

Inquiry into Australia's Human Rights Framework

## Submission to Australian Parliamentary Joint Committee on Human Rights

## 3 July 2023

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# Introduction

1. The Queensland Human Rights Commission (**QHRC**) is a statutory body established under the Queensland *Anti-Discrimination Act 1991* (**AD Act**)*.* The QHRC has no formal relationship with the Australian Human Rights Commission (**AHRC**), but state, territory, and federal human rights and discrimination agencies meet regularly under the framework of the Australian Council of Human Rights Authorities (**ACHRA**), of which the QHRC is a member.
2. The QHRC has functions under the AD Act and the *Human Rights Act 2019* (Qld) (**HR Act**)to promote an understanding and public discussion of human rights in Queensland, and to provide information and education about human rights.
3. From 1 July 2019, the Anti-Discrimination Commission Queensland (**ADCQ**) became the Queensland Human Rights Commission, taking on new functions and responsibilities under the HR Act. This transformation included a rebrand, a new website, community education, and training. Dealing with human rights complaints under the HR Act commenced on 1 January 2020 when all provisions became operational.
4. The QHRC continues to deal with complaints of discrimination, vilification, and other objectionable conduct under the AD Act*,* reprisal under the *Public Interest Disclosure Act 2009*, and human rights complaints under the HR Act*.*
5. The AD Act prohibits vilification on the grounds of race, religion, sexuality, and gender identity. Currently it provides a criminal offence for serious vilification.
6. The terms of reference for this inquiry include:

* to review the scope and effectiveness of Australia's 2010 [Human Rights Framework](https://www.aph.gov.au/-/media/Committees/Senate/committee/humanrights_ctte/Aus_Human_Rights_Framework/Aust_HR_Framework_2010.pdf?la=en&hash=E28A006D823EE0BCDDCED2C0B851C4E56B4EEE04) and the [National Human Rights Action Plan](https://www.aph.gov.au/-/media/Committees/Senate/committee/humanrights_ctte/Aus_Human_Rights_Framework/Nat_HR_Action_Plan_2012.pdf?la=en&hash=A548EBFAC08B582773D0AE3015B5CA8F6355F68C)
* to consider whether the Framework should be re-established, as well as the components of the Framework, and any improvements that should be made
* to consider developments since 2010 in Australian human rights laws (both at the Commonwealth and State and Territory levels) and relevant case law
* to consider any other relevant matters.

1. The Parliamentary Joint Committee on Human Rights (**PJCHR**) seeks submissions in relation to these matters, and in particular:

* whether the Australian Parliament should enact a federal Human Rights Act, and if so, what elements it should include (including by reference to the Australian Human Rights Commission's recent [Position Paper](https://humanrights.gov.au/human-rights-act-for-australia))
* whether existing mechanisms to protect human rights in the federal context are adequate and if improvements should be made, including:
  + to the remit of the Parliamentary Joint Committee on Human Rights
  + the role of the Australian Human Rights Commission
  + the process of how federal institutions engage with human rights, including requirements for statements of compatibility
* the effectiveness of existing human rights Acts/Charters in protecting human rights in the Australian Capital Territory, Victoria and Queensland, including relevant caselaw, and relevant work done in other states and territories.

1. This submission touches on a number of these matters, but focuses on the effectiveness of the Queensland HR Act, drawing extensively on the QHRC’s annual reports prepared under s 91 of the Queensland HR Act to support our position.

# Summary

1. The QHRC supports AHRC’s recommendations to this inquiry, in particular its model of a national human rights act set out in its Position Paper: ‘A Human Rights Act for Australia’ (**Position Paper**).
2. Australia is unique in implementing international human rights into provincial (state and territory) law without overarching national human rights legislation. While this benefits people in those jurisdictions, it has created inequitable human rights protections across the country and undermined the development of clear, national case law and standards.
3. Based on the experience of implementing the HR Act in Queensland, the QHRC recommends that:
   1. Australia should enact a federal Human Rights Act based on the Australian Human Rights Commission’s Position Paper.
   2. This legislation should be developed through a draft exposure Bill process as recommended by the Australian Human Rights Commission.
   3. The Australian Government should commit to the development of a national human rights indicator index and annual statement to parliament as proposed by the Australian Human Rights Commission.
   4. The Australian Human Rights Commission should be appropriately and sustainably resourced to implement its work in relation to these changes, particularly to ensure these reforms are supported by a national human rights education program.
   5. Measures should be adopted to ensure the non-government sector is supported to engage in dialogue with the Australian Government on human rights.
   6. A permanent central unit within the federal Attorney-General’s Department should be responsible for actively guiding the process to maximise consistency across government.
   7. Senior staff in all agencies should be required to drive a culture of human rights, which may include formal performance indicators.
   8. Forums, such as inter-departmental committees attended by senior staff, should be established to share experiences and best practice across government.
   9. The federal Attorney-General’s Department should maintain and publish a list of entities that have opted-in to being public entities under a national human rights act.
   10. The Australian Government should provide additional funding to legal assistance providers to ensure new human rights complaints processes and remedies are accessible.
4. While the Queensland HR Act is in its early stages of implementation, the QHRC has observed a growing culture of human rights awareness in the government sector and wider community. Even so, the QHRC has identified amendments to the HR Act that would assist with meeting the Act’s objectives. Many of the changes identified are included in AHRC’s proposed human rights act, namely:

* inclusion of potential for financial compensation as a remedy in court actions, which would assist early, informal resolution of complaints addition of a direct right of action to address complexity in the requirement to ‘piggy-back’ alleged contraventions of the HR Act onto another legal action
* inclusion of further rights, such as rights to a healthy environment, adequate standard of living, work, and social security
* addition of a new specific participation duty.

1. In addition to the model set out in the AHRC Position Paper, the QHRC suggests the following matters should be considered in drafting an exposure draft for a national human rights act:

* inclusion of specific rights for victims of crime
* consideration of how best to manage legal costs in litigation to avoid a chilling effect on litigation
* retaining parliamentary supremacy by allowing parliament to pass legislation that is incompatible with human rights, but removing a provision for parliament to override the human rights act
* inclusion of victimisation protection for people who seek to assert their rights.

# Part 1: The Qld HR Act

1. As set out in the AHRC Position Paper, human rights acts have been passed in Victoria, the Australian Capital Territory, and most recently in Queensland.
2. The result of a sustained, grassroots campaign over five years,[[1]](#footnote-2) the Queensland Act was primarily modelled on the Victorian *Charter of Human Rights and Responsibilities Act 2006* (**Victorian Charter**) and to a lesser degree the Australian Capital Territory’s (ACT) *Human Rights Act 2004* (**ACT Act**).
3. The Position Paper notes that AHRC’s proposal for a federal Human Rights Act is based on the dialogue model adopted by state and territory Acts. These Acts bind the relevant state and territory public authorities, including government departments, statutory authorities, public servants, and functional public entities.
4. Dialogue models are based on each branch of government having a distinct role to play in line with the ordinary institutional functions each performs:

* The Executive considers human rights when it formulates policies and makes decisions in accordance with human rights legislation.
* Parliament considers human rights when it makes laws.
* The Judiciary considers human rights when it interprets laws.

Figure 1: Diagram of the dialogue model

This image is a simple diagram of the dialogue model of human rights. It shows the parliament, courts and tribunals, and public entities, at equidistant points around a circle. Each has a brief description of their role: 
- Parliament makes and changes laws; 
- Courts and tribunals interpret and enforce the law; and 
- Public entities put laws into action. 

In the middle of the circle is a smaller gold circle with 'Queensland community' inside it.   
Figure 1: Summary of dialogue model

1. The key factor of the dialogue model is that it maintains the supremacy of Parliament. The intention is that through dialogue a shared culture of human rights will spread through all branches of government. Specifically, the Queensland HR Act provides that:[[2]](#footnote-3)
   1. All Bills introduced into Parliament are to be accompanied by a statement of compatibility (s 38). Statements of compatibility must state whether, in the opinion of the member who introduces the Bill, the Bill is compatible with human rights and the nature and extent of any incompatibility.
   2. A parliamentary portfolio committee is responsible for examining a Bill and reporting to the Legislative Assembly about any incompatibility with human rights (s 39).
   3. A Minister responsible for subordinate legislation must prepare a human rights certificate to accompany the legislation when it is tabled in the Legislative Assembly (s 41). A human rights certificate states whether, in the Minster’s opinion, the subordinate legislation is compatible with human rights (s 41(2)).
   4. Parliament may pass laws even if they are assessed as incompatible with human rights.
   5. In exceptional circumstances, Parliament may make an override declaration in relation to an Act or a provision in an Act (s 43). If an override declaration is made, the HR Act does not apply to the Act or provision to the extent of the declaration while the declaration is in force (Explanatory Notes, clause 45). This has happened once, as discussed further below.
   6. The Supreme Court, if it is of the opinion that a statutory provision cannot be interpreted in a way compatible with human rights, may make a declaration of incompatibility (s 53).
   7. The court does not have the power to invalidate legislation by making a declaration of incompatibility (s 54).
   8. A parliamentary portfolio committee considers and reports on the declaration of incompatibility (s 57) and the relevant Minister must table a written response to the declaration within 6 months of receipt (s 56).
2. AHRC’s Position Paper sets out the advantages of this model, which is supported by the practical experience of this legislation in Queensland.
3. The advantage of the dialogue model is that it enshrines human rights accountability requirements, whereas the ‘framework’ reach is limited with the associated risks that the Australian Government’s awareness and commitment to human rights obligations will reduce over time.
4. For example, the Australian Public Service has no formal obligation to consider human rights in their actions and decisions, whether through legislation or in documents such as the APS Code of Conduct.[[3]](#footnote-4) Similarly, there is no uniform system of accountability for assessing human rights compliance.[[4]](#footnote-5)
5. Nonetheless, the role of the PJCHR must be acknowledged in developing a human rights culture within the Commonwealth public service and parliamentary process. However, the current framework is deficient because it does not impose enforceable obligations on Commonwealth entities.[[5]](#footnote-6)
6. The QHRC has developed a framework for assessing the development of a culture of human rights in the public sector and the parliament annually, which is discussed below.

## Protected rights

1. The following human rights are protected under the HR 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).

## Compatibility

1. The Act requires parliament, the courts, and the executive to act, make decisions, and assess compatibility with human rights.
2. An act or decision is compatible with human rights if it does not limit a right, or only limits rights to the extent that is reasonable and demonstrably justifiable in a free and democratic society based on human dignity, equality and freedom.[[6]](#footnote-7)

## Human rights in the Queensland context

1. Queensland’s geographic and demographic differences from other human rights jurisdictions may influence how human rights protection is applied. Queensland is nearly eight times the size of Victoria, with a smaller population spread across urban, rural, and remote communities. The state has a larger percentage than the other jurisdictions of residents who identify as being Aboriginal and/or Torres Strait Islander.[[7]](#footnote-8)
2. The unicameral legislature of Queensland may also affect how parliamentary scrutiny of human rights compatibility is approached.

### Views of Queenslanders

1. Two recent studies provide an indication of human rights literacy in Queensland. The first was conducted in early 2021 by Amnesty International with a sample of 1,600 people of various ages, genders, and locations across Australia.[[8]](#footnote-9) Some of the general findings included:

* The rights of most importance to people surveyed included the right to vote (86%), freedom from discrimination (84%), right to free speech (83%), and right to equal treatment before the law (83%).
* Of those surveyed, 36% thought that Indigenous Australians had fewer opportunities than non-Indigenous Australians.
* People surveyed believed that the following groups (in order of priority) were most in need of protection of their rights: Indigenous people, refugees, ethnic minorities, immigrants, and women.
* Of those surveyed, 76% wanted national human rights legislation.

1. A Queensland study by Griffith University researchers found overwhelming support for human rights and the HR Act. The study,[[9]](#footnote-10) conducted in July 2021, surveyed a randomised sample of 1,000 people living in Queensland. Some key findings included that:

* The priority areas for Queenslanders were child protection, health, aged care, and disability rights.
* Overall, the attitudes towards human rights were similar in Brisbane and regional Queensland.
* Aboriginal and Torres Strait Islander people responded that human rights were less respected in regions.
* Women were less sure that human rights were being respected than men, especially in health care.
* The age group that was the least supportive of human rights were people over 65.
* Scepticism about effectiveness of human rights protections was higher amongst people on lower incomes.

1. The Amnesty study revealed that more than half of their respondents believed that Australia already had a federal Human Rights Act. While 91% of respondents to the Griffith University study thought that protection of human rights and dignity is important, only 43% knew about the Queensland HR Act. The QHRC understands further surveys are being undertaken.
2. While general support for human rights and a legislated human rights act has been demonstrated, the QHRC does not suggest that Queensland is free from significant human rights issues.
3. These include: the prolonged detention of children in police watch houses, the over-representation of Aboriginal and Torres Strait Islander people in the justice and child protection systems, and the over-representation of children with disabilities and Aboriginal and Torres Strait Islander children in exclusion and expulsion from schools.
4. A human rights act is clearly not a ‘silver bullet’ to solve such entrenched limitations on human rights across many areas of our community.

### Aboriginal peoples and Torres Strait Islander peoples

1. Queensland has much to do to close the gap for Aboriginal peoples and Torres Strait Islander peoples.
2. Since coming into force, the Queensland HR Act has provided a new means to hold government accountable for these issues. The right to equality in s 15 provides overarching protection from discrimination, and further supports the Queensland AD Act which has been in operation for over 30 years. The term ‘without discrimination’ in the HR Act has been interpreted to apply to people with protected attributes under the AD Act[[10]](#footnote-11) as well as people with attributes not specifically protected but which are analogous.[[11]](#footnote-12)
3. Section 25 of the HR Act specifically protects the rights of all children, and section 28 protects the cultural rights of Aboriginal peoples and Torres Strait Islander peoples. This includes the right to ‘maintain and strengthen their distinctive spiritual, material and economic relationship with the land, territories, waters, coastal seas and other resources with which they have a connection under Aboriginal tradition or Island custom’. These rights are drawn from the United Nations *Declaration on the Rights of Indigenous Peoples* (UNDRIP).
4. The cultural rights of Aboriginal peoples and Torres Strait Islander peoples have been relevant to several complaints conciliated by the QHRC, including in relation to decisions made by the Queensland Police Service (see Appendix A). This right has also been considered and applied by the courts, most notably by the Land Court of Queensland in the *Waratah Coal* litigationdiscussed further below and in Appendix C.
5. Queensland’s *Path to Treaty Act 2023* is a key reform with the ultimate goal of negotiating a treaty or treaties that will reframe and strengthen the relationship between Queensland’s First Nations people and the wider community. Section 6 of the Act requires that it be administered in accordance with the HR Act and the principles of UNDRIP.
6. The QHRC supports AHRC’s recommendation in the Position Paper that there be a new duty on public entities to ensure participation of First Nations peoples in actions and decisions that affect them and this is discussed further below. AHRC’s proposed national human rights act includes rights and principles from UNDRIP and requires that the Act itself be interpreted with reference to UNDRIP.
7. A timeline summarising significant human rights developments in Queensland since the passage of the HR Act is at Appendix F.

## Role of the QHRC

1. The QHRC has functions under the HR Act, including in relation to:

* training and community engagement[[12]](#footnote-13)
* handling complaints[[13]](#footnote-14)
* reviewing the law and public entities’ policies and practices for compatibility with human rights[[14]](#footnote-15)
* reporting annually on the operation of the HR Act[[15]](#footnote-16)
* intervening in legal proceedings.[[16]](#footnote-17)

### Training and community engagement

1. The HR Act gives the QHRC 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.[[17]](#footnote-18)

1. 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.[[18]](#footnote-19)
2. The QHRC provides education and training on the HR Act to government and functional public entities, private and not-for-profit sectors, and sessions aimed at community advocates and legal representatives.
3. Face-to-face training is complemented by the QHRC’s online learning modules, which are the most popular way to receive training.
4. Training was a particular focus of the QHRC’s work prior to the operational provisions of the HR Act commencing. In 2019–20, the QHRC conducted state-wide training for public sector entities, large and small, to promote an understanding of obligations under the Act.
5. The QHRC’s training was available online, face-to-face, and through webinars. The demand was high and the QHRC saw a 35% increase in training sessions over the previous year, and a 55% increase in participant numbers. In most cases, organisations requested training tailored to their business needs, and QHRC trainers worked with them to devise real life scenarios that were workshopped by participants to make the Act relevant to their own environment.
6. Over 18,000 participants completed the QHRC’s online training for public entities during 2019–2020.
7. In addition to general rights resources, the QHRC created tailored resources for particular groups to help them understanding how the HR Act applies to them. For example, the QHRC released a [*A guide for our mob*](https://www.qhrc.qld.gov.au/your-rights/for-aboriginal-and-torres-strait-islander-people/a-guide-for-our-mob)which addresses some common questions from Aboriginal and Torres Strait Islander communities about how the HR Act works and explains practical situations in which it may be used, with a particular focus on cultural rights. The guide is part of a whole-of-Commission commitment to make our processes more accessible to Aboriginal and Torres Strait Islander Queenslanders.
8. However, the Commission acknowledges that the current limited remedies available under the HR Act causes frustration in the community and creates a disincentive for many in the community to make a complaint or commence legal action. The lack of damages in particular is often identified as an issue.
9. The QHRC continues to facilitate consultation groups that work 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.

1. The QHRC also facilitates an informal discussion each quarter among legal and policy officers from the ACT, Victorian, and Queensland human rights commissions.

### Cabinet process

1. Unlike the ACT Human Rights Commission, the QHRC does not routinely see proposed legislation or significant policy changes during the Cabinet process. While recognising the benefits that have been developed through the ACT process, the QHRC has not sought such a role.
2. To further develop a culture of human rights, the QHRC supports a framework in Queensland that encourages human rights understanding across the public service and the broader community. Human rights proportionality analysis need not be a complicated decision-making framework, and when framed in an accessible and understandable way leads to fair, balanced, and evidence-based decision-making and policy development. Such culture change within the public sector is one of the most significant outcomes of human rights legislation, and has the potential to prevent later limitations on human rights that may be implemented through legislation, policy or practice.
3. Queensland parliamentary portfolio committees generally seek public submissions and hold public hearings when inquiring into bills introduced into parliament. This provides an opportunity for the QHRC (and other stakeholders) to make submissions about the human rights compatibility of legislation. The QHRC publishes its submissions on its website to further community understanding of the application of the HR Act to legislation.

## Impact of COVID-19

1. The Queensland HR Act became fully operational on 1 January 2020, which meant Queensland public entities’ response to the COVID-19 pandemic became the focus of the Act’s early application. There is perhaps no greater test of new human rights legislation than a global pandemic.
2. The QHRC saw dramatic increases in complaint and enquiry numbers throughout 2020-21, as well as surges in enquiries and complaints about lockdowns and other pandemic response measures.
3. As the Australian Human Rights Commission notes in its submission, ‘human rights law provides a framework for making decisions in times of crisis’.[[19]](#footnote-20)
4. Across the Queensland public sector, agencies grappled with the human rights implications of wide-scale restrictions on their service delivery and what that meant for the communities they serve, while Queenslanders both inside and outside state borders were faced with constantly changing, and sometimes confusing, public health directions.
5. While the challenges were considerable, so too have been the gains in developing Queensland’s human rights culture. The HR Act provided a framework for a consistent, nuanced assessment of public health directions in an evolving environment against international human rights standards. The Government ensured it continued to apply to all legislation passed in response to the pandemic and so the HR Act provided authority under which the QHRC could raise issues directly with the Chief Health Officer (**CHO**) and other key agencies. The HR Act also provided people complaining of human rights breaches with a process to have their concerns considered and, in some cases, resolved quickly. When the QHRC identified trends in complaints, these were relayed informally to the CHO and other key agencies. The QHRC also addressed how limitations on human rights could be appropriately reduced in unresolved complaint reports and submissions to parliament.
6. Hotel quarantine, mask requirements, vaccines, lockdowns, and border closures occupied much space in media coverage and public discourse, and along with that has come an accelerated understanding of the need to balance people’s human rights against the rights of others, both individually and collectively.
7. Many public entities indicated a willingness to engage in human rights dialogue when issues were raised, and to consider less restrictive alternatives to rights’ limitations. Advocates also reported positive outcomes from raising human rights arguments in their dealings with public entities.
8. Complaints about COVID-19-related issues have been the subject of many complaints to the QHRC and formed the biggest share of the QHRC’s public comment and awareness-raising about the Act. Of the 418 accepted and finalised piggyback complaints over the period since the Act commenced, 101 were about COVID-19, and of the 187 human rights complaints that were accepted, 57 were about COVID-19. Overall, that means that a quarter of accepted and finalised human rights complaints were about COVID-19.[[20]](#footnote-21)
9. These complaints commonly raised issues about vaccination, wearing masks, border restrictions, and hotel quarantine. The high proportion of COVID-19-related complaints influenced the complaints data and continued to have an impact on the agencies complained about (e.g. health agencies and police) in relation to the rights identified in complaints, particularly freedom of movement.
10. Many of Queensland’s public entities have developed human rights compatibility assessment tools sharply focussed on pandemic response measures. Courts grappled with mandatory vaccination requirements, while parliament has continued to pass COVID-related legislation and extend emergency powers.
11. Like many legislatures around Australia and the world, the Queensland Parliament declared and extended a public health emergency period, initially through short-term legislation.
12. Given the ongoing threat of COVID-19, the QHRC acknowledged the rationale for continued use of extraordinary powers that were implemented. Despite this, throughout the pandemic the QHRC recommended additional safeguards for human rights and that the government consider promulgating these into long-term legislation to cover COVID-19 and any future pandemics or emergencies. Key safeguards the QHRC recommended included: a greater degree of parliamentary oversight, the publication of human rights considerations for all Public Health Directions, a clear process for a person to seek a review of a decision about a Public Health Direction to quarantine, and precise and tailored power for a direction to make vaccination mandatory.
13. The QHRC’s submissions were partially adopted through the passage of the *Public Health and Other Legislation (COVID-19 Management) Amendment Act 2022*, including requiring human rights compatibility analysis to accompany public health directions.
14. While the pandemic and its inescapable impact domestically has been the initial focal point for Queensland’s HR Act, in recent years the focus has shifted to other priority areas of application.

