



# Human rights complaints

# About human rights complaints

Before making a complaint to the Commission under the Human Rights Act, a person must make a complaint to the public entity about the alleged contravention of the Act first. At least 45 business days must elapse after the person makes the complaint to the public entity and either they have not received a response or they consider the response inadequate.<sup>90</sup> This process encourages direct resolution of complaints at the earliest possible stage.

This section of the report reviews human rights complaints received by specific public entities as reported to the Commission and complaints made directly to the Commission.

## Complaints made directly to public entities

Public entities must ensure they have an appropriate complaint handling procedure in place for early resolution of complaints.

The Act requires the Commissioner to report on the number of human rights complaints received by particular entities and allows the Commissioner discretion to decide which public entities' complaints to report on under this provision.<sup>91</sup>

The Act requires public entities to prepare an annual report providing details of human rights complaints received including the:

- number received
- outcome of complaints.<sup>92</sup>

For this section we have used the same state public entities that were discussed in the *Human rights and the public sector* chapter of this report. The information has been drawn from the annual reports of those public entities.

Table 5 provides the number of complaints reported by selected entities in their annual reports for 2022-23 and the previous year. The Commission has included details, where they have been provided, of outcomes of human rights complaints.

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<sup>90</sup> *Human Rights Act 2019* (Qld) s 65.

<sup>91</sup> *Human Rights Act 2019* (Qld) s 91(j).

<sup>92</sup> *Human Rights Act 2019* (Qld) s 97.

Table 5: Internal human rights complaints made to public entities, 2022-23

Public entity	Number of complaints	Outcomes
Department of Education <sup>93</sup>	14 complaints upheld or substantiated either in full or in part (6 in 2021-22)	<p>These complaints were managed in accordance with complaints policies and procedures.</p> <p>Action taken for substantiated complaints may include the department overturning a decision, giving an apology, changing a practice or process, providing a service not previously provided or addressing or referring the issue for system improvement.</p>
Department of Housing <sup>94</sup>	25 complaints	<p>The nature of the complaints were:</p> <ul style="list-style-type: none"> <li>• 6 were about eligibility or wait times</li> <li>• 6 were about staff conduct</li> <li>• 4 were about the level of service provided</li> <li>• 3 were about property maintenance</li> <li>• 1 was about staff skill/knowledge</li> <li>• 1 was about privacy</li> <li>• 1 was about treatment by a funded housing provider</li> <li>• 1 was about the handling of the complaint.</li> </ul> <p>The outcome of the complaints were:</p> <ul style="list-style-type: none"> <li>• 12 customers were provided with an explanation</li> <li>• 7 complaints could not be substantiated</li> <li>• 3 received an apology</li> <li>• 2 resulted in staff training</li> <li>• 1 was a provision for housing</li> </ul>
Queensland Police Service <sup>95</sup>	1,366 complaints (1,184 in 2021-22)	<p>1,366 complaints where it was alleged that one or more human rights had been unreasonably limited.</p> <p>1,788 possible human rights limitations (one complaint can include more than one human rights limitation).</p> <p>752 (of the 1,184) complaints were finalised as at 30 June 2023.</p> <p>35 instances where human rights were unreasonably limited resulted in: 8 apologies, 3 managerial resolution, 9 explanations, 12 disciplinary actions. However, in most cases, there was no further action taken as no human rights limitations were detected, or an explanation was provided to the complainant as the officers' actions were identified as being lawful and reasonable.</p>

<sup>93</sup> Department of Education (Qld), *Annual Report 2022-2023*, 59.

<sup>94</sup> Department of Housing (Qld), *Annual Report 2022-2023*, 23.

<sup>95</sup> Queensland Police Service, *Annual Report 2022-23*, 12.

Public entity	Number of complaints	Outcomes
Department of Child Safety, Seniors and Disability Services <sup>96</sup>	104 complaints	<p>104 complaints that contained 206 allegations. Of these allegations, 186 have been finalised, with the following outcomes:</p> <ul style="list-style-type: none"> <li>• 87 were unsubstantiated (rights not limited)</li> <li>• 66 were unsubstantiated (rights limited, but justified and reasonable)</li> <li>• 33 were substantiated (limited, not justified and unreasonable).</li> </ul>
Queensland Corrective Services <sup>97</sup>	138 complaints (693 in 2021-22)	<p>QCS received 1,032 complaints, including 138 complaints which raised a human rights issue.</p> <p>The complaints with a human rights component were about:</p> <p>Of the 138 complaints with a human rights component the outcomes were as follows:</p> <ul style="list-style-type: none"> <li>• 10 were partially substantiated</li> <li>• 78 were not substantiated</li> <li>• 17 were referred or made to another agency</li> <li>• 31 are still open/ongoing</li> <li>• 2 were listed as other'.</li> </ul>
Department of Treaty, Aboriginal and Torres Strait Islander Partnerships, Communities, and the Arts <sup>98</sup>	3 customer complaints 4 staff complaints	<p>3 customer complaints were identified as containing multiple human rights issues. Concerns about 1 human rights were resolved as not substantiated, and concerns about the remaining 2 human rights are not yet finalised.</p> <p>Of the staff complaints received, none directly referred to the Act, but 4 matters were assessed as containing identified human rights that may have been engaged. Some matters contained multiple human rights issues. All 4 complaints were finalised with no further action.</p>
Department of Health <sup>99</sup>	558 complaints (435 in 2021-22)	<p>Of the 558 complaints received, the outcomes were:</p> <ul style="list-style-type: none"> <li>• 471 complaints were resolved by the Department</li> <li>• 67 complaints remain ongoing/open</li> <li>• 7 complaints were referred to the QIRC for conciliation</li> <li>• 11 complaints were unresolved (including closed or lapsed)</li> </ul>

<sup>96</sup> Department of Child Safety, Seniors and Disability Services (Qld), *Annual report 2022–23*, 47–48.

