



Right to Equality (s.8)

Section 8 of the *Human Rights Act 2004* says that:

1. Everyone has the right to recognition as a person before the law.
2. Everyone has the right to enjoy his or her human rights without distinction or discrimination of any kind.
3. Everyone is equal before the law and is entitled to the equal protection of the law without discrimination. In particular, everyone has the right to equal and effective protection against discrimination on any ground.

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

Section 8 of the Act protects three different but related rights.

The right to recognition as a person before the law

The first is the right to recognition as a person before the law. This is an absolute right which, under international law, cannot be limited under any circumstances.

The essence of this right is equality of legal capacity, for example the capacity to enter into contracts or access Government services. In some countries, such capacity is denied to certain groups (such as women or particular ethnic groups).

The right to enjoy other human rights free from discrimination

The second right in section 8 of the Act is the right to enjoy other human rights without 'distinction or discrimination of any kind'. Everyone has the same rights and deserves the same level of respect. This means that laws, policies and programs should not be discriminatory and also that public authorities should not apply or enforce laws, policies and programs in a discriminatory way.

The section includes some examples of discrimination. These include, discrimination because of race, colour, sex, sexual orientation, language, religion, political or other opinion, national or social origin, property, birth, disability or other status.

The right to the protection of the law without discrimination

Section 8 of the Act also provides that everyone is entitled to equal protection of the law without discrimination. This right refers to the enforcement and administration of the law.

Example: *Parks Victoria (Anti-Discrimination Exemption)* [2011] VCAT 2238 (28 November 2011)

In this case, Parks Victoria wanted to advertise for and employ Indigenous people to care for Wurundjeri country. The Tribunal found that the purpose of the activity was to provide employment opportunities to Indigenous people, to increase the number of Indigenous people employed by Parks Victoria, to provide opportunities for connection and care for the Wurundjeri country by its traditional owners and also for the maintenance of the culture associated with the country. The Tribunal was satisfied that the measure was proportionate because at the time the application was made only 7.6 per cent of Parks Victoria's workforce was Indigenous. This measure of limiting the employment opportunity to Aboriginal people was found to be a reasonable limitation on the right to equality of other groups.

Examples of when this right could be relevant in practice

The actions of public authorities can both promote and limit rights. Section 8 could be engaged by activities that:

- Provide for the delivery of an entitlement or service to some groups but not others;
- Assist or recognise the interests of Aboriginal persons or members of other ethnic groups;
- Are stated in neutral terms but have a disproportionate impact on a sector of the community whose members have one or more protected attributes under the Discrimination Act 1991 (for example, sex, race, age or disability);
- Deal with any of the human rights set out in the HRA in a discriminatory way: for example, if the legislation curtails freedom of expression or if a person has engaged in industrial activity;
- Set age brackets that are expressed as protective measures, graduated entitlements (for example, driver licensing), or statements of legal capacity (for example, voting);
- Establish eligibility requirements for access to services or assistance (such as legal aid);
- Contain measures that aim to assist people who are socially, culturally or economically disadvantaged;
- Take steps to diminish or eliminate conditions that have resulted in specific groups within society being disadvantaged (positive discrimination);
- Regulate access to infrastructure and public facilities including building, roads, transport, schools, housing and hospitals;
- Affect information and communications services including electronic services;
- Regulate access to public services including education, healthcare, the justice system and voting;
- Provide for mobility aids, assistive devices and technologies designed for people with disabilities;
- Set standards or guidelines for access to facilities and services to ensure businesses that provide public services take into account access for people with disabilities.



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