

# Cultural Rights at School in Queensland

## KEY LAWS THAT APPLY IN QUEENSLAND TO PROTECT STUDENTS WITH RACIAL AND CULTURAL NEEDS

<p><b>Anti-Discrimination Act 1991 (Qld)</b> Discrimination on the basis of race (and many other attributes) is unlawful in all schools and other education facilities in Queensland – as well as in many other places. There is also protection against racial hate speech. People are protected against retribution for making complaints about racism and discrimination.</p>	<p><b>Race Discrimination Act 1975 (Cth)</b> Discriminating, excluding, and restricting people because of their race is unlawful in many areas of public life, including schools. Offensive racist behaviour is also prohibited, as is punishing people for making complaints about race discrimination and racist behaviour.</p>
<p><b>Human Rights Act 2019 (Qld) – Right to Education</b> All children have a right to an education appropriate to their needs. The Human Rights Act applies in state schools and some other education facilities in Queensland.</p>	<p><b>Human Rights Act 2019 (Qld) – Cultural Rights</b> People with a particular culture, religion, race or language have a right to enjoy their culture, language and practices. Aboriginal and Torres Strait Islander peoples also have important additional cultural rights.</p>

## WHAT IS UNLAWFUL RACE DISCRIMINATION?

There are two types of unlawful race discrimination prohibited in Australia.

**1. Direct discrimination** is when a person treats another person worse because of the other person's protected attribute (in this case their race). An example of direct discrimination would be saying that a student of Japanese heritage cannot enrol in a Japanese course because they are Japanese and might already know some of the language.

**2. Indirect discrimination** is when a person unreasonably imposes a requirement or a rule which seems fair and neutral, but which causes real detriment to some people because of their race, or other protected attribute. An example of indirect discrimination would be a rule that no one is allowed to wear a head covering to school – which would cause detriment to a Muslim girl who chooses to cover her hair for religious reasons.

## HAVE THERE BEEN ANY CULTURAL RIGHTS LEGAL CASES BROUGHT AGAINST SCHOOLS?

Yes, but not many. Most schools are able to make the necessary accommodations to welcome and support students from diverse backgrounds. The two main cases are:

<p><b>Arora v Melton Christian College [2017] (VCAT) 1507</b></p> <p>In this case from Victoria, a school uniform policy said boys must have short hair and no head coverings. Sidhak Singh Arora was a Sikh child whose parents wished to enrol him at the school. The school told Sidhak he would need to cut his hair and not wear a head covering, both things he could not do because of Sikh cultural practices.</p> <p>The Tribunal found that this rule was <b>indirect discrimination</b> because it operated to exclude Sidhak from the school because he was Sikh and unable to comply. It was found that this was not proportionate in the circumstances.</p> <p><a href="https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VCAT/2017/1507.html">https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VCAT/2017/1507.html</a></p>	<p><b>Australian Christian College Moreton Ltd &amp; Anor v Taniela [2022] QCATA 118</b></p> <p>Cyrus Taniela was a Cook Islander, Niuean and Samoan child, and the first-born son in his family. Cyrus' hair had never been cut and his family wished for it to remain long until he had a traditional hair cutting ceremony, as is the practice in many parts of the Cook Islands and in Niue. His school said it would unenrol Cyrus during his prep year if he could not comply with the uniform policy that all boys have short hair.</p> <p>The Tribunal found that this rule was <b>indirect discrimination</b> because complying with the rule would cause Cyrus significant detriment and the rule was not reasonable.</p> <p><a href="https://www.sclqld.org.au/caselaw/QCATA/2022/118">https://www.sclqld.org.au/caselaw/QCATA/2022/118</a></p>
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## WHEN IS A RULE REASONABLE OR UNREASONABLE?

Sometimes a rule will be discriminatory but it will still be legal because it is reasonable or necessary in the circumstances.

The *Anti-Discrimination Act 1991* says that what is reasonable depends on *all the circumstances of the case* including the consequences of failing to follow the rule, as well as whether there are any alternatives, and what they would cost. When the consequence of not following the rule is serious (for example, in the cases above when the student has to choose between their cultural practice and attending school) this makes it more likely a rule will be unreasonable.

## HOW DOES THE HUMAN RIGHTS ACT 2019 FIT IN?

Anti-discrimination law applies to ALL schools, public and private. Most private schools (like the two in the case examples above) do not also have to comply with the *Human Rights Act 2019*, but Queensland state schools do. This means that the protection for cultural rights is *even stronger* in Queensland state schools.

The *Human Rights Act 2019* says that children in state schools have a right to an education “appropriate to the child’s needs”. While the term “needs” is not defined most people understand that to mean educational, emotional, age-related and other needs, including cultural safety. All people also have a right to know and practise their culture with others.

Human rights have special legal protection and can only be limited by law, and when the limitation can be *demonstrably justified in a free and democratic society based on human dignity, equality and freedom*.

## WHERE TO FIND HELP

Legal Aid Queensland  
legalaid.qld.gov.au  
1300 651 188

Queensland Human Rights Commission  
qhrc.qld.gov.au  
1300 130 670

Caxton Legal Centre Inc.  
1 Manning Street  
South Brisbane Qld 4101

Youth Advocacy Centre  
yac.net.au  
1800 527 527

Australian Human Rights Commission  
humanrights.gov.au  
1300 369 711

Telephone: (07) 3214 6333  
Facsimile: (07) 3846 7483  
Internet: www.caxton.org.au

## WHAT CAN I DO IF A UNIFORM POLICY OR OTHER RULE LIMITS CULTURAL RIGHTS?

The usual first step is to speak with the school Principal. They might not be aware that their rules are causing harm.

If your concern is with a uniform policy, in a Queensland public school the Principal should be guided in their decisions by Education Queensland’s *Dress Code Procedure*. This procedure says that a Principal may consult with the school community including students, the P&C and parents. The Principal must ensure that any uniform policy complies with anti-discrimination and human rights laws, and they are responsible for making decisions about any individual exceptions needed because of a child’s race or other protected attribute such as pregnancy, disability, religion or gender identity.

When raising the matter with the Principal you should explain the cultural practice and the impact of the rule. If the practice is something only some people from your culture will choose to do, or there is some choice about timing, it might help to explain that those variations are themselves part of the cultural practice (and not a reason to ask someone not to do it). Sometimes asking a respected community leader or elder to help you explain can be useful.

If you have difficulties negotiating with a school directly, you can get legal advice from a community legal centre, such as Caxton Legal Centre, or Legal Aid Queensland.

It is also possible to make formal internal and external complaints about discrimination either directly to the school, to the Department of Education, or to the Queensland Human Rights Commission, or the Australian Human Rights Commission. Choosing which complaint option is best will depend on the circumstances and seeking legal advice beforehand is a good idea.

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