

Commissioner's foreword

In my foreword to last year's report – the first on the operation of Queensland's *Human Rights Act 2019* – I reflected that there was possibly no greater test of new human rights legislation than a global pandemic.

COVID-19 and the ensuing restrictions swept the world less than three months after the operational provisions of Queensland's new Human Rights Act (**the Act**) had come into effect, and its impact on human rights culture and understanding, both at a community and political level, has been immense.

Here at the Commission we saw dramatic increases in complaint and enquiry numbers throughout 2020-21, as well as sharp surges in enquiries and complaints as a result of lockdowns and other pandemic response measures.

Across the public sector, agencies have grappled with the human rights implications of wide-scale restrictions on their service delivery and what that means for the communities they serve, while Queenslanders both inside our borders and out – many of whom may never have considered the need for their own rights to be protected – were faced with constantly changing and sometimes confusing public health directions.

However, while the challenges have been myriad, so too have the gains when it comes to Queensland's developing human rights culture.

Hotel quarantine, mask requirements, vaccines, lockdowns and border closures have occupied much space in media coverage and public discourse over the past year, and along with that has come an accelerated understanding of the need to balance people's human rights against the rights of others, both individually and collectively.

Public entities have largely shown themselves willing to engage in human rights dialogue when issues were raised, and consider less restrictive alternatives to rights limitations. Advocates have also reported positive outcomes by raising human rights arguments in their dealings with public entities.



In a case in which the Commission intervened during the reporting period, the Supreme Court has since made an instructive decision about how public entities must apply the Act to ensure their actions and decisions are compatible with human rights.¹

However, there remain some areas where a human rights culture is still emerging. Parliamentary utilisation of the Act is arguably not as developed, particularly when it comes to scrutiny of legislation through a human rights lens. This year, the Commission has been invited to appear regularly before parliamentary committees to offer expert guidance on the potential human rights impacts of legislation across multiple portfolios. Parliamentary committees have expressed concerns about human rights compatibility, particularly laws relating to emergency powers in the ongoing pandemic, and youth justice. However, this has not translated to meaningful change through the legislative process.

Strong and sustained leadership which keeps human rights at the centre of decision-making will be essential for a human rights culture to continue to grow at every level - in public entities, the courts and in the parliament.



Scott McDougall
Commissioner
Queensland Human Rights Commission

¹ Owen-D’Arcy v Chief Executive, Queensland Corrective Services [2021] QSC 273

About the Commission

The Queensland Human Rights Commission (**the Commission**) is an independent statutory body established under the *Anti-Discrimination Act 1991*. The Commission was formerly the Anti-Discrimination Commission Queensland and was renamed the Queensland Human Rights Commission on 1 July 2019 following the passage of the *Human Rights Act 2019* (**the Act**). The functions and powers of the Commission under section 61 of the Act are:

- to deal with human rights complaints;
- if asked by the Attorney-General, to review the effect of Acts, statutory instruments and the common law on human rights and give the Attorney-General a written report about the outcome of the review;
- to review public entities' policies, programs, procedures, practices and services in relation to their compatibility with human rights;
- to promote an understanding and acceptance, and the public discussion, of human rights and this Act in Queensland;
- to make information about human rights available to the community;
- to provide education about human rights and this Act;
- to assist the Attorney-General in reviews of this Act under sections 95 and 96;
- to advise the Attorney-General about matters relevant to the operation of this Act; and
- another function conferred on the Commission under this Act or another Act.

About this report

Section 91 of the Act requires that, as soon as practicable after the end of each financial year, the Commissioner must prepare an annual report about the operation of the Act during the year. The purpose of this report is to provide a resource for government, parliament, and the community on the operationalisation of the Act and the degree to which it is achieving its objectives.² The Act will be reviewed in 2023³ and 2027,⁴ and the content of this report will provide evidence of how the Act has operated in its early years.

² Explanatory Notes, Human Rights Bill 2018 44.

³ Section 95 of the Act requires the Attorney-General to cause an independent review of the operation of the Act up until 1 July 2023.

⁴ Section 96 of the Act requires the Attorney-General to cause a second independent review of the operation of the Act for the period July 2023 to July 2027.

