orders are designed to protect the community. In 2022, a new condition was added to his supervision order that meant he had to obtain approval to have any person at his home, including family members. The man contested the new condition and the Supreme Court found that condition limited his right to freedom of association under section 22 of the Human Rights Act 2019 (Qld).
2. Sixteen protesters from a larger group of 150-200 people were charged with trespass and besetting after they took part in a political demonstration outside a shop in QV Shopping Centre in Melbourne. The protesters successfully used the Victorian Human Rights Charter to defend the trespass charge by arguing that the trespass laws must be interpreted to allow protest consistent with freedom of expression, peaceful assembly, and freedom of association. The Court noted that the nature of the inconvenience caused by the protest was not enough to justify prohibiting it. The Court also dismissed the besetting charge, ruling that the protestors did not surround the shop with hostile intent or hinder or impede the public from entering, using or leaving the shop.

