



**FACT SHEET:**

## Rights in criminal proceedings

### Section 32 of the *Human Rights Act 2019*

Section 32 of the *Human Rights Act 2019* says that:

1. A person charged with a criminal offence has the right to be presumed innocent until proved guilty according to law.
2. A person charged with a criminal offence is entitled without discrimination to the following minimum guarantees—
  - (a) to be informed promptly and in detail of the nature and reason for the charge in a language or, if necessary, a type of communication the person speaks or understands;
  - (b) to have adequate time and facilities to prepare the person's defence and to communicate with a lawyer or advisor chosen the person;
  - (c) to be tried without unreasonable delay;
  - (d) to be tried in person, and to defend themselves personally or through legal assistance chosen the person or, if eligible, through legal aid;
  - (e) to be told, if the person does not have legal assistance, about the right, if eligible, to legal aid;
  - (f) to have legal aid provided if the interests of justice require it, without any costs payable by the person if the person is eligible for free legal aid under the *Legal Aid Queensland Act 1997*;
  - (g) to examine, or have examined, witnesses against the person;
  - (h) to obtain the attendance and examination of witnesses on the person's behalf under the same conditions as witnesses for the prosecution;
  - (i) to have the free assistance of an interpreter if the person cannot understand or speak English;
  - (j) to have the free assistance of specialised communication tools and technology, and assistants, if the person has communication or speech difficulties that require the assistance;
  - (k) not to be compelled to testify against themselves or to confess guilt.
3. A child charged with a criminal offence has the right to a procedure that takes account of the child's age and the desirability of promoting the child's rehabilitation.
4. Any person convicted of a criminal offence has the right to have the conviction and any sentence imposed in relation to it reviewed by a higher court in accordance with law.
5. In this section –

*legal aid* means legal assistance given under the *Legal Aid Queensland Act 1997*.

In section 32, the Human Rights Act protects the right to certain minimum procedural guarantees in criminal trials.

This section is modelled on Article 14 of the International Covenant on Civil and Political Rights. Australia became a party to this treaty in 1980.

The rights contained in section 32 are complementary to the rights contained in section 31 of the Act, which protects the right to a fair hearing.

## Scope of the rights

The rights contained in this section relate to people who are charged and/or convicted of a criminal offence.

In Victoria, where a similar protection is found in the Victorian Charter of Human Rights and Responsibilities Act 2006, this has been interpreted to mean that it applies from the time the police first indicate that charges will be laid.

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

## The right to be presumed innocent until proven guilty according to law

This right should inform the way criminal proceedings are conducted. It may include requiring that the accused is not presented in court in a manner that implies they are a dangerous prisoner.

This right has significance for bail applications. Bail should only be refused where there is a genuine reason, rather than as punishment.

In Victoria, the Supreme Court has found that the right appears to apply only to criminal proceedings and that it would not apply in disciplinary proceedings.

## Minimum guarantees

A person who is charged with an offence has a right to minimum guarantees about how they will be treated and how the criminal proceedings will be conducted. These rights are available without discrimination.

The right to minimum guarantees when convicted of a crime can be limited. For example, the right to defend oneself may be limited for the purpose of examining vulnerable witnesses, preventing an accused from cross-examining a witness without representation.

A person has the right to choose a lawyer under s 32(2)(d), but this is not an absolute right. It must be balanced against considerations such as potential delays and availability of reasonable alternatives if the person's first choice of lawyer is unavailable. Additionally, it will not give someone the right to Legal Aid funding when they do not satisfy Legal Aid's eligibility criteria.

## A child charged with a criminal offence

This right should include the requirement that detained children are treated in a manner that is consistent with the promotion of their dignity and worth. It should ensure that children can participate equally and without exclusion in the legal process. This may mean that special measures are required.

Internationally, the UN Human Rights Committee has explained that article 14 of the International Covenant on Civil and Political Rights requires that alternatives to criminal proceedings be considered for children charged with criminal offences. These alternatives include mediation, conferences, counselling, community services or educational programs (UN Human Rights Committee, *General Comment No. 32* [44]).

## Right to review of a conviction

Section 32(4) of the Act is modelled on article 14(5) of the International Covenant on Civil and Political Rights.

The UN Human Rights Committee has explained that article 14(5) gives a convicted person the right to access the written judgment of the trial court and other relevant documents, such as trial transcripts (General Comment No. 32 [49]).

## When these rights could be relevant

Section 32 could be relevant to laws, policies, acts or decisions that:

- impact on the right to be presumed innocent (including changes to the law relating to self-incrimination);
- regulate aspects of criminal trial procedure, such as time limits on complaints or access to witnesses;
- establish guidelines or procedures for the provision of assistants, translators and interpreters;
- change whether the accused can represent themselves personally;
- regulate how an accused person may appear in court, for example, security measures associated with their appearance;
- limit requirements on courts or tribunals to accord fair hearing rights;
- deal with the admissibility of evidence;
- restrict access to information and material to be used as evidence;
- affect the law of evidence governing examination of witnesses;
- allow special procedures for examination of witnesses, for example, the manner in which they give evidence;
- create or amend an offence that contains a presumption of fact or law and puts the legal or evidential burden on the accused to rebut the presumption;
- alter the criteria or conditions under which a person may apply for or be released on bail;
- amend or alter procedures under which a person is able to appeal against or review a decision;
- amend the eligibility criteria for legal aid;
- relate to remedies available to people whose criminal convictions have been overturned or who have been pardoned in situations involving a miscarriage of justice;
- affect the law regarding double jeopardy;
- affect the capacity of investigators and prosecutors to prepare for trial and of courts to conduct trials through allocation of resources.

## Example

### **DELAY IN HEARING NOT JUSTIFIED**

#### ***Gray v DPP [2008] VSC 4***

In this matter, the Court was asked to consider a trial delay. The delay meant the accused could spend longer on remand than any sentence that might be imposed if he were convicted. The Court considered the Charter and the rights contained in sections 21(3) and (5) [equivalent of section 29(3) and (5) under the Queensland Act] and 25(2)(c) [32(2)(c) in Queensland]. The Court found that Gray's continued incarceration was not justified because of the delay. He was released on bail (with strict conditions).

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