



Annual report  
ON THE OPERATION OF  
Queensland's  
Human Rights  
Act 2019

2023-24



Queensland  
**Human Rights**  
Commission



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

2023-24



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# Contents

Commissioner’s foreword.....	4
About the Commission .....	5
About this report.....	5
Report summary.....	6
Human rights timeline: 2023-24 .....	8
<b>About the <i>Human Rights Act 2019</i> .....</b>	<b>11</b>
<b>Human rights and the parliament.....</b>	<b>16</b>
The role of Queensland Parliament .....	17
Human rights indicators .....	20
Significant legislation 2023-24 .....	28
Significant inquiries 2023-24 .....	34
Focus on human rights certificates .....	36
Summary of the role of parliament in 2023-24 .....	38
<b>Human rights in courts and tribunals .....</b>	<b>40</b>
The role of courts and tribunals .....	41
Queensland cases that have considered or mentioned the Human Rights Act .....	46
Interventions.....	51
Summary of the role of courts and tribunals in 2023-24 .....	52
<b>Human rights and the public sector.....</b>	<b>55</b>
Obligations on public entities .....	56
Developing a human rights culture .....	56
Indicators of a human rights culture.....	57
State public entities .....	57
Local government public entities.....	61
Human rights leadership .....	63
Progress towards a human rights culture .....	64
QHRC’s first major human rights review for human rights compatibility.....	66
<b>Human rights complaints .....</b>	<b>68</b>
Complaints to the Commission .....	69
Complaints made directly to public entities.....	70
<b>Human rights in the community .....</b>	<b>73</b>
<b>Community education and training.....</b>	<b>74</b>
<b>Appendices .....</b>	<b>80</b>

# Commissioner's foreword

At the heart of the Human Rights Act and enshrined in the Act's objects is the aim to build a culture in the Queensland public sector that respects and promotes human rights. That is, the Queensland Government will put people at the heart of decision-making about how government services are delivered.

In essence, this is about making government more responsive to the everyday reality of the people it serves, so that the complexity of people's circumstances and needs are considered in coming to decisions that affect their health, housing, education and the core pillars of life.

Five years into the Act's implementation and the Queensland public sector, Parliament and judiciary have largely completed the initial implementation of the Act.

This year, key developments have shone a light on the extent to which person-centred decision-making has been adopted in Queensland.

The Supreme Court decision in *Johnston v Commissioner of Police* on vaccine mandates clarified the scope of obligations on public entities in making decisions that engage human rights, and the impact human rights can have on curtailing broad discretionary powers. It highlighted the importance of structured decision-making that actively considers the engagement of human rights and how any limitations of rights can be managed by less restrictive means.

In 2023-24 the Human Rights Act was undermined through override declarations in legislation. The effect of those overrides was to suspend the application of the Act to decisions about detaining children in police watchhouses and in designating new places as youth detention centres. This allows decisions to be made about some of Queensland's most vulnerable children, without the safety net of a human rights framework to consider their needs in the decision-making process.

In fact, it is in these most difficult and complex of circumstances when the Act should have its most powerful application in safeguarding human rights. It is intensely disappointing that, instead, the Act was overridden.

Implementing a person-centred decision-making framework takes commitment and a long-term vision. Queensland remains at the start of the journey to ensure that human rights are not an abstract, international concept, but rather a practical day-to-day reality for the people of our state.

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

# About the Commission

The Queensland Human Rights Commission (the Commission) is an independent statutory body established under the *Anti-Discrimination Act 1991* (the Anti-Discrimination Act). The functions and powers of the Commission under section 61 of the *Human Rights Act 2019* (Human Rights Act) are:

- to deal with human rights complaints;
- if asked by the Attorney-General, to review the effect of Acts, statutory instruments and the common law on human rights and give the Attorney-General a written report about the outcome of the review;
- to review public entities' policies, programs, procedures, practices and services in relation to their compatibility with human rights;
- to promote an understanding and acceptance, and the public discussion, of human rights and this Act in Queensland;
- to make information about human rights available to the community;
- to provide education about human rights and this Act;
- to assist the Attorney-General in reviews of this Act under sections 95 and 96;
- to advise the Attorney-General about matters relevant to the operation of this Act; and
- another function conferred on the Commission under this Act or another Act.

## About this report

Section 91 of the Human Rights Act requires that, as soon as practicable after the end of each financial year, the Commissioner must prepare an annual report about the operation of the Act during the year. The purpose of this report is to provide a resource for government, parliament, and the community on the operationalisation of the Human Rights Act and the degree to which it is achieving its objectives.<sup>1</sup>

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

# Report summary

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

Section	Required information
91(2)(a)	<p>details of any examination of the interaction between this Act and other Acts, statutory instruments and the common law</p> <p>For more information see <i>Human rights and the public sector</i> chapter.</p>
91(2)(b)	<p>details of all declarations of incompatibility made</p> <p>No declarations of incompatibility were made in the 2023–24 financial year.</p>
91(2)(c)	<p>details of all override declarations made</p> <p>Four override declarations were made in relation to amendments to the Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Bill 2022.</p> <p>For more information see <i>Human rights and the parliament</i> chapter.</p>
91(2)(d)	<p>details of all interventions by the Attorney-General or the Commission under section 50 or 51</p> <p>The Commission intervened in 2 new court matters.<sup>2</sup></p> <p>The Attorney-General intervened in no new matters, but finalised 10 during the reporting period.</p> <p>For more information see <i>Human Rights in courts and tribunals - Interventions</i> section.</p>
91(2)(e)	<p>number of human rights complaints made or referred to the Commissioner</p> <p>The number of human rights complaints finalised in the financial year was 469 (down from 561 last year). Of these, 227 were human rights only complaints and 242 were piggy-back complaints.</p>
91(2)(f)	<p>outcome of human rights complaints accepted by the Commissioner for resolution by the Commission, including whether or not the complaints were resolved by conciliation or otherwise</p> <p>Of the 269 accepted complaints finalised in the 2023–24 financial year:</p> <p>76 complaints were resolved (13 human rights only complaints, 63 piggy-back complaints)</p> <p>52 complaints were referred to the Queensland Civil and Administrative Tribunal (all piggy-back complaints)</p>

<sup>2</sup> This does not include ongoing matters that had commenced during previous reporting periods.

Section	Required information
	40 complaints were referred to the Queensland Industrial Relations Commission (all piggy-back complaints).
91(2)(g)	<p>the number of human rights complaints resolved by the Commission</p> <p>In the 2023–24 financial year, 76 complaints were resolved and finalised by the Commission, comprising 13 human rights only complaints and 63 piggy-back complaints.</p>
91(2)(h)	<p>the number of conciliation conferences conducted under this part</p> <p>187 conciliation conferences relating to human rights were scheduled in the 2023–24 financial year.</p>
91(2)(i)	<p>the number of public entities that were asked or directed to take part in a conciliation conference, and the number that failed to comply with a direction to take part</p> <p>Most accepted complaints involved more than one respondent, and some public entities were directed to attend on more than one occasion. Overall, 129 discrete respondents were directed to take part, of which 71 were individual people, and 58 were public entities such as government departments, councils or functional public entities.</p> <p>No public entities failed to comply with a direction to attend a conference in the 2023–24 financial year.</p>
91(2)(j)	<p>the number of human rights complaints received by particular public entities decided by the Commissioner</p> <p>This information is too detailed to reproduce in the report summary. The Commissioner has decided to report on the complaints reported by the entities we surveyed in relation to the human rights indicators.</p> <p><i>See Human rights complaints – Complaints made to public entities.</i></p>
88(4)	<p>details of action the Commissioner considers the respondent should take to ensure its acts and decisions are compatible with human rights, following an unresolved conciliation</p> <p>No reports on unresolved complaints with recommendations were made this financial year.</p>

# Human rights timeline: 2023-24

Below is a brief timeline of some significant events relevant to the operation of the Act in 2023-24.



First Nations people



Civil liberties



The fight for equality



Children and families



Life and health



Prisons and institutions



## JULY 2023

The Queensland Ombudsman's functions under the *Inspector of Detention Services Act 2022* commenced on 1 July 2023. Inspection Standards for Queensland prisons and youth detention centres were released in August 2023.



## AUGUST 2023

The Supreme Court of Queensland ordered the immediate transfer of 3 children from police watch houses into the custody of Youth Justice, after Queensland Police were unable to establish the lawfulness of their watch house detention. The *habeas corpus* application was brought on behalf of 8 children who had been remanded in custody in various watch houses in Queensland following appearances in the Magistrates Court. At the time of hearing only 3 of the 8 children had not been moved to detention centres. See *Youth Empowered Towards Independence Incorporated v Commissioner of Queensland Police Service & Anor* [2023] QSC 174.



## AUGUST 2023

The Queensland Family and Child Commission released its first *Queensland Child Rights Report*, which analysed how Queensland upholds children's rights and identified changes needed to embed a child rights approach across government policy, legislation, and systems to deliver better, more equitable outcomes for Queensland children.



## SEPTEMBER 2023

The override declaration provisions in section 43(1) of the *Human Rights Act 2019* were used for the second time since the Act's commencement to allow for children to be lawfully detained in police watch houses. Four override declarations relate to various aspects of the custody of children in and between watch houses and youth detention centres. The Human Rights Act continues to apply to the way children are treated in detention, no matter where they are detained. See *Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Act 2023*.



## SEPTEMBER 2023

The Queensland Police Service (QPS) and Queensland Human Rights Commission announced the commencement of a review into diversity and inclusion in the QPS, following a recommendation by the Commission of Inquiry (Col) into the QPS's responses to domestic and family violence. The Col found widespread cultural issues including racism and sexual harassment in the QPS. The review will focus on the recruitment and retention of women, First Nations, and culturally diverse police, and will publish a report and recommendations in late 2024.



## SEPTEMBER 2023

The Queensland Human Rights Commission released *Stripped of our dignity*, a report on a human rights review of the practice of strip searching women in Queensland prisons. The report concludes that strip searches fail to improve prison safety while unreasonably limiting the human rights of prisoners, their children and families, and prison staff, and makes 24 recommendations aimed at fostering a more trauma-informed and human rights-compatible approach to searching female prisoners. Changes to regulations and policy were made in response to the report, and the Commission is continuing to monitor progress.



## SEPTEMBER 2023

The Australian Government tabled the *Final Report of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability*, which calls on all governments and the wider community to improve service systems, legislation and policies that contribute towards violence, abuse, neglect and exploitation of people with disability and recommends each government to publish a written response.



## OCTOBER 2023

A referendum to constitutionally recognise Aboriginal peoples and Torres Strait Islander peoples as the First Peoples of Australia by enshrining a First Nations Voice in the Australian Constitution was defeated. Nationally, 60% of voters opposed the proposal. Queensland saw the highest 'no' vote of any state or territory at 68%.



## OCTOBER 2023

Amendments to the *Criminal Law (Sexual Offences) Act 1978* were passed to allow alleged offenders to be named prior to committal for prescribed sexual offences (including rape, attempt to commit rape, assault with intent to commit rape, and sexual assault), as recommended by the Women's Safety and Justice Taskforce.



## DECEMBER 2023

The Final Report of the Independent Review of the National Disability Insurance Scheme was released, making 26 interrelated recommendations to provide a unified system of support for people with disability.



## DECEMBER 2023

The United Nations Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment released a scathing report on its 2022 visit to Australia that was suspended due to lack of cooperation. The recommendations included a complete ban on the use of spit hoods, that pretrial detention is always a measure of last resort, and increasing the age of criminal responsibility to a minimum of 14 years old.



## FEBRUARY 2024

The Supreme Court of Queensland delivered a decision in relation to judicial reviews brought by members of the Queensland Police Service and Queensland Ambulance Service staff challenging their employers' requirement for mandatory vaccination against COVID-19. The Court declared the QPS directions were unlawful because the Police Commissioner did not give proper consideration to human rights before issuing the direction. The QAS direction was declared to have no effect because, on the evidence presented to the Court, the decision-maker had no power to issue the direction. See *Johnston v Commissioner of Police* [2024] QSC 2.



## APRIL 2024

The Anti-Discrimination Act was updated to include a new attribute of 'sex characteristics' to ensure coverage of intersex people in the Act, and the definition of 'gender identity' was expanded to incorporate gender expression and ensure that people who identify outside of the binary are covered.



## APRIL 2024

Updated vilification and serious hate crime laws came into effect in Queensland, including:

- An increase in the penalty for the criminal offence of serious vilification, from 6 months to 3 years imprisonment, and the removal of a requirement for the Attorney-General or Director of Public Prosecutions to approve the laying of charges

- Adding sex characteristics as a protected attribute for vilification

- Adding a new offence of publicly displaying a prohibited symbol to the Criminal Code. The Nazi Hakenkreuz has since been prescribed as a prohibited symbol.

- Higher penalties for certain offences under the Criminal Code when they are motivated by hatred or serious contempt for a person or group based on their race, religion, sexuality, sex characteristics, or gender identity.



## APRIL 2024

Legislation was passed to establish a Victims' Commissioner to promote the rights and needs of victims of crime. Victims of violent crime, including domestic and family violence, who believe their rights under the Charter of Victims' Rights have not been upheld, can make a complaint to the Victims' Commissioner from 2 September 2024. See *Victims' Commissioner and Sexual Violence Review Board Act 2024*.



## MAY 2024

Legislation was passed to decriminalise sex work in Queensland and establish a legal framework for the sex work industry in Queensland to improve the health, safety, rights and legal protections for sex workers. The reforms also add 'sex work activity' as a protected attribute under the Anti-Discrimination Act. See the Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Bill 2024.



## JUNE 2024

Remaining provisions of the *Births, Deaths and Marriages Registration Act 2023* commenced. The Act increases recognition of trans and gender diverse people and diverse families on birth certificates, removes outdated barriers to changing record of sex, and ensures that people are recognised across state laws as their registered sex.



## JUNE 2024

A coronial inquest into two deaths in custody found although the detainees died of natural causes, they were not adequately supervised and did not receive appropriate medical care. The two women were detained different watch houses, but the matters considered together. 'In each case, checks were conducted by watchhouse officers which recorded that there were "no problems detected" when, in fact, the women appeared clearly unwell or their state of wellbeing could not be properly discerned,' Deputy Coroner Gallager said. See Inquest into the deaths of Shiralee Deanne Tilberoo and Vlasta Wylucki.



# About the *Human Rights Act 2019*

# What are human rights?

Human rights are rights inherent to all human beings. By promoting respect for human rights, we recognise the dignity and worth of all people. Human rights should only be limited in a way that can be justified in a free and democratic society based on human dignity, equality, freedom, and the rule of law.

## Modern human rights law

The modern idea of human rights derives from the Universal Declaration of Human Rights which was adopted by the United Nations General Assembly in 1948. Australia has shown its commitment to human rights by ratifying treaties, including the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). However, a treaty only becomes a direct source of individual rights and obligations once it is incorporated into domestic legislation.

## Objects, rights and obligations

### Objects of the Human Rights Act

The main objects of the Human Rights Act are:

- to protect and promote human rights; and
- to help build a culture in the Queensland public sector that respects and promotes human rights; and
- to help promote a dialogue about the nature, meaning and scope of human rights.

### Protected human rights

The Act consolidates and establishes statutory protections for certain rights recognised under international law, including those drawn from the ICCPR and the ICESCR.

The following human rights are protected under the Human Rights Act:

- Right to recognition and equality before the law (section 15)
- Right to life (section 16)
- Right to protection from torture and cruel, inhuman or degrading treatment (section 17)
- Right to freedom from forced work (section 18)
- Right to freedom of movement (section 19)
- Right to freedom of thought, conscience, religion and belief (section 20)
- Right to freedom of expression (section 21)
- Right to peaceful assembly and freedom of association (section 22)
- Right to take part in public life (section 23)

- Property rights (section 24)
- Right to privacy and reputation (section 25)
- Protection of families and children (section 26)
- Cultural rights – generally (section 27)
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28)
- Right to liberty and security of person (section 29)
- Right to humane treatment when deprived of liberty (section 30)
- Right to a fair hearing (section 31)
- Rights in criminal proceedings (section 32)
- Rights of children in the criminal process (section 33)
- Right not to be tried or punished more than once (section 34)
- Retrospective criminal laws (section 35)
- Right to education (section 36)
- Right to health services (section 37)

## Government obligations

The Human Rights Act places obligations on all three arms of government, the legislature, the judiciary and the executive. This means that:

Parliament (the legislature) must consider human rights when proposing and scrutinising new laws.

Courts and tribunals (the judiciary) so far as is possible to do so, must interpret legislation in a way that is compatible with human rights.

Public entities (the executive) – such as state government departments, local councils, state schools, the police and non-government organisations and businesses performing a public function must act compatibly with human rights.

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

# The dialogue model

Figure 1: Diagram of the dialogue model



A dialogue model is aimed at prevention rather than litigation, and retains the sovereignty of parliament.

It means that human rights are considered across the three arms of government – when the parliament makes laws, when government applies laws, and when courts and tribunals interpret laws.

There is a mechanism for the court to inform the government if legislation is inconsistent with human rights, but it doesn't affect the validity of the legislation and parliament has the final say.

