



## Right to Liberty and Security of Person (s.18)

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Section 18 of the *Human Rights Act 2004* says that:

- (1) Everyone has the right to liberty and security of person. In particular, no-one may be arbitrarily arrested or detained.
- (2) No-one may be deprived of liberty, except on the grounds and in accordance with the procedure established by law.
- (3) Anyone who is arrested must be told, at the time of arrest, of the reasons for the arrest and must be promptly told about any charges against him or her.
- (4) Anyone who is arrested or detained on a criminal charge—
  - (a) Must be promptly brought before a judge or magistrate; and
  - (b) Has the right to be tried within a reasonable time or released.
- (5) Anyone who is awaiting trial must not be detained in custody as a general rule, but his or her release may be subject to guarantees to appear for trial, at any other stage of the judicial proceeding, and, if appropriate, for execution of judgment.
- (6) Anyone who is deprived of liberty by arrest or detention is entitled to apply to a court so that the court can decide, without delay, the lawfulness of the detention and order the person's release if the detention is not lawful.
- (7) Anyone who has been unlawfully arrested or detained has the right to compensation for the arrest or detention.
- (8) No-one may be imprisoned only because of the inability to carry out a contractual obligation.

Note: Under the Act, all rights may be subject to reasonable limits (section 28). The nature of the right is relevant when considering what is reasonable.

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

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### Scope of the Right

The right to liberty means that persons must not be subject to arrest and detention, except as 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 his or her own choice.

The right to security requires the Territory to provide reasonable measures to protect a person's physical security. The Government does this, for example, through the work of the police and emergency services. This right differs from the freedom of movement in section 13 of the Act, because a person must be 'detained' to suffer a deprivation of liberty.

The rights in subsections 18(4)–(7) are relevant after a person has been arrested or detained. Some of these rights are also reflected in the criminal law of the ACT, such as the *Crimes Act 1900* and the *Bail Act 1992*. In practice, these guarantees mean that when arresting a person the police must immediately inform him or her of the reason for the arrest and arrange for them to be brought before a court for a preliminary

hearing (usually to determine bail). Even if someone is detained without charges being laid, this should not take more than 24 hours. This helps to ensure that no one is detained on an unfounded suspicion or for an improper purpose.

Section 18(4), which provides that a person who has been charged with an offence must be brought to trial without unreasonable delay, overlaps with section 22(2)(c) of the *Human Rights Act*, because it is also an essential element of a fair trial.

## Examples

The following examples have been found to violate the right to liberty and security:

- In *R v Rubino* [2012] ACTSC 157 the Supreme Court considered a sixth request for bail by a man charged with aggravated burglary, theft and criminal damage. Justice Refshauge granted bail. His Honour found that the previous bail applications were approached in a manner that assumed Mr Rubino would commit further offences and that he had to disprove this. This approach 'offended against the presumption of liberty in s 18 of the *HRA*'.
- A trial which was delayed to the extent that the accused's maximum potential sentence was less than time already served was said by the Victorian Supreme Court to be likely to breach the right to liberty (*Gray v DPP* [2008] VSC 4)

On the other hand, no violation was found in the following international case:

- The UK House of Lords has found 'stop and search' powers under anti-terror legislation to be reasonable because the search stopped people only for a brief period and did not involve restraining them with handcuffs or taking them away (*R (Gillan) v Commissioner of Police* [2006] UKHL 12).

### Examples of when this right could be relevant in practice

The actions of public authorities can both promote and limit rights. Section 18 could be engaged by activities that:

- Authorise a person with a mental illness to be detained for treatment in a mental health facility and facilitates review of their detention;
- Provide for the interim detention of a person whether or not he or she is 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 the management of security of anyone in the care of public authorities, particularly those in involuntary care;
- Make it an offence for a person to fail to remain at a place (for example, for further questioning or to conduct a search or test by a police officer or other official);
- Allow a public authority to cordon an area and control movement within that area;
- Grant a power of arrest.



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