

# Guideline: Intervention in court proceedings

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## 1. Purpose

The Queensland Human Rights Commission (**the Commission**) has a function to intervene in proceedings involving human rights issues, including those relating to the application of the *Human Rights Act 2019* (Qld) (**Human Rights Act**) or the *Anti-Discrimination Act 1991* (Qld) (**Anti-Discrimination Act**).

The purpose of these guidelines is to outline:

- the nature of the Commission’s intervention function; and
- how the Commission will exercise that function.

## 2. Our role

The Commission aims to prevent discrimination and strengthen human rights in Queensland, to help build a fairer, safer, and more inclusive community.

One of the ways we do that is through intervening in court and tribunal proceedings where the Commission’s expertise can assist interpreting and applying the Human Rights Act and Anti-Discrimination Act.

The Commission intervenes as an independent, expert advocate for the Acts rather than in support of a particular party. Its role is to assist the court or tribunal by:

- helping to identify and explain issues in relation to human rights
- identifying relevant domestic and international law
- potentially recommending outcomes compatible with human rights.

Given our role, the Commission can make submissions that focus on broader public interest issues, rather than limited to the interests of the parties.

To ensure effective use of resources, the Commission will only intervene in matters where we can be of assistance to the court or tribunal, and not repeat the same arguments being offered by the parties or the Attorney-General.

## 3. When will the Commission intervene?

### 3.1. Power to intervene

#### Interventions under the Human Rights Act

Under section 51(1) of the Human Rights Act, the Commission may intervene in proceedings where:

- a question of law arises about how the Act applies, or
- a question arises about the interpretation of a statutory provision in line with the Act.<sup>1</sup>

Where the Supreme Court is considering making a declaration of incompatibility<sup>2</sup>, the court must notify the Commission and give the Commission a reasonable opportunity to intervene or make submissions.

The Attorney-General holds the same power as the Commission to intervene.<sup>3</sup>

#### Interventions under the Anti-Discrimination Act

Under section 235(j) of the Anti-Discrimination Act, the Commission may intervene in a proceeding that involves human rights issues if:

- the Commission considers it appropriate to do so; and
- the court or tribunal grants permission to intervene.

### 3.2. Relevant factors for deciding whether to intervene

The Commission intervenes in only a small proportion of matters that raise human rights issues.

We select matters that have the potential to develop human rights jurisprudence, foster discussion of the meaning and scope of rights, and/or address serious human rights issues.

When deciding whether to intervene, the Commission considers:

- (a) whether the case involves a new or unsettled law or would clarify a disputed interpretation.
- (b) whether intervention aligns with the Commission's strategic priorities.
- (c) whether the human rights issue is significant and central to the proceedings.
- (d) whether the outcome may affect people beyond the parties.

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<sup>1</sup> Whether such a question arises depends on the issues in the case, not the parties' submissions: *Kortel v Mirik* (2008) 28 VAR 405; [2008] VSC 103 at [16].

<sup>2</sup> A declaration that, in the court's opinion, a statutory provision cannot be interpreted in a way that is compatible with human rights: *Human Rights Act 2019* (Qld), s 53.

<sup>3</sup> *Human Rights Act 2019* (Qld), ss 50 and 53.

- (e) the seriousness of the human rights issues.
- (f) whether the Commission can add unique value not already provided by the parties or the Attorney-General.
- (g) whether the Commission's intervention will have an adverse affect on the parties, including any delay or obstacle to early resolution.
- (h) time and resource implications for the Commission.
- (i) the benefit of intervention at the stage of the proceedings.
- (j) whether intervention is relevant to the Commission's role, function or reputation.

### 3.3. Examples of where the Commission is unlikely to intervene

The Commission is unlikely to intervene where it is in the Commission's view that:

- the human rights issues raised have already been settled, or will soon be clarified, by other court decisions.
- the human rights issues raised are not central to the issues in dispute and/or are not likely to be dealt with by the Court.
- the Commission would not be adding value to submissions on human rights issues made by the parties to the proceeding or the Attorney-General.
- the Commission does not have the resources to intervene in the required timeframes.

## 4. Notice of matters raising human rights issues

### 4.1. Supreme, District, Land, and Land Appeal Court proceedings raising questions of law or statutory interpretation

A party must give notice in the [approved form](#) to the Commission and the Attorney-General if:

- for a proceeding in the Supreme Court, District Court, Land Court or Land Appeal Court – a question of law relating to the application of the Human Rights Act arises, or a question relating to interpreting a statutory provision in line with the Human Rights Act arises, or
- for any proceeding - a question is referred to the Supreme Court under section 49 of the Human Rights Act.<sup>4</sup>

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<sup>4</sup> *Human Rights Act 2019* (Qld) s 52.

To assist the Commission, copies of relevant court documents should be provided with the notice in the approved form.

Notice should be served on the Commission, the Attorney-General, the court and all other parties as soon as possible after the question arises.

Giving notice does not require the court to adjourn proceedings.<sup>5</sup>

If a matter previously notified is appealed to the Supreme Court (including Court of Appeal), District Court, Land Court, or Land Appeal Court, the Commission considers these fresh proceedings requiring a further notice under s 52.

How to contact the Commission for the purpose of notification:

By email:	<a href="mailto:legal@ghrc.qld.gov.au">legal@ghrc.qld.gov.au</a>
By post:	Queensland Human Rights Commission City East Post Shop PO Box 15565 City East Qld 4002

## 4.2. Other proceedings

For other courts and tribunals, or in matters raising other human rights issues, parties can notify the Commission of cases raising human rights issues by contacting us using the details above.

Notification should include the same information required by the [approved form](#) and copies of relevant court or tribunal documents.

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<sup>5</sup> *Human Rights Act 2019* (Qld) s 52(3).

## 5. Our process

### 5.1. Upon notification

In matters before the Supreme Court, District Court, Land Court and Land Appeal Court which require notice in the [approved form](#), the Commission will respond to all parties, the Attorney-General, and the court to advise whether or not it will intervene.

In other matters the Commission will respond to the notifying party and any other parties copied in the notification.

The Commission will aim to respond within 14 days of receiving notice, or advise if more time is needed.

The Commission does not provide reasons for intervening or not intervening as this is a matter within the Commission's discretion and provision of further information may result in breach of professional obligations.

### 5.2. If the Commission intervenes

Once the Commission intervenes, it becomes a party to the proceedings with the right to:

- make oral and written submissions
- lead evidence
- appeal the decision.

The Commission may appeal the proceedings where it has intervened.<sup>6</sup>

### 5.3. Costs

The Commission ordinarily does not seek its costs from any party and would resist costs against the Commission.

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<sup>6</sup> *Human Rights Act 2019* (Qld) s 51(2).

## 6. Further information and feedback

If you have feedback about the Commission's legal intervention functions, or suggestions for improvement, please contact:

- [legal@ghrc.qld.gov.au](mailto:legal@ghrc.qld.gov.au)

Further resources:

- [Supreme Court of Queensland: Practice directions](#)  
(See Practice Direction 2019/27 – Questions referred by a court or tribunal pursuant to the Human Rights Act 2019 (Qld))
- [Supreme Court of Queensland: Forms](#)  
(See Form 1 – Notice to the Attorney-General and/or the Queensland Human Rights Commission under the Human Rights Act 2019)
- [Attorney-General: Human Rights Act Intervention Guidelines](#)