



Right to Education (s.27A)

Section 27A of the *Human Rights Act 2004* says that:

- (1) Every child has the right to have access to free, school education appropriate to his or her needs.
- (2) Everyone has the right to have access to further education and vocational and continuing training.
- (3) These rights are limited to the following immediately realisable aspects:
 - (a) Everyone is entitled to enjoy these rights without discrimination;
 - (b) To ensure the religious and moral education of a child in conformity with the convictions of the child's parent or guardian, the parent or guardian may choose schooling for the child (other than schooling provided by the government) that conforms to the minimum educational standards required under law.

Note: Under the Act, all rights may be subject to reasonable limits (section 28). The nature of the right is relevant when considering what is reasonable.

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

Scope of the Right

The *Human Rights Act* expressly limits the right to education to two immediately implementable aspects of the right to education:

- (a) Access to certain levels of education (identified as free pre-school, primary and secondary education and further education and continuing training) without discrimination; and
- (b) The ability of parents or guardians to choose schooling that provides religious and moral education in conformity with the convictions of those parents and guardians, subject to the minimum educational standards required under law.

Unlike all other rights included in the *Human Rights Act* which require “public authorities” such as public servants to act consistently with them, public authorities are not required to act consistently with s 27A. This means that any court or tribunal case concerning s27A must be brought on the basis of an existing avenue for litigation.

Examples of existing avenues include s 145A of the *Education Act 2004* (ACT) and ss 18 and 20 of the *Discrimination Act 1991* (ACT). Under s 18 of the *Discrimination Act*, for example, an educational authority must not discriminate against a person with respect to admission to educational institutions and, once admitted, it must not deny them benefits, subject them to detriments or expel them on a discriminatory basis.

Content of the right to education

Article 13(1) of the International Covenant on Economic, Social and Cultural Rights describes the goals of education, namely:

The full development of the human personality and the sense of its dignity, and [to] strengthen the respect for human rights and fundamental freedoms. ... Education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

The goals of education are expanded in Article 29 of the Convention on the Rights of the Child, which adds equality between the sexes and respect for the environment to the goals set out in the Covenant. Access to something called “education” that does not further these goals, might not satisfy the right of access to education at all. As the Committee on the Rights of the Child has said, ‘the child’s right to education is not only a matter of access but also of content’.

Principles of equality and non-discrimination are also interrelated with four general qualities which apply to the right to education. In its General Comment on Article 13 of the Covenant, the Committee on Economic, Social and Cultural Rights has said that all levels of education must be *available, accessible, acceptable and adaptable*. Section 27A of the Human Rights Act explicitly uses the word “access”. However, the Committee notes that availability, accessibility, acceptability and adaptability are ‘interrelated and essential’. The use of the word “access” in s27A does not mean that the other three requirements of availability, acceptability and adaptability are irrelevant.

Examples of when this right could be relevant in practice

The actions of public authorities can both promote and limit rights. Section 27A could be engaged by activities that:

- Limit access to schools by children or young people with disabilities, such as failure to provide wheelchair access;
- Introduce fees for education that, while applying to everyone, discriminate against people on low incomes;
- Favour sharp disparities in spending policies resulting in differing qualities of education for persons residing in different geographic locations, including for example school closures;
- Provide inferior educative materials to children of diverse cultural backgrounds;
- Fail to tailor education and its mode of delivery for students such as migrants, refugees, working students, students with children, students in detention, homeless students and students with disabilities.

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