## Public entities

1. Public entities have obligations to make decisions and act compatibly with human rights, and to give proper consideration to human rights when making decisions.
2. A public entity is an organisation or body performing a public function in and for Queensland.
3. There are two types of public entities, although the following terms are not used in the Act:

* Core public entities are government entities. This includes government agencies and departments, public schools, public hospitals, the Queensland Police Service and other emergency services, and state government ministers.
* 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 functional public entities.

1. Queensland public entities are still in varying stages of implementing and applying the HR Act, and approaches differ depending on the size and sector of the entity as well as its location. Identifying when complaints from clients or service users are human rights-related continues to challenge most public entities. This is particularly the case where the complainant does not raise the HR Act themself, or where there are inconsistencies between different divisions of the organisation in how they handle complaints.
2. After the passage of human rights legislation, the QHRC’s experience is that a coordinated, well-funded plan is necessary to ensure all public entities understand their obligations, not just core public entities such as government departments. In Queensland local government councils appear to have widely differing approaches to implementation, partly as a result of funding and resourcing issues.
3. Several non-government agencies have prioritised applying the HR Act in the housing sector. Consistent with research findings across Australian human rights jurisdictions, while there are few reported tribunal and court decisions to indicate that the HR Act is having a significant impact on the housing sector,[[21]](#footnote-22) the QHRC continues to hear that informal discussions and negotiations between advocates and housing service providers framed around the Human Rights Act is leading to early resolution of disputes.
4. As part of her recent research on Australian human rights jurisdictions (Queensland, ACT, and Victoria), Professor Tamara Walsh ran focus groups with lawyers, who told her that while many people were hesitant to raise rights-based arguments before tribunals, human rights dialogue was taking place ‘behind the scenes’ in negotiations with social housing providers.[[22]](#footnote-23)
5. Early resolution of complaints means that parties avoid the investment of time and resources required by complaint processes to external complaints agencies or proceedings in courts and tribunals. Case studies in Appendix Ademonstrate the dialogue model working at its best.

### Building a human rights culture in government

1. The QHRC recognises the challenges with embedding a culture that respects and promotes human rights throughout a large and decentralised workforce across a vast geographical area.
2. Training and professional development in state public entities and the majority of councils has continued since the commencement of the Act. As a minimum, most state public entities offer a mandatory online module (including for new staff on induction) and further tailored training options are available to specific work groups. Larger councils provide in-depth training to meet the needs of particular work groups in addition to general modules. Public entities on the whole are no longer reporting that COVID-19 and work-from-home arrangements are a barrier to delivering training and professional development.
3. In 2021, the annual Working for Queensland survey of over 80,000 state public sector employees included a question about the HR Act for the first time. Seventy-eight percent of responses indicated that they understand how the HR Act applies to their work. This result is an early indication that training and professional development is having a positive effect in building the capacity of state public servants to understand and apply the Act. The 2022 survey results have yet to be released. The QHRC will closely observe these survey results in subsequent years.
4. Many state public entities indicated that they had processes in place to ensure the HR Act is considered when undertaking policy review and development and were using assessment tools, checklists, and other resources to assist them identify limitations on rights and assess proportionality. However, based on the information provided, the HR Act did not seem to be having a significant impact on the outcome of policy review or development.
5. The QHRC has observed that state public entities face challenges to identify human rights complaints, particularly where the complainant does not specifically raise the HR Act in their complaint to the organisation. These challenges appear 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 handling complaints.
6. Case studies received from public entities clearly demonstrate the value of internal complaint processes to address service delivery issues.

### Measuring a human rights culture in government

1. A key object of the HR Act is to develop a human rights culture in the Queensland public sector, in which the human rights of individual people are respected and promoted. In her second reading speech on the Human Rights Bill, the Honourable Yvette D’Ath, then Attorney-General and Minister for Justice, provided insight into what was intended by this object. She said:

This Human Rights Bill is about changing the culture of the public sector by putting people first in all that we do. This is about a modern Queensland, a fair Queensland and a responsive Queensland.[[23]](#footnote-24)

1. Developing a culture of human rights requires more than mere compliance with the HR Act.
2. The concept of building a culture acknowledges that it will take time; there will be progress and setbacks.
3. The dialogue model, which prioritises discussion, awareness-raising, and education over an enforcement and compliance model, supports the goal of building gradually to achieve a human rights culture.
4. While public entities may start in compliance mode, the aim is for the public sector to move towards a culture in which protecting and promoting human rights – rights of clients, stakeholders, and staff – becomes part of everyday business. As the Attorney-General expressed it, ‘putting people first in all that we do.’
5. The QHRC 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 2: Cascading culture change model

Figure 3: Cascading culture change model

This diagram shows the cascading culture change model of human rights, where change flows from legislation through regulations, policies, procedures and service delivery to individual members of the community. 

The diagram shows a series of six rectangles stepping downward from the top left corner of the image to the bottom right. Each has an arrow curving down to the rectangle below it, to demonstrate the flow of change. From top to bottom these rectangles are labelled in white text: Legislation (navy rectangle), Regulations (blue), Policies (aqua), Procedures (gold), Service Delivery (orange), and a brown box at the bottom contains white people icons to represent the community. 

Down the left hand side of the image is a grey rectangle which says Leadership. Grey arrows extend from this to each of the top five boxes of the cascade, to demonstrate that leadership is needed at each level to champion human rights culture change. 

1. The model recognises that unless legislation and regulations are human rights compatible, limited benefit will result from changing policies and procedures. Correspondingly, 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 and operational levels as well as among individual workers on the front line.
2. In the first year of the HR Act’s operation, the QHRC 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 HR Act is influencing the day-to-day business of public entities.
3. See Appendix Dfor the full *Indicators of a Developing Human Rights Culture*. The QHRC’s annual reports prepared under the HR Act provide a full discussion of the public entities surveyed and their responses.[[24]](#footnote-25)

#### The role of internal leadership[[25]](#footnote-26)

1. In the QHRC’s experience, providing accessible, central government support is essential for successful implementation of a human rights act. In May 2019, the Department of Justice and Attorney-General established a Human Rights Unit (**HRU**) to help prepare Queensland Government departments to embed human rights into their business l by providing leadership, coordination, and support.
2. The HRU convened a Human Rights Inter-Departmental Committee (**HRIDC**) with a representative from each Queensland Government department to support capacity-building, collaboration, and culture change across Queensland Government. This included discussing implementation activities, sharing lessons across departments and government functions, and facilitating the distribution of information and resources. The HRIDC first met in May 2019 and held a total of 11 meetings up to 30 June 2020.
3. A key resource for communication and education about human rights for Queensland Public Service employees is the Human Rights Portal at <http://www.forgov.qld.gov.au/humanrights>. The portal comprises six web pages developed and maintained by the HRU covering the following topics:

* Understand human rights
* Apply human rights to your work
* Human rights complaints
* Human rights training
* Human rights resources
* Human rights policy and legislation.

1. In 2019-20, the portal had nearly 70,000 page views and over 85,000 clicks to available resources, which includes detailed guides, factsheets, posters, presentations, and video resources.
2. The HRU provides a repository of human rights expertise for officers within Queensland Government departments to support them in developing policy and legislation that is compatible with human rights. This includes providing detailed advice on the preparation of statements of compatibility and human rights certificates for legislation. The HRU provides ongoing advice and information to government departments on human rights implementation activities, including reviewing policies and procedures, identifying and responding to human rights complaints, and understanding reporting obligations under the HR Act.
3. The HRU continues to support work across Queensland Government departments to respect, protect, and promote human rights by continuing to develop and share human rights information and expertise, and support the operation of the HRIDC.
4. The QHRC has valued the HRU’s work of providing practical and expert advice and assistance to public entities. As an independent statutory body with an impartial complaint handling function, the QHRC must necessarily have a less hands-on role in advising agencies on policy matters than the HRU. The experience in Victoria has also highlighted the value and importance of a dedicated unit such as the HRU to ensure that public entities have a coordinated and considered approach to implementing the Act.
5. During a period when the HRU was not active during the 2021-22 reporting year, the QHRC saw a decline in the number of internal human rights complaints reported by public entities whose service delivery was not directly impacted by COVID (e.g. police, Queensland Corrective Services and Queensland Health). This may have been a result of the HRU not supporting agencies to identify and report such complaints.
6. The QHRC recommends that if a national human rights act is enacted, the Australian Government permanently fund additional staff within the Attorney-General’s Department to ensure there is ongoing support for agencies. As issues in areas like local government councils has shown, without such permanent support, the objects of human rights legislation cannot be properly realised.
7. However, a central unit alone is not enough to build a human rights culture. There must be leadership and commitment across government, particularly within key departments. This includes a demonstrated commitment to taking complaints seriously and avoiding adversarial or legal processes. In the QHRC’s experience, resolution is most likely when key staff are engaged in finding innovative solutions that seek to resolve and improve practices, rather than engaging external legal advice to resist change. Culture is improved where senior staff drive reviews of policies and practice to consider HR Act compatibility. This goes beyond staff training and includes senior leadership figures mentoring and guiding staff. Forums such as inter-departmental committees, which are attended by senior staff, provide opportunities to share experiences and innovation.

### Functional public entities

1. Functional public entities contribute to building a positive human rights culture in Queensland as many have a direct role in delivering essential services, including disability services, aged care, and housing.
2. Prior to the commencement of the HR Act, many non-government organisations carrying out work for the state of Queensland had taken a rights-based approach to client service.
3. The Human Services Quality Framework (**HSQF**), which already had a strong focus on the rights of individuals, has been updated to incorporate the requirements of the Act.
4. The HSQF entrenches the HR Act by requiring that an agency record how they have limited rights in a way that is consistent with section 13 of the Act.
5. Non-government entities have supported the HR Act's introduction, particularly as it provides a useful decision-making framework which complements the rights-based approach that has underpinned organisations’ approaches for many years.
6. In 2021 the Queensland Council of Social Service (**QCOSS**) partnered with the Department of Communities, Housing and Digital Economy (**DCHDE**) and the housing and homelessness sector to build understanding of the Act, increase confidence to work compatibly with the Act, and support sectors to use the Act for person-centred service delivery.
7. QHRC was engaged as a project stakeholder. As part of the project, QCOSS worked intensively with five community service providers and 15 department staff (from across the state) as Human Rights Champions. Through training, policy development, and the co-design of learning resources, project champions built their confidence to develop new practices and share their insights across the sector to help other providers understand the benefits of a human rights approach. Practical, real-life scenarios were used to train staff and the sector about how to give proper consideration.
8. The tailored, practical, and detailed resources produced for the project are available on an ongoing basis through Community Door website, which aims to ensure organisations are ‘human rights-aligned’. Jacaranda Housing, a human rights champion that participated in the project, commented that they became champions:

To receive bespoke guidance that reflects the challenges and operating environment of the community housing sector. Our team has attended training and discussion forums on the Act, but this is a terrific opportunity to ensure we have correctly embedded the Act in all aspects of our decision-making processes and service delivery. [[26]](#footnote-27)

### Opting in

1. Like the AHRC proposal, the Queensland HR Act provides that entities may opt in to become public entities. Details of entities that make this election are published in the *Queensland Government Gazette*.
2. The QHRC understands, based on a search of the Gazette since 1 January 2020, that two entities have opted in:

* QAI
* Caxton Legal Centre.

1. The QHRC suggests, for the sake of transparency, that the Attorney-General’s Department be required to maintain a public register, published online, of entities that have opted-in.

### Reviews of public entities actions and decisions

1. The QHRC has a function to review public entities’ policies, programs, procedures, practices and services for compatibility with human rights.[[27]](#footnote-28)
2. In late 2019 the QHRC commenced an organisational review of community housing provider, Bric Housing (**Bric**). Bric is a functional public entity that manages tenancies, properties, and maintenance services for low income and/or disadvantaged families and single people. The QHRC review included:

* human rights workshops
* development of decision-making flowcharts
* working with Bric to review and amend policies and procedures.

1. Following a recommendation of the Queensland *Women’s Safety and Justice Taskforce*, the QHRC has commenced a human rights review of policies, procedures and practices relating to the use of strip searches on women in Queensland.[[28]](#footnote-29)
2. The QHRC anticipates a report on our findings from the review and recommendations to Queensland Corrective Services will be published by the end of August 2023. The review report will explore the key human rights issues and identify opportunities for best practice, drawing on human rights standards and the policies, and practices and procedures from other jurisdictions in Australia and overseas.

## Complaints under the HR Act

1. As set out in the Position Paper, AHRC already handles complaints concerning alleged breaches of Australia’s human rights obligations. The QHRC handles alleged contraventions of public entities’ obligations under the HR Act in a similar way.
2. The HR Act allows a person to make a human rights complaint to the QHRC only after first making a complaint to the public entity about the alleged contravention, and at least 45 business days have elapsed since making that complaint — the intention being to encourage direct resolution of complaints at the earliest possible stage. While there are some promising signs of the present model achieving these goals, the QHRC believes the process could be improved.
3. AHRC has noted that the lack of enforceable remedies for the current federal complaints system undermines the conciliation process.[[29]](#footnote-30) While the Queensland HR Act provides avenues for redress through courts and tribunals as well as the complaint process, this requires individuals to ‘piggy-back’ alleged contraventions of their human rights on to other legal actions. The modified model suggested by AHRC in its proposed national human rights act, discussed further in Part 2 of this submission, addresses many of the limitations with the current model in Queensland.
4. The QHRC agrees with the changes proposed in the AHRC Position Paper to improve access to justice and remedies for complainants, which will also help to resolve complaints earlier.

### Complaints made directly to public entities

1. Section 97 of the HR Act requires public entities to prepare an annual report on the details of human rights complaints received. The QHRC then reports on how selected public entities have applied this obligation in its annual report on the operation of the HR Act.
2. There is little consistency in how public entities report on complaints they have received. Some reports provide comprehensive information about the type and nature of complaints and their outcomes, and others contain scant information. While the QHRC endorses the need to protect the privacy of complainants and others, the QHRC observes that the legislative requirement to provide ‘details’ implies a level of particularisation is required that is lacking in some reports by public entities. Information in reports can be de-identified to protect the privacy of individuals while giving a useful and detailed account of the complaint.
3. Information provided by some public entities suggests that agencies are not identifying all human rights complaints and reporting them in their annual reports. An indication of this is given when large departments identify a very small number of complaints as human rights complaints, and that in some agencies the complaints identified have significantly reduced since the previous year, with no explanation given.
4. This is an issue that should be considered in the drafting and implementation of a federal Human Rights Act.

### Early complaint resolution

1. A benefit of the internal complaint requirement is that agencies and complainants have the opportunity to resolve complaints early.
2. Advocates have told the QHRC that the HR Act is continuing to have a positive, beneficial impact whether or not a matter proceeds to a formal complaint at the QHRC or to a hearing in a court or tribunal.
3. LawRight, which aims to increase access to justice through strategic partnerships with pro bono lawyers, has reported using the Act in its Court and Tribunal Services in the following ways:

* guardianship and administration and blue card review matters in QCAT
* judicial review applications in the Supreme Court
* submissions to the Mental Health Review Tribunal during reviews of forensic orders and applications for electroconvulsive therapy.

1. LawRight also uses the Act as an advocacy tool in its Community and Health Justice Partnerships to achieve better outcomes for clients when negotiating with government departments.
2. Townsville Community Law told us that they have:

…advocated for public housing clients using the Human Rights Act on several occasions where a person was feeling unsafe because of the actions of their neighbours in a housing complex. In one instance an older woman had complained to her housing provider that her neighbour had verbally and physically intimidated her, but the housing provider had failed to intervene. The legal service wrote to the housing provider setting out the woman’s rights under the Human Rights Act, including the right to equal treatment, freedom of movement, and the right to privacy, which includes the right to not have a person’s home unlawfully or arbitrarily interfered with. The housing provider swiftly responded once the human rights issues had been raised with them and organised for her to be relocated to a new residence.

1. While other options are available, such as involving the police or urging the housing provider to instigate processes under residential tenancy laws, Townsville Community Law said that these avenues often led to tenants being evicted, or criminalised. These options were also often time consuming while the HR Act allowed for more effective advocacy directly centred around protecting the rights of their clients.

### Complaints made to the QHRC

1. If a person subjected to an alleged human rights breach has made a complaint to the public entity and the entity’s response does not resolve the issue, the person may make a complaint to the QHRC. Human rights complaints allege that a public entity has acted or made a decision in a way that is not compatible with the person’s human rights, or has failed to give proper consideration to a human right relevant to a decision that affects them.
2. The person can appoint an agent, or the QHRC can authorise another person to make a complaint for them. Two or more people can make a joint complaint.[[30]](#footnote-31)
3. The QHRC's role in dispute resolution is impartial and the Commission does not take sides or make findings, but helps parties come together to resolve complaints.
4. The QHRC’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
* prepare reports about unresolved complaints
* publish information about complaints.

1. The government’s response to COVID-19 produced a large volume of complaints under the HR Act, causing lengthy delays in assessing and conciliating complaints which is only just abating.
2. Under section 75 of the HR Act, the QHRC may deal with a human rights complaint as an alleged contravention of the Anti-Discrimination Act, if the Commissioner considers it appropriate to do so and if the complainant consents.
3. This effectively creates two types of human rights complaints: piggy-back complaints and human rights only complaints.
4. A ‘piggy-back’ complaint at the QHRC is where a complaint is dealt with under the Anti-Discrimination Act (such as a discrimination complaint) but is against a public entity and raises human rights issues under the HR 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.
5. 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 person’s human rights, or that proper consideration of a human right relevant to a decision was lacking.
6. Human rights only complaints may be dealt with through a conciliation conference or by early intervention. In early intervention, the matter is resolved by the conciliator who speaks with the parties separately through a shuttle negotiation process.
7. For human rights only complaints, there is no right of referral to a tribunal for a decision on the complaint.
8. A finalised complaint is one that has been dealt with to conclusion, either through the dispute resolution process or rejection and closure of the complaint file. ‘Resolved’ means that a complaint has been through a complaints process (conciliation or early intervention) and is assessed as being resolved.

#### Complaint trends

1. Between 1 January 2020, and June 2023, the QHRC has finalised 1,393 complaints related to the HR Act. This includes 761 human rights only complaints and 632 ‘piggy-backed’ complaints made under the Anti-Discrimination Act.
2. Of the complaints that were accepted, and then finalised, 158 complaints were HR Act only matters, and 418 of them were piggyback complaints.
3. The Commission has recorded 96 complaints made by Aboriginal and Torres Strait Islander people since the Act commenced, 53 of which were accepted for resolution by the Commission.