<sup>97</sup> Queensland Corrective Services, *Annual Client Complaints 2022–23*, 6–11.

<sup>98</sup> Department of Treaty, Aboriginal and Torres Strait Islander Partnerships, Communities, and the Arts (Qld), *Annual Report 2022–23*, 46.

<sup>99</sup> Department of Health (Qld), *Annual Report 2022–23*, 135.



Public entity	Number of complaints	Outcomes
		<ul style="list-style-type: none"> <li>2 were identified as 'other'.</li> </ul>
Department of Youth Justice, Employment, Small Business and Training <sup>100</sup>	152 complaints	<p>There were 152 complaints which were received where human rights were engaged.</p> <p>Of the 152 complaints received:</p> <ul style="list-style-type: none"> <li>56 were investigated and unsubstantiated</li> <li>42 were resolved through a local management action</li> <li>33 are still being investigated</li> <li>17 were investigated and identified as frivolous or insufficient evidence to support allegation</li> <li>4 were investigated and unsubstantiated.</li> </ul>

<sup>100</sup> Department of Youth Justice, Employment, Small Business and Training (Qld), *Annual Report 2022–23*, 45–46.

# Complaints made to the Commission

The Commission receives complaints from people who believe that a public entity has not given proper consideration to their human rights when making a decision, or acted in a way that is not compatible with human rights.

The Commission is impartial and does not take sides when assessing and resolving complaints. The Commission's role is not to decide whether a breach of human rights has occurred or not, but to help people resolve complaints.

The Commission's role is to:

- work to ensure that everyone is able to put forward their point of view, is listened to, and feels safe
- assist everyone reach agreement about how to resolve the complaint, and
- ensure the process is fair.

This section contains information on human rights complaints finalised by the Commission in 2022-23. More detailed information on the data represented in graphs is provided in data tables in Appendix C.

## Complaints processes and terminology

### Piggy-back complaints and human rights only complaints

Some complaints raise issues that might be covered by both the *Anti-Discrimination Act 1991* and the *Human Rights Act 2019*.

Under the Human Rights Act, if the Commissioner considers that a human rights complaint would be more appropriately dealt with as an alleged contravention of the Anti-Discrimination Act, the Commission may deal with the complaint under that Act, with the consent of the complainant.<sup>101</sup>

A 'piggy-back' complaint at the Commission is where a complaint is dealt with under the Anti-Discrimination Act (such as a discrimination complaint) but is against a public entity and therefore raises human rights issues under the Human Rights Act. The human rights aspects of the complaint are 'piggy-backed' onto the discrimination claim. The complaint parties usually proceed through a conciliation conference for these matters in which an impartial conciliator assists the parties to resolve the complaint, and the complainant has the option of referring their complaint to the relevant tribunal if it does not resolve.

A 'human rights only' complaint is confined to a complaint about a public entity in relation to an act or decision of the public entity that is not compatible with the

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<sup>101</sup> *Human Rights Act 2019* (Qld) s 75.

person's human rights, or that proper consideration of a human right relevant to a decision was lacking.

The complaint resolution process for human rights only complaints occurs either through a conciliation conference or by early intervention, in which the matter is managed using a shuttle negotiation process in which the conciliator speaks with the parties separately to reach a resolution of the matter.

If a complaint is a human rights only complaint, there is no right of referral to a tribunal for a decision on the complaint if it does not resolve at the Commission, and no right to compensation.

## Who can make a complaint?

A complaint may be made by a person who alleges that they have been subjected to a limitation of their human rights by a public entity. That is, the person alleges that a public entity has acted or made a decision in a way that is not compatible with their human rights or has failed to give proper consideration to a human right relevant to a decision that affects them.

The person can appoint an agent, or the Commission can authorise another person to make a complaint for them. Two or more persons can make a joint complaint.<sup>102</sup>

## What is an accepted complaint?

The Commission assesses each complaint received and records which human rights are relevant based on the allegations raised by the complaint, as well as which type of public entity is involved (for example, state government, local government, or functional entity) and in which sector (for example, health, education, court services etc.).

An 'accepted complaint' means that the Commission has assessed the complaint and decided that the matter should proceed to a dispute resolution process (conciliation or early intervention) to try to resolve the issues.

Under the Human Rights Act, a complaint can only be accepted if it is made in writing and includes enough details to indicate the alleged contravention to which the complaint relates.<sup>103</sup> When deciding whether to accept a complaint, the complaint handler will consider whether there may have been an unreasonable limitation of human rights.

By accepting a complaint, the Commission has not decided that there has been an unreasonable limitation of human rights.

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<sup>102</sup> *Human Rights Act 2019* (Qld) s 64(3).

<sup>103</sup> *Human Rights Act 2019* (Qld) s 67.

## What is a finalised complaint?

A finalised complaint is one which has been dealt with to conclusion, either through the Commission's dispute resolution process, or through rejection and closure of the complaint file. For more detailed information see the section *Outcomes of finalised complaints*.

## What is an accepted and finalised complaint?

This means a complaint that has been accepted (in any period) by the Commission and has been finalised in the period 2022-23.

## What is a resolved complaint?

'Resolved' means that a complaint has been through a dispute resolution process and either the parties have reached an agreement or the Commission considers that the matter has been resolved.



## Human rights complaints snapshot

By the end of the 2022–23 financial year:

**561** human rights complaints had been finalised in that year. 209 were human rights only complaints and 352 were piggy-back complaints.

**241** of these finalised complaints had been accepted. 68 of these were human rights only complaints and 173 were piggy-back complaints.

**57** complaints were resolved in the 2022–23 financial year. 22 of the resolved complaints were human rights only complaints and 35 were piggy-back complaints.

**73** complaints (all piggy-back complaints) were referred to tribunals (41 to QCAT<sup>104</sup> and 32 to the QIRC<sup>105</sup>).