It encourages people to talk to public entities if they feel their human rights have been unreasonably limited or not considered at all.

Under the Human Rights Act, a complaint may be made to the Commission about human rights, provided a complaint has first been made to the public entity. The dispute resolution process is consistent with a dialogue model as it encourages resolution through discussion. The dialogue model is strengthened by the Commission's capacity to make recommendations for improvements to further human rights compatibility. Section 88 of the Human Rights Act allows the Commission to prepare a report about a human rights complaint which includes recommendations of actions to be taken by public entities to ensure its acts and decisions are compatible with human rights.

## Public entities

Public entities have obligations to make decisions and act compatibly with human rights, and to give proper consideration to human rights when making decisions.

A public entity is an organisation or body performing a public function in and for Queensland.

There are two types of public entities, although the following terms are not used in the Human Rights Act:

Core public entities are government entities. This includes:

- government agencies and departments
- public service employees
- the Queensland Police Service and other emergency services
- state government ministers
- public schools
- public health services, including hospitals
- local government, councillors, and council employees.

Functional public entities are only considered public entities when they are performing a function of a public nature on behalf of the state. Organisations funded by the government to provide public services would fall under this category. Functional public entities could be non-government organisations (NGOs), private companies, or government owned corporations. A private company funded to run a prison, or an NGO providing a public housing service, would be considered a functional public entity.



# Human rights and the parliament

# The role of Queensland Parliament

The Human Rights Act establishes mechanisms that require all arms of government to consider human rights as part of decision-making and law-making processes.

Parliament considers whether limitations on human rights in legislation are justified. This occurs through tabling statements of compatibility with Bills and human rights certificates with subordinate legislation, scrutiny through the committee process, and parliamentary debate. Once a law is passed, human rights compatibility of legislation will generally only arise through litigation.

Where the Supreme Court or Court of Appeal is of the opinion that a statutory provision cannot be interpreted compatibly with human rights, the Court may make a declaration of incompatibility. However, a declaration does not affect the validity of the law. The court must then give notice to the Attorney-General and the Commission of the incompatibility.

## Portfolio committees

Portfolio committees made up of government and non-government members facilitate public, as well as parliamentary, debate about proposed laws. Committees assist parliament to assess human rights implications of new laws, expose legislation to effective scrutiny independent of the executive, and encourage public participation through submissions and attendance at public hearings.<sup>3</sup>

Before proposed laws are debated in the Legislative Assembly, a portfolio committee examines the Bill, considers and reports on the statements of compatibility, and whether the Bill is compatible with human rights. For subordinate legislation (such as regulations, rules, and by-laws etc) committees report on human rights matters of concern raised by the accompanying human rights certificates.

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<sup>3</sup> Explanatory Notes, Human Rights Bill 2018 (Qld) 29.

## Override declarations

Parliament may expressly declare in the text of an Act that an Act or provisions of an Act have effect despite being incompatible with human rights. This declaration is an override declaration and is intended to be only used in exceptional circumstances such as ‘war, a state of emergency, an exceptional crisis situation constituting a threat to public safety, health or order’.<sup>4</sup> The member who introduces a Bill containing an override declaration must make a statement to the Legislative Assembly explaining the exceptional circumstances that justify including the declaration. A provision of an Act containing an override declaration expires 5 years after the provision commences.

This year 4 override declarations were made in the *Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Act 2023*, which received assent on 1 September 2023. The declarations apply to:

- *Police Powers and Responsibilities Act 2000* section 640(1)(a) and (b) – one declaration with respect to the transfer of a child between watchhouses or to other specified places (such as a holding cell at a police station). Section 640 was also amended to provide that failure to provide procedural fairness to a child transferred between watchhouses or to other places such as holding cells does not affect the validity of the decision to transfer the child.
- *Youth Justice Act 1992* sections 56, 210, and 262 – three declarations.
  - Section 56 relates to a child remanded in custody – the Commissioner of Police must take immediate custody of a child remanded in custody until notified that the Chief Executive will accept custody of the child (at a youth detention centre). The Chief Executive is required to consider various matters, such as the child’s age and medical conditions, however a failure of the Chief Executive to provide procedural fairness to the child in deciding the date for delivery into custody does not affect the validity of the decision.
  - Section 210 relates to a child sentenced to detention. The child is to be in the custody of the Commissioner of Police until notified that the Chief Executive will accept the custody of the child (at a youth detention centre). The Chief Executive is required to consider various matters such as the child’s age and medical conditions, however a failure of the Chief Executive to provide procedural fairness to the child in deciding the date for delivery into custody does not affect the validity of the decision.
  - Section 262 of the Youth Justice Act 1992 establishes places of detention and other places for the purposes of the Youth Justice Act 1992. The declaration does not apply to places of detention established before 23 August 2023.
  - Section 262 was also amended to provide that before recommending the Governor in Council makes a regulation establishing a place of detention, the Minister must have regard to whether the establishment of the detention centre would be compatible with human rights. This does not require the Minister to

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

comply with section 58 of the *Human Rights Act 2019*, and a failure to have regard to compatibility with human rights does not affect the validity of a regulation establishing a detention centre. These amendments took effect from 23 August 2023.

A new section 262A 'Human Rights Act 2019, s 58 does not apply to particular acts and decisions' was inserted in the Youth Justice Act 1992 by the Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Act 2023. The Explanatory Notes state that this is to:

disapply section 58 of the Human Rights Act 2019 (HR Act) from actions and decisions subsequent to the establishment of a detention centre under the override. This is to ensure that a decision to place a child in that detention centre, the transport of the child to the detention centre, and the provision of programs and services in the detention centre will be valid.<sup>5</sup>

The Commission considers that the override declarations in relation to youth justice legislation do not meet the threshold for an 'exceptional crisis situation'.

In the Commission's view, the override provisions are unnecessary because the Human Rights Act does not allow courts to declare laws invalid if they are incompatible with human rights. Even without the override provision, parliament can make non-human rights compliant laws that will be enforceable. Transparency and accountability about parliament's decisions to do so can be provided through the statement of compatibility. The override provision does not serve a purpose other than undermining the objects of the Act and should be repealed.

## Statements of compatibility

Scrutiny of proposed legislation for compatibility with human rights is achieved in parliament through tabling of statements of compatibility that provide detailed reasons and justification in respect of any human rights affected by the Bill, and reporting by portfolio committees on their examination of Bills for compatibility with human rights.

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<sup>5</sup> Explanatory Notes for amendments to be moved during consideration in detail (3<sup>rd</sup> Reading, 24 August 2023) Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Bill 2022 (Qld) 12.

# Human rights indicators

The dialogue model adopted in the Human Rights Act aims to promote a dialogue about human rights between the three arms of government (the legislature, executive, and judiciary) with each arm having a 'legitimate role to play, while parliament maintains sovereignty'.<sup>6</sup> This model prioritises discussion, awareness-raising, and education over an enforcement and compliance model, and supports the goal of gradually building a human rights culture.

The Commission has developed a set of indicators to gauge the development of a human rights culture within parliament. These indicators are based on the experiences of other human rights jurisdictions and the specific role portfolio committees play in Queensland's unicameral parliament.<sup>7</sup>

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

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

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

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

A total of 63 Bills were introduced in the reporting period, of which:

- 23 were referred to Committee
- 40 passed into law
- 19 were amended before passing into law.

An additional 9 Bills introduced in the previous reporting period (2022-23) passed into law, 6 of which passed with amendments.

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<sup>6</sup> Explanatory Notes, Human Rights Bill 2018 (Qld) 10.

<sup>7</sup> For more information on how these indicators were developed, see Queensland Human Rights Commission, *Balancing Life and Liberty: The second annual report on the operation of Queensland's Human Rights Act 2019* (Report 2020–21) 30–32.

## Selection of Bills for consideration

This year, the Commission has selected 16 Bills introduced in 2023-24<sup>8</sup> to analyse with respect to the human rights indicators. The methodology for selecting these Bills involved:

- considering subject matter relevance to determine the likelihood that human rights would have been prominent in the considerations of the Bill (across a range of areas of public life)
- considering whether the Commission had made a submission, which is one indicator that human rights considerations were evident
- identifying the extent to which the Committee had referred to the terms 'human rights' or the 'Human Rights Act' in the Committee report.

From this selection of Bills, 2 Bills were selected from each portfolio committee, to provide a representative sample of the work across portfolios.

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<sup>8</sup> Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Bill 2022, Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Bill 2024, Disaster Management and Other Legislation Amendment Bill 2024, Environmental Protection (Powers and Penalties) and Other Legislation Amendment Bill 2024, Health and Other Legislation Amendment Bill (No. 2) 2023, Information Privacy and Other Legislation Amendment Bill 2023, Integrity and Other Legislation Amendment Bill 2023, Justice and Other Legislation Amendment Bill 2023, Land and Other Legislation Amendment Bill (No. 2) 2023, Mineral and Energy Resources and Other Legislation Amendment Bill 2024, Public Records Bill 2023, Pharmacy Business Ownership Bill 2023, Residential Tenancies and Rooming Accommodation and Other Legislation Amendment Bill 2024, State Financial Institutions and Metway Merger Amendment Bill 2024, Work Health and Safety and Other Legislation Amendment Bill 2023, and Inquiry into the Provision and Regulation of Supported Accommodation in Queensland.

Figure 2: Indicators of parliamentary human rights culture diagram



## Indicator 1: Override declarations

*Parliament may, in exceptional circumstances, expressly declare an Act has effect despite being incompatible with one or more human rights.<sup>9</sup> This indicator considers whether override declarations were relied upon by parliament in the 2023–24 financial year.*

Four override declarations were made in the *Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Act 2023* in relation to the *Police Powers and Responsibilities Act 2000* and the *Youth Justice Act 1992*. The override declarations mean that until 31 December 2026, the Human Rights Act does not apply to:

- decisions to hold a child in a police watchhouse
- establishment of new places as youth detention centres, such as police watchhouses or corrective services facilities.

This was the second time in 2023<sup>10</sup> that the Queensland Government introduced legislation that it considered to be incompatible with the Human Rights Act.

The effect of the 2 Bills containing override declarations is that 6 provisions of the Youth Justice Act 1992 are now subject to an override provision, including the declaration and sentencing of children considered to be serious repeat offenders, revocation of conditional release orders, and the arrangements for custody of a child on remand.

The Commission notes that at time of writing, no new places have been declared as youth detention centres.

## 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.*

One Bill<sup>11</sup> passed through parliament without the scrutiny of a portfolio committee, the Revenue and Other Legislation Amendment Bill 2024. The Bill related to implementation of State budget measures in relation to first home buyers, foreign investors, rebates for apprentices and trainees, and reduced payroll taxes for regional employers. While affecting property rights, the Bill did not contain significant human rights limitations.

Of the Bills considered against the indicators, the Commission noted that two Bills contained amendments after the Committee stage that were unrelated to the content of the Bill. Use of last-minute amendments by Ministers by-passes the usual parliamentary scrutiny process and undermines the democratic parliamentary process.

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<sup>9</sup> *Human Rights Act 2019* (Qld) s 43.

<sup>10</sup> The first occasion was with the Strengthening Community Safety Bill 2023 in relation to the *Bail Act 1980* s 29 which received assent on 22 March 2023 (outside the reporting period).

<sup>11</sup> This does not include appropriation Bills.

The Mineral and Energy Resources and Other Legislation Amendment Bill 2024 was amended to make unrelated changes to the Corrective Services Act to validate:

- the appointment and decisions of past parole board members to address errors in how they were engaged
- a past and ongoing practice of granting parole with a delayed release.

Extensive amendments to unrelated Acts through the Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Bill 2022 after the Committee stage meant that issues with major human rights considerations entirely bypassed the usual scrutiny process. As discussed in the previous section, parliament's decision to override the Act to validate the holding of children in watch houses through amendments to the Bill was regrettable. The Commission considers several other changes passed as amendments to the Bill would have benefited from an opportunity for community input and proper parliamentary scrutiny. Changes included:

- decriminalising public intoxication, begging, public urination
- repealing capacity for police to use covert powers and 'move on' powers targeted at sex workers
- changing police powers, functions, and police disciplinary matters
- granting a mining lease for infrastructure relating to a workers' camp
- validating appointments of members and the president of the Mental Health Court retrospectively
- providing for continuation of an expired Supreme Court regulation retrospectively.

### 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.*

Within the selection of Bills considered against the indicators this year, the Commission was unable to identify any statements of compatibility or Explanatory Notes that indicated a Bill was incompatible with rights. For most Bills, where human rights were found to be engaged, the limits placed on them were considered reasonable and demonstrably justifiable.

Because the Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Bill 2022 did not initially contain any provisions that were incompatible with human rights, the introducing Minister did not raise any issues of potential incompatibility at that time. The override declarations were made in relation to youth justice amendments which were unrelated to the content of the original Bill.

## Indicator 4: Committee examination of incompatibility

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

The Commission did not identify instances of portfolio committees considering statements of partial incompatibility.

## 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.*

Within the selection of Bills considered against the indicators this year, the Commission identified 2 instances where a committee indicated that statements of compatibility were inadequate in some way.

The Clean Economy Jobs, Resources and Transport Committee critiqued the adequacy of the statement of compatibility in relation to the Land and Other Legislation Amendment Bill (No. 2) 2023, and noted concerns about potential for erasure of history, and infringement on the right to reputation of family or descendants of historical figures affected by a decision to remove their name from a place in Queensland.<sup>12</sup>

In considering the Information Privacy and Other Legislation Amendment Bill 2023, the Education, Employment and Training Committee commented that the statement of compatibility did not always contain sufficient information to facilitate understanding of the Bill, including the purpose of limiting rights. These concerns related to an increased penalty for computer hacking and misuse under the Criminal Code for which the committee considered there was insufficient consideration of less restrictive measures to achieve the outcome, and a lack of a connection demonstrated between proposed higher imprisonment terms and the aim of deterrence.<sup>13</sup>

The Commission notes that the annual reports for portfolio committees identify the number of times that committees identified human rights issues and instances where committees commented that explanatory notes were not adequate.<sup>14</sup>

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<sup>12</sup> Clean Economy Jobs, Resources and Transport Committee, Queensland Parliament, *Land and Other Legislation Amendment Bill (No. 2) 2023* (Report No. 2, March 2024) 21.

<sup>13</sup> Education, Employment and Training Committee, Queensland Parliament, *Inquiry into the Information Privacy and Other Legislation Amendment Bill 2023* (Report No. 40, November 2023) 12-13.

<sup>14</sup> See for example Clean Economy Jobs, Resources and Transport Committee, Queensland Parliament, *Annual Report 2023-24* (Report No. 11, August 2024) 11.

## 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.*

Within the selection of Bills considered against the indicators this year, the Commission identified 2 instances where a committee sought further information in relation to human rights issues.

In relation to the Mineral and Energy Resources and Other Legislation Amendment Bill 2024, the Clean Economy Jobs, Resources and Transport Committee wrote to the Department of Resources seeking additional information. The committee report did not make it clear what the subject matter involved but stated that it related to 'matters that could potentially have insufficient regard to the rights and liberties of individuals and the institution of parliament'. After receiving this response, the committee was satisfied about human rights compatibility.<sup>15</sup>

The same committee sought further information in relation to the Land and Other Legislation Amendment Bill (No. 2) 2023 and was satisfied on the basis of this information that the limitation on human rights to privacy and reputation was justified.<sup>16</sup>

## Indicator 7: Committee recommendations about human rights

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

The Commission identified 2 examples within the sample of selected Bills to compare against the indicators. Both related to enhancing community engagement and stakeholder consultation.

Stakeholder concerns about restrictions on the right to freedom of association were considered by the Education, Employment, Training and Skills Committee while examining the Work Health and Safety and Other Legislation Amendment Bill 2023. Although finding that changes to key definitions and the creation of 'excluded entities' in response to an increase in associations claiming to act for employees (without being subject to the level of regulation of a registered union) were reasonable and justified, the committee recommended that the Office of Industrial Relations undertake an awareness campaign on the issue.<sup>17</sup>

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<sup>15</sup>Clean Economy Jobs, Resources and Transport Committee, Queensland Parliament, *Mineral and Energy Resources and Other Legislation Amendment Bill 2024* (Report No. 6, June 2024) v.

<sup>16</sup> Clean Economy Jobs, Resources and Transport Committee, Queensland Parliament, *Land and Other Legislation Amendment Bill (No. 2) 2023* (Report No. 2, March 2024) 23.

<sup>17</sup> Education, Employment, Training and Skills Committee, Queensland Parliament, *Work Health and Safety and Other Legislation Amendment Bill* (Report No. 2, February 2024) 12-16.

In considering the Environmental Protection (Powers and Penalties) and Other Legislation Amendment Bill 2024, the Health, Environment and Agriculture Committee provided detailed commentary on concerns raised by stakeholders about entry to land and timeframes for notifying landholders of entry under an environmental enforcement order. The committee noted that stakeholders raised concerns about the adequacy of consultation and suggested the responsible department did not spend enough time explaining the rationale, intent, and impact of the proposed amendments on stakeholders. While falling short of a formal recommendation, a 'committee comment' urged the relevant department to continue consultations with relevant stakeholders to attempt to resolve continuing disagreement about the effect of the proposal.<sup>18</sup>

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

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

The Commission was unable to identify any instances where the introducing member further responded to human rights issues after the committee stage, such as in the second reading speech.