#### Human rights identified in complaints

1. The QHRC 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 several allegations and engage more than one human right.
2. Not all allegations of unreasonable limitations of human rights are accepted. An allegation alone is not enough; the complainant must provide sufficient detail about an act or decision that indicates a breach of human rights has occurred before the complaint is accepted.
3. The most frequently identified human right in accepted and finalised complaints has been the right to recognition and equality before the law. This is because the majority of complaints to the QHRC are about discrimination under the Anti-Discrimination Act which overlaps with this protected right. The right to recognition and equality before the law is likely to be engaged in all complainants of discrimination where the respondent is a public entity.
4. The second most common protected right in accepted and finalised complaints is privacy and reputation. As the scope of this right is broad, complaints range from those involving personal information and data collection through to situations involving social housing.
5. The third most commonly cited right is humane treatment when deprived of liberty, with the right to freedom of movement also commonly cited. The restrictions put in place in Queensland during COVID-19, including the requirement to quarantine in hotels, would be one reason for the prevalence of these rights. Humane treatment when deprived of liberty is also a right commonly cited in complaints from prisoners.

Figure 3: Human rights identified in accepted and finalised complaints (note: complaints may identify more than one right)

|  |  |
| --- | --- |
| Right | Number of complaints which identified this right |
| Recognition and equality before the law | 417 |
| Privacy and reputation | 190 |
| Humane treatment when deprived of liberty | 128 |
| Freedom of movement | 102 |
| Protection of families and children | 91 |
| Protection from torture & cruel, inhuman or degrading treatment | 79 |
| Right to access health services | 51 |
| Right to education | 47 |
| Freedom of expression | 32 |
| Right to liberty and security of person | 29 |
| Cultural rights – Aboriginal peoples and Torres Strait Islander peoples | 25 |
| Freedom of thought, conscience, religion and belief | 15 |
| Property rights | 14 |
| Taking part in public life | 14 |
| Right to life | 11 |
| Cultural rights – generally | 9 |
| Fair hearing | 7 |
| Peaceful assembly and freedom of association | 4 |
| Protection of children in the criminal process | 4 |
| Rights in criminal proceedings | 4 |
| **Total** | **572** |

#### Most common sectors for complaints

1. Work is the most common area for complaints made under the Anti-Discrimination Act, and that is also the case for complaints made alleging limitations on human rights (that is, HR Act only complaints and piggy-back complaints). Other common sectors for complaints included health services and police, which may be partly due to restrictions imposed as a result of COVID-19.

Figure 4: Complaints finalised by sector for all (both HR Act only and piggy-back) to mid-June 2023:

|  |  |  |
| --- | --- | --- |
| Sector | Finalised and accepted complaints | Finalised complaints |
| Work | 125 | 346 |
| Health | 114 | 328 |
| Police | 97 | 187 |
| Other sectors | 78 | 171 |
| Education | 70 | 94 |
| Corrections | 47 | 135 |
| Local government | 37 | 66 |
| Accommodation/housing | 27 | 37 |
| Child protection | 20 | 49 |
| Transport | 11 | 14 |
| Disability | 4 | 10 |
| **Total** | **572** | **1344** |

#### Resolution

1. Of the 572 complaints that were accepted, 161 have been resolved. 109 of the resolved complaints were piggy-back complaints, and 52 were human rights only complaints.

Figure 5: Accepted complaints resolution rate since 1 January 2020

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | HR Act only | Piggy-back |  |  |
| Resolved (%) | 32.9% | 26.1% |  |  |

1. This resolution rate is lower than for complaints under the AD Act. There may be several reasons for this, and it is something the QHRC will monitor as it collects further complaint data. The AHRC Position Paper suggests that public entities are likely to engage more in conciliation conferences if there is the possibility the complaint could be considered later by a court (through a direct right of action), particularly if the court can award monetary damages or compensation. The QHRC sees merit in that argument.
2. The most common outcomes of complaints that were accepted by the Commission include apologies, reviews or changes to policy, and agreements for individuals or organisations to receive training. In 17 piggyback complaints compensation, which is not available for human rights only complaints, was provided to complainants.

#### Unresolved complaints with recommendations

1. 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.[[31]](#footnote-32)
2. The Commission has the discretion to include details of actions that the commissioner considers the respondent should take to ensure its acts and decisions are compatible with human rights.[[32]](#footnote-33) Summaries of reports with recommendations that have been published are at Appendix B.

## Courts and tribunals

1. The ability to enforce rights is fundamental to the effectiveness of human rights protections, and there have already been important developments in Queensland’s emerging human rights jurisprudence.
2. The QHRC identified approximately 300 cases since commencement of the HR Act in which courts or tribunals applied the Act, with the annual numbers progressively increasing.[[33]](#footnote-34) The majority have been in tribunal proceedings, including guardianship matters, discrimination, privacy, blue card reviews, and industrial matters.
3. Appendix C provides a breakdown of court and tribunal mentions, and a summary of important cases on the operation of the HR Act in Queensland.
4. In considering an application for a mining lease by Waratah Coal, the Land Court of Queensland concluded that human rights would be limited if the lease were to be granted. After hearing evidence about impacts on the cultural rights of First Nations on country, the Court recommended that the lease not be granted.[[34]](#footnote-35)
5. The Supreme Court provided significant guidance in *Owen-D'Arcy v Chief Executive, Queensland Corrective Services* [2021] QSC 273, especially in relation to proper consideration and the onus of proof on each party. These tests were further developed in *Austin BMI Pty Ltd v Deputy Premier* [2023] QSC 95.
6. Courts and tribunals, whether acting as public entities or not, must consider human rights when interpreting legislation and where human rights apply directly to their functions. The QHRC has noted the absence of specific reference to the HR Act in some cases where human rights generally are discussed. This includes a decision regarding a child’s consent to proposed treatment for gender dysphoria[[35]](#footnote-36) and a decision to consent to sterilisation of a child.[[36]](#footnote-37)
7. Courts and tribunals may be constrained in their consideration of restrictions on human rights where HR Act issues are not raised by the parties. This points to the need for legal advocates and self-represented parties to have sufficient awareness and understanding of the role of the HR Act in litigation, which is likely to take many years to cultivate.

### Interpreting legislation

1. Section 48 of the HR Act requires that all legislation be interpreted in a way that is compatible with human rights, to the extent possible that is consistent with the purpose of the legislation.
2. 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.
3. ‘Compatible with human rights’ means that the statutory provision 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. In section 13, the Act sets out factors that may be relevant in deciding whether a limit on a human right is reasonable and justifiable.
4. The Queensland Supreme Court has considered the decision of the High Court in *Momcilovic v The Queen* [2011] HCA 34to confirm that the HR Act does not allow courts to effectively rewrite or redraft a provision. Rather the HR Act will apply when different constructions are open on the language of the provision being interpreted, having regard to its purpose.[[37]](#footnote-38) Further, the court has suggested that the consideration of human rights is now incorporated as part of context and purpose in statutory interpretation, where consistent with the purpose of the provisions.[[38]](#footnote-39)
5. In *SF v Department of Education* [2021] QCAT 10, the Queensland Civil and Administrative Tribunal (**QCAT**) applied section 48 in interpreting the *Education (General Provisions) Act 2006.* The case concerned whether a woman applying to home school her child was required to provide a street address, in circumstances where she feared for their safety if their location became known. The tribunal interpreted the governing Act as not requiring the woman to disclose her street number, street name, and town name where it would risk the health and safety of herself and her children, particularly as she had provided alternative contact details. The tribunal noted this interpretation was consistent with the overarching objects and guiding principles of the governing Act and compatible with human rights. The tribunal set aside the Department’s decision and substituted it with a decision to grant home education registration.
6. The Coroners Court has accepted that section 48 must be applied to the interpretation of section 45 of the *Coroners Act 2003*, which sets out the coroner’s obligations in relation to the scope of coronial investigations and findings.[[39]](#footnote-40)

### Piggy-back matters

1. There is no standalone legal remedy available through the courts for an alleged breach of human rights. However, human rights arguments can be added to, or ‘piggy-backed’ on, legal proceedings against a public entity that, under a different law, alleges an act or decision of the public entity was unlawful. 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 HR Act 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.
2. In these actions, a person can obtain (non-financial) relief if they successfully demonstrate a breach of section 58 of the HR Act, even if they are not successful in their primary claim for relief.
3. *Owen-D'Arcy v Chief Executive of Queensland Corrective Services* [2021] QSC 273 and *SQH v Scott* [2022] QSC 16 are examples of matters in which human rights were piggy-backed, in the case of the first, to a judicial review, and in the second, to a statutory appeal.
4. The QHRC notes the following limitations with this approach to human rights litigation:

* Often the respondent decision-maker, particularly in judicial review matters, may not have the power or delegated decision-making authority to consider all aspects of the human rights limitations, even though the public entity as a whole must. This can also arise where the relevant decision or action is shared between two entities, although there may not be a decision amenable to review. For example, where Correctives Services has legislative responsibility for the health of prisoners, but contracts out another entity to provide those services. This issue does not appear to arise under the ACT Human Rights Act, which allows a person to directly bring a human rights action solely against the relevant entity or entities.
* Frequently, a considerable amount of court time and submissions are taken up with whether the requisite tests have been fulfilled under s 59 to allow a person to ‘piggy-back’ human rights.
* The lack of a direct right of action could undermine the willingness of public entities to resolve complaints outside a formal legal process.

### Acting in an administrative capacity

1. When courts and tribunals are acting in an administrative capacity, they are public entities under the 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.

1. Case law has firmly established that Queensland courts and tribunals are subject to the Act when undertaking certain functions. The Land Court, the Mental Health Review Tribunal, and the Coroners Court have all adopted clear positions regarding when they are acting administratively and are therefore public entities with obligations under the HR Act.[[40]](#footnote-41) For example, the Land Court’s decision to not recommend the grant of a mining lease was made in part because of human rights considerations including the cultural rights of First Nations people, the right to life, the rights of children, the right to privacy and home, the right to property, and the right to enjoy human rights equally.[[41]](#footnote-42)
2. The Queensland Civil and Administrative Tribunal (QCAT) has also recognised these obligations when deciding exemption applications under the Anti-Discrimination Act for which the QHRC generally provides submissions outlining the key human rights considerations.[[42]](#footnote-43) Other situations in which human rights are regularly considered include appointing guardians under the Guardianship and Administration Act and reviewing decisions to refuse Blue Cards.[[43]](#footnote-44)

### Referrals to Supreme Court

1. If a question of law arises in a court or tribunal proceeding about the application of the HR Act, or statutory interpretation in accordance with the Act, it may be referred to the Supreme Court of Queensland.
2. The QHRC is aware of only one such referral, involving a referral from the District Court about how the right to liberty and security under the HR Act applied, arising from a bail proceeding.[[44]](#footnote-45)

### Declarations of Incompatibility

1. 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 has not yet exercised this power.

### Role of Interveners

1. Under sections 50 and 51, the QHRC and the Attorney-General may intervene in legal proceedings.[[45]](#footnote-46) Since the commencement of the Act, the QHRC and the Attorney-General have intervened in an average of four to five matters per year. While common, the QHRC and the Attorney-General do not always intervene in the same matters.
2. The Commission has published a guideline[[46]](#footnote-47) about when the Commission might intervene in proceedings. Relevant factors include:

* whether human rights form a significant, and not peripheral, issue to the proceedings
* whether the proceedings involve a new or unsettled area of law, or would clarify a disputed interpretation of the law
* whether the Commission can add value to the proceedings, having regard to the parties to the proceedings and whether they are represented
* the court or tribunal in which the proceedings are brought, and whether it is an intermediate or final hearing
* resource constraints.

1. The ability for the QHRC and the Attorney-General to intervene in legal proceeding has assisted courts, tribunals, and parties understand the application of the HR Act, particularly in the early years of its implementation when there is limited jurisprudence. Often parties refine their submissions and positions throughout the proceeding having had the benefit of submissions from the QHRC and Attorney-General. The QHRC’s practice is to publish its court submissions whenever possible to provide understanding and transparency for those not involved in the particular proceeding.
2. One issue the QHRC has experienced which could potentially be rectified in the drafting of a national human rights act is the ability for the QHRC (and perhaps the Attorney-General) to access material in closed court proceedings prior to intervening. This can include situations where the proceeding itself is always closed (e.g. child protection matters) or where the court or tribunal has already made orders restricting access to the file. It has proven difficult in such situations for the QHRC to quickly decide whether to intervene without being able to easily access this material.

## Parliament

1. Under the Queensland HR Act, parliament must consider whether any limitations on human rights in proposed 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.
2. The work of parliamentary committees in examining human rights compatibility is becoming more sophisticated and detailed.
3. However, since the HR Act commenced, it is rare for parliamentary committees to formally make recommendations or comments about human rights compatibility, such as seeking additional information, changes to a statement of compatibility, or legislative amendments.
4. So while relevant human rights issues are being identified and discussed in committee reports, the HR Act does not yet seem to be having much effect on the outcomes of the legislative process once a Bill is before parliament. The reasons for this may rest outside the operation of the HR Act and include the structure of portfolio committees and that the unicameral nature of Queensland’s Parliament.
5. The QHRC hopes that parliamentary committees will become more assertive in furthering the objects of the HR Act as the culture of human rights continues to develop in parliament. Unfortunately, this growing culture was undermined earlier this year with the first override declaration made under the Act, discussed further below.

### Statements of compatibility and human rights certificates

1. Much like the system for human rights scrutiny in the Australian Parliament, a member who introduces a Bill must table a statement of compatibility with the Bill, and the responsible portfolio committees must consider the Bill and report to the Legislative Assembly about any incompatibility with human rights.
2. Human rights certificates must accompany new subordinate legislation and are drafted by the minister responsible for the subordinate legislation in Queensland.

### Override declarations

1. Parliament may override the HR 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 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 five years after the provision commences.
2. The QHRC does not support the inclusion of such override declarations in a national human rights act, and recommends it be removed from the Queensland HR Act.
3. To date, the Queensland Parliament has made one override declaration concerning certain provisions under the *Strengthening Community Safety Act 2023*.[[47]](#footnote-48) This means that those provisions, and any statutory instruments made under those provisions, cannot be declared incompatible with human rights by the Supreme Court, are not subject to human rights compatible rules of statutory interpretation, and signals to public entities that they do not need to act compatibly with human rights when implementing these provisions.[[48]](#footnote-49)
4. The QHRC was concerned about the use of the override power in this instance for the following reasons:
   1. Briefing provided to the portfolio committee inquiry by government agencies implied an override declaration decision is a matter for the government. The provisions are clear that it is a decision of the parliament.[[49]](#footnote-50)
   2. Insufficient evidence was provided to demonstrate that an emergency of the kind necessary to invoke the declaration exists.
   3. Some of the rights limited by the Act are not suitable for such an override (e.g. rights of children and protection from torture or cruel, inhuman or degrading treatment).
   4. A dangerous precedent has been established for future governments to override human rights as a result of a public controversy. It is at times of heightened public anxiety that maintaining robust protections of human rights is of greatest importance. Instead, by seeking an override declaration from parliament, the government did not undertake its usual human rights compatibility assessment.
5. Article 4 of the *International Covenant on Civil and Political Rights* provides context for how the relevant provisions should operate. This article provides that a state party may only act incompatibly with human rights ‘in times of public emergency which threatens the life of the nation and the existence of which is officially proclaimed.’[[50]](#footnote-51)
6. Queensland was able to respond to the COVID-19 pandemic, including by imposing significant restrictions on people’s freedom of movement and right to liberty, without resorting to the use of an override declaration. Those measures were in response to a worldwide pandemic that continues to affect many aspects of the community. The government was able to justify such measures as necessary to fulfil its obligations under the right to life. The COVID-19 emergency was also officially proclaimed.[[51]](#footnote-52) The safeguards in the HR Act applied to public entities performing functions under that legislation, such as police.
7. In contrast, as noted in the s 44 statement about exceptional circumstances accompanying the Strengthening Community Safety Act, ‘a body performing functions or exercising powers’ is not a public entity ‘within the meaning of the HR Act in respect of its performance of those functions or exercise of those powers’. Removing human rights safeguards with regard to the treatment of children within the justice system in Queensland is an extraordinary and retrograde step for the government and parliament to take.
8. The 2011 review of the *Charter of Human Rights and Responsibility Act 2006* (Vic) (**the** **Charter**) recommended the override mechanism be repealed because of situations like the Strengthening Community Safety Act in these terms:
   1. It is not necessary in a statutory model of human rights protection. The Charter does not permit the courts to strike down legislation for Charter incompatibility, and Parliament remains sovereign without use of the override declaration.
   2. Use of the override provision suppresses the judiciary’s contribution to the dialogue model by preventing courts from commenting on the scope of protected rights, the justifiability of any limitation on rights, the interpretation of the law compatibly with the rights in the Charter and the need for a declaration on inconsistent interpretation.
   3. An override declaration can be made without meeting the exceptional circumstances threshold and without the five-year time limit, undermining the safeguards.[[52]](#footnote-53)
9. The 2015 review of the Victorian Charter also recommended the override provision be repealed because ‘it does not serve the policy purpose of acting as a brake on limitations of human rights; it is not necessary to preserve parliamentary sovereignty; and it fails to make clear to the public that Parliament can enact human rights incompatible legislation without an override declaration’.[[53]](#footnote-54) The Review suggested it would be far more preferable:

…to rely on statements of compatibility (noting any incompatibility), which provide a consistent, transparent and accountable process for the Government to identify how legislation may limit Charter rights or be incompatible with Charter rights.[[54]](#footnote-55)

1. Such statements are ‘just as transparent and public as the override process’ but ‘preferable, because it keeps the courts involved in the human rights dialogue’ without compromising parliamentary sovereignty.[[55]](#footnote-56)

### Portfolio committees

1. The Queensland Parliament has seven 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. In this way, they fulfil similar functions to the PJCHR.
2. Under the HR Act, the portfolio committee responsible for examining a Bill must consider and report to the parliament about whether or not the Bill is compatible with human rights, and consider and report to parliament about the statement of compatibility tabled with the Bill.
3. A strength of the Queensland parliamentary committee system is that committees generally invite submissions to aid in their consideration of a Bill and hold public hearings into all bills at which evidence is heard. This provides an opportunity for broad public debate about proposed laws. In the context of human rights legislation, this can assist parliament in assessing 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.[[56]](#footnote-57) The committees then report to parliament about the Bill and may make comments about the statement of compatibility.
4. 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.

### Human rights indicators for Parliament

1. Drawing on the work of academics and the ACT and Victorian Human Rights Commissions, the QHRC has developed a set of indicators to gauge the development of a human rights culture within the parliament.[[57]](#footnote-58)
2. Parliaments are uniquely placed to assess the human rights implications of proposed legislation by virtue of their position as democratic bodies representing the community with the power to call on expert evidence and advice. However, assessing the efficacy of parliamentary human rights scrutiny involves complex weighing of various public interests and the impact on society of a proposed law.
3. The QHRC 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 under Bills and during inquiries. The QHRC acknowledges the critical work of committee members, staff, and advisers in building a human rights culture in Queensland.
4. The QHRC’s observations are not based on 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.
5. These indicators explore the extent to which legislation is assessed for human rights compatibility, the adequacy of statements of compatibility, and how this is handled 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.
6. Appendix E sets out the application of these indicators to the work of parliament in the 2020-21 and 2021-22 financial years.

This timeline shows the parliamentary indicators mapped against the usual processes a Bill follows, in the following order: 
- Bill introduced to Parliament
- Indicator 1: Override Declarations 
- Indicator 2: Referrals to Committee 
- Referred to Committee 
- Indicator 3: Incompatibility acknowledged by introducing member 
- Indicator 4: Committee examination of incompatibility 
- Indicator 5: Critique of Statements of Compatibility
- Indicator 6: Additional information received by Committee 
- Committee reports back to Parliament 
- Indicator 7: Committee recommendations about human rights 
- Indicator 8: Introducing member responded to report by providing further information 
- Indicator 9: Bill amended as a result of report 
- Bill finalised 

1. The application of these nine human rights indicators suggests that human rights compatibility is being addressed both through submissions to committees and in the human rights commentary in committee reports. Comparing these indicators year on year, it appears a culture of human rights dialogue is continuing to develop in the Queensland Parliament. Positive signs, such as the discussion of human rights compatibility during the third reading debate stage of Bills is encouraging. It remains a positive feature of the Queensland Parliament’s process that committees can collate and consider additional information through the inquiry process and then publish it for the benefit of the community. This approach ensures that limitations on human rights can be considered and potentially resolved by the time the committee delivers its report, which is prior to the Bill being debated.[[58]](#footnote-59)
2. Some committees have also extended their consideration of human rights compatibility to all sections of their reports, rather than confining their analysis to a single section. This includes highlighting human rights concerns raised in submissions[[59]](#footnote-60) and using this material to inform the formal, technical analysis of human rights compatibility, usually included at the end of committee reports. The QHRC hopes this trend continues and becomes the norm for all committee reports ensuring a thorough consideration of all human rights concerns.
3. Several committee reports have discussed deficiencies in statements of compatibility or raised other concerns about limitations on human rights, without making a formal request for more information, or recommending that a Bill be amended.[[60]](#footnote-61) This usually means that no further information was provided by the government to justify a limitation, nor were amendments to the Bill forthcoming.
4. The QHRC has respectfully suggested that, wherever possible, rather than recommending an override declaration for potentially incompatible legislation, portfolio committees could instead consider making recommendations about how Bills could be amended to ensure compatibility, seek further justification for the limitation on rights from the minister, or recommend to parliament that the Bill not be passed.[[61]](#footnote-62)
5. The QHRC has welcomed the approach of the Economics and Governance Committee that a statement of compatibility should not merely consider the compatibility of proposed amendments in isolation, but the overall compatibility of legislation as amended. The QHRC agrees that this will help to ensure that the objects of the HR Act can be genuinely fulfilled.[[62]](#footnote-63)
6. While rare, an unfortunate feature of Queensland’s unicameral system has been the introduction of government amendments to legislation at debate stage, which have not been subject to committee scrutiny.[[63]](#footnote-64)

# Part 2: Proposed Federal Human Rights Act

1. The QHRC supports many of the suggested amendments or improvements to the current dialogue model operating in Queensland as set out in the Position Paper.