Figure 4: Human rights complaint snapshot, 2022-23



<sup>104</sup> QCAT hears complaints not related to work that are made under the *Anti-Discrimination Act 1991* (Qld) but not resolved at the Commission.

<sup>105</sup> QIRC hears complaints related to work that are made under the *Anti-Discrimination Act 1991* (Qld) but not resolved at the Commission.

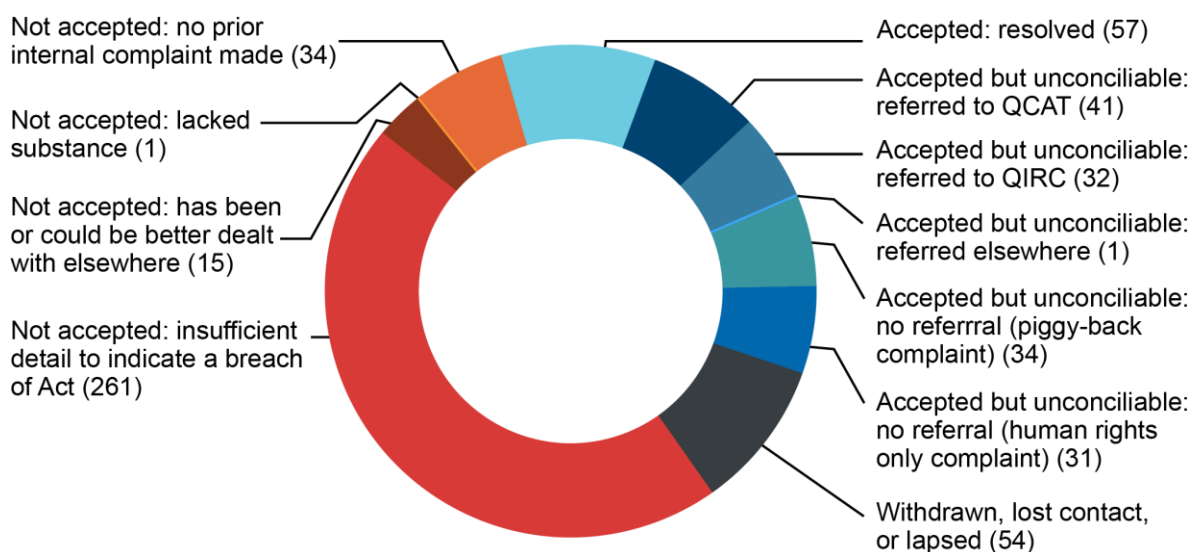
## Outcomes of finalised complaints

Of the human rights complaints finalised in the reporting period, 320 (approximately 57%) were not accepted by the Commission. Complaints that did not indicate an unreasonable limitation on a human right made up the bulk of this number, and 15 complaints were not accepted because the Commission determined that the complaint had already been or would be better dealt with by another body, such as through a court or another specific complaints or oversight agency.

Thirty-four complaints were finalised because the requirement to make an internal complaint to the public entity and wait 45 days for a response was not complied with.<sup>106</sup> The number of complaints closed under this category has reduced from 9% last year and now represents only 6% of complaints finalised, compared with 27% in the first year and 21% in the second year of operation of the Act. This statistic suggests that the revisions made to the Commission's complaints information on its website during the second year of the Act enhanced complainants' understanding of the mandatory requirements.

Of the 241 complaints that were accepted, 57 complaints were resolved in the reporting period and a further 73 complaints, some of which had been received in the previous financial year, were referred to tribunals (QCAT or the QIRC).

Figure 5: Outcomes of all complaints finalised in 2022-23



Of complaints that were resolved through dispute resolution at the Commission, an apology was the most common agreed outcome, followed by an agreement that one or more respondents to the complaint would receive training about their obligations.

<sup>106</sup> *Human Rights Act 2019* (Qld) s 65.

*Table 6: Specific outcomes achieved through the Commission's complaints process 2022-23 (including piggy-back complaints)*

Outcome	Number
Apology	14
Respondents' explanation accepted	8
Policy change / review	7
Service improvement	6
Agreement to train individuals / workforce	5
Agreement for compensation	5
Job reference / Statement of service	5
Change original decision	4
Policy development / implementation	3
Promotion / transfer of job role	2
Modifications to improve accessibility	1
Display of posters / information	1
Free goods or services	1
Other	17

## Representation by lawyers or advocates

This year the Commission monitored whether or not complainants whose matters were accepted for dispute resolution were legally represented. Most complainants were self-represented, whether they were complaining under the Anti-Discrimination Act, the Human Rights Act, or both (piggy-back complaints).

Where the complaint only involved the Anti-Discrimination Act, around 30% of complainants were assisted by a lawyer or advocate.

For piggy-back complaints, 21% of complainants had a lawyer or advocate assisting them. For human rights only complaints, the level of legal or advocacy representation was significantly lower, at only 7% of complainants. Of these, 3% were represented by Legal Aid Queensland or a community legal centre, 3% had a private lawyer, and 1% had a non-legal advocate.

While it is too early to detect any trends from this data, the Commission will continue to monitor the extent of this disparity in legal representation.

## Resolution rate for complaints

This year 44% of Anti-Discrimination Act only complaints were resolved compared with 20% of piggy-back complaints and 32% of Human Rights Act only complaints.

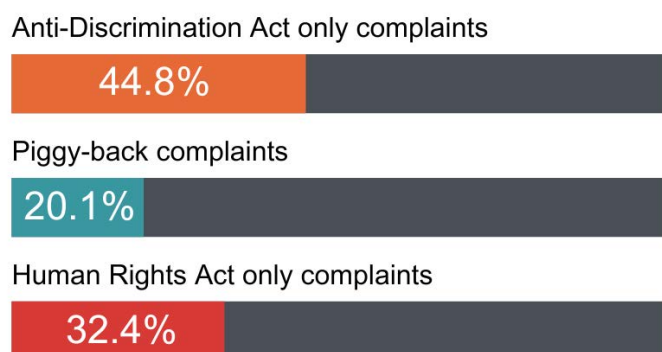
As noted in previous annual reports, the rate of resolution of complaints through conciliation is lower for human rights complaints, whether the complaint is a human rights only complaint or a piggy-back complaint.

