Queensland Human Rights Commission

Strategic review of the Queensland Human Rights Commission and related reviews: Parts A, B & C

Submission to the Review

20 November 2026

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Introduction

1. On 11 June 2026, the Queensland Government announced a strategic review of the Queensland Human Rights Commission (**the Commission**) and two related reviews. They were a further review of the operation of the *Human Rights Act 2019* (**Human Rights Act**) and a review of the uncommenced provisions of the *Respect at Work and Other Matters Amendment Act 2024* (**RAW Act**) amending the *Anti-Discrimination Act 1991* (**Anti-Discrimination Act**).

2. This is the first strategic review of the Commission and will review the Commission's functions and performance to assess whether they are being performed economically, effectively, and efficiently.

3. Strategic reviews of independent statutory authorities were considered as part of the Coaldrake *Review of Culture and Accountability in the Queensland Public Sector*.[1] Subsequent legislative amendments to the *Public Sector Act 2022* and other Acts ensure that organisations will be subjected to periodic strategic reviews.

4. Independent reviews are a cornerstone of good governance and reinforce accountability across the public sector. The Commission welcomes the opportunity to align with other independent agencies, including the Integrity Commission, Information Commission, and the Queensland Ombudsman, who currently benefit from this level of accountability.

5. Going forward, strategic reviews will provide an opportunity for the Commission to reflect, continue to learn, adapt, and improve.

6. Since the reviews were announced, the Commission has consulted with the Independent Reviewer, the Honourable Peter Flanagan KC and his team of barristers and legal policy officers (**Review Team**).

7. The Commission has also:

   - responded to 2 requests to produce documents, and provided 108 documents
   - voluntarily provided 46 documents and access
   - provided a written statement in response to questions
   - provided opportunities for our staff to engage directly with the Review Team.

8. We welcome the opportunity to respond to the Review's Discussion Paper[2].

9. Mr Flanagan noted in his foreword to the Discussion Paper that a number of significant reviews and inquiries have preceded this one. As part of their initial research, the Review

[1] Peter Coaldrake, *Review of Culture and Accountability in the Queensland Public Sector* (Final Report, 28 June 2022).

[2] *Strategic Review of the Queensland Human Rights Commission and Related Reviews* (Discussion Paper, 30 September 2026).

Team identify sources of their initial research. This included reviewing submissions made to past reviews.

10. The Commission was extensively involved in these reviews and our key outputs and submissions are publicly available. These include:

    - submission to Community Safety and Legal Affairs Committee to inform their consideration of the Respect at Work and Other Matters Amendment Bill 2024, dated 8 July 2024 (**RAW Bill submission**)
    - submission to the Independent Reviewer on the first review of Queensland's *Human Rights Act 2019*, conducted by Professor Susan Harris Rimmer, dated 8 July 2024 (**First review**)
    - submission to the Department of Justice and Attorney-General in response to the consultation draft of the Anti-Discrimination Bill 2024, dated 22 March 2024 (**Draft Anti-Discrimination Bill 2024**)
    - report on the Commission's legislative review of the Anti-Discrimination Act, *Building Belonging: Review of Queensland's Anti-Discrimination Act 1991* (**Building Belonging report**).

11. For this Review, the Commission affirms our position taken in earlier reviews and submissions, except where we provide alternative perspectives.

12. The Commission continues to support legislative reform that strengthens human rights protections and provides more effective safeguards against discrimination.

About the Commission

13. The Anti-Discrimination Commission Queensland was established as a Queensland state body when the Anti-Discrimination Act received assent on 9 December 1991. The Anti-Discrimination Commission had functions including dealing with complaints of discrimination and other contraventions of that Act, undertaking research and educational programs, and consulting with organisations to help improve services and conditions for groups affected by discrimination.

14. When the Human Rights Act was introduced, the Anti-Discrimination Commission Queensland was renamed the Queensland Human Rights Commission and took on additional functions under the Human Rights Act. The Commission began dealing with complaints about contraventions of the Human Rights Act from 1 January 2020.

15. The Commission's function to promote an understanding, acceptance, and the public discussion of human rights and the Act in Queensland was a function of the Commission under the Anti-Discrimination Act since commencement in 1991, reflecting that discrimination has always been regarded within a human rights context.

16. The Commission has a long and proud history of protecting and preserving the principles of dignity and equality for everyone.[3] Together the Human Rights Act and the Anti-Discrimination Act provide a framework to realise these principles, strengthen our democracy, and foster an inclusive society. At a time where social cohesion is under pressure, these objectives are more important than ever.

Recommendations

17. The structure of this submission and recommendations follows the questions asked in the Discussion Paper.

18. The Commission has not responded to all questions in each of the three reviews. Rather, we have responded to questions where we can provide information and perspectives beyond our previous outputs and submissions to assist the Review Team's consideration of relevant issues.

19. We have not responded to all questions and not all our responses include recommendations. A summary of the Commission's responses and recommendations is at **Appendix A**.

[3] *Anti-Discrimination Act 1991* (Qld) Preamble 1.

Part A – Strategic review of the Queensland Human Rights Commission

Functions (Questions A1)

Question A1

- Should there be any changes to the drafting of the QHRC's functions or powers?

Commission position

The Commission observes that any changes recommended to the functions of the Commission in sections 61 of the Human Rights Act and section 235 of the Anti-Discrimination Act should have regard to the functions of the Commission as a whole, widespread across both Acts, and the different objects and purposes of those Acts.

The Commission continues to support extending and enhancing the Commission's role in prevention which is discussed in more detail in Part C.

20. One of the tasks required by this Review is to review the Commission's functions.[4] The Review is considering whether the Commission's functions in section 61 of the Human Rights Act and section 235 of the Anti-Discrimination Act should be redrafted to achieve better cohesion, clarity and simplicity.[5]

21. As the Discussion Paper observes, beyond the above provisions, the functions and powers of the Commission are widespread across both Acts, which have different objects and purposes. It will therefore be important to consider the potential interactions between these provisions in any re-drafting.

22. The Commission's functions are currently accepted and relatively well know. Any changes would need to be communicated across diverse stakeholders to ensure they are understood.

23. The Commission continues to support extending and enhancing the Commission's role in prevention, as outlined in our Building Belonging report. We provide further discussion about uncommenced provisions of the *Respect at Work and Other Matters Amendment Act 2024* (Qld) in Part C.

[4] *Anti-Discrimination Act 1991* (Qld) s 247(9)(a).

[5] *Strategic Review of the Queensland Human Rights Commission and Related Reviews* (Discussion Paper, 30 September 2026) [30].

Complaints and conciliation (Question A8)

Question A8

- Should there be more, or different, avenues to resolve complaints?

Commission position

The Commission supports more avenues to resolve complaints. To demonstrate some successful initiatives, we provide information about our early resolution process as one example of alternative avenues to resolve complaints other than through conciliation conferences.

24. The Commission agrees that more, or different, avenues to resolve complaints should be provided. We recognise that conciliation conferences may not be a successful or appropriate means to resolve all complaints.

25. In 2023–24, we trialled an early resolution process using flexible complaint processes to facilitate dispute resolution. The aim was to maximise flexibility within the existing legislative frameworks.

26. Efficient and productive discussions with complaint parties focused on resolving the complaint. This generally involved a shuttle negotiation process in which the complainant was invited to present options for resolution that were presented to the respondent. The dispute resolution officer facilitated negotiations between the parties over a short period of time to assist the parties to resolve the complaint. Early resolution works best for complaints that involve straightforward, factual circumstances, with one or 2 allegations or issues.

27. Even where early resolution processes do not achieve resolution, it enables a faster process, increases satisfaction with the process, and reduces stress on parties.

28. Complaints resolved through the early resolution process have consistently achieved a higher conciliation rate than other methods. In 2025–26, while our conciliation rate was 36% overall, the conciliation rate for complaints dealt with by early resolution was 51%.[6] Due to this success, early resolution has become a permanent option for resolving appropriate complaints made to the Commission.

29. We engage with stakeholders about our early resolution processes (including Crown Law and government agencies that provide education, housing, and health) so that respondents know what to expect if offered early resolution of a complaint.

30. The Building Belonging Review was asked to consider ways to improve the process and accessibility for bringing and defending a complaint of discrimination. In our report, we provided extensive discussion on the complaints process and recommended a suite of

[6] In 2025-26, the early resolution team were operating at reduced capacity because of new staff and training requirements. In 2024-25, the success rate of conciliation using early resolution processes was 65%.

reforms to include more or different mechanisms for resolving complaints to make the complaint process more efficient and flexible.[7]

31. The Commission was consulted and provided feedback on the Draft Anti-Discrimination Bill 2024, including to sections of the Bill that revise the complaints process in line with the recommendations of our Building Belonging report. Our submission on this Bill is available on the Commission's website.

Interventions (Questions A9 - A10)

Question A9 and A10

- Should the QHRC have a right to appear as amicus curiae in a proceeding, whether instead of or in addition to its existing powers to intervene?
- Should there be any conditions on when, where and how the QHRC can participate in a proceeding before a court or tribunal?

Commission position:

Any right for the Commission to appear as amicus curiae in a proceeding should be in addition to its existing roles in intervention. Given limitations on an amicus to inspect documents, lead evidence, examine witnesses, and identify their own issues to address, replacing the Commission's current intervention roles with an amicus function would significantly inhibit the Commission's capacity to further the objects of the Human Rights Act and the Anti-Discrimination Act through its participation in legal proceedings.

The Commission's right to intervene under section 51 of the Human Rights Act and function to intervene under section 235(j) of the Anti-Discrimination Act should be retained in their current form. The Commission does not consider that additional legislative conditions on when, where, and how the Commission intervenes are necessary. However, if legislative conditions are introduced, consideration should be given to applying a consistent approach to the Attorney-General's power to intervene under the Human Rights Act.

The Commission also provides contextual information about our role as intervener to supplement observations in the Discussion Paper.

The Commission's role as intervener

32. The Discussion Paper considers the Commission's role in interventions in court proceedings. This includes observations about:

[7] Queensland Human Rights Commission, *Building Belonging: Review of Queensland's Anti-Discrimination Act 1991* (Report, July 2022) 22, Recommendation 9.

- the Commission's intervention guidelines[8]
- the way the Commission has approached previous interventions.

33. The Commission intervenes in court and tribunal proceedings where its expertise may assist in interpreting and applying the Human Rights Act or Anti-Discrimination Act. Under section 51 of the Human Rights Act, the Commission may intervene in court or tribunal proceedings that involve human rights issues under that Act. The Commission also has a function to intervene, with the leave of the court, under the Anti-Discrimination Act. This is discussed in relation to Question A11.

34. As we set out in our intervention guidelines, the Commission's role as intervener is as an independent and expert advocate for the Acts. In this role, the Commission makes submissions that focus on broader public interest issues of benefit or advantage to whole communities[9] rather than confined to the interests of the parties.

35. Where possible, the Commission endeavours to publish our submissions to contribute to the development of human rights jurisprudence and facilitate public discussion and understanding of human rights.[10]

36. As the Discussion Paper observes, the Attorney-General is given an equivalent right to intervene under section 50 of the Human Rights Act. At paragraph [69], the Review observes that:

    - In most of the proceedings in which the Commission has intervened, the Attorney-General has also intervened.
    - The Commission ordinarily makes submissions on the application of the Human Rights Act that support the position of the individual party.
    - The Attorney-General ordinarily makes submissions on the application of the Human Rights Act that support the position of the State entity party.

37. The Commission agrees with these observations and considers them to be an appropriate feature of the current framework. The Commission may offer different perspectives to the Attorney-General, who may primarily have regard to the government's policy position in relation to a human rights question, or the State's interest in the proceeding.[11] The courts then have the benefit of both points of view when reaching their decision.

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[8] Queensland Human Rights Commission, *Guideline: Intervention in Court Proceedings* (Web Page, updated 18 May 2026) <https://www.qhrc.qld.gov.au/_media/documents/factsheets/2026-Intervention-in-proceedings-guideline-v2.1.1-EXT.pdf>.

[9] *Macquarie Dictionary* (4th ed, 2005) 'public interest'.

[10] See Queensland Human Rights Commission *Intervened Cases* (Web Page, 19 October 2026) <https://www.qhrc.qld.gov.au/legal/intervention-in-proceedings/intervened-cases>.

[11] *Human Rights Act 2019* (Qld) s 50; Crown Law (Qld), *Human Rights Act Intervention Guidelines* (Web Page) <https://www.crownlaw.qld.gov.au/expertise/human-rights/human-rights-act-intervention-guidelines>.

38. The Commission's intervention guideline includes factors we consider when deciding whether to intervene. This includes considering whether the Commission will add 'unique value not already provided by the parties or the Attorney-General'. Where it is anticipated or clear that the Attorney-General will adopt a similar position to the Commission, that is a factor tending against intervening and is specified in the guideline as a situation where the Commission is unlikely to intervene.

39. The following recent matters illustrate the different roles and positions on interventions by the Commission and the Attorney General:

    - ***Chief Executive, Department of Environment, Science and Innovation v Nagana Yarrbayn Wangan and Jagalingou Cultural Custodians Ltd* [2026] QCA 7**: This matter raised significant questions about 2 issues. Firstly, the application of the 'piggy-back' provision under section 59(1) of the Human Rights Act. Secondly, the role of human rights in assessing whether a decision is judicially reviewable. In relation to the piggy-back provision, the Commission submitted that a claim underpinning a piggy-back human rights argument need only be bona fide and not necessarily arguable. The court preferred the Attorney-General's submission that a claim be both bona fide and arguable.[12] In relation to the second issue, the court preferred the Commission's submission that human rights can be relevant to assessing whether a decision is judicially reviewable, notwithstanding that human rights could generally be described as not 'freestanding'.[13] The Commission also made submissions on the content of cultural rights of Aboriginal peoples and Torres Strait Islander peoples that were different to the submissions put forward by the Attorney-General.

    - ***Bobeldyk v Moreton Bay City Council* [2026] QSC 27:** In *Bobeldyk*, people experiencing homelessness challenged the decision of a local council to issue and enforce notices that would remove them from council land and destroy possessions. The Commission and the Attorney-General made different submissions on whether rights were limited at all and the application of section 58(2).[14] The Commission provided submissions on the scope of relevant human rights and outlined factors relevant to determining the human rights compatibility of council's actions. The court, among other matters, agreed with the submissions made by the Commission that officers had a choice in the way they exercised their powers,[15] and considered the caselaw and principles included in the Commission's submissions to inform the finding that requiring people experiencing homelessness to move on, without providing reasonable time or alternative accommodation, and destroying their belongings without consent, was

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[12] *Chief Executive, Department of Environment, Science and Innovation v Nagana Yarrbayn Wangan and Jagalingou Cultural Custodians Ltd* [2026] QCA 7 [171].

[13] *Chief Executive, Department of Environment, Science and Innovation v Nagana Yarrbayn Wangan and Jagalingou Cultural Custodians Ltd* [2026] QCA 7 [118]-[136].

[14] Contrast the Attorney-General's position in *Bobeldyk & Anor v Moreton Bay City Council* [2026] QSC 27 [318]-[323] with Commission's position at [314]-[316].

[15] *Bobeldyk v Moreton Bay City Council* [2026] QSC 27 [346].

an unlawful limitation of human rights. The decision protected the human rights of the applicants and prompted the council to take different action to respond to homelessness and camping,[16] and provides useful guidance for public entities on the application of human rights.

- ***Smith v Chief Executive, Queensland Corrective Services*** **[2026] HCA 37:** The Commission and the Attorney-General put forward different submissions on the scope and application of human rights in relation to the interpretation of a provision that prohibited prisoner access to 'assisted reproductive technology'.[17] The Attorney-General submitted that no human rights would be limited by construing the provision to disallow access to egg-freezing. The Attorney-General submitted that the right to humane treatment in detention was concerned with basic needs and did not cover access to reproductive healthcare that was not available free of charge to people in the community.[18] The Attorney-General also submitted that the right to access health services was concerned with formal equality in providing health services, and was not limited as men and women were both precluded from accessing the service, a submission Edelman J considered 'surprising'.[19] The Commission drew the court's attention to authorities underscoring confirming that the right to humane treatment requires a minimum of services to satisfy prisoners' basic needs *and* human rights, the scope of the right to access health services, and to case law on the concept of substantive equality in domestic and international cases.[20] Although the majority of the judges considered they did not need to decide the case under the Human Rights Act, Edelman J found that the broad construction would unjustifiably limit the right to humane treatment and access to healthcare. All other members of the court expressed the view (when considering the purposes of the Corrective Services Act) that a construction excluding access to egg freezing would be inconsistent with 'humane containment' and the dignity of prisoners.[21]

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[16] See, for example, City of Moreton Bay, 'Moreton Bay Provides New Free Camping Site for Those in Need' (Media Room, 12 August 2026) <https://www.moretonbay.qld.gov.au/News/Media/Moreton-Bay-provides-new-free-camping-site-for-those-in-need>.

[17] *Corrective Services Act 2006* (Qld) s 22. All submissions and the judgment are available at High Court of Australia, *Smith v Chief Executive, Queensland Corrective Services & Ors* (Web Page) <https://www.hcourt.gov.au/cases-and-judgments/cases/decided/case-no-b582026>.

[18] See *Smith v Chief Executive, Queensland Corrective Services* [2026] HCATrans 51; Second Respondent's Submissions [60]-[61], and Second Respondent's Outline of Oral Argument [17] available at https://www.hcourt.gov.au/cases-and-judgments/cases/decided/case-no-b582026.

[19] *Smith v Chief Executive* [2026] HCA 37 [61] (Edelman J). See further *Smith v Chief Executive, Queensland Corrective Services* [2026] HCATrans 51; Second Respondent's Submissions [53], and Second Respondent's Outline of Oral Argument [19] available at https://www.hcourt.gov.au/cases-and-judgments/cases/decided/case-no-b582026.

[20] *Smith v Chief Executive, Queensland Corrective Services* [2026] HCATrans 51. Third Respondent's Outline of Oral Argument [4], [7].