## Interaction with state and territory laws

1. The QHRC agrees with the AHRC Position Paper that the human rights legislation in place in Victoria, Queensland, and the ACT should not be affected by a federal Human Rights Act, especially as the Queensland HR Act places obligations only on Queensland public entities. Commonwealth government agencies operating in Queensland are not subject to the Queensland HR Act. To fill this gap, the Position Paper provides that a national human rights act would apply only to federal laws and federal public authorities.
2. The AHRC proposal includes that a federal Human Rights Act makes clear that it is not intended to override state and territory laws.[[64]](#footnote-65) The QHRC agrees with AHRC that the practical effect of a federal Human Rights Act on uniform schemes and federal-state co-operative schemes could be dealt with on a case-by-case basis. Agreements could be made to adopt the human rights act as it applies to specific laws, or exemptions made. The Position Paper also suggests that a concurrency provision could operate similarly to existing concurrency provisions in federal discrimination laws. Where state authorities may exercise public functions on behalf of the Federal Government, and so may fall under the jurisdiction of both federal and state human rights instruments, this could be dealt with on a case-by-case basis, including through memorandums of understanding or the clarification of obligations through regulations. On the whole, AHRC suggests any practical difficulties or inconsistencies between federal and state/territory laws and functions could be resolved during a transitional implementation period of 1 year.
3. The QHRC sees advantages of complementary legislation at the federal level including

* ensuring there is no gap in human rights protections when public sector organisations at the federal and state level work together (e.g. Australian Federal Police and Queensland Police Service)
* providing consistent protection and clarity of obligations on functional public entities that may be performing functions of a public nature for both the federal and Queensland governments
* promoting a consistent culture across the state and federal public service
* creating potential for enhanced jurisprudence on the implementation of international human rights obligations in Australia.

1. As the Position Paper notes, the lack of an overarching federal instrument means that a person’s access to rights protections is wholly contingent on where they live, and whether the public entity they are complaining about is a state, federal or local body.

## Addition of participation duty

1. The QHRC sees value in AHRC’s proposed ‘participation duty’, which is currently not a feature of the Queensland HR Act. It would require public authorities to ensure the participation of certain groups and individuals in relation to policies and decisions that directly or disproportionately affect their rights. The participation duty addresses a fundamental problem in the development of federal policies and decisions – inadequate engagement with the very people to whom those decisions directly apply. The duty is drawn on international obligations to ensure specific participation from First Nations peoples, children and persons with disabilities.
2. The duty will apply differently to each of these groups, as defined by the relevant international instruments. However, the same underlying requirement applies — when decisions will affect the rights of members of these groups, public authorities have a duty to ensure their participation in those decisions.
3. As discussed in Part 1, some public entities in Queensland are undertaking such consultation. For example, Queensland Health has taken steps in recent years to improve the participation of Aboriginal peoples and Torres Strait Islander peoples in the health system.
4. The *Health Legislation Amendment Act 2020* (Qld) amended the *Hospital and Health Boards Act 2011* (Qld) to strengthen health equity for Aboriginal people and Torres Strait Island peoples. This implemented key recommendations of the Health Equity Report commissioned by the QHRC in 2017 (when the QHRC was known as the Anti-Discrimination Commission Queensland).
5. Through the *Hospital and Health Boards Act 2011* (Qld), Queensland’s public health system is established as a federated health system. Under this governance model Hospital and Health Services (**HHSs**) throughout Queensland have direct responsibility to provide public health services and are accountable for their own performance through a Board to the Deputy Premier and relevant minister.
6. In March 2017, Adrian Marrie (consultant and Associate Professor (Adjunct), School of Human Health and Social Sciences CQ University) provided the *Addressing institutional barriers to health equity for Aboriginal and Torres Strait Islander people in Queensland’s public hospital and health services report* (the **Health Equity Report**) to the then Anti-Discrimination Commission Queensland. The Health Equity Report identified institutional barriers to health equity for Aboriginal people and Torres Strait Islander people in Queensland’s public health system. The Report identified issues with the Hospital and Health Boards Act and concluded that, ‘the Hospital and Health Boards Act fails to give the necessary legislative force to the COAG national partnership agreements and federal and Queensland policy imperatives to close the Aboriginal and Torres Strait Islander health gap, thus indicating to the Aboriginal and Torres Strait Islander communities that the State is not taking its responsibilities to close the Indigenous Health Gap seriously’.
7. The amendments include mandating Aboriginal and Torres Strait Islander representation on Queensland Hospital and Health Service Boards. To support these amendments, Queensland Health has worked with the Queensland Aboriginal and Islander Health Council (QAIHC) to develop the *Making Tracks Together - Queensland's Aboriginal and Torres Strait Islander Health Equity Framework*. The aim is to place First Nations peoples and voices at the centre of healthcare service design and delivery.
8. *Making Tracks Together* supports Hospital and Health Services to develop and implement Health Equity Strategies. The strategies outline the actions each Hospital and Health Services will deliver to achieve health equity, actively eliminate racial discrimination and institutional racism, and influence the social, cultural, and economic determinants of health by working with Aboriginal and Torres Strait Islander organisations, health services, communities, consumers and Traditional Owners.
9. The QHRC believes that making the participation duty an explicit duty would broaden such engagement by making it common practice at all levels of policy making, without having to write it into specific legislation. For example, during the pandemic, some of the complexities and confusion caused by public health directions, particularly those involving mask wearing or what an essential worker was in the disability sector, could have been avoided with better and earlier consultation.
10. We suggest that public entities would benefit from further clarity about when and how the duty arises, and how entities would be held accountable. It would be helpful for AHRC to develop guidance material on how public entities would discharge this duty in various circumstances, including where consultation with multiple people and groups is needed. This may occur where service providers and service users both need to participate in policy or law reform. This guidance could refer to existing Australian Government frameworks, such as the *APS framework for engagement and participation* which cites the work of the International Association for Public Participation (IAP2).[[65]](#footnote-66)

## Equal access to justice duty

1. In addition to an overarching participation duty, AHRC proposes a complementary ‘equal access to justice duty’ for public authorities.
2. This duty would mean that public authorities have a positive duty to realise ‘access to justice’ principles – which would require public authorities to take active steps to provide key elements of a functioning justice system.
3. Specifically, it would be the role of public authorities to provide sufficient access to legal assistance, interpreters, and disability support to individuals navigating the justice system.
4. Section 5 of the Queensland HR 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.
5. The rights most likely to be engaged when performing judicial functions include:

* recognition and equality before the law (section 15)
* fair hearing (section 31)
* rights in criminal proceedings (section 32)
* liberty and security of person (section 29).

1. This provision has been applied in several matters in Queensland.[[66]](#footnote-67) In *AG v Grant (No 2)* [2022] QSC 252 the Supreme Court confirmed that a court is required to consider rights that relate to its functions. In this case, the Court concluded that the function of making a continuing detention order under Queensland‘s dangerous prisoners legislation (in lieu of a supervision order) would involve the application of at least the right to liberty in s 29(1) and the right to protection against arbitrary detention in s 29(2). In contrast, the making of a supervision order in preference to a continuing detention order would involve at least the application of s 30 of the HR Act (right to humane treatment when deprived of liberty).
2. As the QHRC understands the AHRC proposal, a provision similar or additional to s 5 of the Queensland Human Rights Act would be adopted, with more guidance about the application of the right to fair trial and right to equality to avoid some of the complexities associated with the Queensland and Victorian case law.

## Definition of public entity

1. The AHRC proposal is to largely adopt the definition of public entity in the existing state and territory laws. While welcome, the QHRC suggests, if possible, further clarification would improve the application of these provisions. Clarity in defining public entity would ensure the application of the legislation is well understood.
2. The use of examples in legislation should be explained or justified. Both the Queensland HR Act and Victorian Charter (but not the ACT HR Act) give the example of a private school not being a public entity. The inclusion of this example means that private schools are largely assumed to not be public entities, although limited justification is provided in the explanatory material for this. The QHRC appreciates that there may be a question as to whether some (and perhaps all) private schools are possibly fulfilling their functions on behalf of the Queensland and Victorian state governments.
3. The QHRC suggests that this example should not be repeated in any federal Human Rights Act without clear justification, and with reference to the nature of relationship between the Australian Government and non-government schools, against the criteria for functional public entities. The effect of examples of other similar entities operating in different sectors should also be explained or justified.

## UNDRIP / cultural rights

The QHRC supports the AHRC proposal to explicitly recognise UNDRIP in a federal Human Rights Act with a specific cultural right, recognition in the preamble, and ::

* a ‘participation duty’ applicable to the executive to reflect principles of self-determination through practical measures by public authorities, and to complement a Voice to Parliament mechanism, should it be implemented
* participation by First Nations peoples reflected in parliamentary scrutiny processes through the requirement to list in statements of compatibility steps taken to ensure that participation of First Nations peoples has occurred, where relevant
* a clause enabling human rights in the human rights act to be interpreted in line with UNDRIP in cases where the rights of First Nations peoples have been affected by an act or decision of the government.

## Direct right of action

1. AHRC suggests that unlike the Queensland HR Act, a Federal Human Rights Act should include a direct right of action for people to allege breaches of the obligations placed on public entities under the Act. In making this recommendation, AHRC has noted that a major deficiency in its current complaint handling functions for international human rights instruments is the lack of a sanction or consequence that would encourage resolution through conciliation.
2. The QHRC has observed similar challenges with the current model under the Queensland HR Act, as discussed in Part 1 of this submission.
3. While the cause of action would generally start with a complaint to AHRC, the QHRC notes the importance of the additional safeguard proposed by AHRC, that in the case of urgency or an emergency, the matter would proceed directly to court and AHRC would terminate its handling of the matter.
4. The QHRC sees benefits in the Federal Court deciding alleged contraventions, and suggests that a direct right of action be considered in the upcoming independent 4-year review of the Queensland HR Act.
5. However, a key consideration in using superior courts, as opposed to a tribunal, is the issue of costs. Many tribunals are no costs jurisdictions. Through the development of the federal Human Rights Act, the QHRC suggests the issue of adverse costs orders being made against applicants, many of whom are likely to come financially disadvantaged communities, must be considered. Without clear protections, adverse costs orders may have a deterrent effect. The QHRC also recognises that some low cost or pro bono legal assistance is only provided in circumstances where costs may be recovered by successful litigants.
6. At a minimum, to make a direct cause of action, and other complaint mechanisms effective, legal assistance providers such as Legal Aid commissions and community legal centres must be adequately funded to advise and act for people subjected to human rights limitations by government agencies.

## Remedies

1. The AHRC Position Paper proposes that the proposed Human Rights Act give courts discretion over the range of remedies available, noting the variety of human rights claims and the importance of flexibility. Proposed remedies include monetary compensation, injunctions, orders requiring action, and the setting aside of administrative decisions.
2. The QHRC supports this approach, particularly as the extent of remedies under the Queensland HR Act remains unclear and does not include damages. Anecdotally, this uncertainty may be having an effect on willingness to resolve a matter through complaint resolution.
3. As AHRC notes, human rights claims range from relatively minor limitations to egregious breaches. The lack of the usual suite of civil law remedies dissuades litigants from holding the government to account, particularly people with limited financial resources to fund legal action. Public entities may be less likely to reach a settlement and agree to a remedy, where there is little reputational or financial risk, should a matter proceed to a court or tribunal hearing.
4. Much of the human rights jurisprudence in Queensland, ACT, and Victoria concerns people in the detention of the state who seek some change to their circumstances and have few other legal avenues available.

## Right to access health services

1. AHRC suggests that a national human rights act include a right to access health services.
2. The Queensland HR Act is currently the only Australian human rights legislation to include a right to access health services. The right remains relatively untested and is a narrower version of the right protected in the *International Covenant on Economic, Social and Cultural Rights*. Like the right proposed by AHRC, it is limited to two obligations on public entities: to provide access to health services without discrimination, and to not refuse emergency treatment. The Explanatory Note to the Queensland Human Rights Bill 2018 stated that the right was not intended to encompass protections in relation to underlying determinants of health, such as food and water, social security, housing and environmental factors.[[67]](#footnote-68)
3. Nonetheless, the right is likely to extend anti-discrimination protection beyond that already provided for in Queensland law as grounds for discrimination under the Human Rights Act are not confined to those in the Queensland *Anti-Discrimination Act 1991*.
4. The right not to be refused emergency medical treatment is not subject to the caveat ‘without discrimination’ and may prove the more significant aspect of the right.
5. The right was recently applied by the Queensland Coroners Court in an inquest concerning the deaths of several women from the remote community of Doomadgee who had severe rheumatic heart disease. The coroner found that the Doomadgee Hospital appeared on occasions to have failed to provide patients and their families with sufficient information about their health care and treatment to enable them to fully understand their health conditions and the benefits of treatment, and to appropriately involve families in the provision of health care. These factors had an impact on the protection of patients’ health and limited their right to life and the right to health services.
6. At times the hospital did not deliver culturally safe services and a perception existed among some patients that racism had influenced clinical judgment. This affected patients’ right to equality, right to health services, and cultural rights.[[68]](#footnote-69)

## Additional rights

1. The Position Paper suggests the addition of rights not presently set out in the Queensland HR Act, such as:

* right to an adequate standard of living
* right to a healthy environment
* right to work and work-related rights
* right to social security.

1. The QHRC supports the addition of these rights for the reasons set out in the Position Paper.
2. To those rights we would add specific rights for victims of crime.
3. All people have human rights and the QHRC has applied several rights proposed in the federal Human Rights Act to the circumstances of victims of crime, including the right to fair hearing, right to privacy, and freedom of expression (including the right to receive information).
4. The importance of protecting victims’ rights is reflected in the United Nations *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.*[[69]](#footnote-70) The Declaration states that victims should be treated with compassion and respect for their dignity, and are entitled to access mechanisms of justice and prompt redress, as provided for by national legislation, for the harm that they have suffered.
5. It has been noted that promoting rights for victims is an attempt to address the persistent difficulties experienced by institutions and professionals to adequately meet the expectations of victims of crime. Having violence inflicted on them and experienced victimisation separates victims from their usual place in society. It disrupts the sense of trust and belonging people generally (though variably) have in others. [[70]](#footnote-71)
6. Recommendation 20 of the Queensland Women’s Safety and Justice Taskforce *Hear Her Voice* (Report 2)was that:

The Queensland Government, in the next statutory review of the *Human Rights Act 2019*, include a specific focus on victims’ rights and consider whether recognition of victims’ rights or the Charter of victims’ rights in the *Victims of Crime Assistance Act 2009* should be expanded and incorporated into the *Human Rights Act 2019*. The review should involve consultation with victims, First Nations peoples, service providers (including those working with victims of domestic, family and sexual violence victim-survivors) and legal stakeholders.[[71]](#footnote-72)

1. In response, the Queensland Government committed to considering whether victims’ rights are appropriately protected in the next statutory review of the HR Act.[[72]](#footnote-73)
2. These developments are consistent with the recommendation of the Victorian Law Reform Commission’s 2016 *Report on the Role of Victims of Crime in the Criminal Trial Process*, that the Victorian *Charter of Human Rights and Responsibilities Act 2006* be amended to include a right for a victim of a criminal offence to have certain specific minimum guarantees, including to be acknowledged as a participant with an interest in the proceedings, to be treated with respect at all times, and to be protected from unnecessary trauma, intimidation, and distress when giving evidence.[[73]](#footnote-74)

## Override process

1. For the reasons outlined above the QHRC does not support the inclusion of the ability for parliament to override a federal Human Rights Act.

## No formal declaration of incompatibility

1. The QHRC sees no issues with the proposal for informal notification of incompatibility by courts, as proposed by the AHRC.

## Broader interpretation clause

1. Section 48(3) of the HR Act states that international law and the judgments of domestic, foreign and international courts and tribunals relevant to a human right may be considered in interpreting a statutory provision.
2. The Position Paper suggests that the federal HR Act clause should refer specifically to seven core treaties that Australia has ratified, as well as UNDRIP.
3. This approach is consistent with s 48(3) of the Queensland HR Act but would provide greater clarity about the application of international law. Specifically mentioning key international instruments in the Explanatory Statement accompanying a human rights Bill would make this clear. For example, the United Nations *Standard Minimum Rules for the Treatment of Prisoners* (also known as the Nelson Mandel Rules) are particularly relevant to the interpretation of the right to humane treatment when deprived of liberty.

## Victimisation protection

1. A feature of discrimination laws at both the federal and state level is that they provide protection from victimisation.[[74]](#footnote-75) These provisions protect both people who assert their rights and people who assist them to do so, from being treated badly as a result. This protection can apply even if the original claim is not proved.
2. The QHRC has identified a gap in protection for complainants under the Queensland HR Act which does not provide protection against victimisation.
3. The QHRC suggests that the federal Human Rights Act should include such protection, based on similar provisions in the federal anti-discrimination laws.

## Implementation

1. In the QHRC’s experience, the implementation of a human rights act is a complicated and resource-heavy project. A transition phase is clearly necessary to begin the culture change work and build understanding of the obligations on public entities.
2. A question for the implementation of the federal Human Rights Act may be whether all the duties/obligations should commence at the same time. For example, it may be prudent to consider delaying the commencement of some provisions, such as the ability to seek an enforceable remedy through the courts for 12 months after the operational aspects commence.
3. The QHRC supports AHRC’s submissions on ensuring it is sustainably and appropriately resourced to fulfil its functions under a new human rights framework.
4. In our experience, internal government advice is crucial. The QHRC notes evidence from the federal Attorney-General’s Department about the current role various units within that Department play in advising agencies about human rights obligations, including the development of statements of compatibility for draft legislation.[[75]](#footnote-76)
5. If a national human rights act is enacted, there should also be permanent, dedicated, internal departmental teams with human rights expertise and responsibility for consultation and education on human rights act matters. AHRC (and other agencies) are likely to see an initial increase in complaints, and must be properly resourced to handle this increase.
6. Affordable legal assistance should be available to ensure human rights protections are realised and people can access appropriate remedies for unreasonable limitations of their human rights. The QHRC suggests the Australian Government should fund Legal Aid commissions and community legal centres to act and give advice.

# Other aspects of national human rights framework

1. The QHRC endorses AHRC’s submission in relation to the scope and effectiveness of other aspects of the National Human Rights Framework.[[76]](#footnote-77)
2. The new requirement for statements of compatibility for subordinate legislation would align the Commonwealth parliamentary system of human rights scrutiny with the Queensland process.
3. The QHRC supports the development of a national human rights indicator index consistent with the measures we have sought to develop through our annual reports on the operation of the HR Act in Queensland.
4. The QHRC recommends that the foundations identified by AHRC should be adopted, particularly ensuring that AHRC is adequately resourced to fulfil its functions under any new framework.