Where a complaint under the Anti-Discrimination Act involves a public entity and engages the Human Rights Act, the chance of resolution was 12% less than for human rights only complaints.

Under the Human Rights Act, a human rights only complaint can be deemed 'resolved' in the absence of a settlement agreement between the parties in circumstances where the Commissioner considers the matter to be resolved.<sup>107</sup> This may explain the disparity between human rights only and piggy-back complaints.

The Commission is continuing to monitor these trends as it collects more complaint data.

*Figure 6: Resolution rates by complaint type 2022-23*



## Human rights identified in complaints

The Commission may identify relevant human rights from the information provided in a complaint, or the complainant may indicate that they believe a right has been limited. Most complaints contain allegations that engage more than one human right.

Not all allegations of unreasonable limitations of human rights are accepted. An allegation alone (that a contravention has occurred) is not enough. Before the Commission can accept a complaint, the complainant must provide sufficient detail to indicate that an act or decision was not compatible with human rights, or that a human right was not given proper consideration in making a decision.

<sup>107</sup> *Human Rights Act 2019* (Qld) s 89.

Some complaints that were received in 2022–23 are in the queue waiting to be allocated to a complaint handler and are therefore not included here.

The information represented in the following graphs can be found in data tables in Appendix C of this report.

## All human rights complaints

Figure 7 shows human rights relevant to allegations raised in the complaints finalised in 2022–23 and includes both piggy-back complaints and human rights only complaints.

Figure 7: Human rights identified in all complaints, 2022-23



This year, the right to privacy and reputation was the most frequently identified human right in complaints finalised for the first time since the commencement of the Act. In the three previous years, the right to recognition and equality before the law has been the right most identified in complaints.

The scope of the right to privacy and reputation is very broad. It protects personal information and data collection, but also extends to a person's private life more generally, and protects an individual against interference with their physical and mental integrity; family and home; individual identity, including appearance, clothing and gender; and sexuality.

The higher number of privacy complaints could in part be because 43% of complaints involved COVID-19, many of which were about the right to bodily autonomy, which complainants believed had been unreasonably limited through the requirement to be vaccinated.

While more people complained overall about the right to privacy and reputation than equality before the law, the Commission accepted more complaints about recognition and equality before the law in the reporting period. The right to recognition and equality before the law will be engaged in complaints of discrimination in which the respondent is a public entity, which explains why it was previously the most commonly identified human right in complaints.

The second most identified human right in the finalised complaints was the right to protection from torture and cruel, inhuman and degrading treatment. While it was asserted by complainants or identified in complaint materials on many occasions (266), the Commission accepted only 47 of these complaints. The right to protection from torture and cruel, inhuman and degrading treatment includes the right 'not to be subject to medical or scientific experimentation or treatment without the person's full, free and informed consent'.<sup>108</sup> This was the issue in many of the complaints received about vaccination in which the person considered that they were being required to comply with vaccine mandates against their will.

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<sup>108</sup> *Human Rights Act 2019* (Qld) s 17(1)(c).



## Human rights only complaints

Figure 8 shows human rights only complaints. It does not include piggy-back complaints that contain allegations of a contravention of the Anti-Discrimination Act onto which a human rights complaint has been piggy-backed.

Figure 8: Human rights identified in human rights only complaints, 2022-23<sup>109</sup>



For human rights only complaints made to the Commission, privacy and reputation was also the human right most often identified, followed by recognition and equality before the law, and then torture, cruel, inhuman or degrading treatment. The reason why these rights have dominated at this time is explained in the previous section 'All human rights complaints.'

<sup>109</sup> Note that the names of rights protected by the Act are abbreviated. For a full list of rights see the section of this report entitled *Introduction to the Human Rights Act - Protected Rights*.

## Finalised complaints by sector

As part of the Commission's data collection process, public entities named as respondents in human rights complaints are categorised by their sector. A complaint may be about more than one public entity.

'Not a public entity' was recorded when the person complained about an entity not covered by the Act. For example, a person may allege a human rights breach involving a private business which is not a 'public entity' under the Human Rights Act. Federal bodies, such as Australia Post, are also not covered by the Act.

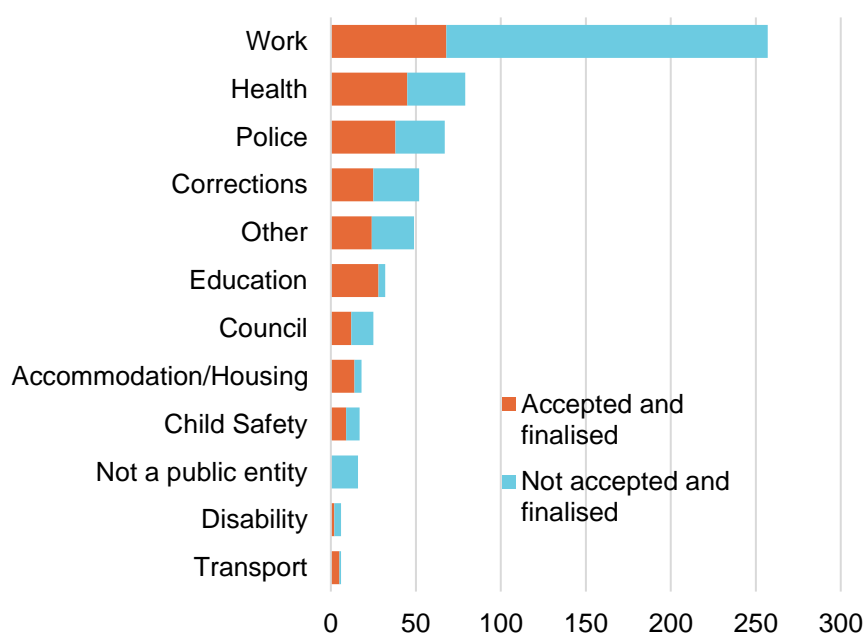
'Corrections' includes both prisons and youth detention.

