



FACT SHEET:

Right to health services

Section 37 of the *Human Rights Act 2019*

Section 37 of the *Human Rights Act 2019* says that:

1. Every person has the right to access health services without discrimination.
2. A person must not be refused emergency medical treatment that is immediately necessary to save the person's life or to prevent serious impairment to the person.

Although this right is modelled on Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), the rights protected in section 37 are much narrower than the rights protected in article 12. Australia ratified this treaty in 1975.

The right to health services is not protected in any other human rights legislation in Australia.

Scope of the right

As this right is not protected elsewhere in Australia, and the wording in the Act is narrower than that contained in the ICESCR, the scope of this right is difficult to ascertain. Similarly, limited guidance can be gained from looking to international cases on the right to health, given the difference in wording in the Queensland Act.

It is clear from the Explanatory Notes to the Bill when it was introduced to Parliament that this section is not intended to encompass rights relating to underlying determinants of health, such as food and water, social security, housing and environmental factors.

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

When this right could be relevant

This right could be relevant to laws, policies, acts or decisions that:

- relate to access to information on the health and well-being of families, including information and advice on family planning;
- relate to access to health facilities, goods, including essential medications and services, especially for vulnerable or marginalised groups;
- relate to health services for particular groups, including Indigenous Australians, people with disability, women and children;
- provide for reproductive, maternal (pre-natal and post-natal) and child health care;
- provide immunisation against infectious diseases; or
- relate to the prevention, treatment and control of epidemic and endemic diseases, including HIV/AIDS.