## Anti-discrimination law

1. The National Human Rights Framework refers to harmonising and consolidating Commonwealth anti-discrimination laws.

### *Building Belonging*: Review of Queensland’s Anti-Discrimination Act

1. In May 2021, Queensland’s Attorney-General asked the QHRC to undertake a review of the AD Act.
2. The Anti-Discrimination Act plays a central role in protecting and promoting equality and belonging in Queensland. This Review, which marked the thirtieth anniversary of the Act, provided an opportunity to undertake a holistic re-evaluation of all aspects of Queensland’s discrimination law.
3. Following extensive consultation and research, the QHRC published its report, *Building Belonging Report – Review of Queensland’s Anti-Discrimination Act 1991* (**Building Belonging**).
4. During the Review, the QHRC was told repeatedly that people and communities continue to experience unlawful discrimination in Queensland.
5. The QHRC surveyed recent inquiries and reforms of state and federal discrimination law, and the terms of reference required the QHRC to consider the implementation of relevant recommendations from the *Respect@Work* report.
6. The Review received feedback that the array of Commonwealth, state, and territory laws (which often overlap) has resulted in a complex and fragmented scheme that is confusing and difficult for both duty holders and complainants to understand and navigate.
7. During the Building Belonging Review the QHRC heard that the law is too complex and can be hard to understand and apply, particularly because of differences between federal and state law. The difficulties are magnified for under-resourced small business owners, who already feel the weight of having to comply with other industrial and work health and safety laws, while running their businesses. The recommendations of Building Belonging aim to minimise inconsistency between state and federal laws as far as possible.
8. Most duty holders want to do the right thing and actively support the elimination of discrimination, but don’t always know what they are required to do, or not do. Building Belonging found that further mechanisms to support and guide organisations in their obligations are required to ensure that preventing and responding to discrimination is a shared responsibility and becomes everyone’s business.
9. The QHRC suggests Building Belonging’s recommendations be considered in future reform of federal discrimination law.

# Conclusion

1. Thank you for the opportunity to make a submission to this important inquiry that has the potential to shape the future human rights protections for all Australians.
2. The Queensland Human Rights Act has already provided tangible benefits to all Queenslanders in the multitude of ways set out in this submission and this should be extended to the federal level.
3. The QHRC is available to provide further assistance the Committee may require, including appearing to give evidence in person.

# Appendix A: Outcomes

Complaints resolved outside the QHRC

The following case studies were provided to the QHRC by public entities and show how the HR Act assisted in resolution of grievances without the need of a formal complaint to the QHRC.

#### Improved respite care as result of complaint

A complainant’s daughter has a disability and attends respite at Accommodation Support and Respite Services (AS&RS) on weekends. The daughter has incontinence and requires support with showering and bathing. The complainant alleged that AS&RS staff had not adequately managed her daughter’s cleanliness, that there were occasions when medication was not administered, and that staff rostering was not appropriate. Although the complainant did not mention the HR Act, the department investigated whether the complaint was a breach under s 17, protection from torture and cruel, inhuman or degrading treatment. While a breach was not able to be determined, a number of service improvements were implemented, including additional training and professional development for residential care officers; enhanced record keeping practices, including more detailed notes for staff changeover; and ensuring female staff were on-shift for future respite stays by the client.[[77]](#footnote-78) The complainant indicated that they were satisfied with the actions the department was taking to address her concerns.

#### Exemption to visit neonatal intensive care unit during COVID-19

On 3 March 2022, Queensland Health received a complaint from a health consumer group about the impact of the Chief Health Officer’s public health directions on the ability of parents who are COVID-19 positive or close contacts to visit their babies in the neonatal intensive care unit (NICU).

The Deputy Chief Health Officer engaged with stakeholders on the restrictions under the Hospital Entry Direction, and the Isolation for Diagnosed Cases of COVID-19 and Management of Close Contacts Direction; and agreed these would prevent parents who were a diagnosed person or a close contact from visiting babies in the NICU for 14 days.

The Deputy Chief Health Officer considered the human rights of parents affected by the restrictions, including the protection of families and children, and issued a class exemption for the management of neonatal visitors. The class exemption reduced the restriction period for parents who were diagnosed cases or close contacts from 14 days to 7 days. Rather than waiting until after the 7 day post isolation period, parents were allowed to visit their babies in the NICU after completing the initial 7 day isolation period.

To address the risk of allowing parents to visit vulnerable and high risk settings in the post isolation period, the class exemption outlined strict conditions, including mandatory compliance with local level policies required by hospital operators and the Queensland Clinical Guidelines.

The class exemption was signed on 16 March 2022 and made available to hospital nurseries to provide to parents in appropriate circumstances.

### Tenancy and family violence

Tenants Queensland (TQ) assisted a tenant who was a single mother and a victim of domestic violence. Her housing provider had sought to terminate her lease for a serious breach caused by her ex-partner who refused to leave the premises. The tenant sought support and obtained a protection order against her ex-partner. The tenant wanted to remain in her premises to enable her to reunite with her son. A termination would most likely render her homeless or only allow her to obtain unstable housing in share houses which would not assist in her reunification plan with child safety. Tenants Queensland assisted the tenant to draft a letter of complaint under the HR Act and submissions in response to the application for termination. The matter did not proceed to a full hearing as QCAT permitted an adjournment which allowed the parties to negotiate a transfer of tenancy. The housing provider withdrew the application for termination.

### Threatened eviction for ‘objectional’ behaviour

A tenant had been renting from a community housing provider for the past 5 years and faced a termination of tenancy due to objectionable behaviour. The tenant had a mental health condition and high anxiety which resulted in lodging numerous complaints with the housing provider over the condition of the common areas. These complaints escalated over time. Due to the language used by the tenant in various emails the community housing provider sought to terminate the tenancy rather than address the tenant’s disability and mental health issues and provide an alternative method of addressing concerns. Tenants Queensland assisted the tenant in drafting a Human Rights complaint as the housing provider should have taken the tenant’s disability into account and afforded him an alternative way of communicating with the provider rather than seek to terminate the tenancy. After ongoing negotiations with the community housing provider and the public health restrictions brought on by COVID-19 the provider withdrew their application to terminate.

### Pregnant woman facing eviction

Tenants Queensland assisted a single mother, who was 7 months pregnant, respond to an application for termination brought against her due to a serious breach which was based on the conduct of her ex-partner who was involved in alleged illegal activity. The tenant filed a human rights complaint as the she had obtained a protection order against the ex-partner, who remained incarcerated due to a domestic violence incident, and the termination order was not required as the behaviours had ceased. The housing provider had failed to response to the tenant's Human Rights complaint therefore the complaint was escalated to QHRC. The tenant sought mediation of the issues surrounding the complaint, however the QHRC declined to deal with the complaint as the matter was before QCAT and set down for a second hearing regarding the termination. The final hearing did not proceed as the Department of Housing had withdrawn their application for termination just prior to the hearing. The tenant remains in same the rental premises.

### Avoiding homelessness after eviction

Tenants Queensland assisted a tenant respond to an application for termination due to objectionable behaviour. The tenant had ongoing mental health and behavioural issues over multiple tenancies and sought to sustain her current tenancy to enable her to remain in stable housing whilst she sought support for the various issues that caused disruption to her tenancy history. Tenants Queensland assisted the tenant in her initial response to the Department’s application and sought an adjournment to allow concerns raised in the Human Rights complaint to be addressed. The adjournment did not result in a successful discussion with the housing provider due to the extensive nature of the breaches. QCAT then proceeded to terminate the tenancy. The housing provider offered to assist the tenant access services so that she was not placed into homelessness.

### Risk of violence

The Benevolent Society assisted a woman and child who had been recently placed in public housing in an unsafe area with significant documented violence. The Family support worker advocated on the mother’s behalf to obtain additional security for the premises, and an eventual transfer to a safer property and area. The service argued that financial hardship should not translate to a young family being exposed to more trauma. The mother and child were able to enjoy their right to a safe home without threat to their physical and mental well-being.

### Single mother at risk of eviction

A single mother of five children from an African country was at risk of being evicted into homelessness from her Department of Housing property. The rental arrears at issue in the case arose from extraordinary circumstances where she had travelled to her homeland but was unable to return home to Australia for a sustained period due to the COVID-19 pandemic. The mother and her case worker were supported to advocate to the Tribunal for the application for a termination order to be dismissed on multiple grounds, including that granting the application would result in an arbitrary limitation on the mother’s human rights. It was argued that the Tribunal should exercise its power in a way that was compatible with human rights, especially having regard to the mother’s right to not be treated in a cruel, inhuman or degrading way which can extend to forcible eviction and considering there were less restrictive methods that could be taken. Ultimately, the parties were able to agree on a less restrictive method and the need for a disputed hearing was avoided

### Prison facilitated virtual access to family funeral

Queensland Corrective Services (QCS) received a human rights complaint from a prisoner who had been denied a leave of absence to attend a family member’s funeral. Due to safety concerns and the high risk the prisoner was deemed to pose, an escort to the funeral was unable to be facilitated. When the human rights complaint was received, a new decision was made to facilitate the prisoner being able to watch a live stream of the funeral. The complaint led to a change to the decision-making paperwork for leave of absence applications, which now requires decision makers to consider this alternative when the leave of absence is not approved.

Resolved QHRC complaints

The following case studies are a selection of resolved outcomes of complaints finalised through the QHRC process.

### Public and Social Housing

#### Crisis housing conflict resolved

The Commission resolved an urgent complaint from a man who was experiencing homelessness. He had been evicted from crisis accommodation following an incident in which he said he was forced to take medication without consent. The man was distressed because he had no money and his personal possessions had been left behind when he was evicted.

The case manager from the crisis accommodation service clarified with the Commission that the man had not been removed for failing to take medication, but because he had threatened staff. Communication had broken down since the man had stopped answering their phone calls.

Through the intervention of the conciliator, direct communication was restored between the man and the case manager from the accommodation provider. The case manager explained to the man that he was not permanently evicted, but temporarily disqualified from the program for one month. The man then collected his belongings and found an alternative crisis accommodation service to move into.

In conversation with the case manager, the man acknowledged that he had been showing increased aggression and thanked the provider for returning his clothes after laundering them. The man commented that after making a complaint he had felt he had been really listened to by the case manager and since moving into another accommodation service he was doing much better.

Relevant human rights: Property rights (section 24), right to privacy and reputation (section 25), recognition and equality before the law (section 15).

Complaint type: Human rights only.

Dispute resolution mode: Early intervention.

#### Family needed accessible social housing

An Aboriginal woman with a disability lived in social housing with her 3 children (who also have disabilities) and was issued with a Notice to Leave because of a serious breach of the tenancy agreement. The circumstances leading up to the eviction were in dispute, but QCAT made an order that the woman vacate the property.

After leaving the premises, the woman and her children were in unstable accommodation, and she understood that she could no longer receive any housing assistance from the social housing provider. The woman also raised concerns that while in the property it took too long to arrange modifications to the social housing property to meet her disability needs so she could safely shower and access the kitchen.

The complaint settled on a financial sum and an expression of regret about the delay in progressing modifications to the property. The social housing provider also agreed to continue to provide services to her and her children, including supporting her to apply for appropriate and accessible accommodation in the area.

Relevant human rights: Recognition and equality before the law (section 15), property rights (section 24), privacy and reputation (section 25), protection of families and children (section 26).

Complaint type: Combined claim.

Dispute resolution mode: Conciliation conference.

#### 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

### Aboriginal and Torres Strait Islander cultural rights

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

An Aboriginal community leader 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 HR 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.

Later media reports suggest this outcome continues to influence the approach of Queensland police regarding the ability for traditional owners to conduct ceremonies. *Guardian Australia* reports police saying to traditional owners: ‘We understand that your connection to culture is disappearing and you don’t want to lose that’ and ‘At the moment you guys are here and you’re practising culture, and part of that under the HR Act is for that to be practised and shared.’[[78]](#footnote-79)

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)

Complaint type: Piggy-back complaint

Attribute : Race

Dispute resolution mode: Conciliation conference

#### Resolution to complaint promoted family and kinship rights

A prisoner’s mother made a complaint against a prison service provider[[79]](#footnote-80) about a breach of human rights, including the right to maintain family and kinship relationships. Her son was in a prison far from where she lived, and she also cared for his child. Because of the distance, the only way that the woman could keep in touch with her son and ensure her grandchild could maintain a relationship with their father was through phone contact.

Phone calls are made by prisoners through an account that other people are able to deposit funds into. However, the service provider’s rules automatically banned a prisoner from receiving funds after there had been a ‘drawback’ of funds. A drawback occurs when a person outside of the prison deposits money, which is then spent by the prisoner but in the meantime the depositor disputes the charge, leaving the account in a deficit. Even though the drawback had not happened when the mother was depositing funds, the policy meant that she was unable to put money onto her son’s account to allow him to make phone calls to his family.

Through the conciliation process the prison service provider committed to review their policies to ensure they were compliant with the human rights of family members as well as those of prisoners. The mother was also reinstated as a person who was able to send funds to her son.

Relevant rights: Protection of families and children (section 26), right to privacy and reputation (section 25), cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28)

Complaint type: Human rights only

Dispute resolution mode: Conciliation conference

#### Perceptions of cultural safety in health service provision improved

A First Nations man detained in prison told us that he was not receiving culturally safe health care. Through early resolution, the prison health service agreed to continue to work with Queensland Corrective Services to ensure a Cultural Liaison Officer is present during future health-related consultations, and put in place a process where the Nurse Unit Manager would directly request the liaison officer’s presence at all appointments.

The man communicated to the QHRC he felt that there had been significant improvement in the way he experienced health care as a result of lodging the complaint. The conciliator sought the assistance of a member of the Aboriginal and Torres Strait Islander Unit at the QHRC to manage the complaint process, and the conciliator reflected that the Unit’s involvement had been crucial in ensuring that the complainant felt comfortable and safe during the complaint process.

Relevant rights: Right to protection from torture, cruel, inhuman and degrading treatment (section 17), humane treatment when deprived of liberty (section 30), right to health services (section 37)

Complaint type: Human rights only

Dispute resolution mode: Early intervention

### COVID-19 Related

#### Quarantine exemption for child with ASD and family

A family of five adults and a three-year-old child were placed in mandatory quarantine after returning from overseas. Although they were Queensland residents, they had spent ten months in New Zealand. The three-year-old child has autism spectrum disorder, and while she was in quarantine it became clear that the environment was unsuitable for her needs and causing her distress.

The child experiences severe food aversions and her diet could not be catered for in quarantine. Usually, the mother relies on family to help care for the child, but was kept separate from other family members. The situation worsened when the mother was accidentally locked out of the room for half an hour, and the child became severely distressed.

Following early intervention discussions between a Commission conciliator and Queensland Health, the family was fast-tracked for an exemption to the requirement to quarantine in a hotel, and were able to return home for quarantining one day after lodging their complaint with the Commission.

Relevant human rights: Humane treatment when deprived of liberty (section 30), protection of families and children (section 26), freedom of movement (section 19), recognition and equality before the law (section 15), right to liberty and security of person (section 29).

Complaint type: Human rights only.

Dispute resolution mode: Early intervention.

#### No balcony in quarantine room caused anxiety

A woman was placed in mandatory quarantine at a hotel following a return from overseas during the COVID-19 pandemic emergency period. She experienced anxiety and panic attacks which were exacerbated by being in a closed space without natural air and light.

The woman lodged a complaint with the Commission after unsuccessfully raising the matter herself. Through the conciliation process it came to light that a recommendation that she be moved to a balcony room had been made but not actioned. The matter was swiftly resolved by the woman being moved to a balcony room*.*

Relevant human rights: Humane treatment when deprived of liberty (section 30), freedom of movement (section 19), recognition and equality before the law (section 15), right to liberty and security of person (section 29).

Complaint type: Human rights only.

Dispute resolution mode: Early intervention.

#### 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 HR Act.[[80]](#footnote-81)

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

#### 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

#### 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 HR 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

#### Man with disability seeks vaccination booster

The QHRC received a complaint from a man with autism who was unable to attend a clinical setting to receive a COVID-19 booster vaccination because of sensory and environmental factors relating to his disability. His anxiety also prevented him from answering phone calls.

He had requested a home visit for a booster shot but was experiencing challenges in getting an appointment. He felt at extreme risk due to his disability and because he was avoiding leaving home, it was causing him to experience social isolation. While he had stated that his preference was for email contact, he was receiving calls by phone from the booking service. Because he did not answer his phone, the appointment was not being booked in and he was becoming increasingly stressed about the situation.

Through the conciliation process, the health service helped arrange for the man to get his booster shot at home. The service also agreed to review the contact centre booking process to ensure that the most appropriate method of communication is used in future.

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

### Other

#### Man sleeping in van has illegal camping fines withdrawn

A man experiencing homelessness was living in his van parked in a council controlled beachside parking area. There were no parking restrictions or fees payable in the carpark. He chose the location because of its easy access to the toilets which were open 24 hours, as he needed to urgently use the toilets up to 15 times during the day and 5 times at night due to a medical condition. Despite raising his medical issues with council officers patrolling the area, the complainant was given fines for illegally camping at the park. The fines amounted to almost $3,000.00, an amount he could not afford to pay.

The man’s advocate raised several human rights including the right not to have a person’s home arbitrarily interfered with (section 25). The man was experiencing strong pain when having to wake up frequently and drive to the toilets. He found interactions with the council officers embarrassing and he felt as though he wasn’t being treated with respect.

During conciliation the council stated that the man was in breach of a local law, which had the important purpose of protecting privacy and safety in the community. Council officers expressed that they had sometimes ignored or warned the man rather than fining him every time. The council also said that they had tried to link the man up with homelessness services.

To resolve the complaint, the council agreed to withdraw the remaining unpaid infringement notices. The man was reimbursed for the fines he had already paid. The council also agreed to undertake staff training on the Act.

Relevant human rights: Recognition and equality before the law (section 15), right to privacy and reputation (section 26), freedom of movement (section 19).

Complaint type: Combined claim.

Dispute resolution mode: Conciliation conference

#### Woman who had experienced DV complains of hospital experience

A woman who had experienced domestic violence from the father of her child complained that a hospital required the presence of the father during the child’s medical appointment. The hospital staff initially advised her that they needed to have the father present by phone due to a Family Court order for shared parental responsibilities. The woman said that she did not want to prevent him from getting the information, but did not want the father to be present on the phone at the same time as her and her child. The appointment proceeded with the agreement that the child be assessed in the presence of a nurse with the parents being consulted separately afterwards. The woman said that the experience left her and her child feeling traumatised and she did not want other people who had experienced domestic violence to have to go through it.

The woman and the health service entered conciliation discussions and negotiations with a genuine will to resolve the complaint. The hospital apologised in writing for the distress the woman and her child had experienced, and explained that they were not aware of the history of violence when they made the decision to include the father. The hospital advised that in future the woman would be able to access the social work team for support, and that they would ensure there would be no further direct or indirect contact with the child’s father. For further appointments the woman would remain with her child during the appointment and receive the doctor’s advice along with her child, and then the father would be contacted separately once they had left.

Relevant human rights: Recognition and equality before the law (section 15), protection of families and children (section 26) and right to health services (section 37).

Complaint type: Human rights only.

Dispute resolution mode: Early intervention.

#### Busking rules negotiable

As an expression of his culture a man wanted to busk using a traditional drum and an amplifier. However, the local council busking application form said that using drums and amplified music was prohibited to prevent interference with the peace and comfort of residents and businesses in the area.

Through the conciliation process, the man was given guidance about how to request an exemption to this rule. So long as the drumming was in particular locations and not late at night, the council said that they were in fact open to providing exceptions to the rule. Clearer communication about the right to ask for an exemption might have avoided the complaint being made.

Relevant human rights: Recognition and equality before the law (section 15), cultural rights – generally (section 27).

Complaint type: Combined claim.

Dispute resolution mode: Conciliation conference.

#### Improving processes to apply for disability parking

A mother lodged a complaint on behalf of her adult son who has an intellectual disability, autism, and other health issues that result in severe pain and extreme behaviour. The mother applied for a disability parking permit to allow her to park closer to the shops to keep her, her son, and members of the public safe. The parking permit was initially refused because the son did not seem to meet the criteria, which are primarily directed at mobility, and the mother subsequently made a complaint to the QHRC.

The woman and a representative of the department responsible for the permit scheme participated in a conciliation conference. In the meantime, the mother made a fresh application and received a permit. During the conference, the mother explained that her son's life was much more difficult during the period when they did not have a permit, but that she felt unable to pursue a formal appeal of the rejection because of her own personal history. She explained her desire for a system that is not so isolating and is more focused on the people involved and their needs, rather than something that is purely bureaucratic. The department’s representative outlined recent reviews to the permit scheme, including consultation and weighing of various needs and interests that occurred.

The complaint was resolved with the parties agreeing that the woman’s feedback about her experience would be given anonymously to the relevant areas of the department (both in policy and customer service).

Relevant rights: Recognition and equality before the law (section 15), protection of families and children (section 26).

