

# Progress and pitfalls

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The fourth annual report on  
the operation of Queensland's  
*Human Rights Act 2019*

2022–23



Queensland  
**Human Rights**  
Commission

# Annual report on the operation of the *Human Rights Act 2019*

2022-23



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# Commissioner's foreword

This fourth annual report on the operation of Queensland's Human Rights Act documents some impressive progress in building a human rights culture in our state's judiciary and public service.

2022-23 saw significant growth in human rights jurisprudence, with the number of times courts considered or mentioned the Human Rights Act doubling on the previous year. Several important decisions were handed down, including a landmark decision from the Land Court recommending the refusal of a mining lease on the basis that the proposed mine would impact human rights by contributing to climate change.

Across state and local government entities there has been an increased engagement with the Act. State government departments are incorporating more human rights principles and assessments into their community consultation and their complaint handling functions, and councils can point to concrete examples where considering human rights when making decisions has led to systemic changes that have made practices or policies more compatible with human rights for everyone.

These are the kinds of impacts we look for when trying to assess the stage of development of a human rights culture in Queensland. Unfortunately, those positive developments are not mirrored across all the areas of the Act's operation.

This reporting period we also saw the first override declarations used in state parliament, allowing significant changes to youth justice legislation to pass through parliament without the usual scrutiny given to new legislation and despite an acknowledgement that the provisions are incompatible with human rights.

Override declarations, according to the Act, are supposed to be invoked only in extreme circumstances – the examples given in the legislation are war, a state of emergency, or an exceptional crisis situation constituting a threat to public safety, health or order. In contrast, despite the clear applicability of this provision during COVID-19, the parliament showed restraint and chose not to rely on override declarations.

While I appreciate the community concern in response to high-profile and tragic events this year, the overall rate of youth offending has decreased, and removing the rights of young people in the youth justice system does not protect the rights of victims of crime or improve community safety.

Overriding the operation of the Act may have serious implications for individuals who are unable to rely on the Act's protective mechanisms when their rights have been unreasonably limited. In the context of the importance of protecting the rights of at-risk children, the parliament's use of the override declaration provisions is a serious setback to the realisation of the Act's objectives of protecting and promoting human rights in Queensland.

**Scott McDougall**  
**Queensland Human Rights Commissioner**

# About the Commission

The Queensland Human Rights Commission (the Commission) is an independent statutory body established under the *Anti-Discrimination Act 1991* (the Anti-Discrimination Act). The functions and powers of the Commission under section 61 of the *Human Rights Act 2019* (Human Rights 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 Human Rights 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 Human Rights Act and the degree to which it is achieving its objectives.<sup>1</sup>

The Human Rights Act is to be independently reviewed as soon as practicable (after 1 July 2023) and in 2027.<sup>2</sup> It is intended that the content of this report will provide evidence of how the Human Rights Act has operated in its early years.

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<sup>1</sup> Explanatory Notes, Human Rights Bill 2018, 44.

<sup>2</sup> *Human Rights Act 2019* (Qld) ss 95–96.

# Report summary

*Table 1: Required information for this report under section 91 of the Human Rights Act 2019*

Section	Required information
91(2)(a)	<p>details of any examination of the interaction between this Act and other Acts, statutory instruments and the common law</p> <p>For more information see <i>Human rights and the public sector</i> chapter.</p>
91(2)(b)	<p>details of all declarations of incompatibility made</p> <p>No declarations of incompatibility were made in the 2022–23 financial year.</p>
91(2)(c)	<p>details of all override declarations made</p> <p>The <i>Strengthening Community Safety Act 2023</i> passed with 4 override declarations. For more information see <i>Human rights and the parliament</i> chapter.</p>
91(2)(d)	<p>details of all interventions by the Attorney-General or the Commission under section 50 or 51</p> <p>The Commission intervened in 6 court matters.<sup>3</sup></p> <p>The Attorney-General intervened in 12 matters.</p> <p>For more information see <i>Human Rights in courts and tribunals - Interventions</i> section.</p>
91(2)(e)	<p>number of human rights complaints made or referred to the Commissioner</p> <p>The Commission received 762 complaints about human rights in the financial year. The number of human rights complaints finalised in the financial year was 561. Of these, 209 were human rights only complaints and 352 were piggy-back complaints.</p>
91(2)(f)	<p>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</p> <p>Of the 241 accepted complaints finalised in the 2022–23 financial year:</p> <ul style="list-style-type: none"> <li>• 57 complaints were resolved</li> <li>• 41 complaints were referred to the Queensland Civil and Administrative Tribunal</li> </ul>

<sup>3</sup> Some matters that the Commission intervened in during previous reporting periods continued into this financial year.



Section	Required information
	<ul style="list-style-type: none"> <li>32 complaints were referred to the Queensland Industrial Relations Commission.</li> </ul> <p>For more information, see <i>Human rights complaints – Outcomes of finalised complaints</i> and <i>Resolved complaint case studies</i> sections.</p>
91(2)(g)	<p>the number of human rights complaints resolved by the Commission</p> <p>In the 2022–23 financial year, 57 complaints were resolved and finalised by the Commission, comprising 22 human rights only complaints and 35 piggy-back complaints.</p> <p>For more information see <i>Human rights complaints – Human rights complaints snapshot</i>.</p>
91(2)(h)	<p>the number of conciliation conferences conducted under this part</p> <p>185 conciliation conferences relating to human rights were scheduled in the 2022–23 financial year. Piggy-back complaints accounted for 137, and 48 were for human rights only complaints.</p>
91(2)(i)	<p>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</p> <p>Most accepted complaints involved more than one respondent, and some public entities were directed to attend on more than one occasion. Overall, 392 discrete respondents were directed to take part, of which 324 were individual people, and 68 were public entities such as government departments, councils or functional public entities.</p> <p>No public entities failed to comply with a direction to attend a conference in the 2022–23 financial year.</p> <p>For more information, see <i>Human rights complaints – finalised complaints by sector</i> section.</p>
91(2)(j)	<p>the number of human rights complaints received by particular public entities decided by the Commissioner</p> <p>This information is too detailed to reproduce in the report summary. See <i>Human rights complaints – Complaints made directly to public entities</i> section.</p>
88(4)	<p>details of action the Commissioner considers the respondent should take to ensure its acts and decisions are compatible with human rights, following an unresolved conciliation</p> <p>Two reports on unresolved complaints with recommendations were made this financial year.</p> <p>For more information, see <i>Human rights complaints – Unresolved complaints with recommendations</i> section.</p>

# Report highlights

## Developing human rights case law

In 2022-23, there were significant developments in the area of human rights jurisprudence. The frequency with which courts referred to or considered the Human Rights Act more than doubled, marking a notable increase in the engagement with human rights issues among advocates, tribunals and courts. Several significant decisions offered invaluable insights to both public entities and the community on interpretation of the rights to liberty, property rights, the right to non-discrimination and the right to consent to medical treatment.

In a landmark decision, the Land Court recommended refusing a mining lease and environmental authority due to concerns about the impact on human rights, including the right to life, Aboriginal and Torres Strait Islander cultural rights, and property rights.<sup>4</sup>

For more information see *Human rights in courts and tribunals* chapter.

## Increasing influence on parliament, but Act overridden

The Queensland Parliament continued to play a crucial role in addressing human rights compatibility through the passage of primary legislation. In 2022-23, the Commission observed encouraging signs that the Human Rights Act was exerting a growing and positive influence on the parliamentary process.

Parliamentary committees assessed Bills and statements of compatibility, leading to more detailed scrutiny and some amendments being made to Bills to address human rights concerns. However, in some instances human rights issues were left unaddressed, and Bills were passed despite concerns raised by Committees.

The most concerning development was the parliament's decision to override the Human Rights Act for the first time since its introduction, in circumstances where clear justification was lacking. Under the Act, override declarations should be confined to the most exceptional circumstances such as war, a state of emergency, or an exceptional crisis situation constituting a threat to public safety, health or order. The use of override declarations effectively bypasses the usual scrutiny and assessment of human rights compatibility by committees and stakeholders. Passing override declarations undermines the accountability and transparency of the legislative process, as it prevents thorough examination of potential human rights issues, while denying affected individuals effective protection and access to remedies.

For more information see *Human rights and the parliament* chapter.

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<sup>4</sup> *Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors* (No 6) [2022] QLC 21.

## Growing human rights culture

In the fourth year of the operation of the Human Rights Act, state public entities have shown steady progress in cultivating a human rights culture, focusing on staff awareness and training, community engagement, and compliance in government contracts. While human rights compatibility assessments in policy development appear to be increasingly routine, there are few examples of significant policy changes based on the Act.

State government employees continue to report that they understand how the Act applies in the work,<sup>5</sup> but challenges persist in identifying and reporting on human rights complaints.

The implementation of the Human Rights Act in councils initially faced challenges, leading to delays compared to state public entities, mainly due to funding and resource issues. However, there have been positive developments, including improved staff awareness through human rights training, enhanced public information dissemination, and a growing influence of human rights on local law development and complaint management within councils.

Case studies provided by state and local government entities are a positive indicator that the internal complaints process is achieving beneficial outcomes. Despite ongoing challenges, there is evidence of progress, and a commitment to converting human rights principles to practice is evident in both state and local government entities.

For more information see *Human rights and the public sector* chapter.

## Stepping down from COVID-19 response

In November 2022, parliament passed legislation to replace the temporary COVID-19 framework with more targeted powers to manage the disease as a notifiable condition under the *Public Health Act 2005* (Qld). The Commission had previously made submissions to parliament recommending changes to the temporary COVID-19 framework which granted extraordinary powers to the Chief Health Officer and emergency officers. In response to the Commission and other stakeholder's advocacy for greater transparency and scrutiny of public health directions, including requiring a statement of compatibility with human rights, the Health Minister passed the Public Health and Other Legislation (COVID-19) Management Bill 2022. This reflects a step-down approach, acknowledging that while the COVID-19 pandemic is not over, it should be treated in line with other communicable diseases.

In the last report, the Commission expressed our hope for a shift in focus away from COVID-19, which had inevitably been the early focus for the Commission, the parliament, the government, and public discourse, during the initial years of the Human Rights Act. While the focus of the Commission's policy and educative work has shifted away from COVID-19, the human rights complaints being dealt with by

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<sup>5</sup> Queensland Government, *Working for Queensland survey 2022* (Highlights report – Queensland public sector, 2022) 3.

the Commission remained centred around COVID-19 related issues, representing 44% of our complaints finalised (43% last year).

However, the nature of the COVID-19 related complaints has evolved during the course of the pandemic. In previous years, the Commission's role primarily involved aiding individuals subject to hotel quarantine, those seeking exemptions to enter Queensland during periods of border restrictions, and individuals facing challenges in adhering to mandatory mask-wearing requirements.

In the reporting period, most of the complaints the Commission was dealing with were about vaccine mandates to control the spread of COVID-19, often brought by public sector workers and sometimes in combination with other workplace issues. These disputes are often intractable and are also complicated by the fact the Supreme Court is yet to hand down several decisions currently before the court about whether vaccine mandates for public servants were compatible with human rights.

## Youth justice changes

News headlines this year were dominated by changes to the government's approach to youth justice and culminated in the parliament overriding the Human Rights Act for the first time to pass the *Strengthening Community Safety Bill 2023*.

Without adequate consultation, new laws were introduced in February 2023 including a new breach of bail offence for youth offenders. The Commission opposed the amendments on the basis that there was no evidence they would be effective or meet the goal of protecting the community from the small number of Queensland children engaging in harmful behaviours.

In December 2022, the numbers of children held in youth detention and police watchhouses had significantly increased, with young people spending an average of 43 nights in unsentenced detention. Throughout the reporting period, the Commission expressed escalating concerns about the practice of holding children in the watchhouse for prolonged periods because of the unacceptable risks of psychological and physical harm to young people.

## Recognition and equality for LGBTQ+ Queenslanders

A significant event in the reporting period for the LGBTQ+ community was the introduction of new birth registration laws to remove unfair barriers to obtaining a change of sex on a person's birth certificate. On 2 December 2022, the Births, Deaths and Marriages Registration Bill was introduced into parliament, and on 24 February 2023 it was recommended to be passed by a parliamentary committee.<sup>6</sup>

For over a decade the Commission has advocated for updates to births registration laws, and in that period Queensland's regime had fallen significantly behind that of most other Australian jurisdictions. The Commission welcomed the Bill which provides greater recognition of trans and gender diverse people and

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<sup>6</sup> At the time of writing, this Bill has passed into law but not yet commenced.



contemporary family and parenting structures, upholding and promoting the rights to equality, privacy, families and children.

## Medical and disability support for prisoners

A theme emerging from human rights complaints this year centred around the assistance provided to prisoners with medical or disability-related support needs. In complaints brought to the Commission, prisoners sought continuity of treatment or supports they were receiving in the community through the National Disability Insurance Scheme and continued prescription of medication they were relying on.

Of the human rights only<sup>7</sup> complaints made to the Commission this year, most came from corrections, representing a shift away from health and policing as the key complaint areas. Our resolved complaint case studies feature examples in which the health service operating in prison committed to addressing concerns raised by prisoners in specific instances.

On 28 June 2023, the Commission released a report as the result of an unresolved complaint on this issue. This report emphasised the pressing need for improved coordination between prison health services and Queensland Corrective Services to minimise delays in taking action to support prisoner health.

## Human rights of victim-survivors

In 2022-23, the Commission observed a heightened focus on the rights of victims of crime in the media, parliamentary debate, public discourse, and inquiry recommendations. While not explicitly mentioned in the Human Rights Act, several human rights in the Act as it stands protect and promote the rights of victim-survivors, including the right to life, non-discrimination, prohibition on cruel, inhuman and degrading treatment, and the right to privacy.

The Commission considers that all people involved in proceedings in the criminal justice system should be able to participate and have their rights upheld. One helpful framing is the concept of a 'triangulation of interests', with the 3 rights-holders being the victim-survivor, the public, and the perpetrator.<sup>8</sup>

On 1 July 2022, the Women's Safety and Justice Taskforce's second *Hear her voice* report recommended<sup>9</sup> the establishment of an independent victims' commissioner to promote and protect the victims of violent offences, with a focus on domestic and family violence, and to review both the Human Rights Act and the Victims Charter.<sup>10</sup>

To mark the 2022 International Day for the Elimination of Violence against Women, the Commission presented a webinar hosted by Legal Aid Queensland about international and Queensland human rights obligations to victims of domestic and family violence. On 12 April 2023 the Commission was pleased to

<sup>7</sup> A 'human rights only' complaint is a complaint about a public entity in relation to an act or decision of the public entity that is not compatible with the person's human rights, or that proper consideration of a human right relevant to a decision was lacking, where the person is not also raising a complaint that is covered by the Anti-Discrimination Act.

<sup>8</sup> The concept was initially articulated by Lord Steyn of the House of Lords in *R v H* [2004] 2 AC 134, 145–46.

<sup>9</sup> Women's Safety and Justice Taskforce, *Hear Her Voice – Report two: Women and girls' experiences across the criminal justice system* (vol. 1, 2022) Recommendations 18–20.

<sup>10</sup> Charter of Victim's Rights is contained in schedule 1AA of the *Victims of Crime Assistance Act 2009* (Qld).

support a parliamentary inquiry into support provided to victims of crime and expressed our support for a dedicated victims' commissioner as well as more explicit recognition of fair hearing rights for victims following the forthcoming review of the Human Rights Act.

## Human rights timeline: 2022-23

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



First Nations people



Civil liberties



The fight for equality



Children and families



Life and health



Prisons and institutions



## JULY 2022

Experiences of women and girls across Queensland's criminal justice system were examined and reviewed by the Women's Safety and Justice Taskforce in *Hear her voice report 2*.



## SEPTEMBER 2022

Legislation was passed to establish an independent inspectorate to promote and uphold the humane treatment and conditions of people detained in prisons, community corrections centres, work camps, youth detention centres and police watch-houses. See *Inspector of Detention Services Act 2022*.



## OCTOBER 2022

A United Nations tour that was to have included unannounced inspections of detention facilities as part of Australia's implementation of the Optional Protocol to the Convention against Torture was suspended due to obstructions, particularly the lack of co-operation by the governments of New South Wales and Queensland.



## NOVEMBER 2022

Temporary legislation (effective from 31 October 2022 to 31 October 2023) provides a step-down approach to managing COVID-19. It limits the power of the Chief Health Officer to make public health directions to three key measures: masks, isolation and quarantine, and vaccinations for workers in high-risk settings, and requires a parliamentary process outlining compatibility with human rights for directions. See *Public Health and Other Legislation (COVID-19 Management) Amendment Act 2022*.



## NOVEMBER 2022

The Commission of Inquiry into Queensland Police Service responses to domestic and family violence delivered their report, *A call for change*. The Inquiry was set up following recommendations made by the Women's Safety and Justice Taskforce.



## DECEMBER 2022

A significant increase in young people held in youth detention and police watchhouses was noted in the Childrens Court annual report, with young people spending an average of 43 nights in unsentenced detention.



## JANUARY 2023

The Queensland Government marked Dundalli Remembrance Day as a 'truth-telling story of state significance' and committed to other truth-telling initiatives across the state to promote understanding and reconciliation.



## JANUARY 2023

Queensland's inaugural First Nations Justice Officer was appointed in response to a recommendation by the Women's Safety and Justice Taskforce to reduce the representation of First Nations people in the criminal justice system.



## FEBRUARY 2023

A Townsville Childrens Court magistrate ordered release on bail of thirteen children being held on remand in the police watch house amid growing human rights concerns at the treatment of young people in the Queensland justice system.



## FEBRUARY 2023

The Queensland Family and Child Commission initiated a systemic review of the drivers that cause children to enter and remain in Queensland watchhouses.



## MARCH - MAY 2023

The Commission completed a human rights review of policies, procedures, and practices relating to strip searching of women in Queensland prisons, as recommended by the Women's Safety and Justice Taskforce. The Review team undertook prison visits and consultation, with the final report to be published in September 2023.

## MARCH 2023



The first four override declarations under section 43 of the Human Rights Act were made in the *Strengthening Community Safety Act 2023*, which received assent on 22 March 2023 and:

- makes it an offence for a young person to breach their bail conditions
- allows a court to declare a young person a 'serious repeat offender'
- requires a court to have regard to a child's offending and bail history when sentencing
- requires a court to revoke a conditional release order for certain offences.

## APRIL 2023



Legislation was passed to authorise police officers to use hand held scanners in Safe Night Precincts, at public transport stations, and on public transport to detect knives being carried in public and reduce knife crime. See *Police Powers and Responsibilities (Jack's Law) Amendment Act 2022*.

## MAY 2023



The Path to Treaty Bill 2023 received assent and will commence on a date to be fixed by proclamation. The Act will provide for the establishment of a First Nations Treaty Institute and Truth-telling and Healing Inquiry. See *Path to Treaty Act 2023*.

## MAY 2023



Queensland Parliament's Legal Affairs and Safety Committee tabled the report of the inquiry into support provided to victims of crime, which included recommendations to: review victims' rights, improve coordination of services, increase access to information, trauma-informed training, invest in victim support services, improve access to restorative justice and youth justice conferencing.

## JUNE 2023



For the first time, the Commission's biennial Mabo Oration was held outside Brisbane. Megan Davis delivered the ninth Mabo Oration and Professor Henry Reynolds and Gail Mabo were special guest speakers at the event in Townsville hosted by Jeff McMullen.

## JUNE 2023



Legislation was passed to facilitate visits to places of detention by the United Nations Subcommittee on Prevention of Torture and commenced on assent. See *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2023*.

## JUNE 2023



The Honourable Alan Wilson KC conducted a review of the Public Interest Disclosure Act, as recommended by the Coaldrake report, *Let the sunshine in: Review of culture and accountability in the Queensland public sector*. The review recommended a new PID Act with clearer and accessible language, reclaiming the language of 'whistleblower', and with two objects of facilitating the exposure of serious or systemic wrongdoing in the public sector and protecting those who assist that endeavour.

## JUNE 2023



The existing Births, Deaths and Marriages Registration Act (which establishes a system for registering life events) was repealed and replaced with a new Act of the same name, which takes account of changes in society and aims to appropriately accommodate the diversity of Queensland society (especially in relation to recognition of the trans and gender diverse community and modern and diverse family structures). The Act will commence on a date to be fixed by proclamation. See *Births, Deaths and Marriages Registration Act 2023*.

## JUNE 2023



The Commonwealth Parliament passed legislation proposing an alteration to the Australian Constitution to recognise Australia's First Peoples by establishing an Aboriginal and Torres Strait Islander Voice to make representations to the parliament on matters relating to Aboriginal and Torres Strait Islander peoples. This will trigger a referendum, to be held on 14 October 2023.



A scenic view of a river with several sailboats and a small blue and white motorboat. In the background, a tall, modern skyscraper with a glass facade stands against a sky filled with large, grey clouds. The foreground shows some greenery and purple flowers on the left side.

# 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.

## Objects, rights and obligations

### Objects of the Human Rights Act

The main objects of the Human Rights 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 Human Rights 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 Human Rights 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.

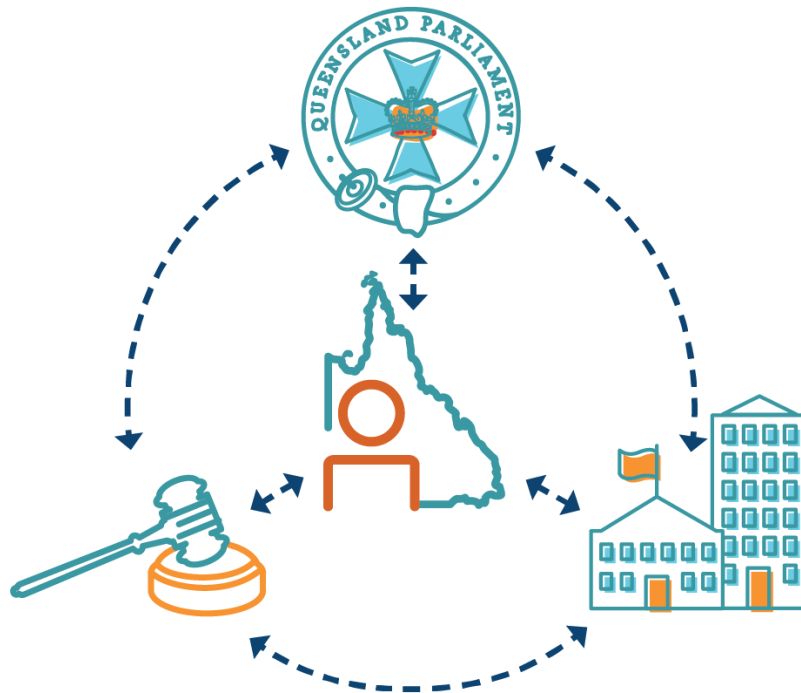
The Human Rights Act makes it clear that rights can be limited, but only where it is reasonable and justifiable.

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

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

# 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 Human Rights 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 Human Rights 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 Human Rights 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.



# Human rights and the parliament



# The role of Queensland Parliament

The Human Rights Act requires parliament, the courts, and the executive to act compatibly with human rights.

Parliament is responsible for making and passing laws and must consider whether any limitations on human rights in legislation are justified. This occurs through the tabling of statements of compatibility with Bills and human rights certificates for subordinate legislation, scrutiny through the committee process, and parliamentary debate. Once a law is passed, any future human rights compatibility assessment will generally only arise if raised in litigation.

The Supreme Court or Court of Appeal cannot invalidate legislation under the Human Rights Act. Instead, it may make a declaration of incompatibility where the court is of the opinion that a statutory provision cannot be interpreted in a way compatible with human rights. The court must then give notice to the Attorney-General and the Commission of the incompatibility, but this does not affect the validity of the law.

## Portfolio committees

Parliamentary committees enhance the democratic process by monitoring or investigating issues, reporting to parliament, and scrutinising proposed laws.

The Queensland Parliament has 7 portfolio committees made up of government and non-government members of parliament, and it is their job to inquire into proposed laws before they are debated in parliament. Under the Human Rights Act, the portfolio committee responsible for examining a Bill must consider and report to the parliament about whether the Bill is compatible with human rights and consider and report to parliament about the statement of compatibility tabled with the Bill.

A strength of the Queensland parliamentary committee system is that committees generally invite submissions to aid their consideration of a Bill and hold public hearings at which evidence is heard. This provides an opportunity for broader public debate about proposed laws. Committees may assist parliament to assess the human rights implications of new laws, expose legislation to effective scrutiny independent of the executive, and allow for public participation in the human rights dialogue and debate.<sup>11</sup> The committees then report to parliament about the Bill and may make comments about the statement of compatibility.

