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Human rights enquiries and complaints

Introduction to human rights complaints

The Commission receives complaints about human rights where a person believes that a public entity has not given proper consideration to human rights or acted compatibly with human rights.

The Commission is impartial and will not take sides. Our role is not to decide who is right or wrong but to help people resolve complaints.

The Commission's role is to:

- work to ensure that everyone puts 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.

The Commission received a large volume of complaints in 2020-21, partly due to COVID-19, and has a backlog resulting in a current delay between lodgement and assessment of around 6 months.

This section contains several graphs to visually represent the enquiries and complaints data held by the Commission. The same information is provided in data tables in Appendix C.

Internal complaints made to public entities

The Act allows a person to make a human rights complaint to the Commission only after 45 business days have elapsed since the person has made an internal complaint to the relevant public entity. This process encourages direct resolution of complaints at the earliest possible stage.

Public entities must ensure an appropriate complaint handling procedure is in place for early resolution of complaints.⁹⁰

Section 91(j) of the Act requires the commissioner to report on human rights complaints made to particular entities, and allows the commissioner discretion to decide which public entities' complaints to report on here.

The Commission has selected the same public entities who responded to the Indicators in the previous section. The annual reports of state government public entities and information provided to the Commission under section 98 of the Act have been used to compile the following information about complaint numbers and outcomes.

The Commission notes that there are significant variations in how the human rights complaints are reported on between different state public entities which makes it difficult to interpret complaint outcomes, and to discern the overall effectiveness of the internal human rights complaints process.

⁹⁰ Explanatory Notes, Human Rights Bill 2018, 37.

Table 9: Internal human rights complaints made to public entities, 2020-21

Public entity	Number of complaints	Outcomes
Department of Education ⁹¹	15 complaints	<p>These complaints were managed according to the Department's customer complaint management framework.</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 Communities, Housing and Digital Economy ⁹²	30 complaints	<p>30 complaints, with 29 originating from clients and 1 internal complaint</p> <p>25 actions or decisions that led to complaints were found to be compatible with human rights</p> <p>3 actions or decisions that led to complaints were found to be incompatible with human rights</p> <p>1 outcome is pending</p> <p>1 referred to Queensland Human Rights Commission</p>
Queensland Police Service ⁹³	893 complaints	<p>893 complaints where it was identified that one or more human rights may have been unreasonably limited.</p> <p>521 (of the 893) complaints were finalised as at 30 June 2021.</p> <p>32 instances where human rights were unreasonably limited resulting in the officers receiving managerial resolution and/or fine taken from the officer's salary. 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>

⁹¹ Department of Education, *Annual Report 2020-2021*, 49.

⁹² Department of Communities, Housing and Digital Economy, *Annual Report 2020-2021*, 37.

⁹³ Queensland Police Service, *Annual Report 2020-21*, 11.

Public entity	Number of complaints	Outcomes
		<p>In 2020-21, the QPS refined the process and methodology for identifying and recording complaints that may involve a human rights component. Each time the QPS received a complaint, human rights limitations were assessed to determine if any rights were unreasonably limited. The human rights aspect of each complaint was investigated along with the allegation/s, which assisted in determining the appropriate resolution.</p>
Department of Children, Youth Justice and Multicultural Affairs ⁹⁴	124 allegations	<p>99 of the 124 allegations have been closed and 25 are still active.</p> <p>Of the closed allegations:</p> <ul style="list-style-type: none"> • 38 did not involve a limitation of rights • 41 involved limitations that were considered to be justifiable and reasonable • 9 were substantiated and appropriate action has been taken <p>The remaining were withdrawn (3), referred (3), unable to determine (3) and out of scope (2).</p>
Queensland Corrective Services ⁹⁵	615 complaints	<p>QCS received 615 complaints, including 77 complaints which raised a human rights issue.</p> <p>Issues raised for this reporting period predominantly fell within the following categories:</p> <ol style="list-style-type: none"> 1. Offender Management (accommodation, communication, safety concerns), and 2. Other (visitors/family). <p>Of the 77 human rights complaints received during this reporting period:</p> <ul style="list-style-type: none"> • Nine remain open and 68 have been closed. <p>Of the 68 closed complaints:</p> <ul style="list-style-type: none"> • 55 were not substantiated, • 1 was substantiated, • 3 were partially substantiated, and

⁹⁴ Department of Children, Youth Justice and Multicultural affairs, *Annual report 2020-2021*, 35.

⁹⁵ Queensland Corrective Services, *Annual Report 2020-21*, 36.

Public entity	Number of complaints	Outcomes
		<ul style="list-style-type: none"> 9 had other outcomes (including referred or made to another agency).
Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships ⁹⁶	7 complaints	6 matters found no substantiated breach 1 matter went to conciliation at Commission
Queensland Civil and Administrative Tribunal		Annual Report unavailable at time of publication.
Department of Health ⁹⁷	206 complaints	169 complaints resolved by the Department 12 complaints remain ongoing/open 4 complaints were withdrawn 2 complaints were referred to the QIRC for conciliation 19 complaints were unresolved (including closed or lapsed complaints by the QHRC).

⁹⁶ Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships, *Annual Report 2020-2021*, 48.

⁹⁷ Department of Health, *Annual Report 2020-21*, 106.
Human Rights Act 2019 Annual Report 2020-2021

Early complaint resolution

Last year, the Commission received positive reports from some advocates that complaints were being resolved prior to a complaint being lodged with the Commission.

Queensland Advocacy Incorporated (QAI) provided a case study from this reporting period of one such situation:

Amber* is a 38-year-old woman with significant disability, who requires a wheelchair for access at all times, has small stature and shortened limbs. Due to health issues associated with her disability, Amber is required to frequently access a Brisbane-based public hospital for specialist treatment.

Amber's small stature and shortened limbs makes accessing automated ticket machines in commercial car parking facilities impossible. Amber lives independently with minimal support, and drives herself in a modified vehicle to all healthcare appointments. While an NDIS participant, her funding does not extend to cover travel to medical appointments by taxi.

Amber had been utilising designated disabled parking bays in the basement of the Hospital for a number of years, in order to attend her specialist appointments. This arrangement was facilitated by her specialist. Access to the basement parking is regulated by security guards.

In recent months, Amber was denied access to this parking by a security guard on each occasion she sought entry, notwithstanding that there were multiple available spaces visible at the time of each refusal. There was no reasonable explanation provided for this denial, only a direction that Amber instead use a disabled carpark adjacent to the hospital. As this carpark only featured a single car park and is situated on an uphill incline, it was not accessible for Amber. This inability to park in an accessible carpark was restricting her ability to access the health services that are essential for her to maintain her health, and to live.

Amber sought QAI's assistance when her attempts to resolve this matter directly with the liaison officer through the Hospital's complaints process was unsuccessful. QAI wrote to the Complaints Coordinator of the Hospital, reminding the Hospital of their obligations under the Human Rights Act 2019 (Qld) and expressing concern that the Hospital had not given proper consideration to Amber's human rights in making the decision to deny her ongoing access to appropriate parking. We sought reinstatement of her access, along with the introduction of protocols to ensure these access rights were respected by all relevant staff.

QAI's letter prompted an immediate response and, within 10 days, our client received a telephone call from the Hospital Director who offered a sincere apology for Amber's treatment and an assurance that the matter had been addressed and appropriate training introduced to ensure staff were aware of their obligations. Amber was also provided with details of a direct contact person within the Hospital to contact in the event of any problems. Amber has not experienced any further barriers to accessing this parking.

* Name has been changed

A housing service provider has provided the following case study of how the Act is a difference in everyday decisions in the public housing sector:

A young Aboriginal woman was living in a multi-dwelling complex with her sibling over whom she had formal custody under a child safety order. Repeated disruptive incidents over a two year period had left the neighbours feeling fatigued and impacted by this tenant's behaviour. Following a recent incident at the property involving police, she was issued a Notice to Leave.

The housing provider needed to carefully balance the rights of the neighbours to live in peace, comfort and privacy with the cultural rights of the tenant and the child living at the property.

After making enquiries the housing officer identified that the woman had significant mental health issues and was experiencing serious domestic violence for which she was not receiving support. The housing officer linked the siblings to culturally appropriate supports and decided not to proceed to enforce the Notice to Leave, instead facilitating a transfer to an Indigenous Housing property.

The outcome has been a fresh start for the siblings in a lower density housing complex, with new neighbours who have not complained about disruption or challenging behaviours. The new residence is more suitable for the long-term, including when the younger sibling turns 18.

Enquiries to the Commission

The Commission does not collect demographic data for every enquiry, but those where this information is collected provide some insight. People can enquire with us by phone, email or in person. Those enquiring about human rights may be potential complainants, lawyers or advocates, support persons, or employees from public sector entities.

