

FACT SHEET:

Right to life

Section 16 of the *Human Rights Act 2019*

Section 16 of the *Human Rights Act 2019* says that:

Every person has the right to life and has the right not to be arbitrarily deprived of life.

The Human Rights Act protects the right to life. The right not to be deprived of life is limited to arbitrary deprivation of life. It follows that not every action that results in death will be a breach of the Human Rights Act.

This right includes an obligation on states to take steps to protect the lives of individuals. Examples include positive measures to address threats to life like malnutrition and infant mortality.

This right is modelled on Article 6(1) of the International Covenant on Civil and Political Rights. Australia ratified this treaty in 1980.

This section is to be read together with clause 106 of the Human Rights Act. It states that nothing in the Act affects any law relating to termination of pregnancy or the killing of an unborn child.

Scope of the right

Because the right to life is concerned with preventing the arbitrary deprivation of life it can be relevant in situations such as:

- the use of force by public authorities;
- the delivery of medical treatment; and
- the investigation of the conduct of public entities, particularly when a person dies while in their care.

The right to life imposes both positive and negative duties on public entities. This means public entities need to refrain from taking someone's life (a negative duty). They also need to act to protect people from real and immediate risks to life (a positive duty).

Under international law, the right to life is one of the rights that cannot be suspended, even in emergency situations. The unlawful and arbitrary deprivation of life is never allowed.

Like all rights in the Act, the right to life can be limited where it is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

However, because of the nature of this right and because it cannot be limited under international law, it is difficult to see circumstances where this right would be limited in Queensland.

Negative duties

The negative duties imposed by this right mean that public entities must not arbitrarily or intentionally deprive 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 (Application No 54/1997/838/1044, 27 July 1998)*, the Court found that the right to life had been violated when police fired guns to disperse demonstrators, killing a 15 year old boy, where less lethal means of crowd control should have been used.

Positive duties

The right to life also requires public entities to take positive steps to protect the right to life. Because the Act requires public entities to give proper consideration to relevant human rights when making a decision, government agencies, such as the Queensland Police Service, should have regard to the right to life in their actions and decision-making. This may also imply a positive obligation to safeguard the lives of Queenslanders.

When this right could be relevant

Section 16 could be relevant to laws, policies, acts or decisions that:

- impact on the way that essential services (such as medical or welfare services) are provided, or how and whether these services can be accessed in a way that impacts on people's welfare or safety;
- impact on the delivery of medical resources for patients;
- impact on procedures for the management of those held in care;
- permit 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 entities, especially when people die while in the care of public entities, for example, deaths in custody or of children in the child protection system.

Examples

There are no case examples from Queensland yet which involve this right. The following examples are from Victoria and the United Kingdom, where the right to life is included in their human rights laws.

CORONIAL INVESTIGATION INTO LEVEL CROSSING DEATHS

The Victorian Coroners Court was investigating 29 deaths that occurred on level crossings in Victoria. The Coroner held that there was an obligation on 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'.

RESPONSIBILITY TO PROTECT LIFE

(Rabone and Anor v Pennine Care NHS Foundation Trust (2012))

A woman with a recurring depressive disorder had attempted suicide on several occasions. She was initially assessed by the hospital as being at high risk of deliberate self harm and suicide. Following treatment, she was reassessed as moderate to high risk of self harm. Her father was concerned about her condition and urged the hospital not to allow her home on leave or to discharge her too soon. However, the woman asked for home leave and was granted it for two days and nights against her parents' wishes. During her home leave she committed suicide. The Supreme Court held that the hospital had a duty to take reasonable steps to protect her from the real and immediate risk of suicide and that article 2 of the European Convention, which protects the right to life, had been breached.

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