Executive summary

Balancing life and liberty

The right to life is a supreme right which recognises that human life is 'precious for its own sake'.⁵ COVID-19 has required us to give up some of our liberties to preserve the lives of others around us. Finding the right balance between protecting life and preserving liberty is an ongoing challenge for our society.

Last year the Commission reflected on how COVID-19 had presented a significant and unforeseen test of the Act in its earliest stages. COVID-19 was declared a pandemic in the first months of the Act's operation, just as the complaints process had commenced. The Commission expressed last year that the Act provides an important framework for assessing the impact on rights of the unprecedented measures taken to protect life.

Complaints made internally to Queensland Health, and through the Commission's complaint process, demonstrate the critical importance of the framework of assessing compatibility with human rights in order to achieve the right balance.

In the reporting period, lockdowns, border closures, and quarantine requirements imposed by the Queensland Government placed numerous limitations on human rights, especially the right to freedom of movement, in order to protect the community from COVID-19. Queensland Parliament passed legislation that granted the Chief Health Officer substantial powers. Under the Act, the Parliament was required to consider whether the limitations on human rights were reasonable and justifiable in the current situation of a pandemic.

COVID-19 was the subject matter of 1 in 4 human rights complaints and 1 in 6 enquiries to the Commission in 2020-21. Around 80% of complaints about health services were related to COVID-19. This focus is reflected in the rights most frequently identified in complaints finalised in the reporting period:

- Recognition and equality before the law
- Humane treatment when deprived of liberty
- Freedom of movement

⁵ Human Rights Committee, *General comment no. 36, Article 6: right to life*, UN Doc CCPR/C/GC/36, (3 September 2019).

Without the passage of the *Human Rights Act 2019*, hundreds of people would not have had the option of complaining to an external body equipped to deal with their complaint through a human rights lens. The complaints process ensured that people who were most disadvantaged – such as children, families, and people with disabilities – were able to negotiate fair and reasonable outcomes in challenging circumstances. The flexible processes allowed by the Act made it possible for the swift resolution of issues to the benefit of individuals and public entities and led to service improvements at a systemic level [refer to *Human rights enquires and complaints – Resolved complaints case studies* on page 155].

One requirement under the Act is for public entities to consider whether there are any less restrictive and reasonably available ways to achieve a legitimate purpose. Two reports issued with recommendations following unresolved complaints about COVID-19 suggested alternative options that could have been considered while still meeting the legitimate purpose of protecting life [refer to *Human rights enquiries and complaints - Unresolved complaints with recommendations* on page 152].

To continue to provide a legal basis for public health restrictions, Queensland Parliament passed further legislation in the reporting period. Unfortunately, in some instances such laws were passed on an urgent basis, which bypassed proper parliamentary scrutiny with respect to human rights [refer to *Human rights and the Parliament – COVID-19 related legislation* on page 41].

Overall, community attitudes reflect support for the actions of government with respect to the pandemic in protecting and promoting human rights [refer to *Human rights in the community – measuring human rights attitudes* on page 166].

Human rights leadership in the public sector

In the first year of the Act, the Commission created indicators of a developing human rights culture and asked a number of state public entities and councils about progress made against the indicators towards building a culture where rights are protected and promoted.

Again this year the Commission has asked key government agencies and a small sample of councils to respond against these indicators. It is hoped that this exercise will identify strengths and areas for improvement on an ongoing basis.

The Commission observed that in the second year, teams tasked with implementing the Act had mostly completed their initial work of reviewing policies, procedures and legislation, and a high proportion of staff had already received training on the Act. Practical examples were provided of how positive changes had been implemented either in response to a policy review, or in response to a complaint or a series of complaints. This shows the value in the Act in achieving improved service delivery.

While the pandemic has created a particularly challenging environment for cultural change, it is important that the public sector does not become complacent. The Commission will continue to monitor how the Act is operating in the hope that this culture will continue to grow. It will take sustained effort and strong leadership for human rights to be embedded in every public entity in Queensland.

That's why this year, the Commission has focussed on the question of human rights leadership and what role it has to play in ensuring sustained cultural change [refer to *Human rights in the public sector – Developing a human rights culture* on page 74].