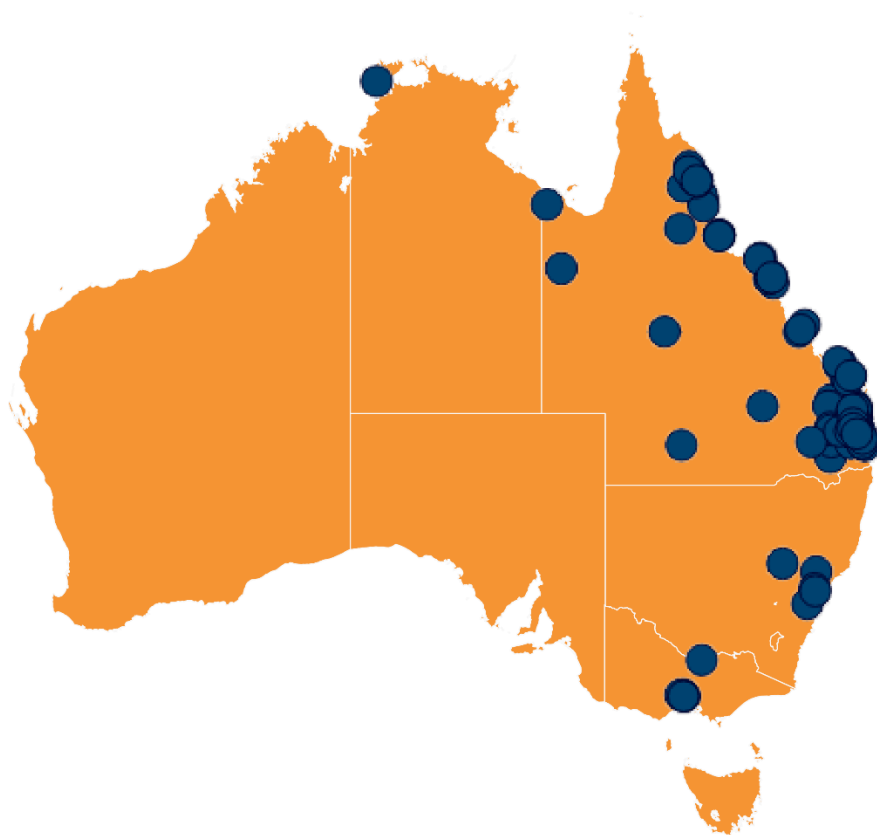
The Commission received 1,084 enquiries that were identified as being about human rights, up 65% from the previous year (655 enquiries were taken last year).⁹⁸ This represents approximately 26.1% of enquiries received by the Commission for the financial year, where the topic of the enquiry was collected. Enquiries about discrimination still predominated (35.1%) but the gap appears to be narrowing.

157 of the 969 human rights enquiries (16%) were about COVID-19, regarding issues such as hotel quarantine, border closures and exemptions, and mask-wearing requirements.

Human rights enquiries came mostly from within Queensland, predominantly from the southeast region but also other regional areas on the coast, with a number also coming from interstate. This may be partly explained by enquiries relating to COVID-19 from people located interstate who were either residents currently outside the state, or non-residents intending to come to Queensland.

⁹⁸ 5,849 enquiries were received overall by the Commission in 2020-21. In 4,166 of these, an alleged breach of legislation was discussed.

Figure 4: Enquiries to the Commission by enquirer location in Australia, 2020-21



While the vast majority of enquirers were born in Australia, the Commission continued to receive contact from people with diverse backgrounds, but mostly from people born in New Zealand or the United Kingdom. Around 16% of enquirers overall were born outside of Australia.

Enquiry numbers

- 1
- 2-3
- 4-10
- 10-20

Figure 6: Human rights enquiries to the Commission by age bracket, 2020-21



Slightly more women (50.57%) than men (49.2%) enquired at the Commission about human rights, and 0.23% of enquirers identified as neither male nor female. This is in contrast with complaints, where men were more likely than women to make human rights complaints in the reporting period.

Figure 7: Human rights enquiries to the Commission by gender, 2020-21



The Commission received 99 enquiries from Aboriginal or Torres Strait Islander people. As well as contacting the Commission's general phone or email, First Nations people can phone or email a staff member from the Commission's Aboriginal and Torres Strait Islander Unit to discuss their enquiry. This year's figure was a significant increase from the 43 enquiries in the previous year. Of the 99 enquirers, 86 were Aboriginal, 4 were Aboriginal and Torres Strait Islander and 4 were Torres Strait Islander.

Complaints to the Commission

The following section will provide information about complaints about human rights made to the Commission in the 2020-21 period.

As noted above, there is currently around a 6 month wait for a complaint to be dealt with. The consequence of a backlog in assessing complaints is that not every complaint that was received in 2020-21 has been assessed at the date of publication, and therefore not every complaint that has been made about human rights will be reflected in the data below. Nonetheless, there is enough data to be able to identify emerging trends in many areas.

Consistent with last year a large number of complaints (21%) finalised in the 2020–21 financial year could not be accepted because the complainant had not first complained to the public entity and waited 45 business days before lodging with the Commission – a requirement under the Act.⁹⁹ This has improved since the previous year, when 27% of complaints could not be accepted because these requirements had not been met. Complaints information on the Commission's website has been updated to make this requirement as clear as possible to potential complainants and hopefully this number will decrease further in time.

Complaints processes and terminology

What is a piggy-back complaint? And what is a human rights only complaint?

Complaints can be accepted under both the *Anti-Discrimination Act 1991* and the *Human Rights Act 2019* and these are referred to as 'piggy-back' complaints. A piggy-back complaint is sometimes also referred to as a piggy-back claim (noting last year's report almost exclusively referred to this, but the Commission's terminology has since been updated).

⁹⁹ See *Human Rights Act 2019* s 65.

A 'piggy-back' complaint is where the complainant has a complaint that falls under the *Anti-Discrimination Act 1991* (such as for discrimination) but the complaint also raises human rights issues under the *Human Rights Act 2019*. Under section 75 of the *Human Rights Act 2019*, the Commission can deal with such a complaint under the *Anti-Discrimination Act 1991* as if it were a contravention of the *Anti-Discrimination Act 1991*. This can occur where a primary claim of discrimination exists, but the respondent is also a public entity. The complaint parties proceed through conciliation for these matters and the complainant has the option of referring their complaint to the relevant Tribunal, should it not resolve. If a complaint is human rights only complaint, there is no right of referral and no right to compensation.

Conciliation conferences, in which an impartial conciliator assists the parties to resolve the complaint, are held for piggy-back complaints.

The complaints process for human rights only complaints can occur either through a conciliation conference or by early intervention, which is where the matter is resolved by the conciliator who speaks with the parties separately through a shuttle negotiation process.

Who can make a complaint?

A complaint can be made by an individual who is the subject of a human rights breach. That is, where the individual 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 impacts on them. The individual can appoint an agent, or the Commission can authorise another person to make a complaint for the individual. Two or more persons can make a joint complaint.¹⁰⁰

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 (e.g. state government, local government, or functional entity) and in which sector (e.g. 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.

¹⁰⁰ *Human Rights Act 2019* s 64(3).
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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 – see Section 67 *Human Rights Act 2019*. When deciding whether to accept a complaint, the complaint handler will consider if there has been an unreasonable limitation of human rights.

By accepting a complaint the Commission has not decided that there has been a breach of human rights.

What is a finalised complaint?

A complaint may have been finalised for a number of reasons. It may have been rejected, accepted and resolved, accepted and not resolved, or withdrawn. 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 2020-21.

What is a resolved complaint?

‘Resolved’ means that it has been through a complaints process (conciliation or early intervention) and the matter has been resolved to complainant’s satisfaction.

Human rights complaints snapshot

The Commission has identified **369** complaints received in the 2020–21 period as being about human rights.

Of these complaints, **132** were piggy-back complaints, and **237** were human rights only complaints.

Figure 8: Complaints to the Commission shown as piggy-back complaints or human rights only complaints, 2020-21



By the end of the 2020–21 financial year:

344 human complaints had been finalised in that year. 235 were human rights only complaints and 109 were piggy-back complaints.

151 of these finalised complaints had been accepted. 56 of these were human rights only complaints and 95 were piggyback complaints.

47 complaints were resolved in the 2020-21 financial year. 19 of the resolved complaints were human rights only complaints and 28 were piggyback complaints.

26 complaints (all piggy-back complaints) were referred to tribunals (14 to the QCAT¹⁰¹ and 12 to the QIRC¹⁰²).