Complaint type: Piggy-back complaint

Attribute: Impairment

Dispute resolution mode: Conciliation conference

#### Treatment of family with disabilities prompts training review

A complaint was made by four members of a family, three of whom have learning disabilities and one who has a physical disability and uses a wheelchair. The family attempted to board a public bus and alleged in their complaint that the driver said there was a ‘bad odour here’ and asked the complainants if they ever took baths and that they needed to use deodorant. Insulted and embarrassed, the complainants got off the bus and in their rush the wheelchair tipped. They alleged the driver said he didn't want to see the wheelchair on his bus again and it was best that they took a taxi. The complainants felt that they could not catch local public transport after the incident.

At the conciliation conference, the respondents did not agree with all the complainants’ assertions, but nonetheless provided written apologies expressing their regret for the incident and confirming that the complainants are genuinely welcome on the bus. The respondents also provided compensation and travel vouchers to the complainants and agreed to review the discrimination training provided to staff to ensure it highlights the impact of discrimination on people who live with disabilities.

Relevant rights: Recognition and equality before the law (section 15), privacy and reputation (section 25).

Complaint type: Piggy-back complaint

Attribute: Impairment, family responsibilities.

Dispute resolution mode: Conciliation conference

#### More responsive health services for man with Klinefelter syndrome

The QHRC received a complaint from a man who is neurodiverse and has Klinefelter syndrome, which is a term that describes people with XXY chromosomes. The man requires testosterone injections of a certain dose and regularity to avoid symptoms such as lethargy, depression, anxiety, and fatigue. As he had been in and out of prison, the man had not received the required testosterone dose at various times, and he lodged a complaint that this was a breach of his right to health services.

The health service responsible for health care in the prison participated in a conciliation conference and agreed to the following:

* apology for any miscommunication regarding his syndrome
* training for prison health staff about the syndrome
* assurances that his medical records/discharge summaries would be available when needed
* referral to see a medical officer to refer for ultrasound and physiotherapy as needed.

We note that is a complaint that could have also been accepted as discrimination on the basis of ‘sex characteristics’ which is not currently a protected attribute under the *Anti-Discrimination Act 1991* (Qld). Inclusion of ‘sex characteristics’ as an attribute has been recommended by the QHRC in its recent Review of the Anti-Discrimination Act,[[81]](#footnote-82) to ensure better protections of people with variations of sex characteristics, such as Klinefelter syndrome.

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

# Appendix B: QHRC reports with recommendations

To June 2023, the QHRC has published 4 reports with recommendations for public entities arising from unresolved complaints.

## Prisoner accommodation and medication

|  |  |
| --- | --- |
| **Complaint lodged against** | Hospital and Health Service  Queensland Corrective Services |
| **Human Rights Act sections** | 30 (Humane treatment when deprived of liberty) |
| **Date report published** | 28 June 2023 |

The Commission received a complaint from a prisoner involving various allegations against a Hospital and Health Service and Queensland Corrective Services (QCS) about his period of incarceration, primarily concerning:

* a significant delay in his transfer to single cell accommodation in accordance with a medical recommendation, due to the prisoner having primary responsibility for passing on the HHS’ recommendation to QCS;
* a failure 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 Hospital and Health Service review whether its prison policies and procedures are compatible with rights in the Human Rights Act to ensure:

a) Subject to the prisoner’s consent, medical recommendations about the accommodation of prisoners are communicated directly from the Hospital and Health Service to Queensland Corrective Services (QCS).  
b) The consideration of factors such as 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. This demonstrates a commitment to building a culture of human rights.

## Visitor access to prisons

|  |  |
| --- | --- |
| **Complaint lodged against** | Queensland Corrective Services |
| **Human Rights Act sections** | 26 (protection of families and children)  28 (Cultural rights – Aboriginal peoples and Torres Strait Islander peoples)  30 (Humane treatment when deprived of liberty) |
| **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 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 Correct 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 regarding process including that Queensland Corrective Services:

* 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 accommodation they may need to participate in the application process or visit the prisoner.
* include human rights considerations in their decision letters.

## Prisoner isolation

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

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 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
* 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 Health |
| **Human Rights Act sections** | 30 (Humane treatment when deprived of liberty) |
| **Date report published** | 15 October 2020 |

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 standards[[82]](#footnote-83) and
* 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.

# Appendix C: Case law

#### Matters in which HR Act was applied to mid-June 2023[[83]](#footnote-84)

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Court | 2022-23 | 2021-22 | 2020-21 | 2019-20 |
| Federal Court of Australia | 0 | 1 |  |  |
| Fair Work Commission | 1 | 2 |  |  |
| Court of Appeal Queensland | 1 | 1 | 3 |  |
| Supreme Court of Queensland | 11 | 3 | 13 | 1 |
| District Court of Queensland | 3 | 4 | 3 | 1 |
| Land Court of Queensland | 4 | 2 | 3 |  |
| Mental Health Court Queensland | 1 | 1 |  |  |
| Coroners Court Queensland | 1 | 1 |  |  |
| Industrial Court of Queensland | 0 |  |  | 1 |
| Queensland Civil and Administrative Tribunal, Appeals | 4 | 4 | 1 | 6 |
| Queensland Civil and Administrative Tribunal | 69 | 44 | 30 | 8 |
| Queensland Industrial Relations Commission | 30 | 23 | 6 | 9 |
| Planning and Environment Court | **0** |  |  | 3 |
| Magistrates Court | **1** |  |  |  |
| **Total** | **126** | **86** | **59** | **29** |

#### Case summaries[[84]](#footnote-85)

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

A prisoner applied to the Supreme Court for judicial review of two related decisions to continue his solitary confinement – which had been ongoing for 7 years – for a further 6 months. Alleged breaches of the respondent’s obligations under the HR Act were piggy-backed onto the judicial review application, and proved central to the proceedings, as the only successful grounds involved human rights.

The court clarified what it means to give proper consideration to human rights in making a decision under the Act and dismissed the idea that section 58(5) of the Act, which is unique to Queensland, ‘codified’ the existing position in Victorian case law.

Instead, section 58(5) sets out two elements necessary to demonstrate that proper consideration has been given to a human right, namely:

* identifying the human rights that may be affected by the decision; and
* considering whether the decision would be compatible with human rights.

Justice Martin stated that identifying the relevant human rights ‘is an exercise that must be approached in a common sense and practical manner’.[[85]](#footnote-86)

In this case, the decision-maker only referred to the applicant's right to peaceful assembly and freedom of association. By failing to identify the prisoner’s right to humane treatment when deprived of liberty, the respondent had failed to give proper consideration to human rights when making the decision.

The also court confirmed that the applicant must first demonstrate that a right has been ‘engaged’ or limited. The onus then shifts to the respondent public entity to demonstrably justify the limitation. The standard of proof on the respondent is high and requires a degree of probability which is commensurate with the occasion.

In this case, the court found there was insufficient evidence to show that the applicant had been subjected to torture, inhuman or degrading treatment. However, the applicant’s right to humane treatment when deprived of liberty had been limited, because he had been subject to hardship beyond that experienced by all prisoners by virtue of their detention.

The respondent had not discharged the onus as it had not provided any evidence to support the belief that no less restrictive way of adequately managing the applicant’s risk to others was available. As the respondent had not fulfilled its obligations under the Act, the court concluded that the decisions were unlawful. The applicant was also successful on one ground of judicial review: that the respondent failed to take into account a relevant consideration, namely, the effect of the decision on the applicant’s human rights.

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

Three groups applied for judicial review of a decision made by the Deputy Premier to ‘call-in’ a development application made by Wanless Recycling Park to establish a new resource and recovery and landfill facility west of Ipswich. The Deputy Premier may call-in a development application where a ‘state interest’ is involved. 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 itself.

One group of local residents alleged that the call-in decision was incompatible with their human rights under the Human Rights Act 2019 (HR Act). The Court considered the nature of their right to participate in public life, the right to property and the right to fair hearing in the planning process. 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 reaching this conclusion, the Court considered the meaning of the term ‘without discrimination’ in the HR Act. The expression ‘discrimination’ is defined as including direct or indirect discrimination under the Anti-Discrimination Act 1991, which protects people on the basis of certain attribute such as age, impairment, political belief or activity, race, religious belief or religious activity, sex and sexuality. The residents argued that they were not given the same representation opportunities based on political association, meaning they were discriminated against because of their political belief or activity. However, the court found there was no evidence to support this argument.

The court found analogous grounds to those in the Anti-Discrimination Act 1991 would also be protected under the HR Act. However, there was nothing in the factual material to demonstrate that the residents had been discriminated against on a relevant analogous ground.

The Court also concluded the Deputy Premier had given proper consideration to human rights, and therefore had not contravened his obligations as a public entity. However, even if he had, a contravention of those obligations would be a non-jurisdictional error and so may not have assisted the applicants.

All other grounds of challenge including allegations of apprehended bias were also dismissed, and the applications refused.

##### Attorney-General for the State of Queensland v Grant [2022] QSC 180; and Attorney-General for the State of Queensland v Grant (No 2) [2022] QSC 252

The *Dangerous Prisoners (Sexual Offenders) Act 2003* (the **DPSO Act**) provides a scheme for the Queensland Attorney-General to apply to the Supreme Court for convicted sex offenders who have served their term of imprisonment to remain in detention or be released under supervision, if they remain a serious danger to the community. In these decisions, the Supreme Court concluded the Human Rights Act applies to its discretion to make such orders.

The application concerned a 78-year-old man whose five-year sentence for sexual offences had expired. He has several medical conditions and limited mobility and requires support. The prisoner and the Attorney-Generally accepted that the evidence, particularly the prisoner’s history, and the assessments of risk by expert psychiatrists, suggested that the court should release him under a supervision order.

The Commission intervened and made submissions about how the Human Rights Act applies to the court’s discretion under s 5 of the Act (direct application). Section 5(2)(a) provides that the HR Act applies to a court or tribunal to the extent that the court of tribunal has functions under part 2, which contains the human rights. The Court considered the various approaches discussed in previous Queensland and Victorian decisions as to how s 5 and its Victorian equivalent may operate. The court favoured the ‘intermediate approach’, which looks to the functions that the court or tribunal is performing in the particular proceedings. The Court then considered whether the intermediate approach required it to ‘act compatibly’ with the identified right or to merely consider the right. It regarded the suggested differences between these approaches as more apparent than real. It will depend on the specific function the court or tribunal is performing, the relevant right, and the circumstances of the case.

In this case, the Court concluded that the function of making a continuing detention order in lieu of a supervision order would involve the application of at least the right to liberty in s 29(1) and the right to protection against arbitrary detention in s 29(2). In contrast, the making of a supervision order in preference to a continuing detention order would involve at least the application of s 30 of the HR Act (right to humane treatment when deprived of liberty).

To consign a person, even a detestable sex offender, to such an unsafe situation was, in the Court’s view, unsatisfactory. However, these were ultimately questions for another day and possibly another court. It ordered the prisoner be released under a supervision order for 10 years duration.

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

A man applied to the Supreme Court for a review of two aspects of a direction issued to him by Queensland Corrective Services (**QCS**) pursuant to a supervision order made under the *Dangerous Prisoners (Sexual Offenders) Act 2003* (**DPSOA**)*.*

The man had a history of sexual and violent offending. Psychiatric assessments of the man made in 2015 for the original DPSOA application suggested he represented a risk of future sexual reoffending. Based on these assessments, the Supreme Court released the man from prison subject to a 10-year supervision order, which required that he comply with every reasonable direction of a corrective services officer.

For some time he has lived alone with support from the National Disability Insurance Scheme (NDIS), including funded services from support workers who visit him at his home. They assist with tasks such as cooking, cleaning, and shopping. The man is able to exercise control over this situation by use of an “app” from which he can make requests for support workers. QCS staff became concerned about the man’s behaviour with respect to female NDIS workers, and in 2022 issued a direction requiring, among other things that he only have male NDIS support workers (Support Worker Direction) and that he obtains approval to have any person at his home, including family members (Visitor Direction). QCS stated that the reasons for making the directions included the psychiatric opinions considered by the court in making the 2015 supervision order. QCS did not obtain any current or recent psychiatric information from the man’s current treating team.

The man sought a review of these directions on several grounds, including that they were an unreasonable limitation on his human rights.

The court concluded the directions engaged and limited his right to freedom of association. The evidence provided by the respondent demonstrated that Support Workers Direction’s limitation on the man’s right was justified according to the criteria in s 13 of the HR Act. It was ‘calculated to mitigate the damage to society that may arise from the applicant’s offending against a female support worker’.

However, the same evidence did not justify the limitation on rights in the Visitors Direction. A direction requiring the man to inform QCS about the prospect of the man associating with women might have been. However, the direction went further, requiring approval for any persons, including men within the man’s family, to be approved. The evidence did not justify such a broad direction, particularly as the 2015 supervision order was made because of concerns about the man committing sexual offences against women. The respondent did not demonstrate that the direction achieved the purpose of the direction, which was to ensure community safety. The court set aside the Visitors Direction on the additional basis that it was an invalid limitation on the man’s freedom of association.

The court suggested the directions may also have been unreasonable, and set them aside and remitted the decision back to QCS to consider according to law.

##### Wood v The King & Anor [2022] QSC 216

The applicant/accused, Mr Wood, failed to appear before the District Court as required by his bail undertaking and his bail was revoked. He did not make a new application for bail, but instead applied for the District Court to declare under s 29(7) of the HR Act (right to liberty and security) his detention was unlawful. He argued this would oblige the District Court to then order his release.

Mr Wood submitted that once he had made his application, the District Court was obliged to hear it ‘without delay’ which meant the court should have heard the application on the day it was made. Instead the court adjourned the application to the following day, during which the District Court agreed to the Mr Wood’s request to have his application referred to the Supreme Court as a question of law (under s 49 of the HR Act).

The Supreme Court identified three primary questions arising from the referral, but found it needed to only answer one question, regarding whether the application purportedly made pursuant to s 29(7) of the HR Act was appropriately brought in the District Court. The answer was that it was not appropriately brought.

The Supreme Court noted that the obligations in s 58 of the Human Rights Act (e.g. to act and make decisions compatibly with human rights, and give proper consideration to human rights) would only apply to courts and tribunals when exercising administrative power. Section 5 of the Human Rights Act should be considered when courts and tribunals exercise judicial power. The Court adopted the ‘intermediate approach’, which means the Human Rights Act applies to courts and tribunals when they are applying or enforcing human rights that relate to the court or tribunal’s proceedings.

The application of the HR Act in this way did not lead to a conclusion that s 29(7) provides a remedy by declaration. Case law in Queensland, the ACT and Victoria confirmed that the HR Act does not provide independent remedies. Instead, where there are proceedings on foot seeking a remedy such as an application for a writ of habeas corpus, human rights must be applied. (The writ of habeas corpus demands that a person incarcerated be brought before the court to determine whether there is lawful authority to detain the person.)

When considering a writ of habeas corpus those rights would include, for example, the rights in s 29.

The Supreme Court concluded section 29(7) of the HR Act does not vest jurisdiction in the District Court to grant a declaration that a prisoner was being held in custody unlawfully. His human right, as identified by s 29(7) of the Act, was accommodated by the avenue available to him to apply for habeas corpus. The court further observed that such an application may have difficulties. The accused’s real remedy was therefore to apply for bail.

##### Attorney-General v GLH [2021] QMHC 4

The respondent had been the subject of a forensic order since 2004. On a review of the forensic order, the Mental Health Review Tribunal removed a condition that prevented the respondent from having unsupervised contact with children. The Attorney-General appealed that decision to the Mental Health Court.

The court recognised the regime established by the *Mental Health Act 2016* iscompatible with the HR Act, and that it was necessary for the court to consider the compatibility of its decision with human rights. The court also held that conditions on forensic orders that limit human rights should only be imposed to the extent necessary to reduce or maintain the risk posed by the person to a not ‘unacceptable’ level; any conditions must be proportionate or no more onerous in their limitation of human rights than required.

In the circumstances of this case, and the expert evidence regarding risk, the appeal was dismissed.

##### Inquest into the death of Selesa Tafaifa (20 June 2022)

The Coroner was asked to rule on the conduct of a police coronial investigation into the death of a woman in custody.

The Queensland Police Service unit that would normally carry out such an investigation had been investigating and prosecuting the deceased for criminal charges against Queensland Corrective Services employees. The deceased’s family opposed the investigation by that unit because of conflict-of-interest issues that arose.

The Coroner, acting as a public entity and interpreting legislation compatibly with human rights, took into account a person’s right to lifeand determined that another unit within the Queensland Police Service should finalise the investigation.[[86]](#footnote-87)

##### Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors [2020] QLC 33

In several decisions, the Land Court considered objections to Waratah Coal Pty Ltd’s (Waratah) application for a mining lease and environmental authority to develop a coal mine.

In this first decision, the Court considered Waratah’s application to strike out any objections that relied on the HR Act due to the Court’s lack of jurisdiction to consider those objections. The parties agreed that the Land Court was a public entity acting in an administrative capacity when making recommendations under the *Mineral Resources Act 1989* and when making an objections decision under the *Environmental Protection Act 1994*. In accordance with the Court’s obligations as a public entity, their recommendations and objections had to be compatible with and give proper consideration to human rights. The Court dismissed the strike out application

##### Waratah Coal v Youth Verdict (No 5) [2022] QLC 4

Objectors to a mining lease proposed that the Land Court take ‘on country’ evidence from four First Nations witnesses.

The court acknowledged that it is unlawful for the court to conduct a hearing in a way that is incompatible with human rights. Refusing the application would limit the witnesses’ ability to enjoy and maintain their cultural heritage, specifically the way in which traditional knowledge is imparted, as protected by section 28(2)(a) of the Act. The court granted the application, noting that the inconvenience and cost of an ‘on country’ hearing did not justify the limitation of rights which would result if the witnesses were confined to witness statements.[[87]](#footnote-88)

##### SQH v Scott [2022] QSC 16

The Crime and Corruption Commission required a person to answer a question that allegedly touched on charges against them and could have an impact on their receiving a fair trial.

The person sought leave to appeal the decision under the Crime and Corruption Act and piggy-backed a human rights claim. The court found that while the person’s right to a fair hearing and right against self-incrimination (that is, the right not to be compelled to testify against themselves or confess guilt) had been engaged, the limit was justified. This included because of the protections in place under the legislative scheme, such as direct use immunity and confidentiality in respect of the identity of the witness and any evidence given. A further protective order required limited disclosure of the evidence to prevent it from being given to the prosecution.[[88]](#footnote-89)

##### Miami Recreational Facilities [2021] QCAT 378

The Miami Retirement Village applied for a renewal of an exemption previously granted under section 113 of the *Anti-Discrimination Act 1991* (Anti-Discrimination Act) for it to restrict accommodation and services in a residential complex to people over 50 years old.

When deciding exemption applications, the tribunal is acting in an administrative capacity and is a public entity. The tribunal identified the right to equality before the law as potentially limited by its decision, and that the factors set out in section 13 of the HR Act to assess proportionality should be considered, along with the aims and objects of the Anti-Discrimination Act. On balance, with emphasis on the short-term effect of ending the exemption, renewal of the exemption was found to reasonably and justifiably limit the right to equality.[[89]](#footnote-90)

##### Sunshine Coast Regional Council (No 2) [2021] QCAT 439

In another exemption application under the Anti-Discrimination Act, the Sunshine Coast Regional Council sought an exemption to allow it to restrict the grant of permits solely to Aboriginal people and Torres Strait Islander people for the commercial activity of Indigenous tourism on Council-controlled land.

The tribunal concluded that it was not necessary to grant an exemption, as the existing ‘welfare measures’ provision under section 104 of the Anti-Discrimination Act would apply.

Before reaching this conclusion, the tribunal considered if it could interpret section 104 compatibly with the right to equality before the lawof non-Indigenous people under the HR Act*.* The tribunal concluded that the limitation of the human right to equal treatment under the law could be justified. The proposed policy to restrict the grant of permits in the way outlined may also align with section 15(5) of the HR Act as a ‘special measure’. Section 104 of the Anti-Discrimination Act would also amount to a justification of the Council policy should any complaint made against it under the HR Act.[[90]](#footnote-91)

##### EB [2021] QCAT 434

The Queensland Civil and Administrative Tribunal granted an interim order for the appointment of a guardian for a woman with severe dementia, but refused an interim order for the appointment of an administrator.

