

FACT SHEET:

Right not to be tried or punished more than once

Section 34 of the *Human Rights Act 2019*

Section 34 of the *Human Rights Act 2019* says that:

A person must not be tried or punished more than once for an offence in relation to which the person has already been finally convicted or acquitted in accordance with law.

The Human Rights Act protects the right not to be tried or punished more than one for an offence.

This right is based on Article 14(7) of the International Covenant on Civil and Political Rights. Australia ratified this treaty in 1980.

Scope of the right

This right will generally apply where a person is charged with the same offence for which they have been previously convicted or acquitted.

This principle, also known as 'double jeopardy', applies to criminal offences. It does not apply to civil trials which may result in civil liability. Sanctions and penalties imposed by professional disciplinary bodies are not usually considered a breach of this right.

This right only applies where a person has been 'finally' acquitted or convicted. This means all appeals have been exhausted.

This right does not prevent cases from being reopened if an appeal court finds a conviction has been the result of a miscarriage of justice.

Like all rights in the Act, the right to not to be tried or punished more than once 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

Section 34 could be relevant to laws, policies, acts or decisions that:

- allow a person to be punished a second time for the same offence;
- amend any criminal procedure rules relating to previous convictions and acquittals;
- create an overlap between an offence in regulations and an offence in the authorising legislation;
- allow continued incarceration of people (for example, convicted sex offenders) following completion of sentence.

Example

No examples exist yet in Queensland, but this right has been tested in Victoria.

PROFESSIONAL DISCIPLINARY PROCEEDINGS AND THE QUESTION OF DOUBLE PUNISHMENT

(Psychology Board of Australia v Ildiri (Occupational and Business Regulation) [2011] VCAT 1036)

In this case, Ms Ildiri had been found guilty of numerous fraud offences under the Crimes Act 1958 (Vic). The Psychology Board of Australia knew of the findings. As a result, they ruled that Ms Ildiri had also engaged in unprofessional conduct under the Health Professions Registration Act 2005 (Vic). The Tribunal found this did not violate the right not to be tried more than once under section 26 of the Charter [equivalent of section 34 under the Queensland Act]. This was because the aim of the disciplinary proceedings was 'primarily to protect the public, and not to punish the practitioner'.

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