The portfolio committees also consider subordinate legislation, such as regulations, and report on any issues they identify through their consideration of the human rights certificates tabled with the subordinate legislation.

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<sup>11</sup> Explanatory Notes, Human Rights Bill 2018 (Qld) 29.

## Override declarations

Parliament may override the Human Rights Act by including an override declaration with a Bill expressly declaring that the Act, or a provision of the Act, has effect despite being incompatible with one or more human rights. This power is intended to be used only in exceptional circumstances and the Human Rights Act gives the examples of 'war, a state of emergency, an exceptional crisis situation constituting a threat to public safety, health or order'. A provision of an Act containing an override declaration expires 5 years after the provision commences.

In the reporting period, the override provisions of the Human Rights Act were used for the first time. The government sought override declarations for provisions of the Strengthening Community Safety Bill 2023. Despite submissions to the Economics and Governance Committee questioning whether the override declarations were necessary and appropriate, and noting that any override should occur only after extensive consultation,<sup>12</sup> the Queensland Parliament made the Override declarations.

The situation giving rise to the override declarations, a crisis in the youth justice system, does not appear to fit with the exceptional circumstances examples as set out in the Human Rights Act. During the pandemic, parliament passed several pieces of emergency legislation in response to the COVID-19 pandemic without resorting to an override declaration. The application of the Human Rights Act to such emergency legislation was noted as an important safeguard at the time.

Of further concern to the Commission was the discussion through the parliamentary process that implied a decision to override the Human Rights Act is one made by the government. The Human Rights Act makes clear it is a matter for the parliament, not the government, to make such a significant declaration.

## Statements of compatibility

The Queensland Parliament must scrutinise all proposed laws for compatibility with human rights. A member who introduces a Bill must table a statement of compatibility with the Bill, and the responsible portfolio committee must consider the Bill and report to the Legislative Assembly about any incompatibility with human rights.

There were 43 Bills introduced during the 2022–23 financial year that were accompanied by statements of compatibility. Of those, 23 were passed after consideration by portfolio committees (excluding appropriation and related Bills).<sup>13</sup>

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<sup>12</sup> Economics and Governance Committee, Queensland Parliament, *Strengthening Community Safety Bill 2023* (Report No. 41, March 2023) 6–7.

<sup>13</sup> For example, the Revenue Legislation Amendment Bill 2023 was declared urgent, not referred to committee, and debated cognately with related appropriation Bills.



Portfolio committees completed 29 inquiries into Bills that were introduced in the parliament and then referred to committees for examination during the reporting period.<sup>14</sup>

These committees completed an additional 6 reports for Bills introduced in previous years.<sup>15</sup> All but 7 of the Bills subject to committee inquiry passed during the reporting period.<sup>16</sup>

Statements of compatibility must state whether the Bill is compatible with human rights and how it is compatible. If not compatible, the statement of compatibility must explain the nature and extent of the incompatibility and provide detailed reasons and justification for the impact on human rights. *The Queensland Legislation Handbook*<sup>17</sup> provides guidance and a template for a statement of compatibility to be completed by the relevant department. These statements:

- set out the human rights issues, including which human rights are engaged or are of relevance
- explain how the legislation meets the proportionality test in section 13 of the Human Rights Act, which allows for rights to be subject to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality, and freedom.

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<sup>14</sup> See: Major Sports Facilities Amendment Bill 2022; Public Health and Other Legislation (COVID-19 Management) Amendment Bill 2022; Betting Tax and Other Legislation Amendment Bill 2022; Environmental Protection and Other Legislation Amendment Bill 2022; Coal Mining Safety and Health and Other Legislation Amendment Bill 2022; Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Bill 2022; Integrity and Other Legislation Amendment Bill 2022; Public Sector Bill 2022; Housing Legislation Amendment Bill 2022; Police Service Administration and Other Legislation Amendment Bill (No. 2) 2022; Health and Other Legislation Amendment Bill 2022; Corrective Services (Emerging Technologies and Security) and Other Legislation Amendment Bill 2022; Police Powers and Responsibilities (Jack's Law) Amendment Bill 2022; Police Powers and Responsibilities and Other Legislation Amendment Bill 2022; Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Bill 2022; Local Government Electoral and Other Legislation (Expenditure Caps) Amendment Bill 2022; Births, Deaths and Marriages Registration Bill 2022; Strengthening Community Safety Bill 2023; Police Powers and Responsibilities and Other Legislation Amendment Bill 2023; Path to Treaty Bill 2023; Waste Reduction and Recycling and Other Legislation Amendment Bill 2023; Tobacco and Other Smoking Products Amendment Bill 2023; Residential Tenancies and Rooming Accommodation (Rent Freeze) Amendment Bill 2022; Water Legislation Amendment Bill 2022; Liquid Fuel Supply (Minimum Biobased Petrol Content) Amendment Bill 2022; Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Bill 2022; Property Law Bill 2023; Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Bill 2023; Health Practitioner Regulation National Law (Surgeons) Amendment Bill 2023.

<sup>15</sup> Animal Care and Protection Amendment Bill 2022; Trading (Allowable Hours) and Other Legislation Amendment Bill 2022; Transport Legislation (Road Safety and Other Matters) Amendment Bill 2022; Casino Control and Other Legislation Amendment Bill 2022; Building Units and Group Titles and Other Legislation Amendment Bill 2022; Industrial Relations and Other Legislation Amendment Bill 2022.

<sup>16</sup> Residential Tenancies and Rooming Accommodation (Rent Freeze) Amendment Bill 2022; Water Legislation Amendment Bill 2022; Liquid Fuel Supply (Minimum Biobased Petrol Content) Amendment Bill 2022; Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Bill 2022; Property Law Bill 2023; Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Bill 2023; Health Practitioner Regulation National Law (Surgeons) Amendment Bill 2023.

<sup>17</sup> Department of the Premier and Cabinet (Qld), '3.5 Role of drafter', *Queensland Legislation Handbook* (Web Page, 17 June 2021).

# Human rights indicators

The dialogue model adopted in the Human Rights Act aims to promote a dialogue about human rights between the three arms of government (the legislature, executive, and judiciary) with each arm having a 'legitimate role to play, while parliament maintains sovereignty'.<sup>18</sup> This model prioritises discussion, awareness-raising, and education over an enforcement and compliance model, and supports the goal of gradually building a human rights culture.

The Commission has developed a set of indicators to gauge the development of a human rights culture within the parliament. These indicators are based on the experiences of other human rights jurisdictions and the specific role portfolio committees play in Queensland's unicameral parliament.<sup>19</sup>

The Queensland Parliament is uniquely placed to assess the human rights implications of proposed legislation. It is a democratic body, representing the Queensland community, with the power to call on expert evidence and advice. However, assessing the efficacy of parliamentary human rights scrutiny involves complex weighing of a range of public interests and the impact on society of a proposed law.

The Commission is grateful for the opportunity to make submissions and appear before portfolio committees and, in our experience, committees are generally open to hearing about human rights issues arising in Bills and during inquiries. The Commission acknowledges the critical work of committee members, staff, and advisers in building a human rights culture in Queensland.

The observations in this report are not based on the Commission's direct experiences of the parliamentary scrutiny system, but are primarily drawn from the portfolio committee reports, submissions made to committees, statements of compatibility, and parliamentary debate.

These indicators explore the extent to which legislation is assessed for human rights compatibility, the adequacy of statements of compatibility, and how this is discussed through the parliamentary process. The indicators do not judge whether a Bill is compatible or not. Rather, they capture how concerns about human rights compatibility are raised through the scrutiny processes used in Queensland, and if such concerns are robustly debated in the parliament.

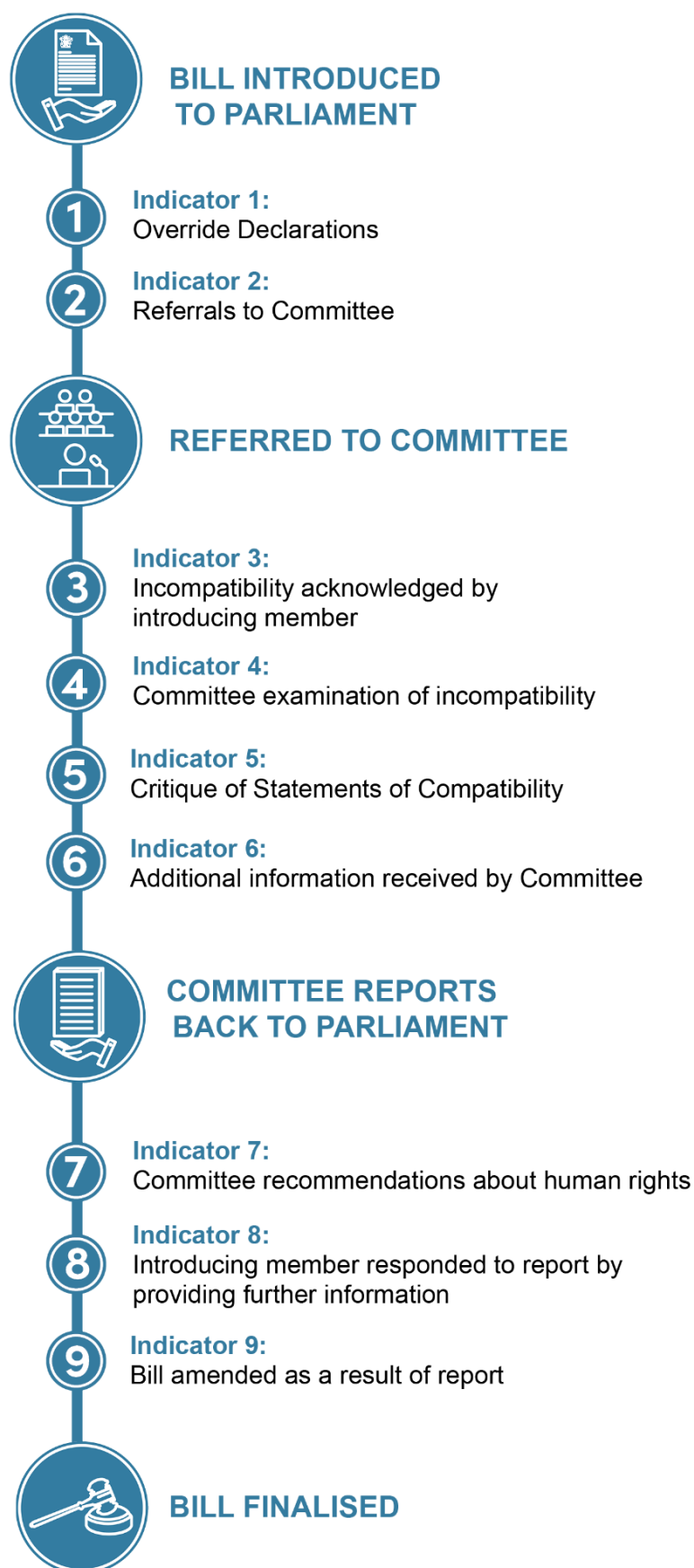
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<sup>18</sup> Explanatory Notes, Human Rights Bill 2018 (Qld) 10.

<sup>19</sup> For more information on how these indicators were developed, see Queensland Human Rights Commission, *Balancing Life and Liberty: The second annual report on the operation of Queensland's Human Rights Act 2019* (Report 2020–21) 30–32.



Figure 2: Indicators of parliamentary human rights culture diagram



## Indicator 1: Override declarations

*Parliament may, in exceptional circumstances, expressly declare an Act has effect despite being incompatible with one or more human rights.<sup>20</sup> This indicator considers whether override declarations were relied upon by parliament in the 2022–23 financial year.*

The *Strengthening Community Safety Act 2023* passed with 4 override declarations.

## Indicator 2: Referrals to committee

*This indicator considers bills that were passed on an urgent basis and therefore not referred to committee and subjected to usual parliamentary scrutiny.*

Two Bills were declared urgent and debated without examination by the relevant portfolio committees. One of these Bills was related to appropriation Bills and was debated cognately with them.<sup>21</sup> The other urgent Bill amended the *Holidays Act 1983* to provide for a public holiday for the National Day of Mourning for Her Majesty the Queen.<sup>22</sup> Neither Bill had significant human rights impacts or implications.

## Indicator 3: Incompatibility acknowledged by introducing member

*This indicator considers Bills that had explanatory materials (including Explanatory Notes and Statement of Compatibility) in which the introducing member raised potential incompatibility.*

The Commission identified one Statement of Compatibility that suggested a Bill was potentially incompatible with human rights, that being the *Strengthening Community Safety Bill 2023*, which included proposed override declarations.

## Indicator 4: Committee examination of incompatibility

*This indicator considers discussion by portfolio committees of statements of partial incompatibility or proposed override declarations after they were raised by the introducing member.*

The Economics and Governance Committee's report discussed the proposed Override declarations relating to the *Strengthening Community Safety Bill 2023*, noted the Statement about Exceptional Circumstances accompanying the Bill, and overall, was satisfied that 'the Bill strikes an appropriate balance between the

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<sup>20</sup> *Human Rights Act 2019* (Qld) s 43.

<sup>21</sup> *Revenue Legislation Amendment Bill 2022*.

<sup>22</sup> *Holidays and Other Legislation Amendment Bill 2022*.

protection of the rights of children and young people in Queensland, and strengthening community safety'.<sup>23</sup>

## Indicator 5: Critique of Statements of Compatibility

*This indicator considers determinations by portfolio committees in their reports to parliament that Statements of Compatibility were inadequate.*

Committee reports published during 2022–23 identified deficiencies in 5 statements (compared with 6 last financial year).

In relation to the Coal Mining Safety and Health and Other Legislation Amendment Bill 2022, the Transport and Resources Committee formally recommended that the Statement of Compatibility be amended to include a discussion of the engagement of the right to property.<sup>24</sup>

In 3 other reports, portfolio committees found that statements failed to discuss a relevant right.<sup>25</sup> This included a Bill that did not discuss the human rights issues arising from provisions proposing to place an onus on a person charged with a criminal offence to prove it was reasonable for them to have not complied with the relevant section.<sup>26</sup>

One committee helpfully provided guidance on rights that refer to unlawful and/or arbitrary interference, which includes the right to privacy and reputation, the right to property, and the right to liberty and security of person. The committee suggested that it is insufficient, and incompatible with international human rights standards that inform the interpretation of the Human Rights Act, to say that a limitation or restriction on a right occurs only when an interference is clearly unlawful or arbitrary, and go no further to consider the compatibility of the provisions. The committee suggested that, in the spirit of the Human Rights Act's overarching objectives, statements should more fully consider compatibility under section 13 for any arguable limitations on these rights.<sup>27</sup>

## Indicator 6: Additional information received by committee

*This indicator considers further information received by portfolio committees and whether this resolved concerns about lack of justification for limitations on human rights.*

This indicator reveals the effectiveness of Queensland's scrutiny process, as the ongoing dialogue between government departments, committees, and stakeholders through the inquiry process allows further information to be obtained

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<sup>23</sup> Economics and Governance Committee, Queensland Parliament, *Strengthening Community Safety Bill 2023* (Report No. 41, March 2023) 7.

<sup>24</sup> Coal Mining Safety and Health and Other Legislation Amendment Bill 2022.

<sup>25</sup> Industrial Relations and Other Legislation Amendment Bill 2022; Land and Other Legislation Amendment Bill 2022; and Environmental Protection and Other Legislation Amendment Bill 2022.

<sup>26</sup> Environmental Protection and Other Legislation Amendment Bill 2022.

<sup>27</sup> Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2022.

from the government about human rights compatibility and published in committee reports.

In those reports that discussed human rights limitations, the Commission identified that on 11 occasions committees sought additional information from the government.<sup>28</sup>

## Indicator 7: Committee recommendations about human rights

*This indicator considers recommendations made by portfolio committees about human rights compatibility in reports to parliament.*

This indicator was satisfied by 7 committee reports in which the Act was a factor in the committee making a formal recommendation to government. However, not all recommendations by committees required the government to consider amendments to legislation or Statements of Compatibility.

This contrasts with last year's annual report in which the Commission did not identify any formal recommendations about human rights made by committees.

The Corrective Services (Emerging Technologies and Security) and Other Legislation Amendment Bill 2022 proposed amendments to ensure the safety and security of the custodial environment. The Education, Employment and Training Committee made 3 recommendations asking the Minister to clarify aspects of the Bill, including its compatibility with human rights. In its response, the government noted these recommendations and provided further justification.

The Health and Other Legislation Amendment Bill 2022 proposed changes to the *Recording of Evidence Act 1962* to facilitate the electronic recording of evidence before the Mental Health Review Tribunal (MHRT). In its submission, the Commission suggested further amendments to this Act were needed to ensure that the MHRT is legislatively obliged to accurately record its proceedings, for example, by way of electronic audio recording. This would ensure its practices were compatible with obligations under the right to fair hearing and right to equality before the law. While the Committee did not recommend amendments to the Bill, it did recommend that resources for technical and/or administrative support be provided to the MHRT to make recordings and/or transcriptions of proceedings. In its response, the government indicated support for this recommendation.

The primary purpose of the Police Powers and Responsibilities (Jack's Law) Amendment Bill 2022 was to expand the areas covered by the trial of hand held scanners to detect knives carried in public to locations beyond existing prescribed areas of Surfers Paradise and Broadbeach. The Community Support and Services Committee found that while the use of wands is not inherently inhuman or degrading, there is a potential that the manner of wand use could be an

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<sup>28</sup> This occurred in relation to the: Animal Care and Protection Amendment Bill 2022; Public Health and Other Legislation (COVID-19 Management) Amendment Bill 2022; Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Bill 2022; Corrective Services (Emerging Technologies and Security) and Other Legislation Amendment Bill 2022; Police Powers and Responsibilities (Jack's Law) Amendment Bill 2022; Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Bill 2022; Local Government Electoral and Other Legislation (Expenditure Caps) Amendment Bill 2022; Births, Deaths and Marriages Registration Bill 2022; Police Powers and Responsibilities and Other Legislation Amendment Bill 2023; Path to Treaty Bill 2023; Tobacco and Other Smoking Products Amendment Bill 2023.

unreasonable limitation on human rights, particularly if the choice to want a person was due to stereotyping or unconscious bias. The Committee recommended that the trial be independently evaluated and the Queensland Government supported this recommendation.

The key objectives of the Births, Deaths and Marriages Registration Bill 2022 included strengthening the legal recognition of trans and gender diverse people, and better recognising contemporary family and parenting structures. A number of submissions, including one from the Commission, expressed concern that the statute book contains examples of older legislation passed before the community had a more nuanced understanding of sex and gender. In response, the Legal Affairs and Safety Committee recommended that Queensland Government agencies undertake an audit of Queensland legislation within their remit to identify amendments that would be required as a result of the passing of the Bill. The government supported this recommendation.

The main objective of the Police Powers and Responsibilities and Other Legislation Amendment Bill 2023 was to improve the efficiency and effectiveness of the Queensland Police Service (QPS), and the Queensland Fire and Emergency Services (QFES) by making a range of amendments to improve the administration and operation of these agencies. The Legal Affairs and Safety Committee considered additional information from the department and concluded any limitation on rights was reasonable. However, with regard to the proposed amendments to the Police Drug Diversion Program, the Committee recommended that the Queensland Police Service review their training to assess whether any change to current training is required to ensure that the greater discretion afforded to police when dealing with children suspected of minor drug offences does not result in them being treated more harshly than if they were adults. The government supported this recommendation.

The Path to Treaty Bill 2023 proposed the creation of legislative framework to progress truth and treaty in Queensland. The Community Support and Services Committee recommended the Bill be amended to change how criminal history was considered in making appointments to the Treaty Institute and senior executives. The government accepted this recommendation and amended the Bill to remove the automatic disqualification of people with convictions for indictable offences from holding positions on the First Nations Treaty Institute. The government also made amendments to enable the Queensland Police Commissioner to be compelled to provide information, and to require the Minister to provide a report on the operation and efficiency of the Institute within one year of its establishment.

During the reporting period, a committee recommended amendments to the Statement of Compatibility for the Coal Mining Safety and Health and Other Legislation Amendment Bill 2022.<sup>29</sup>

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<sup>29</sup> Coal Mining Safety and Health and Other Legislation Amendment Bill 2022.



While not counted for the purposes of this indicator (as it does not appear the Human Rights Act was central to a recommendation being made), a member of parliament noted the relevance of the Human Rights Act to a committee recommendation during debate of the Racing Integrity Amendment Bill 2022.<sup>30</sup>

## Indicator 8: Introducing member responded to report by providing further information

*This indicator considers whether the member of parliament introducing the bill responded to committee recommendations and/or provided further justification for limitations on human rights.*

On 4 occasions an introducing member provided more information to parliament about human rights compatibility issues raised through the scrutiny process.

The Education, Employment and Training Committee made 3 recommendations seeking further information about the Corrective Services (Emerging Technologies and Security) and Other Legislation Amendment Bill 2022. In its response, the government noted these recommendations and provided further justification for human rights compatibility.

During the debate stage, the Minister tabled amendments to the Statement of Compatibility for the Coal Mining Safety and Health and Other Legislation Amendment Bill 2022 in response to the recommendation by the Transport and Resources Committee.<sup>31</sup>

The Economics and Governance Committee concluded that the Integrity and Other Legislation Amendment Bill 2022 did not limit any human rights protected by the Human Rights Act, but noted that the right to freedom of thought, conscience, religion and belief<sup>32</sup> is stated in language wide enough to encompass more than religious belief and also protects atheistic, agnostic, cultural, philosophical, academic, social, or personal beliefs. To further promote this right, the Committee suggested the Bill further amend the Auditor-General Act to include the words 'or affirmation', in addition to oath, for those provisions concerning the Auditor-General's commitment to acting faithfully and impartially in the role. The Minister referred to this issue in her second reading speech, advising the House that the *Acts Interpretation Act 1954* defines 'oath' to include affirmation. As such, she considered amendments to the Bill unnecessary.<sup>33</sup>

A report of the Education, Employment and Training Committee discussed concerns that provisions of the Industrial Relations and Other Legislation Amendment Bill 2022, which would prevent unregistered organisations from representing employees in the Queensland Industrial Relations Commission, may unreasonably limit the right to freedom of association. The Committee's primary report concluded any limitation was reasonable and proportionate. However, in a

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<sup>30</sup> Racing Integrity Amendment Bill 2022. The member stated: 'Recommendation 4 was again clarifying the publication of stewards' reports. We heard from a number of people around the use of stewards' reports and what they can be used for. There are multiple uses of those reports, but there is an impact in terms of the Human Rights Act, so I think a really good balance has been struck in terms of what we publish when it comes to those stewards' reports and being able to access information and sharing arrangements that have been put in place.'

<sup>31</sup> Queensland Parliament, *Parliamentary Debates*, Legislative Assembly, 8 November 2022, 3343 (SJ Stewart, Minister for Resources).

<sup>32</sup> *Human Rights Act 2019* (Qld) s 20.

<sup>33</sup> Queensland, *Parliamentary Debates*, Legislative Assembly, 29 November 2022, 3658 (G Grace).

dissenting report, some members of the Committee questioned this conclusion. The Minister provided further justification for the limitation on rights during the debate stage of the Bill.<sup>34</sup>

## Indicator 9: Bill amended as a result of report

*This indicator considers amendments to Bills as a result of human rights issues raised in the committee process.*

Through the parliamentary process 2 Bills were amended to improve compatibility with the Human Rights Act.

The Path to Treaty Bill 2023 was amended in response to recommendations made by the Community Support and Services committee. See also commentary under Indicator 8 above.

While not formally recommended by the Legal Affairs and Safety Committee, the Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Bill 2022 was amended based on human rights issues raised through the committee process including to:

- remove the limitations on when and where a United Nations subcommittee could conduct an interview with a person in detention (essentially to remove the requirement to visit a place of detention to be able to interview a person)
- remove the requirement for a 'legal guardian' to consent on a detainee's behalf to avoid inadvertently limiting the ability of a person to provide consent
- expand the examples of 'detriment' to include other forms of reprisal that may be more relevant to a person in detention.

By way of contrast, last year no bills were amended as a result of human rights issues raised in portfolio committee.

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<sup>34</sup> Queensland, *Parliamentary Debates*, Legislative Assembly, 26 October 2022, 3092 (G Grace).

