

The right to a fair trial in the ACT Courts



The right to a fair trial is a fundamental principle of our criminal justice system. A fair trial is one that is held

before a competent, independent and unbiased court. Many of the processes and principles that ensure a fair trial, such as the four principles set out on this page, have been inherited from British law. In the ACT, the *Human Rights Act 2004* enshrines (protects) the rights of an accused person to a fair trial. If a person is found guilty but they believe that they did not receive a fair trial, they can appeal to a higher court to have the decision reviewed.



Burden of proof

The burden of proof refers to the responsibility of a party to prove the facts of the case. In a criminal matter,

the prosecution carries the burden of proof. The burden of proof means that the prosecution must prove that the accused person is guilty of the crime(s) they have been charged with.

The reason for this is that it is the prosecution that is accusing the person of committing a crime, so it is their responsibility to establish the facts and prove the case. Another reason is that the prosecution acts on behalf of the community through the government, and therefore has significantly more money and resources than the defendant.

In a few circumstances the burden of proof can be reversed and put on the defendant. One example of this is if the defendant raises a defence such as self-defence.



Right to silence

Anyone accused of committing a crime has the right to silence. They cannot be forced to answer questions by the police or stand up in court and give evidence.

A person's silence is not a sign that they are guilty.



Standard of proof

The standard of proof refers to the strength of evidence needed to prove the case. In a criminal case, the

the prosecution must prove the case beyond reasonable doubt. Proving someone guilty beyond reasonable doubt does not mean that no doubts exists as to the accused's guilt (or that they are 'completely innocent').

To meet the standard of proof there must be no other logical or reasonable conclusion that can be reached about what occurred, based on the evidence presented in court, except that the accused is guilty. The judge or members of the jury may still be able to think of fanciful, imaginary or completely unrealistic doubts, but these are not reasonable.

If the burden of proof is on the accused (for example, if the defendant raises self-defence), then the standard of proof is on the balance of probabilities. This is a lower standard.



Presumption of innocence

Every person accused of a crime is presumed to be innocent until they

have gone before a court and have been found guilty. The presumption of innocence is one of the most important concepts in the criminal justice system. It guarantees that any person who is accused of a crime will be treated, as far as possible, as being innocent (not guilty) until the charge has been proved beyond reasonable doubt.

One of the critical ways in which the presumption of innocence is maintained is by requiring the prosecution to prove, beyond a reasonable doubt, that the accused is guilty. This means that the accused person does not have to actively prove they are innocent; rather, they must show there is a reasonable doubt in the prosecution's case.