2 reports were made about unresolved human rights complaints that contained recommendations for the respondents to take to ensure their actions and decisions are compatible with human rights.

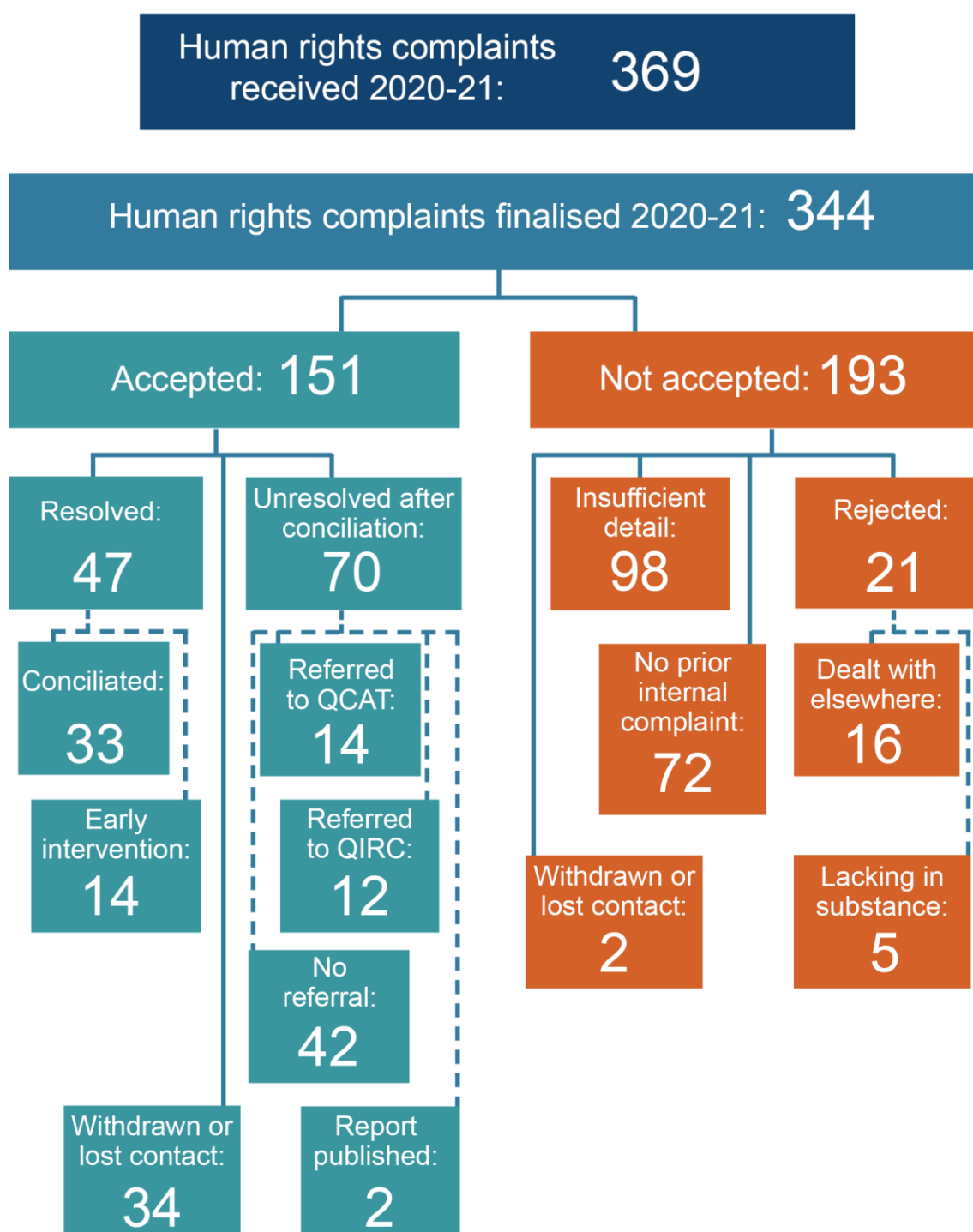
¹⁰¹ QCAT hears complaints made under the *Anti-Discrimination Act 1991* (Qld) but not resolved at the Commission that are not work-related.

¹⁰² QIRC hears complaints made under the *Anti-Discrimination Act 1991* (Qld) but not resolved at the Commission that are work-related.

Of the **344** complaints finalised in the 2020-21 financial year, **89** complaints were about COVID-19, including issues arising in hotel quarantine and border restrictions. In other words, COVID-19-related complaints made up just over a quarter of finalised human rights complaints.

Appendix C from page 187 of this report contains detailed statistical data presented in data tables.

Figure 9: Human rights complaints snapshot, 2020-21



Outcomes of finalised complaints

Around 55% of complaints finalised in the 2020–21 financial year were not accepted by the Commission. Aside from those complaints not indicating an unreasonable limitation on a human right, some complaints could not be accepted where they described events occurring prior to the commencement of the Act on 1 January 2020.

Of the complaints that were accepted, 47 complaints were resolved in the 2020–21 financial year. 26 complaints, some of which had been received in the previous financial year, were referred to Tribunals (QCAT or QIRC).

Figure 10: Outcomes of all complaints finalised in 2020-21

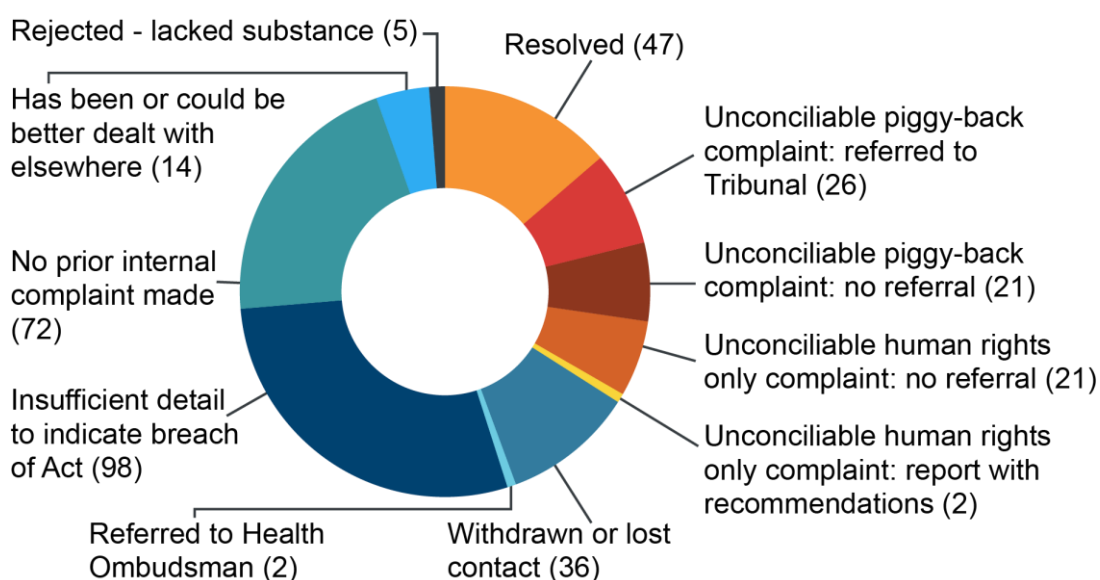


Table 10: Specific outcomes achieved through the Commission's complaints process 2020-21

Outcome	Number
Apology	6
Agreement to train individuals/workforce	4
Agreement for compensation	4
Policy change/review	3
Agreement to change the original decision made by the public entity	1
Policy development/implementation	1
Service improvement	1
Free goods/services	1

Resolution rate for human rights complaints

Compared with complaints made under the *Anti-Discrimination Act 1991*, the resolution rate appears to be significantly lower for human rights and piggy-back complaints.

Figure 11: Resolution rates by complaint type 2020-21



In the reporting period, 50.3% of anti-discrimination complaints (not involving a public entity) were resolved through conciliation. This is consistent with previous years in which resolution rates were somewhere between 50 to 55%.

In contrast, only 29.1% of human rights only complaints were resolved through conciliation and the piggy-back complaints resolved at a similar rate. While it is too early to detect any clear trends, the possible reasons for this may include:

- Without the risk of a potential determination by the tribunal, respondents are less inclined to settle a complaint.
- There is less incentive for the parties (including the complainant) to sign a formal conciliation agreement to settle the matter, or confirm that the matter is resolved, if there is no chance of it progressing further to a tribunal.

- Complaints made about public entities in the administration of state laws and programs are generally less likely to resolve,¹⁰³ regardless of the complaint type.
- Significant numbers of complainants who had human rights only complaints (13) lost contact or withdrew their complaints, which may be related to the backlog of complaints. At times a person may have withdrawn because they were satisfied with the outcome, but these situations were not recorded as 'resolved'.