'Work' is where a public sector worker is complaining about issues arising in their workplace.

## All human rights complaints

Figure 9 includes all complaints – piggy-back and human rights only complaints – by the sector of the public entity or entities named in the complaint.

Figure 9: Finalised complaints by sector – all complaints, 2022-23



Most of the complaints that were made to the Commission were about workplace issues. In most instances where the Commission has recorded the sector as 'work', a person is complaining about discrimination or sexual harassment as their primary concern, and because their workplace is a public entity the Human Rights Act also applies to their complaint. As public servants become increasingly aware of their obligations under the Human Rights Act, they may also become aware of their own rights and protections and how the Act applies to their employment.

Complaints about health, police, and corrections were high in number, as was the case in previous years. Compared with the periods in which COVID-19 Public Health Directions were in effect, complaints about health bodies have reduced in number.

While there were fewer complaints about education than corrections, a higher number of complaints involving schools, tertiary institutions, and vocational education were accepted for dispute resolution than for corrections.

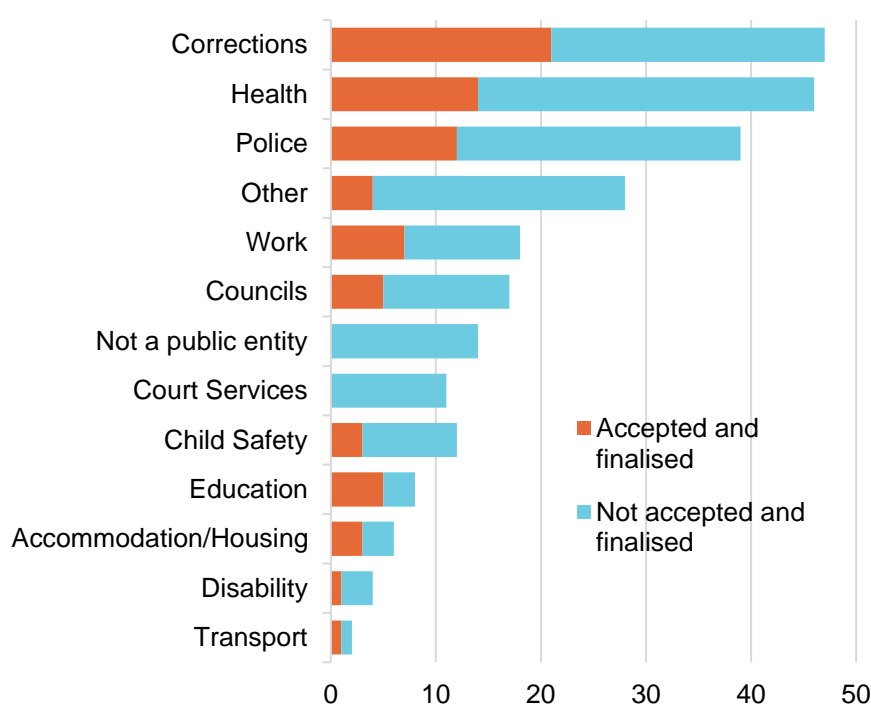
Most education complaints were piggy-back complaints about alleged discrimination, and particularly impairment discrimination, in educational institutions run by public entities, with a human rights complaint piggy-backed to it.

## Human rights only complaints

Figure 10 shows human rights only complaints finalised in 2022–23 by the sector of the public entity named.

Of the human rights only complaints, a significant proportion involved prisons. Police and health bodies were the next most common sectors.

*Figure 10: Finalised complaints by sector – human rights only complaints, 2022-23*



Of the complaints made only about human rights, the most common sectors represented in complaints were corrections and health, followed by police.

## COVID-19 complaints

Since the start of the pandemic, the Commission has recorded whether the complaint is about COVID-19 or related issues. Common issues in these complaints include vaccination, mask-wearing, border restrictions, and quarantine requirements.

Of the 561 human rights complaints finalised in the reporting period, 250 (44%) were COVID-19-related. This is nearly the same rate as last year (43%) despite most restrictions on the rights of individuals ending in April 2022. In part, the high proportion of COVID-related complaints resulted because a sharp increase in complaint numbers in the previous 2 years created a backlog of complaints, which was added to by a stream of complaints to the Commission about incidents that had occurred during the height of the pandemic. Complaints may be made up to one year after the incident, and complaints made more than one year after the alleged contravention may still be accepted in certain circumstances.<sup>110</sup>

Of the finalised COVID-19 complaints, 50 were accepted and 8 were conciliated. The COVID-19 complaints that proceeded through the conciliation process tended to involve complex and intractable disputes, which may explain to some extent the significantly lower resolution rate for COVID-19 related complaints (16%) compared with the overall resolution rate for complaints (36%). The Commission's complaints team reported that many of the COVID-related complaints in the financial year related to vaccination mandates that applied to public servants, and these matters were particularly unlikely to resolve pending the outcome of a Supreme Court decision about the lawfulness of the mandate in certain circumstances.

## Demographic information for finalised complaints

The information in this section breaks down complaints by the complainant's country of birth, sex, and age, based on information provided to the Commission. Demographic data was not available for every complaint, but the information captured demonstrates general trends. The demographic information in this section covers people who made piggy-back complaints as well people who made human rights only complaints.

Most of the complainants living in Queensland were from the south-east corner, and some from smaller regional coastal areas. Few complaints were received from people living in rural or remote areas.

Of the finalised complaints, 58% were from female complainants, 40% were from male complainants, and 2% from people with a gender other than male or female.