[21] See, *Smith v Chief Executive* [2026] HCA 37 [24] (Gordon A-CJ and Beech-Jones J), [93]-[96], [99] (Gleeson J), [147] (Jagot J).

Interventions by the Commission

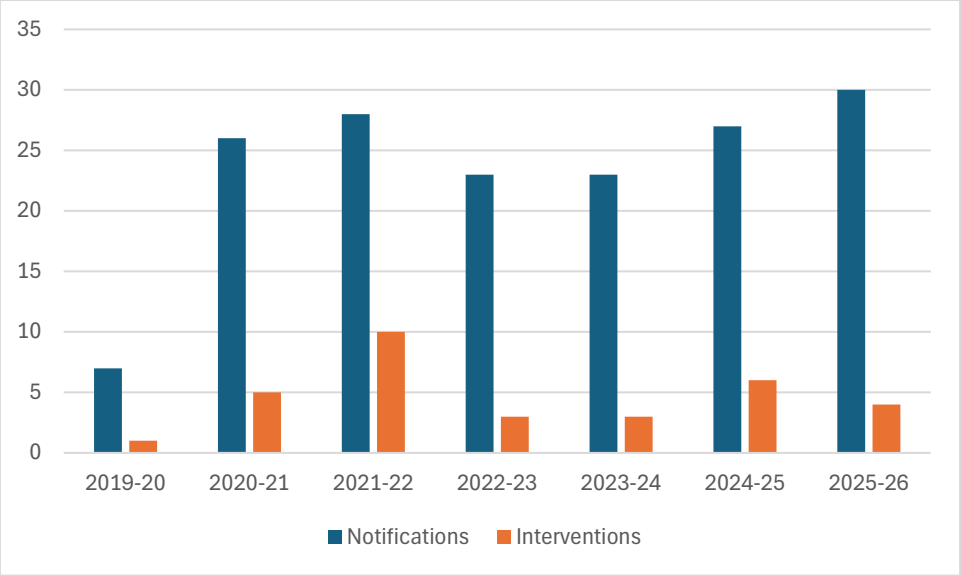
40. As outlined at paragraph [56] of the Discussion Paper, the Human Rights Act provides the Commission with the right to intervene in a proceeding before a court or tribunal in which:

- a question of law arises that relates to the application of this Act; or
- a question arises in relation to the interpretation of a statutory provision in accordance with this Act.[22]

41. The Human Rights Act requires parties to notify the Commission and Attorney-General when the above questions arise so that they can each decide whether to intervene (**section 52 notices**).[23] Parties and other entities can also notify the Commission and Attorney-General separately to the requirements of the Act.

42. The Commission has only intervened in a small number of matters for which we have received notification as shown Figure 1. A list of interventions is at **Appendix B**.

Figure 1: Bar graph identifying number of notifications received and number of interventions by the Commission each financial year from 1 January 2020 to 30 June 2026



43. The following clarifications provide context for interpreting the Commission's intervention statistics:

- In 2021-22, 8 of the matters intervened in related to a cluster of vaccination mandates imposed by public entity employers and the Chief Health Officer. As many applications were made at the same time, it was necessary to intervene in them all to ensure the Commission was heard in the lead case. Three of the matters, heard together, resulted in the decision of *Johnston v Commissioner of Police* [2024] QSC 2. Two of

[22] *Human Rights Act 2019* (Qld) s 51. The Attorney-General may intervene in the same circumstances under s 50.

[23] *Human Rights Act 2019* (Qld) s 52.

the matters were struck out and appealed, which the Commission declined to intervene in. The Commission withdrew from one matter. The remaining two matters have not proceeded.

- The Commission intervened in two matters and was subsequently joined as a party to the appeals of those matters. In 2023-24, the Commission intervened in *Anderson v President of the Parole Board of Queensland* [2025] QSC 123 and was a party to the appeal in 2025-26. Similarly, in 2024-25 the Commission intervened in *Smith v Chief Executive, Queensland Corrective Services* [2026] QCA 99 and was a party to the appeal in 2025-26.
- Two of the interventions in 2024-25 were in the Coroners Court and were by written submission only, meaning the Commission did not appear in court.
- The matters of *Bobeldyk & Anor v Moreton Bay City Council; Eichin & Ors v Moreton Bay City Council* [2026] QSC 27, in which we intervened in 2024-25 and 2025-26, were heard together.

44. Based on this information, the Commission's intervention numbers remain relatively consistent at around 3 proceedings each year.

45. The Commission's interventions are influenced by the types of issues being pursued in court. Notably, these interventions occurred during the initial 6 years of the operation of the Human Rights Act. Intervention rates are similar to Victoria's rate of intervention at the same early stage of the Charter's operation. In contrast, ACT intervened in five new matters in 2025-26.[24]

Where the Commission intervenes

46. The Commission has intervened in a variety of jurisdictions, including the Supreme Court, Court of Appeal, the Mental Health Court, the District Court, and Coroners Court. A list of the Commission's interventions is at **Appendix B.** As noted above, the Commission's intervention guideline includes factors we consider when deciding to intervene. Factors include consideration of whether the case involves new or unsettled law, whether the Commission can add unique value, and the anticipated benefit of intervention at the stage of the proceedings. As the approach to human rights in the courts becomes more settled, the unique value the Commission can contribute may be required less often.

47. While intervening in superior courts is an opportunity to establish precedent on legal principles, there can be value in intervening in lower court and tribunal proceedings where, considering the subject matter and volume of cases in these jurisdictions, facilitating the proper application of human rights may have a greater impact for people experiencing limits on their human rights. Many types of matters, such as those in the Children's Court or Queensland Civil and Administrative Tribunal, may never be appealed to superior courts.

48. In 2023, the Commission intervened in a District Court application to have evidence excluded from a criminal trial on the basis it was obtained unlawfully or given involuntarily. The Commission's submissions concerned how the human rights obligations on police

[24] Australian Capital Territory Human Rights Commission, *Annual Report 2025-26*, (Report, 2026) 24.

were relevant to the court's consideration of whether to exclude the evidence. Although the charge was discontinued the morning of the hearing, the Commission was able to publish their submissions.[25] The Commission has since received a number of notifications raising similar arguments and has elected not to intervene.

49. As noted in the Discussion Paper,[26] the Commission has intervened in 6 coronial inquests and findings have been delivered in 3 of these.[27] Our most recent intervention in a coroner's matter was in February 2025.

50. In each case, the Coroners Court has proactively notified the Commission of the inquest to provide the Commission the opportunity to intervene. Given the fundamental nature of the right to life, the power of coroners to make comments[28] that uphold the right to life, and the role of the Coroners Court to make recommendations to prevent deaths in the future, the Commission considers coronial inquests are a valuable opportunity to apply human rights principles and produce a practical and preventive effect.

51. Despite contrasting views of individual coroners about the role of the Human Rights Act in the coroner's functions,[29] human rights can provide a useful lens through which to view a public entity's interactions with the public to identify systemic shortcomings and make recommendations to prevent deaths in similar circumstances in the future. Recommendations of the Coroners Court should be consistent with, and support the fulfilment of, the public entity's obligations under s 58(1) of the Human Rights Act.

52. An example of how human rights can support better outcomes is the Victorian matter of *Inquest into the passing of XY*, which concerns the death of a child in the care of the Victorian Department of Families, Fairness and Housing. In that case, the coroner observed that under the right of a child to protection in their best interests, XY had a right to 'voice priorities and preferences for her care' and for those views to be given due weight. [30] The coroner also considered whether the department's failure to actively consider XY's views about her own best interests constituted an unjustified and disproportionate limitation of the right to the protection of the child.[31] His Honour

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[25] See Queensland Human Rights Commission. *Intervened Cases* (Web Page, 19 October 2026) <https://www.qhrc.qld.gov.au/legal/intervention-in-proceedings/intervened-cases>.

[26] *Strategic Review of the Queensland Human Rights Commission and Related Reviews* (Discussion Paper, 30 September 2026) [65].

[27] Findings have been delivered in the following inquests: *Inquest into the Deaths of Yvette Michelle Wilma Booth, Adele Estelle Sandy and Shakaya George* (Coroners Court of Queensland, Northern Coroner Nerida Wilson, 6 February 2023) (*RHD Inquest*); *Inquest into the Death of Selesa Tafaifa* (Coroners Court of Queensland, Deputy State Coroner Stephanie Gallagher, 29 October 2025) (*Tafaifa Inquest*); *Inquest into the death of Wayne Thomas Kerle* (Coroners Court of Queensland, Deputy State Coroner Stephanie Gallagher, 26 June 2026) (*Kerle Inquest*).

[28] *Coroners Act 2003* (Qld) s 46.

[29] In 2 coronial inquests, the coroner was of the view that the Human Rights Act has no application - *Tafaifa Inquest* (Deputy State Coroner) and *Kerle Inquest* (Deputy State Coroner). This contrasts with the coroner's view in *RHD Inquest* (Northern Coroner) that the Human Rights Act does apply.

[30] *Inquest into the passing of XY* (Coroners Court of Victoria, Coroner Simon McGregor, 19 June 2024) [731], [733] (*XY Inquest*).

[31] *XY Inquest* [751].

recommended that the department review and revise its training courses and programs to improve child protection practitioners' skills in engaging with children and young people so as to hear, acknowledge, understand, and give weight to a child's experience and expressed views'.[32]

53. A human rights approach also encourages consideration of alternative actions or decisions that could have been taken by the public entity to prevent the death,[33] which can in turn inform recommendations. In the *Inquest into the death of Damon Paul William Savage,* the State Coroner agreed with the family's submission that all officers engaged in high-risk confrontations should be able to plan responses, gather all relevant information, and consider all available alternatives in accordance with the requirements of the Human Rights Act, the Operational Police Manual, and the broader objective of preserving human life.[34]

Additional amicus curiae powers

54. The Commission suggested in its submission to the Harris Rimmer Review that, in addition to its existing right of intervention, it could have a role to act as amicus curiae in appropriate proceedings.[35] However, an amicus curiae power is a more limited role, and should not replace the Commission's intervention functions.

55. By way of comparison, the Australian Human Rights Commission has functions to intervene, and in addition, Commission members have functions as amicus curiae.[36]

56. The Commission has performed an amicus-like role in past proceedings. For example, pursuant to section 28(3)(c) of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld), the Queensland Civil Administrative Tribunal requested the Commission to make written submissions on specific issues regarding the standing of a young person to make a complaint and to make a representative complaint.[37] The Commission has been given leave to appear in 2 coroner's matters by way of written submissions only.

57. However, an amicus is not generally permitted to inspect documents, lead evidence, examine, or cross-examine witnesses. An amicus may be confined by the court on the issues they address and the form of their participation (written or oral) and are not normally subject to costs orders. The Commission considers that these restrictions would

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[32] *XY Inquest* [758] (Recommendation 17).

[33] A relevant factor for assessing proportionality under section 13(2)(d) of the Human Rights Act is whether any less restrictive and reasonably available ways are available to achieve the purpose of the limitation on human rights.

[34] *Inquest into the death of Damon Paul William Savage* (Coroners Court of Queensland, State Coroner Terry Ryan, 4 November 2024) [91]-[92], [117].

[35] Queensland Human Rights Commission, Submission to Independent Reviewer, *Review of Queensland's Human Rights Act 2019* (8 July 2024) [198]-[202], Recommendation 3.10.

[36] *Australian Human Rights Commission Act 1986* (Cth) ss 11(1)(o), 31(j), 46PV.

[37] See *BA, DC, FE v State of Queensland* [2022] QCAT 332.

significantly limit the value the Commission can add to proceedings to further the objects of the Human Rights Act or Anti-Discrimination Act.

58. For example, our submissions in *Johnston v Commissioner of the Queensland Police Service* (2024) 19 QR 1 or *Bobeldyk v Moreton Bay City Council* [2026] QSC 27 would have been significantly less helpful to the court and to the parties if the Commission were confined to particular issues identified at the outset of the case, or without regard to the particular evidence produced. In *Smith v Chief Executive, Qld Corrective Services and Ors* [2026] HCA 37, the Commission was named as third respondent having been a party to Court of Appeal proceedings, which avoided additional processes to seek leave to appear as intervener or amicus.

Conditions on interventions

59. Both the ACT Human Rights Commission and the Australian Human Rights Commission need to apply for leave to intervene.[38] The Commission has only been able to identify one decision in each of those jurisdictions where leave has been refused.[39]

60. The Victorian Equal Opportunity and Human Rights Commission (**VEOHRC**) has a right of intervention on similar terms to the Commission.[40] While neither the Commission (under the Human Rights Act), or VEOHRC require leave of the court to intervene, our power to intervene is still conditional on the proceedings raising questions of law or statutory interpretation under the Human Rights Act. VEOHRC's intervention guidelines indicate that a relevant factor for exercising their right is whether the Commission would be likely to be granted leave to intervene in the absence of its statutory right. That is:

- Does the Commission propose to present arguments or facts that the other parties will not be canvassing?
- Will the Commission's involvement contribute to the decision-maker reaching an informed decision? (*Levy v Victoria* (1997) 189 CLR 579 per Brennan CJ at 603)[41]

61. Similarly, the Commission's intervention guidelines include as part of its set of relevant factors:

- whether the case involves new or unsettled law or would clarify a disputed interpretation
- whether the human rights issue is significant and central to the proceedings

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[38] *Human Rights Act 2004* (ACT) s 36, *Australian Human Rights Commission Act 1986* (Cth) s 11(1)(o), 31(j).

[39] *Carberry v Sentence Administration Board* [2026] ACTSC 180; *The Queen v GJ* [2005] NTCCA 20.

[40] *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 40.

[41] Victorian Equal Opportunity Human Rights Commission, *Charter Intervention Guidelines* (Web Page, May 2018) 5 <https://www.humanrights.vic.gov.au/resources/charter-intervention-guidelines/>.

- whether the Commission can add unique value not already provided by the parties or the Attorney-General.[42]

62. The Commission's capacity to intervene in proceedings is constrained by its limited resources and the intervention guidelines. Imposing a requirement to seek leave would impose an additional burden on the Commission's and other parties' resources. The Commission's view is that the right to intervene under section 51 of the Human Rights Act should be retained in its present form. If it is amended, it follows that the Attorney-General's power of intervention under section 50 should be similarly amended to ensure consistency of roles.

63. The Commission is open to expressly incorporating into its intervention guidelines consideration of whether the Commission would be likely to be granted leave to intervene in the absence of a statutory right, if that was recommended.

64. The Commission supports the Discussion Paper's proposal to adopt metrics to measure and formally report on the impact of its involvement in court proceedings in its annual report. In particular, the Commission sees benefit in measuring whether its submissions influence outcomes that are consistent with its functions under s 61(d) of the Human Rights Act to promote an understanding and acceptance, and public discussion of human rights and the Act. Like the Australian Human Rights Commission, these metrics could be stated in a performance measurement framework and reported against in the annual report.[43]

Question A11

- ### Should the QHRC's intervention function in the ADA be repealed?

Commission position

The Commission recommends that the intervention function in the Anti-Discrimination Act be retained.

65. Section 235(j) of the Anti-Discrimination Act includes in the Commission's functions, 'if the commission considers it appropriate to do so—to intervene in a proceeding that involves human rights issues with the leave of the court hearing the proceeding and subject to any conditions imposed by the court'.

66. 'Human rights' under the Anti-Discrimination Act adopts the meaning given to it under section 3(1) of the *Australian Human Rights Commission Act 1986* (Cth), which refers to rights and freedoms recognised or declared by international instruments.[44] This is broader

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[42] Queensland Human Rights Commission, *Guideline: Intervention in Court Proceedings* (Web Page, updated 18 May 2026) <https://www.qhrc.qld.gov.au/_media/documents/factsheets/2026-Intervention-in-proceedings-guideline-v2.1.1-EXT.pdf> 4-5. See similarly for the Attorney-General: Crown Law (Qld), *Human Rights Act Intervention Guidelines* (Web Page) <https://www.crownlaw.qld.gov.au/expertise/human-rights/human-rights-act-intervention-guidelines>.

[43] For example, Australian Human Rights Commission, *Annual Report 2024-25* (Report,2025) 32-33, 93.

[44] *Anti-Discrimination Act 1991* (Qld) sch 1.

than the meaning of 'human rights' under the Human Rights Act which means the rights as set out in sections 15 to 37.

67. The Commission's function to intervene under the Anti-Discrimination Act must be interpreted with regard to the Anti-Discrimination Act's purpose, set out in the preamble, which is different to the purpose of the Human Rights Act.

68. The right to intervene under the Human Rights Act is confined to proceedings in which a question of law relating to the application of the Human Rights Act or a question in relation to the interpretation of a statutory provision arises. The intervention function under the Anti-Discrimination Act is not so constrained to questions of law about the application of that Act and interpretation.

69. At paragraph [77], the Discussion Paper observes that the Commission does not and never has exercised this function and that interventions by the Anti-Discrimination Commission were 'extremely rare'. The function has, in fact, been used on 4 occasions and details of the cases are available on the Commission's website Commission.[45]

70. These have involved:

- the jurisdiction of the Queensland Industrial Relations Commission to review a decision the Commission made under section 137 (to accept a complaint notwithstanding an earlier agreement made in settlement of all claims)[46]
- the interpretation and application of indirect discrimination, and language as a characteristic of race[47]
- the tribunal's power on an application under section 144 (to protect the interests of a complainant before the complaint is referred to the tribunal)[48]
- the meaning of a requirement under the *Industrial Relations Act 1999* (Qld) before certifying a multi-employer agreement.[49]

71. More recently, an appeal in *BA & Ors v State of Queensland* [2026] QCAT 298 raised questions about the application of the Human Rights Act, and a second appeal raises issues on the interpretation and application of the Anti-Discrimination Act. Because the second appeal is separate to the appeal in which the Commission has the right to intervene in without leave, the intervention function under the Anti-Discrimination Act enables the Commission to apply for leave to intervene and make submissions on the

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[45] Queensland Human Rights Commission, *Intervened cases – Interventions under the Anti-Discrimination Act 1991* (Web page, 19 October 2026) <https://www.qhrc.qld.gov.au/legal/intervention-in-proceedings/intervened-cases>.