Cultural rights upheld

2020-21 has been a significant year for Aboriginal and Torres Strait Islander peoples' cultural rights, which are protected under section 28 of the Act. Firstly, 2021 saw the passage of landmark legislation to legally recognise traditional Torres Strait Islander adoption practices.⁶

Of the complaints received about human rights, one in 10 were made by Aboriginal or Torres Strait Islander people.

Section 28 of the Act upholds the distinct cultural rights of Aboriginal and Torres Strait Islander people, ensuring that they are free to practice their cultures. As demonstrated by a complaint resolved by the Commission, cultural rights may apply even when native title has been extinguished.

Traditional Wangan and Jagalingou custodians relied on the Act to protect their cultural rights to perform ceremonies on land granted to Adani's Carmichael coal mine. Community leader Adrian Burragubba brought a complaint to the Commission⁷ after police asked a group of traditional custodians to stop conducting ceremonies and leave the site. The complaint was resolved through the conciliation process, and the Queensland Police Service issued a public apology.

⁶ *Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Act 2020.*

⁷ See *Resolved complaint case studies* on page 155 under the title 'Police express regret about asking traditional custodians to move on while exercising their cultural rights'.

The outcome indicates a strong commitment by the Queensland Police Service to uphold the cultural rights of Aboriginal peoples and Torres Strait Islander peoples and demonstrates the value of the Act for Queensland's First Nations peoples.

Human Rights Act snapshot of 2020-21: A timeline

Below is a brief timeline of some of the key events relevant to the operation of the Act in its second year.



First Nations people



Civil liberties



The fight for equality



Children and families



Life and health



Prisons and institutions

8 AUGUST 2020



The Commission intervened in a matter before the Supreme Court about an injunction to prevent a blockade of Brisbane's Story Bridge, and argued that the court must consider human rights protection for all people. See *Attorney-General for the State of Queensland v Sri & Ors* [2020] QSC 246.

4 SEPTEMBER 2020



The Land Court of Queensland, when hearing objections to an application for a mining lease under the *Mineral Resources Act 1989* and environmental authority under the *Environmental Protection Act 1994*, accepted it was acting in an administrative capacity and is a public entity under the *Human Rights Act 2019*. See *Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors* [2020] QLC 33

17 NOVEMBER 2020



The Queensland Industrial Relations Commission, when hearing an application for an exemption under the *Anti-Discrimination Act 1991*, found it was acting in an administrative capacity and must observe its obligations as a public entity under the *Human Rights Act 2019*. See *Re Ipswich City Council* [2020] QIRC 194.

15 OCTOBER 2020



The Commission published its first report and recommendations on an unresolved complaint about hotel quarantine conditions.

25 FEBRUARY 2021



Parliament passed the controversial Youth Justice and Other Legislation Amendment Bill 2021 that allows a court to grant bail to a child on condition that the child wears a GPS monitoring device. The Commission opposed the use of the monitoring devices and new requirements for children to 'show cause' to be granted bail.

1 APRIL 2021



Commencement of some provisions of the *Meriba Omasker Kaziw Kazipa (Torres Strait Traditional Child Rearing Practice) Act 2020*, with remaining provisions commenced on 1 July 2021.

21 APRIL 2021



Queensland Parliament's Legislative Assembly agreed that the Legal Affairs and Safety Committee inquire into and report on the nature and extent of hate crimes and serious vilification in Queensland.

3 MAY 2021



The Premier announced a review of industrial relations laws, including protections for workers subjected to workplace sexual harassment.

4 MAY 2021



The Attorney-General announced a review by the Commission of the *Anti-Discrimination Act 1991* to 'consider whether any reforms are needed to update the laws to best protect and promote equality, non-discrimination and the realisation of human rights.'

Report summary

The Act requires under s91 that this report contain particular information. This information has been summarised below, along with the location of more detailed commentary in this report.