## 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.*

Of the Bills selected for consideration against the indicators, none contained amendments arising from human rights issues raised in portfolio committee reports.

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<sup>18</sup> Health, Environment and Agriculture Committee, Queensland Parliament, *Environmental Protection (Powers and Penalties) and Other Legislation Amendment Bill 2024* (Report No. 4, April 2024) 9, 21-22.

# Significant legislation 2023-24

Legislation introduced in the 2023–24 financial year that raised significant human rights issues is summarised below.

## Legislation focused on victims' rights

A notable trend in this year's legislation was the emphasis on realising the rights of victims of crime, with a particular focus on victims of sexual violence and domestic or family violence.

Under the International Covenant on Civil and Political Rights and other human rights treaties, relevant public entities must take positive steps to prevent and respond to violent crime in order to effectively protect life, the right to freedom from torture and cruel, inhuman or degrading treatment, and the right to security of the person. Judicial interpretation of the Act has recognised duties owed by public entities to take positive steps to protect rights under the Act.<sup>19</sup>

## Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Bill 2023

The Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Bill 2023 implemented significant reforms based on recommendations of the Women's Safety and Justice Taskforce and the Commission of Inquiry into Queensland Police Service Responses to Domestic and Family Violence, as detailed in their reports *Hear Her Voice* and *A Call for Change*. These reforms aimed to address issues related to coercive control, domestic violence, and the treatment of women and girls within the justice system.

Reflecting the international position, the Human Rights Act imposes a duty on the State to prevent rights violations committed by private actors – and this is articulated in the Statement of Compatibility to this Bill. This Statement highlights the rights promoted by the Bill, such as the right to life and the right to protection from torture, and from cruel, inhuman, or degrading treatment. It also acknowledges, in line with the Taskforce's findings, the government's positive obligation to safeguard individuals' lives and physical and psychological safety from coercive control, even when such acts are perpetrated by private actors.<sup>20</sup>

In its submission to the parliamentary inquiry into the Bill, the Commission supported the Bill's advances in human rights for victims, but identified areas where human rights compatibility issues arose. The need to consider the rights of the accused alongside the rights of victims was raised by the Commission, citing international human rights obligations to protect individuals from violations by both state and private actors. The Commission recommended monitoring, data

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<sup>19</sup> 4 On positive obligations relating to the right to life generally, see *Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors* (No 6) [2022] QLC 21 [1452]; Explanatory Notes, Human Rights Bill 2018 19; *Coroners Court of Queensland, Inquest into the Death of Selesa Tafaiifa: Ruling in relation to the conduct of the Police Coronial Investigation* (T Ryan, State Coroner, 20 June 2022) [43]. These duties have not yet been applied to violent crime by private individuals in Queensland, but see UN Human Rights Committee, General Comment No 36: Article 6: right to life (CCPR/C/GC/36, 3 September 2019) [21].

<sup>20</sup> Statement of Compatibility, Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Bill 2023, 25.

collection, and a 5-year review<sup>21</sup> to assess the impact of the reforms, particularly the potential for a new coercive control offence to inadvertently lead to further criminalisation of First Nations people.

One concern raised by the Commission and other stakeholders was the inclusion of 'transmission of a serious disease' as a factor that nullifies consent. Concerns included whether this would impact negatively on public health by further stigmatising people living with HIV, and the potential broad scope of the term 'serious disease'. The committee recommended that the government consider amending the Bill to remove the provision, but the Bill passed unamended.<sup>22</sup>

## Victims' Commissioner and Sexual Violence Review Board Bill 2024

This legislation established an independent Victims' Commissioner to protect and promote the rights of victims, and the Sexual Violence Review Board to identify and review systemic issues about reporting, investigating, and prosecuting sexual offences.

In the Commission's view, the establishment of an independent Victims' Commissioner is a positive step, but the lack of compensation as an available remedy and the limited complaint powers available to the Commissioner are inadequate to provide genuine redress for victims of crime. This means that in many cases a complainant will be better off making a complaint under the Human Rights Act to the Commission, which offers the opportunity for a conciliation conference, and for piggy-back matters which provide an opportunity to obtain compensation.

The Community Safety and Legal Affairs Committee expressed related concerns about the complaint process, recommending that consideration be given to whether the complaints mechanism in the Bill is sufficient to ensure it is accessible to child complainants, particularly children without adults to assist on their behalf.<sup>23</sup> In response, the government pointed to the capacity for the Victims' Commissioner to provide reasonable assistance to reduce a complaint to writing. The Bill passed without amendment.

In the Commission's view, the powers granted to the new Victims' Commissioner should be reviewed in the following years to identify whether there is a need for powers to compel parties to attend a conference (as contained in the Human Rights Act), and serious consideration should be given to allowing these matters to be decided at a tribunal where not resolved by the Victims' Commissioner. Precedent for this exists in relation to privacy breaches under the Information Privacy Act, and in the Anti-Discrimination Act.

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<sup>21</sup> The parliamentary committee examining the Bill also recommended a 12 month and a 5-year review. See Legal Affairs and Safety Committee, Queensland Parliament, *Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Bill 2023* (Report No. 63, January 2024) 25. This statutory review has since been implemented in a more recent Bill, the Criminal Justice Legislation (Sexual Violence and Other Matters) Amendment Bill 2024.

<sup>22</sup> Legal Affairs and Safety Committee, Queensland Parliament, *Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Bill 2023* (Report No. 63, January) 18.

<sup>23</sup> Community Safety and Legal Affairs Committee, Queensland Parliament, *Victims' Commissioner and Sexual Violence Review Board Bill 2024* (Report No. 9, April 2024) 18-19, Recommendation 2.

## Amendments to search provisions

Two pieces of legislation introduced in the financial year made changes to the way in which searches are carried out on people in custody. The Commission and other stakeholders engaged in extensive human rights dialogue with the aim of ensuring that safeguards for people in custody are improved (and not eroded) through the changes.

### Corrective Services (Promoting Safety) and Other Legislation Amendment Bill 2024

The Corrective Services (Promoting Safety) and Other Legislation Amendment Bill 2024 included changes to implement certain recommendations of the Commission's *Stripped of our Dignity* report, which examined strip searches in women's prisons.<sup>24</sup> The Bill increases flexibility for Queensland Corrective Services to modify standard search procedures to accommodate vulnerable groups like pregnant women, people with disabilities, and trans and gender-diverse prisoners. Changes to search provisions were also made to align with the *Births, Deaths and Marriages Registration Act 2023* to ensure that trans and gender-diverse people are treated with dignity and respect in line with their identified gender.

While acknowledging the overall aim of increasing human rights protections, the Commission raised concerns about removing current legislative safeguards that ensure searches are conducted by officers of the same sex or gender as the prisoner, which would have the effect of reducing prisoner protections. Although the same rights have since been preserved in regulations, the Commission remains concerned that regulations can be subject to change with a reduced degree of parliamentary scrutiny compared with primary legislation.

Commenting on this issue, the committee recognised concerns about the delegation of legislative power to the executive rather than parliament, but considered that the flexibility achieved through incorporating the protections in regulations justified the change. The committee was reassured by the inclusion of factors that may be prescribed (including the effective carrying out of the search, respecting a prisoner's dignity, or taking into account the special or diverse needs of a prisoner) which it considered would set some limits on what changes could be made in the future.<sup>25</sup>

### Police Powers and Responsibilities and Other Legislation Amendment Bill 2024

The Bill aimed to introduce new safeguards that allow individuals being searched by police to express a preference about the gender of the searching officer. It replaced existing same-sex search safeguards with a framework that considered a person's gender. The Bill also made changes to other procedures that inherently restrict the privacy of people who interact with police (such as taking photographs

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<sup>24</sup> Queensland Human Rights Commission, *Stripped of our dignity: a human rights review of policies, procedures, and practices in relation to strip searches of women in Queensland prisons*, September 2023.

<sup>25</sup> Community Safety and Legal Affairs Committee, Queensland Parliament, *Corrective Services (Promoting Safety) and Other Legislation Amendment Bill 2024* (Report No. 7, April 2024) 39.

of offender's breasts) and made some further changes to gender-based searches in mental health settings.

A broad range of stakeholders, including the Commission, raised concerns that the new search regime created by the Bill provides too much discretion to police to determine the gender of the person performing a search, which would be likely to disproportionately disadvantage women and gender diverse people.

The Commission, and others, submitted that the 'reasonably practicable' exceptions throughout the Bill in relation to the same gender starting point for conducting searches and other procedures, reduce human rights protections compared to existing mandatory same-sex safeguards.<sup>26</sup> Stakeholders were concerned that on current wording, this could allow a male officer to search a woman because there is no female officer available to conduct the search, particularly in regional or remote areas where fewer female officers are available.

While not asserting that the Bill is incompatible with human rights, the committee suggested adding examples to the relevant parts of the legislation to 'clarify the application of gender preference', and recommended that the Minister clarify the circumstances in which it is not 'reasonably practicable' to accommodate a gender preference.<sup>27</sup> In response to this recommendation, the Minister moved an amendment prior the passage of the Bill through parliament to include a legislative note to provide that ordinarily it will be reasonably practicable to accommodate a preference for a male or female officer.<sup>28</sup>

## Queensland Community Safety Bill 2024

The Queensland Community Safety Bill 2024 contained extensive changes to 14 Acts and raised significant human rights issues. The Bill attracted a large volume of submissions from stakeholders, including individual community members, particularly about a new firearm prohibition order (FPO) scheme, and a new standalone offence to publishing material that depicts a crime or promotes or glorifies a crime.

The Commission supported some aspects of the Bill, including the provisions allowing children held in watch houses to be temporarily transferred to youth detention centres for age-appropriate programs, recognising the importance of disability support in youth justice, and encouraging young people to participate in rehabilitative programs without fear of self-incrimination. However, the Commission commented generally that the Bill's focus on tougher penalties and expanded police powers aimed at improving public safety may lead to increased criminalisation of young people, particularly Aboriginal and Torres Strait Islander children. These measures could increase detention rates and undermine long-term community safety.

The Commission raised concerns about expansion of police wandering powers, changes to who may access Childrens Court proceedings, new criminal

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<sup>26</sup> Queensland Human Rights Commission, Submission No 6 to Community Support and Services Committee, Queensland Parliament, *Inquiry into the Police Powers and Responsibilities and Other Legislation Amendment Bill 2024* (12 April 2024).

<sup>27</sup> Community Support and Services Committee, Queensland Parliament, *Police Powers and Responsibilities and Other Legislation Amendment Bill 2024* (Report No. 43, May 2024) 10.

<sup>28</sup> Explanatory Notes for amendments to be moved during consideration in detail (3<sup>rd</sup> reading, 21 May 2024) *Police Powers and Responsibilities and Other Legislation Amendment Bill 2024* (Qld).

offences and increased penalties, photographing detainees, recording calls in youth detention, and the removing 'detention as a last resort' as a youth justice principle. In responding to a question on notice, the Commission provided further information to the committee about the FPO scheme and highlighted concerns about the significant impact on individual rights, especially the use of broad search powers and the ability to impose FPOs based on undisclosed criminal intelligence.

The committee's report demonstrates how the human rights dialogue model can effectively incorporate stakeholder views and guide and enhance parliamentary scrutiny of lengthy and complex legislation.

In examining the Bill, the committee found that the potential limitations on human rights were demonstrably justified. However, the report provided detailed commentary on several issues raising human rights.

In relation to a new online material offence and new associated powers for police, the committee supported the purpose of the law, but stated its reservations because:

in the absence of the 'glorification' threshold, children and adults who do not intend to promote such conduct, but publish material depicting such conduct for other reasons, may be subjected to unduly harsh penalties.<sup>29</sup>

The committee critiqued the statement of compatibility as containing insufficient information about the rights of the child, given the level of immaturity and young people's high usage of social media:

The committee therefore suggests, for increased transparency, that future statements of compatibility would benefit from greater assessment of the rights of the child for provisions which enliven relevant rights.

In relation to the removal of detention as a last resort, the committee noted the submitters would have benefited from the statement of compatibility containing a more comprehensive explanation of the limitations of children's rights imposed by removing the principle of detention of last resort as a youth justice principle.

During the second reading speech, the Minister introduced amendments to address some stakeholder concerns with the Bill, including a clear exemption to the new online material offence where journalists are reporting a crime.<sup>30</sup> However, most of the human rights concerns raised by the Commission and other stakeholders were left unaddressed before the Bill passed into law.

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<sup>29</sup> Community Safety and Legal Affairs Committee, Queensland Parliament, *Queensland Community Safety Bill 2024* (Report No. 15, July 2024) 29.

<sup>30</sup> Explanatory Notes, Queensland Community Safety Bill 2024 (Qld) 6.

## Criminal Code and Other Legislation (Double Jeopardy Exception and Subsequent Appeals) Amendment Bill 2023

The policy objectives of the Criminal Code and Other Legislation (Double Jeopardy Exception and Subsequent Appeals) Bill 2023 were to address wrongful convictions and unjust acquittals by:

- establishing a framework for a convicted person to file a subsequent appeal with the leave of the Court of Appeal
- expanding the ‘fresh and compelling evidence’ exception to double jeopardy to cover 10 additional serious offences, beyond murder.

The Bill's compatibility with human rights was assessed in relation to the right to a fair trial, rights in criminal proceedings, and the protection against being tried more than once. The committee acknowledged the importance of the principle of double jeopardy, which ensures the prosecution has only one chance to present its case, while also recognising that the justice system is not infallible.

The committee considered the Bill's safeguards, such as ensuring that new evidence must have been unavailable despite reasonable efforts by the police or prosecution during the original trial, and that the prosecution can only retry an individual once based on fresh evidence. Noting that similar regimes exist in other jurisdictions, such as the United Kingdom (which includes an even broader range of exempt provisions), the committee was satisfied that the Bill struck the appropriate balance.<sup>31</sup>

## Health and Other Legislation Amendment Bill (No.2) 2023

The Health and Other Legislation Amendment Bill (No.2) 2023 made changes to enhance access to health services by permitting a medical termination of pregnancy to be performed by a nurse or midwife, and through clarifying the patient to nurse/midwife ratios in maternity wards. The Bill extended the rights of ‘conscientious objection’ to the new category of health practitioners able to perform terminations of pregnancy. The Bill attracted diverse stakeholder views and led to statements of reservations from non-government members, who were particularly concerned about the short consultation period and implications for patient safety.

In considering the changes to medical termination laws, the committee noted the relevant human rights and commented that the laws strike ‘a fair balance between the public benefit of improving equality of access to health care services and protecting and promoting other important rights including the right to freedom of thought, conscience, religion and belief’, and acknowledged the benefits of increased access for remote and regional Queenslanders.<sup>32</sup>

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<sup>31</sup> Community Safety and Legal Affairs Committee, Queensland Parliament, *Criminal Code and Other Legislation (Double Jeopardy Exception and Subsequent Appeals) Amendment Bill 2023* (Report No. 1, February 2024) 14.

<sup>32</sup> Health, Environment and Agriculture Committee, Queensland Parliament, *Health and Other Legislation Amendment Bill (No. 2) 2023* (Report No. 3, March 2024) 20.

# Significant inquiries 2023-24

Aside from inquiries into Bills, parliamentary inquiries may involve investigations into specific policy areas that the government or a committee believes warrant examination. Often, parliamentary inquiries into policy issues are a first step towards law reform. These inquiries often include an assessment of the human rights implications related to the issues under consideration.

## Inquiry into the provision and regulation of supported accommodation in Queensland

The Community Support and Services Committee inquired into and reported on the provision and regulation of supported accommodation, or residential services as defined under the *Residential Services (Accreditation) Act 2002*, and other shared living arrangements.

In its report on the inquiry, the committee observed that:

Residents in supported accommodation are particularly vulnerable and at risk of institutionalisation. A significant number have complex support needs including disability, intellectual disability or mental illness, with limited or no family or community support.<sup>33</sup>

Supported by Queenslanders with Disability Network and Queensland Advocacy for Inclusion, the committee took steps to ensure the participation of people with a disability, the key stakeholders in relation to the inquiry, through:

- visiting 14 accommodation places across Queensland
- taking audio submissions transcribed into text
- producing a user-friendly summary report of the final report on the Inquiry.<sup>34</sup>

This novel approach, which promotes the human rights to equality for people with disability, allowed over 700 residents and past residents to contribute to the inquiry.

The Commission provided a detailed submission to the inquiry, recommending the committee focus on ensuring that residential services align with the needs of residents and comply with human rights standards. The Commission also recommended strengthening regulatory oversight, providing accessible human rights information to residents, ensuring access to external dispute resolution, and offering case coordination and advocacy support for residents with complex needs. In addition, the Commission suggested assessing whether residential services should be considered 'public entities' under the Human

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<sup>33</sup> Community Support and Services Committee, Queensland Parliament, *Inquiry into the provision and regulation of supported accommodation in Queensland* (Report No. 44, June 2024) iv.

