ORIGINS

The right to life in section 9 of the Human Rights Act 2004 (‘HR Act’) derives from Article 6(1) of the International Covenant on Civil and Political Rights (‘ICCPR’).

Article 6(1) provides that:

Every human being has the inherent right to life. This shall be protected by law. No-one shall be arbitrarily deprived of his life.

INTERPRETING THE RIGHT TO LIFE

In accordance with section 31 of the HR Act:

International law and the judgments of foreign and international courts and tribunals, relevant to a human right may be considered in interpreting the human right.

‘International law’ is defined inclusively in the Dictionary to the HR Act to mean the ICCPR and other human rights treaties to which Australia is party, as well as other relevant United Nations (‘UN’) standards. Comparative domestic human rights jurisprudence may also be considered. Section 31 aims to promote a consistent interpretation of universal human rights standards that derive from the ICCPR.

Set out below are some of the key international, regional and domestic human rights instruments which also recognise the right to life. Pursuant to s.31 HR Act, the jurisprudence developed under the ICCPR, as well as these other instruments will be relevant in determining the content and application of the right to life in s.9 HR Act.
### International human rights instruments

<table>
<thead>
<tr>
<th>Instrument</th>
<th>Article</th>
<th>Text</th>
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| **Convention on the Rights of the Child ("CRC")** | Article 6: | 1. States Parties recognize that every child has the inherent right to life.  
2. States Parties shall ensure to the maximum extent possible the survival and development of the child. |
| **International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families** | Article 9: | The right to life of migrant workers and members of their families shall be protected by law.  
**NB**: Australia is not a signatory to the Convention. However, the Convention may be considered to be part of international law for the purposes of interpreting the right to life as the HR Act Dictionary definition of ‘international law’ is not exhaustive. |

### Regional human rights instruments

<table>
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<tr>
<th>Instrument</th>
<th>Article</th>
<th>Text</th>
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</table>
| **European Convention for the Protection of Human Rights and Fundamental Freedoms ("ECHR")** | Article 2: | 1. Everyone's right to life shall be protected by law. No-one shall be deprived of his life intentionally... .  
2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:  
a. in defence of any person from unlawful violence;  
b. in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;  
c. in action lawfully taken for the purpose of quelling a riot or insurrection. |

### Domestic human rights instruments

<table>
<thead>
<tr>
<th>Instrument</th>
<th>Section</th>
<th>Text</th>
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<tbody>
<tr>
<td><strong>Victorian Charter of Human Rights and Responsibilities Act 2006</strong></td>
<td>Section 9:</td>
<td>Every person has the right to life and has the right not to be arbitrarily deprived of life.</td>
</tr>
<tr>
<td><strong>New Zealand Bill of Rights Act 1990 (&quot;NZBORA&quot;)</strong></td>
<td>Section 8:</td>
<td>No one shall be deprived of life except on such grounds as are established by law and are consistent with the principles of fundamental justice.</td>
</tr>
<tr>
<td><strong>United Kingdom Human Rights Act 1998 (&quot;UKHRA&quot;)</strong></td>
<td>Section 7:</td>
<td>The UK HR Act gives domestic effect to the rights protected in the ECHR, including the right to life in Article 2.</td>
</tr>
<tr>
<td><strong>Canadian Charter of Rights and Freedoms</strong></td>
<td>Section 7:</td>
<td>Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with principles of fundamental justice.</td>
</tr>
<tr>
<td><strong>South African Bill of Rights</strong></td>
<td>Section 11:</td>
<td>Everyone has the right to life.</td>
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</tbody>
</table>
KEY FEATURES

A fundamental right:
The right to life was considered by the drafters of the ICCPR to be ‘the most fundamental of all rights’. This view has also been reflected by the Human Rights Committee, which has stated that the right to life is the ‘supreme right from which no derogation is permitted even in time of public emergency’. The Committee has further noted that the right to life is ‘basic to all human rights’.

No arbitrary deprivation:
The right to life is primarily concerned with preventing arbitrary deprivations of life. The Human Rights Committee has emphasised that ‘the protection against arbitrary deprivation of life … is of paramount importance’. The term ‘arbitrarily’ is taken to mean not only ‘illegally’ but also ‘unjustly’, and includes a requirement to satisfy conditions of necessity and proportionality. The circumstances allowing for the deprivation of life must therefore be clearly established by law, capable of being articulated with certainty, and subject to due process. Moreover, they must be substantively just and comply with the principles of necessity and proportionality. The scope of this obligation is discussed below.