# Guidance on statements of compatibility

Since the commencement of the Human Rights Act, portfolio committees have provided the following general guidance on requirements for statements of compatibility:

Issue	Committee	Inquiry	Requirement
Rights that refer to arbitrary and/or unlawful interference	Health and Environment Committee	Report No. 21, 57th Parliament: Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2022	Statements of compatibility should still undertake an analysis under section 13 (to determine if a limitation of a human right is reasonable and justifiable) even if the Minister suggests that there is not an unlawful or arbitrary interference with the right.
Where a Bill primarily concerns acts or decisions of corporations and/or associations	Legal Affairs and Safety Committee	Report No. 28, 57th Parliament: Casino Control and Other Legislation Amendment Bill 2022	While provisions aimed at corporations or associations do not engage human rights, per se, this does not remove the need to consider whether human rights may be adversely affected when corporate officers are directly implicated by provisions affecting corporations.
Existing Acts amended by Bills	Economics and Governance Committee	Report No. 24, 57th Parliament: State Penalties Enforcement (Modernisation) Amendment Bill 2022	The statement of compatibility should consider the entirety of the Act as amended, including existing provisions not amended by the Bill.
Surveillance and cameras	Health and Environment Committee	Report No. 27, 57th Parliament: Environmental Protection and Other Legislation Amendment Bill 2022	Statements of compatibility should address the limitation on the right to privacy arising from the use of cameras and storage of footage (body-worn, CCTV, etc).
	Economics and Governance Committee	Report No. 24, 57th Parliament: State Penalties Enforcement (Modernisation) Amendment Bill 2022	

Onus of proof in criminal matters	Health and Environment Committee	Report No. 27, 57th Parliament: Environmental Protection and Other Legislation Amendment Bill 2022	Limitations on the rights in criminal proceedings <sup>35</sup> should be justified whenever a reverse onus provision requires a person charged to demonstrate it was reasonable for them to not comply with a provision.
Justification for limitations on multiple rights.	Community Support and Services Committee	Report No. 17, 57th Parliament: Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Bill 2022	Ensure that justification for limits on human rights are specifically discussed in relation to individual rights rather than a general discussion across multiple rights.
Approach in other human rights jurisdictions	Economics and Governance Committee	Report No. 11, 57th Parliament: Public Health and Other Legislation (Further Extension of Expiring Provisions) Amendment Bill 2021	It is helpful for statements of compatibility to discuss how the approach in a Bill differs from approaches taken to similar issues in other human rights jurisdictions.
Reasonably available alternatives	Legal Affairs and Safety Committee	Report No. 7, 57 <sup>th</sup> Parliament: Youth Justice and Other Legislation Amendment Bill 2021	Statements of compatibility should incorporate the views of stakeholders and their suggestions about reasonably available alternatives where targeted consultation has been undertaken in developing the Bill.

<sup>35</sup> *Human Rights Act 2019* (Qld) s 32.

# Significant legislation 2022-23

A summary follows of legislation introduced in the 2022–23 financial year that raised significant human rights issues.

## Strengthening Community Safety Bill 2023

Youth crime in Queensland has raised serious community concerns in recent years. Some victims have lost their lives during tragic and highly-publicised events involving young offenders. The Queensland Government undoubtedly has a duty to protect its citizens, and people should be able to live safely. The best outcomes for victims, young offenders, and the broader community are achieved through initiatives that reduce reoffending and incarceration – that is, by tackling the causes and consequences of youth crime.

The Strengthening Community Safety Bill 2023 proposed amendments to various laws with the stated aim of strengthening community safety and is the first instance of a law in Queensland passing with an override declaration. Parliament may, only in exceptional circumstances, declare that a provision of an Act has effect despite being incompatible with human rights (override declaration).<sup>36</sup> If parliament makes an override declaration, the Human Rights Act does not apply to the Human Rights Act or provision while the declaration is in force. An override declaration must expire after 5 years but could be re-enacted by parliament. The Bill was the first to propose such an override and concerned certain provisions to change the granting of bail and the detention of children.<sup>37</sup> The Minister agreed that these provisions were incompatible with several rights including the rights of children to protection in their best interest<sup>38</sup> and the right to liberty.<sup>39</sup>

The Commission recommended the Bill not be passed because of the significant and disproportionate limitations it placed on the rights of children. In the Commission's view, the override was not justifiable because the circumstances did not meet the test of an 'emergency' as set out in the Human Rights Act. Examples provided in the Human Rights Act are: 'war, a state of emergency, an exceptional crisis situation constituting a threat to public safety, health or order'.<sup>40</sup>

In considering the Bill, the Economics and Governance Committee report concluded that the incompatibilities with human rights were justified and that other limitations on human rights struck an appropriate balance between the protection of the rights of children and strengthening community safety. The Committee determined that the Bill's impact on human rights was justified in the circumstances and recommended that parliament pass the Bill. The Committee's report noted concerns raised in submissions about the proposed override of the Human Rights Act, and concluded:

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<sup>36</sup> *Human Rights Act 2019* (Qld) s 43.

<sup>37</sup> These were amendments to introduce a breach of bail offence for children, a new Serious Repeat Offender Declaration Scheme, and the requirement for a child convicted of a prescribed indictable offence to serve a period of detention when they breached certain conditional release orders.

<sup>38</sup> *Human Rights Act 2019* (Qld) s 26(2).

<sup>39</sup> *Human Rights Act 2019* (Qld) s 29.

<sup>40</sup> *Human Rights Act 2019* (Qld) s 43(4).



*In response to these concerns, the department emphasised that the decision to override human rights and the justification for that decision are both matters for the government.*<sup>41</sup>

The footnote to this statement cited the joint departmental response provided to the Committee by the Queensland Police Service (QPS), Department of Children, Youth Justice and Multicultural Affairs (DCYJMA), and Department of Justice and Attorney-General (DJAG). The briefing stated:

*The decision to override human rights and its justification are both matters for Government.*<sup>42</sup>

The Commission is concerned that this briefing material demonstrates a misunderstanding of the operation of the override declaration. It is a matter for an introducing member, in this case the relevant minister, to justify a proposed override. However, the Human Rights Act is clear that it is a decision of *parliament*, not the government, as to whether such a declaration should be made.<sup>43</sup>

The Bill passed with 4 override declarations in place. The Human Rights Act was discussed throughout the debate stage, including submissions made by the Commission.<sup>44</sup>

In the Commission's view, the experience of the Human Rights Act's first override declarations provides weight to the argument that the provision should be removed from the Human Rights Act. Instead, potential incompatibility should be assessed using the Statements of Compatibility and parliamentary scrutiny process. That process would permit parliament to consider whether sufficient justification for incompatible Bills to be passed has been made by introducing members, rather than removing the application of the Human Rights Act entirely.

## Monitoring of Places of Detention (OPCAT) Bill 2022

The purpose of the Bill was to facilitate visits by the United Nations Subcommittee on Prevention of Torture (the subcommittee) to places of detention in Queensland. The subcommittee has the authority to conduct visits to Australia under the *Optional Protocol to the Convention Against Torture* (OPCAT). The subcommittee has a mandate to visit places of detention and make recommendations to state parties concerning the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment.

The subcommittee visited Australia in late 2022 and was refused entry to a place of detention under the control of Queensland Health. As a result, the Bill was introduced to provide the subcommittee with access to places of detention in

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<sup>41</sup> Economics and Governance Committee, Queensland Parliament, *Inquiry into the Strengthening Community Safety Bill 2023* (Final Report, March 2023) 6.

<sup>42</sup> Joint departmental response to submissions (Queensland Government), Submission to Economics and Governance Committee, Queensland Parliament, *Inquiry into the Strengthening Community Safety Bill 2023* (8 March 2023) 72.

<sup>43</sup> *Human Rights Act 2019* (Qld) s 43(1) states that the *parliament* may expressly declare an Act or provision has effect despite being incompatible with rights (emphasis added).

<sup>44</sup> See for example: Queensland Parliament, *Parliamentary Debates*, Legislative Assembly, 14 March 2023, 363 (L Power); Queensland Parliament, *Parliamentary Debates*, Legislative Assembly, 15 March 2023, 478 (M Berkman).

Queensland and to ensure the subcommittee could fulfil its mandate under OPCAT.

Human rights issues, such as the privacy rights of detainees, were discussed throughout the Legal Affairs and Safety Committee's report and during debate of the Bill. Additional information was included throughout the report from the department responding to submissions.

While the Committee found any limitations on rights were reasonable and recommended the Bill be passed, the Commission and other stakeholders raised concerns that clauses of the Bill regarding people with impaired capacity who may wish to engage with the subcommittee were too restrictive and may prevent equitable access to participation in interviews by people with a disability or young people.

While no recommendation was made by the Committee about this issue, in response to submissions made by stakeholders during the Committee inquiry process, the government made amendments to the Bill to:

- remove the limitations on when and where the subcommittee conducts an interview (in essence, to remove the requirement to visit a place of detention to be able to interview a person)
- remove the requirement for a 'legal guardian' to consent on a detainee's behalf in order to avoid inadvertently limiting the ability of a person to provide consent
- expand the examples of 'detriment' to include other forms of reprisal that may be more relevant to a person in detention.

Despite the Bill passing into law, the subcommittee decided to terminate its visit to Australia on 20 February 2023 due to obstacles in carrying out its mandate, and so were unable to visit any places of detention in Queensland.<sup>45</sup>

The Commission notes that even with the passage of this Bill, the Queensland Government must still take steps to:

- fully participate in Australia's National Preventive Mechanism (NPM) under the *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT) which was due to commence in early 2023; and
- clarify the roles and responsibilities of various agencies with oversight functions in Queensland.

## Nature Conservation and Other Legislation Amendment Bill 2022

The primary purpose of the Bill was to amend the *Nature Conservation Act 1992* to provide a 20-year extension to enable beekeeping in specified national parks to continue until 31 December 2044. The proposed extension only applies to areas where beekeeping could be lawfully undertaken immediately prior to the transfer of the land as national park.

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<sup>45</sup> United Nations Human Rights Office of the High Commissioner, 'UN torture prevention body terminates visit to Australia, confirms missions to South Africa, Kazakhstan, Madagascar, Croatia, Georgia, Guatemala, Palestine, and the Philippines' (Press release, 20 February 2023).

The Statement of Compatibility noted that aspects of the Bill potentially limited the cultural rights of Aboriginal peoples and Torres Strait Islander peoples.<sup>46</sup> In its submission to the State Development and Regional Industries Committee, the Commission noted that cultural rights in the Human Rights Act are modelled on articles of the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP). A key obligation of UNDRIP is to seek the free, prior and informed consent of First Nations peoples.

The Statement of Compatibility noted that 12 First Nations groups currently have native title determinations or native title claims over national parks with apiary sites located on them. The Department of Environment and Science wrote to each of these groups to seek feedback about the proposed amendments.

The Commission welcomed this consultation but noted that this may not be sufficient to demonstrate a reasonable and proportionate justification of the limitation of rights. Cultural rights under the Human Rights Act are broader than native title, and protect the cultural rights of any First Nations person with a cultural interest in lands or waters, beyond those with an interest under native title legislation.<sup>47</sup>

The State Development and Regional Industries Committee sought more information from the government on these issues. The department acknowledged that cultural and native title rights can be distinct and separate and acknowledged the deep connection that First Nations peoples have with their land. While the department acknowledged cultural rights extend beyond native title rights, its consultation regarding the potential impacts of the Bill on cultural rights involved seeking the views of the representatives of the people who can speak for the land to which the Bill applies.

In the absence of an agreed cross-government framework for broader engagement with First Nations peoples regarding cultural rights under the Human Rights Act, the department considered this approach to be respectful of the practice of letting people on country speak for their country. The department stated that they had provided an opportunity for individuals to advise them if cultural rights are held by other First Nations peoples who are not of that country, or who are not recognised native title holders of that country.

Separate to their assessment of cultural rights, the department noted that the committee's inquiry into the Bill also provided an avenue for the public to raise any human rights matters.

In its submission to the committee the Commission questioned whether new apiary permits should only be granted with the free, prior and informed consent of First Nations peoples with cultural connections to the land, including those people who have not had formal native title recognition. The department advised that new apiary permits will be granted with consideration of the requirements of the Human Rights Act and consistent with the department's obligations as articulated in the Nature Conservation Act.

The department stated that it plans to explore alternative methods to evaluate the effects on the cultural rights of First Nations peoples. This assessment would go beyond considering only those people who hold native title or have filed claims on

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<sup>46</sup> *Human Rights Act 2019* (Qld) s 28.

<sup>47</sup> *Human Rights Act 2019* (Qld) s 28(2)(d). See discussion of this issue in Queensland Human Rights Commission, *Putting people first: the first annual report on the operation of Queensland's Human Rights Act* (Report, 2019-20) 37-38.

the land where beekeeping activities take place. This investigation would include engaging with the Commission to discuss where such approaches have been used effectively in other circumstances across government. The Commission views this instance as a constructive illustration of human rights dialogue in the committee process.

## Births, Deaths and Marriages Registration Bill 2022

The key objectives of the Bill included strengthening the legal recognition of trans and gender diverse people, and better recognising contemporary family and parenting structures. The Commission has long supported law reform to achieve these objectives.

The changes in the Bill included: removing the requirement for a person to undergo sexual reassignment surgery in order to alter the record of their sex; introducing a more accessible framework for people aged 16 years and older to apply to alter the record of their sex; enabling a person to nominate a sex descriptor of their choice (male, female, or any other sex); and allowing each of a child's parents to be registered as mother, father, or parent, which allows combinations that are not confined to 'mother/father'.

The Bill also proposed amendments to the *Anti-Discrimination Act 1991* to change the meaning of 'gender identity' to provide for a more inclusive definition, to introduce a new protected attribute of 'sex characteristics' to protect the intersex community, and to repeal an exemption that allows discrimination in working with children.

Human rights under the Human Rights Act, as informed by relevant international instruments, were discussed throughout the Legal Affairs and Safety Committee's report on the Bill. This included additional information provided by the department to the committee regarding the *Yogyakarta Principles*, which provide a universal guide to the application of human rights principles and legal standards on sexuality and gender identity.

The Commission and other stakeholders raised concerns about the impact on human rights in relation to provisions about 'restricted persons' (a prisoner or a released prisoner) including the requirement that such persons seek the approval of the Queensland Corrective Services Chief Executive to apply for a change of sex. The Commission considered that this was a significant limitation on the right to equality before the law, the right to privacy, and the right to humane treatment when deprived of liberty.

The committee found the Statement of Compatibility lacked sufficient detail on these issues and sought further information from the government, which was subsequently published in the report. The committee concluded that the approval process was a reasonable limitation on human rights.

Several submissions, including from the Commission, expressed concern that the statute book contains examples of older legislation passed before the community had a more nuanced understanding of sex and gender. Stakeholders suggested that an audit was necessary to ensure all legal rights, entitlements, privileges, and responsibilities are afforded equally to all Queenslanders, regardless of their gender or sex. In response, the committee recommended that Queensland Government agencies undertake an audit of Queensland legislation within their

remit and identify amendments required as a result of the introduction of the Bill. The government supported this recommendation.

Human rights were discussed during the debate, both in relation to the promotion and limitation of rights arising from the Bill. The Bill has been passed and received assent and will commence on a date to be fixed by proclamation.

## Path to Treaty Bill 2023

This Bill establishes the legislative framework needed to progress truth and treaty in Queensland. The Commission supported the intent of the Bill as promoting the human rights of Aboriginal peoples and Torres Strait Islander peoples but made several recommendations regarding the details. In particular, the Commission noted that the Truth-telling and Healing Inquiry's powers to compel were insufficient and did not include the power to compel the Queensland Police Service or non-government service providers to give information or attend a hearing. The Commission was concerned that not providing the Inquiry with adequate powers to compel risked compromising the effectiveness and cultural safety of the truth telling and healing process. The Commission, along with other stakeholders, raised concerns about the compatibility of some clauses in the Bill, including the automatic disqualification of people convicted of indictable offences from being members of the Treaty Institute Council, with the rights to equality, taking part in public life, and privacy.

In its report, the Community Support and Services Committee accepted that limiting appointment to the Treaty Institute Council to Aboriginal and Torres Strait Islander peoples was a special measure to redress disadvantage under the 'special measures' provision in the Human Rights Act.<sup>48</sup> The committee considered the potential impact on an individual's right to privacy and confidentiality in relation to the criminal history provisions may be justifiable. However, the committee suggested that in the context of the over-representation of First Nations people in the criminal justice system, more tailored disqualification provisions would be appropriate. The Committee recommended that the relevant clause be omitted and replaced with a new provision providing that a person's criminal history may be taken into account in making appointments to the Treaty Institute and senior executive positions.

The committee noted concerns about the inability for the inquiry to compel the Commissioner of the Queensland Police Service, but noted with approval that the department has made a commitment to amend the relevant clauses prior to the passage of the Bill in response to the issue being raised by stakeholders during the submission process.

The Bill was amended to remove the automatic disqualification of people with convictions for indictable offences from holding positions in the First Nations Treaty Institute, to enable the Queensland Police Commissioner to be compelled to provide information, and to require the Minister to provide a report on the operation and efficiency of the Inquiry within one year after it is established. Compatibility with the Human Rights Act and the *United Nations Declaration on the Rights of Indigenous Peoples* was discussed during the debate stage. The Bill has been passed and received assent and will commence on a date to be fixed by proclamation.

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<sup>48</sup> *Human Rights Act 2019* (Qld) s 15(5).



# Land and Other Legislation Amendment Bill 2022

The purpose of the Bill was to ensure the regulatory frameworks within the resources portfolio remain efficient, effective, and responsive to change. The Transport and Resources Committee identified two significant issues in relation to this Bill:

- The Statement of Compatibility failed to address the limitation on cultural rights of Aboriginal and Torres Strait Islander peoples.<sup>49</sup>
- A potential unintended consequence of the Bill was that it may override the obligations of public entities under the Human Rights Act, or at least make enforcement of those obligations more difficult.

In the body of the Committee's report, but not included as a formal recommendation, the Committee sought further justification about the limitation on First Nations' cultural rights and suggested an amendment to deal with the enforceability issue. The Committee went so far as to suggest that a failure to respond appropriately to these issues may reduce the government's commitment to upholding the human rights of First Nations people to mere 'lip service'.

The department's response to the Committee indicated it did not agree it should address all the identified issues because:

*The compatibility of a Bill with the HR Act should only be considered in the context of the amendments being proposed in a Bill. Compatibility should not consider human rights more generally across Acts or its provisions that are not the subject of the proposed amendments.*

This interpretation contrasts with the conclusion reached previously by the Economics and Governance Committee, which in a report discussed in last year's annual report on the operation of the Human Rights Act, concluded that statements of compatibility should justify any limitation on human rights arising from existing legislation as amended, including in relation to aspects of legislation not amended by the Bill.<sup>50</sup> The department provided no justification as to why it reached a different conclusion to the approach set out in the previous Economics and Governance Committee report.

This example illustrates a drawback of the Queensland parliamentary committee system. The formulation of clear and consistent rules and expectations for the preparation of statements of compatibility is frustrated by multiple committees undertaking scrutiny functions.

The Commission supports the conclusions reached by the Economics and Governance Committee that statements of compatibility should consider the compatibility of the entirety of existing legislation, as amended.

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<sup>49</sup> Human Rights Act 2019 (Qld) s 28.

<sup>50</sup> See discussion of this issue in Queensland Human Rights Commission, *Shifting the focus: The third annual report on the operation of Queensland's Human Rights Act 2019* (Report 2021-22) 41.

## Animal Care and Protection Amendment Bill 2022

The objective of the Bill was to modernise Queensland's animal welfare laws to reflect modern scientific knowledge, community attitudes, and expectations.

The State Development Committee noted that proposed section (93T) would require livestock slaughter facilities to install, maintain, and operate closed-circuit television (CCTV) equipment. The Committee noted that CCTV equipment in public places may record employees or visitors and engages the right for a person not to have their privacy unlawfully or arbitrarily interfered with. While noting that the Bill included some protections, the Committee found that no mention was made in the proposed Bill about who may view the recordings and associated records, and no specific requirements about storage were outlined.

The Committee suggested it could be argued that a more appropriate balance could be struck between the legitimate purpose of protecting animals and the importance of preserving individuals' rights to privacy by further amendments.

As the Committee made no formal recommendations on this point, the government did not respond to these suggestions in its response to the Committee, and no amendments to the Bill were moved.

## Casino Control and Other Legislation Amendment Bill 2022

The purpose of this Bill was to ensure casino integrity and to modernise gambling legislation.

Significantly, the Bill proposed to remove an existing detention power under the *Casino Control Act 1982* due to its potential incompatibility with human rights. The power could be used by an inspector, casino operator, or casino operator's employees and agents. The Statement of Compatibility noted that Office of Liquor and Gaming Regulation inspectors do not use the detention power, and so the government concluded it could not justify retaining the detention power for others. The Bill passed and received assent on 21 October 2022.

## Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Bill 2022

The Bill proposed to implement reforms to address coercive control as recommended by the Women's Safety and Justice Taskforce in its report, *Hear her Voice – Report one – Addressing coercive control and domestic and family violence in Queensland*.

The amendments proposed in this Bill included updating the language used to describe sexualised violence, including changing the term 'carnal knowledge' to 'penile intercourse'. Several submissions raised concerns about this change arguing that the language was not gender neutral and the terminology implied certain offences could only be perpetrated by men.

In the human rights compatibility section of its report, the Legal Affairs and Safety Committee noted the proposed change could be seen as discriminatory against potential victims and not compatible with human rights norms and expectations. However, the department provided further advice that the term 'penile intercourse' is not considered to be gendered language and therefore discriminatory because it relates to physical anatomy, including a surgically constructed penis. It further advised that amending the terminology was for the purpose of modernising the language, not to substantively alter the scope or operation of the offence. Finally, the department advised other types of abuse are captured by other offence provisions in the Criminal Code. Based on this additional information, the Committee was satisfied the limits on the human rights were reasonable and demonstrably justifiable.

The potentially discriminatory aspects of this provision were also discussed in the debate stage of the Bill, but the Bill was passed with this definition.

## COVID-19 related legislation

The key objective of the Public Health and Other Legislation (COVID-19 Management) Amendment Bill 2022 was to replace the temporary amendments made to the *Public Health Act 2005* in response to COVID-19. These temporary changes provided extraordinary powers to the Chief Health Officer and emergency officers to contain and respond to the spread of COVID-19. Without further extension by parliament, the framework would have expired on 31 October 2022 or earlier, if the Minister for Health and Ambulance Services ended the public health emergency.

The Bill proposed to replace the temporary framework with more targeted powers to manage COVID-19 as a notifiable condition under the Public Health Act. This was intended to provide a 'step-down' approach to managing the pandemic response. The power of the Chief Health Officer to make public health directions would be limited to: masks, isolation and quarantine, and vaccinations for workers in high-risk settings. Directions would undergo a parliamentary process to include a statement explaining the rationale and compatibility with human rights. These directions would expire automatically after 90 days. The Bill contained additional safeguards that require a person to be given an opportunity to voluntarily comply with a direction before compliance is enforced.

The Commission had previously made several submissions to parliament recommending changes to the temporary COVID-19 framework. In introducing the Bill, the Minister suggested the advocacy of several stakeholders, including the Commission, had informed the Bill.

The Human Rights Act was raised in several submissions and discussed extensively throughout the Health and Environment Committee's report. The Human Rights Act was discussed in debate, however the Bill passed unamended and has received assent. The temporary changes to the Public Health Act commenced on 1 November 2022.

# Summary of the role of parliament in 2022-23

The Commission's analysis focuses on the passage of primary legislation through the parliament, including the assessment of Bills and statements of compatibility by portfolio committees.

The application of these indicators to legislation considered in the reporting period suggests that human rights compatibility is being addressed both through submissions to Committees and in the discussion in Committee reports. Comparing the progress on the indicators this year with previous years, there are positive signs that a human rights culture is continuing to develop. This is reflected in more amendments being made to Bills to address human rights concerns raised through the scrutiny process. It remains a positive feature of the Queensland Parliament's process that Committees continue to collate and publish additional information about compatibility obtained through the inquiry process.

Committees also continue to refine the format and structure of their reports, often extending their consideration of human rights compatibility to all sections of the report and including graphical analysis of human rights limitations and justifications.<sup>51</sup>

During the reporting period, Committees also made more recommendations to improve Bills and statements of compatibility based on human rights considerations. The government generally accepted these recommendations and made some amendments. In one case, in response to issues raised during the inquiry process, the relevant department agreed to amend a Bill after reading stakeholder submissions, even before the committee report was published.<sup>52</sup>

Some Committee recommendations required only clarification of an issue rather than proposing an amendment, while other committee reports discussed human rights concerns but did not make recommendations, and therefore a formal response was not required from government. This meant that some human rights compatibility issues went unaddressed, and the Bills were passed despite the Committees' concerns.

On several occasions, amendments unrelated to the original subject matter of the Bills were made after committees had reported.<sup>53</sup> In past annual reports, the Commission has raised concerns regarding this practice. Even though these amendments were accompanied by statements of compatibility, it is deeply concerning that they were not subject to any scrutiny by a portfolio committee. This raises fundamental questions about the integrity of the legislative process.