[46] This matter resulted in the respondents withdrawing their arguments about the Commission's decision under s 137, and consequently there is no published decision.

[47] *Xi v WorkCover Queensland* [2016] QCATA 134.

[48] *Attrill v Department of Corrective Services* [2012] QCATA 31; *State of Queensland v Attrill* [2012] QCA 299.

[49] *Ergon Energy Corporation Ltd v ETU* [2005] QIRComm 73; 179 QGIG 140.

interpretation and application of the Anti-Discrimination Act, issues in which the Commission has an interest.

72. Retaining the Commission's intervention function under the Anti-Discrimination Act ensures the Commission can continue to contribute its expertise to matters concerning the interpretation and application of the Anti-Discrimination Act, as well as other proceedings/matters.

Question A12

- ### What is your experience of the QHRC's education services and are any improvements required?

Commission position

The Commission outlines recent work to review our education services, develop an education strategy, and our progress towards implementing the strategy.

73. This discussion question invites stakeholders' experience of our education services. We welcome those views. Outcomes of the Strategic Review will help the Commission continue developing and improving our services.

74. The Commission has recently reviewed our approach to human rights and discrimination education and is working towards an uplift of our education products and services.

75. The Commission is required to undertake educational programs to promote the purposes of the Anti-Discrimination Act and provide education about human rights. In 2024-25 we conducted a review of our education programs to assess how effectively current services advance awareness, capability, and culture change.

76. During this review, we drew on client feedback, comparative analysis of other Australian human rights agencies' approach to education and training, leading practice literature, and case studies. We also conducted consultations with experts and clients. Findings from these processes were used to identify strengths, gaps, and opportunities for improvement.

77. The review found that existing education services were reasonably credible and widely accessed. However, the primary focus of existing courses was to raise awareness about the Anti-Discrimination Act and Human Rights Act and build basic skills. While this focus played an important role in the early stages of the Act, the Review found it was now preferrable to develop an approach that prioritises capability-building for duty-bearers.

78. To reflect this transition, the Commission published the *Education Strategy 2026–30* (Education Strategy). The Education Strategy outlines our vision to deliver evidence-based, data-driven education services that support duty-bearers to improve performance. It looks to progressively implement our 4-pillar model of education services, which includes:

- **Knowledge and skills**: accessible, contemporary eLearning and live workshops that provide foundational understanding of discrimination and human rights laws and basic skills to apply the law.

- **Capability and systems**: practical, skills-based modules that develop decision-making, inclusive leadership, and policy design competence, customised for each client.

- **Leadership:** senior executive and board engagement to strengthen governance and accountability for rights-respecting workplaces.

- **Innovation:** the adoption of advanced and emerging methodologies and education technologies to deliver services with meaningful impact.

79. Each pillar represents a distinct, but complementary, stream of work that together will enable the Commission to move from information delivery to capability development, leadership engagement, organisational consultancy, and innovation.

80. This model is designed to be scalable, evidence-based, sustainable, and allow the Commission to respond flexibly to different audiences, needs, and levels of maturity across Queensland workplaces and communities.

81. To improve our service delivery, in September 2026, the Commission launched our new Learning Management System, referred to as the Education Hub. This is a one stop shop for booking and enquiring about our education services, undertaking a learning journey for all our education services, including eLearning and live workshops, and assessment capabilities and comprehensive multi-level reporting on individual and client learning outcomes.

82. As part of the Education Strategy, we are developing a framework for monitoring and continuous improvement, including to provide deeper insights into whether the Strategy is effective. The Commission looks forward to the outcomes of the Strategic Review providing further opportunities to improve our education service delivery.

Examining Acts and making submissions to public policy processes (Questions A13 - A15)

Question A13

- What should be the role of the QHRC in participating in public debate on policy and legislation development in Queensland?

Commission position

The Commission has functions to promote the understanding and acceptance, and the public discussion of, human rights; and to undertake research to promote the purposes of the Anti-Discrimination Act. These functions are necessarily broad in scope.

In carrying out these functions, at times, the Commission contributes to discussion of policy and legislation through a range of work. One of the most visible aspects of this work includes making submissions to parliamentary inquiries and to other reviews, inquiries, and bodies. We also respond to requests for consultation from Queensland Government agencies during the development of policy and legislation, which may be confidential.

Examination of human rights impacts and compatibility in submissions covers a broad range of nuanced matters, as informed by factors set out in section 13 of the Human Rights Act.

How the Commission contributes to public debate on development of policy and legislation reflects the overall strategic direction of the Commission.

Commission's contribution to public policy processes

83. Under the Anti-Discrimination Act and the Human Rights Act, the Commission has the function 'to promote the understanding and acceptance, and the public discussion of human rights',[50] and under the Human Rights Act 'to make information about human rights available to the community'.[51] Under the Anti-Discrimination Act, the Commission has the function to undertake research and educational programs to promote the purposes of the Anti-Discrimination Act and to consult with organisations to ascertain means of improving services and conditions.[52]

84. The Commission has sought to give effect to these functions through a range of work including public and strategic engagement, education, training, conducting reviews, and producing reports. We also seek to achieve the objectives of these functions through work conducted under other functions, such as publishing recommendations about unresolved human rights complaints[53] and intervening in matters before courts and tribunals involving human rights issues.

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[50] *Anti-Discrimination Act 1991 (*Qld) s 235(j), *Human Rights Act 2019* (Qld) s 61(d).

[51] *Human Rights Act 2019* (Qld) s 61(e).

[52] *Anti-Discrimination Act 1991* (Qld) s 235(d)–(e).

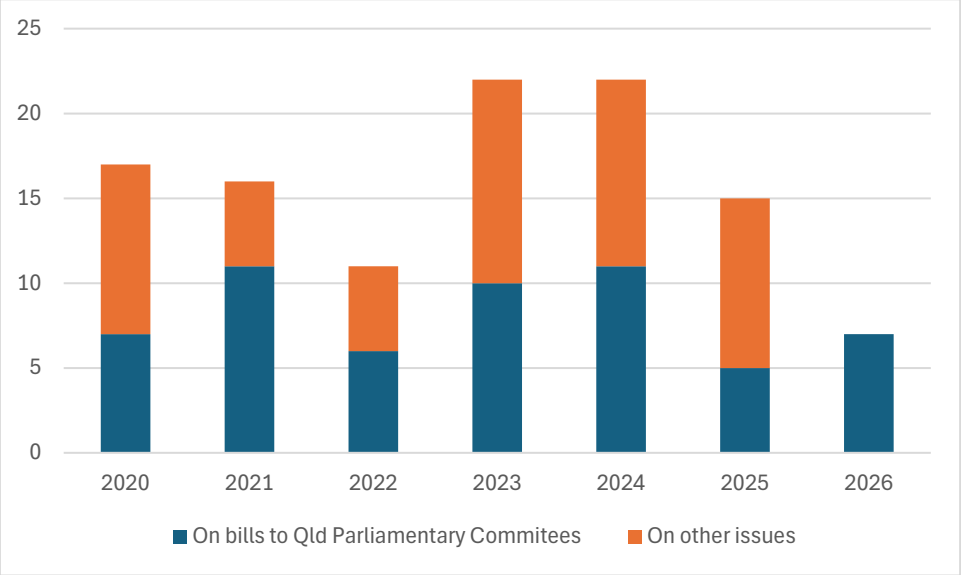
[53] *Human Rights Act 2019* (Qld) s 88(4).

85. These functions underpin the Commission's contributions to public debate on policy and the development of legislation in Queensland. Over the 6 years since commencement of the Human Rights Act, this has included, but is not limited to, providing submissions to Queensland parliamentary inquiries about proposed legislation.[54]

86. Since January 2020, the Commission has published on its website a total of 66 submissions to Queensland parliamentary inquiries, including 57 on Bills,[55] and a further 9 to other parliamentary inquiries.[56] This period covers the initial phase of implementation of the Human Rights Act. This reflects both the evolution of our work as the Human Rights Act matures, and strategic decisions by the Commission about how to best apply its resources.

87. The Commission has also made submissions to independent reviews, commissions of inquiry, and other formal consultation processes. Not all submissions are published, but of those that have been made public, this is a total of 44, or 40% of submissions made since January 2020. A list of all submissions made by the Commission since 1 January 2020 to 30 October 2026 is at **Appendix C**.

Figure 2: Bar graph indicating the number of submissions made by the Commission on Bills to a Queensland parliamentary inquiry and the number of submissions on other issues made by the Commission between 1 January 2020 and 30 October 2026



88. We also respond to informal consultation requests from government departments, agencies, and statutory bodies. In those contexts, we have worked collaboratively with the

[54] Queensland Human Rights Commission, *Submissions by the Commission* (Web Page, 5 November 2026) <https://www.qhrc.qld.gov.au/our-work/submissions-by-the-commission>.

[55] The Discussion Paper states that since 2020 a total of 61 submissions to Queensland parliamentary committees have been published on the Commission website. This appears to be an error.

[56] Queensland Human Rights Commission, *Submissions by the Commission* (Web Page, 14 October 2026) <https://www.qhrc.qld.gov.au/our-work/submissions-by-the-commission>.

relevant body to provide advice on policy proposals or draft legislation that directly affects people with protected attributes or that raise human rights concerns.

89. Often, this engagement occurs confidentially and is subject to Cabinet-in-Confidence. This means the Commission's early engagement in analysing and contributing to the development of Bills and other policy decisions is not always public or visible. Broadly, some of the areas in which we have contributed during early confidential consultation processes include child protection, sex worker reforms, reforms to legislation that provides for births, deaths, and marriages, the legislative role for a prisoner inspectorate, corrective services legislation, and in the health sector.

90. Decisions about whether to make a submission to a parliamentary inquiry or consultation are made by assessing the relevant Bill or consultation request against an internal decision-making matrix. This includes a range of factors that we consider and supports consistent decision making.

91. The Commission's reactive policy work to make submissions to parliamentary and other inquiries and consultations serves a range of purposes, including to:

    - fulfill the Commission's legislative functions (section 61(d) and (e) of the Human Rights Act, and section 235 (d) and (e) of the Anti-Discrimination Act)
    - support parliamentary committees and public entities to fulfil their obligations under the Human Rights Act, including to consider statements of compatibility and report to parliament about compatibility (section 38 and 39), and to act compatibly with human rights (section 58). These obligations are discussed in relation to Question B5.

92. Given the experience and expertise of the Commission on the application of the Human Rights Act and Anti-Discrimination Act, the Commission submissions on legislative and policy proposals can contribute to ensuring limits to human rights, discrimination and other objectionable conduct is minimised.

93. We acknowledge that the Commission's policy influence may be constrained by the perception that submissions may be seen to be critical of government policy. This tension is one that many independent agencies must manage. The Commission has always sought to provide constructive input on matters within our remit within an increasingly complex environment.

94. The Commission continues to consider how it can best contribute to public policy processes. While submissions support the Commission and other bodies to fulfil their obligations under the Anti-Discrimination Act and Human Rights Act, they do constrain our ability to invest resources into more strategic and proactive contributions to the public policy landscape.

95. The Commission contributes to public debate on policy and legislation through a range of other reactive and proactive work that includes:

    - contributing extensively to regular meetings and forums hosted by government, often by request. Some examples include the Queensland Government LGBTIQ+ Roundtable, the Restrictive Practices Authorisation Framework Reference Group,

Office of the Victims' Commissioner Stakeholder working group, Shifting Minds strategic leadership group, and the QLRC Evidence Law Review Consultation Committee

- developing resources including guidance materials, fact sheets, including to provide legal education on topics when the law changes
- participating in research partnerships - for example, the Commission is currently involved in 2 Australian Research Council funded projects that are operating across multiple years, including in relation to prevention of sexual harassment and to develop a human rights implementation assessment for mental health law and policy
- conducting larger, albeit infrequent, reviews - for example a human rights review of policies, procedures and practices in relation to strip searches of women in Queensland prisons, and a review of the Queensland Police Service workplace equality – both of which were recommended by external taskforces or inquiries.

Approach to submissions

96. In line with the Commission's functions to promote the understanding and acceptance, and the public discussion of human rights and the Human Rights Act, and provide information about human rights to the community, the Commission's submissions to Queensland portfolio committees have focussed on:

    - identifying and highlighting the impact a Bill may have on human rights, including considering whether the provisions of the Bill are compatible with human rights
    - identifying and highlighting whether a Bill may result in discrimination
    - making practical recommendations on Bills or policy proposals to achieve outcomes that are least restrictive of, or most compatible with, human rights
    - identifying elements of a statement of compatibility that may require amendment.

97. Specifically, most submissions consider in detail whether any limits on human rights are reasonable and justifiable (compatible) and apply the factors outlined in section 13 of the Human Rights Act. Submissions also identify where a Bill may create the conditions in which human rights could be unreasonably limited.

98. In Queensland's unicameral parliamentary system, scrutiny by parliamentary committees and consultation by way of submissions is core to the legislative process. It seeks to ensure that a larger group of people have an opportunity to review proposed legislation and provide input that could improve it. In turn, this consultation and scrutiny help to ensure laws passed by parliament are effective and that unintentional negative consequences are identified and avoided.

99. The Commission is well positioned to support the scrutiny of legislation by providing submissions containing analysis of the impact of Bills on human rights and compatibility of Bills with human rights.

100. Application of the human rights framework is particularly useful in the scrutiny of legislation. Discussing human rights impacts assists to identify all of the possible consequences of legislation for members of the community; and the application of the

factors provided for assessing compatibility in section 13 provide a framework for ensuring legitimate objectives can be pursued via legislation, while safeguarding against actions that will not be effective or which cause harm.

101. The Commission's submissions support dialogue about human rights between members of parliament. By submitting on human rights matters, the Commission may increase familiarity with, and understanding of, human rights among members of parliament in service of the broader objects of the Human Rights Act to promote and protect human rights through dialogue.

Discussion of human rights and the Human Rights Act in submissions

102. The Discussion Paper observes that the Commission's submissions 'often raise issues about matters concerning government policy, rather than focussing on the application of the Human Rights Act to the proposed legislation and the potential impact on human rights'.[57]

103. The discussion of human rights impacts and compatibility with human rights encompasses a broad range of nuanced matters, including the factors set out in section 13 and section 43 of the Human Rights Act. They include:

- The effect the Bill has on human rights, and the **nature of the rights** that may be limited. This may include consideration of the extent of consultation which is essential to understand the extent of human rights limitations.
- Whether the Bill is clear, accessible, and sufficiently precise to be a **reasonable limit under law**.[58]
- Whether the **purpose of the limitation** is identifiable and is consistent with a free and democratic society or purpose for imposing a limit on human rights. This may include discussion of the policy objective sought to be achieved by the proposed limit and whether or not that objective is consistent with a free, democratic society.
- Whether measures imposed by the Bill that limit rights will help to **achieve their stated purpose.** This requires discussion of evidence that the provisions will be effective in achieving their purpose.
- Whether there are ways to achieve the Bill's purpose that are **less restrictive of human rights and reasonably available,** and whether these options have been considered.[59] This requires discussion of less restrictive options that may be available other than through amendments to the law.
- The balance between the **importance of the purpose of the limit** and the **importance of preserving the human right**, which may require discussion of the

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[57] *Strategic Review of the Queensland Human Rights Commission and Related Reviews* (Discussion Paper, 30 September 2026) 13, 14.

[58] *Kracke v Mental Health Review Board* (2009) 29 VAR 1; [2009] VCAT 646 at [162]–[196].

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

importance of the policy objectives behind the Bill, and the nature and extent of the limitation on human rights it imposes.

- Where it is proposed to override the Human Rights Act, **whether or not exceptional circumstances exist** which justify this.

104. **Appendix D** includes a table outlining what issues might be in scope for consideration under each limb of s13, as well as section 43(4) together with examples drawn from submissions.

105. These matters are expansive and not naturally limiting. Additionally, they are not precise legal matters, but ones which inevitably involve subjective opinion, based on what the Commission is able to ascertain within the consultation time frames available.

106. For example, when considering the Protecting Queenslanders from Dangerous Prisoners and Strengthening Victims' Rights Amendment Bill 2026, the Commission identified that the Bill may have a significant impact on the capacity of the adult prisons that are already operating at over 150 per cent capacity.[60] While this may appear to be a comment on broader government policy, it is also a foreseeable consequence of the legislation and will have a significant negative impact on the human rights of people in prison in Queensland. Failing to draw this connection would be a failure to properly identify the potential human rights impacts of proposed legislation in line with the Commission's functions.

Effectiveness of submissions and effect of submissions on relationship with government

107. The Discussion Paper paragraph [85] raises questions as to:

(a) the effectiveness of [the Commission's] submissions in achieving a different outcome after a Bill has been introduced into parliament

(b) the effect on the relationship between the government and the Commission, noting that the Commission is independent but has an important role to play in furthering an understanding of the impact of proposed legislative changes on human rights.

108. It is correct that the Commission's submissions to parliamentary inquiries rarely result in recommendations made by the relevant portfolio committee to amend the Bill to resolve the Commission's concerns.

109. The Commission is not alone in this outcome. In the 12-month period preceding publication of this Discussion Paper, the Commission was only able to identify 7 portfolio committee reports that made recommendations that proposed changes to a government

[60] Queensland Human Rights Commission, Submission No 12 to Justice, Integrity and Community Safety Committee, *Protecting Queenslanders from Dangerous Prisoners and Strengthening Victims' Rights Amendment Bill 2026* (30 September 2026).

Bill before it passed.[61] Despite receiving a large number of submissions, overwhelmingly, committees have made no recommendations other than to pass the relevant Bill.[62]

110. By this measure, very few submissions to portfolio committees are 'effective'. Nevertheless, as set out in more detail in Question B5, in a unicameral parliament, the parliamentary committee system, including receiving and publishing submissions and holding public hearings, is vital to an accountable government and enhancing the democratic process.

111. As we observe above, the purpose of the Commission's submissions is not limited to having a direct impact on legislation. Primarily, the Commission's submissions support its function to promote the understanding and discussion of human rights, interpreted through the lens of the objects of the Human Rights Act in section 3. In doing so, the Commission's submissions contribute to the broader policy discourse, which may shape debate and inform future reform.