In making its decision, the tribunal acknowledged its obligations as a public entity to interpret legislation compatibly with human rights. The tribunal considered the woman’s rights to freedom of movement, privacy and reputation, and fair hearing. The urgent nature of the application, and immediacy of the purpose to protect the woman from the risk of harm justified limiting her right to a fair hearing on a short-term basis, and limits on her rights of free movement and privacy, until the matter is heard.[[91]](#footnote-92)

##### Innes v Electoral Commission of Queensland & Anor (No 2) [2020] QSC 293

The Supreme Court considered the direct application of the right to take part in public life to the Court of Disputed Returns, as well as the application of human rights to statutory interpretation where there is no ambiguity. However, the court did not consider the case was ‘an appropriate vehicle for reaching solid conclusions about the operation of the HR Act in Queensland’.

*Attorney-General for the State of Queensland v Sri & Ors* [2020] QSC 246  
The Supreme Court considered human rights in an application for a mandatory injunction to prevent a planned protest which involved the blockade of Brisbane’s Storey Bridge during the COVID-19 pandemic. The Commission intervened in these proceedings. The court decided that limiting the rights of freedom of movement of the broader community outweighed the rights of the protestors to peaceful assembly and freedom of expression, and it was therefore appropriate to make the injunction.

##### The Australian Institute for Progress Ltd v The Electoral Commission of Queensland [2020] QSC 54

The Commission and the Attorney-General intervened in a Supreme Court case considering the coverage of Queensland’s electoral donation laws. The case involved an application by a company described as a political think tank for a declaration relating to the interpretation of certain provisions of the *Electoral Act 1992* that prohibit donations from ‘prohibited donors’ for electoral expenditure.

The Court considered that the prohibition in the *Electoral Act 1992* is capable of limiting freedom of expression and the right of individuals to take part in public life. The Court considered the factors set out in section 13 of the Actin determining that the prohibition on certain political donations is compatible with human rights. Balancing the importance of human rights with the important purpose of reducing corruption and enhancing our democratic society, the Court concluded that the limitation on human rights is reasonable and justified.

# Appendix D: Public entity indicators

#### 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 organization 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.

# Appendix E: Parliamentary indicators

The Commission is currently assessing indicators for the 2022-2023 year and so these conclusions apply for previous years only, other than noting the significant development of Queensland’s first override declaration.

### Indicator 1: Override Declarations

*Parliament may, in exceptional circumstances, expressly declare an Act has effect despite being incompatible with one or more human rights.*[[92]](#footnote-93) *This indicator considers whether override declarations were relied upon by parliament in the 2021–22 financial year.*

From 2020-2022, no Bills were introduced or passed with override declarations in this period.

In the 2022-2023 year, the parliament made an override declaration in relation to the *Strengthening Community Safety Act 2023*.

### 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.*

The QHRC is currently evaluating this indicator for the 2022-23 year.

In 2021-22, only one non-appropriation Bill during the reporting period was declared urgent and therefore debated without inquiry by the relevant portfolio committee. However, this Bill was related to appropriation Bills and debated cognately with them.[[93]](#footnote-94)

During 2020-21, three Bills were declared urgent and therefore debated without inquiry by the relevant portfolio Committee.[[94]](#footnote-95)

### 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.*

In the 2022-23 year, at least one Statement of Compatibility — for the Strengthening Community Safety Bill 2023— discussed incompatibility. The QHRC is currently evaluating material accompanying other Bills introduced in this period.

The QHRC was unable to identify any statements of compatibility that stated a Bill was potentially incompatible with rights in 2021-22.

In 2020-21, statements of compatibility for two Bills discussed potential incompatibility.[[95]](#footnote-96)

### Indicator 4: Committee examination of incompatibility

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

As discussed above, the Strengthening Community Safety Bill 2023included a proposed override declaration by the government. The Economics and Governance Committee noted concerns raised in submissions about the proposed override of the HR Act, and concluded:

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.[[96]](#footnote-97)

The footnote to this statement cites the joint departmental response to submissions 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.[[97]](#footnote-98)

The QHRC is concerned that this briefing material demonstrated a misunderstanding of the operation of the override declaration in s 43 of the HR Act. Sections 43 and 44 of the Bill confirm that it is a matter for an introducing member, in this case the relevant minister of the government, to justify a proposed override. However, s 43 clearly sets out that it is a decision of parliament, not the government, as to whether such a declaration should be made.

This is further evidence of why the override provision should be removed from the HR 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 is made by introducing members for incompatible bills to be passed, rather than removing the application of the HR Act entirely. For Bills introduced during 2021-22, no portfolio committee was required to consider statements of partial incompatibility.

In the previous year, potential incompatibility identified by the introducing minister for the Youth Justice and Other Legislation Amendment Bill 2021 was also discussed in the Legal Affairs and Safety Committee’s report.[[98]](#footnote-99)

In contrast, in the statement for the Defamation (Model Provisions) and Other Legislation Amendment Bill 2021, the Attorney-General concluded that:

While I acknowledge the amendments in the Bill limit the right to privacy and reputation and in doing so may be open to conclude that theamendments are incompatible with human rights, it is my view that the limitation is reasonable and justified and appropriately balanced with the right to freedom of expression.[[99]](#footnote-100)

The Committee considered the limitation of several rights in detail but did not appear to comment upon the Attorney-General’s statement.

### 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 2021–22 identified deficiencies in 6 statements of compatibility compared with 10 in the 2020-21 year. The QHRC is still to evaluate statements tabled in the 2022-23 year.

Issues identified in statements of compatibility during 2021-22 included:

* failure to consider *all* relevant human rights limited by the Bill[[100]](#footnote-101)
* failure to particularise justifications for limiting individual human rights[[101]](#footnote-102)
* insufficient justification for limitations to satisfy the justification criteria set out in section 13 of the Act,[[102]](#footnote-103) such as less restrictive alternatives to achieve the stated purpose or more information about proposed safeguards.[[103]](#footnote-104) In one case, this lack of justification led the committee to question if provisions of the Bill may be incompatible.[[104]](#footnote-105)
* further consideration necessary on how the approach in the Bill differs from approaches taken to similar issues in other human rights jurisdictions.[[105]](#footnote-106)

Nearly three-quarters of committee reports published in 2021-22 found the Bills they were examining had adequate statements.

This compares to the previous year, in which Committee reports identified deficiencies in 10 Statements of Compatibility, meaning that of the Bills referred to Committee, approximately half were found to have adequate statements.[[106]](#footnote-107) Improvements to statements recommended by Committees included:

* providing sufficient evidence to enable a robust analysis of whether the proposed measures will be effective at achieving their stated aims, and which less restrictive alternatives had been considered
* including the views of stakeholders and their suggestions about reasonably available alternatives, where targeted consultation was undertaken in developing the Bill [[107]](#footnote-108)
* providing greater detail to assist the Committee’s consideration[[108]](#footnote-109)
* providing more detailed descriptions of the positive rights impacts of the Bill, including more detailed reference to the relevant provisions of United Nations instruments
* engaging more directly with international law and comparative law sources by drafters of statements of compatibility, particularly when describing the nature of the rights protected under the Act[[109]](#footnote-110)
* identifying the particular clauses of a Bill being addressed by statements of compatibility and applying the limitations analysis to each human right being addressed.[[110]](#footnote-111)

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

The QHRC is evaluating reports made in the 2022-23 year.

In those reports that discussed human rights limitations in 2021-22, on 8 occasions the committee published additional information regarding the limitations provided by the government.[[111]](#footnote-112)

Of those 10 statements of compatibility in which Committees identified deficiencies in 2020-21, on 4 occasions the Committee received further information through the inquiry process to address some or all issues.[[112]](#footnote-113)

### Indicator 7: Committee recommendations about human rights

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

The QHRC is currently evaluating portfolio committee reports tabled in 2022-23.

During 2021-22, the QHRC was unable to identify any formal recommendations about human rights' compatibility made in reports during the reporting period; however, committees did make specific comments in relation to three Bills seeking further information from the government regarding concerns about human rights compatibility.[[113]](#footnote-114)

Similarly, during 2020-21, it appears no formal recommendations about human rights were made, however in relation to one Bill, the Committee did make a specific comment encouraging the minister to respond to its concerns in her second reading speech.[[114]](#footnote-115)

### 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.*

The QHRC is currently evaluating this indicator for the 2022-23 year.

During 2021-22, on one occasion further information regarding human rights compatibility was provided in the government response to the committee report and in the debate stage, although the committee’s recommendation on this issue did not specifically identify the human rights compatibility issues. These were however discussed in the committee’s report.[[115]](#footnote-116)

This indicator is relevant to only one Bill in 2020-21, the COVID-19 Emergency Response and Other Legislation Amendment Bill 2021. In a comment, the Economics and Governance Committee encouraged the Attorney-General to make clear during her second reading speech the expectation on local councils as to how extended temporary meeting provisions would be used. While not explicitly cited, some of these concerns were relevant to human rights and the Committee noted it would have welcomed further detail in the statement. The Attorney-General responded to the Committee’s concerns about local council meetings in her speech, and also took the opportunity to address other issues identified in the Committee report.

In relation to other legislation, while not formally required to do so, during 2020-21 a minister did table further information to justify limitations on rights.[[116]](#footnote-117)

### 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.*

The QHRC is currently evaluating this indicator for the 2022-23 year.

It appears no Bills were amended during 2021-22 arising from human rights issues raised in portfolio committee reports.

While not formally recommended by a Committee, in 2020-21 the government did move amendments to the Youth Justice and Other Legislation Amendment Bill 2021 arising from concerns raised during the inquiry about the use of the term ‘tracker’ in the Bill. The Bill passed with these amendments.

# Appendix F: Human rights timeline

This image is page 1 of 4 and shows part of a timeline of important human rights events in Queensland's history.

The following events are listed on this page: 

1788 to 1930s
Frontier wars – violent conflicts between Aboriginal and Torres Strait Islander people and European settlers. 

1869 to 1970 
‘Living under the Act’–  Aboriginal and Torres Strait Islander people removed from their homelands; had all basic freedoms removed, families broken up, children taken away, forbidden to use language and practice culture; control of work and how money could be spent.

1850s to 1901 Pacific Island labourers brought to Queensland (by force, trickery, or as indentured labour) – paid well below European workers. 
1890 Married Women’s Property Act 1890 – married women may acquire and dispose of property and other investments independent of their husbands.
1891 Shearers’ strike – first major industrial dispute (about wage cuts); clashes between unionists and non-union labour; call for party to represent interests of working people.
1901 Immigration Restriction Act 1901 (Cth) – specifically limited non-British migration to Australia;  establishment of the White Australia policy.
1905 Women achieved right to vote in state elections, though Aboriginal peoples and Torres Strait Islander peoples did not until 1965.
1912 Tramways (general) strike lasted 5 weeks – right to join a union; on ‘Black Friday’ police mounted savage baton charges on crowd of 15,000 people.
1916 Anti-conscription protest – 10,000 workers went on strike for the day; Queensland voted against conscription in the plebiscite later in 1916 and a second plebiscite in 1917 was also defeated.
1922 Death penalty abolished in Queensland.
1928 Royal Flying Doctor Service founded in Cloncurry.
1946 Free universal public hospital treatment introduced. 
1954, 1975, 1986, 1994, 2020 Mine Inquiries: Collinsville State Coal Mine, 1954 (7 deaths); Moura (36 deaths in 3 incidents) – 1975, 1986, 1994; Mine Safety Board of Inquiry 2020 (40 methane gas incidents in previous year).
1957 Palm Island Strike– residents protested against poor health, housing, wages, and working conditions.

1961 Westbook Farm Home for Boys investigation – excessive punishments and assaults; retributive and repressive atmosphere, while intended purpose was rehabilitative and reformative.


This image is page 2 of 4 and shows part of a timeline of important human rights events in Queensland's history.

The following events are listed on this page: 

Image 2: 
1967 Referendum – Australia voted to amend the Constitution to allow Commonwealth to make laws for Aboriginal people, and to be included in the Census.
1967 Referendum – amended the Constitution to allow the Commonwealth to make laws for Aboriginal people and include them in the census – signaled shift away from assimilationist policies.
1969 Ban on married women as permanent employees in Queensland public sector abolished.
1969 Principle of ‘equal pay for work of equal value’ – Commonwealth Conciliation and Arbitration Commission: equal pay to men and women granted 1972; minimum wage extended to women workers 1974.

1967 to 1977 Student marches and protests – time of social change; people from range of backgrounds prepared to defy authority (anti-conscription, anti-Vietnam, anti-uranium); ban on street marches; police arrests made under the Traffic Act.  
1970 First ‘moratoriums’ (halt to business as usual) – protest against involvement in Vietnam war and conscription. 

1971 Springbok (South African rugby) tour – anti-Apartheid protests; Premier declared month-long state of emergency.
1975 Racial Discrimination Act 1975 (Cth) – an instrument for holding people to account for acts of racial discrimination and vilification.
1976 Cedar Bay raid by police, narcotics, and customs – on ‘hippie commune’; dwellings burnt down, food crops and clothing destroyed. 
1977 Ban on street marches – invoked for anti- uranium mining protests.
1981 UN International Year of the Disabled – emphasised rights of persons with disability and participation in society; shift to a human rights-based focus on eliminating barriers, promoting social inclusion and civic participation.
1983 UN Convention on the Elimination of all Forms of Discrimination Against Women ratified – established agenda for action on women’s issues (equality, domestic violence, girls’ equal participation, non-traditional occupations, reproductive rights).

1983 HIV epidemic reached Australia – stigma, discrimination, and marginalization of people living with HIV prevalent.
1987 Our Homeless Children report  – found large number of children denied adequate housing and protection from neglect, cruelty, and exploitation.
1988 Kennedy report on prison, probation, and parole reform – recommended doing away with Boggo Road prison, renaming prisons ‘correctional centres’, greater use of community corrections, home detention, and release to work programs, and to establish official visitors. 
1989 UN Convention Against Torture & Other Cruel, Inhuman or Degrading Treatment or Punishment – Australia ratified.
1990 UN Convention on the Rights of the Child – Australia ratified.
1990 Homosexuality decriminalised in Queensland.
1991 Anti-Discrimination Act 1991 (Queensland) provides wide-ranging anti-discrimination protection for people in Queensland.
1991 Royal Commission into Aboriginal Deaths in Custody – report investigated and made recommendations on 27 deaths in custody in Queensland between 1980 and 1989.

1991 Ward 10B inquiry – into care and treatment of patients in the psychiatric unit, Townsville General Hospital; found treatment was, in many respects, negligent, unsafe, unethical, and unlawful acts; 65 patients died in circumstances which justified close investigation.


This image is page 3 of 4 and shows part of a timeline of important human rights events in Queensland's history.

The following events are listed on this page: 

1992 Freedom of Information Act 1992 – government required to make documents about a person available to them, and to ensure the information is accurate.
1992 Peaceful Assembly Act 1992 replaced police permits for street marches. 
1992 Health Rights Commission established – now Office of the Health Ombudsman.
1992 Mabo case– High Court decision that overturned the concept of terra nullius. 

1994 Murrandoo Yanner case – High Court recognised hunting, gathering, and fishing rights for Aboriginal and Torres Strait Islander people in Queensland by exercising native title rights.

1994 Compulsory age retirement effectively abolished under the Anti-Discrimination Act.


1995 Basil Stafford Centre (provided accommodation and care for intellectually disabled people) –Stewart report recommended closure and found assault, client abuse, and neglect linked to an ‘insidious institutional culture’.

1996 Wik case – High Court held that statutory leases do not extinguish native title rights.

1997 Bringing Them Home – report on the separation of Aboriginal and Torres Strait Islander children from their families and community.
1997 Bringing Them Home – report on the separation of Aboriginal and Torres Strait Islander children from their families and community.

1998 to 1999 Forde Inquiry – into abuse, mistreatment, or neglect of children in Queensland institutions.
1999 Forde Inquiry, 1999 – into abuse mistreatment and neglect of children in Queensland institutions from 1911 – found emotional, physical, sexual, and systems abuse; breaches re food, clothing, education, and corporal punishment.

2002 Family responsibilities added as ground for discrimination under the Anti-Discrimination Act
2002 Gender identity added as a ground for discrimination under the Anti-Discrimination Act 2002.
2002 Queensland Government established Stolen Wages Reparation Scheme. 
2002 Recognition of same-sex couples in Queensland legislation – de facto partners (regardless of sexual orientation) have rights and obligations consistent with married spouses.
2003 Aboriginal Cultural Heritage Act 2003 and Torres Strait Cultural Heritage Act 2003 – required developers to make Cultural Heritage Management Plans. 

2004 Protecting children – Crime and Misconduct Commission (now Crime and Corruption Commission) inquiry into abuse of children in foster care; recommendations for systemic change and child-focused protective services.
2005 Queensland Public Hospitals Commission of Inquiry – found conduct that appears to constitute criminal offences and a ‘sustained path of injury and death at Bundaberg Base Hospital’.
2008 Apology to the Stolen Generations – Federal Government apologised to Aboriginal and Torres Strait Islander people for past laws, practices, and policies of forcible removal.

2008 UN Convention for the Rights of Persons with Disabilities ratified by Australia – major advance for the disability rights movement.


This image is page 4 of 4 and shows part of a timeline of important human rights events in Queensland's history.

The following events are listed on this page: 


2011 First national Paid Parental Leave scheme commenced. 
2012 Apology for past forced adoption policies and practices by Queensland Parliament.
2012 Self-harm the leading cause of death among children 15 to 24 (ABS). 
2013 ‘Anti-bikie’ laws (Vicious Lawless Association Disestablishment Act 2013) – created anti-association offences and mandatory sentencing provisions; replaced by Serious Organised Crime Act 2016.
2013 Child protection Inquiry – review progress and recommendations from Forde Inquiry.
2016 same-sex couples and single people eligible to adopt.
2016 Lex Wotton High Court challenge – High Court ruled on acts of racial discrimination in the investigation of the death of Mulrunji Doomadgee. 

2017 Australia ratified UN Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) – Australia agreed to establish an independent National Preventive Mechanism to conduct inspections of all places of detention and closed environments, and international inspections of places of detention by the United Nations Subcommittee on the Prevention of Torture.
2018 Aboriginal children 8 times as likely to be in child protection system as non-Indigenous children (AIHW).
2018 Modern slavery Act 2018 (Cth) – reporting requirements on business; address modern slavery risks (servitude, child labour, forced labour, human trafficking, debt bondage, slavery-like practices, forced marriage, deceptive recruiting).
2018 17-year-olds dealt with in the youth justice system, rather than the adult system from 2018.
2006 and 2019 Women in Prison reports, 2006 and 2019, by ADCQ and QHRC – law, policy, and practices pertaining to the detention of women in prison examined against international human rights standards.
2019 Children in Brisbane’s maximum security police watch house attracted national condemnation – 2019.
2020 Human Rights Act 2019 (Queensland) – includes specific protection of cultural rights of Aboriginal peoples and Torres Strait Islander peoples.
2020 Human Right Act 2019 (Queensland) gives effect to civil and political rights, plus right to education and to health services – specifically protects cultural rights of Aboriginal peoples and Torres Strait Islander peoples.
2020 Human Rights Act 2019 came into force 2020 – affording broad humans rights protections to people in Queensland.
2020 COVID-19 pandemic 2020 – declaration of a Public Health Emergency and Public Health Directions that severely restrict movement and other rights.

2020 Meriba Omasker Kaziw Kazipz Act 2020 – provided legal recognition of Torres Strait Islander families’ use of traditional child rearing practice.


2020 

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

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

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

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

2021 

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

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

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

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

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

Timeline laying out significant events with human rights impacts which took place across 2021-22, including judicial decisions, parliamentary enquiries and legislation, and COVID-19 public health directions. The full text is available in Appendix D of this report. 