Positive obligation:
In addition to the obligation not to deprive life arbitrarily, the right to life also imposes a positive obligation to protect life. The drafting history of Article 6(1) of the ICCPR indicates that a strong emphasis was placed on the duty of States Parties (countries that have ratified the treaty) to protect life. The drafters considered that, as well as protecting individuals from unwarranted actions by the State, it was also necessary for the State to protect individuals from unwarranted actions by private persons. The Human Rights Committee has confirmed that protection of the right to life ‘requires that

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2 The Human Rights Committee is responsible for monitoring compliance with the ICCPR. It is considered to be a ‘judicial body of high standing’: Tavita v Minister of Immigration [1994] 2 NZLR 257.
3 See Human Rights Committee, General Comment No 6 (1982), para 1 and General Comment No 14 (1984), para 1. A General Comment is the Committee’s authoritative interpretation of a human rights provision of the ICCPR.
6 Otherwise States could simply legislate to permit the commission of atrocities. See Bossuyt, supra note 1, pp 121-124. See also, T Meron, Human Rights in International Law (Oxford Uni Press 1984), p. 122.
8 Bossuyt, supra note 1, p.120.
States adopt positive measures’. The scope of the positive obligation to protect life is discussed below.

**Procedural duty:**
The right to life has also been interpreted to impose a duty on the State to investigate deaths occurring in circumstances where the substantive obligations not to take life arbitrarily and to protect life have been (or may have been) breached. The scope of this duty is discussed below.

**Broad interpretation:**
Given its fundamental nature, the Human Rights Committee has stated that the right to life ‘should not be interpreted narrowly’, noting that the right ‘cannot be properly understood in a restrictive manner’. Thus, for example, the Committee has viewed issues such as homelessness, infant mortality, and life expectancy as falling within its scope. It has also specified that ‘it would be desirable for States parties to take all possible measures to reduce infant mortality and to increase life expectancy, especially in adopting measures to eliminate malnutrition and epidemics’. A similarly broad interpretation has been given by some national courts. For example, the Indian courts have found that the right to life extends to a right to a livelihood, a right to the basic necessities of life such as adequate nutrition, clothing, reading facilities, and the rights to shelter and education. However, other national courts have displayed a more

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9 Human Rights Committee, General Comment No 6 (1982), para 5.
15 Human Rights Committee, General Comment No 6 (1982) para 5. The Committee on the Rights of the Child, in the context of Article 6 CRC, has also urged States parties ‘to take all possible measures to improve perinatal care for mothers and babies, reduce infant and child mortality’, see Committee on the Rights of the Child, General Comment No 27 (2005) para 10. Significantly, Article 6(2) CRC, which requires States parties to ensure, to the maximum extent possible, the child’s survival and development, expressly recognises a survival component to the right to life. The drafting history of Article 6 confirms that the child’s right to life and right to survival are not to be considered as mutually exclusive, see Office of the UN High Commissioner for Human Rights, Legislative History of the Convention on the Rights of the Child (Volume 1, 2007), pp. 364-369.
17 Francis Coralie Mullin v. The Administrator, Union Territory of Delhi, (1981) 2 SCR 516 at 529.
cautious approach, particularly where there are social policy and budgetary implications.20

‘From the time of birth’:
Sub-section 9(2) of the HR Act specifies that the right to life applies from the time of birth. In other words, consistent with the meaning given to ‘everyone’ elsewhere in the HR Act, the protection afforded by sub-section 9(1) applies only from birth and does not extend to a foetus.21 However, this does not prevent the criminal law from treating the death of a foetus as an aggravating factor in a serious criminal offence;22 nor does it limit any entitlements to adequate prenatal care or measures to prevent stillbirths.

THE OBLIGATION NOT TO DEPRIVE LIFE ARBITRARILY

As noted above, the right to life imposes an obligation on the State to refrain from arbitrarily taking life. The deprivation of life by State authorities is viewed as a matter of the utmost gravity.23 It follows then that the prohibition against arbitrary deprivation of life is mainly concerned with controlling and limiting the circumstances in which lethal force may be used by State authorities. The obligation therefore has particular relevance for police and other law enforcement authorities, including prison officers.