Human rights identified in all human rights complaints

This section looks at the human rights relevant to the allegations raised in the complaints finalised in 2020–21. The information in this section includes all complaints – piggy-back complaints and human rights only complaints.

The Commission may identify the relevant human right from the information provided in the complaint, or the complainant may indicate that they believe the right has been limited.

Most complaints contain several allegations, and engage more than one human right.

Not all allegations of unreasonable limitations of human rights are accepted. An allegation (that a contravention has occurred) alone is not enough; the complainant must provide sufficient detail about an act or decision that indicates a breach of human rights has occurred in order to have the complaint accepted.

Some complaints that were received in 2020–21 have been assessed and accepted in the 2021–22 financial year (or are in the queue for assessment), and are therefore not included here.

¹⁰³ Based on the last 5 financial years of data, anti-discrimination complaints in the area of administration of state laws and programs have resolved at a rate of 38.5%, in contrast to other areas such as work (51.4%), accommodation (55.1%), education (51.9%), and good and services (55%),
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Figure 12: Human rights identified in all complaints, 2020-21



The most frequently identified human right in complaints as a whole was the right to recognition and equality before the law, identified in over half of the human rights complaints made to the Commission. As noted last year, this is because the majority of complaints to the Commission are about discrimination under the *Anti-Discrimination Act 1991* which overlaps with this protected right. The right to recognition and equality before the law will likely be engaged in all cases where a complainant is complaining about discrimination and the respondent is a public entity.

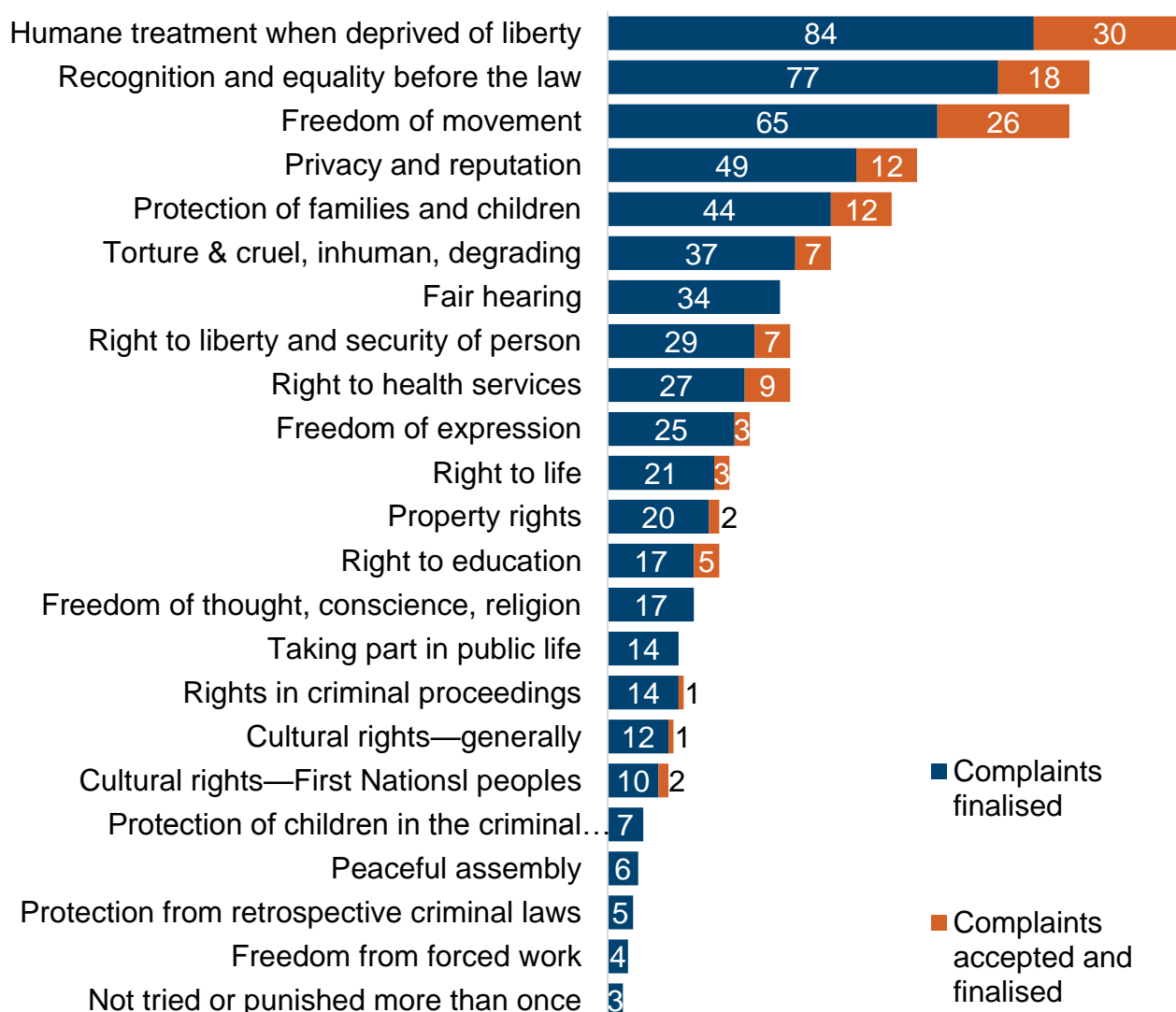
The second most common protected right in complaints finalised in the reporting period was the right to humane treatment when deprived of liberty. While these complaints may relate to prisons and other closed environments, the impact of COVID-19 has resulted in a significant number of complaints made by people in hotel quarantine.

The third most common protected right in complaints was the right to freedom of movement. Similar to humane treatment when deprived of liberty, complaints about limitation of this right are high in number because of the impact of COVID-19 and the restrictions placed on free movement of people in Queensland.

Human rights identified in human rights only complaints

The information in this section is about human rights only complaints (i.e. where it is not a piggy-back complaint).

Figure 13: Human rights identified in human rights only complaints, 2020-21¹⁰⁴



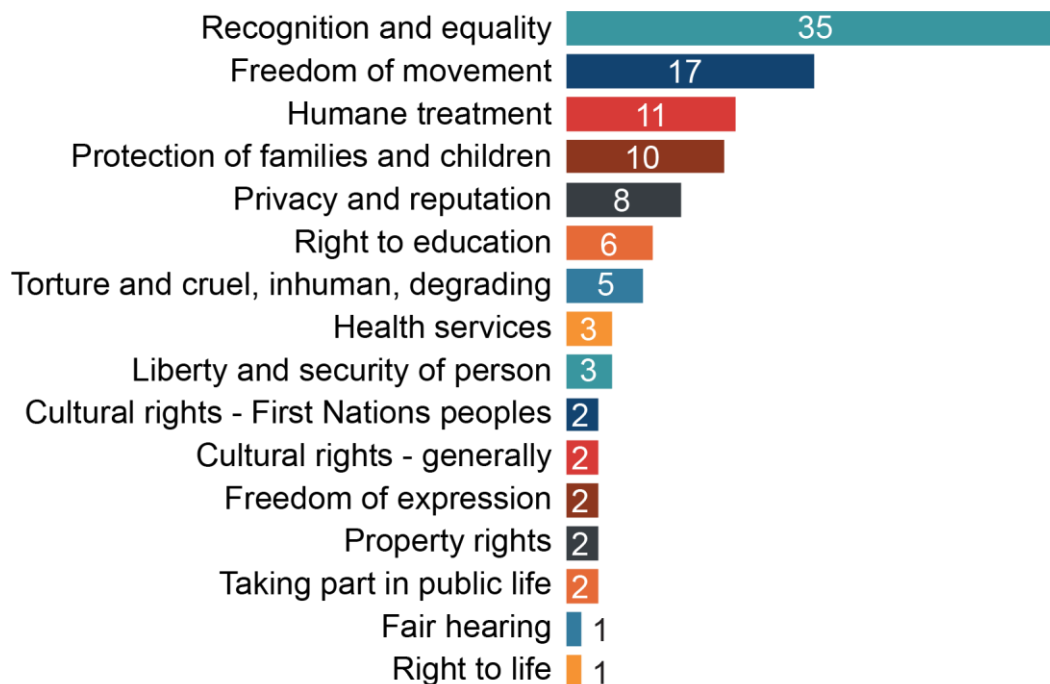
Human rights only complaints featured the same key rights as piggy-back complaints, but humane treatment when deprived of liberty predominated (in around 37% of complaints).

¹⁰⁴ Note that the names of rights sections are abbreviated. For a full list of rights see section of this report entitled *Introduction to the Human Rights Act - Protected Rights*.