<sup>34</sup> Queenslanders with Disability Network and Queensland Advocacy for Inclusion, *User-friendly summary report of the Community Support and Services Committee's Report No. 44, 57<sup>th</sup> Parliament: Inquiry into the provision and regulation of supported accommodation in Queensland* (June 2024).

Rights Act and ensuring they are adequately supported to meet these obligations.<sup>35</sup>

The inquiry incorporated 2 recommendations about how accommodation services interact with the Human Rights Act. Firstly, the parliamentary committee encouraged the government to provide grant opportunities or funding initiatives to improve the attraction, training, and retention of staff in the sector with the goal of ensuring service standards are maintained to align with human rights.<sup>36</sup> Secondly, the committee recommended the department reform the regulatory framework through a 'person-centred' approach which aligns with the Human Rights Act.<sup>37</sup>

The Commission looks forward to contributing to the anticipated review of the *Residential Services (Accreditation) Act 2002* aimed at improving safeguards for residents living in residential services and promoting rights to assert choice and control.

## Extent of debate involving human rights issues

This year, the Commission reviewed Hansard to identify instances where the Human Rights Act was referred to in parliamentary debates. These debates covered a wide range of topics, with both government and non-government members mentioning the Act in diverse contexts.

Some of the key topic areas were criminal justice (and particularly youth justice), equality laws, and privacy. The Act was raised in these contexts:

### Criminal justice:

- overriding the Human Rights Act in relation to youth justice amendments
- holding children in watch houses
- applying the double jeopardy principle to criminal law changes
- aligning offence provisions related to the agriculture industry with human rights.<sup>38</sup>

### Equality and non-discrimination:

- decriminalising of sex work
- proposing changes to anti-discrimination legislation, and its effect on religious rights
- debating issues associated with serious vilification and hate crimes.

### Privacy:

- use of body-worn cameras by corrective services officers

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<sup>35</sup> Queensland Human Rights Commission, Submission No 139 to Community Support and Services Committee, Queensland Parliament, *Inquiry into the provision and regulation of supported accommodation in Queensland* (5 February 2024) 2.

<sup>36</sup> Community Support and Services Committee, Queensland Parliament, *Inquiry into the provision and regulation of supported accommodation in Queensland* (Report No. 44, June 2024) 72, Recommendation 10.

<sup>37</sup> Community Support and Services Committee, Queensland Parliament, *Inquiry into the provision and regulation of supported accommodation in Queensland* (Report No. 44, June 2024) 91, Recommendation 11.

<sup>38</sup> Agriculture and Fisheries and Other Legislation Amendment Bill 2023 (Qld).

- obligation for cashless carded play at casinos (encroachment on privacy)
- accreditation of tow truck drivers (related to criminal records where a person had not been convicted).

## Focus on human rights certificates

Subordinate legislation is legislation made by a department or other entity under powers given to them by an Act of parliament.

All subordinate legislation must be tabled in the Legislative Assembly, which can disallow it by resolution. To help it decide whether or not to do so, the Legislative Assembly refers each item of subordinate legislation to the relevant portfolio committee for consideration.

When examining subordinate legislation, each committee considers these matters:

- whether it has sufficient regard for fundamental legislative principles
- whether it is consistent with the human rights of people in Queensland
- whether the explanatory notes provide an adequate explanation of why the subordinate legislation is needed and what it does.

From 1 January 2020, all new subordinate legislation tabled must be accompanied by a human rights certificate as well as explanatory notes which are supplied by the department.

### Portfolio committee scrutiny

To assess the extent to which human rights analysis was making a difference in the scrutiny process, the Commission considered the commentary on subordinate legislation in portfolio committee annual reports.

For consistency, the portfolio committees chosen were those that examined the 16 Bills we analysed for performance against the established indicators of parliamentary human rights culture discussed earlier in this chapter. Each of the committees was established on 13 February 2024.

Human rights certificates provide an overview of the subordinate legislation, why it is required, and how it affects existing Acts, Regulations, and other subordinate legislation. The tabling minister identifies all human rights relevant to the legislation, considers the nature of the rights, the purpose of the limitation, whether it is a reasonable and proportionate response, and whether there are any less restrictive and reasonably available ways to achieve the purpose.

In some instances, human rights certificates stated that no human rights were engaged by the making of the subordinate legislation, for example the Vegetation Management Regulation 2023, Statutory Bodies Financial Arrangements Amendment Regulation 2023. This may be because of the subject matter or that the legislation is an administrative mechanism.

Other human rights certificates identified that specific human rights were engaged but that the protected right was not limited, restricted, or interfered with, for example the Education (General Provisions) (Barcaldine State School P-12 Campus) Amendment Regulation 2023.

It is not possible to discern the depth of committee examination in cases where the committee found that no human rights were engaged.

### **Clean Economy Jobs, Resources and Transport Committee**

The Clean Economy Jobs, Resources and Transport Committee reviewed 10 pieces of subordinate legislation and did not identify any matters of concern regarding human rights in any of them, and found the explanatory notes were adequate.

### **Community Safety and Legal Affairs Committee**

The Community Safety and Legal Affairs Committee reviewed 20 pieces of subordinate legislation and identified a small number of provisions that may limit human rights.<sup>39</sup> In each of these instances, the committee was satisfied that any limitations on human rights in respect of the subordinate legislation were reasonable and justified in the circumstances.

### **Community Support and Services Committee**

The Community Support and Services Committee reviewed 2 pieces of subordinate legislation, and examination of this legislation was ongoing at the end of the 2023–2024 financial year.

### **Cost of Living and Economics Committee**

The Cost of Living and Economics Committee reviewed 3 pieces of subordinate legislation and did not identify any matters of concern regarding human rights.

### **Education, Employment, Training and Skills Committee**

The Education, Employment, Training and Skills Committee reviewed 2 pieces of subordinate legislation and did not identify any matters of concern regarding human rights.

### **Health, Environment and Agriculture Committee**

The Health, Environment, Training and Skills Committee reviewed 27 pieces of subordinate legislation and in many cases did not identify any matters of concern regarding fundamental legislative principles or human rights. Where it did, in each case the committee was ultimately satisfied that the subordinate legislation had sufficient regard for fundamental legislative principles, and any limitations of human rights were reasonable and justified in the circumstances.

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<sup>39</sup> Body Corporate and Community Management and Other Legislation Amendment Regulation 2023 (property rights); Uniform Civil Procedure (Fees) and Other Legislation Amendment Regulation 2024 (freedom of expression, protection of reputation, right to a fair hearing); Proclamation made under the Information Privacy and Other Legislation Amendment Act 2023 (freedom of expression, fair hearing); Trust Accounts (Transitional) Regulation 2024 (property).

For each human rights matter identified, except the Veterinary Surgeons Amendment Regulation 2023, the Explanatory Notes were said to be adequate. In that Regulation, the committee considered it would have been beneficial for the notes to have provided more detail on the new process for Veterinary Surgeons Board elections. (The right engaged was the right to take part in public life).

### Housing, Big Build and Manufacturing Committee

The Housing, Big Build and Manufacturing Committee reviewed 17 pieces of subordinate legislation, and identified matters relating human rights in less than half of these. Where issues were identified, in each case the committee was ultimately satisfied that any limitations of human rights were reasonable and justified in the circumstances.

The committee found that the Explanatory Note for the Planning and Environment Court Amendment Rule 2024 was not adequate. The human rights certificate identified the relevant human rights as recognition and equality, freedom of expression, and fair hearing.

## Summary of the role of parliament in 2023-24

In the previous reporting period, the Commission observed a gradual improvement in human rights culture with parliamentary processes. In 2022-23 override declarations were made for the first time, and the Commission identified other concerning instances of bypassing committee scrutiny.

In 2023-24, the Human Rights Act was again undermined through override declarations in legislation. The effect of the overrides was to suspend the application of the Human Rights Act to decisions about detaining children in police watchhouses and designating new places as youth detention centres. This was the second time in 2023 that the government introduced legislation incompatible with the Human Rights Act, signalling an increasing reliance on overrides in the youth justice context. The situations in which the parliament is compelled to override the Act seem to reflect a broader tension between protecting public safety and ensuring individual rights.

Also, scrutiny of human rights issues in parliamentary processes was undermined in several instances, particularly with the use of urgent Bills and last-minute amendments. These practices circumvented the usual portfolio committee process and community consultation, which limited the opportunity for thorough examination of impacts on human rights. Policy issues involving genuine human rights concerns, such as the decriminalisation of public intoxication and public urination, as well as expanded police powers, bypassed public debate and reduced the opportunity for public discussion and for potential improvements.

Significant legislation introduced this year sparked human rights dialogues that attracted hundreds of submissions from organisations and individuals on issues involving changes to youth justice legislation, increases in police powers, and new

criminal offences, including the new coercive control offence and implementation of an affirmative consent model.

While not commonplace, portfolio committee reports continued to question the adequacy of statements of compatibility where concerns about limiting rights and discussion of less restrictive measures were inadequate. On a few occasions, committees made recommendations for amendments, and sometimes Bills were subsequently amended to address human rights concerns raised by stakeholders. Amendments involved clarifications to avoid unintended consequences – in one instance to ensure media freedom to report on crimes,<sup>40</sup> and in another a potential reduction in protections for women and gender diverse people during searches in custody.<sup>41</sup>

In some instances, even when committees were ultimately convinced that legislation was compatible with human rights, they were compelled to recommend improved public education or engagement.

In addition to portfolio committees' scrutiny of legislation, parliamentary inquiries consider human rights issues. The inquiry into supported accommodation adopted an inclusive approach to ensure that the voices of people with disabilities were heard. This inquiry highlighted the vulnerability of residents in supported accommodation and made recommendations to improve the alignment of residential services with human rights standards.

For the first time, the Commission examined the impact of the Human Rights Act on the development of subordinate legislation. The Human Rights Act has added an important layer to the subordinate legislative review process, requiring committees to assess whether new regulations or changes to regulations are human rights compatible. While committees identified some limitations on human rights, these were largely deemed reasonable and justified. Although the Commission was unable to identify substantive changes as a result of the Act, the requirement to provide and scrutinise human rights certificates ensured human rights considerations at the forefront when examining subordinate legislation.

In summary, the 2023-24 financial year demonstrated both the strengths and limitations of Queensland's human rights framework. As in previous years, the Act was instrumental in shaping legislative reforms and guiding parliamentary scrutiny. While Hansard and commentary in committee reports show an evolving recognition of human rights across a range of policy areas, the continued use of override declarations continues to challenge the full realisation of the Act's protections.

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<sup>40</sup> Queensland Community Safety Bill 2024 (Qld).

<sup>41</sup> Police Powers and Responsibilities and Other Legislation Amendment Bill 2024 (Qld).

A photograph of a classical building entrance, likely a courthouse or tribunal. The image features two large, fluted columns with ornate, carved capitals. A decorative lamp post with multiple white globe lights is positioned in the foreground. The text "Human rights in courts and tribunals" is overlaid on a dark blue background across the center of the image.

# Human rights in courts and tribunals

# The role of courts and tribunals

Courts and tribunals are required to consider the Human Rights Act when:

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

## Interpreting legislation

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

In ***Athwal v State of Queensland*** [2023] QCA 156, the court considered whether section 51(5) of the *Weapons Act 1990* (Qld),<sup>42</sup> which prohibited the carrying of a knife in schools even if carried for a ‘genuine religious purpose’, was inconsistent with section 10 of the *Racial Discrimination Act 1975* (Cth). The law disproportionately impacted Amritdhari Sikhs whose faith requires they wear a small ceremonial sword.

The court confirmed that section 48 of the Human Rights Act establishes one of the rules of statutory interpretation to be applied, with other rules, in determining the objective meaning of a provision. It also noted the relevance of proportionality factors set out in section 13 of the Human Rights Act to statutory interpretation, due to the definition of ‘compatible with human rights’ in section 8, unlike the Victorian Charter which does not have a definition of compatibility.

However, while acknowledging that section 51(5) of the *Weapons Act 1990* (Qld) interfered with the right to practice religion, section 48 of the Human Rights Act was held to be of little assistance in this case where the objective meaning and purpose of the provision was apparent from its language and context, and no declaration of incompatibility had been sought under the Human Rights Act.<sup>43</sup>

The court ultimately decided the provision was inconsistent with the *Racial Discrimination Act 1975* (Cth) and therefore invalid under the Commonwealth Constitution.

Section 51 of the *Weapons Act 1990* (Qld) was amended by the *Queensland Community Safety Act 2024* (Qld), however, the amendments only increase the maximum penalties, and no change was made to section 51(5) to reflect the decision in *Athwal*, despite this issue being raised for the relevant Queensland Parliamentary committee’s consideration.

Section 48 was the basis for one of the key human rights arguments in ***Youth Empowered Towards Independence Incorporated v Commissioner of***

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<sup>42</sup> Now renumbered to section 51(6).

<sup>43</sup> *Athwal v State of Queensland* [2023] QCA 156 [91]–[95].

**Queensland Police Service & Anor** [2023] QSC 174 which challenged, by writ of habeas corpus, the prolonged detention of children in watchhouses under section 56 of the *Youth Justice Act 1992*. However, the application succeeded on other grounds and it was therefore not necessary for the court to determine questions relating to the Human Rights Act. Section 56 of the *Youth Justice Act 1992* has subsequently been amended by the *Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Act 2023* (Qld).

Serious repeat offender provisions under the *Youth Justice Act 1992*, which are subject to override declarations under section 43 of the Human Rights Act (that is, are expressly declared to have effect despite being incompatible with human rights), were raised for the Court of Appeal's consideration in **R v SEG** [2024] QCA 95, however, no error had been established and leave to appeal was refused.

## Declarations of incompatibility

The Supreme Court or the Court of Appeal may make a declaration of incompatibility if the court considers that a statutory provision cannot be interpreted in a way that is compatible with human rights. The power was not exercised in 2023-24.

The fact that parties did not seek a declaration of incompatibility was noted by both the Court of Appeal in **Athwal v State of Queensland** [2023] QCA 156 [94] and the Supreme Court in **Johnston v Commissioner of Police** [2024] QSC 2 [148].

## Acting in an administrative capacity

Courts and tribunals can act in a judicial or administrative capacity. Judicial decision making is making binding and authoritative determinations of legal rights and duties according to existing legal principles. Administrative decision making is the exercise of discretionary authority to create new rights and obligations, especially on the basis of policy considerations. Whether a court or tribunal is acting administratively or judicially will depend on the court or tribunal, its purpose, and the mechanism for enforcing the decision, determination or order made.

A court or tribunal acting in an administrative capacity is a public entity with obligations under the Human Rights Act to act and decide compatibly with, and give proper consideration to, human rights under section 58 of the Human Rights Act.

Courts and tribunals which decide they are acting judicially often still apply human rights considerations as a result of statutory interpretation under section 48 or direct application of rights under section 5(2)(a) of the Human Rights Act.

Tables 1a and 1b list cases from 2023-24 in which Queensland courts and tribunals acknowledged they were acting in an administrative capacity or judicial capacity in the circumstances outlined.

Table 1a: Courts and tribunals acting in an administrative capacity in 2023-24

Subject matter	Case
Queensland Civil and Administrative Tribunal (QCAT) when determining an application for an interlocutory injunction under section 144 of the <i>Anti-Discrimination Act 1991</i> .	<i>XA (by ZA) v School</i> [2024] QCAT 15
QCAT when considering an application for review of a contact decision under the <i>Child Protection Act 1999</i> .	E.g. <i>DDY v Department of Child Safety, Seniors and Disability Services</i> [2024] QCAT 108
QCAT in deciding interlocutory applications in relation to a review of a placement decision under the <i>Child Protection Act 1999</i> .	E.g., <i>EST &amp; ERE v Department of Child Safety, Seniors and Disability Services</i> [2023] QCAT 305; <i>Mrs O and Mr O v Department of Child Safety, Seniors and Disability Services</i> [2023] QCAT 339
QCAT in exercising its review jurisdiction under Chapter 2, Division 3 of the <i>Queensland Civil and Administrative Tribunal Act 2009</i> , conferred upon it by the <i>Queensland Building and Construction Commission Act 1991</i> .	<i>Coulter v Queensland Building and Construction Commission</i> [2024] QCAT 167

Table 1b: Courts and tribunals acting in a judicial capacity in 2023-24

Subject matter	Case
QCAT when determining an application for termination of tenancy and warrant of possession under sections 293 and 350 of the <i>Residential Tenancies and Rooming Accommodation Act 2008</i> (Qld)	<i>Vanilla Rentals v Tenant</i> [2023] QCAT 519
QCAT when deciding whether to appoint an adult a representative under section 125 of the <i>Guardianship and Administration Act 2000</i> .	<i>DBD</i> [2023] QCATA 160
QCAT determining a complaint of vilification under section 124A of the <i>Anti-Discrimination Act 1991</i>	<i>Valkyrie and Hill v Shelton</i> [2023] QCAT 302
Magistrates Court in extending a restraining order under s 359F Criminal Code 1899 (Qld)	<i>Hickey v Commissioner of Police</i> [2023] QDC 181

## Direct application

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

In ***R v Malcolm*** [2023] QDCPR 105, the District Court considered whether the statements of a deceased person should be admissible, given the accused person's right to examine witnesses against them protected by section 32(2)(g) of the Human Rights Act. Section 130 of the *Evidence Act 1977* (Qld) retains the discretion of the court in criminal proceedings to exclude evidence if the court is satisfied that it would be unfair to the person charged to admit the evidence.

