



**ENQUIRY LINE:**  
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## Right to a fair hearing

Section 31 of the Human Rights Act 2019 says that:

1. A person charged with a criminal offence or a party to a civil proceeding has the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing.
2. However, a court or tribunal may exclude members of media organisations, other persons or the general public from all or part of a hearing in the public interest or the interests of justice.
3. All judgements or decisions made by a court or tribunal in a criminal or civil proceeding must be publicly available.

The Human Rights Act states that a person has the right to have criminal charges or civil proceedings decided by a competent, independent and impartial court or tribunal following a fair, public hearing.

The right to a fair hearing is based on Article 14 of the International Covenant on Civil and Political Rights. Australia ratified this treaty in 1980.

The right to a fair hearing is complementary to 'Rights in criminal proceedings', protected in section 32 of the Act.

### Scope of the right

#### Competent, independent and impartial court

The right to a fair hearing under section 31 of the Act extends to criminal and civil cases. It applies to all stages in proceedings in any Queensland court or tribunal.

In Victoria, the right to a fair hearing is protected under the *Charter of Human Rights and*

*Responsibilities Act 2006*. There, the following factors have been identified as relevant to determining whether a court or tribunal is 'competent, independent and impartial':

- It is established by law;
- It is independent of the executive and legislative branches of government, or has, in specific cases, judicial independence in deciding legal matters in judicial proceedings;
- It is free to decide the factual and legal issues in a matter without interference;
- It has the function of deciding matters within its competence on the basis of rules of law, following prescribed proceedings;
- It presents the appearance of independence; and
- Its officers have security of tenure.

## Fair and public hearing

This right applies to procedural fairness, not the fairness of a decision or judgement of a court or tribunal. It provides a right for parties to be heard and to respond to allegations made against them, and requires courts be unbiased and independent. What constitutes a 'fair' hearing will depend on the facts of the case, and will require a number of public interest factors to be weighed. These factors might include the rights of the accused and the victim in criminal proceedings, for example.

Subsection 2 allows for courts and tribunals to exclude media or other people from a hearing if it is in the public interest or the interest of justice.

Subsection 3 states that judgments and decisions must be public. However, international law (and the Explanatory Notes to the Bill when it was introduced) acknowledge that some circumstances will justify a court suppressing all or part of a judgement.

Like all rights in the Act, the right to a fair trial 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.

In addition to this, the Act states that the right to a fair trial can be lawfully limited by a court or tribunal excluding certain people from a hearing in the public interest or in the interests of justice.

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## When this right could be relevant

Section 31 could be relevant to laws, policies, acts or decisions that:

- create or limit the review of administrative decision-making and appeals processes;
- reverse the onus of proof;
- regulate the rules of evidence in courts and tribunals;
- regulate the procedures for challenging the impartiality and independence of courts and

tribunals;

- impact on the way witnesses give evidence; or
- regulate media reporting on proceedings.

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## Examples

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

## Open justice and limiting publication of police documents

*(Inquest into the Death of Tyler Cassidy, Ruling on suppression application by the Chief Commissioner of Police pursuant to section 73(2)(b) of the Coroners Act 2008 (Vic))*

During the inquest into the fatal shooting of Tyler Cassidy by police, the Coroner had to consider evidence relating to the internal workings and procedures, training methods and protocols of the police. The Chief Commissioner applied to have these documents kept secret due to their sensitive nature. Among other things, the Coroner considered the principle of open justice set out in section 24(3) of the Victorian Human Rights Charter [equivalent to section 31(3) of the Queensland Act]. She noted that this is not an absolute principle and could be limited in certain circumstances. She found that allowing most of the documents to be published might place police and others at risk, and ordered that they be kept secret. However, to ensure the integrity of the coronial process and the effectiveness of the investigation, she allowed police officers to be questioned about some of the matters in the documents where it was appropriate.

*This fact sheet is not intended to be a substitute for legal advice.*

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