Human rights identified in resolved complaints

This section looks at protected rights identified in complaints that were resolved in 2020–21. The information includes all complaints – piggy-back complaints and human rights only complaints – and again the same three rights featured most often.

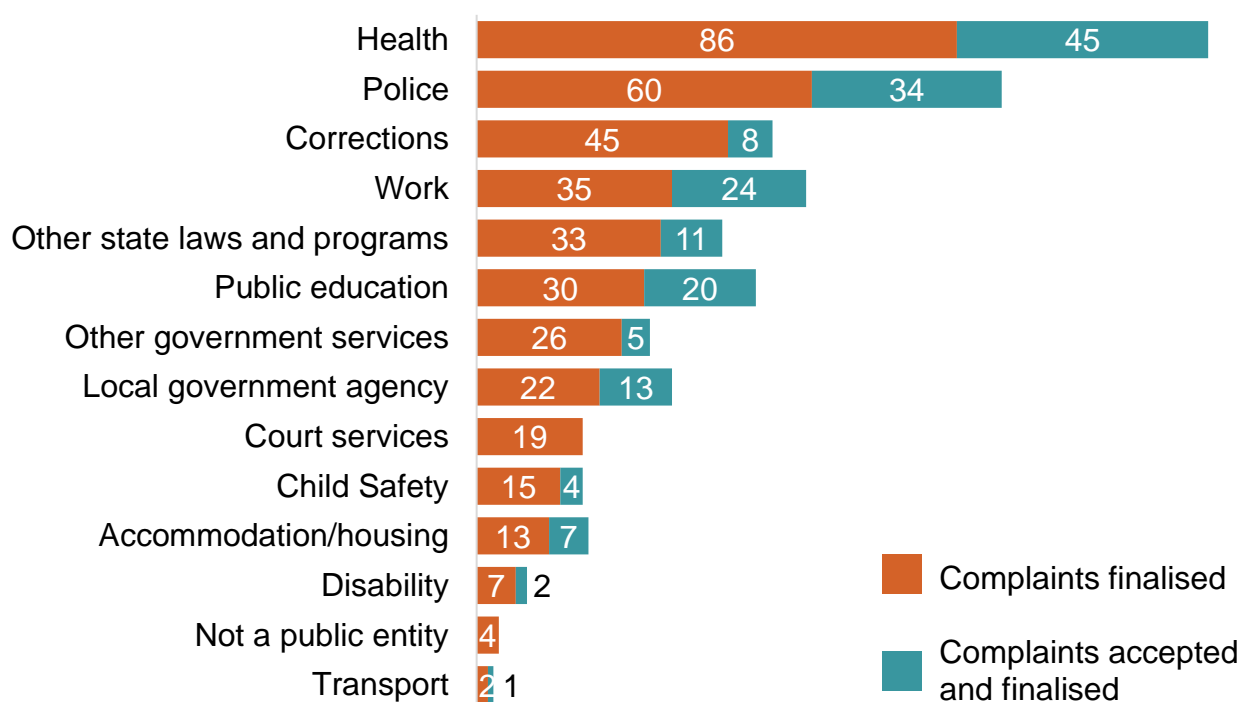
Figure 14: Human rights identified in resolved complaints, 2020-21



Finalised complaints by sector

The information in this section includes all complaints – piggy-back and human rights only complaints.

Figure 15: Finalised complaints by sector – all complaints, 2020-21



‘Not a public entity’ was recorded when the person complained about a respondent not covered by the Act. For example, a towing company that towed a car impounded by police.

‘Other government services’ are services provided by public entities that do not fit into the key categories as provided in our database. These services might include services such as public transport, legal, or community services.

‘Other state laws and programs’ means government programs that are not services provided to an individual. For example, an entity that enforces fines or regulates individuals or industries such as Queensland Racing Integrity Commission or State Penalty Enforcement Registry.

‘Corrections’ includes both prisons and youth detention, but the vast majority of complaints were about prisons. 4 complaints were finalised about youth detention (1 of which was accepted and finalised), and 41 complaints were finalised about prisons (of which 7 were accepted and finalised). While a relatively high number of complaints were made against prisons, few were accepted and finalised in the reporting period. This may be partly because of further legislative requirements on prisoners making anti-discrimination complaints under the *Corrective Services Act 2006*.¹⁰⁵

Complaints about health bodies predominated, strongly influenced by the COVID-19 pandemic, and it remains to be seen whether the trend will continue in future years. The Commission identified 68 finalised health matters about COVID-19 (80% of the total finalised health complaints).¹⁰⁶ Of the complaints about health, most were about health services generally, with 12 being about mental health services.

Similarly, as police have been required to enforce Public Health Directions and hotel quarantine, the number of complaints about police was high because of the COVID-19 situation. The Commission identified 28 of the 58 finalised police complaints that were related to COVID-19 (48% of the total finalised police complaints).

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

Education complaints comprised allegations of human rights breaches by primary, secondary and tertiary institutions.

Table 11: Human rights complaints to the Commission about the education sector 2020-21

Type	Finalised	Accepted & finalised
Primary	6	5
Secondary	14	10
Tertiary	10	5

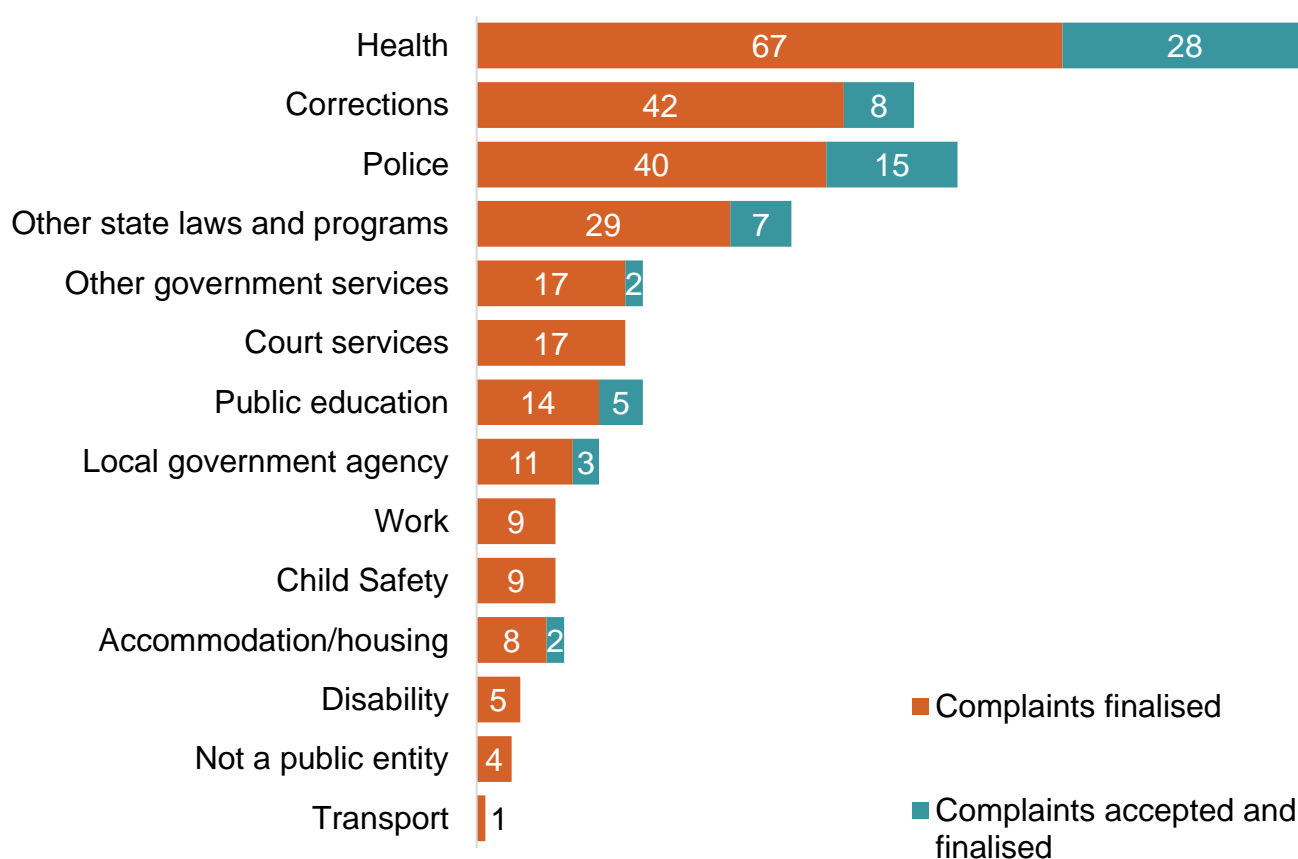
¹⁰⁵ *Corrective Services Act 2006* pt 12A div 2 ‘Restrictions on Complaints’, in particular ss 319E–319F.

