



HUMAN RIGHTS &  
DISCRIMINATION COMMISSIONER  
ACT Human Rights Commission

# Factsheet

## Right to Humane Treatment when Deprived of Liberty (s.19)

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Section 19 of the *Human Rights Act 2004* says that:

- (1) Anyone deprived of liberty must be treated with humanity and with respect for the inherent dignity of the human person.
- (2) An accused person must be segregated from convicted people, except in exceptional circumstances.
- (3) An accused person must be treated in a way that is appropriate for a person who has not been convicted.

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.*

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### Scope of the Right

Section 19 requires all Public Authorities (including police and correctional staff) to treat persons in detention with humanity and dignity. It also requires the segregation of persons accused of offences from persons who have already been convicted of offences. Additionally, an explanatory note under section 19(2) provides that under section 20(1) an accused child must also be segregated from accused adults.

The purpose of the right to humane treatment when deprived of liberty is to recognise the particular vulnerability of persons in detention and to ensure that they are treated with consideration of their rights and dignity as human beings. This right complements the right to be free from torture and cruel, inhumane and degrading treatment under section 10 of the *HR Act*. However, it is engaged by less serious mistreatment or punishment than under section 10.

In the context of international human rights law, the UN Human Rights Committee has observed that this right applies not just to persons detained under the criminal law, but also to persons detained elsewhere (for example, in an approved mental health service) under the laws and authority of the government (see the Committee's General Comment 21). The Committee has made it clear that this right applies to all detention facilities within a state's jurisdiction.

The right to humane treatment means that individuals who are detained should not be subject to any hardship or constraint in addition to that resulting from the deprivation of liberty. The Human Rights Committee has emphasised that persons who are detained retain all their rights, subject only to the restrictions that are unavoidable in a closed environment.

Some rights are unavoidably restricted in a closed environment, for example: a person's freedom of movement; elements of freedom of expression and some elements of privacy; and interference with family life are inevitably affected.

The *UN Standard Minimum Rules for the Treatment of Prisoners* establish minimum standards on a range of matters, including conditions of: accommodation; food of adequate quality; facilities for personal hygiene; standard of clothing and bedding; opportunities for exercise and availability of medical services; contacts with the outside world; access to books and regulation of methods and procedures for discipline

and punishment (including the prohibition of certain forms of punishment). These are adopted into ACT Law through other legislation also, such as the *Corrections Management Act 2007*.

Section 19(3) grants additional rights to 'an accused person'. These rights follow from the principle of the presumption of innocence in criminal law: a detainee who has not yet been tried is entitled to a different treatment regime than convicted detainees. In particular, accused persons are entitled to be segregated from those serving their sentences. Section 19(2) provides, however, that the right applies 'except in exceptional circumstances' – for example where separate facilities are unavailable.

Note: The *HR Act* does not apply to the Commonwealth Government. For example, it does not apply to federal officials running immigration detention centres. Australia's obligations under international human rights law, the *Australian Human Rights Commission Act 1986*, and relevant criminal laws and procedures apply to the Commonwealth Government.

## Examples

In *Eastman v Chief Executive Officer of the Department of Justice and Community Safety* [2010] ACTSC 4, the ACT Supreme Court held that section 19 requires that a prisoner be given the opportunity of "useful" work (judged by community standards, not the prisoner's own) and rehabilitative measures are necessary.

A detainee's right to be treated humanely has been held to be violated in cases before the UN Human Rights Committee where detainees were:

- Held in 'incommunicado' detention for any length of time (*Caldas v Uruguay*);
- Refused medical attention or there was a failure to address deteriorating mental health (*Mpandanjila v Zaire*);
- Subjected to ridicule (*Francis v Jamaica*);
- Denied reading facilities and not allowed to listen to the radio (*Nieto v Uruguay*);
- Confined to a cell for an unreasonably long period of time (*Cabreira v Uruguay*);
- Required to prepare prison food in unsanitary conditions (*Matthews v Trinidad and Tobago*);
- Subject to restricted correspondence with family (*Espinoza de Polay v Peru*);
- Prevented from being present at the birth of a child (*Madafferi v Australia*);
- Held in a small cage awaiting court appearance (*Cabal & Passini v Australia*);

## Examples of when this right could be relevant in practice

The actions of public authorities can both promote and limit rights. Section 19 could be engaged by activities that:

- Enable a public authority to detain individuals or relates to the conditions under which a person may be detained for example, in prisons, mental health services, prison transportation facilities;
- Concern standards and procedures for treatment of those who are detained (for example, use of force, dietary choice, access to private shower and toilet facilities);
- Authorise a person to be held in a place with limited facilities or services for the care and safety of detainees;
- Enable enforcement officers to undertake personal searches of those individuals detained in custody or detainee visitors.

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