Applying section 5(2)(a) of the Human Rights Act, the court concluded that it was uncontroversial that section 32(2)(g) of the Human Rights Act related to these court proceedings, and in this case, it was the court's obligation to give consideration to this right, rather than to enforce the right. The court found that it was not unfair to admit the evidence under the *Evidence Act 1977*, and the limitation of section 32(2)(g) of the Human Rights Act was justified in the circumstances.

In ***Vanilla Rentals v Tenant*** [2023] QCAT 519, a landlord applied to QCAT following the expiration of a fixed term tenancy agreement for a termination order and warrant of possession. QCAT found that the tenant's freedom of movement to choose where to live applied directly to QCAT's functions under section 5(2)(a) of the Human Rights Act. Limits on that right were permissible having regard to the rights of the landlord, the contractual agreement between the parties, and giving effect to legislation regulating the end of fixed term residential tenancy agreements.

Both these cases applied the approach taken by the Supreme Court in ***Attorney-General for the State of Queensland v Grant (No 2)*** [2022] QSC 252.

Although not expressly referring to section 5(2)(a) of the Human Rights Act, the District Court also appears to have directly applied human rights in two more cases in 2023-24.

In ***R v Dobrenov*** [2023] QDC 258, the applicant, charged with dangerous operation of a motor vehicle, sought exclusion of recorded pre-crash data, including vehicle speed, engine speed and accelerator pedal percentage, including on basis that their seizure was unlawful under the Human Rights Act. Having regard to Canadian jurisprudence on whether data stored in a car is private information protected by the right to privacy, the court considered the applicant did not have a reasonable expectation of privacy in the pre-crash data and the right to privacy under section 25 of the Human Rights Act was not engaged.

***Hickey v Commissioner of Police*** [2023] QDC 181 was an appeal of a decision of the Magistrates Court to extend the length of a restraining order which prevented the appellant from posting material on the internet or in a public place about the complainant. The District Court dismissed the appeal on jurisdictional grounds, however, still gave reasons on the appellant's argument that extending

the restraining order breached his right to freedom of expression under section 21 of the Human Rights Act.

First, the Magistrate was acting judicially and therefore did not have obligations to act compatibly with human rights. Second, in any event, the limitation was imposed to protect the complainant's dignity, privacy and reputation, and the appellant's rights were only limited in a very minor way. The fact that the appellant wanted to publish material about the complainant increased the impact of the limitation on the appellant, but also strengthened the justification for imposing the restraining order. The limitation was compatible with human rights.

## Piggy-back matters

A complaint about an alleged breach of human rights by a public entity can only be enforced by a court or tribunal if the complaint is added ('piggy-backed') to another type of legal action (the primary action) before the court or tribunal, under section 59 of the Human Rights Act.

Significantly, the Supreme Court handed down its decision in ***Johnston v Commissioner of Police*** [2024] QSC 2, in which human rights grounds were piggy-backed onto the judicial review of employment directions that required mandatory vaccination of public servants, including members of the Queensland Police Service. The application succeeded due to a lack of proper consideration to human rights given by the Police Commissioner, even though the employment directions were held to be compatible with human rights.

The court considered the right to equality (s 15), right to life (s 16), right not to be subject to medical treatment without consent (s 17(c)), freedom of thought, conscience, religion and belief (s 20), right to take part in public life (s 23), right to privacy and reputation (s 25), and right to liberty and security (s 29). Only the applicants' right to medical treatment without consent was held to have been limited, and that the limitation was justified under section 13 of the Human Rights Act.

The decision includes discussion in relation to:

- the role of the courts in assessing compliance with section 58 of the Human Rights Act in judicial review proceedings;
- the scope of the obligations to give proper consideration and to decide compatibly with human rights under section 58 of the Human Rights Act;
- the impact of human rights on curtailing broad discretionary powers;
- the scope of the right to equality (s 15), and the meaning of 'political belief or activity' under the Anti-Discrimination Act 1991;
- the meaning of 'full, free and informed consent' in the context of s 17(c) of the Human Rights Act;
- the scope of 'beliefs' protected by section 20 of the Human Rights Act.

The Commission prepared a comprehensive case note on this case which is published on the Commission's website.

A case where piggy-back arguments were raised but were not successful is ***BZN v Chief Executive, the Department of Children, Youth Justice and Multicultural Affairs*** [2023] QSC 266. In that case, the applicant sought judicial review of the outcome of a departmental investigation, arguing his rights to privacy had been breached in the course of the investigation which accessed his private information, and compromised his mental health and integrity.

Given the purpose of the investigation, and the safeguards on accessing and using the information, the interference was found to be proportionate. The court also confirmed that the task of proper consideration must be approached in a 'common sense and practical manner' and that public entities 'are not expected to achieve the level of consideration that might be hoped for in a decision given by a judge'. It is not necessary for a decision maker to expressly relate their consideration of human rights to specific sections of the Human Rights Act.

In ***JD v Dept Seniors, Disability Services & Aboriginal & Torres Strait Islander Partnerships*** [2023] QCAT 316, it was held that human rights grounds could not be piggy backed on an application for review of a decision, where the tribunal's function was to reach 'the correct and preferable decision' and did not have power to conclude that the decision under review was unlawful. In that case, the decision under review, for the approval of a yellow card under the *Disability Services Act 2006*, had already been reversed in favour of the applicant.

## Referrals to Supreme Court

If a question of law arises in a court or tribunal proceeding about the application of the Human Rights Act, or statutory interpretation in accordance with the Act, it may be referred to the Supreme Court of Queensland under section 49 of the Human Rights Act.

The Commission has not identified any referrals under section 49 during the reporting period.

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

In 2023-24, Queensland courts and tribunals referred to the Human Rights Act in 177 matters, giving more detailed consideration in 84 of those cases. This is a slight increase from 161 cases last year (noting that the 202 cases referred to in last year's annual report also included international cases, federal jurisdiction cases and Office of the Information Commissioner cases).

Table 2: Number of matters where Queensland courts and tribunals considered or mentioned the Human Rights Act.

Court	2022-23	2023-24
Court of Appeal Queensland	3	2
Supreme Court of Queensland	14	9
Industrial Court Queensland	1	1
District Court of Queensland	3	6
Land Court of Queensland	4	2
Mental Health Court Queensland	1	1
Coroners Court Queensland	2	0
Magistrates Court of Queensland	2	1
Queensland Civil and Administrative Tribunal, Appeals	4	12
Queensland Civil and Administrative Tribunal	77	94
Queensland Industrial Relations Commission	50	49
<b>Total</b>	<b>161</b>	<b>177</b>

## Specialist courts

The Queensland Mental Health Court *In the Matter of FYS* [2023] QMHC 3 applies the human rights principles identified *In the matter of ICO* [2023] QMHC 1 to interpret and apply the test for capacity to give informed consent to electroconvulsive therapy (ECT) under the *Mental Health Act 2016*. In this case, the appellant was found not to have capacity to give informed consent and the appeal against the decision to approve ECT was dismissed.

In *BHP Coal Pty Ltd & Ors v Chief Executive, Department of Environment, Science and Innovation* [2024] QLC 7, the Queensland Land Court considered whether a recommendation to approve an environmental authority was compatible with human rights. In the absence of evidence being raised by the parties regarding limitation of rights, the court still accepted there is a potential threat to human rights in any activity that increases greenhouse gas emissions.

On that basis, the court proceeded to balance the impacts on human rights with the purpose of the proposal. Having regard to the economic benefits, financial contribution in taxes, community engagement, cultural heritage studies undertaken, consultation with traditional owners, and no ecological significance of the area, the court concluded that any limitation on human rights was proportionate.

## Tribunals

In decisions made by the Queensland Civil and Administrative Tribunal (QCAT), QCAT appeals, and the Queensland Industrial Relations Commission (QIRC), human rights were considered predominantly in the areas of:

- review of working with children screenings (blue cards) and disability worker screenings (yellow card) – 38 decisions
- public sector reviews – 27 decisions
- guardianship and administration – 23 decisions
- anti-discrimination – 15 decisions
- industrial law – 11 decisions
- anti-discrimination exemption applications – 10 decisions.

A full breakdown of cases which considered human rights by area of law is given in Appendix A.

### Working with children (blue card) and disability worker screening (yellow card) decisions

QCAT accepts that when reviewing a blue card decision, it is a public entity under the Human Rights Act. See for example, **CG v Director-General Department of Justice and Attorney-General** [2024] QCAT 155.

While decisions generally identify human rights relevant to the proceedings, any limitations to the rights of blue card applicants are held to be justified because of the proper purpose of promoting and protecting the right, interests, and wellbeing of children and young people, and the principle under section 6 of the *Working with Children (Risk Management and Screening) Act 2000* (Qld) that the welfare and best interests of children are paramount.

Only two decisions concerned yellow cards. In **JD v Dept Seniors, Disability Services & Aboriginal & Torres Strait Islander Partnerships** [2023] QCAT 316, the decision to refuse a yellow card had already been reversed by the decision-maker, and there was no need for the tribunal to assess the human rights compatibility of its own decision. The other decision merely records that the tribunal has given proper consideration to human rights and the decision is justified.

### Public sector reviews

Public sector reviews under the *Industrial Relations Act 2016* are not re-hearings of the original case. Instead, they involve a review of the decision that was made and the process used to make that decision. The purpose of the appeal is to determine whether the original decision was fair and reasonable. If the decision maker's conclusions were reasonably based on the available evidence, the appeal is unlikely to change those findings.

A review of a sample (10) of these decisions indicates that the QIRC deals with appeal grounds raising human rights issues by considering whether the decision-maker has given proper consideration to human rights, and whether it was open to

the decision-maker to determine that the limitations were reasonably justified. None of the cases reviewed overturned the original-decision maker's decision on human rights grounds.

## Guardianship and administration

In the 2022 decision of **NJ** [2022] QCAT 283, after considering the case law to date, QCAT decided consistently with past decisions that it was acting in an administrative capacity when deciding whether to appoint a guardian, who, and on what conditions. By contrast, cases in 2022-23 also relied on statutory interpretation (section 48) or imply the direct application of rights (section 5(2)(a)) as the basis for their human rights consideration in guardianship and administration cases.

For example, **DBD** [2023] QCATA 160 concerned an appeal against a decision to appoint the Public Guardian as guardian for DBD, which included the use of restrictive practices in an aged care facility. The Public Guardian contended that the appointment of a guardian, without the appointment of a representative for DBD, was not compatible with DBD's right to equality before the law. The Tribunal held that the power to appoint a representative under section 125 of the *Guardianship and Administration Act 2000* was a judicial power, although DBD's human rights still needed to be considered under section 48 of the Human Rights Act, which the tribunal below had done.

In other cases decided this year, such as **RPE** [2024] QCAT 109 and **TFY** [2023] 295, the Tribunal appeared to consider human rights compatibility as part of applying the General Principles in section 11B of the *Guardianship and Administration Act 2000*, including the principle that adults have the same human rights and fundamental freedoms.

Generally speaking, in determining matters under the *Guardianship and Administration Act 2000* the Tribunal concluded that rights are limited, however, were justified for the reasons identified in the course of applying the general principles and criteria under the *Guardianship and Administration Act 2000*. The Tribunal is careful to ensure that the orders are the least restrictive possible of human rights in the circumstances.

## Exemptions under the Anti-Discrimination Act

The tribunals regularly referred to the Human Rights Act in their determination of matters under the *Anti-Discrimination Act 1991*, although perhaps most significantly in relation to applications for exemption from the operation of certain provisions of the Anti-Discrimination Act under section 113(1) of that Act. In all 10 applications for exemptions decided during the reporting period, the exemption was granted.

In **Re: Jet Aviation Australia Pty Ltd & Jet Aviation Australia (Qld) Pty Ltd** [2024] QIRC 133, the applicant sought an exemption that would permit it to request information regarding nationality and citizenship from prospective employees. This was so the applicant could comply with United States export control laws which prohibits access to certain technology and data by persons from proscribed countries.

The Tribunal noted that a common feature of exemption applications is there is no particular 'victim' of the intended discrimination, it was rare for someone to appear in a hearing to oppose an application, exemptions of this nature have far reaching consequences, and as a result, the Tribunal is the guardian of the human rights of the community in these applications.

The exemption was found to limit the right to equality. However, the conditions of the draft exemption did not go beyond the purpose of the exemption and required the applicant to take all steps reasonably available to it to avoid conduct that would otherwise be in breach of anti-discrimination laws. The Tribunal further took into account the consequences of not granting the exemption submitted by the applicant and concluded that the limitation of rights caused by the exemption was reasonable and justifiable.

## Child protection

There were 7 matters in child protection that referred to the Human Rights Act: 4 reviewing contact decisions, and 3 considering interlocutory applications in applications for review of placement decisions.

In ***LVF v Department of Child Safety, Seniors and Disability Services*** [2023] QCAT 406, two children, who were not Aboriginal or Torres Strait Islander children, were removed from LVF's care, a non-biological kinship carer. The Department decided that the children's contact with LVF should cease and LVF sought review of the decision. Under the *Child Protection Act 1999*, only a 'member of the child's family' had standing to seek review of the contact decision. In the circumstances, it was held the term 'member of the child's family' could not be, and was not required by section 48 of the Human Rights Act to be, interpreted so broadly so as to include a kinship carer who was not a member of the child's family or extended family as they are understood in contemporary 'western' Anglo-Australian culture.

In ***DR and YO v Department of Child Safety, Seniors and Disability Services*** [2023] QCAT 333, the Tribunal was asked to consider an application for a stay of a decision to remove 3 Aboriginal children from their long term foster care placement on the basis of harm allegations. The children would be placed in the care of their aunt, who lived in the same town as their mother.

The Tribunal, in applying the principles in the *Child Protection Act 1999* concluded that on the evidence, the risks of the children staying with the foster carers, where they had long been integrated into the community and had indicated a wish to stay with them, were no greater than the risk of removing them.

The Tribunal then identified human rights potentially impacted by the process and the decision as part of their obligations under section 58 of the Human Rights Act as a public entity.

In relation to the cultural rights of Aboriginal peoples and Torres Strait Islander peoples, there was no evidence that a decision to return the children to the foster carers would interfere with their rights to enjoy their culture or restrict their ability to maintain and strengthen their culture or spiritual relationship with the land which they have a connection with under Aboriginal tradition or Island custom, although it would restrict their ability to develop kinship ties. However, given the matters

already taken into account and discussed in applying the *Child Protection Act 1999*, this interference was considered reasonable and justifiable, and compatible with human rights.

## Interventions

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

## Commission notifications

In 2023-24, the Commission received 22 notifications or requests to intervene under the Human Rights Act, of which 19 were notices under section 52.

## Commission interventions

In the reporting period, the Commission intervened in one new matter in the Supreme Court and one matter in the Coroners Court.<sup>44</sup>

The Supreme Court matter was an application by a support agency for young people living in Far North Queensland for the transfer of children held in watch houses to a youth detention centre under a writ of habeas corpus. The Commission intervened and made submissions on interpretation of a provision relating to the remand of children in custody in accordance with the Human Rights Act. That question was not resolved because the respondents were unable to show that the proper orders were made when the children were remanded. The effect of the court's decision in ***Youth Empowered Towards Independence Incorporated v Commissioner of Queensland Police Service & Anor*** [2023] QSC 17 was that the named children were transferred to a detention centre.

The Commission also intervened in the ***Inquest into the death of Milton Harrison George***. Mr George was an Aboriginal man who died in the Kowanyama watch house while he was in the custody of police. The hearing of the inquest has completed and we await the findings of the coroner.

Five of the matters the Commission has previously intervened in were determined in ***Johnston v Carroll*** [2024] QSC 2 and ***Johnston v Carroll*** [2024] QSC 6 during the reporting period. They relate to directives requiring employees to be vaccinated for COVID-19. The first decision has been summarised in detail above.

The Commission's intervention into the ***Inquest into the death of Selesa Tafafa*** is still ongoing.

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<sup>44</sup> Several matters that the Commission intervened in during previous reporting periods were ongoing in 2023-24.

## Attorney-General interventions

During 2023–24, the Attorney-General did not intervene in any proceedings under section 50 of the Human Rights Act. However, the Attorney-General had already intervened in ten matters that were heard and/or determined during that period.