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20 See, for example, Lawson v. Housing New Zealand (1997) 4 LRC 369, where a decision to charge state housing tenants market rental rates, was challenged on the grounds that it breached the right to life (among other things). The NZ High Court acknowledged that it ‘should have regard to international human rights norms in interpreting and applying the [NZBORA], and … a liberal interpretative approach is warranted’, but considered that it was ‘ultimately constrained by the wording of s8 itself’. Note that s8 NZBORA is worded negatively in that it confers a right not to be deprived of life, rather than a right to life. See also Gosselin v Quebec (Attorney General) [2002] 4 S.C.R. 429, where the Supreme Court of Canada found that the right to life did not extend to a positive obligation on the State to guarantee adequate living standards, citing ‘insufficient evidence’ to support adopting such a ‘novel’ interpretation. The Court was however careful to leave the door open to future challenges, saying that ‘it would be a mistake to regard [the right to life] as frozen or its content as having been exhaustively defined in previous cases’: per McLachlin C.J, at para. 82.

21 The equivalent provision in the Victorian Charter (s.9) is not directly qualified; instead, a separate savings provision (s48) provides that nothing in the Charter affects any law applicable to abortion or child destruction. NZ courts have not considered the issue of whether the right to life extends to a foetus. The Canadian courts have indicated that a foetus is not a person under the Canadian Charter: Borowski v Canada (Attorney General) (1987) 37 DLR (4th) 731m Sask CA (Canada); Tremblay v. Daigle [1989] 2 S.C.R. 530. Traditionally, the UK courts have found that a foetus has no legal status: Paton v. British Pregnancy Advisory Service Trustees [1978] 2 All ER 987. A similar position has been adopted by the South African courts: Christian Lawyers Association of South Africa v Minister of Health 1998 (11) BCLR 1434. The European Commission of Human Rights and the Human Rights Committee have avoided making pronouncements on whether the right to life extends to a foetus, leaving it to the discretion of individual States parties as to whether and when the right applies to unborn life.

22 For example, the Crimes Act 1900 makes a number of offences (including manslaughter, grievous bodily harm and culpable driving) aggravated offences if it causes the loss of, or serious harm to a foetus (s48A).

23 Human Rights Committee, General Comment No 6 (1982), para 3.
Limited purposes based in law

The circumstances in which State authorities may use lethal force must be strictly defined in law. The Human Rights Committee has stated that ‘the law must strictly control and limit the circumstances in which a person may be deprived of his life by [State] authorities.’ The Committee has identified limited purposes for which the application of lethal force may be permissible, namely, self-defence or defence of others, or to effect the arrest or prevent the escape of the persons concerned.25 Article 2(2) of the ECHR expressly recognises the same purposes;26 no other circumstance for depriving life is permitted outside these categories. For example, a loss of life occurring as a result of using lethal force for the sole purpose of defending property will amount to an arbitrary deprivation of life.

The strict legality requirement means that a loss of life resulting from actions based in procedures other than those established in law will be an arbitrary deprivation of life. It is important to note that a loss of life resulting from even lawful actions may constitute an arbitrary deprivation if the law in question does not satisfy the requirement of strictly controlling and limiting the circumstances for depriving life. For example, in Guerrero v Columbia, the Human Rights Committee made it clear that the use of force by the Columbian police could not be justified simply on the basis that it was taken in accordance with the law. The relevant law itself violated the right to life because it did not sufficiently conform to the requisite standard of protection.27

Necessary and strictly proportionate

A deprivation of life resulting from the use of force permitted by law for a limited purpose will still require a further condition to be satisfied before it can be considered to be justifiable in accordance with the right to life. The deprivation must also be shown to be necessary in the circumstances to accomplish the purpose. The European Court of Human Rights described the relationship between purpose and necessity as follows:

[The recognition of limited purposes for the use of force] does not primarily define instances where it is permitted intentionally to kill an individual, but describes situations where it is permitted to ‘use force’ which may result, as an unintended outcome, in the deprivation of life. The use of force, however, must be no more than ‘absolutely necessary’ for the achievement of one of the purposes [recognised].

24 Human Rights Committee, General Comment No 6 (1982), para 3.
26 It also names an additional purpose: quelling a riot or insurrection.
27 At para 13.3.
28 McCann v United Kingdom (1996) 21 EHRR 97, para 148. See also Stewart v United Kingdom, (Application No 10044/82), Decision of 10 July 1984, para 15. The Human Rights Committee has similarly applied the concept of necessity to qualify the use of force for a lawfully permitted purpose. In Guerrero v Columbia, it asked whether the use of force was necessary for self-defence or the defence of
The principle of proportionality is central to the idea of necessity:

Above all, the test of necessity includes an assessment as to whether interference with [the right to life] was proportionate to the legitimate aim pursued.  