112. Finally, maintaining a constructive, trusted relationship with government is critical. This relies on the Commission and government having a mutually respectful relationship. Identifying human rights impacts provides an opportunity for the Commission to advance the objects of the Human Rights Act and the Anti-Discrimination Act and is not an adversarial act.

113. The protection and public discussion of human rights requires independent and impartial commentary where human rights are at risk, including where that commentary might be interpreted to be critical of government policy. The Commission is uniquely positioned to provide this commentary. Ensuring government decisions and actions are compatible with human rights and cause the least possible harm should be a core objective of government. Robust, respectful, and evidence-based dialogue facilitates these outcomes,

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[61] This number excludes portfolio committee reports about inquiries into matters other than Bills; and excludes inquiries into appropriations Bills. This number also excludes 4 portfolio committee reports about non-government Bills which made a single recommendation that the relevant Bill not be passed. The reports which included recommendations to amend the relevant Bill were: Health, Environment and Innovation Committee, Queensland Parliament, *Waste Reduction and Recycling (Strengthening the Container Refund Scheme) Amendment Bill 2026* (Report No 24, 58th Parliament, [Month] 2026); Primary Industries and Resources Committee, Queensland Parliament, *Mineral Resources and Other Legislation Amendment Bill 2026* (Report No 29, 58th Parliament, November 2026); Primary Industries and Resources Committee, Queensland Parliament, *Regional Planning Interests (Condamine Alluvium) and Other Legislation Amendment Bill 2026* (Report No 19, 58th Parliament, May 2026); Primary Industries and Resources Committee, Queensland Parliament, *Resources Safety and Health Queensland and Other Legislation Amendment Bill 2026* (Report No 17, 58th Parliament, April 2026); State Development, Infrastructure and Works Committee, Queensland Parliament, *Criminal Code (Dangerous Driving) and Other Legislation Amendment Bill 2026* (Report No 30, 58th Parliament, [Month] 2026); State Development, Infrastructure and Works Committee, Queensland Parliament, *Transport and Other Legislation (Managing E-mobility Use and Protecting Our Communities) Amendment Bill 2026* (Report No 26, 58th Parliament, May 2026); State Development, Infrastructure and Works Committee, Queensland Parliament, *Major Sports Facilities and Other Legislation Amendment Bill 2025* (Report No 13, 58th Parliament, October 2025).

[62] See for example: Queensland Human Rights Commission, *Annual Report on the Operation of Queensland's Human Rights Act 2019, 2024–25* (Report, 2026) 21.

fosters public trust, understanding, and confidence in government, and should strengthen the Commission's relationship with government based on mutual respect.

Question A14 and 15

- At what stage in the process for the development of policy and legislation should the Commission be involved? For example, should the QHRC be involved earlier in the process?
- Would earlier involvement of the QHRC in government decision-making processes compromise the independence of the QHRC?

Commission position

The Commission acknowledges the value of early engagement in policy and legislative development; however, to date our involvement generally occurs on an ad hoc basis when consultation is sought.

At the same time, involvement in such processes can have implications for the Commission's functions in promoting understanding and discussion of human rights and providing information about human rights to the community, as well as on the Commission's perceived and actual independence, which need to be managed.

Experiences of early involvement

114. As explored above, the Commission is uniquely positioned to provide advice on the human rights impacts and compatibility of proposed policy or legislation. The framework established under the Human Rights Act for assessing the compatibility is a helpful framework for developing effective, sustainable policy and legislation.

115. Early engagement with the Commission in the development of policy and legislation can be beneficial. Embedding human rights considerations from the outset helps identify issues early and increases the likelihood of achieving rights-compatible outcomes.

116. Currently, early engagement of the Commission in the development of policy and legislation occurs sporadically, typically as a result of officer-level relationships between government departments and the Commission. However, this engagement has the potential to produce tangible change to policy or legislation.

117. Establishing and maintaining relationships between the Commission and government departments that increase the likelihood that the Commission will be engaged early is an ongoing objective of the Commission.

118. The Discussion Paper asks whether Queensland should adopt the approach taken in the ACT that involves frequent early engagement and advice to ministers and government departments during policy develop and the Cabinet process. The *Human Rights Act 2005* (ACT) provides that the Commissioner must, after consulting with the justice department, prepare a protocol which outlines how the Commission and the department will work together. The Protocol outlines that the department will consult the ACT Human Rights

Commission on cabinet submissions and the ACT Commission will provide comments on submissions directly to the cabinet office.[63]

119. Consultation on cabinet materials may provide a more formal avenue for input into the development of policy and legislation. Theoretically, input at this stage could be more readily incorporated, compared to when it is provided after a Bill has entered parliament and is being scrutinised by a parliamentary inquiry.

120. In our experience, opportunities for officer-level exchange on human rights impacts and compatibility can also improve policy officers' understanding of human rights and the Human Rights Act.

Considerations relevant to whether earlier involvement is appropriate

121. While beneficial, early involvement in policy and legislative development can give rise to some issues that should be considered.

122. Early engagement may be subject to confidentiality or Cabinet-in-Confidence, which limits visibility of the Commission's contributions and therefore the systemic value of the engagement. At the same time, early and confidential involvement can provide settings in which advice may be more likely to be accepted.

123. There is the actual or perceived risk that may be imprecisely referred to as 'regulatory capture'. While the Commission does not have any regulatory role, it is an independent statutory body with responsibilities to impartially resolve disputes, as well as a range of other activities to achieve the purposes of the legislation. Frequent and regular engagement with entities with high-stakes interests in the outcomes of policy decisions can increase the risk of undue influence. While this may not directly compromise the independence of the Commission, it is a relational reality that requires self-reflection and insight at both an institutional, leadership, and individual level. This risk should be foreseen and mitigated, including through a strong internal governance environment.

[63] Australian Capital Territory Human Rights Commission, *Governance and Corporate Support Protocol 2025-28* (Protocol, 6 December 2024) <https://www.hrc.act.gov.au/__data/assets/pdf_file/0017/3031226/SIGNED-Governance-and-Support-Protocol040326.pdf>.

A reformed complaints framework

The current framework – potential reforms (Question A18)

Question A18

- Do you support aligning the complaints framework in the ADA with the Draft Anti-Discrimination Bill 2024?

Commission position

Yes. We suggest completing consultation on the exposure draft to the Draft Anti-Discrimination Bill 2024.

124. As outlined in the Discussion Paper, following the Building Belonging review, the government sought public feedback on a consultation draft of a new Anti-Discrimination Bill 2024.[64] This consultation was not completed and the submissions made were not published. Instead, the RAW Act was introduced and passed, which amended the Anti-Discrimination Act.

125. While the consultation draft aligned closely with the Building Belonging report, the Commission recommended that amendments be made.[65] Our recommendations in relation to Part 9 of the Draft Anti-Discrimination Bill 2024, which outlined the legislative framework for complaints, are summarised in Appendix F of the Commission's submission on the draft bill.

126. The Commission relies on the submissions it made on the consultation draft and does not repeat them here, save for the following observations:

Clause	Issues
Clause 101(1)(a)(ii) Who may make a complaint	This provision automatically allows a child's parent to make a complaint on behalf of the child. Under the Anti-Discrimination Act, a parent may make a complaint on behalf of a child where the parent has been authorised in writing by the commissioner under s 134(1)(c). Parent is defined broadly and non-exhaustively under the Draft Anti-Discrimination Bill 2024. Clause 101(1)(a)(ii) may create difficulties, eg, if there are parents who do not agree, or if the child is in the care of the State or another guardian.
Clause 107 Form of complaint	See Question A26 and 27.

[64] *Strategic Review of the Queensland Human Rights Commission and Related Reviews* (Discussion Paper, 30 September 2026) [102].

[65] Queensland Human Rights Commission, Submission to Department of Justice and Attorney-General *Draft Anti-Discrimination Bill 2024* (22 March 2024).

Clause	Issues
Clause 117 Commission may decide not to deal with complaint	In addition to Commission's previous submissions on this clause: • Under s 70(2) of the Human Rights Act, the commissioner has discretion to refuse to deal with a human rights complaint if the complainant does not comply with the commissioner's reasonable request, has not cooperated in the commissioner's dealing with the complaint, or the commissioner cannot make contact with the complainant. A similar discretion could be adopted in the Draft Anti-Discrimination Bill 2024, although there is a broad discretion under clause 117(1)(f) to decide not to deal with a complaint where 'having regard to all the circumstances, the commissioner considers it is not appropriate to deal with, or continue to deal with, the complaint.'
Clause 122 Commissioner may decide not to deal with complaint	In addition to the Commission's previous submissions on this clause: • Under clause 117(1)(e) the commissioner may decide not to deal with a complaint if the commissioner considers there are insufficient details to indicate the alleged contravention the subject of the complaint. Under clause 122, such a decision means the complaint lapses, and the complainant cannot make a further complaint relating to the alleged contravention the subject of the complaint. In the Commission's view, a decision not to deal with a complaint in these circumstances should not lapse the complaint; • Clause 122 does not lapse complaints dismissed under clause 133 (failure to attend conference).
Clause 135 Use of interpreters and other persons	• Says that a person may be 'helped' at a conciliation conference, which could create confusion regarding the role of an interpreter or other person. Section 162 of the Anti-Discrimination Act provides that a person has the right to 'use' a professional or voluntary interpreter at a conciliation conference. • In practice, the Commission will generally pay for professional interpreters and will not allow a friend to interpret, although they can be a support person. A person providing cultural or other support, as envisaged by clause 135, should be similarly suitable for that role, and for that reason, should only be allowed with the commissioner's consent.
Clause 137 Confidentiality of conciliation conference	• Previously, the Commission recommended amendment of this provision, however, we acknowledge that clause 137 aligns with the confidentiality provision of the Human Rights Act (s 86).

Human rights complaints process (Questions A20 - A22)

Question A20

- Are there any changes that could be made to the process for making human rights complaints to public entities to better align it with other government complaints processes?

Commission position

Public entities should, as far as possible, adopt a uniform and consistent approach to identifying, responding to, and recording human rights complaints, with whole-of-government guidance provided including training for complaint handlers.

127. A human rights complaint is defined as a complaint about an alleged contravention of section 58(1) by a public entity in relation to an act or decision of the public entity.[66] A complaint to the Commission cannot be made until the person has first made a complaint to the public entity.[67]

128. Section 97 of the Human Rights Act requires public entities to include details of human rights complaints received in their annual report. Section 91(2)(j) of the Human Rights Act requires the commissioner to report on the number of human rights complaints received by particular public entities decided by the commissioner in an annual report.

129. As noted by the Harris Rimmer Review, the Human Rights Act does not provide detailed information about the form, nature, content, or other issues relevant to making a human rights complaint to a public entity.

130. In the absence of statutory clarity, government departments have taken different approaches to the identification, management, and recording of human rights complaints. For example, some entities require a complainant to identify that a complaint is a human rights complaint and/or refer specifically to the Human Rights Act or to a specific right before they will deal with the complaint as a human rights complaint. [68]This is consistent with the Commission's observations that:

    - Large departments sometimes only identify a very small number of complaints as human rights complaints.
    - 'Details' of human rights complaints received included in public entity annual reports vary widely, with some providing very scant information.[69]

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[66] *Human Rights Act 2019* (Qld) s 63.

[67] *Human Rights Act 2019* (Qld) s 65(1)(a).

[68] Susan Harris Rimmer, *Placing People at the Heart of Policy: First Independent Review of the Human Rights Act 2019 (Qld)* (Final Report, 30 September 2024) 70-71.

[69] Queensland Human Rights Commission, Submission to Independent Reviewer, *Review of Queensland's Human Rights Act 2019* (8 July 2024) [236]-[241].

131. As we have previously noted,[70] some of these deficits could be addressed if public entities adopted a consistent approach to identifying, responding to, and recording human rights complaints. Whole-of-government guidance, specialist support, and training for complaint handlers on these issues would assist this process.

132. Greater consistency would help build confidence and understanding of human rights in the public sector and help manage community expectations leading to:

- efficiencies in processing complaints
- decisions that achieve better outcomes and cause less harm
- decisions that may be less likely to be challenged on human rights grounds to external complaints agencies, tribunals, or courts
- an improved ability to analyse and compare complaints data to evaluate the operation of the Human Rights Act and identify and address systemic issues.

Question A21

- **Should there be a prescribed process for when a complaint made to a public entity involves more than one public entity?**

Commission position

The Commission:

- briefly outlines some challenges it has encountered in managing complaints involving multiple public entities, and
- supports recommendations that will improve the process for dealing with complaints involving multiple public entities at the outset and observes the benefits for both public entities and complainants.

133. Human rights complaints to the Commission alleging conduct by more than one public entity only arise occasionally. In those cases, the Commission expects the complainant to make an initial complaint to each of the public entities to comply with section 65 of the Human Rights Act.

134. An exception to this is where a complaint is made about a health service provided to a prisoner. Given the limited access of prisoners to complaints processes, the Commission will be satisfied that a complaint to the General Manager under the Corrective Service's complaint processes is sufficient to make a complaint against the prison and a Hospital and Health Service for the purpose of section 65.

135. The Commission is aware of complaints that are difficult, or unable to be resolved, due to the public entity respondent not having the relevant information or authority to address the

[70] Queensland Human Rights Commission, Submission to Independent Reviewer, *Review of Queensland's Human Rights Act 2019* (8 July 2024) 66, Recommendation 3.14; Susan Harris Rimmer, *Placing People at the Heart of Policy: First Independent Review of the Human Rights Act 2019 (Qld)* (Final Report, 30 September 2024) 72.

complainant's concerns. This is usually due to the complexity of identifying decision-makers and responsible entities. For example, to resolve hotel quarantine cases, access to fresh air complaints could require the combined efforts of Hospital and Health Services (to assess whether walks were necessary for health reasons), Queensland Police Service (to supervise walks), and hotel staff (to facilitate open air access). Being clear about who the decision-maker is and what their responsibilities are and communicating this information to affected people can be invaluable for quickly and successfully resolving a complaint.[71]

136. Efficiently managing complaints involving multiple public entities throughout would achieve the same positive outcomes as identified in question A20. An opportunity exists to preserve government resources by ensuring a complaint is dealt with through a single process. This simplifies the complaint pathway so complainants need only lodge one complaint and engage with one coordinating entity, and will help to identify and address issues that genuinely require a multi-system response.

137. The development of guidance for public entities on managing multi-agency complaints would assist. This guidance could include a process to identify relevant stakeholders, allocate responsibility for complaint management, share information (having due regard to legal restrictions and privacy responsibilities), communicate with the complainant, coordinate responses, and maintain records.

Question A22

- Should the HRA specify that a 'human rights complaint' may only be made against a public entity, and not an individual in the employ of, or contracted to, that public entity?

Commission position

The Commission adopts a cautious approach to naming individual respondents to human rights complaints. At times, naming individual respondents can improve overall outcomes of the dispute resolution process. Individual respondents are protected from civil liability. The capacity to name individual respondents should be maintained.

138. As outlined in the Discussion Paper, public service employees, individual staff members, and executive officers are public entities. Under the definition of 'respondent', both an individual public entity and/or the public entity that employs or engages them can be named as a respondent to a human rights complaint to the Commission.[72]

139. The Discussion Paper notes that the ability to name an individual is unusual. For example, in the judicial review context, unless the decision-maker acts as an individual,

[71] See, for example, Queensland Human Rights Commission, *Hotel Quarantine: Unresolved Complaint Report under Section 88 Human Rights Act 2019* (Web Page, 15 October 2020) <https://www.qhrc.qld.gov.au/legal/unresolved-human-rights-complaints>.

[72] *Human Rights Act 2019* (Qld) s 9(1)(i), Sch 1 (definition of 'respondent').

the entity should be named, not the individual. The Discussion Paper also notes that being named in a complaint may be distressing.[73]

140. The Commission agrees it is often appropriate for only the entity to be named and takes a cautious approach to naming individuals.[74] The proportion of finalised complaints naming an individual has remained relatively low over the past 3 years as set out in Figure 3. However, a human rights complaint is different from other legal processes in that its resolution involves an informal process in which any outcomes must be mutually agreed between the complainant and respondent.

Figure 3: Table indicating the number of individually named respondents in Human Rights Act accepted and finalised complaints over the last 3 financial years

Financial Year	Human rights complaints (accepted and closed)	Individual respondent named	Proportion of complaints where individual respondent named
FY23-24	48	16	33.3%
FY24-25	34	8	23.5%
FY25-26	73	20	27.4%

141. The *Public Sector Act 2022* gives public service employees and other prescribed persons protection from civil liability for engaging in conduct in an official capacity. Similar protections from liability can be found in the *Police Service Administration Act 1990* (section 10.5), the *Local Government Act 2009* (section 235), and the *Mental Health Act 2016* (section 797). Human rights complaints to the Commission cannot be referred to a tribunal for determination and do not attract civil liability.

142. Reasons why the Commission may name individual as a respondent to a complaint, if that is what the complainant wants to do, include:

- **Outcomes**: Outcomes through conciliation can include agreeing that the respondent apologise, engage in training, and do or refrain from doing a particular thing. These outcomes might only be achieved through the individual respondent's participation and agreement. Further, complainants may benefit from hearing directly from the individual involved, including understanding the context and reasons for the action or decision, rather than hearing this through a representative for the entity.

[73] *Strategic Review of the Queensland Human Rights Commission and Related Reviews* (Discussion Paper, 30 September 2026) [130].

[74] Queensland Human Rights Commission, *Manual for Managing Complaints under the Human Rights Act 2019* (Internal document, 22 January 2026).

- **Individual participation**: While the commissioner may direct a person to participate in a conciliation conference,[75] this can create issues with confidentiality and privacy, for example, disclosing the complaint to a non-party. Further, a non-party may only be directed to participate in a conciliation conference. A non-party cannot be directed to participate in conciliation processes that do not include conferencing,

- **Educative value**: As conciliation is more directive and advisory than mediation, all individuals involved in the conduct that led to the complaint may have an opportunity to learn about relevant responsibilities and rights.