1. Emma Phillips and Aimee McVeigh, ‘The Grassroots Campaign for a Human Rights Act in Queensland: A case study of modern Australian law reform’ (2020) 45(1) *Alternative Law Journal* 31. [↑](#footnote-ref-2)
2. Some these overlap with the framework established in the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth). [↑](#footnote-ref-3)
3. Ms Sheehan in evidence to the Committee suggested that in 2012 the government considered recognising human rights in the APS values, but the only change was to add the value of respect: Evidence to Parliamentary Joint Committee on Human Rights, Parliament of Australia, Canberra, 12 May 2023, 21 (Anne Sheehan, First Assistant Secretary, Attorney-General’s Department). [↑](#footnote-ref-4)
4. Evidence to Parliamentary Joint Committee on Human Rights, Parliament of Australia, Canberra, 12 May 2023, 17-18 (Anne Sheehan, First Assistant Secretary, Attorney-General’s Department). [↑](#footnote-ref-5)
5. Evidence to Parliamentary Joint Committee on Human Rights, Parliament of Australia, Canberra, 12 May 2023, 11-15 (Anne Sheehan, First Assistant Secretary, Attorney-General’s Department). [↑](#footnote-ref-6)
6. *Human Rights Act 2019* (Qld) ss 8, 13. [↑](#footnote-ref-7)
7. Four per cent of the Queensland population identifies as being of Aboriginal and/or Torres Strait Islander origin, compared to 0.8 per cent in Victoria and 1.6 per cent in the ACT. Australian Bureau of Statistics, *Census of Population and Housing: Reflecting Australia - Stories from the Census*, 2016 (Catalogue No 2071.0, 28 July 2017. [↑](#footnote-ref-8)
8. Amnesty International Australia, *2021 Human Rights Barometer: What are Australians current attitudes to their rights and the rights of others?* (PDF, 8 August 2021). [↑](#footnote-ref-9)
9. Eddie Ngaluafe, ‘Most Queenslanders support human rights – survey finds’, *Griffith News (*Web Page, 22 September 2021) <[Most Queenslanders support human rights – survey finds – Griffith News>.](https://news.griffith.edu.au/2021/09/22/most-queenslanders-support-human-rights-survey-finds/) [↑](#footnote-ref-10)
10. Which includes impairment (discrimination), race, age, sex, sexuality, relationship status, pregnancy, parental status, breastfeeding, religious belief or religious activity, political belief or activity, trade union activity, lawful sexual activity, gender identity and family responsibilities. [↑](#footnote-ref-11)
11. *Austin BMI Pty Ltd v Deputy Premier* [2023] QSC 95 [318]. [↑](#footnote-ref-12)
12. *Human Rights Act 2019* s 61(d)–(f). [↑](#footnote-ref-13)
13. *Human Rights Act 2019* s 61(a). [↑](#footnote-ref-14)
14. *Human Rights Act 2019* s 61 (b),(c). [↑](#footnote-ref-15)
15. *Human Rights Act 2019* s 91. [↑](#footnote-ref-16)
16. *Human Rights Act 2019* s 51. [↑](#footnote-ref-17)
17. *Human Rights Act 2019* s 61(d)–(f). [↑](#footnote-ref-18)
18. *Human Rights Act 2019* s 3. [↑](#footnote-ref-19)
19. Australian Human Rights Commission, Submission No 1 to Parliamentary Joint Committee on Human Rights, *Inquiry into Australia’s Human Rights Framework* (May 2023) 62. [↑](#footnote-ref-20)
20. To June 2023. [↑](#footnote-ref-21)
21. Tamara Walsh, ‘Social Housing, Homelessness and Human Rights’ (2022) 45(2) *UNSW Law Journal* 688. [↑](#footnote-ref-22)
22. Tamara Walsh, ‘Social Housing, Homelessness and Human Rights’ (2022) 45(2) *UNSW Law Journal* 709. [↑](#footnote-ref-23)
23. Queensland, *Parliamentary Debates*, Legislative Assembly, 31 October 2018, 3184 (YM D’Ath, Attorney-General). [↑](#footnote-ref-24)
24. See https://www.qhrc.qld.gov.au/resources/reports. [↑](#footnote-ref-25)
25. The information in this section was contributed by the Department of Justice and Attorney-General’s Human Rights Unit and originally appeared in our 2019-20 HR Act Annual Report. [↑](#footnote-ref-26)
26. Queensland Council of Social Service, ‘Human Rights, Housing and Homelessness – About the project’ (Web page) <https://www.qcoss.org.au/project/human-rights-housing-and-homelessness/>. [↑](#footnote-ref-27)
27. *Human Rights Act 2019* (Qld) s 61. [↑](#footnote-ref-28)
28. Women’s Safety and Justice Taskforce, *Hear Her Voice* (Report 2, 2022) vol 1, rec 137. [↑](#footnote-ref-29)
29. Evidence to Parliamentary Joint Committee on Human Rights, Parliament of Australia, Canberra, 12 May 2023, 27 (Emeritus Professor Rosalind Croucher, President, Australian Human Rights Commission). [↑](#footnote-ref-30)
30. *Human Rights Act 2019* s 64(3). [↑](#footnote-ref-31)
31. *Human Rights Act 2019* s 88(1)-(3) [↑](#footnote-ref-32)
32. *Human Rights Act 2019* s 88(4). [↑](#footnote-ref-33)
33. To mid-June 2023. [↑](#footnote-ref-34)
34. See in particular *Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors (No 6)* [2022] QLC 21; *Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors (No 5)* [2022] QLC 4; *Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors* [2020] QLC 33. [↑](#footnote-ref-35)
35. *Re A* [2022] QSC 159. [↑](#footnote-ref-36)
36. *In an application about matters concerning CM* [2022] QCAT 263. [↑](#footnote-ref-37)
37. *Owen-Darcy v Chief Executive, Queensland Corrective Services* [2021] QSC 273 [111]. [↑](#footnote-ref-38)
38. *SQH v Scott* [2022] QSC 16[116]. [↑](#footnote-ref-39)
39. See: Ruling in relation to the conduct of the Police Coronial Investigation, *Inquest into the death of Selesa Tafaifa* (Coroners Court of Queensland, T Ryan, State Coroner, 20 June 2022). [↑](#footnote-ref-40)
40. See Ruling in relation to the conduct of the Police Coronial Investigation, *Inquest into the death of Selesa Tafaifa* (Coroners Court of Queensland, T Ryan, State Coroner, 20 June 2022). See also Queensland Mental Health Tribunal, *Policy – Human Rights* (November 2019). [↑](#footnote-ref-41)
41. *Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors* (No 5) [2022] QLC 4. [↑](#footnote-ref-42)
42. *Sunshine Coast Regional Council (No 2)* [2021] QCAT 439; *Miami Recreational Facilities Pty Ltd* [2021] QCAT 378. [↑](#footnote-ref-43)
43. For example *EB* [2021] QCAT 434; *DP* [2021] QCAT 271. [↑](#footnote-ref-44)
44. *Wood v The King & Anor* [2022] QSC 216. [↑](#footnote-ref-45)
45. Ruling in the *Inquest into the death of Selesa Tafaifa* (Coroners Court of Queensland, T Ryan, State Coroner, 20 June 2022). [↑](#footnote-ref-46)
46. Queensland Human Rights Commission, ‘Intervention guidelines’ *Legal information* (Webpage, 3 February 2020). [↑](#footnote-ref-47)
47. An override declaration was proposed in a report by a portfolio committee regarding the Police Powers and Responsibilities and Other Legislation Amendment Bill 2021, but did not eventuate. This is discussed further in Appendix E. [↑](#footnote-ref-48)
48. *Human Rights Act 2019* (Qld) ss 43, 45. [↑](#footnote-ref-49)
49. This is discussed further in Appendix E. [↑](#footnote-ref-50)
50. *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, (entered into force 23 March 1976) art 4. [↑](#footnote-ref-51)
51. *Public Health Act 2005* s 323 and accompanying regulations. [↑](#footnote-ref-52)
52. As summarised in Michael Brett Young, *From Commitment to Culture: The 2015 Review of the Charter of Human Rights and Responsibilities Act 2006* (Report, September 2015) 198. [↑](#footnote-ref-53)
53. Michael Brett Young, *From Commitment to Culture: The 2015 Review of the Charter of Human Rights and Responsibilities Act 2006* (Report, September 2015) 198. [↑](#footnote-ref-54)
54. Michael Brett Young, *From Commitment to Culture: The 2015 Review of the Charter of Human Rights and Responsibilities Act 2006* (Report, September 2015) 199. [↑](#footnote-ref-55)
55. Michael Brett Young, *From Commitment to Culture: The 2015 Review of the Charter of*

    *Human Rights and Responsibilities Act 2006* (Report, September 2015) 199. [↑](#footnote-ref-56)
56. Explanatory Notes, Human Rights Bill 2018 (Qld) 29. [↑](#footnote-ref-57)
57. 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. [↑](#footnote-ref-58)
58. See for example: Economics and Governance Committee, Queensland Parliament*, Inquiry into Police Service Administration and Other Legislation Amendment Bill 2021* (Report No 21, February 2022) 14. [↑](#footnote-ref-59)
59. See for example Community Support and Services Committee, Queensland Parliament, *Inquiry* *into Public Trustee (Advisory and Monitoring Board) Amendment Bill 2021* (Report No 15, January 2022) 10. Legal Affairs and Safety Committee, Queensland Parliament, *Inquiry into Evidence and Other Legislation Amendment Bill 2021* (Report No 23, February 2022) 25, 36-37. [↑](#footnote-ref-60)
60. See for example Economics and Governance Committee, *Inquiry into* *Brisbane Olympic and Paralympic Games Arrangements Bill 2021* (Report No 20, November 2021) 57; Legal Affairs and Safety Committee, Queensland Parliament, *Inquiry into Police Legislation (Efficiencies and Effectiveness) Amendment Bill 2021* (Report No 16, November 2021) 39; Legal Affairs and Safety Committee, Queensland Parliament, *Police Powers and Responsibilities and Other Legislation Amendment Bill 2021* (Report No 15, November 2021) 41; Community Support and Services Committee, Queensland Parliament, *Inquiry into Child Protection Reform and Other Legislation Amendment Bill 2021* (Report No 12, November 2021) 34*.*  [↑](#footnote-ref-61)
61. While not related to human rights, the Community Support and Services Committee did recommend that the parliament not pass the Residential Tenancies and Rooming Accommodation (Tenants' Rights) and Other Legislation Amendment Bill 2021. [↑](#footnote-ref-62)
62. Economics and Governance Committee, Queensland Parliament, *Inquiry into State Penalties Enforcement (Modernisation) Amendment Bill 2022* (Report No 24, May 2022) 40. [↑](#footnote-ref-63)
63. See for example *Community Services Industry (Portable Long Service Leave) Act* *2020* which was amended to change bail arrangements for young people, but these were unrelated to the primary purpose of the Bill. [↑](#footnote-ref-64)
64. To deal with any question about the application of s 109 of the *Australian Constitution*. [↑](#footnote-ref-65)
65. Department of Industry, Science and Resources (Cth), *APS framework for engagement and participation* (Web Page, 31 August 2021) < <https://www.industry.gov.au/publications/aps-framework-engagement-and-participation> >. [↑](#footnote-ref-66)
66. See for example *BSJ* [2022] QCAT 51; *King v Wood* [2022] QSC 216. [↑](#footnote-ref-67)
67. Explanatory Notes, Human Rights Bill 2018 (Qld) 28. [↑](#footnote-ref-68)
68. *Inquest into the death of Yvette Michelle Wilma Booth, Adele Estelle Sandy and Shakaya George* (Coroners Court of Queensland, N Wilson, Northern Coroner, 30 June 2023) [651]-[652] [↑](#footnote-ref-69)
69. Adopted by the General Assembly on 29 November 1985. [↑](#footnote-ref-70)
70. Robyn Holder, Tyrone Kirchengast and Paul Cassell, ‘Transforming Crime Victims’ Rights: from Myth to Reality’ (2021) 45(1) *International Journal of Comparative and Applied Criminal Justice* 1. [↑](#footnote-ref-71)
71. Women’s Safety and Justice Taskforce, *Hear Her Voice* (Report 2, 2022) vol 1, 14. [↑](#footnote-ref-72)
72. Department of Justice and Attorney-General, Briefing Paper to Legal Affairs and Safety Committee, Queensland Parliament, *Inquiry into support provided to victims of crime* (30 March 2023) 12. [↑](#footnote-ref-73)
73. Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report, August 2016) xxi. [↑](#footnote-ref-74)
74. See *Disability Discrimination Act 1992* s 42; *Sex Discrimination Act 1984* s 94; *Race Discrimination Act 1975* s 27(2); *Age Discrimination Act 2004* s 51. [↑](#footnote-ref-75)
75. Evidence to Parliamentary Joint Committee on Human Rights, Parliament of Australia, Canberra, 12 May 2023, 16-17 (Anne Sheehan, First Assistant Secretary, Attorney-General’s Department). [↑](#footnote-ref-76)
76. Australian Human Rights Commission, Submission No 1 to Parliamentary Joint Committee on Human Rights, *Inquiry into Australia’s Human Rights Framework* (May 2023). [↑](#footnote-ref-77)
77. Case study provided by the Queensland Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships. [↑](#footnote-ref-78)
78. Ben Smee, ‘Queensland police refuse to remove traditional owners occupying Adani’s coalmine site’ *The Guardian* (online, 3 October 2021) <https://www.theguardian.com/australia-news/2021/oct/03/queensland-police-refuse-to-remove-traditional-owners-occupying-adanis-coalmine-site>. [↑](#footnote-ref-79)
79. The Commission ascertained that the prison had provided alternative options, such as money orders or other forms of deposit, and so Queensland Corrective Services was not a respondent to this complaint, only the service provider. [↑](#footnote-ref-80)
80. 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. [↑](#footnote-ref-81)
81. Queensland Human Rights Commission, *Building Belonging: Review of Queensland’s Anti-Discrimination Act 1991* (Report, July 2022) 312–315. [↑](#footnote-ref-82)
82. 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. [↑](#footnote-ref-83)
83. Does not include matters in which the HR Act was merely noted. [↑](#footnote-ref-84)
84. See <https://www.qhrc.qld.gov.au/resources/legal-information/case-notes-human-rights>. [↑](#footnote-ref-85)
85. *Owen-D’Arcy v Chief Executive, Queensland Corrective Services* [2021] QSC 273 [137]. [↑](#footnote-ref-86)
86. *Inquest into the death of Selesa Tafaifa* (Coroners Court of Queensland, T Ryan, State Coroner, 20 June 2022). [↑](#footnote-ref-87)
87. *Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors (No 5)* [2022] QLC 4. [↑](#footnote-ref-88)
88. *SQH v Scott* [2022] QSC 16. [↑](#footnote-ref-89)
89. *Miami Recreational Facilities Pty Ltd* [2021] QCAT 378. [↑](#footnote-ref-90)
90. *Sunshine Coast Regional Council (No 2)* [2021] QCAT 439. [↑](#footnote-ref-91)
91. *EB* [2021] QCAT 434. [↑](#footnote-ref-92)
92. *Human Rights Act 2019* s 43. [↑](#footnote-ref-93)
93. Revenue Legislation Amendment Bill 2022. [↑](#footnote-ref-94)
94. Appropriation (Parliament) Bill 2020, Appropriation Bill 2020, and COVID-19 Emergency Response and Other Legislation Amendment Bill 2020. [↑](#footnote-ref-95)
95. Youth Justice and Other Legislation Amendment Bill 2021 and the Defamation (Model Provisions) and Other Legislation Amendment Bill 2021. [↑](#footnote-ref-96)
96. Economics and Governance Committee, Queensland Parliament, *Inquiry into the Strengthening Community Safety Bill 2023* (Final Report, March 2023) 6. [↑](#footnote-ref-97)
97. 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. [↑](#footnote-ref-98)
98. Legal Affairs and Safety Committee, Queensland Parliament, *Inquiry into the Youth Justice and Other Legislation Amendment Bill 2021* (Final Report, April 2021) 54. [↑](#footnote-ref-99)
99. Statement of Compatibility, Defamation (Model Provisions) and Other Legislation Amendment Bill 2021, 11. [↑](#footnote-ref-100)
100. Legal Affairs and Safety Committee, Queensland Parliament, *Police Powers and Responsibilities and Other Legislation Amendment Bill 2021* (Report No 15, November 2021) 41. [↑](#footnote-ref-101)
101. Community Support and Services Committee, Queensland Parliament, *Inquiry into Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Bill 2022* (Report No 17, March 2022) 38. [↑](#footnote-ref-102)
102. Legal Affairs and Safety Committee, Queensland Parliament, *Inquiry into Police Powers and Responsibilities and Other Legislation Amendment Bill 2021* (Report No 15, November 2021) 41; Economics and Governance Committee, *Inquiry into* *Brisbane Olympic and Paralympic Games Arrangements Bill 2021* (Report No 20, November 201) 57; State Development and Regional Industries Committee, *Inquiry into Health and Other Legislation Amendment Bill 2021* (Report No 17, February 2022) 49. [↑](#footnote-ref-103)
103. State Penalties Enforcement (Modernisation) Amendment Bill 2022. [↑](#footnote-ref-104)
104. Legal Affairs and Safety Committee, Queensland Parliament, *Police Powers and Responsibilities and Other Legislation Amendment Bill 2021* (Report No 15, November 2021) 40-41. [↑](#footnote-ref-105)
105. Economics and Governance Committee, *Inquiry into Public Health and Other Legislation (Further Extension of Expiring Provisions) Amendment Bill 2021* (Report No 11, August 2021) 72. [↑](#footnote-ref-106)
106. Transport and Other Legislation (Road Safety, Technology and Other Matters) Amendment Bill 2020; Building Industry Fairness (Security of Payment) and Other Legislation Amendment Bill 2020; Forest Wind Farm Development Bill 2020; Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Bill 2020; Public Service and Other Legislation Amendment Bill 2020; Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Bill 2020; Waste Reduction and Recycling (Plastic Items) Amendment Bill 2020; Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Bill 2020; COVID-19 Emergency Response and Other Legislation Amendment Bill 2021; Youth Justice and Other Legislation Amendment Bill 2021. [↑](#footnote-ref-107)
107. Legal Affairs and Safety Committee, Queensland Parliament, *Youth Justice and Other Legislation Amendment Bill* (Report, April 2021) 122-123. [↑](#footnote-ref-108)
108. Economics and Governance Committee, Queensland Parliament, *COVID-19 Emergency Response and Other Legislation Amendment Bill 2021* (Report No 6, April 2021) 46. [↑](#footnote-ref-109)
109. Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee, Queensland Parliament, *Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Bill 2020* *– for our children’s children* (Report No 40, August 2020) 108, 5.2. [↑](#footnote-ref-110)
110. Legal Affairs and Safety Committee, Queensland Parliament, *Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Bill 2000* (Report No 3, February 2021) 84, 4.2.3. [↑](#footnote-ref-111)
111. Economics and Governance Committee, Queensland Parliament, *Inquiry into Public Health and Other Legislation (Further Extension of Expiring Provisions) Amendment Bill 2021* (Report No 11, August 2021); Health and Environment Committee, Queensland Parliament, *Inquiry into Voluntary Assisted Dying Bill 2021* (Report No 10, August 2021); State Development and Regional Industries Committee, *Inquiry into Health and Other Legislation Amendment Bill 2021* (Report No 17, February 2022); Legal Affairs and Safety Committee, Queensland Parliament, *Inquiry into Evidence and Other Legislation Amendment Bill 2021* (Report No 23, February 2022); Economics and Governance Committee, Queensland Parliament*, Inquiry into Police Service Administration and Other Legislation Amendment Bill 2021* (Report No 21, February 2022); Community Support and Services Committee, Queensland Parliament, *Inquiry into Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Bill 2022* (Report No 17, March 2022); Legal Affairs and Safety Committee, Queensland Parliament, *Inquiry into Police Legislation (Efficiencies and Effectiveness) Amendment Bill 2021* (Report No 16, November 2021); Legal Affairs and Safety Committee, Queensland Parliament, *Inquiry into* *Police Powers and Responsibilities and Other Legislation Amendment Bill 2021* (Report No 15, November 2021). [↑](#footnote-ref-112)
112. Transport and Other Legislation (Road Safety, Technology and Other Matters) Amendment Bill 2020; Building Industry Fairness (Security of Payment) and Other Legislation Amendment Bill 2020; Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Bill 2020; COVID-19 Emergency Response and Other Legislation Amendment Bill 2021. [↑](#footnote-ref-113)
113. Economics and Governance Committee, Queensland Parliament, *Inquiry into State Penalties Enforcement (Modernisation) Amendment Bill 2022* (Report No 24, May 2022) 39-40; State Development and Regional Industries Committee, Queensland Parliament, *Inquiry into the Health and Other Legislation Amendment Bill 2021* (Report No 17, February 2022) 49; Economics and Governance Committee, *Inquiry into* *Brisbane Olympic and Paralympic Games Arrangements Bill 2021* (Report No 20, November 2021) 57. [↑](#footnote-ref-114)
114. Economics and Governance Committee, Queensland Parliament, *Inquiry into the Covid-19 Emergency Response and Other Legislation Amendment Bill 2021* (Report, April 2021), 42. [↑](#footnote-ref-115)
115. State Development and Regional Industries Committee, Queensland Parliament, *Inquiry into the Health and Other Legislation Amendment Bill 2021* (Report No 17, February 2022) 49. [↑](#footnote-ref-116)
116. See, for example, information tabled by the Attorney-General in relation to the *Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Act 2021.* [↑](#footnote-ref-117)