In particular, the force used must be strictly proportionate...

Whether the use of force in a particular instance is ‘strictly proportionate’ requires an assessment of:

The nature of the aim pursued, the dangers to life and limb inherent in the situation and the degree of risk that the force employed might result in loss of life. ...

It also requires looking behind the action to the operational context that gave rise to it:

[C]onsideration [must be given] not only [to] the actions but also [to] the surrounding circumstances including such matters as the planning and control of the actions... The Court must scrutinise not only whether the force used was strictly proportionate to the aim ... but also whether the operation was planned and controlled so as to minimise, to the greatest extent possible, recourse to lethal force.

The European Court has found violations of the right to life because of deficient operational planning and control in a number of cases. For example, in McCann v UK, the Court found that the right to life had been violated because inadequate consideration had been given to evaluating the accuracy of intelligence before transmitting it to a point where recourse to lethal force became automatic. In Gulec v Turkey, the Court found that the right to life had been violated when police fired guns to disperse demonstrators: the unavailability of less lethal means of crowd control was considered to be ‘incomprehensible and unacceptable’. In Ergi v Turkey, the European Commission was able to reasonably infer deficient operational control

others, or to effect the arrest or prevent the escape of the persons concerned’ (at para 13.2). Note that a mistaken belief that the killing is necessary does not prevent the use of force from being lawful: see, for example, Brady v United Kingdom (Application No. 55151/00) (2001).

Stewart v United Kingdom, (Application No 10044/82), Decision of 10 July 1984, para 18. See also Guerrero v Columbia: The Human Rights Committee found that the use of force by the police ‘was disproportionate to the requirements of law enforcement in the circumstances of the case’ (para 13.3)

McCann v United Kingdom (1996) 21 EHRR 97, para 149; see also Stewart v United Kingdom, (Application No 10044/82), Decision of 10 July 1984, para 19.

Stewart v United Kingdom, (Application No 10044/82), Decision of 10 July 1984, para 19.

McCann v United Kingdom (1996) 21 EHRR 97, para 150 and para 194.


Application No 23818/94; See also Canan v Turkey (Application No 39436/98), 26 June 2007.
because the State was unable to provide plausible evidence on the planning and conduct of the operation.

The ‘strictly proportionate’ test therefore has important implications for public authorities in terms of ensuring the proper planning and control of its operations, as well as the adequacy of the training provided to its agents (police officers, prison officers, and the like).

<table>
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<tr>
<th>INTERNATIONAL STANDARDS ON THE USE OF FORCE</th>
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<td>Specific and detailed guidance on the use of force is set out in:</td>
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<tr>
<td>• UN Code of Conduct for Law Enforcement Officials (see in particular Article 3)</td>
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<td>• UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials</td>
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<tr>
<td>These instruments are not binding in international law but they reflect internationally accepted standards on the use of force. The standards expressed reinforce and elaborate upon the principles of necessity and proportionality discussed above.</td>
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<th>THE POSITIVE OBLIGATION TO PROTECT LIFE</th>
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<tr>
<td>As noted above, the right to life not only obliges the State to refrain from taking life arbitrarily, but also requires the State to take appropriate steps to protect the life of those within its jurisdiction.</td>
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<td>In its widest sense, the obligation to take appropriate steps means that the State must, as its primary duty, establish a framework of laws, procedures and enforcement mechanisms that will, as far as reasonably practicable, protect life. This includes making effective provisions in the criminal law to deter the commission of offences against the person and establishing law-enforcement machinery for the prevention, suppression, and sanctioning of breaches of criminal law. It also includes regulating activities, whether public or not, in which the right to life may be at stake. The regulations should govern the licensing, setting up, operation, security and supervision of the activity, and take practical measures to ensure the effective protection of individuals, whose lives might be endangered by the inherent risks posed by the activity.</td>
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The obligation applies in a variety of situations, most notably in the contexts of (i) law enforcement; (ii) prison and custodial settings; and (iii) health care.