Table 1: Required information for this report under s91 of the Human Rights Act 2019

Section	Required information
91(2)(a)	<p><i>details of the examination of the interaction between this Act and other Acts, statutory instruments and the common law</i></p> <p>This provision refers to section 61(b) of the Act. The Commission has not been asked to perform this function in the 2020-21 financial year.</p>
91(2)(b)	<p><i>details of all declarations of incompatibility made</i></p> <p>No declarations of incompatibility were made in the 2020-21 financial year.</p>
91(2)(c)	<p><i>details of all override declarations made</i></p> <p>No Override Declarations were made in the 2020-21 financial year.</p>
91(2)(d)	<p><i>details of all interventions by the Attorney-General or the commission under section 50 or 51</i></p> <p>The Commission intervened in 3 matters before the Supreme Court and 2 matters before the Mental Health Court during 2020-21.</p> <p>For more information, see <i>Human rights in courts and tribunals – Interventions</i> from page 68.</p>

Section	Required information
91(2)(e)	<p><i>the number of human rights complaints made or referred to the commissioner</i></p> <p>In the reporting period, the Commission received 369 complaints that have been identified as human rights complaints.⁸ Of those complaints:</p> <ul style="list-style-type: none"> • 237 were human rights only complaints⁹ • 132 were piggy-back complaints¹⁰ <p>For more information, see <i>Human rights enquiries and complaints – Human rights complaints snapshot</i> on page 138.</p>
91(2)(f)	<p><i>the outcome of human rights complaints accepted by the commissioner for resolution by the commission, including whether or not the complaints were resolved by conciliation or otherwise</i></p> <p>Of the 151 accepted complaints that were finalised in the 2020-21 financial year:</p> <ul style="list-style-type: none"> • 47 complaints were resolved. • 14 complaints were referred to Queensland Civil and Administrative Tribunal.

⁸ A total of 1,490 complaints were received by the Commission, with the majority being complaints falling under the *Anti-Discrimination Act 1991*. The human rights and piggy-back complaints together make up around 24.7% of complaints received.

⁹ A 'human rights only' complaint is where the complaint was dealt with only under the *Human Rights Act 2019*.

¹⁰ A 'piggy-back complaint' is where the complaint raises issues under the *Anti-Discrimination Act 1991* and the *Human Rights Act 2019*. Under section 75 of the *Human Rights Act*, the Commission may decide that a human rights complaint would be more appropriately dealt with by the Commission as a complaint under the *Anti-Discrimination Act 2019*. These were referred to as 'combined claims' last year but the Commission's terminology has since changed.

Section	Required information
	<ul style="list-style-type: none"> 12 complaints were referred to Queensland Industrial Relations Commission. <p>For more information, see <i>Human rights enquiries and complaints – Outcomes of finalised complaints</i> on page 140 and <i>Resolved complaint case studies</i>, from page 155.</p>
91(2)(g)	<p><i>the number of human rights complaints resolved by the commission</i></p> <p>In the 2020-21 financial year: 47 complaints were resolved and finalised, comprising:</p> <ul style="list-style-type: none"> 19 human rights only complaints resolved and finalised by the Commission; and 28 piggy-back complaints resolved and finalised by the Commission. <p>For more information, see <i>Human rights enquiries and complaints – Human rights complaints snapshot</i> on page 137.</p>
91(2)(h)	<p><i>the number of conciliation conferences conducted under this part</i></p> <p>120 conciliation conferences relating to human rights were conducted in the 2020-21 financial year. 100 were for piggy-back complaints and 20 were for human rights only complaints.</p>

Section	Required information
	For more information, see <i>Human rights enquiries and complaints – Dispute resolution process: conciliation and early intervention</i> on page 152.
91(2)(i)	<p><i>the number of public entities that were asked or directed to take part in a conciliation conference, and the number that failed to comply with a direction to take part</i></p> <p>While 453 notifications were sent out for public entities to participate in dispute resolution, some public entities were required multiple times. Overall, 246 discrete public entities participated.</p> <p>No public entities failed to comply with a direction to attend a conference in the 2020-21 financial year.</p> <p>For more information, see <i>Human rights enquiries and complaints – finalised complaints by sector</i> on page 146.</p>
91(2)(j)	<p><i>the number of human rights complaints received by particular public entities decided by the commissioner</i></p> <p>This information is too detailed to reproduce in the report summary. See <i>Human rights enquiries and complaints - Internal complaints made to public entities</i> from page 124.</p>
88(4)	<i>The names of public entities and details of actions recommended by the Commissioner following an unresolved conciliation</i>

Section	Required information
	<p>The Commissioner made recommendations in relation to two complaints, one about hotel quarantine and another about prisoner quarantine during COVID-19.</p> <p>See further details under the heading <i>Human rights enquiries and complaints – Recommendations made by Commissioner</i> from page 152.</p>