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<sup>51</sup> See for example, State Development and Regional Industries Committee, Queensland Parliament, *Local Government Electoral and Other Legislation (Expenditure Caps) Amendment Bill 2022* (Report No. 37, February 2023) 25.

<sup>52</sup> See Community Support and Services Committee, Queensland Parliament, *Path to Treaty Bill 2023* (Report No. 30, April 2023) 42.

<sup>53</sup> See Integrity and Other Legislation Amendment Bill 2022; Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Bill 2022; Local Government Electoral and Other Legislation (Expenditure Caps) Amendment Bill 2022.

The most concerning development of the year was parliament agreeing to the first override declarations under the Human Rights Act. The limited justification for the proposed overrides, coupled with confusion through the parliamentary process as to how the declarations are made should prompt consideration about whether this option should be removed from the Act.

Where an override declaration is made, the relevant legislation or provisions subject to the override do not undergo any scrutiny by committees, and stakeholders have no opportunity for input. A key benefit to removing the Human Rights Act's override provision would be ensuring the continued scrutiny of all legislation including those laws which parliament has conceded are incompatible with human rights.

However, the effect of removing the override provision from the Act would need to be closely evaluated, particularly considering that the benefit of the current framework is that overrides expire automatically after 5 years. This prompts parliament to periodically reassess whether the crisis justifying the override declaration still prevails.



A photograph of a classical building entrance, likely a courthouse or tribunal. The image features two large, fluted columns with ornate Corinthian capitals. A decorative lamp with a blue and white patterned globe hangs from the ceiling. The text "Human rights in courts and tribunals" is overlaid on the image in a dark blue banner.

# Human rights in courts and tribunals



# The role of courts and tribunals

The Westminster system of government, as it operates in Queensland, requires separation of the three arms of government: the legislature (parliament), the executive, and the judiciary. However, each of these arms is required to consider the *Human Rights Act 2019* when acting or making decisions. Courts and tribunals are required to consider the Human Rights Act when:

- interpreting legislation
- acting in an administrative capacity
- carrying out functions where human rights have direct application, and
- dealing with matters in which human rights grounds have been 'piggy-backed' onto an existing cause of action.

## Interpreting legislation

Section 48 of the Human Rights Act requires all legislation to be interpreted in a way that is compatible with human rights, to the extent possible that is consistent with the purpose of the legislation.

If legislation cannot be interpreted in a way that is compatible with human rights, it is to be interpreted in a way that is most compatible with human rights, to the extent possible that is consistent with the purpose of the legislation.

A statutory provision is 'compatible with human rights' if it does not limit a human right, or limits a human right only to the extent that is reasonable and demonstrably justifiable in a free and democratic society based on human dignity, equality, and freedom. Section 13 of the Human Rights Act sets out factors that may be relevant in deciding whether a limit on a human right is reasonable and justifiable.

In *BA, DC, FE v State of Queensland* [2022] QCAT 332, one of the issues before the Tribunal was whether proceedings under the *Anti-Discrimination Act 1991* had been properly made and referred to the tribunal in circumstances where complaints were made by a lawyer for three young people under 18 years of age, some of whom identified that they have a disability, and no person had been authorised to act on behalf of them. The Tribunal held that the statutory regime contemplated that a person under the age of 18 may bring a complaint and have it referred, and the tribunal would then assist the young person without the need for a litigation guardian. This interpretation was said to be 'most compatible' with the young person's human rights and took into consideration the fact that the young people were legally represented and that lawyers have obligations to the tribunal and their clients. However, in the interests of a fair hearing, the tribunal ordered that a litigation guardian be appointed for one of the young people whose lawyer was taking instructions from the mother rather than the young person themselves. Specific human rights were not identified in the tribunal's reasons for decision, but the Commission raised the rights of the child and recognition and equality before the law in its submissions to the tribunal.

In *SBN v Department of Children, Youth Justice and Multicultural Affairs* [2022] QCAT 321 an application was made by a mother to review the Department's decision designed to facilitate contact between her children. As the decision did not involve the mother, the department sought to have the application dismissed

on the basis the mother was not ‘a person affected by the decision’ as required by the *Child Protection Act 1999*. While not expressly referring to section 48 of the Human Rights Act, the tribunal considered the right to protection of families and children in section 26 of that Act in concluding that the mother was a person affected by a decision concerning contact between her children.

The Human Rights Act requires that all statutory provisions must, to the extent possible that is consistent with their purpose, be interpreted in a way that is compatible with human rights. Section 48 of the Human Rights Act forms part of the body of interpretative rules to be applied in ascertaining the meaning of a statutory provision.

## Declarations of Incompatibility

The Supreme Court or the Court of Appeal may make a declaration of incompatibility if the court considers that a statutory provision cannot be interpreted in a way that is compatible with human rights. The experience of other jurisdictions is that this power is rarely used, and Queensland’s Supreme Court did not exercise the power in the 2022–23 year.

## Acting in an administrative capacity

When courts and tribunals are acting in an administrative capacity, they are public entities under the Human Rights Act and are required to:

- act and make decisions in a way that is compatible with human rights, and
- give proper consideration to human rights relevant to decisions they make.

In 2022–23, the following Queensland courts and tribunals acknowledged that they were acting in an administrative capacity and are therefore a public entity with obligations under the Human Rights Act, in the circumstances outlined in Table 2a.

*Table 2a: Cases confirming where courts and tribunals were acting in an administrative capacity in 2022-23*

Subject matter	Case
Land Court in deciding whether to recommend the approval of a mining lease and environmental authority for a coal mine	<i>Waratah Coal Pty Ltd v Youth Verdict Ltd &amp; Ors (No 6)</i> [2022] QLC 21
QCAT in deciding an exemption application under section 113 of the <i>Anti-Discrimination Act 1991</i>	<i>Burleigh Town Village Pty Ltd (3)</i> [2022] QCAT 285
QCAT in a review of a decision to cancel a blue card	<i>LM v Director-General, Department of Justice and Attorney-General</i> [2022] QCAT 333

Coroners Court in holding an inquest and making findings and recommendations to prevent deaths in the future	<i>Inquest into the deaths of Yvette Michelle Wilma Booth, Adele Estelle Sandy, Shakaya George (Findings of inquest, Coroners Court of Queensland, Coroner Wilson, 30 June 2023)</i>
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The following Queensland courts and tribunals confirmed they were acting in a judicial capacity, and are therefore not public entities under the Human Rights Act, in the circumstances outlined.

*Table 2b: Cases where tribunals have stated they are not acting in an administrative capacity in 2022-23*

Subject matter	Case
QCAT in deciding a complaint about a contravention of the <i>Anti-Discrimination Act 1991</i>	<i>Gorgievski v Gold Coast City Council &amp; Anor</i> [2022] QCAT 365

## Direct application

Section 5(2)(a) of the Human Rights Act imposes direct obligations on courts and tribunals to act compatibly with human rights to the extent that the court or tribunal has the function of applying or enforcing those rights. The obligation applies whether or not the court or tribunal is acting in a judicial or administrative capacity.

The Supreme Court in *Attorney-General for the State of Queensland v Grant* (No 2) [2022] QSC 252 confirmed that a court is required to consider the human rights relevant to the subject matter in the particular proceedings. This has been referred to in other jurisdictions as the ‘intermediate construction’ of section 5(2)(a) of the Human Rights Act, and a ‘functional approach’ to identifying rights. Whether this required the Court to ‘act compatibly’ with the identified right or to merely consider the right depended on the specific function being performed, the relevant right, and the circumstances of the case, although the Court regarded the difference as ‘more apparent than real’.

In this case, the Court applied the right to liberty (section 29) and the right to humane treatment when deprived of liberty (section 30) in determining whether a sexual offender who had completed his sentence should be released under supervision or be subject to continuing detention under the *Dangerous Prisoners (Sexual Offenders) Act 2003*.

In *Queensland Police Service v Ahmed* [2023] QMC 2, the defendant was charged with contravening an order by refusing to provide the passcode to his phone to police. The defendant claimed he had a ‘reasonable excuse’ defence because it would offend his faith to expose photographs of his wife to male police officers. This engaged the rights to freedom of thought, conscience, religion and belief (section 20), and cultural rights (section 27). The Court held that when police fail to

comply with their obligations under the Human Rights Act, this may give rise to, or bolster, the reasonable excuse to withhold information in compliance with the order.

Even where a human right relates directly to a court's proceedings, it does not provide an independent remedy or cause of action. In *Wood v The King & Anor* [2022] QSC 216, the applicant applied for a declaration under the section 29(7) of the Human Rights Act that his detention on remand was unlawful. He argued this would oblige the District Court to order his release. The District Court referred a question of law to the Supreme Court, which determined that section 29(7) did not vest jurisdiction in the District Court to grant a declaration that a prisoner was being held in custody unlawfully. To make such a challenge, a prisoner ought to seek *habeus corpus*, which accommodates the right provided under section 29(7) of the Human Rights Act. However, the real remedy was a bail application, which the Court found is not concerned with the lawfulness of the detention and is therefore not relevant to section 29(7) of the Human Rights Act.

## Piggy-back matters

There is no standalone legal remedy available through the courts for an alleged limitation of human rights. However, human rights arguments can be added to, or 'piggy-backed' onto, a separate and independent cause of action against the public entity. For example, an application for judicial review of a decision made by a public entity might also include a claim that the public entity breached its section 58 obligations under the *Human Rights Act 2019* to act or make a decision in a way that is compatible with human rights and to give proper consideration to a human right relevant to the decision.

In these actions, a person may obtain (non-financial) relief if they successfully demonstrate a breach of section 58 of the *Human Rights Act 2019*, even if they are not successful in their primary claim for relief.

*Austin BMI Pty Ltd v Deputy Premier* [2023] QSC 95 and *Wallace v Tannock & Anor* [2023] QSC 122 are examples of judicial review proceedings to which claims of unlawfulness under the Human Rights Act were piggy-backed.

*Wallace v Tannock* concerned a review of directions issued by Queensland Corrective Services to a person subject to a supervision order made under the *Dangerous Prisoners (Sexual Offenders) Act 2003*. The Court concluded that the man was not provided with procedural fairness in the making of the directions and also found an invalid limitation had been placed on the applicant's right to freedom of association.

## Referrals to Supreme Court

If a question of law arises in a court or tribunal proceeding about the application of the *Human Rights Act 2019*, or statutory interpretation in accordance with the Act, it may be referred to the Supreme Court of Queensland.

In 2022-23, there was one referral from the District Court on the question of whether an application purportedly made pursuant to section 29(7) of the Human Rights Act (liberty and security) was appropriately brought to the District Court. The decision in *Wood v The King & Anor* [2022] QSC 216 was that the application was not appropriately brought because the Human Rights Act does not provide an independent remedy or cause of action.

## Queensland cases that have considered or mentioned the Human Rights Act

In the financial year ending 30 June 2023, courts and tribunals considered or mentioned the Act in 202 matters. Of these, 136 involved detailed consideration. On 66 occasions the Human Rights Act only received a minor mention by the decision-maker. For the first time this year we have reported on 2 overseas courts that considered or mentioned the Queensland Act.

The number of times that courts or tribunals considered or mentioned the Human Rights Act more than doubled in number from the previous year.

*Table 3: Number of matters where courts and tribunals considered or mentioned the Human Rights Act.*

Court	2021-22	2022-23
Federal Court of Australia, Full Court	0	2
Federal Court of Australia	1	1
Federal Circuit and Family Court of Australia	0	1
Fair Work Commission	2	1
Court of Appeal Queensland	1	3
Supreme Court of Queensland	3	14
Industrial Court Queensland	0	1
District Court of Queensland	4	3
Land Court of Queensland	2	4
Mental Health Court Queensland	1	1
Coroners Court Queensland	1	2
Magistrates Court of Queensland	0	2
Queensland Civil and Administrative Tribunal, Appeals	4	4

Queensland Civil and Administrative Tribunal	44	77
Queensland Industrial Relations Commission	23	50
Office of Information Commissioner	0	34
New Zealand Supreme Court	0	1
United Kingdom Supreme Court	0	1
<b>Total</b>	<b>86</b>	<b>202</b>

## Key cases

Queensland courts from a range of jurisdictions considered the Human Rights Act, and a selection of key cases from the reporting period are summarised below.

### Property and development

#### *Austin BMI Pty Ltd v Deputy Premier* [2023] QSC 95

Three groups applied for judicial review of a decision made by Queensland's Deputy Premier to 'call-in' a development application made by Wanless Recycling Park to establish a new resource recovery and landfill facility west of Ipswich. The call-in meant the decision on whether to approve the application would be made by the Deputy Premier, rather than through the usual development application process. The Deputy Premier had not yet decided whether to approve or reject the application.

A group of local residents alleged that the call-in decision was incompatible with their human rights under the Human Rights Act. The Court considered their right to take part in public life, property rights, and right to a fair hearing. The Court concluded that the Deputy Premier's decision did not limit human rights, and even if it did, any limitation was reasonable and proportionate.

In considering the rights of the local residents to take part in public life,<sup>54</sup> the Court concluded that they had the opportunity, without discrimination, to participate in the conduct of the call-in process. Even if opposing lobbyists had better prospects of persuading the Deputy Premier, the right to take part in public life does not guarantee an equal voice or equality of bargaining power.

The Court also considered the meaning of the term 'without discrimination' as it forms part of the right to take part in public life. The word 'discrimination' is defined in the Human Rights Act as *including* direct or indirect discrimination within the meaning of the *Anti-Discrimination Act 1991*. The Court found that this definition allows for analogous grounds of discrimination beyond what is protected by the

<sup>54</sup> *Human Rights Act 2019* (Qld) s 23.



Anti-Discrimination Act, by applying the ordinary use of the word ‘discrimination’. This involves ‘making a distinction, as in to discriminate against a minority’, and not merely differential treatment.

The applicants had also argued that the call-in deprived them of their rights to property<sup>55</sup> in the form of a statutory right to elect to be a co-respondent and participate as a party to a planning appeal. Even at its most liberal interpretation, the Court disagreed this amounted to property, which goes to a person’s dignity and ability to enjoy other human rights. The Court further found that the applicants had not demonstrated how they had been ‘arbitrarily’ deprived of the right to property and that the Deputy Premier’s actions in accordance with the statutory regime could not be described as arbitrary.

The call-in decision meant the planning appeal, to which the applicants were a party, was discontinued. However, the Court followed case law from the United Kingdom to conclude that the applicants’ right to a fair hearing<sup>56</sup> would not be limited, provided the call-in decision was subject to independent review which looked at ‘the legality of the decisions and of the procedures followed’ – in this case, judicial review.

The Court also found the Deputy Premier had given proper consideration to human rights. The Deputy Premier expressly referred to a human rights assessment prepared by the department to assist with his consideration, which he was entitled to do. The human rights assessment primarily discussed freedom of expression and did not refer to the rights to take part in public life, property, or fair hearing under the Human Rights Act. The Court nevertheless held that proper consideration had been given by the Deputy Premier because those rights had not been affected by the call-in decision. Further, the Deputy Premier had identified and considered the potential impact of the call-in decision on the right to property, although the human rights assessment did not refer to that right expressly.

The Court confirmed that section 58(6) of the Human Rights Act makes clear that breach of section 58(1) by a public entity amounts to ‘non-jurisdictional error’. That means that even if a decision is ‘unlawful’ under section 58(1), it does not make the decision ‘invalid’.

### *Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors (No 6)* [2022] QLC 21

Waratah Coal applied for a mining lease and an environmental authority to allow it to mine thermal coal in the Galilee Basin. Youth Verdict and others objected to the grant of a mining lease and environmental authority and the matter was referred to the Land Court to make recommendations. The Land Court recommended that the mining lease and environmental authority be refused on several grounds,

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<sup>55</sup> *Human Rights Act 2019* (Qld) s 24.

<sup>56</sup> *Human Rights Act 2019* (Qld) s 31.

including that the resulting limitation on human rights caused by climate change could not be justified.

The Land Court was acting in an administrative capacity and therefore required to properly consider human rights that might be limited by the mining project, and to make a decision that is compatible with human rights. The Court accepted the connection between the act of authorising the grant of the lease and the harm that would be caused by the emission of greenhouse gas when the mined coal was burnt. This meant that authorising the project had the capacity to limit human rights.

The Court held it was not necessary for the claimant to have suffered harm to establish a limit on the right to life.<sup>57</sup> The increased risks of climate change, even if the risks did not materialise, were sufficient to demonstrate a limitation because of the life-threatening consequences of climate change caused by burning the mined coal.

Climate change impacts would also have a profound impact on the cultural rights of Aboriginal peoples and Torres Strait Islander peoples<sup>58</sup> and, for people who would be displaced from their country, the survival of their culture was at risk. The impacts of climate change and displacement also limit the right to privacy and home,<sup>59</sup> and the right to enjoy human rights equally.<sup>60</sup>

The rights of children<sup>61</sup> were limited due to their vulnerability to climate change impacts and the disproportionate burden of those impacts on children today and in the future.

The Court also accepted that 'climate change impacts will include destruction of property or a sufficient restriction on the ability to use and enjoy property to amount to a de facto expropriation'. This deprivation of property<sup>62</sup> was arbitrary in the sense of not being proportionate to the legitimate aim. The Court considered the importance of preserving the right, both as a fundamental common law right, and the human and cultural loss for First Nations peoples.

The Court was not persuaded that the limits on human rights identified were demonstrably justified, even taking into account the economic benefit and supply of thermal coal in South-East Asia.

Additionally, the court found that limits on the rights to property and privacy of landholders as a result of nuisance and environmental damage caused by the project were not justified.

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<sup>57</sup> *Human Rights Act 2019* (Qld) s 16.

<sup>58</sup> *Human Rights Act 2019* (Qld) s 26.

<sup>59</sup> *Human Rights Act 2019* (Qld) s 25.

<sup>60</sup> *Human Rights Act 2019* (Qld) s 15.

<sup>61</sup> *Human Rights Act 2019* (Qld) s 26.

<sup>62</sup> *Human Rights Act 2019* (Qld) s 24.

## *Burleigh Town Village Pty Ltd (3) [2022] QCAT 285*

The applicant sought renewal of an exemption from the operation of the *Anti-Discrimination Act 1991* in order to operate a manufactured home park reserved for persons over 50 years.

The tribunal held that the right to own property is not limited to the taking of a person's title to their property, but included preventing a person from exercising their property rights<sup>63</sup> in a way that is 'practical and effective'. The exemption, if granted, would limit property rights by preventing a person from owning a home in the park if they are under age 50, and restricting homeowners to selling their homes only to persons over age 50, which in turn significantly affected market value.

The tribunal also considered the right to recognition and equality before the law.<sup>64</sup> If the measure proposed is a 'special measure' to achieve equality for groups of disadvantaged persons, then it is not discrimination. That was not the case here. It followed that the discrimination that would occur by excluding persons under 50 years from ownership and occupation limited the right to recognition and equality before the law and had to be justified.

QCAT was not persuaded that the limitation of either right was reasonable and demonstrably justified 'to the objective of providing affordable housing in a community environment for older people'.

## Coronial inquest

### *Inquest into the deaths of Yvette Michelle Wilma Booth, Adele Estelle Sandy, Shakaya George (Findings of inquest, Coroners Court of Queensland, 30 June 2023)*

This inquest investigated the deaths of three young Aboriginal women from the remote community of Doomadgee who died as a result of rheumatic heart disease. The issues for the Coroner included the adequacy of health services and prevention strategies in the community for rheumatic heart disease.

The Coroner found that holding an inquest and making findings and recommendations to prevent deaths in the future is an administrative function of the Court and is therefore subject to the obligations on a public entity under section 58 of the *Human Rights Act 2019*. This means that the Coroner must:

- conduct the inquest in a manner that is compatible with human rights
- undertake a thorough and effective investigation that takes into account all surrounding circumstances, in accordance with the right to life. This may include making findings on failures by public entities to comply with the Human Rights Act that may have caused or contributed to the deaths

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<sup>63</sup> *Human Rights Act 2019* (Qld) s 26.

<sup>64</sup> *Human Rights Act 2019* (Qld) s 15.

- give proper consideration to human rights, and to make decisions, findings, and comments that are compatible with human rights
- in making recommendations, take into account the protection of human rights, including a consideration that recommendations should be designed to protect human rights and should not disproportionately limit human rights.

The Coroner found that failures in information sharing between the separate health services as well as between health services, patients, and their families, had an impact on the patients' right to life<sup>65</sup> and their right to access health services without discrimination.<sup>66</sup> The Coroner also made findings that the cultural rights of Aboriginal Peoples and Torres Strait Islander peoples,<sup>67</sup> the right to equality,<sup>68</sup> and children's rights<sup>69</sup> had been affected.

The Coroner acknowledged concerns regarding cultural safety at the health services in the community and made recommendations to address this. The findings outline how cultural rights are preserved by the existence of an Aboriginal Community Controlled Health Organisation in the community, including because it supports community identity by employing locals, ensures observance of language and cultural expression, recognises kinship ties and how those relationships may be impacted, and is governed by a predominantly First Nations Board of Directors and CEO, some of whom have close cultural connections to the community.

## Cases relating to the *Dangerous Prisoners (Sexual Offender) Act 2003*

### *Attorney-General for the State of Queensland v Grant (No 2)* [2022] QSC 252

A 78-year-old man's sentence for sexual offences had expired. The decision for the Court was whether to make a supervision order, which would allow the prisoner to be released under supervision, or a continuing detention order under the *Dangerous Prisoners (Sexual Offenders) Act 2003*. While the prisoner's risk to the community could be appropriately managed if released, his health and disability needs would not be met by the placement chosen by Queensland Corrective Services (QCS).

Applying section 5(2)(a) of the Human Rights Act, the Court concluded that the function of making a continuing detention order would involve consideration of at least the right to liberty<sup>70</sup> and the right to protection against arbitrary detention.<sup>71</sup> If a continuing detention order was only made because of QCS's decision to not provide suitable and humane conditions for placement of the, then the prisoner's detention would arguably be arbitrary.

<sup>65</sup> *Human Rights Act 2019* (Qld) s 16.

<sup>66</sup> *Human Rights Act 2019* (Qld) s 37.

<sup>67</sup> *Human Rights Act 2019* (Qld) s 29.

<sup>68</sup> *Human Rights Act 2019* (Qld) s 15.

<sup>69</sup> *Human Rights Act 2019* (Qld) s 26(2).

<sup>70</sup> *Human Rights Act 2019* (Qld) s 29(1).

<sup>71</sup> *Human Rights Act 2019* (Qld) s 29(2).

In contrast, the making of a supervision order in preference to a continuing detention order would involve, at a minimum, consideration of the right to humane treatment when deprived of liberty.<sup>72</sup> The prisoner required a high level of support which made his proposed placement unsafe for his health.

Ultimately, the Court applied the principle that supervised release should generally be preferred to a continuing detention order. This principle rests on the basis that intrusions on the right to liberty are exceptional and that liberty should be constrained to no greater extent than is warranted by the law. This was reinforced in this case by the prisoner's preference for a supervision order. The Court ordered the prisoner be released under a supervision order.

### *Wallace v Tannock & Anor* [2023] QSC 122

A man had a history of sexual offending against women. Following the expiry of his prison sentence, he was released from prison on a supervision order which required that he comply with every reasonable direction of a Queensland Corrective Services (QCS) officer.

QCS became concerned about the man's behaviour with respect to female NDIS workers and in 2022 issued a direction requiring that the man have only male NDIS support workers and that he obtain approval to have any person in his home, including family members. The man's risk had not been assessed since 2015.

The man sought judicial review of the QCS direction.

The Court concluded that the man had not been provided with procedural fairness in the making of the directions and ordered the QCS direction to be set aside and remitted for reconsideration according to law.

The Court also considered the man's human right to freedom of association.<sup>73</sup> The Court found that the direction regarding male NDIS support workers was justified and calculated to mitigate the damage to society that may arise from the man's offending against a female support worker. However, the limitation on visitors, including male visitors from the man's own family, was not justified. There was no rational basis for concern that the man would offend against a male, or any evidence that QCS needed to be aware of all male visitors to ensure community safety. The Court indicated that it would have set aside the QCS direction on the basis that it was an invalid limitation on the man's freedom of association.

## Legal capacity

### *BA, DC, FE v State of Queensland* [2022] QCAT 332

The tribunal considered whether complaints made by persons all under 18 years of age had been properly made and referred under the *Anti-Discrimination Act 1991*. The concern arose because of the position in the civil courts that a litigation

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<sup>72</sup> *Human Rights Act 2019* (Qld) s 30.

<sup>73</sup> *Human Rights Act 2019* (Qld) s 22.

guardian is required for a person under 18 to bring a proceeding. The tribunal asked the Commission to make submissions.

