



HUMAN RIGHTS &  
DISCRIMINATION COMMISSIONER  
ACT Human Rights Commission

# Factsheet

## Right Not to be Tried or Punished More than Once (s.24)

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Section 24 of the *Human Rights Act 2004* says that:

No-one may be tried or punished again for an offence for which he or she has already been finally convicted or acquitted in accordance with law.

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

This right, known as the rule against double jeopardy, prevents a person from being prosecuted more than once for an offence of which he or she has been previously finally acquitted or convicted. The right will generally apply where proceedings are brought against a person for exactly, or substantially and practically, the same offence as before. The purpose of the right is to ensure fairness to the accused and to provide certainty in the criminal justice system by upholding the principle that there should be finality in criminal proceedings, and that a judgment which can no longer be appealed should be taken to be authoritative.

The rule against ‘double jeopardy’, applies to all criminal offences, regardless of their seriousness. It may also apply to penalties and proceedings that are described as civil or administrative in ACT legislation, but which, because of their nature or severity, may be considered to be of a criminal character for the purposes of human rights law.

With the exception of the ACT and NT, all other Australian jurisdictions have recently introduced legislative changes to narrow the scope of the rule against double jeopardy. In circumstances where ‘fresh and compelling’ evidence is found, a second prosecution of an acquitted individual on the same facts for serious offences can be initiated. In some states, such as Victoria, a retrial can also be initiated where an acquittal is found to have been ‘tainted’ by perjury, corruption or perversion of the course of justice. Safeguards incorporated in these exceptions to the double jeopardy rule include that the retrial must be in the interests of justice; there must be a strong case for retrial and police may not start investigating an acquitted person without the permission of relevant authorities. It is important to note that these changes are not applicable in the ACT.

### Examples

- **Charged twice on same facts – *R v O’Neill* [2004] ACTSC 64 (30 July 2004)**

The rule against double jeopardy encompasses situations where an accused is charged with two criminal offences arising from precisely the same facts. In *R v O'Neill* [2004] ACTSC 64, in response to a Police Officer directing the accused to stop his vehicle, the accused reversed his car over a police officer's motorcycle and injured the officer. The accused was charged with two counts; first with using an offensive weapon (his car) against the officer, likely to endanger the officer's life, for the purpose of preventing or hindering his lawful apprehension; and second, with assaulting the officer occasioning actual bodily harm. The accused was found guilty on the first count, and Justice Connolly did not proceed to the second count.

- **Prosecution appeals against acquittals – *King v Fricker* [2007] ACTSC 101 (21 December 2007)**

In this case, the ACT Supreme Court held that the right not to be tried or punished more than once does not preclude the Prosecution from appealing against an acquittal in the Magistrates Court on the ground that "the decision...should not in law have been made". This reasoning is consistent with international human rights standards. In General Comment 13 and 32, the United Nations Human Rights Committee drew a distinction between the resumption of a trial where a person has not been *finally* acquitted, which is permitted under Article 14 of the International Covenant of Civil and Political Rights (the international equivalent of section 24 of the *HR Act*), and a retrial, which, in general, is not.

- **Disciplinary proceedings against inmates**

Disciplinary proceedings against inmates that occur within a correctional facility may raise some complex issues. The Canadian Supreme Court in *R v Shubley* [1990] 1 SCR 3 held 3:2 that prison disciplinary proceedings aim to secure order within the prison and therefore do not constitute a criminal offence for the purpose of the double jeopardy rule. The European Court of Human Rights ruled similarly in *Campbell and Fell v United Kingdom* (1984) 7 EHRR 165, finding that some disciplinary 'offences' are solely concerned with maintaining order in the prison and are therefore purely disciplinary, whereas other disciplinary offences may come within the scope of the double jeopardy rule because their nature or severity makes them criminal in substance. In the ACT, the *Corrections Management Act 2007* (s 155) provides that a detainee cannot be prosecuted for a criminal offence if an administrative penalty has been imposed because of the disciplinary breach, and vice versa.



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