- **Principles of natural justice**: Naming individual respondents gives them an opportunity to hear from the complainant and be heard, which offers natural justice. If resolution is left to management, individuals may feel excluded, not trusted, and may have less understanding of the outcome.

143. Other reasons may influence the Commission's decision not to name an individual respondent. For example, where the person who made a decision was a junior staff member complying with an established process, this may weigh against not naming them. In these circumstances, the public entity would be in the best position to hear concerns, make changes to process, and best effect those changes across the entity.

144. However, if the decision-maker was a senior employee, minister, or someone with authority, the Commission may agree to name them as a respondent. The benefit here would be that the person best placed to resolve the complaint would hear the complainant's concerns directly.

145. In cases where the subject matter of the complaint is inherently distressing for all parties (such as allegations of police violence, death in hospital or custody) the Commission will generally propose to name the entity, not individuals, as the respondent.

146. The Commission recommends maintaining the capacity to name individual respondents in appropriate human rights complaints. However, individual respondents should be assured that the Commission strives to minimise distress by supporting the respondent to understand the nature, purpose, process, and possible outcomes for the complaint, and adapting conciliation processes, such as whether a conference is held face-to-face. The Commission also discusses the option for individual respondents to have a support person or representative attend a conciliation conference with them.

[75] *Human Rights Act 2019* (Qld) s 81.

Agents and representative complaints (Question A23)

Question A23

- Would a representative action for human rights complaints be necessary or desirable?

Commission position

The Commission supports the introduction of a representative complaint framework under the Human Rights Act.

147. A representative complaint is one made on behalf of a 'class' or 'category' of people who are not named as complainants and are not parties to the proceedings, but may be entitled to the final remedy.

148. In considering whether changes were needed to improve accessibility and utility of representative complaints under the Anti-Discrimination Act, the Building Belonging report identified the following benefits of representative complaints under the Anti-Discrimination Act:

- dealing with one complaint rather than many separate complaints about the same issue
- creating efficiencies
- providing access to justice
- reducing the burden on individual complainants to take the complaint forward themselves
- addressing systemic discrimination.[76]

149. To realise these benefits, the Building Belonging Review recommended amendments to the criteria for bringing a representative complaint which were reflected in amendments to the Anti-Discrimination Act by the *Respect at Work and Other Matters Amendment Act 2024*, which commenced on 1 December 2024.[77]

150. The new test was applied in *SP by PY v State of Queensland* [2026] QCAT 245 in which the tribunal ordered a complaint about a direction to restrict hormone treatment for children diagnosed with gender dysphoria to be dealt with as representing the class of children diagnosed with gender dysphoria who had not commenced receiving the specified hormone therapy.

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[76] Queensland Human Rights Commission, *Building Belonging: Review of Queensland's Anti-Discrimination Act 1991* (Report, July 2022) 181.

[77] See *Anti-Discrimination Act 1991* (Qld), ss 146-152A.

151. While human rights complaints do not go to a tribunal and are unlikely to result in compensation, the outcomes of human rights complaints can bring about systemic change, such as changes in policy or addressing training needs.

152. The ability to make a representative complaint reduces the burden on individual complainants and creates efficiencies for respondents and the Commission who only have to deal with one complaint in relation to conduct affecting a whole class of people. For example:

    - numerous complaints challenging the same directive that required a person to be vaccinated
    - multiple complaints alleging the destruction of property by the same public entity in similar circumstances.

153. On the other hand, representative complaints are typically more complex and may require legal advice and representation, which is harder for complainants to access in a no costs jurisdiction.

154. Ultimately, the Commission supports the introduction of representative complaints under the Human Rights Act. As noted in the Discussion Paper at [134], aligning the frameworks for representative complaints under the Human Rights Act and Anti-Discrimination Act will enhance simplicity and understanding of the provisions. However, providing a simpler framework under the Human Rights Act may assist people wishing to pursue representative complaints, recognising that human rights complaints can only be resolved through conciliation and cannot be referred to a tribunal for determination.

Requirement to engage with public entity (Questions A24 - A25)

Question A24

- Should a complainant be required to engage with the relevant public entity prior to complaining to the QHRC?

Commission position

If the requirement to first raise a complaint with the public entity before making a human rights complaint to the Commission is maintained, consideration could be given to introducing an express prohibition on victimisation to help ensure people can raise concerns without fear of adverse consequences.

155. The Human Rights Act requires that, before a complaint can be made to the Commission, the person must have first complained to the public entity about the alleged contravention. The public entity is then given 45 business days to respond (internal complaint requirement).[78]

[78] *Human Rights Act 2019* (Qld), s 65.

156. In the Commission's submission to the Harris-Rimmer Review, we recommended the internal complaint requirement be repealed, or at a minimum, the timeframe for a response be reduced to 30 business days.[79] This recommendation was based on the:

    - utility of the requirement, given observations that public entities had difficulty identifying human rights complaints in the first place
    - discouraging effect the requirement can have on potential complainants, particularly people who are most vulnerable.

157. The Commission also notes concerns about retaliation after making an internal complaint to the public entity.[80] It is harder to allay this fear, whether real or perceived, when no express prohibition against victimisation is available like there is under the Anti-Discrimination Act,[81] although such conduct is itself likely to indicate a contravention of section 58(1) of the Human Rights Act.

158. However, the Commission acknowledges the value of an internal complaint that allows for the direct, informal, and expeditious resolution of complaints and reduces unnecessary loads on the Commission complaint processes. By requiring agencies to respond to human rights complaints directly, they may build a richer understanding of human rights issues relevant to their work and form proactive, appropriate responses. Where a complaint remains unresolved, the response given by the public entity to the internal complaint can help the Commission to more efficiently identify the issues in dispute and pathways towards resolution.

159. The Commission triages every complaint received to mitigate negative effects of the internal complaint requirement. Where a complaint meets the criteria for priority assessment and an internal complaint has been made, the Commission will consider exercising its discretion under section 65(2) to waive the requirement to wait 45 business days for a response because of exceptional circumstances. If no internal complaint has been made, the complainant is contacted and advised of the internal complaint requirement. Once the complainant has lodged a complaint with the public entity, the Commission will consider waiver of the 45 business days under section 65(2).

160. Drawbacks to the internal complaint requirement could be further addressed through improving the efficacy of public entity human rights complaint processes, considered by the Review in questions A20 and A21.

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[79] Queensland Human Rights Commission, Submission to Independent Reviewer, *Review of Queensland's Human Rights Act 2019* (8 July 2024) [242]-[245] Recommendation 3.15.

[80] The Harris-Rimmer review heard that in many cases, the requirement to make an internal complaint to the public entity created real fear of reprisal or retaliation.

[81] *Anti-Discrimination Act 1991* (Qld) ss 129–131.

Question A25

- Is the timeframe of 45 business days appropriate, including where a complaint engages multiple complaints frameworks?

Commission position

The Commission suggests reducing the timeframe in section 65 of the Human Rights Act to 30 business days.

161. Forty-five business days (approximately 9 weeks) is a significant period during which complainants may continue to endure limitations on their human rights before their matter can proceed to the Commission. This length of time may increase stress and entrench attitudes that make the complaint harder to resolve or may deter people from pursuing a complaint at all.

162. The Commission acknowledges the intention of this timeframe is to provide entities with a reasonable period in which to resolve the complaint, and that it coexists with the ability of the Commission to waive the period in exceptional circumstances.[82]

163. Given these competing factors, the Commission suggests that a reduction of the timeframe to 30 business days (approximately 4 weeks) would provide an appropriate period for agencies to resolve complaints or escalate where necessary. The Commission retains the ability to defer dealing with a complaint if the commissioner considers the public entity has not yet had an adequate opportunity to deal with the complaint.[83]

[82] *Human Rights Act 2019* (Qld) s 65(2).

[83] *Human Rights Act 2019* (Qld) s 70(3).

Form complaint (Questions A26 - A27)

Question A26

- Should there be a prescribed form for human rights complaints for the purposes of the initial complaint to the relevant public entity and any subsequent complaint to the QHRC?

Commission position

We have interpreted the Discussion Paper's reference to a 'prescribed form' as a reference to a form the complainant must use to make a valid complaint to a public entity or to the Commission. The Commission already has a complaint form which we encourage complainants to use, however, it is not required to make a valid complaint under the Human Rights Act.

Having considered the benefits and disadvantages, particularly to people seeking to make a complaint, the Commission considers there should not be a prescribed (mandatory) form to make human rights complaints to public entities or to the Commission.

However, there may be merit in developing a standard (optional) form that may be used for public entity human rights complaints that is aligned with the Commission's optional complaint form, provided it is carefully designed with relevant stakeholders, and the risks of public entities failing to identify human rights concerns in cases where the form is not used are mitigated.

164. Section 65 of the Human Rights Act does not require the initial complaint to a public entity about an alleged contravention to be in a particular form or contain specified content – only that 'the person has made a complaint'.

165. A complaint to the Commission must be in writing, state the complainant's name and address for service, and include enough details to indicate an alleged contravention of the Human Rights Act.[84] A complaint to the Commission does not have to be in a prescribed form, although we encourage use of the form available on our website. The Discussion Paper identifies that a mandatory prescribed form might streamline the management of human rights complaints between public entities and the Commission.[85]

166. In support of this observation, the Commission notes the following:

- A complaint received by the Commission via email did not indicate that a complaint had also been made to the Fair Work Commission. Had the complainant used the Commission's complaint form, they would have been prompted to answer whether they had already complained somewhere else, and we would not have accepted the complaint without jurisdiction.
- Use of a form may improve the quality of information and reduce the length of complaints written with the assistance of Artificial Intelligence (AI), although we note

[84] *Human Rights Act 2019* (Qld) s 67.

[85] *Strategic Review of the Queensland Human Rights Commission and Related Reviews* (Discussion Paper, 30 September 2026) [138].

that agencies with prescribed forms, such as the Fair Work Commission, are still significantly affected by the use of AI.[86]

167. In terms of unintended consequences of a prescribed form, the Commission notes that a prescribed form for making complaints to public entities would shift the onus of identifying a complaint as a human rights complaint from the public entity onto the individual. If a complainant does not use the form, they risk a human rights complaint being missed and does not develop expertise within public entities to identify human rights complaints. This is inconsistent with the object of the Human Rights Act to build a culture in the public service that respects and promotes human rights.

168. Prescribed forms also present challenges for some people, including people with disability, people who have low-literacy, and people for whom English is an additional language or dialect. While some of these concerns may be allayed through the careful design of a prescribed form, producing information in other languages, providing interpreters, and referrals to individual advocacy services, a prescribed form will still be a barrier to accessing complaints processes for some people.

169. The requirement to use a prescribed form to make a right to information access application was recently removed[87] as it imposed an additional step for applicants, who need to locate and download or submit a form, and was criticised as unnecessarily bureaucratic.[88] Even if a form is prescribed, under section 48A of the *Acts Interpretation Act 1954* (Qld), substantial compliance with the form is sufficient.

170. On balance, the benefits of a mandatory prescribed form for public entity complaints and Commission complaints are outweighed by the potential disadvantages. Further, there are other ways of achieving the benefits of a prescribed form, such as implementing screening questions for complaints not made in the existing Commission complaint form and providing information and tools to support the effective use of AI.

171. However, there may be merit in having a standard (optional) form for public entity human rights complaints, which complements the Commission's optional complaint form (noting that the Commission uses a single form for complaints under the Anti-Discrimination Act and Human Rights Act and does not require the complainant to choose which Act they are complaining under). The Commission recommends such a form be:

    - designed in consultation with relevant stakeholders to ensure it is easy to use, accessible, and fit for purpose

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[86] Natalie Gauld, 'Fair Work Commission President reveals "perfect storm" as AI, funding cuts hit' *Proctor*; 5 May 2026; '"Incoherent" AI-generated application wastes Fair Work Commission's time', (online 24 June 2026) <https://www.qlsproctor.com.au/2026/06/incoherent-ai-generated-application-wastes-fair-work-commissions-time/>.

[87] *Right to Information Act 2009* (Qld), s 24 amended by the *Information Privacy and Other Legislation Amendment Act 2023* (Qld) (No 32 of 2023, s 90).

[88] Department of Justice and Attorney-General (Qld), *Review of the Right to Information Act 2009 and Information Privacy Act 2009* (Report, October 2017) 51.

- accompanied by guidance to ensure the form is used appropriately and does not lead to failure to identify human rights concerns in cases where the form is not used.

Question A27

- ### Should a person be able to make an oral complaint to the QHRC in exceptional circumstances?

Commission position

Section 67(2) of the Human Rights Act requires the commissioner to give reasonable help to a complainant to put their complaint in writing where the commissioner is satisfied the complainant needs that help. This provision should be adopted by the Anti-Discrimination Act.

172. Under the Human Rights Act, if the commissioner is satisfied a complainant needs help to put their complaint in writing, the commissioner must give reasonable help to the complainant to put the complaint in writing.[89] No similar provision is available in the Anti-Discrimination Act, although it was adopted in clause 107 of the Draft Anti-Discrimination Bill 2024 as recommended by the Commission's Building Belonging report. The Commission continues to support this alignment.

173. The Commission has previously recommended an additional provision, in both the Anti-Discrimination Act and Human Rights Act, to allow Commission staff, in exceptional circumstances that justify it, to receive and deal with a complaint made orally, and to transcribe such a complaint in written form.[90] This would improve access to justice for people with low literacy, people for whom English is an additional language or dialect, and Aboriginal and Torres Strait Islander complainants.

174. Some other jurisdictions that can receive oral complaints include:

    - The ACT Human Rights Commission who can receive oral complaints if the commission is satisfied on reasonable grounds that exceptional circumstances justify action without a written complaint. The example given of exceptional circumstances is waiting until the complaint is put in writing would make action in response to the complaint impossible or impracticable.[91]
    - The Queensland Ombudsman may receive complaints orally but may decline to investigate an oral complaint until the complaint is put in writing.[92]

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[89] *Human Rights Act 2019* (Qld) s 67(2).

[90] Queensland Human Rights Commission, *Building Belonging: Review of Queensland's Anti-Discrimination Act 1991* (Report, July 2022) 147-153 rec 7.2-7.3; Queensland Human Rights Commission, Submission to Independent Reviewer, *Review of Queensland's Human Rights Act 2019* (8 July 2024) [198]-[202], Recommendation 3.10. [252], rec 3.17, Queensland Human Rights Commission, Submission to Department of Justice and Attorney-General *Draft Anti-Discrimination Bill 2024* (22 March 2024) 44.

[91] *Human Rights Commission Act 2005* (ACT) s 44(4).

[92] *Ombudsman Act 2001* (Qld) s 20.

- The Queensland Health Ombudsman may receive an oral complaint and must make a record of the complaint.[93]

175. Giving help to complainants to make a complaint has implications for the Commission's perceived independence. In practice, if a complainant requires assistance to put the complaint in writing, the Commission will first attempt to refer the complainant to a family member or friend, or to a community legal centre. If this is not possible, the Commission will book a time to meet with the complainant, typically over the phone, to provide assistance.

176. A new provision that permits the Commission to receive oral complaints, in addition to the existing provision under the Human Rights Act to give reasonable help, is unlikely to significantly affect the above approach.

177. Conversely, permitting verbal complaints only in exceptional circumstances may create additional administrative complexity, as it would require assessments of whether the threshold is met and the management of any disputes arising from those decisions. Further, while such a provision may assist some complainants in initiating a complaint, it would not necessarily address the barriers faced by individuals who experience difficulty preparing written material if they later choose to pursue an unresolved matter in a tribunal.

Powers of the Commission (Questions A28 - A30)

Question A28

- Are the QHRC's powers to enquire into human rights complaints sufficient for the purposes of its functions in dealing with and conciliating complaints?

Commission position

Yes. The Commission considers the existing powers to make preliminary inquiries and to ask or direct information be provided about a complaint[94] are sufficient to deal with human rights complaints under the Human Right Act.

Question A29

- Should the complainant's consent be a prerequisite to any referral by the QHRC to another entity?

Commission position

Yes. The Commission considers the complainant's consent about whether their complaint is referred to another entity or is to be dealt with under a different law is appropriate.

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[93] *Health Ombudsman Act 2013* (Qld) s 33.

[94] *Human Rights Act 2019* (Qld) ss 68 and 78.

Referral to other entities - in practice

178. As outlined in the Discussion Paper,[95] section 73 of the Human Rights Act provides that the Commission may refer a human rights complaint to another entity if the commissioner forms the view that the complaint would be more appropriately dealt with by that other entity and the complainant consents. Under section 70, the Commission may refuse to deal with, or continue to deal with, a human rights complaint if the Commission considers a more appropriate course of action is available under another law to deal with the subject of the complaint.

179. These provisions indicate a legislative intention that a complaint should be dealt with by one entity or process. In practice, the Commission relies on section 70 to refuse to deal with a human rights complaint that would be more appropriately dealt with by another entity, rather than utilising referral powers under section 73. The complainant is then free to make their own complaint to the other entity without the Commission having to act as intermediary. The Commission's triage system (outlined under response to question A24) seeks to identify these matters at an early stage, to ensure complainants are not unduly disadvantaged by complaint timeframes of other entities.

Referral of human rights complaint to Anti-Discrimination Act – in practice

180. Under section 75 of the Human Rights Act, the Commission may deal with a human rights complaint under the Anti-Discrimination Act if the commissioner considers the complaint would be more appropriately dealt with under that Act and the complainant consents.

181. Often, a complaint will not indicate whether it is made under the Human Right Act or the Anti-Discrimination Act. If a complaint is assessed as meeting the requirements of both Acts, then the Commission seeks the complainant's written direction. While complainants generally choose the Anti-Discrimination Act so that their matter can be referred to a tribunal and damages awarded, valid reasons for complainants to choose the Human Rights Act. For example, where the complainant seeks a fast resolution that is more easily achieved with the Human Rights Act's more flexible processes; where the complainant seeks to draw attention to systemic issues through an unresolved complaint report with recommendations,[96] or where the complainant is a prisoner who does not want to wait the required 4 months to make a complaint under the Anti-Discrimination Act.[97]

Complainant consent

182. A person's participation in decisions that affect them is a way of safeguarding their autonomy and right to privacy, although limitation of this right may be justified.