¹⁰⁶ This is reasonably consistent with the Department of Health’s annual report, which reported 206 human rights complaints, 88% of which related to the department’s response to the COVID-19 pandemic restrictions and exemptions under the. See Department of Health (Qld), *Annual Report 2020-2021*, 107.

Finalised complaints by sector for human rights only complaints

The information in this section reports on human rights only complaints finalised in 2020-21.

Figure 16: Finalised complaints by sector – human rights only complaints, 2020-21



Similar trends can be observed in relation to the complaints made about human rights only, with the same three public entity types – health, corrections, and police being the most complained about in the reporting period.

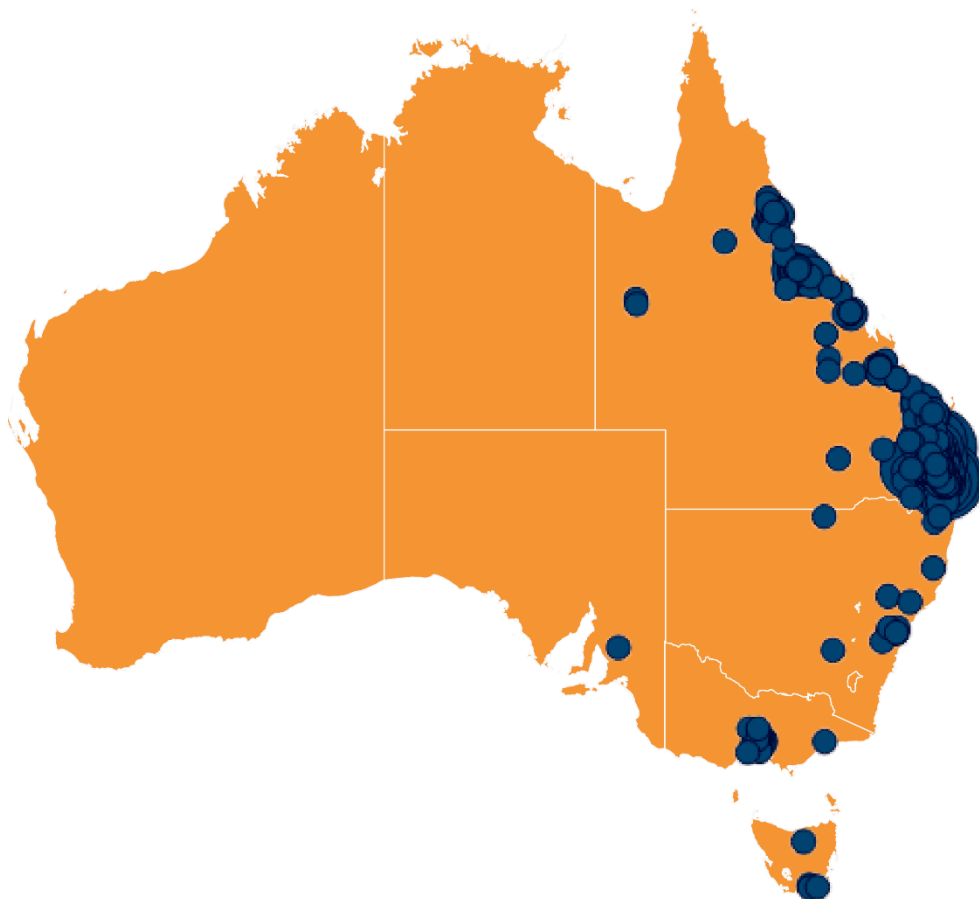
Demographic information for finalised complaints

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 has not been collected for every complaint, but some trends are emerging with the data that has been provided by complainants. The demographic information in this section is about complainants who made piggy-back complaints, as well complainants who made human rights only complaints.

Complaints finalised in the 2020-21 period were lodged mainly from within Queensland. Compared with last year, more complaints were lodged from interstate and particularly from Melbourne and Sydney, reflecting COVID-19 related complaints about border entry restrictions.

Most of the complainants living in Queensland were from the southeast region, but a reasonable number came from coastal regional areas of Queensland. Few complaints were received from people living in remote areas.

Figure 17: Finalised complaints by complainant location, 2020-21



Of the finalised complaints, 54.5% complainants identified as male, and 45.5% identified as female. The gender split for complaints under the *Anti-Discrimination Act 1991* is roughly equal. There were more men than women who lodged complaints last year, but the difference was more marked (66.66% male).

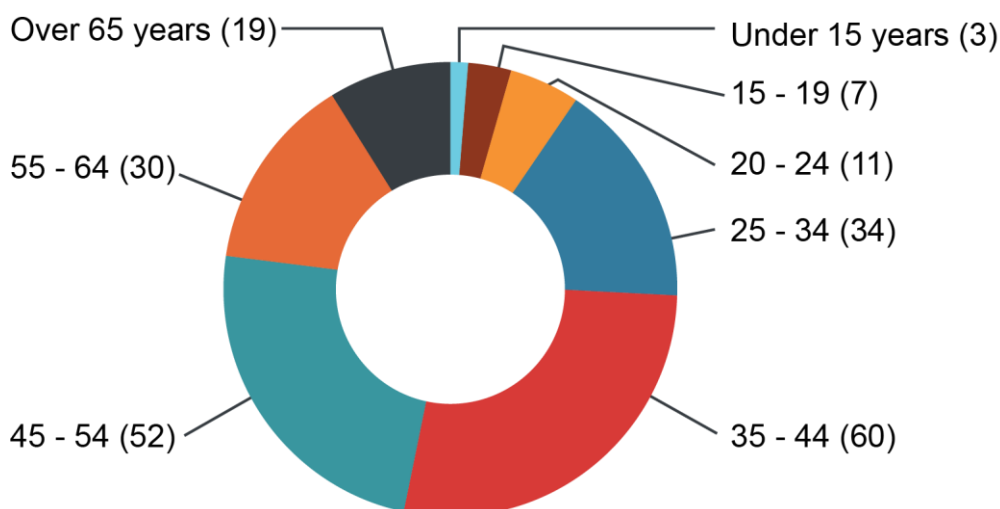
Around 74% of complainants were born in Australia, and 26% were born overseas.

Aboriginal or Torres Strait Islander people made up 10.5% of complainants, which is significant given that approximately 4% of the Queensland population is of Aboriginal or Torres Strait Islander descent.¹⁰⁷ In the same reporting period only around 7% of complainants under the *Anti-Discrimination Act 1991* were Aboriginal or Torres Strait Islander.

6.5% of complainants had a primary language other than English.

Most complainants were in the brackets of 35 to 44 years (27.7%), and 45 to 54 years (24.1%). This was similar to the results last year, but unlike the previous year, 10 people aged 19 and under made complaints (or complaints were made on their behalf).

Figure 18: Finalised complaints by complainant age, 2020-21



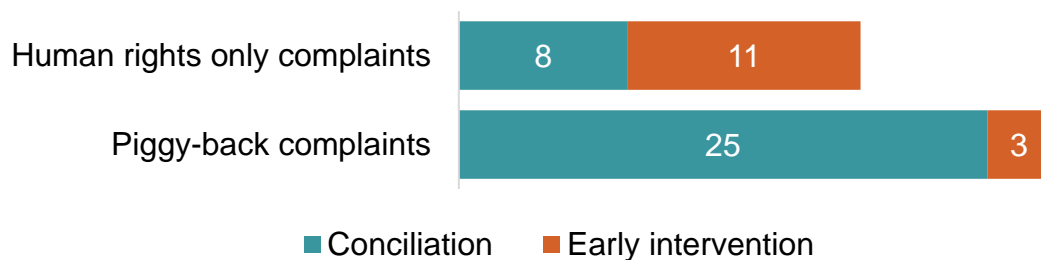
¹⁰⁷ Queensland Treasury, 'Population estimates and projections', *Aboriginal peoples and Torres Strait Islander peoples* (Web Page, 23 January 2019).

Dispute resolution process: conciliation and early intervention

Compared to the *Anti-Discrimination Act 1991*, the *Human Rights Act 2019* provides a more flexible approach to complaint handling. For urgent situations in human rights only complaints, early interventions replaced conciliation conferences.

Where a complaint was a piggy-back complaint, it was almost exclusively resolved through a conciliation conference, whereas for human rights only complaints it was more likely to be resolved by early intervention. As demonstrated by the resolved case studies (from page 155), early intervention quickly resolved a number of matters that may not have been resolved if the parties needed to wait for a conciliation in a number of weeks' time. This indicates that flexible and responsive early intervention model is continuing to be a successful one for resolving human rights matters.