(i) Law enforcement

The positive obligation to protect life in the context of law enforcement is likely to extend beyond putting in place an effective criminal justice system.\(^{40}\)

The European jurisprudence has established that the obligation to protect life also requires the police and other protective authorities to take, in certain well-defined circumstances, preventative operational measures to protect an individual whose life is at risk from the acts of a third party.\(^{41}\)

Protecting persons at risk

The obligation to protect persons at risk will not arise vis-à-vis every claimed risk to life:

[B]earing in mind the difficulties involved in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources, such an obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities. Accordingly, not every claimed risk to life can entail for the authorities a ... requirement to take operational measures to prevent that risk from materialising.\(^{42}\)

The risk must be ‘real and immediate’ and it must (or should) be known to the authorities:

[I]t must be established ... that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party.\(^{43}\)

The requisite standard for assessing the authorities’ actions (or failure to act) is one of reasonableness:

The Court does not accept ... that the failure to perceive the risk to life in the circumstances known at the time or to take preventive measures to avoid that risk must

\(^{40}\) Osman v United Kingdom (1998) 29 EHRR 245, para 115.

\(^{41}\) Osman v United Kingdom (1998) 29 EHRR 245; see also Kontrová v Slovakia [2007] ECHR 7510/04 (31 May 2007): The Court found that the right to life had been violated because the police had failed to take appropriate steps to protect Mrs Kontrová’s children when they were aware of her husband’s abusive and threatening behaviour. See also Smith v Chief Constable of Sussex Police [2008] EWCA Civ 39 (5 February 2008), concerning a negligence claim against the police, where the police were alerted to a risk of serious harm to Mr Smith by his partner but failed to act. The case is currently before the House of Lords.


be tantamount to gross negligence or wilful disregard of the duty to protect life. ... Such a rigid standard must be considered to be incompatible with the requirements of [the right to life]. ... Having regard to the [fundamental] nature of the right [to life], it is sufficient for an applicant to show that the authorities did not do all that could be reasonably expected of them to avoid a real and immediate risk to life of which they have or ought to have knowledge.44

In acting to protect persons at risk, the authorities must also ensure that they act consistently with other protected rights:

[T]he police [must] exercise their powers to control and prevent crime in a manner which fully respects the due process and other guarantees which legitimately place restraints on the scope of their action to investigate crime and bring offenders to justice, including the [the right to liberty and security of the person and the right to privacy].

Protecting witnesses

Building on these principles, the UK Court of Appeal has held that witnesses fall into a particular category of vulnerable persons who are entitled to a greater degree of protection from the authorities relative to that afforded to members of the public generally.45 This is because, by virtue of being a witness, they are exposed to the potential risk by the authorities themselves.46 The threshold of ‘real and immediate’ risk must therefore be assessed in that context.47 The Court considered that the discharge of these obligations was not a disproportionate or unrealistic burden on the authorities.48

A duty to warn

The obligation to protect persons at risk of harm extends to life-threatening situations (such as environmental hazards) that are known (or ought to be known) to public authorities. In such circumstances, the authorities have a duty to warn persons who are likely to be at risk from the danger.49 The duty also applies to imminent, clearly

45 Van Colle v Chief Constable of Hertfordshire [2007] EWCA Civ 325 (24 April 2007). The case concerned a witness for the prosecution in a criminal trial who had received threats from the defendant, which were reported to the police. The police did not intervene to protect the witness (for example, by arresting the defendant for witness intimidation, or seeking his remand). The witness was murdered by the defendant before the trial commenced. (NB Van Colle is currently being appealed in the House of Lords.)
46 Van Colle v Chief Constable of Hertfordshire [2007] EWCA Civ 325, paras 75-76.
47 Van Colle v Chief Constable of Hertfordshire [2007] EWCA Civ 325. See also Re Officer L (Respondent) (Northern Ireland) [2007] UKHL 36.
49 LCB v United Kingdom (1998) 27 EHRR 212. See also Oneryldiz v Turkey, where the European Court of Human Rights held that the Turkish authorities were in breach of the right to life when several people living next to a State-authorised rubbish tip were killed in a methane explosion after the authorities had
identifiable natural hazards, and especially to recurring calamities affecting a distinct area developed for human habitation.  

The duty to warn could also extend to situations where health authorities know that an individual patient is putting another identifiable person at risk, for example, if a doctor is aware that a patient is knowingly exposing his or her partner to HIV infection. The International Guidelines on HIV/AIDS and Human Rights has provided guidance to on how to reconcile the difficult conflict of interests which arise in such circumstances, with respect to the duty of confidentiality.

Conversely, public authorities may be obliged to withhold information to protect a person at risk of violence. For instance, the authorities would be obliged not to disclose information about the whereabouts of persons released from prison where there was a real risk of retributive violence leading to their death.

(ii) Prison and custodial settings

It is well-established in human rights jurisprudence that prisoners and persons held in custody are a category of vulnerable persons, whose lives the State has a particular obligation to protect.