183. Even though the Commission rarely refers a complaint to another entity under section 73 and a complainant may have reasons for choosing to make their complaint under one Act

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[95] *Strategic Review of the Queensland Human Rights Commission and Related Reviews* (Discussion Paper, 30 September 2026) [142](a), [143](b).

[96] *Human Rights Act 2019* (Qld) s 88(4).

[97] *Corrective Services Act 2006* (Qld) pt 12A.

over the other, the Commission is of the view that the requirement for consent is appropriate and should be maintained.

184. Under section 70(2) of the Human Rights Act, the commissioner has the discretion to refuse to continue to deal with a human rights complaint if the complainant does not comply with a reasonable request or cooperate with the complaints process. A similar discretion under the Anti-Discrimination Act (as suggested in question A18 in relation to clause 117 of the Draft Anti-Discrimination Bill 2024) would assist to guard against a situation where obtaining consent is overly burdensome.

Question A30

- Should a time limit for the making of a human rights complaint be imposed and, if so, what is the appropriate timeframe and in what circumstances (if any) would it be appropriate to accept an out of time complaint?
- Should this be consistent with the provisions of the Draft Anti-Discrimination Bill 2024?

Commission position

The Commission considers the current discretion under section 70(1)(d) of the Human Rights Act to refuse to deal with a complaint made outside the time limit appropriately balances flexibility and fairness to the parties. Other than aligning the time limit with that under the Anti-Discrimination Act, no amendment is required. A separate test for out of time human rights complaints is unnecessary.

185. Under s 70(1)(d) of the Human Rights Act, the commissioner may refuse to deal or continue to deal with a human rights complaint if the complaint was not made or referred to the commissioner within one year of the alleged contravention.

186. The Commission has not experienced any difficulty with this provision however supports aligning the timeframes with the Anti-Discrimination Act (in the Draft Anti-Discrimination Bill 2024 this is 2 years from the date of the alleged contravention or, if the complainant was a child at the time, when the child turns 18 years old).

187. The higher threshold under clause 117(2) of the Draft Anti-Discrimination Bill 2024 for dealing with out-of-time complaints is warranted, given that such complaints may attract civil liability and respondents are entitled to certainty and protection from potential prejudice and injustice.

Progression of human rights complaints (Question A31)

Question A31

- Do you support alignment, where appropriate, of the complaints processes under the Human Rights Act with the changes proposed

to the Anti-Discrimination Act, while the complaint is being dealt with by the Qld Human Rights Commission?

Commission position

The Commission supports alignment of the human rights complaints framework, where possible, with the complaints framework set out in Part 9 of the Draft Anti-Discrimination Bill 2024 (Qld).

188. The Commission supports alignment and consistency in how it deals with complaints to the extent possible and appropriate. Comments on the complaints framework set out in Part 9 of the Draft Anti-Discrimination Bill 2024 are provided in response to Question A18.

189. Differences to maintain between the Human Rights Act and Anti-Discrimination Act include:

- the test for deciding whether to deal with a complaint made outside the complaint period, as discussed in Question A30
- discretion to not deal with a complaint where the commissioner considers the subject of the complaint has been, or would be, more appropriately dealt with by 'a court or tribunal' under clause 117(1)(b) and (c) of the Draft Anti-Discrimination Bill 2024, whereas s 70(1)(a) and (b) of the Human Rights Act is broader.[98]

[98] The Human Rights Act provides the commissioner with a discretion to not deal with a complaint if 'there is a more appropriate course of action available', or the commissioner considers the subject of the complaint has been appropriately dealt with by 'another entity'.

Action on dealing with human rights complaint (Question A32)

Question A32

- Should there be any changes to the reporting process where a human rights complaint is unable to be resolved at conciliation?

Commission position

The Commission agrees with the proposal at [151] of the Discussion Paper that, where recommendations are made in an unresolved complaint report:

- Within a specified timeframe, the respondent is required to respond to the recommendation.
- Within a specified timeframe(s), the respondent is subsequently required to report on any action being taken in relation to the recommendation.
- The Commission must/may publish on its website:
  - the substance of the complaint and recommendations
  - the respondent's response
  - the respondent's subsequent report(s) on action taken in relation to the recommendation.

190. A complaint to the Commission under the Human Rights Act does not result in a determination of facts or findings of wrongdoing. Resolution of the complaint relies on agreement between the parties reached through conciliation processes facilitated by the Commission. If agreement cannot be reached, the complaint is unresolved. For all matters, the Commission provides parties with an unresolved complaint report that must include the substance of the complaint and actions taken to try and resolve the complaint.[99]

191. An unresolved complaint report *may* include details of action the commissioner considers the respondent should take to ensure its acts and decisions are compatible with human rights (recommendations).[100] While de-identified information about the complaint may be published and recommendations may be included in the Human Rights annual report, there are no statutory responsibilities on the public entity to respond, and no requirement for the Commission to monitor or report on implementation of recommendations.

192. The Commission has published 10 section 88 reports with recommendations under the Human Rights Act,[101] and has made a further 4 that have not been published. **Appendix E** provides a short description of each published report.

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[99] *Human Rights Act 2019* (Qld) s 88.

[100] *Human Rights Act 2019* (Qld) s 88(4).

[101] Queensland Human Rights Commission, *Unresolved Human Rights Complaints* (Web Page, 10 September 2026) <https://www.qhrc.qld.gov.au/legal/unresolved-human-rights-complaints>.

193. Making recommendations is one tool available to the commissioner to promote an understanding and acceptance of human rights in Queensland and help build a culture in the Queensland public sector that respects and promotes human rights. The commissioner only makes recommendations in a small number of complaints in accordance with published guidelines.[102]

194. In matters where the commissioner makes recommendations, the Commission has carefully reviewed the material and identified ways the public entity can improve their human rights practices, including to avoid similar allegations arising. Publication of this information can provide guidance to other public entities on how to improve their own practices and processes and comply with human rights obligations. The capacity to make recommendations also empowers complainants, and hopefully all parties, to know that their time and effort has had a positive effect, even if the complaint itself was unresolved.

195. As noted by the Discussion Paper [150], a report with recommendations may suggest that the Commission has taken a particular view about the respondent's conduct. This accords with the Commission's experience of proposed recommendations often meeting resistance from public entities during the adverse comment process.[103]

196. As Commission processes under the Human Rights Act have matured, the Commission has revised its approach over the last 18 months to encourage engagement with the process and enhance effectiveness of recommendations by:

- **Educational purpose**: On the Commission website and in reports with recommendations, note that the purpose of the report is to educate and build a public sector culture that respects human rights and does not mean human rights have been unlawfully limited.
- **Short format**: For appropriate matters, adopt a shorter format for reports and focus on the recommendations to support future compliance, rather than an outline of facts in dispute.
- **Discussions**: Invite the public entity to meet with the Commission to discuss draft recommendations. This will ensure the public entity's context and operational requirements are considered and other barriers to achieving the intention of the draft recommendations minimised.
- **Resources**: Identify resources and case examples that may assist public entities implement recommendations.
- **Timeframes**: Provide public entities with a timeframe that includes follow ups by the Commission on steps taken by the respondent to implement recommendations, and whether the Commission can be of any assistance. Engagement by the public entity in this process would be voluntary.

197. The Commission supports legislative changes requiring a public entity to respond to

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[102] Queensland Human Rights Commission, *Publishing Information About a Human Rights Complaint Guideline* (Guideline, 11 September 2023); *Human Rights Act 2019* (Qld) ss 90, 91(3).

[103] *Human Rights Act 2019* (Qld) s 93.

recommendations of the final report within a specific timeframe, and provide implementation updates that may be published or reported on by the Commission as proposed by the Discussion Paper at [151]. This approach is similar to how recommendations of the Coroners Court are dealt with in Queensland,[104] and under law in jurisdictions such as South Australia and Victoria.[105]

198. The Discussion Paper at [151] proposes that the Commission be *required* to publish the substance of a complaint, recommended action, responses, and implementation actions on its website. The Commission has a published guideline to support decisions of when to publish information about human rights complaints under section 90.[106] The guideline notes that unresolved complaint reports containing recommendations will generally be published in full, including the identity of individuals involved.

199. However, there may be some circumstances where publishing the report may not be appropriate; for example, where publication may result in harm to individuals despite de-identification, or may have impacts for the public entity that are inconsistent with building a culture of human rights in the public sector. The Commission therefore supports the inclusion of a provision giving discretion not to do so in certain circumstances, such as an unjustified limitation on human rights.

200. The Commission supports a clear mandate to publish information about recommendations and their outcomes, but the decision to do so should remain discretionary.

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[104] Department of Justice (Qld), Queensland Government response to coronial recommendations (Web Page, 21 August 2023) <https://www.justice.qld.gov.au/about-us/services/general-counsel/legal-services-coordination-unit/queensland-government-response-to-coronial-recommendations>.

[105] *Coroners Act 2003* (SA) ss 25 (4)-(8); *Coroners Act 2008* (Vic) s 72.

[106] Queensland Human Rights Commission, *Publishing Information About a Human Rights Complaint Guideline* (Guideline, 11 September 2023).

Part B – Further Review of the Human Rights Act 2019

Recommendations

201. The structure of this submission and recommendations follows the questions asked in the Discussion Paper. The Commission has not responded to all questions. Rather, we have responded to questions where we can provide information and perspectives beyond our previous outputs and submissions to assist the Review Team's consideration of relevant issues.

202. A summary of the Commission's responses and recommendations is at **Appendix A**.

Considerations underpinning the Commission's submission

203. The Commission's submission in relation to Part B is underpinned by the following considerations.

Human rights are worthy of legislative protection

204. The foreword to the Discussion Paper recognises the need for all people in Queensland, especially the most vulnerable, to be protected by a workable and effective human rights framework.[107]

205. The modern idea of human rights is based on the adoption of the *Universal Declaration of Human Rights* in 1948. Australia has since accepted legal obligations for the protection of human rights under a number of international human rights treaties. Many rights are already domestically protected in legislation (for example, the *Anti-Discrimination Act 1991*) or in long-held principles of common law (for example, right to a fair trial). The aim of Queensland's Human Rights Act is to consolidate and establish statutory protections for certain rights, joining existing oversight mechanisms and administrative law obligations such as right to information, judicial review, the ombudsman and the Crime and Corruption Commission.[108]

206. Legislative protection of human rights should be valued and preserved because it:

> recognises the inherent dignity and worth of human beings. It recognises that the equal and inalienable human rights of all persons are essential in a democratic and inclusive society that respects the rule of law.[109]

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[107] *Strategic Review of the Queensland Human Rights Commission and Related Review*s (Discussion Paper, 30 September 2026) i.

[108] Explanatory Notes, Human Rights Bill 2018 (Qld)1-2; Queensland Parliament, *Parliamentary Debates*, Legislative Assembly, 31 October 2018, 3184 (Yvette D'Ath, Attorney-General and Minister for Justice).

[109] Queensland Parliament, *Parliamentary Debates*, Legislative Assembly, 31 October 2018, 3184 (Yvette D'Ath, Attorney-General and Minister for Justice); See also *Human Rights Act 2019* (Qld) Preamble.

The Human Rights Act utilises the dialogue model for the protection of human rights

207. When developing the Human Rights Act, a number of different models were considered. These included a constitutional model, which allows for judicial review of legislative and executive action; a representative model, which relies on expanded parliamentary scrutiny mechanisms; and an education and awareness model, which would attempt to improve understanding of existing means of enforcing human rights, for example, through common law.[110]

208. Ultimately, Parliament decided to adopt a dialogue model, that is, a statutory framework, which sets out the human rights to be protected and facilitates dialogue between each arm of government (the legislature, executive and judiciary) about human rights by imposing particular obligations on them. The dialogue model receives broad support on the basis that it strikes the right balance between protecting individual rights and freedoms and respecting parliamentary sovereignty.[111]

209. Features of Queensland's dialogue model includes obligations on:

- the executive to consider human rights and act in a manner compatible with human rights and allows for complaints to be conciliated where they do not;
- the legislature to scrutinise and discuss human rights impacts of legislation;
- the courts to interpret legislation compatibly with human rights and permits them to raise with parliament any legislation that cannot be.

Figure 4: Diagram of the dialogue model



210. The dialogue that occurs as a result of these mechanisms is in turn expected to penetrate all levels of government decision-making and improve the understanding and acceptance of human rights, and as a result, securing their better protection. This is reflected in the objects of the Human Rights Act, which are to promote a dialogue about the nature, meaning, and scope of human rights, to protect and promote human rights, and to build a culture in the public sector in Queensland which respects and promotes human rights.[112]

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[110] Explanatory Notes, Human Rights Bill 2018 (Qld) 9.

[111] See for example Parliamentary Joint Committee on Human Rights, Parliament of Australia, *Inquiry into Australia's Human Rights Framework* (Report, May 2024) 9.8.

[112] *Human Rights Act 2019* (Qld) s 3.

211. The value of the dialogue model is derived from the whole of the model's parts, rather than from any one mechanism in isolation. Removing some of these mechanisms may weaken feedback loops which underpin the model. In developing this submission, the Commission has therefore had regard to how potential changes to the Human Rights Act may affect the conceptual framework on which the legislation was developed.

The model for human rights protection was carefully selected and adapted from like jurisdictions

212. The Commission modelled the Human Rights Act on the *Charter of Human Rights and Responsibilities 2006* (Vic) and the *Human Rights Act 2004* (ACT).[113] It was built on a 'wealth of experience' from those jurisdictions, as well as other common law human rights jurisdictions such as the United Kingdom and New Zealand, and tailored to our system of government.[114]

213. Departures from Victoria and the ACT were the result of careful consideration of the experience of those provisions and judicial commentary. For example, 'compatible with human rights' is defined in section 8 of the Human Rights Act, to make it clear that the court must apply a proportionality analysis when interpreting a statutory provision, in an effort to avoid the difficulties confronted in applying the interpretive provision in the Victorian Charter discussed in *Momcilovic v The Queen* (2011) 245 CLR 1.

214. Developing a human rights culture takes time. The Human Rights Act is still a relatively recent enactment, and key elements of the model are still being clarified.

215. The Commission has considered the Discussion Paper questions from the perspective that any departures from like jurisdictions should be justified and incremental.

Limitations on human rights (Question B1)

Question B1

- Should any human rights be expressed as absolute and not subject to any limitation?

Commission position

To align the Human Rights Act with Australia's obligations under international law, the Commission supports inclusion of a legislative note to section 13(2)(a) recognising that limits on rights, or aspects of rights, recognised as absolute at international law will never be justified under section 13.

216. The Discussion Paper asks whether any human rights in the Human Rights Act should be expressed as absolute and not subject to any limitation.

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[113] Explanatory Notes Human Rights Bill 2018 (Qld) 11.

[114] Queensland Parliament, *Parliamentary Debates*, Legislative Assembly, 26 February 2019, 353 (Yvette D'Ath, Attorney-General and Minister for Justice).

217. Under international law, certain human rights are absolute and cannot be limited for any reason. Rights recognised as absolute under the *International Covenant on Civil and Political Rights* (ICCPR) include freedom from torture and other cruel, inhuman or degrading treatment or punishment (article 7), freedom from slavery and servitude (article 8(1) and (2)), freedom from imprisonment for inability to fulfil a contractual obligation (article 11), prohibition against the retrospective operation of criminal laws (article 15), right to recognition before the law (article 16), freedom to have or adopt a religion or belief (but not to manifest that religion or belief) (article 18(1) and (2)), and freedom of opinion (article 19(1)).

218. Under Queensland's Human Rights Act, all human rights protected by that Act may be subject under law to reasonable limits that can be demonstrably justified under section 13. A factor relevant to this consideration is 'the nature of the human right'.[115] In practice, there are no circumstances in which a limitation on a right recognised as absolute in international law could ever be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

219. In *Bobeldyk v Moreton Bay City Council* [2026] QSC 27, the Commission submitted that the nature of the right to protection from being treated or punished in a cruel, inhuman or degrading way[116] means that no limit can ever be demonstrably justified under section 13.[117] While Smith J did not engage with this submission directly, he found that the right to protection from degrading treatment had been unlawfully limited and did not undertake further analysis under section 13 – rather stating that he did not consider 'there was any justification for the manner of the exercise of these powers'.[118] This was consistent with the Commission's position (and the position at international law) that when treatment meets the threshold of being degrading it cannot be justified.

220. The right to protection from torture and cruel, inhuman, or degrading treatment is defined narrowly in international law – reflecting its absolute nature – and this narrow scope is reflected in domestic jurisprudence on the scope of the right. Actions that could otherwise be justified (such as reasonable use of force or the degradation or humiliation inherent in punishment) will not limit the right. Actions only fall within the scope of the right because they cannot be reasonably justified.

221. To align the Human Rights Act with international law, the Commission supports inclusion of a legislative note to section 13(2)(a) that recognises rights, or aspects of rights, recognised as absolute at international law can never be justifiably limited under section 13.[119]

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[115] *Human Rights Act 2019* (Qld) s 13(2)(a).

[116] *Human Rights Act 2019* (Qld) s 17(b).

[117] *Bobeldyk v Moreton Bay City Council* [2026] QSC 27 [451].

[118] *Bobeldyk v Moreton Bay City Council* [2026] QSC 27 [482].

[119] This approach is similar to the Parliamentary Joint Committee on Human Rights, Parliament of Australia, *Inquiry into Australia's Human Rights Framework* (Report, May 2024) [9.33].

222. If this approach is adopted, careful consideration should be given to whether specific rights should be listed. The Commission suggests that one or 2 examples of rights that are clearly established as absolute[120] could be included as illustrative, rather than attempting to cover all absolute rights. This would mean consideration of s 13(a) would be informed by any future developments in international law and Australia's international legal obligations.