The tribunal accepted that a complainant did not have to be over 18 years of age to make a valid complaint and, as the complainants were persons subjected to an alleged contravention within section 134(1)(a) of the Anti-Discrimination Act, the complaints had been properly made. This interpretation of the legislation was most compatible with human rights. Although specific rights were not identified in the tribunal's decision, rights raised in the Commission's submissions were the rights of the child<sup>74</sup> and recognition and equality before the law.<sup>75</sup>

Further, the tribunal found that provided a person under 18 years was 'Gillick competent', they may pursue the matter without a litigation guardian. The tribunal assessed the competency of each of the complainants and made directions that one of the complainants be appointed a litigation guardian. QCAT considered that by requiring a litigation guardian, the complainant's rights to equality,<sup>76</sup> protection of families and children<sup>77</sup> and fair hearing<sup>78</sup> were limited. However, that limitation was justified because of its purpose to ensure a fair hearing for all parties based on reliable and informed instructions from a party competent to give instructions and the fair administration of justice.

### *In the matter of ICO [2023] QMHC 1*

The Mental Health Court was asked to consider an application for the approval of involuntary treatment of a woman with electroconvulsive therapy (ECT) under the *Mental Health Act 2016*. Before treatment with ECT can be approved, the Court must be satisfied that the person is not able to give informed consent to ECT.

The Court identified several of human rights engaged by the decision, including the right to equality,<sup>79</sup> privacy,<sup>80</sup> liberty and security,<sup>81</sup> humane treatment when deprived of liberty,<sup>82</sup> the right to access health services without discrimination,<sup>83</sup> and the right not to be subjected to medical treatment without the person's full, free and informed consent.<sup>84</sup> The Court noted that these rights were consistent with the Mental Health Act's objects and principles that must be applied when performing a function or power under the Mental Health Act.

In setting out what was required to determine whether a person can understand the nature and effect of a decision relating to ECT, the Court drew upon aspects of the Victorian case of *PBU and NJE v Mental Health Tribunal* (2018) 56 VR 141. This included that to have capacity, it is not necessary for a person to give careful consideration to the advantages or disadvantages of treatment, or that the person makes a rational or balanced decision. It is enough, like most people, to be able to make and communicate a decision in broad terms as to the general nature and effect of treatment. A person's insight into their illness is relevant to considering

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<sup>74</sup> *Human Rights Act 2019* (Qld) s 26(2).

<sup>75</sup> *Human Rights Act 2019* (Qld) s 15.

<sup>76</sup> *Human Rights Act 2019* (Qld) s 15.

<sup>77</sup> *Human Rights Act 2019* (Qld) s 26.

<sup>78</sup> *Human Rights Act 2019* (Qld) s 31.

<sup>79</sup> *Human Rights Act 2019* (Qld) s 15.

<sup>80</sup> *Human Rights Act 2019* (Qld) s 25.

<sup>81</sup> *Human Rights Act 2019* (Qld) s 37.

<sup>82</sup> *Human Rights Act 2019* (Qld) s 29.

<sup>83</sup> *Human Rights Act 2019* (Qld) s 15.

<sup>84</sup> *Human Rights Act 2019* (Qld) s 17(1)(c).



whether a person has the ability to understand the nature and effect of a decision relating to ECT treatment but is not determinative. The question of capacity under the Mental Health Act will be fact and context specific.

In this case, the Court determined the woman did not have capacity to consent to ECT. However, ECT was refused on the basis the Court was not satisfied that it was appropriate in the circumstances, given there remained alternatives to ECT to be explored.

# Interventions

The Attorney-General and the Queensland Human Rights Commission may intervene in proceedings before a court or tribunal in which a question of law about the application of the Human Rights Act arises, or a question about how legislation is to be interpreted in accordance with the Human Rights Act.

## Commission notifications

For proceedings in the Supreme Court or District Court in which a question of law arises that relates to the application of the Human Rights Act or the interpretation of a statutory provision, parties must give notice in the approved form under section 52 of the *Human Rights Act 2019* to the Attorney-General and the Queensland Human Rights Commission. The Commission also receives notifications of proceedings that are not required under section 52 of the Human Rights Act.

In 2022–23, the Commission received 26 notifications or requests to intervene under the Human Rights Act. Of those, 16 were notices under section 52 of the Human Rights Act.

## Commission interventions

In the reporting period, the Commission intervened in 5 matters before the Supreme Court and one matter in the District Court. A decision was also made in a coronial inquest in which the Commission had previously intervened.

One Supreme Court matter was an application by the Attorney-General under the *Dangerous Prisoners (Sexual Offences) Act 2003* about a person who had been convicted of sexual offences and served their time, but remained a risk if released from prison without a supervision order. The Commission made submissions about the direct application of the Human Rights Act when a court is performing functions relevant to human rights, including judicial functions. The Court's decision was published on 16 November 2022 as *Attorney-General for the State of Queensland v Grant (No 2)* [2022] QSC 253.

Four Supreme Court matters related to applications seeking review of a magistrate's decision not to release children on bail. The Commission made written submissions about the extent to which limitation of human rights is relevant to the consideration of risk when deciding whether to release a person on bail. However, the applications were withdrawn before being heard.

The District Court matter concerned an application to exclude certain evidence in a criminal proceeding. The Commission made submissions about the right to privacy and how it applied to questioning and seizure of property by police, and the obligations on police to give proper consideration to human rights when deciding to seize property. At the hearing of the application the prosecution entered a *nolle prosequi* (no wish to prosecute) which had the effect of discharging the accused person. As a result, there were no findings on human rights issues.

On 30 June 2023, the Coroners Court made a decision in the *Inquest into the deaths of Yvette Michelle Wilma Booth, Adele Estelle Sandy, Shakaya George* ('RHD Doomadgee cluster'). The Commission's submissions as intervener included the application of the Human Rights Act to the Coroners Court and the scope of rights relevant to the investigation.

The Commission has also commenced or continued to intervene as follows:

- seven applications awaiting decision before the Supreme Court seeking judicial review of mandatory requirements for vaccination against COVID-19. While some of the matters have been heard, at the time of writing no decisions about the human rights compatibility of these requirements have been delivered.
- a coronial investigation into a death in custody which was not heard in the reporting period. At the time of writing, the hearing into this matter has now commenced.

## Attorney-General interventions

During 2022–23, the Attorney-General intervened under section 50 of the Human Rights Act in 12 proceedings and provided, or will provide, submissions on the operation of the Human Rights Act in 3 proceedings to which the Attorney-General was already a party:

- One of those was the case of *Wood v The King* [2022] QSC 216, which concerned a referral to the Supreme Court under section 49 of the *Human Rights Act*. The Supreme Court accepted submissions made on behalf of the Attorney-General that the *habeas corpus* right (requiring a person under arrest to be brought before a court and released unless lawful grounds for detention are shown) in section 29(7) is not a standalone cause of action.
- In *Attorney-General (Qld) v Grant (No 2)* [2022] QSC 252, the Supreme Court held that it is required to consider some human rights directly when exercising its discretion to make a supervision order under the *Dangerous Prisoner (Sexual Offenders) Act 2003*.
- In *Morant v Ryan (The State Coroner)* [2023] QCA 109, submissions were made on behalf of the Attorney-General in relation to the relevance of the *Human Rights Act* to the appeal to the District Court.
- In *Wallace v Tannock & Anor* [2023] QSC 122, the Supreme Court determined that a direction made by Queensland Corrective Services in relation to a man subject to a supervision order under the *Dangerous Prisoner (Sexual Offenders) Act 2003* was not compatible with human rights.
- The Attorney-General intervened in the judicial review application of *Waratah Coal Pty Ltd v President Kingham* (Supreme Court No 16196/22), however the application was later discontinued.
- Four matters concerned appeals in the Supreme Court against a grant of bail for young people and are subject to publication restrictions.
- One matter concerned an application in the District Court to exclude evidence on the basis that it was obtained in breach of s 58 of the

*Human Rights Act*, however the matter resolved without the issue being determined.

- Five other matters are ongoing.

## Summary of the role of courts and tribunals in 2022-23

Judgments delivered this year provided guidance to courts and tribunals on direct application of the Human Rights Act under section 5(2)(a) when acting in a judicial capacity. In *Attorney-General for the State of Queensland v Grant (No 2)* [2022] QSC 253, the Supreme Court clarified that the court is required to consider the human rights that relate to the functions the court is performing, rather than limiting its consideration to those rights explicitly addressed to courts (for example, the right to a fair hearing and rights in criminal proceedings). However, rights protected by the Human Rights Act do not give rise to an independent remedy or cause of action.<sup>85</sup>

Further judicial consideration was given to the obligation on public entities to give proper consideration to human rights. The Supreme Court in *Austin BMI Pty Ltd v Deputy Premier* [2023] QSC 95 reinforced comments made in *Owen-D'Arcy v Chief Executive, Queensland Corrective Services* [2021] QSC 273 that the identification of affected human rights required for proper consideration must be approached in a 'common sense and practical manner'. In *Austin BMI Pty Ltd v Deputy Premier* [2023] QSC 95, the Court held that the decision-maker was entitled to rely on briefings from the department to demonstrate proper consideration, and that the briefing did not have to identify and consider rights that were 'not affected' by the decision. The Court also confirmed section 58(6) of the Human Rights Act makes clear that a contravention of section 58(1) obligations by a public entity when making a decision amounts to non-jurisdictional error and does not make the decision invalid.

In 2022-23, there was limited commentary on the application of the interpretative provision under section 48 of the Human Rights Act.

Significant decisions were made by the Land Court of Queensland and the Coroners Court of Queensland acting in an administrative capacity and therefore with public entity obligations.<sup>86</sup> The Mental Health Court also took a human rights approach in a decision regarding approval of electroconvulsive therapy by applying the principles of the *Mental Health Act 2016*, which the Court found were consistent with the Human Rights Act.<sup>87</sup>

Courts and tribunals provided guidance on particular rights in 2022-23, which is reflected in table 4.

<sup>85</sup> *Wood v The King & Anor* (2022) 12 QR 101, [2022] QSC 216.

<sup>86</sup> *Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors* (No 6) [2022] QLC 21; *Inquest into the deaths of Yvette Michelle Wilma Booth, Adele Estelle Sandy, Shakaya George* (Findings of inquest, Coroners Court of Queensland, 30 June 2023).

<sup>87</sup> *In the matter of ICO* [2023] QMHC 1.

Table 4: Consideration of specific rights by courts and tribunals, 2022-23

Protected rights	Cases which considered this right
Recognition and equality before the law (section 15)	<i>Burleigh Town Village Pty Ltd (3)</i> [2022] QCAT 285; <i>Waratah Coal Pty Ltd v Youth Verdict Ltd &amp; Ors (No 6)</i> [2022] QLC 21; <i>Austin BMI Pty Ltd v Deputy Premier</i> [2023] QSC 95 (considered the meaning of ‘without discrimination’ in the context of the right to take part in public life)
Right to life (section 16)	<i>Waratah Coal Pty Ltd v Youth Verdict Ltd &amp; Ors (No 6)</i> [2022] QLC 21; <i>Inquest into the deaths of Yvette Michelle Wilma Booth, Adele Estelle Sandy, Shakaya George</i> (Findings of inquest, Coroners Court of Queensland, 30 June 2023)
Peaceful assembly and freedom of association (section 22)	<i>Wallace v Tannock &amp; Anor</i> [2023] QSC 122
Property rights (section 24)	<i>Austin BMI Pty Ltd v Deputy Premier</i> [2023] QSC 95; <i>Waratah Coal Pty Ltd v Youth Verdict Ltd &amp; Ors (No 6)</i> [2022] QLC 21; <i>Burleigh Town Village Pty Ltd (3)</i> [2022] QCAT 285
Cultural rights—Aboriginal peoples and Torres Strait Islander peoples (section 28)	<i>Waratah Coal Pty Ltd v Youth Verdict Ltd &amp; Ors (No 6)</i> [2022] QLC 21; <i>Inquest into the deaths of Yvette Michelle Wilma Booth, Adele Estelle Sandy, Shakaya George</i> (Findings of inquest, Coroners Court of Queensland, 30 June 2023)
Right to liberty and security of person (section 29)	<i>Attorney-General for the State of Queensland v Grant (No 2)</i> [2022] QSC 252
Fair hearing (section 31)	<i>Austin BMI Pty Ltd v Deputy Premier</i> [2023] QSC 95; <i>BA, DC, FE v State of Queensland</i> [2022] QCAT 332

With the growing number of cases addressing human rights issues in Queensland and the increasing depth of analysis within these cases, it is evident that the jurisprudence surrounding human rights in Queensland is evolving. The rise in such cases may signify a heightened willingness and confidence among advocates to incorporate human rights arguments in their litigation efforts, as well as an increasing openness of courts to thoroughly delve into these matters. As this body of case law continues to expand, both public entities and the community at large will gain a clearer understanding of how the Human Rights Act is applicable in a range of contexts. The Commission’s ongoing participation as an intervenor in significant cases will continue to be instrumental in emphasising the significance of human rights in Queensland.





# Human rights and the public sector



# Obligations on public entities

Public entities have obligations to act and make decisions in a way that is compatible with human rights. This section provides an update on how the Human Rights Act is making an impact on state public entities, councils, tertiary institutions and functional public entities.

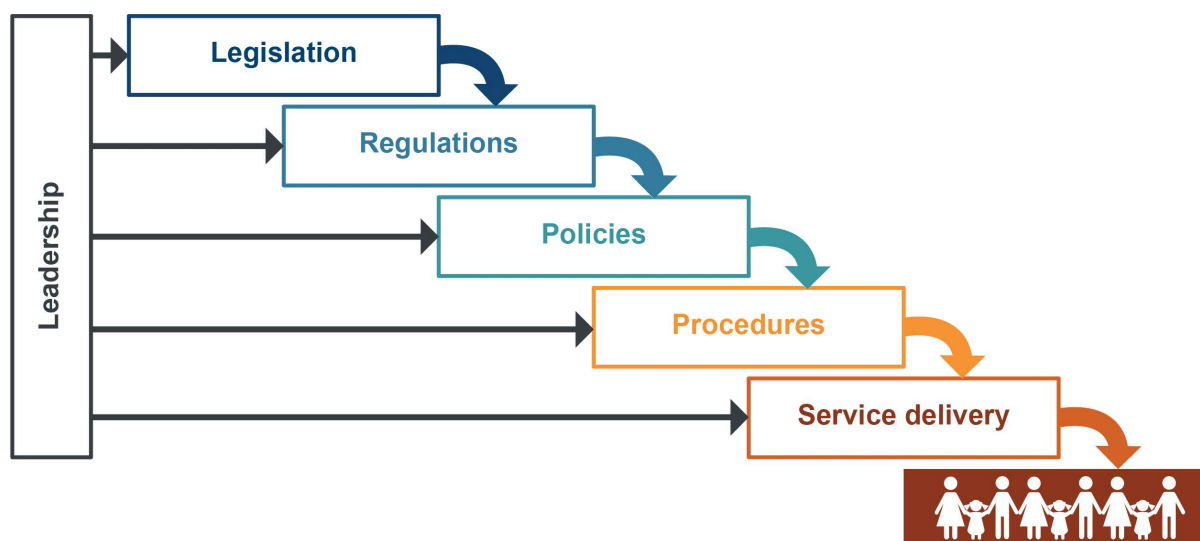
## Developing a human rights culture

The *Human Rights Act 2019* aims to develop a human rights culture in the Queensland public sector, where the human rights of individual people are respected and promoted.

### Cascading culture change model

The Commission has developed the cascading culture change model to illustrate how human rights culture starts with legislation and flows down through regulations, policies, procedures, and services through to the individual.

Figure 3: Cascading culture change model



The model recognises that unless legislation and regulations are human rights compatible, there will be limited benefit in changing policies and procedures. Similarly, service delivery is unlikely to improve if policies and procedures are not human rights compliant. For a human rights culture to develop, strong leadership needs to be present at every stage: at the strategic, operational levels and among individual public sector workers on the front line.

# Indicators of a human rights culture

In the first year of the Human Rights Act's operation, the Commission developed a set of 7 indicators that identify actions that may further the development of a human rights culture, reflecting the elements in the Cascading culture change model. These indicators have become the basis of an annual survey of public entities aimed at evaluating the extent to which the Human Rights Act is influencing the day-to-day business of public entities.

These indicators are:

**Indicator 1:** Education and staff development

**Indicator 2:** Community consultation and engagement about human rights

**Indicator 3:** Awareness raising and support for related entities (including functional public entities engaged by the public entities i.e. contractors)

**Indicator 4:** Reviews and development of legislation or subordinate legislation / local laws or subordinate local laws

**Indicator 5:** Review of policies and procedures

**Indicator 6:** Implementation of internal complaint management for human rights complaints

**Indicator 7:** Future plans to further the goals of the Act

See *Appendix B* of this report for the full *Indicators of a Developing Human Rights Culture* including the specific questions asked of public entities.

In the fourth year of operation of the Human Rights Act, we again used these indicators to survey 8 state government public entities, selected because of the relevance of their work to the human rights of people in Queensland. These agencies provided responses to questions about the indicators:

- Department of Child Safety, Seniors and Disability Services (DCSSDS)
- Department of Housing
- Department of Education
- Department of Treaty, Aboriginal and Torres Strait Islander Partnerships, Communities and the Arts (DTATSIPCA)
- Queensland Corrective Services (QCS)
- Queensland Health (QH)
- Queensland Police Service (QPS)
- Department of Youth Justice, Employment, Small Business and Training (DYJESBT).

Due to machinery of government changes in May 2023, the makeup of several departments changed, making it difficult to compare progress with the previous year. The Commission acknowledges that as some departments have only recently been formed, the various work units will take time to work together to

consistently identify and record the information required to respond to the indicators.

We also sought responses from a small cross-section of metropolitan, regional, and remote local governments. Responses to questions about the indicators were provided by the following 7 councils:

- Brisbane City Council
- Ipswich City Council
- Council of City of Gold Coast (City of Gold Coast)
- Flinders Shire Council
- Logan City Council
- Mornington Shire Council
- Sunshine Coast Council.

Full responses from state and local public entities are not provided below; rather, this section contains a general summary and highlights from the information provided to the Commission, furnished with examples.

## State public entities

### Indicator 1: Education and staff development

The Commission asked state public entities to report on the extent to which awareness about the Human Rights Act has been raised with staff, what education and training has been provided (including the divisions or work units involved) and the chosen delivery method (online, face-to-face etc). State public entities were also asked about whether human rights content has been incorporated into induction training and ongoing professional development for staff, and whether examples were provided to tailor training to the context.

#### Awareness and education

Now the Act is in its fourth year of operation, most departments have implemented online training modules and dedicated intranet resources to raise staff awareness about the Human Rights Act. For example, state government entities reported:

- The Department of Health offers an interactive human rights training module to department staff and staff in Hospital and Health services.
- The Department of Education emphasises staff education through online training, with a focus on maintaining resources for all employees.
- The Queensland Police Service has a dedicated human rights page on their intranet – the QPS Bulletin Board – that provides information on applying human rights principles in decision-making. They also have a 'Human Rights Community of Practice' on Workplace, fostering discussion and sharing of updates related to human rights.
- The Department of Housing's Director-General promoted the Act to all staff, reinforcing responsibilities under the Act and promoting the new suite of human rights resources available on the intranet.

Human Rights Week was celebrated by state government entities, such as Youth Justice (in DYJESBT), who promoted human rights messages on their intranet, in a Director-General's message, email signature blocks, office posters, and an information session for central office staff focused on First Nations cultural rights. DTATSIPCA promoted the week internally and externally, promoting discussion among staff, and Department of Housing distributed screensavers with human rights messaging to their staff.

Some departments also continued to host communities of practice or human rights champion networks. Department of Housing reported that their Human Rights Continuous Improvement Network met 5 times in the reporting period, in each case focussing on specific rights to provide an 'in-depth understanding of the rights protected...as well as practical examples of how the rights have been applied in courts and decision-making.' Presentations focussed on property rights, privacy and reputation, families and children, cultural rights of Aboriginal and Torres Strait Islander peoples and right to liberty and security of the person.

## Training method

The training methods employed by departments include a combination of online training, face-to-face training, and, in some cases, a mix of both.

As was the case in the previous year, departments reported that they predominantly offer online training modules to staff.

## Tailored training

Many departments showed a commitment to enhancing staff training by incorporating context-specific scenarios. The Commission's experience is that providing examples to staff of how the Act specifically applies to their work is vital to create a meaningful learning experience.

The Department of Health offers tailored human rights training, including custom education sessions for various department teams and Executive Leadership Teams.

Queensland Corrective Services provides tailored training on human rights, with a focus on incorporating human rights principles into day-to-day operations. They actively engage the Human Rights Network and maintain tools like the RAPID decision-making tool.

The Department of Housing conducts tailored human rights training sessions, including specific examples of how to apply human rights principles in practice. These sessions are offered to staff, especially people working in Housing Service Centres.

Queensland Police Service incorporates human rights principles into various training products, including mandatory online training, leadership development programs, and learning pods. They also maintain an internal platform called the 'Human Rights Community of Practice' to facilitate discussions and sharing of human rights-related information.

DYJESBT provides face-to-face training, e-learning modules, and information sessions to raise staff awareness about the Human Rights Act. The Department has also customised scenarios for the organisation to illustrate how to put human rights into practice. For instance, Youth Justice updated the mandatory e-learning module to include youth justice specific scenarios and examples, the Commission's decision-making flowchart and a quiz about assessing compatibility. These updates were made in response to 2021-22 feedback from staff about the importance of including examples that relate to their day-to-day work.

## Induction training

Human rights training was frequently reported by state public entities as a mandatory part of the induction process for new staff. For example, Department of Health reported that human rights training occurs during the induction process, and at DCSSDS all new Child and Family staff are automatically enrolled in the 'Public Entities and the Queensland Human Rights Act 2019' e-Learning module as part of their induction.

DTATSIPCA includes human rights training in its induction program for new employees. Queensland Police Service includes human rights training as part of its induction program for new members. DYJESBT conducts initial face-to-face training on the Human Rights Act and offers mandatory induction modules with annual retraining for all employees and contractors.

At Queensland Corrective Services, the QCS Academy offers a 1-hour online training package focused on the Human Rights Act that is to be completed within 42 days of commencement. In addition to online training, a three-hour in-person Workplace Ethics training package was provided to custodial and community staff.

## Reach of human rights training for staff

From the information provided in responses from state government public entities, it was not always possible to identify what overall percentage of staff members have received training on the Human Rights Act, particularly following changes to the composition of various departments in May 2023.

Departments reported that in 2022-23:

- *Department of Education*: 93,436 staff members, casual staff, and contractors completed mandatory training.
- *DTATSIPCA*: 178 employees completed or refreshed their HR act initial awareness mandatory training.
- *DCSSDS*: 81% of Child and Family staff completed 'Public Entities and the Queensland Human Rights Act 2019' training, 79% of Seniors and Disability staff completed the 'Human Rights Act Initial Awareness' training, and 73% of Child and Family staff completed the 'Complaints: Managing expressions of dissatisfaction' training.
- *Queensland Corrective Services*: 1,268 QCS staff completed online human rights training, including staff from custodial, community corrections and corporate areas, and all new QCS recruits.



- *DYJESBT*: 79.4% of Youth Justice Services employees completed mandatory human rights training, as well as 91% of Education, Small Business, and Training staff.
- *Queensland Police Service*: 1,486 members undertook training in the reporting period, which represents new staff and police recruits. Since the launch of mandatory training in 2019 86.2% of QPS members have completed training.

## Indicator 2: Community consultation and engagement

The Commission asked state public entities to report on community consultation and engagement about human rights, and whether information has been provided to the community about human rights.

In the reporting period, these efforts ranged from consultation on legislation and policies to community education and awareness initiatives. Many state public entities reported that they have considered human rights in their policies and programs, particularly in the context of education, healthcare, housing, and youth justice.

### Community consultation and engagement

Many departments undertook community consultation and engagement on various topics related to human rights, as well as initiatives aimed at advancing particular human rights. However, fewer instances were given in which the Human Rights Act played a central role in community engagement activities.

In its commitment to the right to education, the Department of Education released the 'Equity and Excellence' education strategy in February 2023. This strategy was developed after targeted consultations with over 1,400 state school principals and key stakeholders that emphasised educational achievement, wellbeing, and inclusion.

The Queensland Police Service conducted community education and awareness seminars for international visitors, students, migrants, and other diverse groups. These seminars aimed to inform attendees about their legal rights in Queensland and how to report discrimination to authorities.

DCSSDS developed a communications plan for Human Rights week and used social media and email newsletters to promote human rights.

Queensland Corrective Services distributed Human Rights information booklets to prisoners and offenders.