Providing adequate health care

The Human Rights Committee has found that the right to life extends to provision of health care at least within the context of custodial settings. It has asserted that the State is ‘responsible for the life and well-being of its detainees,’ and has a positive duty to maintain an adequate standard of health for detainees.

failed to take adequate steps to warn the people living there about the risks (Application No 48939/99, 30 November 2004). In EHP v Canada (Communication No 67/1980, 27 October 1982), the Human Rights Committee suggested that the location of disposal sites for radioactive waste near residential areas could give rise to a legitimate claim under the right to life.

50 Budayeva v Russia [2008] ECHR 15339/02 (20 March 2008), para 137.


52 See, however, the decision of the European Court of Human Rights in Ayse Colak and Others v Germany (Application No. 77144/01 and 35493/05, 5 March 2009) which found that the State had not breached Article 2 in relation to the failure of a family doctor to inform a patient that her partner had AIDS and the alleged failure of the state to provide clear guidelines for the medical profession to follow in such situations. See also Mr. X v Hospital Z (1998) 8 SCC 296, where the Indian Supreme Court held that a doctor may disclose the HIV- positive status of a patient to his/her (future) spouse without incurring liability; but there was no obligation to do so.


[It is incumbent on States to ensure the right of life of detainees, and not incumbent on the latter to request protection ... the essential fact remains that the State party by arresting and detaining individuals takes responsibility to care for their life. It is up to the State party by organizing its detention facilities to know about the state of health of the detainees as far as may be reasonably expected. Lack of financial means cannot reduce this responsibility.

The Committee has also said that the conditions of detention must comply with the standards required by the right to life, which includes 'the prevention of the spread of disease and the provision of appropriate medical treatment to persons who have contracted diseases, either in prison or prior to their detention.' In a human rights audit of correctional facilities conducted by the ACT Human Rights Commissioner tabled in 2007, the Commissioner recommended that a pilot program for a needle and syringe exchange with provision for safe disposal of needles should be developed for the new Alexander Maconochie Centre ('AMC') prison, to respect detainees’ right to life and achieve equivalence with needle-syringe programs available in the Canberra community. A needle-syringe program has not yet been implemented at the new prison, but the ACT Government has committed to consider the issue following a review of the first 18 months of operation of the AMC.

**Protecting against risk of harm**

The European jurisprudence has also established persons in custody as a particular class of vulnerable person who may be at risk of harm. Accordingly, the authorities are under a positive obligation to take appropriate steps to identify and address such risks. In *Edwards v UK*, the European Court of Human Rights found that the right to life had been violated when the failure by the authorities involved (medical profession, police, prosecution and court) to pass on information to prison authorities about a potentially violent prisoner, and the inadequacy of the screening process on the prisoner’s arrival at the prison, resulted in the death of the prisoner’s cellmate.

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58 See eg. Katie Gallaher, Legislative Assembly for the ACT: 2009 Week 14 Hansard (19 November) p.5321-5322.
60 Edwards v United Kingdom (2002) 35 EHRR 487, para 64. See also R v Home Office ex parte Wright and Bennett (QBD Administrative Court) 20 June 2001, where the failure of the prison authorities to provide adequate care for a known chronic asthmatic, resulting in his death amounted to a violation of the right to life.
Protecting against risk of self-harm or suicide

Where the authorities know or ought to know that a particular prisoner or detainee poses a real and immediate risk of self-harm or suicide, they are obliged to take all reasonable steps to prevent that risk.  

The obligation to take appropriate steps to prevent self-harm or suicide is likely to extend beyond detainees to include persons otherwise in the care and control of the State.

In Kilinc v Turkey, the European Court held that there had been a violation of the right to life when a conscript diagnosed with depression was declared fit for military service and subsequently took his own life when on duty. The Court found that the relevant authorities had not done everything in their power to protect against the risk which was ‘known as it was avoidable’. Significantly, the relevant domestic laws on conscription lacked clear guidance for the supervision of those whose fitness to perform military service was in doubt. In particular, they did not spell out the responsibilities of superiors required to deal with mentally ill conscripts. The Court considered the defective regulatory context to be a decisive factor in giving rise to the violation of the right to life.

In another example, the UK Court of Appeal has found that the negligent failure of a psychiatric hospital to take adequate steps to prevent the suicide of a patient was a violation of the right to life. The Court considered the patient’s position to be:

...more akin to a person detained in prison than an ordinary patient in a hospital...receiving treatment for [mental health] problems...or otherwise.’ The critical factor was the vulnerability of both prisoners and [involuntary] patients...who ‘are under the control of the state in a way in which ordinary patients are not...[and] in a different way’. There was no reason to afford persons involuntarily detained...‘any less rights under [the right to life]...than those detained in prison.