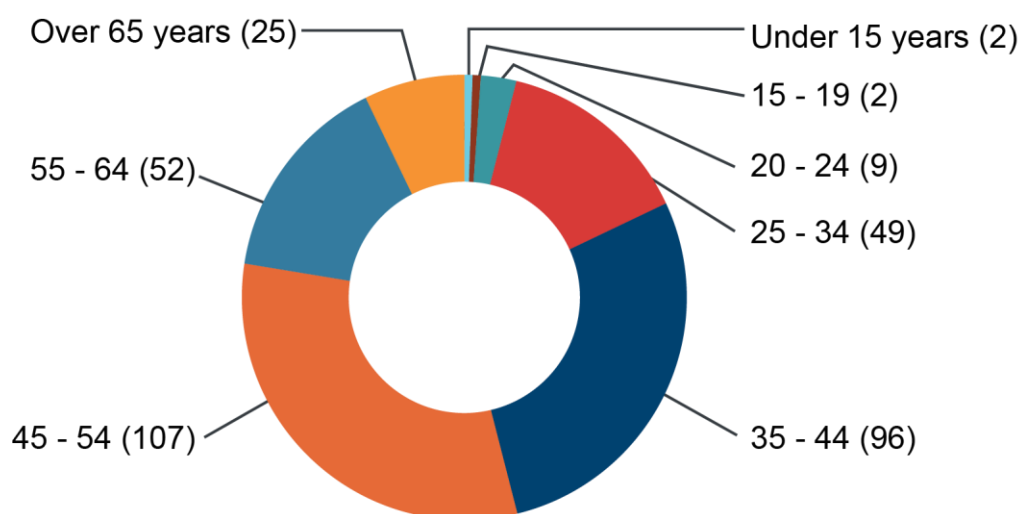
Around 76% of complainants were born in Australia, and 24% were born overseas. Complainants with a primary language other than English accounted for 6%. This was a similar result to last year.

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<sup>110</sup> *Human Rights Act 2019* (Qld) s 70 and *Anti-Discrimination Act 1991* (Qld) s 138.

Most complainants were in the age brackets of 35 to 44 years (30.5%) and 45 to 54 years (25.9%).

Figure 11: Finalised complaints by complainant age, 2022-23



The Commission finalised 49 complaints from people who were Aboriginal or Torres Strait Islander, around double the number of the previous year. Of First Nations complainants this year, 38 identified as of Aboriginal descent, one identified as Torres Strait Islander, and 10 identified as both Aboriginal and Torres Strait Islander.

## Dispute resolution process: conciliation and early intervention

The Human Rights Act offers a flexible approach to complaint handling and in past years we reported that early interventions had replaced conciliation conferences on many occasions, but in the current reporting period early intervention was used much less often, due to a shift in the type and nature of complaints brought to the Commission.

In previous years, the complaints team found that early intervention was an effective process to quickly resolve matters involving hotel quarantine and mandatory use of masks during COVID-19. However, the team found that early intervention was not suitable for the more complex and intractable complaints that arose in the latter part of the COVID-19 pandemic, such as those involving vaccination mandates.

In the reporting period, 57 complaints were resolved and finalised by the Commission, comprising:

- 22 human rights only complaints
- 35 piggy-back complaints.

Of these, one of the human rights only complaints was resolved through early intervention (4% of the human rights only matters resolved), and 5 piggy-back complaints were resolved by early intervention (approximately 14% of the piggy-back complaints).

## Corporations carrying out public functions

In the committee report on the Human Rights Bill in 2018, the Legal Affairs and Community Safety Committee commented that it would be beneficial for the Commission to monitor complaints made against private corporations undertaking public functions given the concerns raised that the definition of public entity in section 9 of the Human Rights Act may create uncertainty about which entities may be captured.<sup>111</sup>

Of the accepted and finalised human rights complaints, we identified 7 in which a corporation was named as a respondent. They were:

- A recruitment agency working for a government department
- An employee superannuation company
- Three National Disability Insurance Scheme (NDIS) service providers
- Two hotels used for quarantine during COVID-19.

## Resolved complaint case studies

The following case studies are a selection of resolved outcomes of complaints finalised in the financial year 2022-23.

### Aboriginal prisoner released from solitary confinement

The Commission received a complaint from an Aboriginal man in prison who was being held in isolation while on a Safety Order. The Safety Order, which had been in place for 5 weeks at the time of the complaint, required him to be provided with a medical examination as soon as practicable after the order was made and at intervals of no more than 7 days thereafter for the duration of the order, and for a daily review by a prison health nurse. However, the prisoner indicated that while he had received a brief visit from a nurse, he had not been provided with regular medical examinations by a nurse or doctor.

Since being remanded in prison he said that he had not been provided with his usual medications for his attention deficit hyperactivity disorder and depression. His mental health had significantly deteriorated as a result of his solitary confinement, which was exacerbated by not receiving the daily check-ups under the Safety Order. He also alleged that while held in isolation, there were several occasions where he was not receiving his two hours outside his cell and that his time out-of-cell was the only opportunity to use the phone and contact his family.

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<sup>111</sup> Legal Affairs and Community Safety Committee, Queensland Parliament, *Human Rights Bill 2018* (Report No. 26, February 2019) 13.



The Commission dealt with the complaint urgently and as a result, it was resolved prior to the parties attending a conciliation conference. The complainant advised the Commission that that he was no longer in isolation and his mental health had improved.

Relevant rights:	Protection from torture & cruel, inhuman or degrading treatment (section 17), freedom of association (section 22), cultural rights – Aboriginal peoples and Torres Strait Islanders (section 28), protection of families and children (section 26), right to liberty and security of person (section 29), humane treatment when deprived of liberty (section 30) and right to health services (section 37).
Complaint type:	Human rights only
Dispute resolution mode:	Early intervention

## Student with a disability provided equipment by school to continue at-home learning

A high school student on the autism spectrum found it challenging to transition back to in-person learning after remote learning due to COVID-19 restrictions. Based on medical advice, she requested to continue with her at-home learning and a reduced study load.

