The Charter of Human Rights and Responsibilities

> Section 9 – Right to life

Scope of the right

The right to life is primarily 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
- 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 from a real and immediate risk to life.

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.

The right to life applies from the time someone is born and the Charter does not apply to abortion laws in Victoria (section 46).

In other jurisdictions, the right to life has been held not to extend to assisted suicide or the right to choose death (Pretty v United Kingdom (2002) 35 EHRR 1).

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.

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 (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 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.

a. Law and procedures to protect life

This includes a duty on the government to establish a framework of laws, precautions and procedures that will protect life. This means that the government needs to have appropriate criminal laws in place, and that Victoria Police, for example, needs to have appropriate policies, procedures and training setting out when and how police officers can use force.

b. Duty to warn

The right to life also imposes a duty on government to warn people about life-threatening hazards that the government knows or should know about (such as fires or chemical spills).

c. Special duty of care

The government must also 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). For example, the United Nations Human Rights Committee has found that the right to life extends to the provision of health care in prisons (Fabrikant v Canada, Communication No 970/2001 (11 Nov 2003), para 9.3).

d. Health care

The right to life extends to public health care and obliges health authorities to account for resource allocation and where life saving treatment is denied, ‘they must explain the priorities that have led them to decline to fund the treatment’ R v Cambridge Health Authority ex parte B [1995] 1 WLR 898 (CA).
e. Duty to investigate

Finally, the right to life includes a procedural obligation to investigate deaths which may have involved an arbitrary deprivation of life involving a public authority. The Explanatory Memorandum to the Charter recognises that the right to life includes ‘a procedural obligation to undertake effective coronial investigations’.

According to international jurisprudence (R (Amin) v Home Secretary (2004) 1 AC 653) an effective investigation must be: independent, prompt, open to public scrutiny, involve the deceased’s near relatives, and where possible establish the cause of death, the identity of the persons involved and whether the use of lethal force was reasonable in the circumstances.

Case 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 Charter 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:

- have an 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)
- have an impact on the delivery of medical resources for patients
- have an 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.

Section 9 of the Charter of Human Rights and Responsibilities Act 2006 says that:

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

The right to life in the Charter is modelled on Article 6(1) of the International Covenant on Civil and Political Rights, a treaty to which Australia became a party in 1980.

Under the Charter, all rights may be subject to reasonable limits (section 7(2)). The nature of the right is relevant when considering what is reasonable.

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