Should there be additional human rights? (Questions B3 – B4)

Question B3, B4

- Should new human rights be included in the HRA to protect victims of crime?
- If any new human rights are included, are there any unintended consequences in how those rights would operate alongside existing rights?

Commission position

The Victims' Commissioner's report on the Charter of Victims' Rights Review, due in December 2026, and the government's response may provide guidance on whether new human rights under the Human Rights Act are needed to protect victims of crime.

Rights currently protected by the Human Rights Act are drawn from international human rights treaties that Australia has ratified or supported. There are advantages to any additional human rights also finding their basis in international human rights law.

223. The Commission acknowledges the human rights of victim-survivors of crime, and the valuable role the Human Rights Act has in protecting their rights.

224. The Commission's submission to the Harris Rimmer Review outlined existing protections for victims of crime under the Human Rights Act.[121]

225. The human rights of victims of crime tend to be overlooked, or considered competing or secondary, to the rights of offenders, who have rights in relation to criminal proceedings, punishment, and liberty.[122]

226. The rights of victim-survivors and the rights of offenders are not in competition. Everyone has human rights. Victim-survivors have the right to trauma-informed processes, access

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[120] See, for example, the position of the Australian Government: Attorney-General's Department (Cth), 'Absolute rights: Public Sector Guidance Sheet' (Web Page) <https://www.ag.gov.au/rights-and-protections/human-rights-and-anti-discrimination/human-rights-scrutiny/public-sector-guidance-sheets/absolute-rightshttps://www.ag.gov.au/rights-and-protections/human-rights-and-anti-discrimination/human-rights-scrutiny/public-sector-guidance-sheets/absolute-rights>.

[121] Queensland Human Rights Commission, Submission to Independent Reviewer, *Review of Queensland's Human Rights Act 2019* (8 July 2024) [262]-[267].

[122] *Human Rights Act 2019* (Qld) ss 29-30, 31-35.

to information about processes or reasons for a decision, and to reasonable adjustments because of a protected attribute. These can be satisfied concurrently with offender rights to fair hearing and humane treatment when deprived of liberty. For example, providing prisoners with access to rehabilitation while in custody may help reduce offending in the future and improve victim-survivor safety.

227. Where the rights of offenders and victims' conflict, such as the right of offenders to liberty and the right of victims to security, the goal is to preserve human rights to the maximum extent possible, having regard to the compatibility framework set out in the Human Rights Act. That framework requires a person deciding whether a limit is justifiable to consider factors such as the extent of the limitation, the purpose of the limitation, and whether there are less restrictive ways of achieving the purpose.[123]

228. Rights protected by the Human Rights Act are drawn from international human rights treaties that Australia has ratified or supports.[124] These rights have been carefully formulated by the international community and are regarded as indivisible and interdependent, meaning one set of rights cannot be enjoyed fully without the other, and all rights have equal status and cannot be positioned in a hierarchy.[125] Rights in relation to criminal proceedings, punishment, and liberty are from the *International Covenant on Civil and Political Rights*, and were already embedded in common law and Queensland legislation before receiving express recognition under the Human Rights Act. Inclusion of additional human rights to protect victim-survivors of crime should similarly find their basis in international law so that international human rights obligations are not unintentionally offended.

229. The Commission has worked with the Victims' Commissioner, whose role commenced in mid-2024, to ensure a comprehensive and effective complaints framework for victim-survivors of crime. Since February 2025, the Victims' Commissioner has been reviewing the *Charter of Victims' Rights* to assess how well it meets the diverse needs of victims of crime in Queensland. The report is due in December 2026.[126] This report and the Government's response will be relevant to whether changes are needed to the Human Rights Act for victim-survivor rights.

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[123] *Human Rights Act 2019* (Qld) s 13.

[124] Explanatory Notes, Human Rights Bill 2018 (Qld) 1–5.

[125] Australian Human Rights Commission, *An Introduction to Human Rights* (Web Page) <https://humanrights.gov.au/?a=68650>; United Nations, Office of the High Commissioner for Human Rights, *What are Human Rights?* (Web Page) < https://www.ohchr.org/en/what-are-human-rights>.

[126] Office of the Victims' Commissioner, *Charter of Victims' Rights Review* (Web Page) <https://www.victimscommissioner.qld.gov.au/our-work/review-of-the-charter-of-victims-rights>.

Scrutiny of new legislation (Question B5)

Question B5

- How has the process of scrutinising new legislation under the Human Right Act operated, and are any improvements required?

Commission position

To improve the quality of statements of compatibility and the process, we recommend that statements of compatibility include a description of any consultation undertaken in relation to the Bill and, where no consultation has occurred, an explanation for this.

We support a requirement in the Human Rights Act that requires the Minister to respond to any deficiencies in the statement of compatibility identified by the portfolio committee.

Consistent with the Victorian approach, we suggest that portfolio committees be required to consider human rights certificates and report to parliament, if they consider subordinate legislation to be incompatible with human rights.

Framework for the scrutiny of new legislation

230. Part 3, Division 1 of the Human Rights Act requires Bills to be accompanied by statements of compatibility in order to 'elevate the consideration of human rights in legislative debate and to increase the transparency and accountability of Parliament.'[127] The statement of compatibility should do more than merely assert compatibility or otherwise. 'It should provide detailed reasons and justification in respect of any human rights that may be impacted by the Bill …'.[128]

231. The intention is to encourage dialogue about human rights between members of parliament by requiring:

    - members to prepare statements of compatibility for Bills which state whether, in the member's opinion, the Bill is compatible with human rights and if so, how
    - the relevant portfolio committee to report to parliament about the statement of compatibility and whether the Bill is compatible with human rights.[129]

232. Ministers responsible for subordinate legislation must prepare and table a human rights certificate with the legislation and the portfolio committee *may*, in examining the legislation, consider the human rights certificate.[130] The Legislative Assembly may refer non-Queensland law to a portfolio committee which must consider and report about whether the law is not compatible with human rights.[131]

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[127] Explanatory Notes, Human Rights Bill 2018 (Qld) 29.

[128] Explanatory Notes, Human Rights Bill 2018 (Qld) 28.

[129] *Human Rights Act 2019* (Qld) ss 38–39.

[130] *Human Rights Act 2019* (Qld) s 41.

[131] *Human Rights Act 2019* (Qld) s 40.

233. In Queensland's unicameral parliamentary system, the portfolio committee process provides the only opportunity to scrutinise statements of compatibility and hold parliament accountable to passing laws that are compatible with human rights. Statements of compatibility provide the starting point for portfolio committees' assessment of a Bill's compatibility with human rights.

Statements of compatibility

234. There has been limited monitoring and scrutiny of the performance of the obligations under Part 3, Division 1.[132]

235. While templates are available,[133] the Discussion Paper observes at [183](c) that statements of compatibility vary in content and length.

236. Some portfolio committees have commented on the substance of statements of compatibility. For example:

- The statement of compatibility for the Land Valuation Amendment Bill 2023 'contained an insufficient level of information to facilitate understanding of the Bill in relation to compatibility with human rights'.[134]
- The statement of compatibility for the Tobacco and Other Smoking Products (Vaping) and Other Legislation Amendment Bill 2024 should have provided 'further analysis of the human rights issues …'.[135]
- The statement of compatibility for the second Making Queensland Safer Bill was considered satisfactory, however the committee observed that 'while the statement of compatibility recognises there may be less restrictive options to achieve the purpose of the Bill, it does not provide an analysis of a "less rights restrictive" approach.'[136]

Commonwealth approach

237. The Parliamentary Joint Committee on Human Rights was established under the *Human Rights (Parliamentary Scrutiny) Act 2011* in March 2012 to enhance understanding of,

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[132] See, for example, Susan Harris Rimmer, *Placing People at the Heart of Policy: First Independent Review of the Human Rights Act 2019 (Qld)* (Final Report, 30 September 2024); Annual reports about the operation of the Act during the year required by s 91 available from Queensland Human Rights Commission, *Human Rights Act Annual Reports* (Web Page, 24 August 2026) <https://www.qhrc.qld.gov.au/our-work/human-rights-act-annual-reports>.

[133] Queensland Government, *Human Rights Certificates and Compatibility Statements* (Web Page, 25 September 2020) < https://www.forgov.qld.gov.au/service-design-and-delivery/deliver-public-services/comply-with-the-human-rights-act/human-rights-certificates-and-compatibility-statements>.

[134] Transport and Resources Committee, Queensland Parliament, *Land Valuation Amendment Bill 2023* (Report No 44, 57th Parliament, November 2023) 3.

[135] Health, Environment and Agriculture Committee, Queensland Parliament, *Tobacco and Other Smoking Products (Vaping) and Other Legislation Amendment Bill 2024* (Report no. 10, August 2024) 5.

[136] Justice, Integrity and Community Safety Committee, Queensland Parliament, *Making Queensland Safer (Adult Crime, Adult Time) Amendment Bill 2025* (Report No 9, May 2025) 26.

and respect for, human rights in Australia, and to ensure appropriate recognition of human rights issues in legislative and policy development.

238. All statements of compatibility that accompany federal Bills are reviewed by the Joint Committee who are, as a result, well positioned to scrutinise their quality and effectiveness, including overarching analysis in annual reports. For example, in its 2017–2018 annual report, the Joint Committee identified common issues in drafting statements of compatibility that made the Joint Committee's task of analysing human rights compatibility more difficult.[137]

239. The Joint Committee has published 2 guidance notes that deal with expectations for statements of compatibility and key human rights compatibility issues in relation to provisions that create offences and civil penalties,[138] as well as a guide to human rights that provides an introduction to the key human rights protected by human rights treaties relevant to the Joint Committee's assessment of legislation.[139]

240. In its *Inquiry into Australia's Human Rights Framework*, the Joint Committee acknowledged that while the quality of statements of compatibility has generally improved over time, the quality of individual statements can vary dramatically. It recorded concerns of submitters that the process is ineffective, and statements do not accurately reflect the human rights limited by legislation and/or reach inaccurate conclusions regarding compatibility.[140]

241. To address these concerns, the Joint Committee recommended measures that would embed public servant consideration of people's rights and freedoms at the very beginning of policy and legislative development, which in turn will affect the quality of statements of compatibility.[141]

242. The Joint Committee also recommends the statement of compatibility contains a description of the nature of any consultation undertaken on the Bill, and if no consultation

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[137] Parliamentary Joint Committee on Human Rights, Parliament of Australia, *Annual Report 2018* (Report 2019) 35 <https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Other_work_of_the_committee/Annual_reports/Annual_Report_2018>.

[138] Parliamentary Joint Committee on Human Rights, Parliament of Australia, *Guidance Note 1: Expectations for Statements of Compatibility* (Web Page, November 2021) <https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Committee_resources/Guidance_note_1>; Parliamentary Joint Committee on Human Rights, Parliament of Australia, *Guidance Note 2: Offence Provisions, Civil Penalties and Human Rights* (Web Page, December 2014) <https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Committee_resources/Guidance_note_2>.

[139] Parliamentary Joint Committee on Human Rights, Parliament of Australia, *Guide to Human Rights* (Web Page, June 2015) <https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Committee_resources/Guide_to_Human_Rights>.

[140] Parliamentary Joint Committee on Human Rights, Parliament of Australia, *Inquiry into Australia's Human Rights Framework* (Report, May 2024) [8.70]–[8.75].

[141] Parliamentary Joint Committee on Human Rights, Parliament of Australia, *Inquiry into Australia's Human Rights Framework* (Report, May 2024) Recommendation 11 [9.72].

took place, explain why.[142] Consultation can reveal possible impacts and likely effectiveness of the Bill on a particular group. It is therefore appropriate the adequacy of consultation by government should be assessed by the Joint Committee.

Opportunities for improving Queensland statements of compatibility process

243. Some aspects of the Commonwealth approach may assist in improving the quality and effectiveness of statements of compatibility and the portfolio committee process. These include:

- using portfolio committee annual reports to raise human rights implications of laws introduced, quality of statements of compatibility, and/or identify overall themes or areas for improvement
- producing parliamentary guidance notes to address issues identified
- introducing measures that embed public servants' consideration of people's rights and freedoms at the very beginning of policy and legislative development.

244. The Commission agrees that statements of compatibility should include a description of any consultation undertaken on the Bill and, where no consultation has occurred, an explanation of reasons. The Commission otherwise considers the requirements set out in section 38(2) for statements of compatibility to be appropriate.

245. Improvements in quality and effectiveness could also be achieved by requiring drafting officers to consult relevant bodies and/or an organisation with expertise on the contents of the statement or certificate,[143] and requiring statements and certificates to include the results of any consultation undertaken to inform their content as well as development of the Bill.

246. However, the Commission does not consider it helpful or appropriate to require uniformity in the content or length of statements of compatibility or human rights certificates (for example, by imposing a prescribed form). Bills vary in length and complexity as do the breadth of issues relevant to a compatibility assessment, and statements and certificates must remain flexible in form and length.

Responding to concerns raised by the portfolio committee

247. The Discussion Paper at [183](b) identifies that no requirement exists for a minister or member proposing a Bill to respond in any way to concerns raised by the portfolio committee.

248. Under section 107 of the *Parliament of Queensland Act 2001* (Qld), if the report of a portfolio committee recommends the government or minister take a particular action, the

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[142] Parliamentary Joint Committee on Human Rights, Parliament of Australia, *Inquiry into Australia's Human Rights Framework* (Report, May 2024) [9.88], Recommendation 14 [9.89].

[143] The Commission notes the value and effectiveness of public consultation on Bills during the committee process can be undermined by short timeframes in which to provide submissions (often between 3-5 business days).

minister must provide the Assembly with a response that outlines whether or not the recommendations will be adopted and any relevant timeframes.[144]

249. The Commission suggests that the Human Rights Act could similarly require the minister to respond to any deficiencies in the statement of compatibility identified by the portfolio committee. For transparency and public understanding, responses could be incorporated into an amended statement of compatibility or addendum or at least published with the legislative history on the Office of the Queensland Parliamentary Counsel website.

Human rights certificates

250. Portfolio committees are not *required* to consider the human rights certificate, comment on the human rights compatibility of subordinate legislation, or conduct community consultation when scrutinising subordinate legislation. It appears deficiencies in human rights certificates are rarely identified.[145]

251. Given subordinate legislation may have significant human rights implications[146] the Commission suggests that portfolio committees be required to consider human rights certificates and report to parliament if it considers subordinate legislation to be incompatible with human rights. This is the approach of the Victorian Charter to subordinate legislation.[147]

252. The Commission would welcome any opportunity to contribute to processes to develop a better, shared understanding of human rights certificate effectiveness and identify any issues for reform.

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[144] *Parliament of Queensland Act 2001* (Qld) s107.

[145] For example, Justice, Integrity and Community Safety Committee, Queensland Parliament, *Annual Report 2024-25* (Report No 22, 58th Parliament, October 2025) 8 states that were no human rights issues identified in the 67 pieces of subordinate legislation examined.

[146] For example, under the Youth Justice (Circuit Breaker) Amendment Bill 2026 (Qld), criteria for determining suitability for a circuit breaker condition (cl 13 inserting ss 52AC and cl 20 inserting 206C), the type of information that could be recorded about the electronic monitoring of a child (cl 25 inserting s 282ZE), and searches, discipline, detention and surveillance in circuit breaker sites (cl 28(5)) were all a matter for regulation.

[147] *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 30, note.

Override declarations (Questions B6)

Question B6

- Should the override provisions of the HRA be repealed?

Commission position

The Commission outlines benefits of retaining the override provision in the Human Rights Act.

To enhance human rights scrutiny and discussion of a proposed provision subject to an override declaration, the Review might consider whether the portfolio committee responsible for examining the Bill be expressly required to report to the Assembly about a declaration of incompatibility under section 39.

253. The preliminary view of the Review is that the override provision should be repealed. In reaching this position, it takes into account override declarations that have been made and commentary on the provision in the Harris Rimmer Review and in other jurisdictions. The Discussion Paper notes that the override provision is not necessary to preserve parliamentary sovereignty, and that using overrides undermines scrutiny, accountability, and dialogue about human rights in relation to those legislative provisions.[148]

254. The Commission agrees with the Review's analysis. Our previous submissions to the Harris Rimmer Review also supported the removal of the override provision.[149] That was based on the understanding that while parliament may make laws that cannot be interpreted compatibly with human rights, parliament would not set out to do so.[150] However, increased exposure to override declarations in recent practice has caused us to reconsider our position in relation to override declarations for the following reasons:

- **Visibility, transparency, and public discussion**: Override declarations increase visibility and transparency of laws that parliament intends to be incompatible with human rights, although the statement of compatibility must still set out if the Bill is not compatible with human rights. This in turn facilitates public discussion and scrutiny through the parliamentary committee processes, which may raise concerns where an override might be inappropriate.
- **Clarity:** Override declarations provide clarity and support efficient use of court and tribunal resources by putting parties on notice of the likely futility of human rights arguments and enabling courts and tribunals to deal with those arguments quickly. Without an override declaration, the Commission may be put in the position of having to determine whether a later provision or law impliedly repeals the operation of the

[148] *Strategic Review of the Queensland Human Rights Commission and Related Reviews* (Discussion Paper, 30 September 2026) [184]-[195].

[149] *Strategic Review of the Queensland Human Rights Commission and Related Reviews* (Discussion Paper, 30 September 2026) [172]-[178].

[150] This also underpins the basis of the recommendation not to include an override provision in an Australian human rights framework: Parliamentary Joint Committee on Human Rights, Parliament of Australia, *Inquiry into Australia's Human Rights Framework* (Report, May 2024) [9.36]. See also discussion at [7.77]–[7.83].

Human Rights Act, making the assessment of human rights complaints difficult and burdensome.

- **Overrides subject to expiry:** The sunset clause imposed by section 45(2) of the Human Rights Act, of no more than 5 years, signals Parliament's intention that provisions that are incompatible with human rights should be reviewed at this time, and incompatible laws should be time limited and not persist indefinitely.

255. While override declarations limit opportunities for courts to discuss human rights in relation to those provisions, this relies on the issue making its way to court, which in turn depends on available legal pathways to raise human rights and the capability of children and adult offenders (the focus of current override provisions) and legal representatives to make the argument.