Figure 19: Finalised complaints by dispute resolution mode, 2020-21



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 raised against private corporations undertaking public functions, in light of some concerns raised that the definition of public entity under section 9 may create uncertainty regarding which entities may be captured.¹⁰⁸

Of the accepted and finalised human rights complaints, the Commission identified three in which a corporation was named as a respondent.

They were:

- a complaint by a prisoner against a privately-run prison;
- a complaint about conditions of hotel quarantine against a hotel contracted by Queensland Health; and
- a complaint against an Aboriginal corporation regarding an application for an Aboriginality certificate required to access state government funded services.

Complaints to other agencies

The Commission is not the only complaints body that has received complaints about human rights in 2020–21.

The Office of the Queensland Ombudsman received 2,159 cases which were assessed as involving a human rights element. Common complaint topics included:

- property rights
- protection of families and children
- humane treatment when deprived of liberty
- privacy and reputation.¹⁰⁹

¹⁰⁸ Legal Affairs and Community Safety Committee, Queensland Parliament, *Human Rights Bill 2018* (Report No. 26, February 2019) 13.

¹⁰⁹ Queensland Ombudsman, *Annual Report 2020–21*, 7.

<https://documents.Parliament.qld.gov.au/tableoffice/tabledpapers/2021/5721T1461.pdf> - p7

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 which includes the substance of the complaint and the actions taken to try to resolve the complaint.¹¹⁰

The Commission has the discretion to include details of actions that the respondents should take to ensure its acts and decisions are compatible with human rights.¹¹¹ Two reports with recommendations were published in the reporting period:

Prisoner isolation

Complaint lodged against	Queensland Department of Corrective Services
Human Rights Act sections	30 (Humane treatment when deprived of liberty)
Date report published	2 February 2021

Summary: The complainant told us she is a vulnerable Aboriginal woman aged in her twenties experiencing a range of mental health conditions. In response to the COVID-19 pandemic, she was placed in isolation for more than 14 days upon her admission to prison. She alleged that during her time in isolation she was deprived of medical treatment, education, exercise, fresh air, and reticulated water. Her alleged treatment included a lack of sufficient medical treatment for her mental health. She also alleged that the respondents failed to facilitate any communication with her mother, and failed to make adequate arrangements for telephone calls with her lawyers.

The Commissioner did not make findings of fact regarding her treatment, but recommended that Queensland Corrective Services:

- amend relevant policies to clearly state that prisoners isolated in response to the COVID-19 pandemic should not be isolated for more than 14 days, other than where Queensland Health provide clear medical advice that their isolation must continue due to a risk of infection

¹¹⁰ *Human Rights Act 2019* s 88(1)-(3)

¹¹¹ *Human Rights Act 2019* s 88(4)

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- ensure prisoners, while in isolation, receive certain minimum entitlements without the caveat of ‘to the greatest extent possible’, including access to confidential medical assessment and mental health services, adequate facilities to communicate with a lawyer and their family. Prisoners should also be given access to complaints procedures and cultural support, and
 - provide prisoners with daily access to fresh air and exercise while in isolation, other than in exceptional circumstances.

Hotel quarantine

Complaint lodged against	Queensland Police Service; Queensland Department of Health
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Human Rights Act sections	30 (Humane treatment when deprived of liberty)
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Date report published	15 October 2020
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Summary: The complainant did not get access to fresh outside air during her 14-day stay in mandatory, self-funded hotel quarantine. The windows of her hotel room did not open, and she was not given a fresh air break from her room. The complainant and the respondents disagreed about the reasons for the lack of room breaks. The complaint was not resolved.

In the unresolved complaint report, the Commissioner considered that the complainant’s right to humane treatment when deprived of liberty had been limited and that the Department of Health and/or Queensland Police Service had to demonstrably justify the limitation of the complainant’s rights. To ensure that the acts and decisions of the Queensland Government would in future be compatible with human rights, the Commissioner recommended that:

- opening windows or balconies be included as a minimum standard for the selection of quarantine hotels, and plans be put in place to decommission currently used hotels that do not meet these minimum standards¹¹² and

¹¹² Standard adopted by the South Australian Department for Health and Wellbeing in a complaint case study reported in the Ombudsman SA *Annual Report 2020-21* (2021) 30, 31.

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- information provided to people in quarantine includes improved communication about decision-making responsibility, rights of review and appeal, and setting realistic expectations about the conditions of quarantine.
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Resolved complaint case studies

The following case studies are a selection of resolved outcomes of complaints finalised in the financial year 2020–21.

School and parents work together to support a child with a disability

A mother lodged a complaint on behalf of her 7-year-old son who attends a state school and has a disability which manifests as anxiety, sensory and behavioural problems. The school became concerned about his escalating behaviour and that some of his behaviours could increase the risk of transmission during the COVID-19 pandemic, and issued a notice of suspension as a result. The child's mother communicated that her son felt confused, upset, anxious, and unwanted. Many of the details were in dispute, and communication between the family and the school had broken down.

Following a conciliation conference, the mother agreed to share information from the child's treating occupational therapist, and the school agreed to take this report into consideration in the development of an Individual Behaviour Support Plan. To improve future communication, the mother and the school agreed to use a communication book and meet at the beginning of each term to discuss the plan.

Relevant rights: Right to education (s36)

Complaint type: Piggy-back complaint

Attribute: Impairment

Dispute resolution mode: Conciliation conference

Quarantine exemption for woman picking up assistance dog

A woman planned to visit Queensland from interstate to pick up her assistance dog, with her mother and her carer, during a period of COVID-19 border restrictions. She was granted an exemption to come into Queensland where she agreed to isolate for 14 days and then spend a week receiving placement of the dog. However, when they tried to arrange for accessible quarantine accommodation, they were told the woman's needs could not be met and her exemption approval was withdrawn. The assistance dog had been trained specifically for the daughter's needs at substantial cost and they were concerned that she would lose the dog allocated to her if she was unable to visit Queensland.

The complainant chose to have this matter dealt with under the *Human Rights Act*.¹¹³

Through early intervention the parties negotiated for the exemption to enter Queensland to be re-approved, with Queensland Health organising suitable accommodation for the complainant, her mother, and her carer to complete 14-day hotel quarantine.

Relevant rights:	Recognition and equality before the law (section 15), freedom of movement (section 19)
Complaint type:	Piggy-back complaint
Attribute:	Impairment
Dispute resolution mode:	Early intervention

¹¹³ If the complaint is arguably a case of discrimination as well as a human rights breach, a person may elect to have their complaint dealt with under the *Anti-Discrimination Act 1991* or the *Human Rights Act 2019*. The HR Act can at times be a more expedient way to deal with urgent complaints, particularly where early intervention is appropriate.

Woman's mental health deteriorates in hotel quarantine

A woman in hotel quarantine after travelling interstate complained that she was given only five fresh air breaks in 14 days. She felt that the communication was poor – the police would say that fresh air breaks were Queensland Health's responsibility, and the hotel reception said it was the Queensland Police Service's role. During her stay her mental health deteriorated. Her GP provided a report to support her request to isolate at home. The woman rang the Acute Mental Health Team but felt that her concerns were dismissed.

In conciliation, the respondents acknowledged how challenging it was for the woman in quarantine while explaining the public health importance of the quarantine system in containing COVID-19. They agreed to help her apply for a quarantine fee waiver on the basis of her personal circumstances.

Relevant rights:	Recognition and equality before the law (section 15), freedom of movement (section 19)
Complaint type:	Piggy-back complaint.
Attribute:	Impairment
Dispute resolution mode:	Conciliation conference

Transport service reviews disability policies and commits to training

A woman who had mobility issues made a complaint about the limited number of accessible parks at a bus terminal, and being issued with a number of fines for parking in other places. She said that on two occasions the bus driver refused to engage the ramp, requiring her to struggle up and down the bus stairs.

The complaint was resolved on the basis that the transport service agreed to conduct an internal review of its policies and procedures about the use of ramps, and to provide a copy to all bus drivers employed by it. Employees were also required to attend training on the Anti-Discrimination Act and the Human Rights Act, and an internal training module on human rights and improving services to people with disability was introduced.

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

Family experiences challenges in hotel quarantine

A mother and her two children, aged 4 years and 18 months, were in hotel quarantine. The room did not include a balcony or opening windows, and she reported not being allowed to have wellness walks because the baby would not keep a mask on. She was also concerned that the food was not nutritional for children and arrived at an inappropriate time such as 8:00pm.

