

**FACT SHEET:**

## Right to liberty and security of person

### Section 29 of the *Human Rights Act 2019*

Section 29 of the *Human Rights Act 2019* says that:

1. Every person has the right to liberty and security.
2. A person must not be subjected to arbitrary arrest or detention.
3. A person must not be deprived of the person's liberty except on grounds, and in accordance with procedures, established by law.
4. A person who is arrested or detained must be informed at the time of arrest or detention of the reason for the arrest or detention and must be promptly informed about any proceedings to be brought against the person.
5. A person who is arrested or detained on a criminal charge:
  - (a) must be promptly brought before a court; and
  - (b) has the right to be brought to trial without unreasonable delay; and
  - (c) must be released if paragraph (a) or (b) is not complied with.
6. A person awaiting trial must not be automatically detained in custody, but the person's release may be subject to guarantees to appear:
  - (a) for trial; and
  - (b) at any other stage of the judicial proceeding; and
  - (c) if appropriate, for execution of judgment.
7. Any person deprived of liberty by arrest or detention is entitled to apply to a court for a declaration or order regarding the lawfulness of the person's detention, and the court must:
  - (a) make a decision without delay; and
  - (b) order the release of the person if it finds the detention is unlawful.
8. A person must not be imprisoned only because of the person's inability to perform a contractual obligation.

The Human Rights Act states that every person has the right to liberty and security. This right protects against the unlawful or arbitrary deprivation of liberty. A person who is arrested or detained is entitled to certain minimum rights. They also have a right to a brought to a trial without unreasonable delay.

This right is based on Articles 9 and 11 of the International Covenant on Civil and Political Rights. Australia ratified this treaty in 1980.

The rights protected in section 29 are complementary to:

- the right to freedom of movement, protected in section 19;
- the right to humane treatment when deprived of liberty, protected in section 30; and
- protection from medical or scientific experimentation or treatment without consent, protected in section 17.

## Scope of the right

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

### Liberty and security of person

The right to liberty means that people must not be arrested and detained, unless provided for by law. Their arrest and the detention must also not be arbitrary.

This right applies to all forms of detention where people are deprived of their liberty, not just criminal justice processes. This can be relevant any time a person is not free to leave a place by their own choice.

This right differs from the freedom of movement in section 12 of the Charter, because a person must be 'detained' to suffer a deprivation of liberty.

The right to security requires the State to take reasonable measures to protect a person's security (both physical and mental). The government does this through the work of the police and emergency services, for example.

Subsection 2 states that a person must not be subject to arbitrary arrest or detention. 'Arbitrary' might involve injustice, inappropriateness, unpredictability, or a lack of due legal process.

Subsection 3 means that someone can only be detained or have their liberty denied in accordance with the law.

### Rights of arrested or detained people

The rights in subsections 29(4)–(7) are relevant after a person has been arrested or detained. Some of these rights are also reflected in the criminal law of Queensland.

Subsection 4 states that when someone is arrested or detained, they must be told why and informed about any proceeding against them.

Subsection 5 is about the rights a person has when arrested or detained on a criminal charge. It means they must be promptly brought before a court, and that they have the right to be brought to trial without unreasonable delay.

Subsection 6 relates to the rights of people awaiting trial. It says that anyone awaiting trial should not be automatically detained in custody, but can be released on certain conditions or guarantees.

Subsection 7 means that if a person who has been arrested applies to a court, that court can make a decision about whether the person's detention was lawful. If the court finds it is not, they must be released.

Subsection 8 means that people cannot be imprisoned if they cannot pay a debt.

## When this right could be relevant

Section 29 could be relevant to laws, policies, acts or decisions that:

- authorise a person with a mental illness to be detained for treatment in a mental health facility, and/or review their detention;
- allow for the interim detention of a person whether or not they are suspected of committing an offence (for example, to prevent the spread of a contagious disease, or enable a person to 'sober up');
- provide for special powers of detention of people for purposes including national security;
- make provision for granting of bail;
- relate to holding people in remand or in watch houses;
- relate to the management of security of anyone in the care of public authorities, particularly those in involuntary care;
- allow a public entity to cordon an area and control movement within that area.

## Examples

No examples exist yet in Queensland.

### **INVOLUNTARY TREATMENT ORDER NOT A BREACH OF RIGHT TO LIBERTY (*MH6 v Mental Health Review Board (General)* [2008] VCAT 84)**

In this case an involuntary treatment order under the *Mental Health Act 1986* was upheld. Evidence indicated that the patient would be a risk to himself and others if released. His behaviour only stabilised in the structured high security psychiatric treatment facility to which he was confined. The order was necessary to fulfil the patient's treatment needs, and was therefore in his interests and a reasonable limitation of his right to liberty and security of person.

### **RIGHT TO LIBERTY REQUIRES A SPEEDY HEARING (*KB and others v Metal Health Review Tribunal and Secretary of State for Health* (2002))**

KB and others were patients detained under the Mental Health Act 1983 (UK). Each of them applied to a Mental Health Review Tribunal for a review of their detention. In each case, the hearing arranged by the Tribunal was repeatedly adjourned, leading to delays of up to 22 weeks. KB and others argued that on the specific facts of their cases, the delays they suffered could not be justified. The court found in each case that the delay in hearing each application was not justified, and that the claimants had not received a speedy hearing as required by Article 5 of the UK's Human Rights Act, the right to liberty and security.

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