### First Nations engagement

Several departments focused on engagement with First Nations communities, and promotion of the distinct cultural rights of Aboriginal peoples and Torres Strait Islander peoples under the Human Rights Act. State public entities reported that:

- West Moreton Hospital and Health Service established Advisory Councils to consider consumers and human rights in co-designing projects.
- DTATSIPCA led community engagement and co-design for Path to Treaty actions and implemented the *Many Voices: Queensland Aboriginal and Torres Strait Islander Languages Policy* to recognise the cultural rights of Aboriginal and Torres Strait Islander peoples.
- Queensland State Archives (QSA) supported language revitalisation and research in Aboriginal and Torres Strait Islander languages.
- The *Cultural Engagement Framework* was developed in a collaboration between the First Nations Arts and Cultures Panel and Arts Queensland (in DTATSIPCA) to foster respectful engagement with First Nations peoples.

## Indicator 3: Awareness-raising and support for related entities

The Commission asked state public entities to report on the extent to which they had raised awareness about the Human Rights Act with contractors they engage to deliver services, and how they have encouraged and supported contractors' compliance with the Human Rights Act.

The responses this year indicated that many government contracts include standard clauses requiring contractors to comply with various laws (which generally includes the Human Rights Act). Increasingly, procurement processes embed human rights obligations, and government departments are actively working to raise awareness of the Human Rights Act among their contractors.

### Contractual arrangements, training, and awareness-raising

The Department of Health conducted various activities during Human Rights Week (1-10 Dec 2022) to raise awareness of human rights and included webinars presented by human rights experts. The Department also hosted events and distributed communications to support the introduction of the *Voluntary Assisted Dying Act 2021*, emphasising the importance of human life and human rights principles.

Queensland Corrective Services reported that Official Visitors and newly appointed Parole Board Queensland members completed training on the Human Rights Act in order to apply human rights principles in their roles. In addition, education service providers working in correctional centres received information on the Human Rights Act.

Human rights principles have been incorporated in departmental contracts with organisations contracted by the Department of Housing. The Department's contract management teams also engage in discussions about human rights obligations during quarterly meetings with funded bodies and promote training opportunities related to human rights.

Contractors engaged by DCSSDS are required to complete human rights training. For instance, newly funded Delegated Authority service providers contracted by DCSSDS receive induction materials that include general information on the Act, the requirement to comply with the Act, and information on where to access further information and training.

Contracting arrangements with DYJESBT include compliance with the Human Rights Act, and contractors engaged for more than three months are also required to complete human rights training. The organisations funded to deliver services for the Department are required to comply with the Human Services Quality Framework which incorporates human rights obligations.

## Procurement processes

Human rights expectations have been integrated into Department of Health procurement processes, including 'request for quote' and 'invitation to offer' stages. Contractors and standing offer arrangements require suppliers to comply with the Human Rights Act.

Procurement documentation for the Department of Education has been updated to include human rights clauses and requirements, ensuring that contractors understand how to meet their obligations to protect, respect, and promote human rights.

DTATSIPCA reported that the Family Responsibilities Commission commissioned an independent review in 2022, and the engagement of the contractor was conditional upon evidence of compliance with the Human Rights Act. In addition, 'request for quote' documentation for Social Services requires tenderers to provide evidence of compliance with the Human Services Quality Framework (which incorporates human rights).

## Indicator 4: Review and development of legislation

The Commission asked state public entities to report on the development of any legislation or subordinate legislation, including examples of the impact of the Human Rights Act, or of good practice in the review and development of laws.

State public entities provided examples of where they were required to consider human rights in the development of new legislation or in amendments to existing legislation.

Fewer responses than last year were received about implementing good practice in the review and development of laws – presumably because these processes are already well embedded in the fourth year of operation of the Human Rights Act. For example, DYJESBT reported that the Policy and Legislation team had developed 'strong capability in assessing and incorporating human rights into all policy, legislative and regulatory options and proposals', and staff are supported by standardised forms and templates that prompt staff to consider human rights at key points through the process.

## Development of legislation promoting rights

The Department of Education reported that the First Nations Strategy and Partnerships division evaluated policy and legislative issues in partnership with the Queensland Aboriginal and Torres Strait Islander Education and Training Advisory Committee (QATSJETAC). Policy and legislation were reviewed for impact on cultural rights of First Nations people and to support engagement with First Nations students in education, such as the Department's language program.

The Department of Housing considered the Housing Legislation Amendment Bill 2022 to be an important development for human rights. The Bill amended the *Housing Act 2003*, the *Housing Regulation 2015*, and the *Retirement Villages Act 1999* (Qld) to help meet the objectives of the Queensland Housing Strategy 2017-2027. The Department of Housing considered that the Bill specifically helps to boost the supply of social and affordable housing through enabling the 'Homes for Homes' donation deed model in Queensland. It also helps maintain public confidence in the retirement village industry by increasing consumer protections. The Bill was assessed for human rights compatibility and found to be compatible with the rights protected by the *Human Rights Act 2019*.

DTATSIPCA referred to the *Path to Treaty Act 2023*, which was co-designed with the Interim Truth and Treaty Body and passed by the Queensland Parliament in May 2023. For more information see our summary in the *Human rights and the parliament* chapter.

DCSSDS reported that amendments to the *Child Protection Act 1999* (Qld) aim to 'reinforce children's rights and strengthen children's voices in decision making'. Reference to the *Human Rights Act 2019* and human rights considerations have been incorporated into materials that support the implementation of amendments to the *Child Protection Act 1999* (Qld). As an example, DCSSDS considered that making staff aware that the change to the definition of 'kin' will help Child Safety to administer the Act in a way that upholds Aboriginal and Torres Strait Islander people's cultural rights, which are protected under the *Human Rights Act 2019*.

## Indicator 5: Review of policies and procedures

The Commission asked state public entities to report on reviews of policies and procedures for compatibility with human rights, whether this has led to any changes (including to service delivery), and whether guidance is available to staff on acting compatibly with the Human Rights Act.

The Department of Health reported that human rights assessments are a standard requirement in policy and procedure approval forms, and provided examples of updates, including:

- Queensland Ambulance Service updated the electronic Ambulance Report Form to 'reflect accepted nomenclature for sex, gender, and pronouns'.
- West Moreton HHS developed new Voluntary Assisted Dying services with the Human Rights Act guiding the development.

- Mackay HHS's review of Least Restrictive Practices policy resulted in changes to practices.

Human rights considerations continue to be a required aspect of policy, and review and development through the use of a Human Rights Impact Assessment Tool at the Department of Education. The Department reported that the Indigenous Cultural and Intellectual Property Protocol was developed in the reporting period. The Protocol relates to the teaching of Aboriginal and Torres Strait Islander languages, and 'promotes the cultural rights of Aboriginal and Torres Strait Islander peoples, the right to education and the right to recognition and equality before the law.'

All youth detention policies have been recently updated by DYJESBT to reflect the requirements of the Human Rights Act. This has resulted in increased policy and procedural guidance for detention centre staff to support their decision-making in restrictive practice situations, including the need to consider alternatives and least restrictive practices.

At the Department of Housing, new whole-of-department policy and procedure templates with human rights considerations have been developed and distributed, along with a process for assessing compatibility and record keeping templates. The Department provided a list of housing corporate and operational policies that were reviewed for human rights compatibility involving a range of issues.

DCYJMA has drafted a Human Rights Impact Assessment procedure, currently under review, prior to implementation. This procedure has been developed to assist with Human Rights Impact Assessments for all departmental staff and incorporates a template to support the assessment of a decision, policy, procedure, document, proposal, or framework. This procedure is expected to be implemented in the near future.

While reviewing and developing policies, the Child Safety Practice Manual team at the DCSSDS are expanding information on human rights and focusing on particular human rights under the Human Rights Act that may be affected or upheld by the policies. In addition, Seniors and Disability Services have developed a resource for Senior Team Leaders and Disability Services Team Leaders to use in meetings and team planning days to prompt operational and frontline staff to recognise inadvertent practices that limit a client's human rights and to drive discussion about alternative, more inclusive practices.

## Indicator 6: Internal complaints

The Commission asked state public entities to report on how successful they had been in integrating human rights complaints into existing complaints processes, any barriers that have prevented this from happening, and examples of where internal complaints have led to changes to policies, procedures, practices, or service delivery.



## Complaint identification

Based on the responses received, the process of identifying and recording complaints as human rights-related continues to be a challenge, but departments demonstrated awareness of this issue, and many are taking steps to address this.

The Department of Education conducted an internal review of the Human Rights Act implementation in 2022 and found that human rights are 'well integrated' but there are opportunities to strengthen the current approach. The Department continues to work to improve the accuracy and consistency of human rights complaint reporting. For example, the Privacy Team provided training to business units to ensure privacy complaints and human rights considerations are consistently assessed.

At the Department of Housing, human rights training and coaching is being implemented with staff who handle complaints. While this work is currently limited in scope it is seeding future plans and supporting the development of resources to provide a 'comprehensive human rights capability uplift' in complaints management across the department.

The Youth Justice department in the DYJESBT have amended systems and processes to ensure human rights complaints can be accurately and consistently recorded, investigated, and reported against.

As reported by the DCSSDS, Child Safety and Professional Standards complaints continue to be managed in separate work units within the department. Each work unit has differing mechanisms for recording and considering complaints. The Department reported that human rights identification and assessment is integrated into the complaints management process and staff are supported to successfully identify, consider, and respond to human rights complaints through complaints management training.

The Department of Health and some Hospital and Health Services have taken steps to help staff identify human rights complaints, with examples including:

- A new fact sheet 'Customer complaints: Identifying human rights complaints' has been developed.
- Gold Coast HHS maintains a dedicated HHS human rights email account with General Counsel oversight.
- A consumer complaints manual and ambassador at Cairns and Hinterland HHS has increased the focus on assessing and documenting complaints.

## Service improvements following internal complaints

The Department of Housing provided a case study to illustrate the consideration of human rights when making everyday tenancy decisions:

*The department received a human rights complaint from a First Nations family who had been issued a notice to leave after an extended time away from their home which had exceeded policy guidelines. The location of their housing was an area that was experiencing an acute shortage of housing and departmental staff*

*were well aware of the discontent in the community about the house being 'vacant'. When the complaint was made a small team of staff worked together to assess the compatibility with human rights of the decision to terminate the tenancy.*

*While it was true that the family had exceeded the allowable length of time to be away from the home, consideration was given to their ties to country and community and the need to be away from the home to receive medical care for a temporary impairment. The complaint led to a review of the decision and different strategies were engaged that supported the family to continue their tenancy and return to their property.*

Queensland Corrective Services reported the following example of an improvement to practice following complaints regarding access to funds for prisoners:

*Prisoners' friends and family are now able to deposit cash into a prisoner's trust account at any Queensland corrective services facility. QCS received complaints about the costs involved with transferring funds via Secure Payment Services or money order. While QCS already offered the opportunity to deposit cash at the facility where a prisoner was located, further feedback was received about challenges with this approach. After consulting with a range of stakeholders, changes were made to permit cash to be accepted in person at any correctional centre, once the identity of the donor has been established. This small change in process has enabled family members living long distances from a prisoner to be able to deposit funds into the prisoner's trust account with ease, promoting the right to protection of families (section 26(1) of the HRA) and the right to humane treatment while deprived of liberty (section 30(1) of the HRA).*

The Queensland Police Service shared an example of service improvements following a serious complaint by a victim of crime:

*Within the reporting period the QPS faced a serious allegation of neglecting its duty to properly handle a rape complaint. This violated the human rights of the complainant to be recognised as a person before the law. As a result of this incident, the QPS implemented several measures to improve its service delivery and response to sexual violence cases. These measures included the establishment of Sexual Violence Liaison Officers, who provide specialised support and assistance to victims, the enhancement of training and skills for investigators, and the revision of protocols and procedures for receiving and processing reports of sexual violence by QPS members.*

## Indicator 7: Future plans

The Commission asked state public entities to report on any future plans to achieve the objects of the Human Rights Act.

The Department of Health's future plans for achieving the objectives of the Act encompass various initiatives, including ongoing staff education and awareness promotion, integrating human rights into complaints processes and project work, and embedding human rights into service delivery models and legislative policy administration. They also aim to promote human rights awareness through

community consultation and staff training to ensure an active human rights culture remains within the division.

Queensland Corrective Services intends to continue embedding human rights considerations in their decision-making processes, policies, legislative changes, and procedures.

The Department of Education plans to reintroduce a centralised human rights function focusing on training, policy and procedure enhancements, and improving the accuracy and consistency of human rights complaint management. They aim to build a strong human rights culture and ensure human rights considerations are clear in their policies and procedures.

The Department of Housing will concentrate on human rights in customer complaints, aligning with the new Australian Standard, and developing a new Customer Complaint Management Framework and Guidelines. This will enhance the understanding of human rights culture and complaint management across the department.

DTATSIPCA anticipates that future initiatives will protect and promote human rights, and include Path to Treaty, stage 2 Public Sector Reforms, and development of the Youth Queenslanders Strategy.

The Queensland Police Service will work on educating and empowering their members to respect and protect human rights and seek to allocate more resources to strengthen their commitment to human rights. They aim to raise awareness and cultivate a human rights culture within the service.

In future, the newly established DYJESBT plans to establish a Human Rights Committee to guide future implementation strategies. The Committee will have the task of identifying implementation challenges and successes to date, as well as risks, priorities, and shared future opportunities. Learning from what has been achieved so far will be a priority and include exploring the Department's internal 'best practice' based on experiences to date of policy officers, contract managers, human resource staff, and frontline workers. As part of the Department's First Nations training strategy, a new digital resource to help small and medium businesses attract and retain Aboriginal and Torres Strait Islander employees is being created.

## Local government public entities

### Indicator 1: Education and staff development

The Commission surveyed councils on the extent to which staff awareness has been raised about the Human Rights Act, in particular:

- what education and training has been provided (noting the particular divisions or work units targeted)
- what delivery method was used (online, face-to-face etc)

- whether human rights content has been incorporated into induction training and ongoing professional development for staff
- whether they provide examples to tailor the training to the particular context.

## Internal awareness raising

In the reporting period, Brisbane City Council, Sunshine Coast Council, Ipswich City Council, and Logan City Council have raised staff awareness through various means, including online training, communication through intranet/internet, and targeted awareness campaigns.

Flinders Shire Council plans to raise staff awareness through a new Human Rights Policy, but no specific actions have been reported yet.

## Education and training programs

Most councils include human rights in induction training for new staff. Most councils deliver training online, while Brisbane City Council and City of Gold Coast incorporate some in-person training in a hybrid approach. At City of Gold Coast, employees can choose online, in person – in a training room or in their workplace – to ensure that the approach to training is modern and flexible.

Brisbane City Council and Sunshine Coast Council provided human rights training tailored to the local government context. This includes examples specific to their councils to illustrate how to put human rights into practice. Ipswich City Council conducted online training with tailored video scenarios. Logan City Council offers a comprehensive training program that includes various resources, fact sheets, and workshops.

At City of Gold Coast, training focussed on staff who work with members of the public, as well as those who deal with investigations and disciplinary procedures. These work units have been provided with resources and checklists to assist in human rights considerations in their case management.

Councils indicated that they collect feedback on their training, and this feedback is used to improve training and resources. For instance, Logan City Council reported that they emphasise an open dialogue with relevant branches to ensure resources and training meet staff needs.

Responses to the survey did not provide a clear picture of the percentage of staff members who had received human rights training, but councils reported that:

- All work areas at Brisbane City Council have access to tailored and in-person human rights training on an annual basis.
- Sunshine Coast Council reported an increase of approximately 2% in employees undertaking training.
- Ipswich City Council reported that 92% of employees have completed the Human Rights Act module.
- City of Gold Coast reported that all new employees receive training and it is mandatory for all employees to complete the training annually.

- Logan City Council reported that training is mandatory for all employees as part of their induction.

## Indicator 2: Community consultation and engagement

The Commission asked councils whether community consultation and engagement about human rights had been conducted, or information provided to the community about human rights.

The councils who responded to the survey reported that they have engaged with various stakeholders and community members to promote and protect human rights. Flinders Shire Council reported that they had not taken action on community consultation or engagement about human rights but are developing a plan for implementation in the upcoming financial year.

Most of the surveyed councils have dedicated webpages or platforms to provide information to the community about human rights, including how to make complaints, and the purpose of human rights legislation. Information dissemination includes materials, campaigns, and web content to educate the public about human rights.

City of Gold Coast updated its Community Engagement Policy to ensure that the Act was included as relevant legislation that has an impact on how Council engages with the community. Council's Equitable Access Policy and Accessible and Inclusive City Action Plan 2020-2025 affirm its commitment to improving accessibility and inclusion for all residents and visitors.

Brisbane City Council has the benefit of a Senior Human Rights Officer who undertook internal and external engagement activities in the financial year. For instance, they attended Homeless Connect in May 2023, met with Brisbane residents experiencing housing insecurity, and referred residents who had experienced racism to the racism reporting tool and information on the Commission's website.

Sunshine Coast Council instanced community engagement activities that 'embody the protection and promotion of human rights for our community.' These included: providing alternative transport options for older people and people with disabilities, promoting health and activity through the Healthy Sunshine Coast program, improving beach accessibility with equipment like beach matting and wheelchairs, and implementing a mobility mapping project. The Council is also partnering with community organisations to address homelessness and is fostering diversity and inclusion within its workforce and the broader Sunshine Coast region, as demonstrated by its participation in events such as the Sunshine Coast Mardi Gras.

Logan City Council reported that they engage in ongoing consultation in response to community feedback, particularly for disability inclusion. In the course of consultations to create Council's 2023-25 Disability Action Plan, an agreement was reached to consult broadly in future when developing new facilities, upgrading existing facilities, and reviewing major projects.



## Indicator 3: Awareness-raising and support for related entities

The Commission asked councils about the extent to which they had raised awareness about the Human Rights Act with contractors they engage to deliver services, and how they have encouraged and supported their compliance with the Act.

Some, but not all, councils had explicitly required contractors to comply with the Act through contractual arrangements, and some had raised awareness with contractors about the need to comply with the Act.

Brisbane City Council has a policy suite outlining human rights obligations for Council and its staff. The Council provides factsheets for external entities and training is provided to staff to ensure contractors are aware of their functional public entity status. Brisbane City Council corporate rules, including human rights policies, extend to contractors, and a reported breach could result in termination of a contract.

Ipswich City Council has liaised with the Local Government Association of Queensland regarding free online training and resources for functional public entities. The Council plans to provide further support for related entities in future.

Logan City Council has developed a human rights information sheet to improve contractor engagement awareness of the Human Rights Act. The corporate induction, including the Human Rights Act module, is mandatory for selected contractors.

## Indicator 4: Reviews and development of laws

The Commission asked councils about the development of local laws and subordinate local laws, including any examples of the impact of the Human Rights Act, or any examples of good practice in local law development.

Last year, the Human Rights Act had limited impact on the development or amendment of local laws or subordinate local laws. However, responses received this financial year indicated that human rights are starting to become part of the local law process in some councils we surveyed.

Brisbane City Council reported that it gives full consideration to human rights and the Act during the development and review of local laws. They introduced the *Events Local Law 2022* in the reporting period, which aimed to safeguard health, safety, and community amenity through extensive consultation in accordance with the Act.

Sunshine Coast Council introduced *Amendment Local Law No. 1 (Miscellaneous) 2023* and *Amendment Subordinate Local Law No. 1 (Miscellaneous) 2023* in May 2022. These amendments had an impact on other local laws, including those related to animal management and parking. A Human Rights Assessment of Compatibility was conducted as part of the local law development process. Sunshine Coast Council's Assessment of Compatibility in relation to proposed

prohibition on dogs in a specific precinct took into account equality, freedom of movement, protection of families and children, and liberty and security of the person. The process of completing the assessment helped achieve a compromise accepted by the affected community and supported by Council:

*The Compatibility Assessment identified that the limitation relating to the prohibited dog precinct was reasonable, however, there was a practical solution available to reduce the limitation being applied, in that another adjacent area could be made available for off-leash activities. This alternative was accepted by all parties and became part of the adopted decision of Council.*

Sunshine Coast Council reported that undertaking the compatibility assessment was a valuable exercise, as it is a 'process that aids transparent and better decision making in the interests of all.'

Local City Council said that the human rights consideration is designed to occur at the 'very beginning' and the step-by-step process is done in a considered way, rather than a tick box approach. Logan City Council's local law development process includes mandatory steps to assess the potential impact on human rights. Logan City Council introduced amendments to *Subordinate Local Law No. 7.2 (Heavy Vehicle Parking on a Road) 2003* and proposed amendments to *Subordinate Local Law No. 9.2 (Election Signs) 1999*. These changes were made with consideration of human rights, aiming to reduce noise in residential areas and improve public safety by regulating election signs.

Ipswich City Council has not introduced any new local laws or subordinate local laws since the commencement of the Human Rights Act, but they are preparing for a local law review and will incorporate human rights assessment into this process and the related policy.

While the City of Gold Coast reported that there were no new local laws introduced in the reporting period with significant impacts on human rights, the Council confirmed it had amended its standard report template to require consideration of whether recommendations being made to Council impact on human rights, how the recommendations to limit rights are justifiable, and any actions that can be taken to mitigate any human rights impacts.

Flinders Shire Council indicated that their local law review is in progress, and human rights implications will be a component.

## Indicator 5: Review of policies and procedures

The Commission asked councils about their review of policies and procedures for compatibility with human rights, whether this has led to any changes (including to service delivery), and whether guidance is available for staff on acting compatibly with the Act.

Most of the councils reported that they have reviewed their policies and procedures for compatibility with human rights. Positive changes resulting from these reviews include amendments to policies, cultural awareness initiatives, and the development of guides and tools to assist staff in considering human rights.

Ipswich City Council has simplified its Human Rights Impact Assessment Checklist and observed Human Rights Week with a refreshed communication plan, while City of Gold Coast have developed a decision-making checklist to ensure that human rights are properly considered.

Brisbane City Council made amendments to its Code of Conduct and other policies to ensure the language is consistent with the Human Rights Act's non-exhaustive definition of discrimination,<sup>88</sup> and to ensure that protected attributes are broadly interpreted. Brisbane City Council also considered guidelines for the use of employee social networking and has engaged the Senior Human Rights Officer to ensure a balance of rights and reasonable limitations.

Sunshine Coast Council reported making progress in relation to the promotion of cultural rights of Aboriginal peoples and Torres Strait Islander peoples, such as installing Acknowledgement of Country signage, conducting Welcome to Country and acknowledging Traditional Custodians at events, and providing cultural awareness training for all employees. The Council also reported that the Sunshine Coast Housing and Homelessness Action Plan 2023 acknowledges that access to housing is a human right recognised internationally by the United Nations. While not a right contained in Queensland legislation, Council has reflected on the impact of Council actions and decisions regarding this basic human need.

Logan City Council's review of policies and procedures resulted in a realisation that there were gaps in policies that addressed work-related violence and aggression in relation to staff. Changes included requirements for a thorough investigation, strengthened workplace health and safety, and adding further requirements for the review of policies and procedures.

While City of Gold Coast did not identify any changes in service delivery as such, the Council reported that there has been a 'more considered approach to decisions impacting on individuals' when policies and procedures are under review.

## Indicator 6: Internal complaints

Councils were asked about:

- successes in integrating a process for human rights complaints into existing internal complaint processes
- barriers that have prevented this from happening
- examples of where internal complaints have led to changes to policies, procedures, practices, or service delivery.

Last year, councils reported either no complaints, or few complaints, and provided little in the way of examples of complaints that had led to systemic change.

This year we heard from councils that they are actively incorporating human rights considerations into their complaint management processes and taking steps to improve their capacity to identify and address human rights issues.

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<sup>88</sup> The definition of 'discrimination' under the Human Rights Act in the Dictionary (sch 1) 'includes' (so is not limited to) the attributes protected by the *Anti-Discrimination Act 1991* (Qld).

Examples provided demonstrate that complaints in certain instances have led to policy and procedure improvements and have resulted in better service delivery to the community.

Sunshine Coast Council reported that experience in engaging in human rights complaints procedures is still relatively new, and relevant officers continue to undertake professional development.

At the Gold Coast City Council, internal restructures have led to the human rights portfolio being reallocated, creating an opportunity to identify barriers to addressing human rights complaints and training needs for staff. The Council identified that the team responsible for making decisions was not documenting human rights considerations. This has resulted in training being provided to the team, as well as advice about how those considerations should be documented.

Brisbane City Council reported that it continues to receive a low volume of human rights complaints, which are managed in accordance with the Human Rights Complaints Procedure and broader governance framework.

