

# About the *Human Rights Act 2019*

# What are human rights?

Human rights are rights inherent to all human beings.

By promoting respect for human rights, we recognise the dignity and worth of all people.

Human rights should only be limited in a way that can be justified in a free and democratic society based on human dignity, equality, freedom, and the rule of law.

## Modern human rights law

The modern idea of human rights derives from the Universal Declaration of Human Rights which was adopted by the United Nations General Assembly in 1948. Australia has shown its commitment to human rights by ratifying treaties, including the International Covenant on Civil and political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). However, a treaty only becomes a direct source of individual rights and obligations once it is incorporated into domestic legislation.

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### Objects of the Act

The main objects of the Act are:

- to protect and promote human rights; and
- to help build a culture in the Queensland public sector that respects and promotes human rights; and
- to help promote a dialogue about the nature, meaning and scope of human rights.

### Protected human rights

The Act consolidates and establishes statutory protections for certain rights recognised under international law, including those drawn from the ICCPR and the ICESCR.

The following human rights are protected under the Act:

- Right to recognition and equality before the law (section 15)
- Right to life (section 16)
- Right to protection from torture and cruel, inhuman or degrading treatment (section 17)
- Right to freedom from forced work (section 18)
- Right to freedom of movement (section 19)
- Right to freedom of thought, conscience, religion and belief (section 20)
- Right to freedom of expression (section 21)
- Right to peaceful assembly and freedom of association (section 22)
- Right to take part in public life (section 23)
- Property rights (section 24)
- Right to privacy and reputation (section 25)
- Protection of families and children (section 26)
- Cultural rights – generally (section 27)
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28)
- Right to liberty and security of person (section 29)
- Right to humane treatment when deprived of liberty (section 30)
- Right to a fair hearing (section 31)
- Rights in criminal proceedings (section 32)
- Rights of children in the criminal process (section 33)
- Right not to be tried or punished more than once (section 34)
- Retrospective criminal laws (section 35)
- Right to education (section 36)
- Right to health services (section 37)

## Government obligations

The Act places obligations on all three arms of government, the legislature, the judiciary and the executive. This means that:

Parliament (the legislature) must consider human rights when proposing and scrutinising new laws.

Courts and tribunals (the judiciary) so far as is possible to do so, must interpret legislation in a way that is compatible with human rights.

Public entities (the executive) – such as state government departments, local councils, state schools, the police and non-government

organisations and businesses performing a public function must act compatibly with human rights.

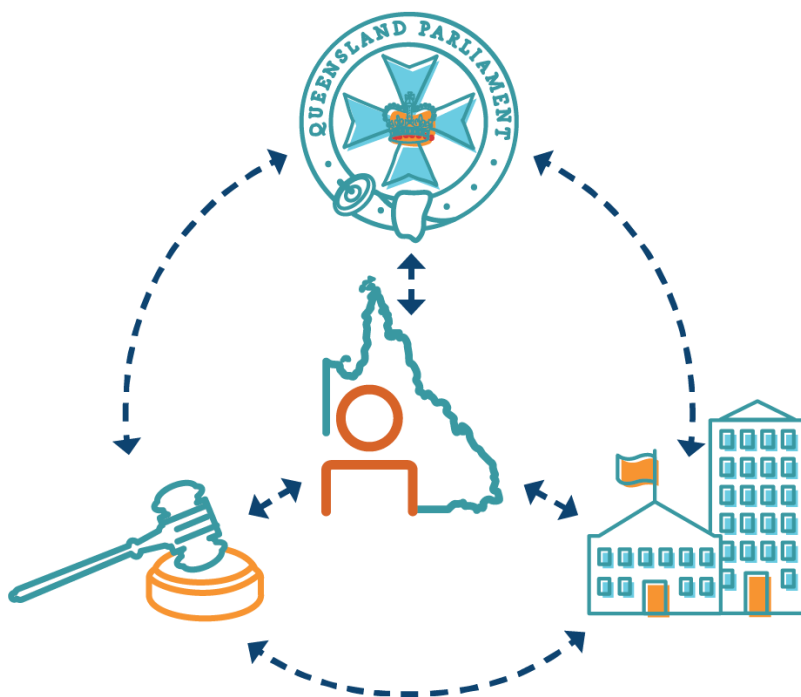
The Act makes it clear that rights can be limited, but only where it is reasonable and justifiable.

This report contains sections reflecting the progress gained by all three arms of government towards the goals of the Act.

- For more information on the parliament see Human rights and the parliament in this report.
- For more information on courts and tribunals see Human rights in courts and tribunals in this report.
- For more information on public entities see Human rights and the public sector in this report.

## The dialogue model

Figure 1: Diagram of the dialogue model



A dialogue model is aimed at prevention rather than litigation, and retains the sovereignty of parliament.

It means that human rights are considered across the three arms of government – when the parliament makes laws, when government applies laws, and when courts and tribunals interpret laws.

There is a mechanism for the court to inform the government if legislation is inconsistent with human rights, but it doesn't affect the validity of the legislation and parliament has the final say.

It encourages people to talk to public entities if they feel their human rights have been unreasonably limited or not considered at all.

Under the Act, a complaint may be made to the Commission about human rights, provided a complaint has first been made to the public entity. The dispute resolution process is consistent with a dialogue model as it encourages resolution through discussion. The dialogue model is strengthened by the Commission's capacity to make recommendations for improvements to further human rights compatibility. Section 88 of the Act allows the Commission to prepare a report about a human rights complaint which includes recommendations of actions to be taken by public entities to ensure its acts and decisions are compatible with human rights.

## Public entities

Public entities have obligations to make decisions and act compatibly with human rights, and to give proper consideration to human rights when making decisions.

A public entity is an organisation or body performing a public function in and for Queensland.

There are two types of public entities, although the following terms are not used in the Act:

Core public entities are government entities. This includes:

- government agencies and departments
- public service employees
- the Queensland Police Service and other emergency services
- state government ministers
- public schools
- public health services, including hospitals
- local government, councillors, and council employees.

Functional public entities are only considered public entities when they are performing a function of a public nature on behalf of the state.

Organisations funded by the government to provide public services would fall under this category. Functional public entities could be non-government organisations (NGOs), private companies, or government

owned corporations. A private company funded to run a prison, or an NGO providing a public housing service, would be considered a functional public entity.