



HUMAN RIGHTS &
DISCRIMINATION COMMISSIONER
ACT Human Rights Commission

Factsheet

Right to Life (s.9)

Section 9 of the *Human Rights Act 2004* says that:

- (1) Everyone has the right to life. In particular, no-one may be arbitrarily deprived of life.
- (2) This section applies to a person from birth.

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 right to life is primarily concerned with preventing the arbitrary deprivation of life. It is relevant to:

- The use of force by public authorities;
- The delivery of medical treatment;
- The investigation of the conduct of public authorities, particularly when a person dies while in the care of public authorities.
- The right to life imposes both positive and negative duties on public authorities – negative duties to refrain from taking someone’s life, and positive duties to take reasonable steps to protect people.
- The right to life recognises that in some limited circumstances government authorities may have to take life, such as in law enforcement or military activities. This can only be done in accordance with the law and when absolutely necessary.

Negative duties

The negative duties imposed by the right to life mean that public authorities must refrain from arbitrarily or intentionally depriving someone of life. The use of force by government officials that has resulted in a deprivation of life must have been ‘absolutely necessary’ and ‘strictly proportionate’ to the achievement of the permitted purpose. For example, this might occur when the police have to use lethal force to protect the lives of other people in imminent danger.

The European Court of Human Rights has found violations of the right to life because of deficient operational planning and control. For example, in *Gulec v Turkey* the Court found that the right to life had been violated when police fired guns to disperse demonstrators and that the unavailability of less lethal means of crowd control was ‘unacceptable’.

Positive duties

The right to life also requires public authorities to take positive steps to protect the right to life. This includes imposing a duty on government:

- to establish a framework of laws, precautions and procedures that will protect life;
- to warn people about life-threatening hazards that the government knows or should know about (such as fires or chemical spills);
- to take steps to protect the life of people within its care and control (in places such as prisons, detention centres, medical facilities or state care);
- to investigate deaths which may have involved an arbitrary deprivation of life involving a public authority; and
- to account for resource allocation, particularly public health authorities.

Example: Coronial Investigation of 29 Level Crossing Deaths, 25 June 2010

In this case, the Victorian Coroners Court considered its ability to 'address systemic and prevention issues' in the investigation of 29 deaths that occurred on level crossings in Victoria. The Coroner held that the interpretive mandate in section 32(1) of the Victorian equivalent of the Human Rights Act obliges the Coroners Court to interpret all legislation compatibly with human rights. The Court found that the right to life 'requires the Coroner to conduct an inquest that investigates not only the immediate circumstances of the death but also the possibility of systemic failure on the part of the authorities to protect life'.

Examples of when this right could be relevant in practice

The actions of public authorities can both promote and limit rights. Section 9 could be engaged by activities that:

- impact on the way that essential services are provided, or how and whether these services can be accessed in a way that impacts on the welfare or safety of persons (such as medical or welfare services)
- impact on the delivery of medical resources for patients
- impact on procedures for the management of those held in care
- create or amend law, policy or practices permitting law enforcement officers to use force, including the use of weapons in the course of their duties
- create or amend the law withholding or requiring medical treatment, or coronial inquests
- relate to investigation into the conduct of public authorities, especially when people die while in the care of public authorities, for example, deaths in custody or of children in the child protection system.



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