(iii) Health care

The right to life extends to the public health sphere and imposes positive obligations on hospitals and health authorities to adopt appropriate measures for the protection of patients’ lives.

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61 Keenan v United Kingdom (2001) 33 EHRR 913.

62 Application No 40145/98, 7 June 2005. An English summary of the decision can be found [here](#).


64 Eriksson v Italy (Application No 37900/97, 26 Oct 1999); Calvelli and Ciglio v. Italy (Application No 32967/96), ECHR 2002-I.
Provision of healthcare

It is arguable that the obligation to protect life may in certain limited circumstances require the State to fund a minimum level of health services or essential medication. At least, health authorities have 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.’

End-of-life decisions

The right to life has implications for medical decision-making, particularly in the context of patients who are terminally ill. Health authorities are not under an absolute duty to protect a person’s life in circumstances when the person concerned is opposed to its continuance. Indeed, to passively allow a person to die may not be contrary to the right to life. However, the key difference lies between the withholding of life-sustaining treatment and positive steps to hasten death. The right to life does not include a right to die, or the right of a disabled person to get assistance in taking his or her own life. Patients’ consent to the withdrawal of medical services or assistance towards their death may not be determinative of whether the right to life has been violated. The determining factor will be whether it is in the best interests of the patient according to standard medical practice and relevant professional guidelines. In *Australian Capital Territory v JT* the Chief Justice confirmed that nutrition could not be withheld from a patient who strongly objected to being fed but did not have capacity to make this decision.

The application of the right to life to patients in permanent vegetative state has been considered in several court cases. The right to life does not impose a duty in every case to take steps to keep a terminally ill patient alive by all means for an indefinite period.

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65 See, for example, *Netecki v Poland* (Application No 65653/01), 21 March 2002; *Scialacqua v Italy* (1998) 26 ECHR 164.


67 *Widmer v Switzerland* (No 20527/92 (1993)).

68 *Pretty v United Kingdom* (Application No 2346/02), 29 April, 2002.


72 His Honour held (at para 63) that the right to humane treatment did not override the basic duty to preserve life where a patient is not capable of making his own decisions: “It is not a relevant consideration in the present case that the Territory’s relevant care providers would find the provision of care distressing and believe it to violate JT’s s 10 rights to humane treatment. They remain under a duty to give competent and effective treatment despite that concern.”

73 *Shortland v Northland Health Ltd* [1998] 1 NZLR 433; *Auckland Area Health Board v Attorney-General* [1993] 1 NZLR 235. See also *Auckland Health Care Services Ltd v L* [1998] 1 NZFLR 74.
To withdraw artificial nutrition or hydration (ANH) from a comatose person may not amount to a violation of the right to life in circumstances where to continue ANH serves ‘absolutely no purpose other than the very short prolongation of the life of a dying patient who has slipped into his final coma and who lacks all awareness of what is happening.’ This is likely to be the position also for competent persons who, previous to falling into a vegetative state, have expressed a wish to receive life-prolonging treatment until they die of natural causes.

Health authorities may be implicated in a decision not to resuscitate or to deny life saving treatment to a disabled person based on the quality of life of someone with a severe disability.

**Medical decisions concerning children**

Human rights jurisprudence recognises that parents have the right to be involved in important decisions concerning their children. However, the right of parents to make decisions on appropriate medical treatment does not extend to decisions that endanger the life or health of the child. It also follows that competing rights, for example, the right to manifest religious or cultural beliefs (eg. the beliefs of Jehova’s Witnesses regarding blood transfusions), could not be used to deny a child the right to life-saving or other essential treatment.

**THE PROCEDURAL DUTY TO INVESTIGATE DEATHS**

As noted above, the right to life has been interpreted to impose a procedural duty on the State to conduct an effective investigation into any death occurring in circumstances where the substantive obligations not to take life arbitrarily and to protect life have (or may have) been breached.