At the conciliation conference, the respondents acknowledged how difficult the situation had been for the family, and explained the significant issues involved in sourcing appropriate hotels to provide quarantine services to cope with the demand of returned travellers. The woman was satisfied with the discussions at the conciliation conference and felt that the issues had been satisfactorily addressed and resolved. As a gesture of goodwill, the hotel provided hotel vouchers to the family.

Relevant rights: Recognition and equality before the law (section 15), freedom of movement (section 19), humane treatment when deprived of liberty (section 30)

Complaint type: Piggy-back complaint
Attribute: Age, family responsibilities
Dispute resolution mode: Conciliation conference

Unaccompanied children allowed to quarantine at home

Two children aged 15 and 11 were placed alone in hotel quarantine and were unable to leave their room. Their father lived interstate and the mother lived in Queensland. They had been placed in hotel quarantine after flying home to Queensland from an interstate visit with their father.

The Commission dealt with the complaint urgently under the Human Rights Act. Queensland Health was informed about the complaint the same day it was lodged, and they immediately arranged for the children to be returned to their mother's home that day where they were allowed to quarantine for 14 days.

Relevant rights:	Recognition and equality before the law (section 15), freedom of movement (section 19), humane treatment when deprived of liberty (section 30), right to liberty and security of the person (section 29)
Complaint type:	Human rights only
Dispute resolution mode:	Early intervention

Appropriate accommodation found for family's quarantine stay

A family was moving back to Queensland after living overseas, and requested to quarantine at home because their 8-year-old daughter has ASD, ADHD, anxiety, and obsessive behaviours. Because of her disability she is prone to meltdowns and has food aversions. The request for exemption from hotel quarantine was rejected.

The complaint was resolved on the basis that the family was allocated more appropriate hotel quarantine accommodation of a 2-bedroom apartment with a kitchen and balcony.

Relevant rights:	Recognition and equality before the law (section 15), freedom of movement (section 19)
Complaint type:	Piggy-back complaint
Attribute:	Impairment
Dispute resolution mode:	Early intervention

Alternative to mask-wearing provided for pregnant woman

A hospital required patients to use face masks to prevent the spread of COVID-19, in accordance with official health directions at the time. A pregnant woman asked for an exemption for wearing a mask as due to a trauma background, the experience of having her mouth covered caused claustrophobia and panic attacks.

When the woman enquired with the hospital about an upcoming appointment she was told she would not be allowed in without a mask. She was concerned about missing her in-person appointment, particularly because it was a high-risk pregnancy due to her having a number of medical conditions.

The conciliator from the Commission assisted a resolution with the hospital through early intervention. The conciliator checked with the woman whether the use of a PPE face screen might work as an alternative to the mask. The woman advised that this kind of face covering would not affect her mental health in the way a mask does. The hospital then followed up directly with the woman, advising her that her system would now include a note that she is exempt from wearing a mask and that they would provide her with a face shield instead. The woman expressed her gratitude for the matter being resolved swiftly and to her satisfaction and she was able to attend her medical appointment as planned.

Relevant rights: Protection of families and children (section 26), privacy and reputation (section 25), right to health services (section 37)

Complaint type: Human rights

Dispute resolution mode: Early intervention

Approved absence from social housing allowed mother to pursue training opportunity

A social housing provider had a general rule that absences from the home of more than 5 months were not permitted. A mother of four children needed to leave her home for several months at a time to commence defence force training. She sought to better her employment opportunities, with her husband being the primary carer of the children. One of her four children has an intellectual disability and a hearing impairment. She was told by the housing provider that if she commenced the training as planned, she would be in breach of the 5-month rule and the family would need to leave their home.

Through conciliation it was agreed that the woman would be permitted to be absent from the property to complete the training, on the condition that she provide evidence of the requirement to attend, return to the property shortly after each absence, notify the housing provider once the training was completed, and continue to pay rent and maintain responsibility for the property during her absence.

Relevant rights: Recognition and equality before the law (section 15), freedom of movement (section 18), property rights (section 24), protection of families and children (section 26)

Complaint type: Piggy-back complaint

Attribute: Family responsibilities

Dispute resolution mode: Conciliation conference

Police express regret about asking traditional custodians to move on while exercising their cultural rights

Community leader Adrian Burragubba and his family were camping, practicing their culture, and performing traditional ceremonies on a pastoral lease area. Police officers approached the group and asked them to leave, stating that the mining company Adani had claimed they were ‘trespassing’. The site was the subject of an Indigenous Land Use Agreement but the family opposed the agreement and the mine, saying that Aboriginal people had been exercising their culture by fishing and hunting and performing ceremonies for 40,000 years.

Cultural rights of Aboriginal peoples and Torres Strait Islander peoples are specifically protected by the Human Rights Act, including the right to maintain their distinctive spiritual, material, and economic relationship with the land and waters with which they hold a connection.

The family told the police that they had received expert advice that they could lawfully exercise their cultural rights and responsibilities. However, the police required the group to pack up their equipment and leave within an hour. The family says that this caused grief and trauma.

The Queensland Police Service (QPS) agreed to provide a statement of regret which was able to be shared publicly. The statement acknowledged that the events caused embarrassment, hurt, and humiliation for the complainant and his extended family, that there are complex legal issues and cultural sensitivities, and that the QPS will commit to take into account the issues in the complaint in future responses.

Relevant rights:	Recognition and equality before the law (section 15), freedom of movement (section 18), cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28)
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Complaint type:	Piggy-back complaint
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Attribute:	Race
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Dispute resolution mode: Conciliation conference

Health service acknowledges embarrassment experienced by patient with a disability

A man had an acquired brain injury, an inoperable brain aneurysm, and used a wheelchair. After a long recovery and more than 3 years of treatment in hospital and in rehabilitation facilities, he had become independent and started living at home, with a partner. One night the man accidentally fell out of his wheelchair, knocking his face on a tiled floor and becoming trapped under the 164kg chair. While in the ambulance he requested a bottle so that he could urinate. Due to his dexterity challenges and the bumps on the road, he was splashed by some of the urine.

On arrival at the hospital, without asking, the nurses in attendance assumed he was incontinent and fitted him with disposable incontinence underwear. He says that he was not asked for his medical history and this made him concerned for his safety as he had a risk of haemorrhaging again if he hit his head in the wrong place. He requested that the doctor access his 'my health record' but says he was told that it's 'too late at night to access that'.

During a shift change the man overheard nurses on shift discussing his condition, asking whether alcohol was involved, and commenting that he was incontinent. He felt he was treated as if he had been drunk and that was the reason for the fall. The man felt judged and humiliated by the experience.

The man attended a conciliation conference with representatives of the health service. The complaint parties discussed the complaint and the impact of the experience on the patient. The health service discussed improvement of services in the future, and the complaint was resolved on the basis the man felt he had received a satisfactory explanation.

Relevant rights:	Recognition and equality before the law (section 15), right to health services (section 37)
Complaint type:	Piggy-back complaint
Attribute:	Impairment
Dispute resolution mode:	Conciliation conference

Suitable social housing secured for older woman with mobility issues

A 73-year-old woman with lung cancer had been approved for social housing, but had only been offered properties that she considered to be unsuitable for her mobility needs. She also needed a yard area for her dog. At the time she was facing homelessness, as her private rental was up for sale and she had been unsuccessful in applying for around 30 properties in the private market. The social housing provider expressed empathy for her circumstances but explained that demand for housing exceeded the supply, and that allocations had to be made depending on the number of available properties and the needs of those in queue for social housing.

Through the conciliation process, the social housing provider offered the woman a suitable one-bedroom apartment with an enclosed courtyard which was accepted.

Relevant rights:	Recognition and equality before the law (section 15), right to privacy and reputation (section 25)
Complaint type:	Piggy-back complaint
Attribute:	Impairment
Dispute resolution mode:	Conciliation conference

Employer takes steps to prevent breaches of privacy and reputation in future

A state government employer suspended an employee who was receiving financial support for her university course and who was alleged to have received the assistance of a colleague for the coursework during work hours. Without first speaking with her about the allegations, the employer emailed the employee's university to advise them of potential academic misconduct.

The employee complained that this disclosure came before the external investigation had started, that she had not had the opportunity to learn details of the allegation or to respond, and that her employer had been under no obligation to raise the allegation or investigation with the university.

In making a human rights complaint about the issue, she argued that her employer failed to properly consider her human rights – in particular the right to privacy and reputation set out in section 25 of the *Human Rights Act*. The employee said that her employer's actions had negatively impacted on her professional and academic reputation.

To resolve the complaint the employer agreed to contact the university and explain there was no evidence of wrongdoing, apologise in writing to the employee, and to review their policies and procedures relating to the issues raised in the complaint.

Relevant rights: Privacy and reputation (section 25)

Complaint type: Human rights only

Dispute resolution mode: Conciliation conference