- In ***R v Dobrenov*** [2023] QDC 258, the District Court accepted submissions made on behalf of the Attorney-General that police officers had acted compatibly with the right to privacy when seizing a USB stick and airbag control module.
- In ***BZN v Chief Executive, Dept of Children, Youth Justice and Multicultural Affairs*** [2023] QSC 266, the Supreme Court accepted submissions made on behalf of the Attorney-General that the decision-maker had given proper consideration to human rights—particularly the right to privacy—when determining that an allegation of harm against a child was substantiated.
- Five of those matters were heard together in two separate trials in May and June 2022 and in April 2023, and handed down in February 2024 in the decisions of ***Johnston v Carroll*** [2024] QSC 2 and ***Johnston v Carroll*** [2024] QSC 6. In the first decision, the Supreme Court found that various decisions to adopt COVID-19 vaccination requirements were substantively compatible with human rights, particularly the right not to receive medical treatment without consent. However, the Supreme Court found that proper consideration had not been given to relevant human rights in making the decision, as required by s 58(1)(b) of the Human Rights Act. In the second decision, the Supreme Court dismissed a challenge to public health directions, among other things, on human rights grounds.
- The final three matters were appeals heard together in ***Palmer v Magistrates Court of Queensland*** [2024] QCA 8, from which the Attorney-General withdrew her intervention after one of the appellants abandoned their human rights ground.

## Summary of the role of courts and tribunals in 2023-24

This year, there was a decrease in decisions considering the Human Rights Act in the Supreme Court and Court of Appeal, but an increase in jurisdictions such as the District Court and the Queensland Civil and Administrative Tribunal.

The most significant decision for 2023-24 was ***Johnston v Commissioner of Police*** [2024] QSC 2, which clarified the court’s role in assessing compliance with section 58 of the Human Rights Act in judicial review proceedings, the scope of the obligations on public entities, and the impact of human rights on curtailing broad discretionary powers. The decision provides useful commentary on the meaning of ‘political belief or activity’ under the *Anti-Discrimination Act 1991*, the

meaning of 'full, free and informed consent' in section 17(c) of the Human Rights Act, and 'beliefs' protected by section 20 of the Human Rights Act.

The Court of Appeal in ***Athwal v State of Queensland*** [2023] QCA 156 confirmed that section 48 of the Human Rights Act establishes one of the rules of statutory interpretation to be applied, with other rules, in determining the objective meaning of a provision. However, that rule was of little assistance in this case where the objective meaning and purpose of the provision was apparent from its language and context, and no declaration of incompatibility had been sought under the Human Rights Act.

No declarations of incompatibility have previously been made in Queensland, but two cases, *Johnston* and *Athwal*, both pointed to the potential for a declaration of incompatibility. Because this was not pursued by the parties, neither case was determined on this basis.

Following on from last year's *Attorney-General for the State of Queensland v Grant (No 2)* [2022] QSC 252, a growing number of decisions applied human rights directly under section 5(2)(a) of the Human Rights Act. The District Court in particular used human rights to support decisions to admit evidence of a deceased person in criminal proceedings (***R v Malcolm*** [2023] QDCPR 105), admit evidence of pre-cash data in relation to a driving offence (***R v Dobrenov*** [2023] QDC 258), and a decision to extend a restraining order which limited a person's freedom of expression (***Hickey v Commissioner of Police*** [2023] QDC 181).

This year, the Commission took a closer look at tribunal decisions which considered human rights, organised by area of law. While the majority of decisions concerned blue card and yellow card review decisions, the more comprehensive consideration of human rights occurred in exemption applications under the *Anti-Discrimination Act 1991* (***Re: Jet Aviation Australia Pty Ltd & Jet Aviation Australia (Qld) Pty Ltd*** [2024] QIRC 133), child protection (***LVF v Department of Child Safety, Seniors and Disability Services*** [2023] QCAT 406) and tenancy (***Vanilla Rentals v Tenant*** [2023] QCAT 519).

A summary of decisions that considered particular rights is set out in table 3.

*Table 3: Consideration of specific rights by courts and tribunals, 2023-24*

Protected right	Cases which substantively discuss this right
Recognition and equality before the law (section 15)	<i>Johnston v Commissioner of Police</i> [2024] QSC 2 [148]; <i>In the Matter of FYS</i> [2023] QMHC 3; <i>Re: Jet Aviation Australia Pty Ltd &amp; Jet Aviation Australia (Qld) Pty Ltd</i> [2024] QIRC 133,
Right to life (section 16)	<i>Johnston v Commissioner of Police</i> [2024] QSC 2 [148].
Right to not be subjected to medical treatment without the person's full, free and informed consent (s 17(c))	<i>Johnston v Commissioner of Police</i> [2024] QSC 2 [148].

Freedom of movement (s 19)	<i>Vanilla Rentals v Tenant</i> [2023] QCAT 519
Freedom of thought, conscience, religion and belief (s 20)	<i>Johnston v Commissioner of Police</i> [2024] QSC 2 [148]; <i>Athwal v State of Queensland</i> [2023] QCA 156
Freedom of expression (s 21)	<i>Hickey v Commissioner of Police</i> [2023] QDC 181
Taking part in private life (s 23)	<i>Johnston v Commissioner of Police</i> [2024] QSC 2 [148].
Privacy (s 25)	<i>R v Dobrenov</i> [2023] QDC 258  <i>BZN v Chief Executive, the Department of Children, Youth Justice and Multicultural Affairs</i> [2023] QSC 266  <i>Johnston v Commissioner of Police</i> [2024] QSC 2 [148].
Protection of families and children (s 26)	<i>LVF v Department of Child Safety, Seniors and Disability Services</i> [2023] QCAT 406
Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (s 28)	<i>BHP Coal Pty Ltd &amp; Ors v Chief Executive, Department of Environment, Science and Innovation</i> [2024] QLC 7;  <i>DR and YO v Department of Child Safety, Seniors and Disability Services</i> [2023] QCAT 333
Right to liberty and security of person (s 29)	<i>Johnston v Commissioner of Police</i> [2024] QSC 2 [148].
Rights in criminal proceedings (s 32)	<i>R v Malcolm</i> [2023] QDCPR 105

There were only 2 interventions commenced by the Commission in 2023-24 and none by the Attorney-General, despite the number of notifications remaining stable. A number of outstanding interventions were finalised or ongoing during the reporting period. Currently, the Commission is actively involved in 3 coronial inquests, 1 judicial review and 1 Court of Appeal matter for 2024-25.

The Commission looks forward to the ongoing development of human rights jurisprudence in Queensland, particularly as advocates and decision-makers become more familiar with the potential for human rights application in their areas of practice.



# Human rights and the public sector

# Obligations on public entities

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

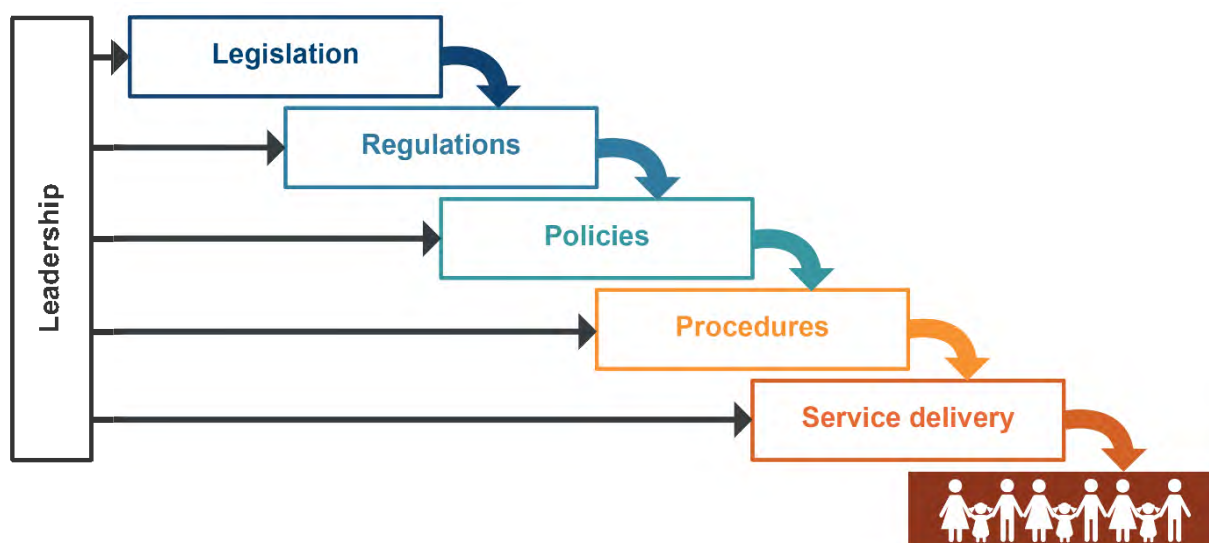
## Developing a human rights culture

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

### Cascading culture change model

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

Figure 3: Cascading culture change model



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

# Indicators of a human rights culture

In the first year of the Human Rights Act's operation, the Commission developed a set of 7 indicators that identify actions that may further the development of a human rights culture. This year, we surveyed public entities on their progress against two of these indicators:

**Indicator 1:** Education and staff development

**Indicator 2:** Implementation of internal complaint management for human rights complaints

See *Appendix B* for the specific questions asked of public entities.

This year we surveyed 9 state government public entities, selected because of the relevance of their work to the human rights of people in Queensland:

- Department of Child Safety, Seniors and Disability Services (DCSSDS)
- Department of Housing, Local Government, Planning and Public Works
- Department of Education
- Department of Youth Justice
- Department of Treaty, Aboriginal and Torres Strait Islander Partnerships, Communities and the Arts (DTATSIPCA)
- Queensland Corrective Services (QCS)
- Queensland Health
- Queensland Police Service (QPS)
- Queensland Civil and Administrative Tribunal (QCAT).

We also sought responses from a small cross-section of metropolitan, regional, and remote local governments. Responses to questions about the indicators were provided by the following 3 councils:

- Brisbane City Council
- Logan City Council
- Sunshine Coast Council.

This section contains a general summary and highlights from the information provided to the Commission.

## State public entities

### Indicator 1: Education and staff development

The Commission asked state public entities to report on the extent to which awareness about the Human Rights Act has been raised with staff, including what education and training has been provided.

## Awareness

State public entities use a range of internal communications channels to raise awareness of human rights with staff. Several host detailed human rights information on their intranets and make use of email, internal training, networks and team meetings to draw attention to human rights issues.

State public entities have incorporated consideration of human rights issues into their policy development and legislative processes, as well as internal human resources policies and processes.

State public entities commonly make use of the Commission's annual Human Rights Week campaign (1 to 10 December) to raise awareness of human rights issues with staff.

- Queensland Health hosted a webinar, 'Triaging Human Rights' by the Queensland Health Human Rights Champion and Crown Law guest speaker
- DTATSIPCA shared Queensland Human Rights Commission content, as well as promoting events and discussion among staff.

## Training

State government entities largely rely on online training modules to educate staff on the Human Rights Act. Entities consistently reported including compulsory human rights modules in induction training. For example:

- Almost 97,000 Department of Education staff completed mandatory training, including on human rights in 2023-24
- 99% of staff in the former Department of Housing completed mandatory training on human rights across 2022-24
- 98.48% of the QPS workforce (including sworn and unsworn officers and police recruits) completed compulsory online human rights training
- Staff in Seniors and Disability Services at DCSSDS are automatically enrolled in the Human Rights Act Initial Awareness course and required to complete this training every two years.

These compulsory learning modules are typically delivered through online or virtual programs, as they are the most accessible form of training for staff working from home, and for covering the whole State, including regional and remote officers.

Specialised training sessions are more often delivered in-person for staff with specialist roles.

- DTATSIPCA delivered a presentation to members of the Cultural Heritage Officer Network to provide an understanding of how section 28 of the Human Rights Act interacts with the Cultural Heritage Acts.
- Bespoke education sessions by the Queensland Health Human Rights Champion were delivered for the Department's senior management forums.

## Guidance

State public entities continue to strengthen the guidance provided to decision-makers at all levels to ensure human rights considerations are engaged in the delivery of services.

- Department of Education provided principals at schools in Central Queensland with exemplars to ensure consistent consideration of human rights in the diverse range of decisions made.
- QCAT provides various resources to Deputy Principal Registrars, Registrars and Managers to support staff to consider human rights relevant to administrative decisions and to make decisions in a way that is compatible with human rights.
- Frontline staff in the Department of Housing's Housing and Homelessness Services Division are supported to understand their obligations and responsibilities under the Human Rights Act through dedicated human rights training and provision of operational information and practice tools, including scenarios and information on how to document and make decisions that are compatible with human rights.
- QCS has developed the RAPID decision-making tool (Relevant rights; Authorisation; Proportionality and purpose; Individual and impartial; and Document) to support staff to apply human rights considerations in day-to-day operations. QCS reports the RAPID test has been well-received and applied to staff work.

Some state public entities maintain internal human rights networks to support development and education for staff.

- The Department of Housing, Local Government, Planning and Public Works holds a Human Rights Continuous Improvement Network four times a year, focussing on four specific rights and how they have been applied in courts, tribunals and decision-making.
- Queensland Health's Human Rights Network shares learnings and promotes a positive culture of human rights, including dissemination of human rights information and professional development training opportunities.

## Indicator 2: Internal complaints

The Commission asked state public entities to report on how successful they had been in integrating human rights complaints into existing complaints processes.

### Integration

In the almost five years since the Human Rights Act's implementation, human rights complaint processes have been largely incorporated into state public entities' complaints processes. State public entities continue to review these processes and to implement improvements.

- In 2023-24 the Department of Education updated its Customer complaints management procedure and framework, and supporting resources, including development of a human rights impact assessment template for customer complaints. These resources strengthened human rights guidance to support complaints officers to properly consider and act compatibly with human rights when managing customer complaints and privacy complaints. Internal training was also refreshed and delivered, including new human rights training scenarios with an education focus.
- Improvements to Queensland Ambulance Service Complaints Management System have enabled better capture and identification of potential human rights complaints.
- QBuild's new business improvement integrates a human rights assessment tool into their complaints management process.

## Barriers

State public entities raised the following barriers in responding to human rights complaints:

- identifying human rights matters in complaints that are not explicitly human rights complaints
- delayed decision-making due to the time involved and available resources required to thoroughly consider whether human rights were engaged.
- a range of different internal approaches to how and when a human rights complaint is recorded, due to having several complaints units within the department.

## Service improvements following complaints

Some large state public entities with high levels of interaction with the public provided examples of service improvements resulting from consideration of a human rights complaints.

A concern was raised at a Hospital and Health Service about access to an interpreter at one of its rural hospitals. The facility undertook a comprehensive review and implemented the necessary improvements to ensure that a reliable and sustainable AUSLAN sign language interpreter service was in place for the hospital.

QPS noted that its discipline system has been subject to several reviews which have identified issues with the timeliness and consistency of the complaint process. The Police Commissioner has implemented an Integrity Discipline Board, designed to support the workforce, improve confidence in the process and reduce complaint and discipline timeframes.

QCS made changes to its Custodial Operations Practice Directive related to personal visits, so that prisoners' friends and family wishing to participate only in virtual visits no longer require criminal history checks. This provides a more streamlined process to provide approval to visitors, reduces wait times and allows family members living long distances from a prisoner to participate in virtual visits

without delay, promoting the right to protection of families and the right to humane treatment while deprived of liberty.

## Local government public entities

### Indicator 1: Education and staff development

The Commission asked local government public entities to report on the extent to which awareness about the Human Rights Act has been raised with staff, including what education and training has been provided.

#### Awareness

Brisbane City Council and Logan City Council have incorporated awareness of the Human Rights Act into Council practice through formal and informal means, including training, corporate policies and processes and discussion among staff.

Brisbane City Council has used awareness opportunities such as Privacy Week and NAIDOC Week to discuss the consideration of human rights in Council's operations. The Council has found this to be an effective way of demonstrating the interaction between the Act and other legislation.

Sunshine Coast Council has focused its efforts on providing skilled support to raise human rights awareness and to build the capacity of those involved in local law making, policy development and other significant decision-making processes. Feedback received through these capacity building interactions has emphasised the value of learning about human rights obligations in the context of relevant, real-life decisions.

#### Training

Some councils offer mandatory induction training on the Human Rights Act, which provides a high level of basic training. Others deliver more targeted training to specific work areas, which means a lower number of staff have received training but it has been more tailored to their work. Councils utilise both online and in-person methodologies to ensure training is responsive to staff needs.

Professional development is offered on an ongoing basis. Resources designed to support and enhance training, for example videos and recorded sessions, are also hosted on intranet sites.

- 92 per cent of staff at Logan City Council have received training either directly on human rights or indirectly on matters that engage human rights.
- Brisbane City Council's Senior Human Rights Officer delivers tailored training to work areas on a rotating basis.
- Sunshine Coast Council's training incorporates examples of scenarios which require decision-making compatible with human rights and tailored to local government context.

## Guidance

Brisbane City Council's training sessions use examples, both real and hypothetical, to demonstrate the practical application of the structured proportionality test and to highlight the importance of ensuring compliance and documentation.

Logan City Council has developed a series of tailored resources to support the consideration of human rights in decision-making, including on Contractor and grant recipient obligations; Councillors' obligations; Corporate Governance considerations; and Customer service considerations.