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75 Burke v United Kingdom (Application No 19807/06) 11 July 2006.
76 Re J (a Minor) (Wardship: Medical Treatment) [1990] 3 All ER 930.
77 See, for example, W v United Kingdom (1987) 10 EHRR 29.
78 See, for example, Re J (An Infant): Director-General of Social Welfare v B and B [1995] 3 NZLR 73; In Auckland Healthcare Services Ltd v Liu (NZ High Court; 11-7-96, M 812/96); MJB v Director-General of Social Welfare (3-4-96; NZCA 154/95); B(R) v Children’s Aid Society of Metropolitan Toronto [1995] 1 SCR 315 (Canada).
The duty to investigate will therefore be triggered where, for example, a person is killed by an agent of the State (such as a police officer), or dies while in the care, custody or control of a public authority (such as in a hospital, mental ward, police watchhouse or prison). The duty also applies if a person is killed or dies through the negligence or omission of a public authority. The duty may also extend to a situation where the right to life is engaged (because someone’s life is at risk) even if the person did not die.

The failure to conduct an effective investigation will constitute a violation of the right to life, notwithstanding proof of compliance with the substantive obligations not to take life arbitrarily and to protect life.

The duty to investigate has particular relevance for the conduct of coroners’ inquests.

European Court jurisprudence has formulated six conditions for an effective investigation which will satisfy the right to life. These are summarised in Jordan v UK:

1. **State initiative:** The State must act of its own motion to initiate an investigation into the death, rather than leaving it to the deceased’s family to bring proceedings.

2. **Independence:** Those carrying out the investigation must be independent from those implicated in the death. They must be institutionally independent, as well as demonstrate their independence in practice.

3. **Effectiveness:** The investigation must be capable of leading to a determination of whether the action taken by State authorities was justified in the circumstances, to a determination of the culpability of those responsible for the death. This is an obligation of process rather than result.

4. **Promptness:** The investigation must take place promptly and must proceed with reasonable expedition.

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81 See, for example, McCann v United Kingdom (1995) 21 EHRR 97
82 See, for example, Edwards v United Kingdom (2002) 35 EHRR 487; Tas v Turkey (Application No 24396/94), 14 November 2000; Keenan v United Kingdom (2001) 33 EHRR 913.
83 See, for example, Sensi Önen v Turkey (Application No 22876/93) 14 May 2002; Kiliç v. Turkey (Application No 22492/93), 28 March 2000; Budayeva v Russia (Application No 15339/02) 20 March 2008, para 142; Oneryldiz v Turkey (Application No 48939/99) 30 November 2004, para 90.
84 Menson v United Kingdom (Application No 47916/99) 6 May 2003; see also R (D) v Secretary of State for the Home Department [2006] EWCA Civ 143.
85 Sensi Önen v Turkey (Application No 22876/93) 14 May 2002.
86 There is no single model of investigation prescribed for compliance with the right to life, but in most cases a coroner’s inquest will be the appropriate forum for the investigation.
87 (2001) 37 EHRR 52.
5. **Transparency**: The investigation must be open to public scrutiny to a degree sufficient to provide accountability in the circumstances of the case.

6. **Family Participation**: The family of the deceased must be involved in the inquiry to the extent necessary to safeguard his or her legitimate interests.

In the UK, the obligation to ensure proper family participation has been interpreted to mean that the family must be provided with legal representation where it is likely to be necessary to ensure an effective investigation. The family must also be provided with relevant material and given the opportunity to cross-examine witnesses.

Further, the UK courts have held that a coroner’s inquest conducting the investigation should not be limited to ‘how’ the death happened in the sense of ‘by what means’: it must also assess ‘in what circumstances’. This includes whether and to what extent systemic failings were a factor in the death. Moreover, when deciding whether to resume an inquest, a coroner must consider whether the State’s duty to investigate in accordance with the right to life had been complied with. The Human Rights Commission’s power to intervene in proceedings is taken to extend to inquests. The investigative requirement, however, has not been interpreted to operate retrospectively.

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The law in this fact sheet is correct as of June 2010. If you have any comments concerning this fact sheet, please contact us: email human.rights@act.gov.au; phone (02) 6205 2222.

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88 R (on the application of Amin (Imtiaz) v Secretary of State for the Home Department [2003] UKHL 51; R (Khan) v Health Secretary [2003] EWCA Civ 1129; Main (R) v Minister for Legal Aid [2007] EWHC 742.

89 R (on the application of Amin (Imtiaz) v Secretary of State for the Home Department [2003] UKHL 51.

90 R (Middleton) v West Somerset Coroner [2004] UKHL 10; R (Sacker) v West Yorkshire Coroner [2004] UHKL 11.

91 See also R (Takoushies) v Inner London North Coroner [2005] EWCA Civ 1440; JL (R) v Home Secretary [2007] EWCA Civ 767.