Ipswich City Council reported that when human rights elements are identified, they are progressed independently of the substantive complaint. As an example, Council reported that:

*Council serviced a unit complex for waste removal, and it was identified by the complaint handler that the current process was impacting adversely on older residents/residents with a disability at that complex, as they were unable to use the communal bins (that were provided by Council) due to the lid being too heavy for them to lift. Therefore, they were unable to place their waste in the communal bins for removal. To ameliorate this negative impact, a learning was provided from the Complaints Management Unit to the businesses area recommending consideration be given to the installation of bin lid lifts on large communal bins to ensure the safe and equitable use by all residents of the unit complex.*

Logan City Council reported that it faces challenges due to its decentralised structure and acknowledged a need to enhance the understanding and knowledge levels of staff handling complaints. Logan City Council has been actively working to improve the identification and consideration of human rights issues within complaint management, especially through staff training and process improvements.

Despite these challenges Logan City Council provided three helpful case studies illustrating where human rights complaints had resulted further consideration for individuals and the development of new resources:

*Example 1:*

*A complaint was lodged with Council regarding an 'unsightly premises' that had substantial human rights implications due to potential imposed punishments. Upon consultation with the Integrity and Information Program, the branch dealing with the complaint independently completed a human rights assessment to determine their next steps. This assessment was recommended to be implemented routinely with the branch.*

*Example 2:*

*A human rights complaint involving a contractor was lodged with Council and went to mediation. Working in conjunction with the complainant, Council put together a 'lessons learned' package which was delivered to the relevant branch. This package included relevant Human Rights Act provisions as well as the complainant's experiences and how the situation impacted them. Additional resources were also born from this complaint and a further fact sheet was created to specifically address contractors' obligations under the Human Rights Act.*

*Example 3:*

*A complaint was received by Council with regard to conditions placed on an individual attending certain premises. Upon review, the conditions placed on the individual were overturned. The complaint shed a light on the knowledge gaps within Council and resulted in additional resources and education being provided namely, the Human Rights Fact Sheet – Refusal to Speak with a Customer.*

## Indicator 7: Future plans

The Commission asked councils to report on their future plans to achieve the objects of the Act.

While all councils indicated a commitment to protecting and promoting human rights, building a culture that respects and promotes human rights, their approaches and specific initiatives differed based on their priorities and resourcing levels. Future priorities were focused on staff training and improving the understanding of contractors.

Brisbane City Council emphasised the need for regular reviews of systems and processes to embed a human rights culture and intends to focus on monitoring feedback to identify and incorporate improvements in awareness-raising, training, and complaints management.

Sunshine Coast Council had addressed a resourcing gap by filling a previously vacant position and planned to progress a formal human rights policy position in the next financial year.

Ipswich City Council intends to focus on practical tools and training for staff, including developing a Human Rights Impact Assessment Checklist template library, a Human Rights and Procurement Procedure, and continued delivery of customised human rights training.

Continuous improvement of training was also a priority for Logan City Council. The Council aims to improve training effectiveness, identify areas where the Human Rights Act has been 'superficially' applied, and promote online resources. Further planned improvements include an overarching policy document to remind staff of their responsibilities under the Human Rights Act, and a 'lessons learnt' module that includes real-life examples to promote a deeper understanding of the issues for Council.



City of Gold Coast plans to continue regular training across all areas of the Council and ensure that template documents consistently reference the Act and the internal human rights decision-making checklist.

Two councils intend to turn their attention to contractors providing services on their behalf. Ipswich City Council plans to conduct an audit of contractual arrangements to ensure human rights compliance, and Logan City Council acknowledged the need for further involvement with contractors and providers to address knowledge gaps and create meaningful resources to improve their understanding of human rights obligations.

While Mornington Shire Council had not taken any activities related to building a human rights culture in the Council in the reporting period, the Commission's correspondence regarding human rights indicators has prompted 'methodical and considered activities towards meaningful introduction of a human rights culture which suitably upholds the Human Rights Act'. Mornington Shire Council has experienced challenges with 'extremely high turnover' that had limited capacity to implement the Human Rights Act. Prompted by the Commission's request for information, the Council has unanimously resolved to endorse a new Human Rights Policy and complaint management process, will review and strengthen their induction processes to include Human Rights legislation, make changes to contracts and new providers are engaged, and release a feature article pertaining to Council's commitment towards a human rights culture.

# Human rights leadership

For the third year, the Commission surveyed public entities (from both state and local government) about the leadership they had shown in building a human rights culture in their organisations. Senior leadership across various government agencies and councils indicated a continuing commitment to embedding human rights.

## Awareness and communication

Human Rights Week continued to present an annual opportunity for senior leaders to promote human rights culture within their organisations, such as through webinars. In the Department of Health these were presented by senior leaders.

Ipswich City Council celebrated Human Rights Week and used the opportunity to promote human rights by publishing and displaying communications and materials (including intranet articles, posters, and email banners) about the importance of human rights and Council's role in protecting and upholding them.

Senior leaders in the Department of Education continued to drive awareness and understanding by actively discussing human rights implications in the delivery of education services at executive, regional, and divisional meetings.

Several councils (Brisbane City, Ipswich City, and Logan City) reported that their senior leaders actively engaged in meaningful discussions and communication with their teams about human rights. For instance, Brisbane City Council reported that senior leaders used their own communication channels including emails, newsletters, and meetings to keep their respective work areas up to date on human rights and to emphasise the importance of applying human rights consideration to relevant work.

## Cross-collaboration

Queensland Government departments noted their participation in the Department of Justice and Attorney-General's Human Rights Interdepartmental Committee (HR IDC), which recommenced operation in the reporting period. From the Commission's experience, a collaborative inter-departmental approach increases the involvement of senior leaders in developing a culture of human rights and improves outcomes overall.

DYJESBT reported positively on being part of the HR IDC, stating it is an 'important forum to learn what other departments are doing and explore opportunities to leverage and reuse ideas and resources rather than reinvent solutions.'

Based on responses we received, councils did not have the benefit of cross-collaboration through a formalised structure, such as the HR IDC, which might improve practice and consistency between local government areas.

## Training and professional development

Consistent with previous years, public entities reported that a significant way in which senior leaders support the development of a human rights culture is by prioritising and facilitating ongoing training and professional development for their staff. State public entities reported, for instance, that:

- Queensland Corrective Services senior leadership have demonstrated a clear commitment to human rights by ensuring all staff have access to appropriate human rights training and tools.
- Senior leaders at DTATSIPCA actively promoted staff participation in human rights training.

Brisbane City Council said that staff in leadership positions have shown a commitment to undertake training themselves and engage in meaningful discussions about how to provide awareness and deliver training to staff at all levels.

City of Gold Coast reported that their senior leadership team actively sought advice to improve their own understanding of human rights, and that they 'encourage an open and understanding approach to human rights complaints lodged by individuals and seek to address those concerns with transparency, fairness and balance.'

## Decision-making processes

The Department of Housing Executive Leadership Team reported that they have embedded human rights consideration into all decision-making processes. This includes, but is not limited to, documented consideration of human rights in all briefing notes, inclusion of human rights complaints numbers and training information in Quarterly Performance Reports and working with the broader senior leadership team to improve human rights capability across the department.

City of Gold Coast reported that Council's delegations and administrative approvals are designed in a way to ensure that senior leaders always take human rights into account in their decision-making.

The Senior Leadership team at DTATSIPCA consider and apply human rights in departmental briefings, submissions, and materials that accompany legislation, and the Board of Management considers human rights reports and discussions on departmental progress in creating a human rights culture.

Queensland Health also reported that senior leadership actively incorporates human rights considerations into briefing notes, onboarding materials, and legal advice.

DYJESBT reported that they have embedded human rights in policies and procedures, incident reviews, complaints process and other governance mechanisms involving young people, and remain open to feedback and continuous improvement.

## Strategic and operational plans

Including human rights in strategic and operational plans can keep the focus of leadership, and staff more broadly, on human rights culture-building. State public entities reported that:

- The Queensland Police Service Strategic Plan 2023-2027 outlines the vision and goals to foster a human rights culture within the Service, emphasising respecting, protecting, and promoting human rights in all aspects of work and decision-making. The plan also identifies the key strategies and actions that will enable QPS to achieve this vision and uphold their human rights obligations.
- The Queensland Ambulance Service Strategy 2022-27 makes a human rights commitment.
- Queensland Health's Hospital and Health Services include human rights commitments in some of their operational plans.
- The Department of Education considers human rights when developing operational plans.
- Human rights is referenced in key corporate documents of DTATSIPCA, including their strategic plan.

Flinders Shire, Sunshine Coast, and Ipswich City Councils also reported a commitment to human rights through senior leadership endorsement of human rights policy and implementation plans.

## Progress towards a human rights culture

### State public entity progress

Based on responses to questions in the Commission's *Indicators of a human rights culture*, steady progress appears to have been made by state public entities in the fourth year of operation of the Act. State public entities have actively worked on increasing awareness and providing education and training to staff about the Human Rights Act. This includes through online training modules, face-to-face training, and a mix of both. Many departments have tailored their training to suit specific contexts and incorporated human rights principles in their induction training.

Departments reported that they have engaged in community consultations and initiatives related to human rights, with a particular focus this year on First Nations engagement to promote cultural rights under the Human Rights Act.

Government contracts increasingly include clauses requiring contractors to comply with the Human Rights Act. Procurement processes now embed human rights obligations, and departments have actively raised awareness of the Act among their contractors.

Human rights compatibility assessments seem to be well integrated into policy review and development processes, and because of the requirement to write statement of compatibility and human rights certificate when introducing laws and

regulations, this appears to be an established and routine practice for state public entities. However, while human rights compatibility analysis seems to be well integrated into these processes, few examples were provided this year of substantive changes being made to existing policies, or in the development of new policies, based on the Human Rights Act.

Of the 80,000 public sector employees who completed the 2021 Working for Queensland survey, over 78% reported that they understood how the Human Rights Act applies to their work. This year the figure was similar at 77%. The Commission will continue to monitor whether this figure remains stable, increases, or decreases over the coming years.

In previous years, we have observed that public entities encounter challenges in identifying human rights complaints, particularly where the complainant does not raise the Human Rights Act themselves. These challenges seem to arise from a lack of staff capacity to recognise human rights issues as well as from complaints systems and recording issues, such as uncertainty about what constitutes a 'complaint' or where there is no consistency between different divisions of an organisation in complaint handling.

As acknowledged by some of the departments we surveyed, challenges involving effective complaint identification and recording remain a concern. This is reflected in the relatively low numbers of complaints being identified and reported in annual reports for some agencies. See also *Human rights complaints - Complaints made directly to public entities* section.

Nonetheless, state public entities have consistently worked on integrating human rights complaints into existing complaints processes and worked with staff to raise awareness and improve processes. These efforts have at times led to positive changes in policies, procedures, practices, and improved service delivery in response to internal complaints.

## Progress in councils

As previously reported, implementation of the Act across Queensland's councils lacks a coordinated and consistent approach, in part due to a lack of funding and resourcing from the outset. The Commission has observed that this has created a delay in the effective implementation of the Human Rights Act compared with the progress in state public entities.

Nonetheless, there are promising signs of progress in the reporting period. Most of the councils we surveyed were building staff awareness through online training and awareness campaigns, and the only council that had not commenced training indicated a willingness to do this in the near future. Most councils incorporate human rights in induction training, with a preference for online delivery. While exact figures on staff training percentages were not clear, the larger and better resourced councils at least are offering regular training sessions to staff.

Most councils maintain a dedicated website or platform through which information about human rights is disseminated to the public, including instructions on how to make a complaint and the purpose of human rights legislation. Increased engagement with contractors was also evident, with some councils taking steps to

develop information for their contractors about their human rights obligations to the community.

For the first three years of the Act's operation, the development of local laws seemed untouched by the commencement of the Human Rights Act, but this shifted in 2022-23. One council provided an example of where their human rights assessments, now a standard part of the law-making process, had systematically considered human rights in decision-making and achieved a balanced outcome. Some councils also provided specific examples of how the Human Rights Act was directly influencing the review and development of council policies.

Last year, few complaints were identified by councils with limited systemic change as a result. But this year councils report actively incorporating human rights considerations into their management of complaints, with the aim of identify and addressing human rights issues more effectively. This was indicated by examples where internal complaints had led to policy and procedure improvements and improved service delivery as a result.

## Functional public entities

Functional public entities are those that fall within the definition of 'public entity' only when they are performing certain functions. Including these entities under the Act reflects the modern operation of government, where non-government entities are engaged in various capacities to deliver services to the public on behalf of the government or another public entity. A private company that manages a prison falls under this category and would be a functional public entity when delivering their prison management services, but not for other work they may carry out as a private company not on behalf of the state.

Functional public entities contribute to building a positive human rights culture in Queensland, as many have a direct role in the delivery of essential services, including disability services, aged care, and housing.

As Queensland's peak body for the social services sector, the Queensland Council of Social Service (QCOSS) works with functional public entities in the sector to raise awareness of their obligations under the Human Rights Act. In 2022-23, QCOSS reported that 681 people registered to attend their Human Rights in Action events. These included:

- Decriminalisation of public offences
- Discussing delegated authority in the Child Protection Act
- Supported decision making and the Public Trustee of Queensland
- Understanding the Inquiry into Australia's Human Rights Framework with the Australian Human Rights Commission
- Accidental advocates
- The role of a functional entity
- How do you prepare and write a submission?
- Anti-Discrimination Act Review with the Queensland Human Rights Commission.



In addition, QCOSS relaunched their Human Rights in Action newsletter, which was delivered to more than 2,300 recipients.<sup>89</sup>

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<sup>89</sup> Queensland Council of Social Service, *Annual report – Being in service* (2022-23).



# 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.

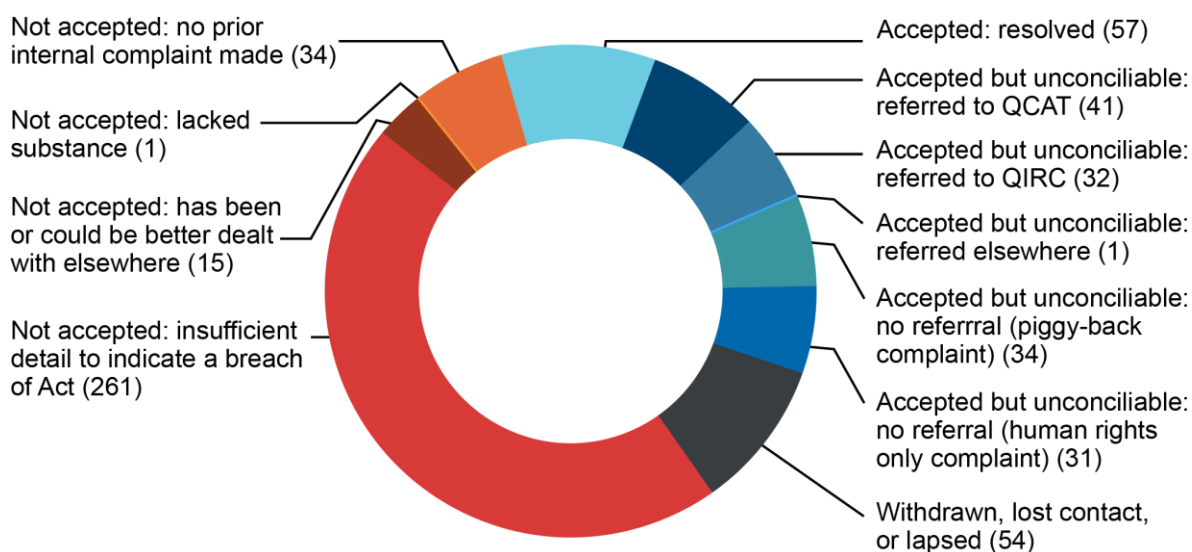
## Outcomes of finalised complaints

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.

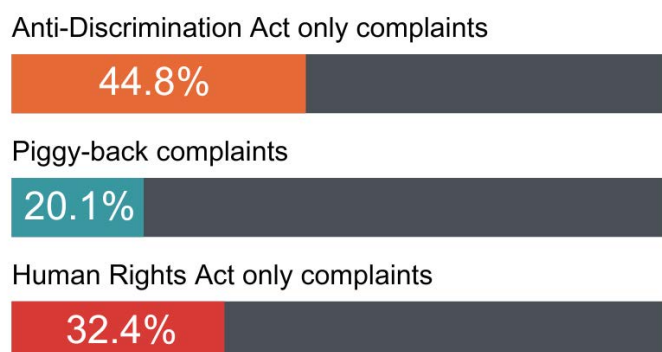
As noted in previous annual reports, the rate of resolution of complaints through conciliation is lower for human rights complaints, whether the complaint is a human rights only complaint or a piggy-back complaint.

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.

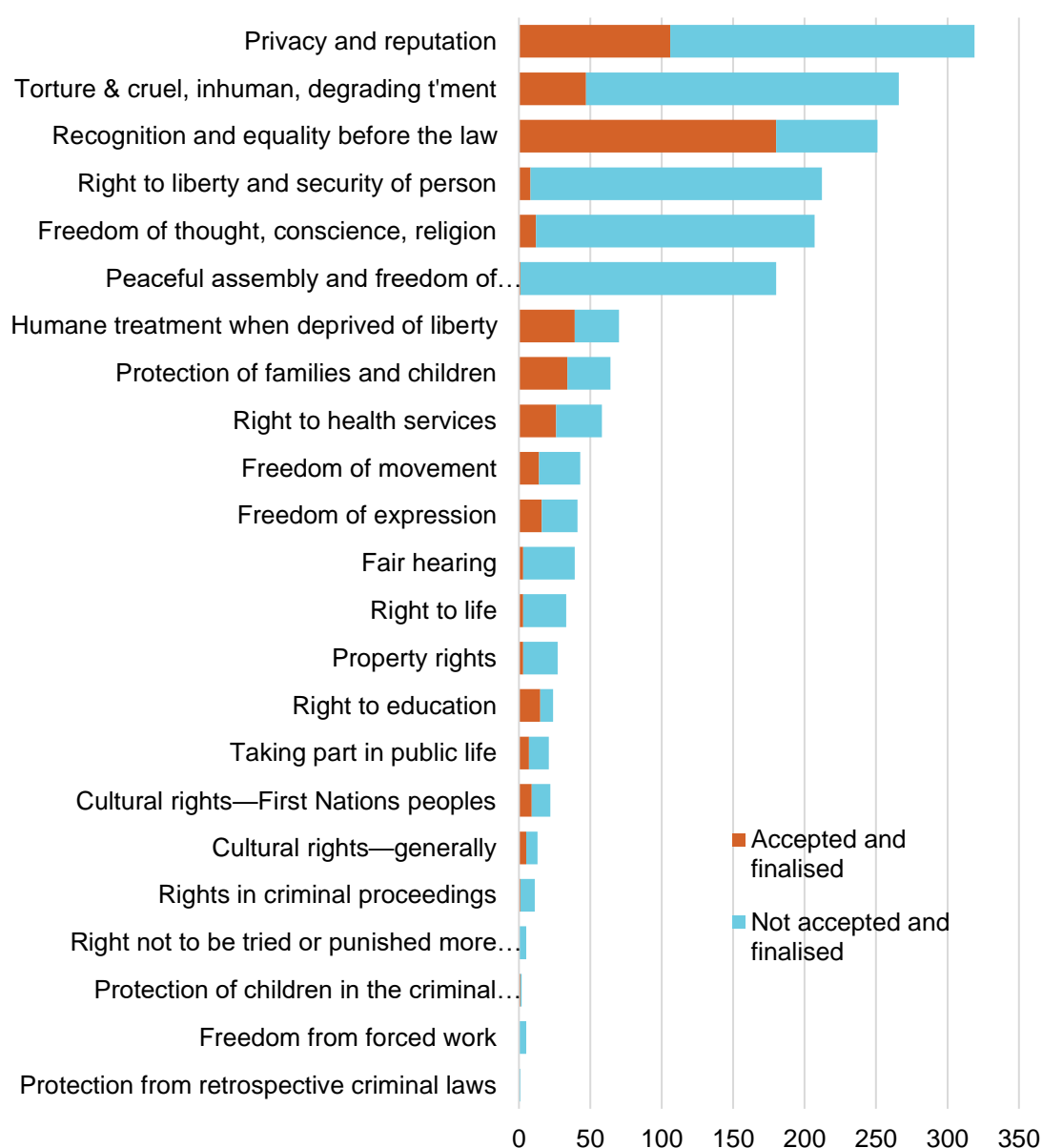
Some complaints that were received in 2022–23 are in the queue waiting to be allocated to a complaint handler and are therefore not included here.

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.

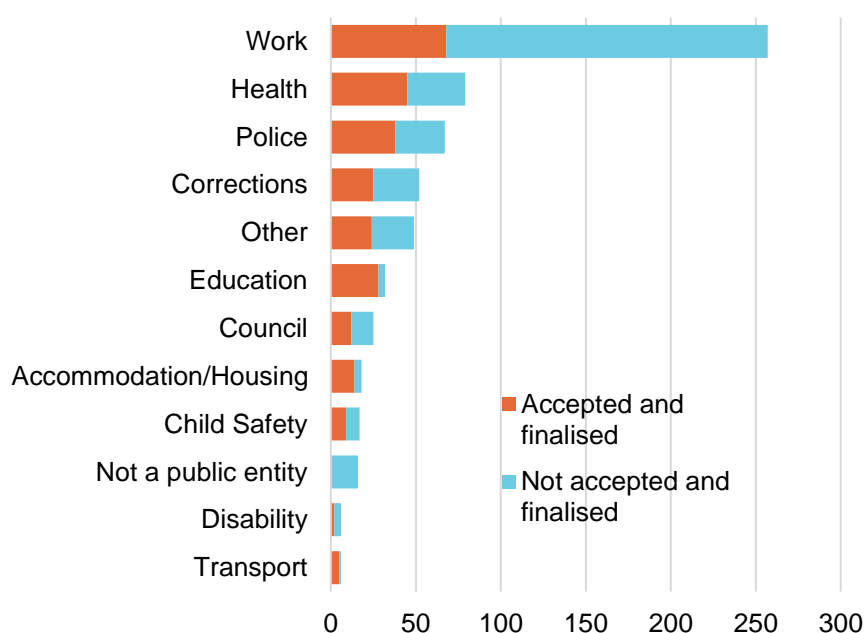
'Corrections' includes both prisons and youth detention.

'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.

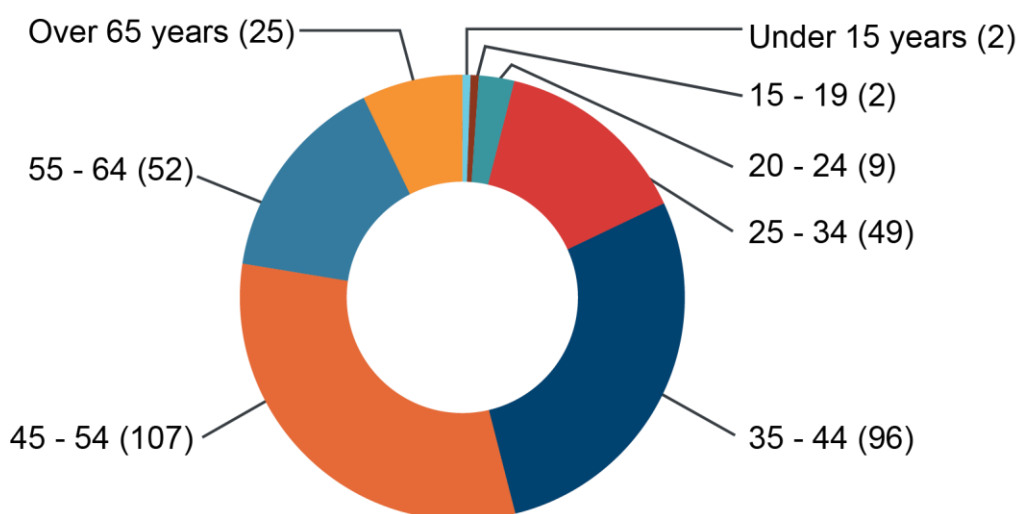
Around 76% of complainants were born in Australia, and 24% were born overseas. Complainants with a primary language other than English accounted for 6%. This was a similar result to last year.

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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.

A person wearing a yellow cap, a dark t-shirt, and red shorts is walking on a large, layered rock formation. The rock is reddish-brown and has a jagged, uneven surface. The person is looking down at the ground. In the background, the ocean is visible, with a clear blue sky above it. The overall scene is bright and sunny.