Sunshine Coast Council's Civic Governance Group provides support to employees with regards to understanding and meeting their human rights obligations, in particular in matters related to policy development projects or complaints. This capacity building approach saw 31 proactive opportunities to support employees in 2023-24.

## Indicator 2: Internal complaints

The administration of human rights complaints has been incorporated into Councils' complaints procedures, including through triage assessment forms, template letters and review processes.

Brisbane City Council has successfully integrated a Senior Human Rights Officer into the Office of the Disputes Commissioner. This position has been beneficial in identifying complaints that have a human rights component but that may not be articulated in a way which makes this immediately apparent. The immediacy of their expertise has also facilitated the streamlining of Council's handling of some complaints.

Councils raised the following barriers to responding to human rights complaints:

- frequent staff changes require continual training to ensure staff are equipped to appropriately handle complaints
- difficulties occurring when complaints involve ongoing legal proceedings involving third parties such as insurers
- the complexity of considering the competing priorities of relevant legislation and local government statutory frameworks, balanced with the public interest.

Councils did not provide any examples of where internal complaints had directly led to change of policy, procedure, practice or service delivery. They did note that since the introduction of the Human Rights Act, the requirement to ensure decisions were made in a way that limited human rights to the least extent possible had allowed practices to be amended to better recognise individual rights.

# Human rights leadership

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

Senior leadership in public entities have sought to build a human rights culture in a variety of ways. Some have incorporated human rights into their strategic plans and planning processes, for example QPS, Department of Youth Justice and DTATSIPCA. Others have formalised consideration of human rights within their decision-making processes, including by making it a mandatory element of policy development and briefing templates. Major operational agencies, such as QCS QPS and Councils, have incorporated human rights knowledge and practices into their operational manuals and training.

Senior leadership teams monitor progress towards a human rights culture through key performance indicators such as complaints reporting, completion of training and contract processes.

Some senior leadership teams spoke to the continual reviewing and refinement of their approach. For example, in 2023-24 the Department of Education has re-established a small, dedicated team to lead human rights activities within the department. The team's objectives include:

- supporting human rights leadership across the Department
- strengthening human rights understanding and practices in schools, regions and corporate office,
- coordinating and improving human rights complaints management and reporting
- identifying opportunities to strengthen human rights considerations in policies, procedures and practices; and
- building staff capability in order to strengthen human rights culture.

These objectives will be supported by a two-year program of work for human rights.

Similarly, Queensland Health and Brisbane City Council have dedicated human rights positions to support building a human rights culture within their organisations.

Senior leadership also demonstrate their commitment to a human rights culture by supporting staff training and capacity building, and by promoting specific activities such as legislative changes, Human Rights Week and other promotional activities.

# Progress towards a human rights culture

## State public entity progress

Several years into the implementation of the Human Rights Act, it is clear that state public entities have incorporated consideration of human rights into many of their strategies, processes and procedures. Many state public entities delivering critical frontline services have developed training and guidelines for staff to assist their service delivery. They have also built in mandatory processes for the consideration of human rights in policy development.

However, the Commission considers progress towards a human rights culture to be uneven. While some state public entities have continued to refine their approach to implementing the Act, for example through supporting staff to apply human rights informed decision-making in all client-facing situations, others have limited their applications to standardised briefing templates, online training and acknowledgement in strategic planning documents.

For example, while introductory online training on human rights is widely available and accessed by staff in state public entities, more effective in-person and tailored training is not always provided. Some state public entities have demonstrated their delivery of more tailored packages, specific to service delivery scenarios faced by staff, but others rely solely on off-the-shelf products that may not thoroughly educate staff on how to apply human rights considerations in difficult situations.

The Human Rights Act introduces a decision-making framework to the delivery of public services across Queensland. To develop a strong human rights culture in Queensland's public sector, it is important this framework remain active and alive to each individual situation to which it is applied. Public entities should continue to review their processes to ensure they are appropriately encouraging human rights-compatible decision-making and have not become mandatory, rote processes with little meaning for staff.

## Progress in councils

Assessing the ongoing implementation of the Act across Queensland's councils is difficult given the low response rate to information requests this period. The limited number of responses – three councils, all in southeast Queensland – reinforces a previous observation of the Commission that the lack of resourcing of the smaller and more remote councils may be an ongoing barrier to building a human rights culture. In prior reports, we have observed that councils with dedicated individuals or teams given the role of implementing the Human Rights Act were further advanced with embedding a human rights culture. We recognise that the resourcing of councils across Queensland is not equal, and the larger, better resourced councils are better able to implement the Act and to report on the actions they have taken to do so.

It was promising to see dedicated staff training implemented across all 3 councils who provided input to this report. It was also positive to consider how councils have responded to the Human Rights Act through implementation strategies

unique to their operating environments. Brisbane City Council's model of establishing a Senior Human Rights Officer position has seen strong outcomes in its complaint management process and allowed for dedicated, tailored training for individual work areas. However, the Council is yet to achieve high take up rates for staff training on human rights.

Similarly, Sunshine Coast Council has developed a capacity building model, working with individual staff to highlight consideration of human rights in real-life working scenarios. The Council's success in building staff engagement and skills through this model show the benefit of a considered, practical approach to engaging human rights in day-to-day decision making.

The integration of human rights complaints into council complaints processes also supports the development of a human rights culture, as staff and Councillors consider how to implement local laws and regulations in a way that least impacts individual rights.

## Functional public entities

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

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

# QHRC's first major human rights review for human rights compatibility

In the reporting period, the Commission completed its first major human rights review under the Act, in relation to strip search policies, procedures and practices in Queensland women's prisons. As a direct result, prison policies have been updated to implement several recommendations and Queensland Corrective Services is considering the remaining recommendations.

In 2022, the Women's Safety and Justice Taskforce delivered its second *Hear her voice* report which focuses on the experiences of women and girls across the criminal justice system. In that report, the Taskforce recommended that the Commission conduct a review of strip search policies, procedures and practices and to provide advice and recommendations to Queensland Corrective Services. The Taskforce also recommended that Queensland Corrective Services immediately move to implement widespread use of non-invasive search technology and implement policy changes in accordance with the advice in this report.

To inform our advice and recommendations, the Commission gathered information through consultations and prison visits, reviewing international human rights standards, analysing the findings of prior investigations and inquiries, and conducting a comprehensive analysis of policies across different jurisdictions. Between March and June 2023, we conducted 20 consultations with legal stakeholders, service provider stakeholders, and interstate prison inspectorates, and 2 roundtable discussions with Together Union delegates and official visitors. In April and May 2023, we conducted site visits to all five women's prisons operating in Queensland and spoke with approximately 60 prisoners and 20 staff members.

Our final report, *Stripped of our dignity*, was published in September 2023. We concluded that strip searches fail to achieve improved prison safety and, at the same time, unreasonably limit the human rights of prisoners, their children and families, and prison staff.

*Stripped of our dignity* presented 24 recommendations to Queensland Corrective Services aimed at fostering a more trauma-informed and human rights-compatible approach to searching female prisoners.

Policy changes made following the publication of the report so far have included:

- Recognition of the inherently traumatic nature of strip searches for female prisoners, acknowledging that special considerations are required and that strip searches can constitute cruel, inhuman, or degrading treatment.
- Clarification that prisoners must not be subject to a forced removal of clothing unless there is an immediate risk to the life of the prisoner, and only once all other escalation alternatives are exhausted.
- Clear guidelines on conducting strip searches with special accommodation for menstruating, breastfeeding, or pregnant prisoners.

- Ensuring that women in low security do not have to undergo a routine strip search when going to or returning from attending a medical appointment, rehabilitative program or court.
- Requirement to consider the cultural rights of Aboriginal and Torres Strait Islander prisoners when conducting searches.
- Prohibition of routine searches on pregnant prisoners (whatever their trimester, or level of security) when attending or returning from visits or medical appointments.
- Clarification that mothers with children in custody should not undergo routine searches, and searches must not be conducted in the presence of their child.
- Modifications to search procedures to accommodate older prisoners and those with mobility issues.
- Allowance for trans and gender-diverse prisoners to request the preferred gender of corrective services officers conducting the search.
- Clearer instructions on how to manage a situation where a search is occurring in an area with a camera or recording device.

The Commission continues to monitor changes to policy and procedures. More changes are expected following the completion of the evaluation of a trial of body scanning searches at Brisbane Women's Correctional Centre.



Human rights  
complaints

Under the *Human Rights Act 2019*, people who believe their rights have been unjustifiably limited by a public entity can make a complaint. Complaints must first be made directly to the public entity, in keeping with the dialogue model of human rights protection in Queensland which encourages local resolution. If after 45 days the complainant has not received a response, or the response they have received is unsatisfactory, a complaint can be lodged with the Commission.

## Complaints to the Commission

Our role in dispute resolution is as an impartial third party. We do not decide whether a breach of human rights has occurred or not, but help people resolve complaints.

The Commission's role is to:

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

Some complaints raise issues that might be covered by both the *Anti-Discrimination Act 1991* and the *Human Rights Act 2019*. Under the Human Rights Act, if the Commissioner considers that a human rights complaint would be more appropriately dealt with as an alleged contravention of the Anti-Discrimination Act, the Commission may deal with the complaint under that Act, with the consent of the complainant. These complaints are referred to as 'piggy-back' complaint, with the human rights aspects being 'piggy-backed' on to the discrimination claim.

Due to the different options available for complainants under the Anti-Discrimination Act – for example, being able to refer an unresolved complaint to a tribunal for a binding decision – many complainants with allegations covered by both Acts elect to have their issue dealt with under the Anti-Discrimination Act.

In 2023-24:

**469** human rights complaints had been finalised: 227 human rights only complaints and 242 piggy-back complaints.

**269** of those complaints were accepted. 49 were dealt with under the Human Rights Act and 220 were piggy-back complaints.

**76** complaints were resolved. 13 of these were human rights only complaints and 63 were piggy-back complaints.

The highest number of human rights complaints accepted this year again engaged the right to recognition and equality before the law.

More information about complaints to the Commission this year can be found in our 2023-24 Annual Report, available from our website at <https://www.qhrc.qld.gov.au/about-us/annual-reports>.

# Complaints made directly to public entities

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

The Act requires the Commissioner to report on the number of human rights complaints received by particular entities and allows the Commissioner discretion to decide which public entities' complaints to report on under this provision.<sup>45</sup>

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

- number received
- outcome of complaints.<sup>46</sup>

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

Table 4 provides the number of complaints reported by selected entities in their annual reports for 2023-24 and the previous year. The Commission has included details, where they have been provided, of outcomes of human rights complaints.

*Table 4: Internal human rights complaints made to public entities, 2023-24*

Public entity	Number of complaints	Outcomes
Department of Education <sup>47</sup>	1,902 complaints  41 complaints upheld or substantiated either in full or in part  (14 in 2022-23)	These complaints were managed in accordance with complaints policies and procedures.  Actions taken for substantiated complaints included giving an apology, changing a practice or process, or referring the issue for further investigation or system improvement.
Department of Housing, Local Government, planning and Public Works <sup>48</sup>	78 complaints (25 in 2022-23)	The nature of the complaints were: <ul style="list-style-type: none"> <li>• 55 were complaints made by customers and dealt with under the department's <i>Customer Complaint Management Policy and Procedure</i>.</li> <li>• 5 were complaints made by customers and dealt with under other departmental policies, such as the <i>Corrupt Conduct Prevention Policy and the Public Interest Disclosure Policy</i>.</li> </ul>

<sup>45</sup> *Human Rights Act 2019* (Qld) s 91(j).

<sup>46</sup> *Human Rights Act 2019* (Qld) s 97.

<sup>47</sup> Department of Education (Qld), *Annual Report 2023-2024*, 59.

<sup>48</sup> Department of Housing, Local Government, planning and Public Works (Qld), *Annual Report 2023-2024*, 42.

Public entity	Number of complaints	Outcomes
		<ul style="list-style-type: none"> <li>18 were complaints made by the department's employees.</li> </ul> <p>The outcome of the complaints were:</p> <ul style="list-style-type: none"> <li>46 complaints resulted in no further action.</li> <li>8 complaints resulted in further action.</li> <li>24 complaints open at the time of reporting.</li> </ul>
Queensland Police Service <sup>49</sup>	2,698 complaints (total figure, not human rights specific) (1,366 in 2022-23)	<p>1,844 individual human rights limitations connected to those complaints (one complaint can include more than one human rights limitation)</p> <p>851 instances where it was deemed there were no human rights limitations.</p> <p>31 instances where human rights were unreasonably limited resulting in:</p> <ul style="list-style-type: none"> <li>5 apologies.</li> <li>5 managerial resolutions.</li> <li>5 explanations.</li> <li>16 disciplinary actions</li> </ul> <p>1,850 (of the 2,698) complaints were finalised as at 30 June 2023.</p> <p>Of the 2,698 distinct complaints received, in most cases there was no further action taken as no human rights limitations were detected, or an explanation was provided to the complainant as the officer's actions were identified as being lawful and reasonable.</p>
Department of Child Safety, Seniors and Disability Services <sup>50</sup>	80 complaints (104 in 2022-2023)	<p>80 complaints that contained 127 allegations. Of these allegations, 118 have been finalised, with the following outcomes:</p> <ul style="list-style-type: none"> <li>48 were unsubstantiated (rights not limited)</li> <li>63 were unsubstantiated (rights limited, justified and reasonable); and</li> <li>7 were substantiated (rights limited, not justified or reasonable).</li> </ul>
Queensland Corrective Services <sup>51</sup>	139 complaints (138 in 2022-23)	<p>QCS received 1,164 complaints, including 139 complaints which raised a human rights issue.</p> <p>Of the 139 complaints with a human rights component the outcomes were as follows:</p> <ul style="list-style-type: none"> <li>6 were substantiated.</li> <li>5 were partially substantiated.</li> <li>9 were referred or made to another agency.</li> </ul>

<sup>49</sup> Queensland Police Service, *Annual Report 2023-24*, 12.

<sup>50</sup> Department of Child Safety, Seniors and Disability Services (Qld), *Annual report 2023-24*, 49.

<sup>51</sup> Queensland Corrective Services, *Annual Client Complaints 2023-24*, 6-11.

Public entity	Number of complaints	Outcomes
		<ul style="list-style-type: none"> <li>• 98 were not substantiated.</li> <li>• 1 provided insufficient information</li> <li>• 1 was withdrawn</li> <li>• 17 are still open/ongoing</li> </ul> <p>2 were listed as 'other'.</p>
Department of Treaty, Aboriginal and Torres Strait Islander Partnerships, Communities, and the Arts <sup>52</sup>	0 (7 in 2022-2023)	No complaints raised human rights issues.
Department of Health <sup>53</sup>	1,516 complaints (558 in 2022-23)	<p>Of the 1,516 complaints received, the outcomes were:</p> <ul style="list-style-type: none"> <li>• 960 require further action.</li> <li>• 179 require no further action.</li> <li>• As at 30 June 2024, 377 human rights complaints were open/ongoing, for conciliation, withdrawn or closed/lapsed.</li> </ul> <p>The actions taken to deal with and resolve human rights complaints included giving an explanation, offering an apology, making changes to practices or processes, conciliation, further staff training and local management.</p>
Department of Youth Justice <sup>54</sup>	93 complaints (152 in 2022-23)	<p>There were 93 complaints which were received where human rights were engaged.</p> <p>Of the 93 complaints received:</p> <ul style="list-style-type: none"> <li>• 39 were investigated and unsubstantiated.</li> <li>• 22 were resolved through a local management action.</li> <li>• 20 are still being investigated</li> <li>• 4 were investigated and identified as frivolous or insufficient evidence to support allegation.</li> <li>• 8 were investigated and substantiated.</li> </ul> <p>Remedies and actions for the substantiated matters included performance discussions with staff members, opportunity for restorative conversations between young people and staff members, and a review of operations and practices.</p>

<sup>52</sup> Department of Treaty, Aboriginal and Torres Strait Islander Partnerships, Communities, and the Arts (Qld), *Annual Report 2023–24*, 50.

<sup>53</sup> Department of Health (Qld), *Annual Report 2023–24*, 139-140.

<sup>54</sup> Department of Youth Justice (Qld), *Annual Report 2023–24*, 38.

A group of people is sitting on a grassy hill, looking out over a city at sunset. The scene is bathed in warm, golden light. In the foreground, several people are seen from behind, sitting on the grass. Some have picnic items like glasses and a bag nearby. The middle ground shows more people scattered across the hill. The background features a cityscape with a prominent church spire, all under a bright, hazy sky. The overall atmosphere is peaceful and communal.

# Human rights in the community

# Community education and training

The Human Rights Act gives the Commission functions to:

- promote an understanding and acceptance, and the public discussion, of human rights
- make information about human rights available to the community
- provide education about human rights and the Act.<sup>55</sup>

This work is integral to achieving the Act's objectives of protecting and promoting human rights, building a culture in the public sector that respects human rights, and promoting a dialogue about the nature, meaning and scope of human rights.<sup>56</sup>

## Training for public entities

In addition to human rights complaint handling functions, the Commission provides education and training to government and functional public entities (as well as private and not-for-profit sectors), and in the financial year delivered 45 *Introduction to the Human Rights Act* sessions. The Commission delivered 11 sessions on *Using the Human Rights Act* for community advocates and 1 session on the *Human Rights Act for legal advocates*.