While the principal of the school presented several options to transition her back to school, the student considered that none of them met her particular needs and that the school had not been adhering to her current support plan. In conciliation, the school expressed that they considered the steps taken to provide adjustments to the student were reasonable.

The parties attended a conciliation conference and came to an agreement that the school would provide the student with computer equipment (a laptop and headset) as well as a letter of regret. The school agreed to post the student the new equipment that would allow her to complete her studies at home.

Relevant rights:	Recognition and equality before the law (section 15), protection of families and children (section 26) and right to education (section 36)
Complaint type:	Piggy-back
Attribute:	Impairment
Dispute resolution mode:	Conciliation conference

## Complaint results in medical review for a prisoner experiencing pain

Prior to being incarcerated, a prisoner had been prescribed pain medication and spinal supports through the National Disability Insurance Scheme (NDIS). The prisoner complained that on entering prison he was refused his prescribed medication, was not given a suitable substitute, and was experiencing significant pain.

The prisoner and the prison health service resolved the complaint through a conciliation conference in which it was agreed that a medical review would take place to improve the prisoner's pain management. This included a review of the suitability of his current medication, further scans, consideration of whether the prisoner needed a back brace and a special mattress, and a referral to a physiotherapist.

Relevant rights:	Right to health services (section 37), recognition and equality before the law (section 15), protection from torture & cruel, inhuman or degrading treatment (section 17) and humane treatment when deprived of liberty (section 30).
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Complaint type:	Human rights only
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Dispute resolution mode:	Conciliation conference
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## Housing provider agrees to modify property for mother with a disability

A complaint was made by a woman with a disability who resides with her child in public housing. After the complainant's condition worsened, she started to rely more frequently on a wheelchair and requested that her housing provider transfer her to a wheelchair accessible property. The transfer request was supported by her occupational therapist.

While waiting for a suitable property to move into, the complainant became aware that an accessible property in the area had been allocated to a family who did not require a wheelchair accessible home.

The parties attended conciliation and agreed that the housing provider would transfer the complainant to a suitable property as soon as possible. In the meantime, the housing provider agreed to have an occupational therapist attend the complainant's current property, at the housing provider's expense, to assist them in identifying appropriate modifications to make to the property. The housing provider agreed to make the necessary modifications to the current property as appropriate.

Relevant rights:	Recognition and equality before the law (section 15)
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Complaint type:	Piggy-back complaint
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Attribute: Impairment

Dispute resolution mode: Conciliation conference

## NDIS service provider addresses misgendering of their client

A gender diverse person who uses they/them pronouns raised a complaint about their National Disability Insurance Scheme (NDIS) service provider. They said that employees of their NDIS service provider took them to visit a new female doctor without their consent, insisting that they needed to see a female doctor despite them having used the same male doctor for over 20 years.

The complainant said that one of the staff members would misgender them by using the wrong pronouns, and that the staff member had told them that they had been in trouble with their employer since the complainant raised the issue with the NDIS provider.

The complaint was resolved by conciliation. The parties agreed that the staff member involved would apologise and financial compensation would be provided to the complainant. The NDIS service provider agreed to review the organisational anti-discrimination and human rights policy, provide an updated copy to all employees, and undertake training on their obligations under discrimination law.

Relevant rights: Recognition and equality before the law (section 15), right to health services (section 37), privacy and reputation (section 25)

Complaint type: Piggy-back complaint

Attribute: Gender identity

Dispute resolution mode: Conciliation conference

## Employer apologises for enforcing a COVID-19 mandate where not relevant to employee's role

A public sector employee did not wish to obtain a COVID-19 vaccination because she had an autoimmune disease and had been provided a medical opinion that the vaccination may be risky for her. However, her employer advised that she was subject to a mandatory vaccination unless she had an exemption. The employee provided medical evidence but her application for an exemption was rejected. The employee was provided with 2 days to comply with the mandatory vaccination directive or face disciplinary action. Following this decision, the employee was seconded to a role working from home full time, and because of this the employer determined that an exemption should be granted as she had no contact with the public.

On return to her substantive role, a decision was made by the employer that she was again subject to the mandatory vaccination directive. The employee said that she was not given sufficient information about the reasons for the rejection of the exemption application or the appeal rights available, and her employer did not take up the opportunity to speak with her treating doctor.

The employer and employee attended a conciliation conference in which they came to an agreement that the employer would provide the employee with a written apology stating that the COVID-19 vaccination mandate did not apply to her role, acknowledging the detrimental impact on her and her family during this period. The employer also agreed to recredit a loss of earnings caused to her as it was now agreed that the vaccination mandate did not apply to her.

Relevant rights: Recognition and equality before the law (section 15), privacy and reputation (section 25), freedom of expression (section 21) and right not to be subjected to medical treatment without full, free and informed consent (section 17(1)(c)).

Complaint type: Piggy-back

Attribute: Impairment

Dispute resolution mode: Conciliation conference

## University agrees to investigate stalking allegations made by student

A student complained that her education provider failed to provide her with a safe place for education after she made repeated reports of stalking from another student. She said that her mental and physical health and academic performance were adversely affected as a result of the stalking and lack of action from the education provider.

The education provider and the student attended conciliation and came to an agreement that the education provider would commence a formal investigation including a review of CCTV footage of the alleged incidents, and that the student would be given support to defer exams.

Relevant rights: Freedom of movement (section 19), privacy and reputation (section 25), right to education (section 36).