# Human rights in the community



# Community education and training

The Human Rights Act gives the Commission functions to:

- promote an understanding and acceptance, and the public discussion, of human rights
- make information about human rights available to the community
- provide education about human rights and the Act.<sup>118</sup>

This work is integral to achieving the Act's objectives of protecting and promoting human rights, building a culture in the public sector that respects human rights, and promoting a dialogue about the nature, meaning and scope of human rights.<sup>119</sup>

After several years of After several years of events being cancelled or held via alternative formats due to COVID-19, 2022-23 saw a strong return to face-to-face events. This year we took part in or attended over 50 events across the state – more than double the number we took part in in 2021-22 – including:

- MOSAIC Multicultural Festival
- Brisbane and Cairns Pride Fair Days
- Rockhampton's all abilities Beach Day Out
- NAIDOC parades, fairs and Deadly Day Out in Townsville, Cairns, Rockhampton and Brisbane
- QCROSS conference in Brisbane
- Islamic Society of Central Queensland's first Youth Conference
- Townsville citizenship ceremonies
- Iftar dinners in Brisbane, Mareeba and Cairns
- Human Rights Week community conversation days across southeast Queensland
- Townsville International Women's Day
- Market days and Orientation Week events at James Cook University's Townsville and Cairns campuses and Central Queensland University.

## Training for public entities

In addition to human rights complaint handling functions, the Commission provides education and training to government and functional public entities (as well as private and not-for-profit sectors), and in the financial year delivered 56 *Introduction to the Human Rights Act* sessions. The Commission delivered 10 sessions on *Human Rights Act for community advocates* and 3 sessions on *Human Rights Act for legal advocates*.

Face-to-face training is complemented by the Commission's online learning modules, which have been increasing in popularity in last 3 years.

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<sup>118</sup> *Human Rights Act 2019* s 61(d)–(f).

<sup>119</sup> *Human Rights Act 2019* s 3.

The online *Introduction to the Human Rights Act* module was completed by 1813 people and 5740 people completed the *Public entities and the Queensland Human Rights Act* module.

In addition to the publicly-available modules, a tailored 'Public entities and the *Queensland Human Rights Act 2019*' module was developed for the Department of Children, Youth Justice and Multicultural Affairs. This module was completed by an 1,103 people.

## Human Rights Week

As part of our objective to provide education and awareness about human rights to the community, the Commission runs an annual Human Rights Week campaign starting on 1 December and culminating on Human Rights Day on 10 December.

As with other events this year, more face-to-face activity was possible in 2022-23 than the preceding years and we were able to augment our online awareness activities with more in-person events.

This fit well with our theme for Human Rights Week 2022, 'Close to Home'. Close to Home aimed to focus on human rights at a local level, helping people and their communities to know the Act, to share it, and to use it.

Human Rights Week opened with a forum on the implementation of the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment (often referred to simply as OPCAT). OPCAT is an international agreement aiming to prevent the mistreatment of people in detention. We co-convened the forum with the Public Advocate and Queensland Advocacy for Inclusion on 1 December in Brisbane, and over 120 participants gathered to call on state government to prioritise the commencement of independent oversight of prisons, youth detention centres, locked mental health wards, and state-run aged care centres.

In keeping with the 'Close to Home' theme, we held several community conversation days across southeast Queensland during Human Rights Week, which provided an opportunity for people to come together to discuss human rights and discrimination, and to find out about or connect with services or campaigns happening in their local community. These events incorporated free human rights training for community advocates, which we also offered online during Human Rights Week for people who weren't able to make it to a face-to-face event.

We also ran free introductory human rights training in Townsville, a pop-up information stall in Cairns, and free webinars on Queensland's Anti-Discrimination and Human Rights Acts. Daily spotlights on our website and across our socials highlighted key human rights issues in Queensland, including accessibility, climate change, housing, and First Nations Justice.

## Aboriginal and Torres Strait Islander community engagement

The role of the Aboriginal and Torres Strait Islander engagement unit includes promoting and protecting the rights of Aboriginal peoples and Torres Strait Islander peoples.

This year, training sessions on the Human Rights Act were conducted with staff from an Aboriginal and Torres Strait Islander healthcare service provider.

In April the engagement unit had the opportunity to speak about the role of the Commission and the Human Rights Act to representatives from 17 First Nations councils at a Local Government Association Queensland forum in Cairns.

## Website

The Commission's website remained a key source of information for the community about their rights. General information on human rights law, the 'right to recognition and equality before the law', 'right to life' and 'right to liberty and security of person' pages were in the top ten most accessed pages on the site in the reporting period.

## Consultation and engagement

The Commission continues to facilitate consultation groups to contribute towards building a culture of human rights in the legal and academic sectors:

- Queensland Academics Human Rights Group: academics undertaking research and sharing information to support Queensland's developing human rights culture
- Queensland Human Rights Advocates Group: lawyers and advocates who work in discrimination and human rights law.

## Community attitudes to human rights

Between July and August 2021, researchers from Griffith University conducted a community survey to identify attitudes to human rights in Queensland, the adequacy of Queensland's human rights performance, and to gauge levels of support for the then new Human Rights Act.

Their findings included that there is great support for human rights, general confidence that rights are well protected in Queensland, but there were particular concerns about certain sectors including aged care facilities and prisons. Of most importance to 2021 participants were the rights of children, the elderly and in healthcare. The researchers concluded that more work needed to be done to

develop public knowledge of the legislation and the free complaints process offered by the Commission.<sup>120</sup>

In late June 2023, the survey was conducted once again, marking approximately two years since the initial survey. Although a comprehensive analysis of the survey results is pending, the Commission has taken a keen interest in a few preliminary findings:

- Consistent with 2 years ago, the community continues to consider that protection of human rights and dignity is both vital (92%) and relevant to them as individuals (85%)
- Knowledge of the existence of the Human Rights Act has had a marked uptick from 43% awareness in 2021 to 69% awareness in 2023.
- Conviction that the Human Rights Act makes a difference in protecting human rights has also substantially increased from 38% in 2021 to 58% in 2023.
- Confidence about how well human rights works for people in regional areas has decreased from 42% in 2021 down to 34% in 2023.
- Approval of the way in which Queenslanders' human rights were protected during COVID-19 was also down from a 62% positive response in 2021 to 52% in 2023.

The key areas in which survey respondents considered that human rights were in need of protection were fairly stable between 2021 and 2023, with child protection, health and aged care remaining the top priorities.

These results are positive affirmation that human rights are of enduring importance to the Queensland community, and that the public perceives the Human Rights Act to have a significant role in protecting and promoting these rights. The Commission looks forward to sharing comprehensive insights about the survey in the coming months.

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<sup>120</sup> Sarah Joseph, Susan Harris Rimmer and Chris Lane, 'What Did Queenslanders Think of Human Rights in 2021? An Attitudinal Survey' (2022) 41(3) *The University of Queensland Law Journal* 363.



# Appendixes



# Appendix A: Courts and tribunals

In the financial year ended 30 June 2023, courts and tribunals considered or mentioned the Human Rights Act in 86 matters.

*Table 7: Courts and tribunals that considered or mentioned the Human Rights Act, 2022-23*

Court	Number
Federal Court of Australia (FCA)	1
Fair Work Commission (FWC)	2
Court of Appeal Queensland (QCA)	1
Supreme Court of Queensland (QSC)	3
District Court of Queensland (QDA)	4
Land Court of Queensland (QLC)	2
Mental Health Court Queensland (QMHC)	1
Coroners Court Queensland	1
Queensland Civil and Administrative Tribunal Appeals (QCATA)	4
Queensland Civil and Administrative Tribunal (QCAT)	44
Queensland Industrial Relations Commission (QIRC)	23
<b>Total</b>	<b>86</b>

Details of the cause of action that gave rise to the mention or consideration of the *Human Rights Act 2019* in each court or tribunal matter are given in the following table.

*Table 8: Cause of action in court and tribunal matters that considered or mentioned the Human Rights Act in the 2022-23 period*

Court	Cause of action	No
FCA	Covid-19 insurance test case – 1	1
FWC	Unfair dismissal – 1 General protections – 1	2
QCA	Referral of point of law under Criminal Code	1



QSC	Appeal from decision of Crime and Corruption Commission – 1 Application for relief for unlawful imprisonment – 1 Judicial review – 1	3
QDA	Appeal from decision to stay a summary charge arising from arguably same set of facts that had already resulted in conviction of indictable charge – 1 Breach of lease – 1 Defamation (orders for anonymisation) – 1 Protection order – 1	4
QLC	Objection to mining lease – 1 Objection to mining lease (procedural issue) – 1	2
QMHC	Condition on forensic order	1
Coroner	Coronial inquest (procedural issue)	1
QCATA	Minor civil dispute – 2 Minor civil dispute (tenancy) – 1 Review of blue card decision – 1	4
QCAT	Application for stay of decision to suspend driver authorisation number – 1 Discrimination – 1 Discrimination (exemption application) – 3 Discrimination (procedural issue) – 1 Guardianship and administration – 7 Guardianship and administration (Interim appointment) – 3 Information privacy – 1 Minor civil dispute – 1 Minor civil dispute (tenancy) – 1 Occupational regulation matter – 1 Order for costs – 1 Police disciplinary review – 1 Review of blue card decision – 19 Review of child protection decision – 1 Review of decision of Queensland Racing Integrity Commission – 1 Review of decision of weapons division of QPS – 1	44

QIRC	Discrimination (Interim order) – 1	23
	General protections – 1	
	Industrial dispute – 1	
	Public service appeal – 4	
	Public service appeal (vaccination) – 16	
<b>Total</b>		<b>86</b>

# Appendix B: Human rights indicators

## Indicators of a developing human rights culture: State government

### Indicator 1: Staff awareness, education, and development

- How has staff awareness been raised about the Act?
- What education and training on the Act has been provided?
- Does the training include examples specifically tailored to the organisation to illustrate how to put human rights into practice?
- Approximately what percentage of staff have received training?
- Which work groups or areas of the agency have received training? What training has been provided to senior leadership? What was the mode of delivery of the training? For example, online, face-to-face, both online and face-to-face, or other? Has the training been delivered by internal staff, or external providers?
- What has been the impact of increased working from home arrangements on the design and delivery of training?
- Has human rights been included in induction training (onboarding of new staff)? Does ongoing professional development/training for staff include human rights? If so, what is the mode of the delivery of the training?
- What feedback do you collect about education and training? How is it used to design future training and/or resources?

### Indicator 2: Community consultation and engagement about human rights

- Have you conducted any community consultation and engagement, such as with stakeholders, clients, or consumers about human rights?
- What information have you provided to the community about human rights?
- Have you consulted relevant sectors of the community about proposed changes to, or development of, legislation, regulations, policies, procedures, services etc. which may impact human rights?
- Please provide details, including how did the community consultation and engagement impact on any decision-making/policy formulation, or other?

### Indicator 3: Awareness raising and support for related entities (including functional public entities engaged by the entity i.e. contractors)

- Have you raised awareness of human rights with contractors/providers engaged by your agency? If so, provide details. For example, has human rights been embedded into formal contracts?
- What support in ensuring compatibility with the Act have you provided to providers engaged by your agency? If any, provide details.

## Indicator 4: Reviews and development of legislation or subordinate legislation

- Please point to legislation or subordinate legislation that has been introduced in the financial year 2020–21 that:
  - has a significant impact on human rights;
  - works to respect, protect, or promote human rights
- Please provide any examples of good practice in ensuring the proper consideration of human rights is part of legislation development.

## Indicator 5: Review of policies and procedures

- Has your agency reviewed policies and procedures for compatibility with human rights?
- Please provide an example of the way in which the review of policies and procedures has resulted in positive change?
- In particular, have you developed any new guides or other tools to assist staff to act and make decisions that are compatible with human rights, and to properly consider human rights when making decisions?
- Has any review of policies and procedures resulted in a change to service delivery? If so, please provide examples.

## Indicator 6: Internal complaint management for human rights complaints

- How successful has your agency been in integrating human rights complaints into internal complaints processes? If possible, provide examples of what has been achieved.
- Does your agency face any barriers in successfully identifying, considering, and responding to human rights complaints? If so, what are they?
- Please provide examples of where a complaint has been resolved through the internal complaints process and/or has resulted in policy/procedure/practice review, service improvements or change for the agency.

## Indicator 7: Future plans

What future plans does your agency have to achieve the objects of the Act in:

- protecting and promoting human rights;
- building a culture in the Queensland public sector that respects and promotes human rights; and
- helping promote a dialogue about the nature, meaning, and scope of human rights.

## Additional question:

How has senior leadership demonstrated a commitment to embedding human rights generally, and in particular with respect to the Indicators 1 – 6 noted above?

# Indicators of a developing human rights culture: Councils

## Indicator 1: Staff awareness, education and development

- How has staff awareness been raised about the Act?
- What education and training on the Act has been provided?
- Does the training include examples specifically tailored to the council to illustrate how to put human rights into practice?
- Approximately what percentage of staff have received training?
- Which work groups or areas of the council have received training? What training has been provided to senior leadership? What was the mode of delivery of the training? For example, online, face to face, both online and face to face, or other? Has the training been delivered by internal staff, or external providers?
- What has been the impact of increased working from home arrangements on the design and delivery of training?
- Has human rights been included in induction training (onboarding of new staff)? Does ongoing professional development/training for staff include human rights? If so, what is the mode of the delivery of the training?
- What feedback do you collect about education and training? How is it used to design future training and/or resources?

## Indicator 2: Community consultation and engagement about human rights

- Have you conducted any community consultation and engagement, such as with stakeholders, clients, or consumers about human rights?
- What information have you provided to the community about human rights?
- Have you consulted relevant sectors of the community about proposed changes to, or development of, legislation, regulations, policies, procedures, services etc. which may impact human rights?
- Please provide details, including how did the community consultation and engagement impact on any decision-making/policy formulation, or other?

## Indicator 3: Awareness raising and support for related entities (including functional public entities engaged by the council i.e. contractors)

- Have you raised awareness of human rights with contractors/providers engaged by the council? If so, provide details. For example, has human rights been embedded into formal contracts?
- What support in ensuring compatibility with the Act have you provided to providers engaged by the council? If any, provide details.

## Indicator 4: Reviews and development of local laws and subordinate local laws

- Please point to a local law or subordinate local law that has been introduced in the financial year 2022-23 and that:
  - has a significant impact on human rights;
  - works to respect, protect, or promote human rights

- Please provide any examples of good practice in ensuring the proper consideration of human rights is part of local law development.

## Indicator 5: Review of policies and procedures

- Has the council reviewed policies and procedures for compatibility with human rights?
- Please provide an example of the way in which the review of policies and procedures has resulted in positive change?
- In particular, have you developed any new guides or other tools to assist staff to act and make decisions that are compatible with human rights, and to properly consider human rights when making decisions?
- Has any review of policies and procedures resulted in a change to service delivery? If so, please provide examples.

## Indicator 6: Internal complaint management for human rights complaints

- How successful has the council been in integrating human rights complaints into internal complaints processes? If possible, provide examples of what has been achieved.
- Does the council face any barriers in successfully identifying, considering, and responding to human rights complaints? If so, what are they?
- Please provide examples of where a complaint has been resolved through the internal complaints process and/or has resulted in policy/procedure/practice review, service improvements or change for the council.

## Indicator 7: Future plans

What future plans does the council have to achieve the objects of the Act in:

- protecting and promoting human rights;
- building a culture in the Queensland public sector that respects and promotes human rights; and
- helping promote a dialogue about the nature, meaning, and scope of human rights.

## Additional question:

How has senior leadership demonstrated a commitment to embedding human rights generally, and in particular with respect to the Indicators 1 – 6 noted above?



# Appendix C: Complaints data tables

Refer to section *Human rights complaints snapshot* for explanations of terms such as 'accepted', 'resolved' and 'finalised.'

*Table 9: Outcome of finalised complaints – inclusive of piggy-back complaints and human rights only complaints, 2022-23*

<b>Outcome of finalised complaints – all (piggy-back complaints and human rights only)</b>	<b>No. finalised</b>
Information provided indicates not covered by the HR Act	261
Prior internal complaint requirements not met	34
Accepted and resolved	57
Withdrawn or lost contact	54
Unconciliable piggy-back complaint: referred to Tribunal	73
Unconciliable piggy-back complaint: no Tribunal referral	35
Unconciliable human rights only complaint	27
Has been or could be dealt with better elsewhere	15
Rejected - lacked substance	1
Unconciliable human rights only complaint: report with recommendations published	4

*Table 10: Human rights identified in all finalised human rights complaints – inclusive of piggy-back complaints and human rights only complaints, 2022-23*

<b>Relevant human right</b>	<b>Complaints accepted and finalised</b>	<b>Complaints not accepted and finalised</b>
Privacy and reputation	106	213
Torture & cruel, inhuman, degrading t'ment	47	219
Recognition and equality before the law	180	71
Right to liberty and security of person	8	204
Freedom of thought, conscience, religion	12	195
Peaceful assembly and freedom of association	1	179

Humane treatment when deprived of liberty	39	31
Protection of families and children	34	30
Right to health services	26	32
Freedom of movement	14	29
Freedom of expression	16	25
Fair hearing	3	36
Right to life	3	30
Property rights	3	24
Right to education	15	9
Taking part in public life	7	14
Cultural rights—First Nations peoples	9	13
Cultural rights—generally	5	8
Rights in criminal proceedings	1	10
Right not to be tried or punished more than once	0	5
Freedom from forced work	0	5
Protection of children in the criminal process	1	1
Protection from retrospective criminal laws	0	1

*Table 11: Human rights identified in finalised human rights only complaints, 2022-23*

Relevant human right	Complaints accepted and finalised	Complaints not accepted and finalised
Privacy and reputation	34	48
Recognition and equality before the law	20	52
Torture & cruel, inhuman, degrading t'ment	22	31
Humane treatment when deprived of liberty	19	26
Protection of families and children	16	24
Right to health services	13	25
Fair hearing	1	27
Freedom of expression	8	18
Freedom of movement	6	20
Right to liberty and security of person	5	20
Right to life	2	22
Property rights	3	21
Freedom of thought, conscience, religion	0	14
Rights in criminal proceedings	0	9
Taking part in public life	0	9
Right to education	3	5
Cultural rights—First Nations peoples	2	5
Cultural rights—generally	0	4
Peaceful assembly and freedom of association	1	3
Right not to be tried or punished more than once	0	4
Freedom from forced work	0	2
Protection of children in the criminal process	1	1
Protection from retrospective criminal laws	0	1

*Table 12: Human rights complaints by sector – inclusive of piggy-back complaints and human rights only complaints, 2022-23*

<b>Public entity by sector</b>	<b>No. finalised complaints</b>	<b>No. accepted and finalised complaints</b>
Work	68	189
Health	45	34
Police	38	29
Corrections	25	27
Other	24	25
Education	28	4
Council	12	13
Accommodation/Housing	14	4
Child Safety	9	8
Not a public entity	0	16
Transport	5	1
Disability	2	4

*Table 13: Human rights complaints by sector – human rights only complaints,*

<b>Public entity by sector</b>	<b>No. of finalised complaints</b>	<b>No. accepted and finalised complaints</b>
Corrections	26	21
Health	32	14
Police	27	12
Other	24	4
Work	11	7
Councils	12	5
Not a public entity	14	0
Child Safety	9	3
Court Services	11	0
Education	3	5
Accommodation/Housing	3	3
Disability	3	1

*Table 14: Legal representative type for complainants in all finalised complaints 2022-23*

<b>Legal Representative Type</b>	<b>Anti-Discrimination Act only complaints</b>	<b>Piggy-back complaints</b>	<b>Human Rights Act only complaints</b>
Community Legal Service / Legal Aid	23	13	3
Industrial advocate	29	7	0
Other or N/A	42	11	2
Private lawyer	31	11	3
Self-represented	242	132	60

*Table 15: Finalised complaints by complainant age bracket, 2022-23*

Complainant age group	No. of finalised complaints
Under 15	2
15-19	2
20-24	9
25-34	49
35-44	96
45-54	107
55-64	52
Over 65	25



# Appendix D: Human rights timeline 2022-23

This information is represented in the timeline on pages 14 to 16 of this report and is a summary of some significant events relevant to the operation of the Act in its third year.

## July 2022

Experiences of women and girls across Queensland's criminal justice system were examined and reviewed by the Women's Safety and Justice Taskforce in *Hear her voice report 2*.

## September 2022

Legislation was passed to establish an independent inspectorate to promote and uphold the humane treatment and conditions of people detained in prisons, community corrections centres, work camps, youth detention centres and police watch-houses. See *Inspector of Detention Services Act 2022*.

## October 2022

A United Nations tour that was to have included unannounced inspections of detention facilities as part of Australia's implementation of the *Optional Protocol to the Convention against Torture* was suspended due to obstructions, particularly the lack of co-operation by the governments of NSW and Queensland.

## November 2022

Temporary legislation (effective from 31 October 2022 to 31 October 2023) provides a step-down approach to managing COVID-19. It limits the power of the Chief Health Officer to make public health directions to three key measures: masks, isolation and quarantine, and vaccinations for workers in high-risk settings, and requires a parliamentary process outlining compatibility with human rights for directions. See *Public Health and Other Legislation (COVID-19 Management) Amendment Act 2022*.

The Commission of Inquiry into Queensland Police Service responses to domestic and family violence delivered their report, *A call for change*. The Inquiry was set up following recommendations made by the Women's Safety and Justice Taskforce.

## December 2022

A significant increase in young people held in youth detention and police watchhouses was noted in the Childrens Court annual report, with young people spending an average of 43 nights in unsentenced detention.

## January 2023

The Queensland Government marked Dundalli Remembrance Day as a 'truth-telling story of state significance' and committed to other truth-telling initiatives across the state to promote understanding and reconciliation.

Queensland's inaugural First Nations Justice Officer was appointed in response to a recommendation by the Women's Safety and Justice Taskforce to reduce the representation of First Nations people in the criminal justice system.

## February 2023

A Townsville Childrens Court magistrate ordered release on bail of thirteen children being held on remand in the police watch house amid growing human rights concerns at the treatment of young people in the Qld justice system

Separately, the Queensland Family and Child Commission initiated a systemic review of the drivers that cause children to enter and remain in Queensland watchhouses.

## March to May 2023

The Commission completed a human rights review of policies, procedures, and practices relating to strip searching of women in Queensland prisons as recommended by the Women's Safety and Justice Taskforce and undertook prison visits and consultation. The report will be published in September 2023.

## March 2023

The first four override declarations under section 43 of the HR Act were made in the *Strengthening Community Safety Act 2023*, which received assent on 22 March 2023. The override declarations apply to:

- a provision that makes it an offence for a young person to breach their bail conditions
- a decision of the court to declare a young person a 'serious repeat offender'
- a decision of the court to revoke a conditional release order for certain offences.

## April 2023

Legislation was passed to authorise police officers to use hand held scanners in Safe Night Precincts, at public transport stations, and on public transport to detect knives being carried in public and reduce knife crime. See *Police Powers and Responsibilities (Jack's Law) Amendment Act 2022*.

## May 2023

The Path to Treaty Bill 2023 received assent and will commence on a date to be fixed by proclamation. The Act will provide for the establishment of a First Nations Treaty Institute and Truth-telling and Healing Inquiry. See *Path to Treaty Act 2023*.

Queensland Parliament's Legal Affairs and Safety Committee tabled the report of the inquiry into support provided to victims of crime, which included recommendations to: review victims' rights, improve coordination of services, increase access to information, trauma-informed training, invest in victim support services, improve access to restorative justice and youth justice conferencing.

## June 2023

For the first time, the Commission's biennial Mabo Oration was held outside Brisbane. Megan Davis delivered the ninth Mabo Oration and Professor Henry Reynolds and Gail Mabo were special guest speakers at the event in Townsville hosted by Jeff McMullen.

Legislation was passed to facilitate visits to places of detention by the United Nations Subcommittee on Prevention of Torture and commenced on assent. See *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2023*.

The Honourable Alan Wilson KC conducted a review of the Public Interest Disclosure Act, as recommended by the Coaldrake report, *Let the sunshine in: Review of culture and accountability in the Queensland public sector*. The review recommended a new PID Act with clearer and accessible language, reclaiming the language of 'whistleblower', and with two objects of facilitating the exposure of serious or systemic wrongdoing in the public sector and protecting those who assist that endeavour.

The existing Births, Deaths and Marriages Registration Act (which establishes a system for registering life events) was repealed and replaced with a new Act of the same name, which takes account of changes in society and aims to appropriately accommodate the diversity of Queensland society. (especially in relation to recognition of the trans and gender diverse community and modern and diverse family structures). The Act will commence on a date to be fixed by proclamation. See *Births, Deaths and Marriages Registration Act 2023*.

The Commonwealth Parliament passed legislation proposing an alteration to the *Australian Constitution* to recognise Australia's First Peoples by establishing an Aboriginal and Torres Strait Islander Voice to make representations to the parliament on matters relating to Aboriginal and Torres Strait Islander peoples. This will trigger a referendum that will be held on 14 October 2023.