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

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

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

## Human Rights Week

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

This year marked the 75<sup>th</sup> anniversary of the Universal Declaration of Human Rights. Our theme for Human Rights Week 2023 was 'Universal means everyone', exploring what it means to protect and promote human rights for all.

The Commission offered a range of free training opportunities during Human Rights Week, including:

- Using the Human Rights Act

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<sup>55</sup> *Human Rights Act 2019* (Qld) s 61(d)–(f).

<sup>56</sup> *Human Rights Act 2019* (Qld) s 3.

- Know your rights – an intro for Mob
- Queensland’s Human Rights Act – for the housing and homelessness sector; and for the disability sector
- Queensland’s Anti-Discrimination Act.

## Yirmba First Nations Unit

The Commission takes a leadership role in promoting and protecting the rights of Aboriginal people and Torres Strait Islander people in Queensland.

In March 2024, our First Nations Unit was named Yirmba by respected Gimuy Walubara Yidinji Elder, Aunty Henrietta Marrie AM (née Fourmile) in consultation with Gimuy Walubara Yidinji members. The name refers to the four-pronged spear. The spear represents the Commission’s work in the areas of human rights and justice in the community. The spear tips represent justice, survival, leadership, and strength, and point north, south, east and west, representing all areas of Queensland.

The work of our First Nations Unit was strengthened in 2023-24 through a number of measures, including the recruitment of a dedicated Manager, First Nations Unit and supporting staff; inclusion in an advisory role on the Executive Leadership Team; adoption of formal terms of reference for the First Nations Unit; and development of an annual action plan.

## Consultation and engagement

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

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

# A rights-based approach: Supporting a human rights culture through community service sector engagement

**CASE STUDY** supplied by Queensland Council of Social Services (QCOSS)

## Background

As Queensland's leading voice for the community service sector for over 60 years, the [Queensland Council of Social Service](#) (QCOSS) work has been informed by human rights standards since before the *Human Rights Act 2019 (Qld)* (the Act) passed in 2020.

QCOSS is committed to solidifying our reputation as the independent advocate for a fair and just Queensland; to creating change that benefits people who are otherwise disadvantaged and ensuring government policies, laws and investment do not cause or perpetuate disadvantage. We actively support the full realisation of the right of First Nations Peoples to self-determination.

This commitment aligns with our work in facilitating activities that strengthen human rights for Queenslanders by equipping our sector with tools and information that foster human rights respecting services. Since the Act passed, QCOSS has actively collaborated with the sector, playing our role in building a rights respecting culture in Queensland.

Here's how we're doing that:

- learning from the community service sector about what informs and influences their policies and practices, and involving them in the development of resources and tools that support the delivery of human rights respecting services;
- Equipping staff and leaders across the sector to better understand why and how to use a human rights approach in their own service delivery and in their advocacy; and
- supporting sustainable, long-term policy and practice improvement, where changes in policy and practice are not just about making adjustments – they create a context where positive opportunities and improvements can occur.

QCOSS actively identifies the challenges faced by community services to apply human rights principles. This firsthand understanding shapes our advocacy, training programs and resources, ensuring they are relevant, practical, and directly address the needs of the sector.

## Case study

This case study highlights QCOSS' impact in supporting the delivery of human rights respecting community services.

**The challenge:** The Queensland Human Rights Act is a relatively new Act that many community organisations must act compatibly with.

Community service organisations require the knowledge and resources to fully utilise and implement the Human Rights Act in their work. This includes their ability to advocate for the rights of people experiencing disadvantage and to effect systemic change.

**QCOSS' solution:** Implement a multi-faceted strategy to address this challenge, focusing on education, capacity building, and collaborative action.

### Key initiatives

- **Systemic advocacy:**

2024 was a significant year for human rights advocacy and QCOSS leveraged many opportunities to rally the voices of our sector to strengthen human rights for Queenslanders.

The [Human Rights Act Review](#) was an important mechanism to give a voice to Queensland's community service sector on opportunities to make human rights reforms. Our work with the sector included:

- Raising awareness of the review and its significance.
- Providing resources and developing a submission template to assist the sector in making their own submissions.
- Hosting webinars and workshops featuring experts such as the independent Reviewer, Professor Susan Harris Rimmer.
- Establishing a community of practice for collaborative support among policy advocates in the sector.
- Seeking valuable insights and input from our sector to help inform [QCOSS' submission](#) to the Review.

- **Human Rights Network and newsletter:**

QCOSS established a dedicated Human Rights Network and a human rights newsletter to foster ongoing learning and collaboration. These activities provide:

- Bi-monthly meetings with guest speakers and focused discussions to increase knowledge of how the Act applies to decision-making.
- A platform for sharing experiences, resources, and best practices to build capacity and confidence in applying the Act through practical scenarios.
- Promoting a human rights-respecting organisational culture.
- Knowledge and opportunities to support and engage in QCOSS human rights campaigns such as [Raise the Age Campaign](#).
- Information about relevant reports, reviews, submissions - and encourage the community service sector to participate in advocacy opportunities.

- **Housing and homelessness sector activities:**

Coupled with an overall cost-of-living crisis highlighted in the QCOSS [Living Affordability in Queensland 2024 report](#)<sup>57</sup>, homelessness services caseloads in Queensland have continued to expand at rates well above those seen elsewhere in Australia.<sup>58</sup> Access to safe, affordable, and stable housing ensures the enjoyment of many rights protected in the Act. It is critical that community service providers are equipped with tools and knowledge to navigate, apply, and advocate for these rights on behalf of their clients.

One of the ways that QCOSS has acted is by developing and delivering targeted initiatives to help build the capability of the sector to implement the Queensland Human Rights Act. This has included activities to:

- Deepen understanding of the Human Rights Act within the housing and homelessness sector through a series of co-designed regional workshops, information delivery and resource development.
- Provide organisations with resources and support to incorporate human rights into their policies and service delivery.
- Promote effective advocacy using a human rights-based approach, through developing advocacy resources, tools and workshops.

## Testimonials

### Workshop feedback:

- "Thank you, it was great. I learnt a lot and have knowledge on further systems advocacy and to encourage change at higher levels."
- "I'm definitely on my way to having a deeper understanding and application of the Act."

### Network feedback:

- "Thank you so incredibly much. Such a great conversation."
- "This was a very valuable discussion that needs to continue until change has been achieved."

## Impact of human rights activities

- **Increased awareness and knowledge:** Community service organisations have gained a deeper understanding of the Human Rights Act and its potential to drive positive change.
- **Enhanced capacity:** Organisations are better equipped to apply the Act in their work, advocate for human rights, and contribute to policy and law reform processes.
- **Strengthened collaboration:** The workshops, networks and communities of practice have fostered a sense of community and facilitated collaborative connections and action across the sector.
- **Amplified voices:** QCOSS has successfully amplified the voices of the community service sector in key policy discussions and law reform processes.

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<sup>57</sup> Queensland Council of Social Service Ltd. Living Affordability in Queensland 2024. Published 2024.

<sup>58</sup> Pawson H, Clarke A, Van den Nouwelant R, Petersen H, Moore J, Sigler T. Breaking Ground: Progress update and assessment of Queensland's Housing Crisis. 2024.

- **Human rights reform outcomes:** QCOSS' advocacy, informed by sector feedback, has contributed to strengthening human rights protections and law reform in areas such as anti-discrimination, domestic and family violence, homelessness, and workplace protections.

## Looking ahead

QCOSS remains committed to empowering and working collaboratively with the community service sector to build a culture that reflects the principles of human rights in achieving freedom, respect, equality, and dignity for all Queenslanders. Future initiatives will focus on:

- Expanding the reach of the Human Rights Network.
- Developing further targeted training and resources.
- Continuing to advocate for law reform based on feedback from our members and the sector.

We welcome the community service sector to contact QCOSS for more information, to join our networks or to explore our resources [humanrights@qcooss.org.au](mailto:humanrights@qcooss.org.au)



# Appendices

# Appendix A: Courts and tribunals

In the financial year ended 30 June 2024, Queensland courts and tribunals considered or mentioned the Human Rights Act in 177 matters.

*Table 5: Queensland courts and tribunals that considered or mentioned the Human Rights Act, 2022-23*

<b>Court</b>	<b>Number</b>
Court of Appeal Queensland	2
Supreme Court of Queensland	9
Industrial Court Queensland	1
District Court of Queensland	6
Land Court of Queensland	2
Mental Health Court Queensland	1
Coroners Court Queensland	0
Magistrates Court of Queensland	1
Queensland Civil and Administrative Tribunal, Appeals	12
Queensland Civil and Administrative Tribunal	94
Queensland Industrial Relations Commission	49
<b>Total</b>	<b>177</b>

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

*Table 6: Cause of action in court and tribunal matters that considered or mentioned the Human Rights Act in the 2022-23 period*

<b>Court</b>	<b>Cause of action</b>	<b>Number of cases</b>
Court of Appeal Queensland	Criminal appeal	1
	Racial Discrimination Act	1
Supreme Court of Queensland	Dangerous Prisoner Sex Offender	2
	Habeus Corpus	1

	Judicial review	5
	Personal injury	1
Industrial Court Queensland	Appeal	1
District Court of Queensland	Civil	1
	Criminal appeal	3
	Criminal evidence	2
Land Court of Queensland	Environmental authority	1
	Mining application	1
Mental Health Court Queensland	Electroconvulsive therapy	1
Childrens Court	Youth justice	1
Queensland Civil and Administrative Tribunal, Appeals	Anti-discrimination	2
	Blue card	1
	Guardianship and administration	1
	Minor civil dispute	4
	Privacy	2
	Tenancy	1
Queensland Civil and Administrative Tribunal	Anti-discrimination	7
	Administrative law	7
	Blue card	37
	Child protection	7
	Anti-discrimination exemption application	5
	Guardianship and administration	21
	Minor civil dispute	4
	Occupational regulation	5
	Tenancy	1
	Anti-discrimination	6

Queensland Industrial Relations Commission	Anti-discrimination exemption application	5
	Industrial law	11
	Public sector	27
<b>Total</b>		<b>177</b>

# Appendix B: Human rights indicators

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

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

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

### Indicator 2: 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.

### Additional question:

- How has senior leadership demonstrated a commitment to embedding human rights generally, and in particular with respect to the Indicators 1 and 2 noted above?

# Indicators of a developing human rights culture: Councils

## Indicator 1: Staff awareness, education and development

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

## Indicator 2: Internal complaint management for human rights complaints

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

## Additional question:

- How has senior leadership demonstrated a commitment to embedding human rights generally, and in particular with respect to the Indicators 1 and 2 noted above?

# Appendix C: Human rights timeline 2023-24

This information is represented in the timeline on pages 9 to 10 of this report and is a summary of some significant events relevant to the operation of the Act in its fifth year.

## July 2023

- The Queensland Ombudsman's functions under the *Inspector of Detention Services Act 2022* commenced on 1 July 2023. Inspection Standards for Queensland prisons and youth detention centres were released in August 2023.

## August 2023

- The Supreme Court of Queensland ordered the immediate transfer of 3 children from police watch houses into the custody of Youth Justice, after Queensland Police were unable to establish the lawfulness of their watch house detention. The *habeas corpus* application was brought on behalf of 8 children who had been remanded in custody in various watch houses in Queensland following appearances in the Magistrates Court. At the time of hearing only 3 of the 8 children had not been moved to detention centres. See *Youth Empowered Towards Independence Incorporated v Commissioner of Queensland Police Service & Anor* [2023] QSC 174.
- The Queensland Family and Child Commission released its first *Queensland Child Rights Report*, which analysed how Queensland upholds children's rights and identified changes needed to embed a child rights approach across government policy, legislation, and systems to deliver better, more equitable outcomes for Queensland children.

## September 2023

- The override declaration provisions in section 43(1) of the *Human Rights Act 2019* were used for the second time since the Act's commencement to allow for children to be lawfully detained in police watch houses. Four override declarations relate to various aspects of the custody of children in and between watch houses and youth detention centres. The Human Rights Act continues to apply to the way children are treated in detention, no matter where they are detained. See *Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Act 2023*.
- The Queensland Police Service (QPS) and Queensland Human Rights Commission announced the commencement of a review into diversity and inclusion in the QPS, following a recommendation by the Commission of Inquiry into the QPS's responses to domestic and family violence. The Col found widespread cultural issues including

racism and sexual harassment in the QPS. The review will focus on the recruitment and retention of women, First Nations, and culturally diverse police, and will publish a report and recommendations in late 2024.

- The Queensland Human Rights Commission released *Stripped of our dignity*, a report on a human rights review of the practice of strip searching women in Queensland prisons. The report concludes that strip searches fail to improve prison safety while unreasonably limiting the human rights of prisoners, their children and families, and prison staff, and makes 24 recommendations aimed at fostering a more trauma-informed and human rights-compatible approach to searching female prisoners. Changes to regulations and policy were made in response to the report, and the Commission is continuing to monitor progress.
- The Australian Government tabled the *Final Report of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability*, which calls on all governments and the wider community to improve service systems, legislation and policies that contribute towards violence, abuse, neglect and exploitation of people with disability and recommends each government to publish a written response.

## October 2023

- Amendments to the *Criminal Law (Sexual Offences) Act 1978* were passed to allow alleged offenders to be named prior to committal for prescribed sexual offences (including rape, attempt to commit rape, assault with intent to commit rape, and sexual assault), as recommended by the Women's Safety and Justice Taskforce.
- A referendum to constitutionally recognise Aboriginal peoples and Torres Strait Islander peoples as the First Peoples of Australia by enshrining a First Nations Voice in the Australian Constitution was defeated. Nationally, 60% of voters opposed the proposal. Queensland saw the highest 'no' vote of any state or territory at 68%.

## December 2023

- The Final Report of the Independent Review of the National Disability Insurance Scheme was released, making 26 interrelated recommendations to provide a unified system of support for people with disability.
- The United Nations Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment released a scathing report on its 2022 visit to Australia, that was suspended due to lack of cooperation. The recommendations included a complete ban on the use of spit hoods, that pretrial detention is always a measure of last resort, and increasing the age of criminal responsibility to a minimum of 14 years old.

## February 2024

- The Supreme Court of Queensland delivered a decision in relation to judicial reviews brought by members of the Queensland Police Service and Queensland Ambulance Service challenging their employer's requirement for mandatory vaccination against COVID-19. The Court declared the QPS directions were unlawful because the Police Commissioner did not give proper consideration to human rights before issuing the direction. The QAS direction was declared to have no effect because, on the evidence presented to the Court, the decision-maker had no power to issue the direction. See *Johnston v Commissioner of Police* [2024] QSC 2.

## April 2024

- The Anti-Discrimination Act was updated to include a new attribute of 'sex characteristics' to ensure coverage of intersex people in the Act, and the definition of 'gender identity' was expanded to incorporate gender expression and ensure that people who identify outside of the binary are covered.
- Updated vilification and serious hate crime laws came into effect in Queensland, including:
  - An increase in the penalty for the criminal offence of serious vilification, from 6 months to 3 years imprisonment, and the removal of a requirement for the Attorney-General or Director of Public Prosecutions to approve the laying of charges
  - Adding sex characteristics as a protected attribute for vilification
  - Adding a new offence of publicly displaying a prohibited symbol to the Criminal Code. The Nazi Hakenkreuz has since been prescribed as a prohibited symbol.
  - Higher penalties for certain offences under the Criminal Code when they are motivated by hatred or serious contempt for a person or group based on their race, religion, sexuality, sex characteristics, or gender identity.
- Legislation was passed to establish a Victims' Commissioner to promote the rights and needs of victims of crime. Victims of violent crime, including domestic and family violence, who believe their rights under the *Charter of Victims' Rights* have not been upheld, can make a complaint to the Victims' Commissioner from 2 September 2024. See *Victims' Commissioner and Sexual Violence Review Board Act 2024*.

## May 2024

- Legislation was passed to decriminalise sex work in Queensland and establish a legal framework for the sex work industry in Queensland to improve the health, safety, rights and legal protections for sex workers. The reforms also add 'sex work activity' as a protected attribute under the Anti-Discrimination Act. See the Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Bill 2024.

## June 2024

- Remaining provisions of the *Births, Deaths and Marriages Registration Act 2023* commenced. The Act increases recognition of trans and gender diverse people and diverse families on birth certificates, removes outdated barriers to changing record of sex, and ensures that people are recognised across state laws as their registered sex.
- A coronial inquest into two deaths in custody found although the detainees died of natural causes, they were not adequately supervised and did not receive appropriate medical care. The two women were detained in different watch houses, but the matters considered together. 'In each case, checks were conducted by watchhouse officers which recorded that there were "no problems detected" when, in fact, the women appeared clearly unwell or their state of wellbeing could not be properly discerned,' Deputy Coroner Gallagher said. See Inquest into the deaths of Shiralee Deanne Tilberoo and Vlasta Wylucki.