Complaint type: Human rights only<sup>112</sup>

Dispute resolution mode: Conciliation conference

## Health service addresses concerns of prisoner with dietary needs related to his disability

A prisoner who experienced ongoing physical and mental health concerns spoke to a nurse on reception into the prison, expressing his concerns about how his health issues could be effectively managed in the prison. He alleged that the

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<sup>112</sup> The complaint did not fall under the Anti-Discrimination Act because the complainant did not perceive the stalking behaviour to have occurred because of her attributes, and the behaviour was not sexual in nature for the purpose of 'sexual harassment'.

attending nurse dismissed his concerns because he was at an appropriate weight on reception to prison.

The prisoner also claimed that a dietician at the prison told him that while allowances would be made for his allergies, there were no grounds for him to be allowed to take supplements or to be placed on a low fibre diet. The prison health service listed him for a colonoscopy and endoscopy, and continued to monitor his weight.

The prisoner expressed that he suffered a detrimental effect on his mental wellbeing from what he perceived was inadequate health treatment. This led to him to experience several panic attacks for which he was prescribed anxiety medication and placed in the Mental Health Unit. While in the Mental Health Unit staff told him that he could take a fibre supplement but it was not provided unless he argued his case with each staff member.

Through the conciliation process, the parties agreed that the prisoner would receive his medication in accordance with all medical recommendations and reviews. The prison medical service agreed that they would continue to liaise with staff to ensure his dietary requirements are met. The prison also listed him as a 'Prisoner of Concern' and appointed him a case manager to support his care needs.

Relevant rights:	Right to health services (section 37), recognition and equality before the law (section 15), protection from torture & cruel, inhuman or degrading treatment (section 17) and humane treatment when deprived of liberty (section 30)
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Complaint type:	Human rights only
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Dispute resolution mode:	Conciliation conference
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# Unresolved complaints with recommendations

Where the Commission considers a complaint has not been resolved by conciliation or otherwise, the Commissioner must give the parties a report that includes the substance of the complaint and the actions taken to try to resolve the complaint.<sup>113</sup>

The Commission has the discretion to include details of actions the Commissioner considers the respondent should take to ensure its acts and decisions are compatible with human rights (recommendations).<sup>114</sup>

In the reporting period 2 reports with recommendations were published:

## Visitor access to prisons

Complaint lodged against:	Queensland Corrective Services
Human Rights Act sections:	Protection of families and children (section 26), cultural rights - Aboriginal peoples and Torres Strait Islander peoples (section 28), humane treatment when deprived of liberty (section 30)
Date report published:	26 October 2022

The complainant is an Aboriginal man with a criminal history and disability. He applied for access approval to see his son in prison. Following an incident in which threats were allegedly made by the complainant, his access approval was suspended for 3 months. When the complainant's son moved to another prison, there was confusion as to whether a fresh application for access approval was needed. Ultimately, access approval to the second prison was also suspended.

The complainant's grievances against Queensland Corrective Services included the requirement to have criminal history checks in order to visit prisons, the delays criminal history checks cause to the process, and the impact, particularly the mental health impact, this has on prisoners and their families.

The unresolved complaint report makes a number of recommendations about the process, including that Queensland Corrective Services should:

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<sup>113</sup> *Human Rights Act 2019* s 88(1)–(3).

<sup>114</sup> *Human Rights Act 2019* s 88(4).



- implement measures to mitigate against undue delay and distress caused by the need to obtain a criminal history check, such as by giving applicants an estimated timeframe for processing applications, providing guidance on the exercise of discretion to give interim approval for a visitor while they are awaiting a decision, and reinforcing the requirement to give procedural fairness to applicants against whom adverse decisions are made on the basis of their criminal history check;
- obtain information from applicants about any accommodations they may need to participate in the application process or to visit the prisoner;
- include human rights considerations in their decision letters.

## Prisoner accommodation and medication

Complaint lodged against: Hospital and Health Service, Queensland  
Corrective Services

Human Rights Act sections: Humane treatment when deprived of liberty  
(section 30)

Date report published: 28 June 2023

A prisoner alleged significant delay in his transfer to single cell accommodation in accordance with a medical recommendation. This was because the prisoner was required to pass on the medical recommendation from the Hospital and Health Service (HHS) to Queensland Corrective Services (QCS) to implement, instead of the HHS sending on medical recommendations directly to QCS.

The prisoner also alleged the HHS failed to provide continuity and equivalence of medical care to that available in the community, including a decision not to continue the prescription medication that had been prescribed to him prior to admission to prison.

The Commission recommended that the HHS review its prison policies and procedures and make them compatible with rights in the Human Rights Act to ensure:

- Subject to the prisoner's consent, medical recommendations about the accommodation of prisoners are communicated directly from the HHS to QCS.
- The consideration of factors related to as the risk of abuse and diversion in prescribing, ceasing, and managing medication in prison are demonstrably justified.

The Commission welcomed the response from QCS and the HHS that they were prepared to accept the Commission's recommendations and have already commenced implementation.

## Complaints to other agencies

Aside from the Commission, other oversight bodies reported receiving complaints about human rights in 2022–23.

The Office of the Queensland Ombudsman received 1,075 complaints that were assessed as containing a human rights element with the most common complaint issues being right to health services, property rights, protection of families and children, humane treatment when deprived of liberty and right to education.<sup>115</sup>

The Office of the Health Ombudsman (OHO) identified 825 health service complaints in the reporting period that potentially engaged at least one human right. There is a significant increase on previous years data. A focused quality assurance audit was undertaken to ensure matters where one or more human rights were potentially limited were captured and recorded accurately in the case management system.<sup>116</sup>

The main human rights issues identified were right to protection from torture and cruel, inhuman or degrading treatment, right to access health services, right to liberty and security of person, right to humane treatment when deprived of liberty and right to privacy and reputation.<sup>117</sup>

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<sup>115</sup> Queensland Ombudsman, *Annual Report 2022–23*, 7.

<sup>116</sup> Office of the Health Ombudsman, *Annual Report 2022–23*, 49.

<sup>117</sup> Office of the Health Ombudsman, *Annual Report 2022–23*, 49.