256. If override declarations are maintained, to enhance human rights scrutiny and dialogue about the provision as far as possible, section 39 could be amended to expressly require the portfolio committee to report to the Assembly about a declaration of incompatibility.

Interpretation of laws (Questions B7 – B11)

Question B7, B8, B9

- Is it an appropriate function of the Supreme Court of Queensland to make declarations of incompatibility which have no effect on the validity of a statutory provision?
- Is it appropriate for the 'dialogue model' between the courts and Parliament to remain?
- Should sections 53 to 57 of the Human Rights Act be repealed?

Commission position

The Commission supports maintaining declarations of incompatibility, given its place in the dialogue model and its potential for facilitating public discussion about laws.

Declarations of incompatibility

257. Sections 53 to 57 of the Human Rights Act provide for the Supreme Court to make a declaration of incompatibility if the court is of the opinion that a statutory provision cannot be interpreted in a way compatible with human rights. Where the court makes a declaration, the court must provide a copy to the Attorney-General who must give a copy of the declaration to the minister administering the statutory provision. The minister must then table the declaration and prepare and table a written response. The declaration must then be referred to the portfolio committee who must consider it and report on it to parliament.

258. Under the dialogue model of human rights protection, the executive generates dialogue by considering human rights when formulating policy and drafting legislation, which Parliament assesses for compatibility, including through committee processes, debates, and enacts into laws. Courts contribute to this dialogue by interpreting legislation

compatibly with human rights and, when that interpretation is not possible, by making a declaration of incompatibility. The executive and parliament have a range of responses to this judicial opinion but are not required to provide a particular response.[151] The process triggered by a declaration of compatibility under the Human Rights Act is said to be 'consistent with the dialogue model, ensuring the integrity of each limb of government is maintained.'[152] It is modelled on the Victorian Charter,[153] and is reflective of provisions in ACT's Human Rights Act.[154]

259. The Discussion Paper at [206] identifies a series of justifiable concerns in relation to declarations of incompatibility. The Commission responds to those concerns below.

Separation of powers

260. The Discussion Paper questions whether declarations of incompatibility are an appropriate constitutional function of a Chapter III Court, in view of the *Momcilovic v The Queen* (2011) 245 CLR 1; [2011] HCA 34 in which a bare majority (4:3) of the High Court held the equivalent provision under the Victorian Charter equivalent was not unconstitutional.[155]

261. In that case, Chief Justice French, with Justice Bell agreeing, said:

> The power conferred upon the Supreme Court of Victoria to make a declaration of inconsistent interpretation is … a distinct non-judicial power. It provides a mechanism by which the court can direct the attention of the legislature, through the Executive Government of Victoria, to disconformity between a law of the state and a human right set out in the Charter. The making of the declaration does not affect the court's judicial function. It is consistent with the existing constitutional relationship between the court, the legislature and the Executive.[156]

262. In the Chief Justice's view, leaving parliament's decision to infringe human rights intact serves to reinforce, rather than impair, the institutional integrity of the court.[157]

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[151] Legal Affairs and Community Safety Committee, Queensland Parliament, *Human Rights Bill 2018* (Report No. 26, February 2019) 4; Michael Brett Young, *From Commitment to Culture: The 2015 Review of the Charter of Human Rights and Responsibilities 2006* (Report, September 2015) 161.

[152] Explanatory Note, Human Rights Bill 2018 (Qld) 34.

[153] *Charter of Human Rights and Responsibilities 2006* (Vic) ss 36–37.

[154] *Human Rights Act 2004* (ACT) ss 32–33.

[155] *Strategic Review of the Queensland Human Rights Commission and Related Reviews* (Discussion Paper, 30 September 2026) [206(a)].

[156] *Momcilovic v The Queen* (2011) 245 CLR 1; [2011] HCA 34 [95].

[157] See commentary by Will Bateman and James Stellios, 'Chapter III of the Constitution, Federal Jurisdiction and Dialogue Charters of Human Rights' (2012) 36:1 *Melbourne University Law Review* 20.

Unwillingness of Supreme Courts to make declarations of incompatibility and apparent lack of utility

263. The Discussion Paper notes the Supreme Court has not made any declarations of incompatibility. It also states that since a declaration does not affect the validity of a provision, or require a change to the law, it is unlikely to be sought by a party.

264. The 2015 review of the Victorian Charter considered the effectiveness of the declaration of inconsistent interpretation provision, when only one declaration had been made and had been set aside by the High Court.[158] The reviewer considered the role of declarations for courts in the dialogue model, how judicial opinion through declarations continue the dialogue loop, and the importance of this ongoing dialogue. He found that declarations enhance the scrutiny of laws, and together with the interpretative provision, provides for government accountability for a law's compatibility with human rights. Without the express power to make a declaration of inconsistent interpretation, the court could still find a statutory provision cannot be interpreted compatibility with a Charter right. However, the provisions trigger ministerial and parliamentary examination of the provision that would not otherwise occur in this formal and public way. In light of these considerations, the reviewer recommended provisions relating to the declaration of inconsistent interpretation be retained.[159]

265. The public process can also encourage public discussion of human rights and promotes accountability of elected members of Parliament. While it does not have to, it could lead to legislative change. From this perspective, it is possible to understand why a party to court proceedings may see value in applying for a declaration of incompatibility to trigger this process.

266. Due to constitutional issues, the *Inquiry into Australia's Human Rights Framework* did not recommend that a court's findings of statutory incompatibility trigger a review of the law.[160]

267. Declarations of incompatibility have had effect in New Zealand. In *Attorney-General v Taylor* [2018] NZSC 104, the Supreme Court held that provisions which disqualified all prisoners from voting were inconsistent with the *New Zealand Bill of Rights Act 1990* (NZ).[161] This led to amendments providing that only prisoners who are imprisoned for

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[158] *Momcilovic v The Queen* (2011) 245 CLR 1; [2011] HCA 34.

[159] Michael Brett Young, *From Commitment to Culture: The 2015 Review of the Charter of Human Rights and Responsibilities 2006* (Report, September 2015) 59-162.

[160] Parliamentary Joint Committee on Human Rights, Parliament of Australia, *Inquiry into Australia's Human Rights Framework* (Report, May 2024) 9.35.

[161] *Attorney-General v Arthur William Taylor* [2018] NZSC 104 [101]–[119].

more than three years would be disqualified.[162] Notably, this and other examples[163] have occurred nearly 30 years after the New Zealand *Bill of Rights Act* commenced.

Unintended consequences

268. The Discussion Paper gives the example that if a declaration of incompatibility is made in criminal proceedings, the declaration may undermine any conviction of a person.[164]

269. As acknowledged by the Discussion Paper, a declaration does not affect the validity, continuing operation, or enforcement of any provision and as such, cannot undermine a conviction in any legal sense. The conviction rests on a valid law that the court must still apply, and the declaration is a statement of opinion about the law, not a finding about the offender's guilt.

270. While a declaration in this context could attract criticism from the community, that is the dialogue model in action and the 'integrity of each limb of government is maintained'.[165] It would then be incumbent on members of the government to respond to the declaration by amending the provision or providing their reasons for maintaining it. Clear information about the purpose and effect of the court's declaration and accurate media reporting may assist community members to understand the effect of a declaration and avoid unintended consequences.

Question B10

- Should the interpretation provision in the Human Rights Act be retained and, if so, should it be amended to clarify its operation?

Commission Position

The interpretation provision in the Human Rights Act is an integral part of the dialogue model and courts are giving increasing guidance about its operation, potential impact, and role in achieving the purposes of the Act.

Section 48 should be retained in its current form, allowing the courts to develop further guidance as to its application.

271. The Discussion Paper raises concerns about the interpretation provision, including:[166]

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[162] The blanket ban on prisoner voting was since been reinstated by the *Electoral Amendment Act 2025* (NZ).

[163] See also *Make it 16 Inc v Attorney General* [2022] NZSC 134 (minimum voting age) and *Attorney General v Chisnall* [2025] NZSC 126 (retrospective post-sentence detention orders).

[164] *Strategic Review of the Queensland Human Rights Commission and Related Reviews* (Discussion Paper, 30 September 2026) [206](d).

[165] Explanatory Note, Human Rights Bill 2018 (Qld) 34.

[166] *Strategic Review of the Queensland Human Rights Commission and Related Reviews* (Discussion Paper, 30 September 2026) [208]-[212].

- whether section 48 requires a departure from long-established principles of statutory construction and if not, what purpose it serves;
- whether section 48 must be considered by courts every time a statute is interpreted and notice given to the Commission and the Attorney-General.

272. In the Commission's view, section 48 is a component of the Act's architecture that supports the main objects of the Act as set out in section 3, and respects the constitutional roles of parliament and the courts. The main objects of the 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.

273. In the second reading speech for the Human Rights Bill, the then Attorney-General emphasised, in relation to section 48, that:

> Courts and tribunals will play an important role under the bill in interpreting statutory provisions, to the extent possible consistent with their purpose, in a way that is compatible with human rights. The government has achieved the correct balance. The interpretative provision at clause 48 has been very carefully drafted in light of experience from other jurisdictions and is intended to avoid a strong remedial approach that would facilitate a legislative role by the courts. The emphasis on giving effect to the legislative purpose in interpretation means that the provision does not authorise a court to depart from parliament's intention.[167]

Role of section 48

274. Section 48 of the Human Rights Act is consistent with long-established principles of statutory construction, and adds an important 'additional dimension' to them.[168] As Kenny J has recognised, language is 'characteristically malleable and nuanced; and there are almost always constructional choices to make by reference to text, context and purpose'.[169] That is because 'even words having an apparently clear ordinary or grammatical meaning may be ascribed a different legal meaning after the process of construction is complete'.[170]

275. Normally, different aspects of context – understood in its widest sense and including the principle of legality – are considered useful to the extent that they help to fix the meaning

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[167] Queensland, *Parliamentary Debates*, Legislative Assembly, 26 February 2019, 377 (Yvette D'Ath, Attorney-General and Minister for Justice).

[168] *Hogan v Hinch* (2011) 243 CLR 506, [2011] HCA 4 [70] (Gummow, Hayne, Heydon, Crennan, Kiefel, Bell JJ), concerning the analogous provision under the *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 32(1).

[169] *Garrett v FCT* (2015) 233 FCR 226 [12].

[170] *R v A2* (2019) 269 CLR 507, [2019] HCA 35 [32] (Kiefel CJ and Keane J).

of statutory text.[171] However, sections 48(1) and (2) of the Human Rights Act, like 14A of the *Acts Interpretation Act 1954* (Qld), are always relevant context as 'a particular statutory reflection of a general systemic principle'.[172]

276. In *Smith v Chief Executive*, both Edelman and Gleeson JJ emphasised the mandatory nature of considering section 48 as part of the context of a provision.[173] Although 4 members of the Court did not consider it necessary to apply section 48 in this case, that was because the construction urged by the appellant and Commission by reference to section 48 led to the same result as the majority found without separate consideration of it.[174]

277. The specific drafting of section 48, enacted nine years after the High Court's judgment in *Momcilovic*, also indicates that it requires more from the interpretive process than the principle of legality. First, unlike section 32 of the *Charter*, the Human Rights Act expressly incorporates the justification analysis in section 13 into the concept of compatibility.[175] Second, and again unlike the Victorian interpretive provision, section 48(2) provides that if compatibility cannot be achieved, the provision must, to the extent possible consistent with purpose, be interpreted in a way that is 'most compatible' with human rights. This view is also supported by the extrinsic materials.[176]

Evolving application of section 48

278. The Review identifies that the interpretation provision in the Human Rights Act has created considerable uncertainty as to its operation. Much of this uncertainty has stemmed from the divergent judgments of members of the High Court on the similar, but distinct, interpretation provision in the Victorian Charter in *Momcilovic*. However, after a period of relatively limited judicial discussion, courts are now giving more guidance on the application of section 48. For example, in *Chief Executive, Department of Environment,*

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[171] *Federal Commissioner of Taxation v Consolidated Media Holdings Ltd* (2012) 250 CLR 503, 519 [39] (French CJ, Hayne, Crennan, Bell and Gageler JJ). After citing this in *Palmanova Pty Ltd v Commonwealth* (2025) 99 ALJR 1362, 1365 [6], Gageler CJ, Gordon, Jagot and Beech-Jones JJ said, 'Focus on the statutory text is not to the exclusion of extrinsic material that has the potential to assist in fixing its meaning'.

[172] In the same way that s 15AA of the *Acts Interpretation Act 1901* (Cth) is: *SZTAL v Minister for Immigration and Border Protection* (2017) 262 CLR 362, 375 [39] (Gageler J) citing *Thiess v Collector of Customs* (2014) 250 CLR 664, 672 [23]. See further *Smith v Chief Executive, Queensland Corrective Services* [2026] HCA 37 [55] (Edelman J).

[173] *Smith v Chief Executive, Queensland Corrective Services* [2026] HCA 37 [34] (Edelman J), [83] (Gleeson J).

[174] *Smith v Chief Executive, Queensland Corrective Services* [2026] HCA 37 [11] (Gordon A-CJ and Beech-Jones J), [83] (Gleeson J), [113] (Jagot J). In this particular case, the purposes of the *Corrective Services Act 2009* closely mirror the right to humane treatment in detention, including as expressed through rules 1 to 4 of the *United Nations Standard Minimum Rules for the Treatment of Prisoners* (the Nelson Mandela Rules) General Assembly resolution 70/175, annex, adopted on 17 December 2015.

[175] By way of *Human Rights Act 2019* (Qld) s 8.

[176] Department of Justice and Attorney-General, *Response to Legal Affairs and Community Safety Committee: Issues Raised in Written Submissions* (3 December 2018), quoted in Legal Affairs and Community Safety Committee, Parliament of Queensland, *Human Rights Bill 2018* (Report No 26, 56th Parliament, February 2019), 70-71.

Science and Innovation v Nagana Yarrbayn Wangan and Jagalingou Cultural Custodians Ltd [2026] QCA 7, Doyle JA explained how section 48 may have a significant role to play in interpreting the *Environmental Protection Act 1994* (Qld), including:

> (a) Whether a particular power conferred is wholly discretionary, or one which carries with it an obligation to consider its exercise (and then decide whether to exercise it) might be affected by the operation of s 48 of the HRA. Section 358 [of the *Environmental Protection Act 1994*] appears to be a discretion to exercise a power which would have as its objective avoiding adverse impacts on the environment. Whether that is a non-compellable discretion or one which the Chief Executive can be required to consider exercising is in issue between the parties and involves a constructional choice. A construction that required the Chief Executive to at least properly consider and decide upon its exercise would seem both consistent with the purposes of the Environmental Protection Act and also compatible with the human rights stated in s 28 of the HRA.
>
> (b) Further, the Standard Criteria include the character resilience and values of the receiving environment: subparagraph (e). …If otherwise there was some doubt about it, s 48 of the HRA would require interpretation of these provisions (and the reference to the values of the environment) in a way compatible with human rights which include those identified in s 28 of the HRA. Such a construction may be appropriate in any event having regard to s 6 of the Environmental Protection Act …
>
> (c) The Chief Executive, under s 359 before deciding to issue an EPO, would have to consider as part of the standard criteria the values of the social, economic and cultural conditions of the receiving environment. Section 48 would properly be used in the interpretation of those values as including the human rights recognised under s 28 of the HRA.
>
> (d) Moreover, s 359 gives no explicit direction as to the purpose of considering the standard criteria. No doubt as a matter of construction of the Environmental Protection Act the object of any consideration would be to arrive at a decision in furtherance of that Act's purposes. Section 48(1) would direct that the provisions of the Environmental Protection Act be interpreted to the extent possible consistent with those purposes, in a way "compatible with" the s 28 human rights. [177]

279. The approach of the High Court in *Smith* also gives greater clarity to the question of whether courts must consider section 48 every time a statute is interpreted (with notice to the Attorney-General and Commission).[178] In *Smith,* Edelman J indicated that, as a matter

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[177] *Chief Executive, Department of Environment, Science and Innovation v Nagana Yarrbayn Wangan and Jagalingou Cultural Custodians Ltd* [2026] QCA 7 [115].

[178] *Strategic Review of the Queensland Human Rights Commission and Related Reviews* (Discussion Paper, 30 September 2026) [212].

of procedural fairness, the matter should be raised by parties and limited to the rights and arguments they raise.[179] Similarly, where (as in *Smith*) a court arrives at the same construction a party submits is the right construction under section 48 by use of other interpretive techniques, the majority of the court did not consider it necessary to consider section 48 separately.[180]

280. Section 48 recognises and retains parliamentary sovereignty – including parliament's ability to indicate that a provision is not to be read compatibly with human rights, for example, by use of an override declaration[181] – while recognising parliament's general intention expressed through the objects and structure of the Human Rights Act that laws in Queensland will be compatible with human rights. In doing so it promotes a dialogue between the courts and Parliament about the nature, meaning and scope of human rights.

281. Given the short time that section 48 has been in effect and the increasing guidance given by courts as to its operation, the Commission considers retaining the provision in its current form is appropriate to allow the jurisprudence to further mature.

Question B11

- ## Should the referral process be repealed?

Commission position

Although used infrequently, the referral process under section 49 provides a mechanism for the Supreme Court to clarify application of certain aspects of the Human Rights Act's operation.

The Commission's view is that section 49 should be retained, particularly as any referral is subject to the discretion of the referring court or tribunal.

282. Section 49 of the Human Rights Act provides an avenue of referral for questions of law about the application of the Human Rights Act or the interpretation of statutory provisions in accordance with the Human Rights Act to be referred to the Supreme Court. In *Wood v The King* (2022) 12 QR 101, Davis J noted the object and purpose of Part 3, Division 3 in which section 49 and provisions on intervention are located:

> is clear, namely, to enable jurisprudence concerning the Act to develop in this Court in a consistent way and involving the Attorney-General and the Commission making submissions in the public interest rather than on behalf of a party.
>
> By s 49, this Court may be called upon to consider and determine questions of law. The referring court or tribunal retains jurisdiction to otherwise determine the controversy in the proceedings before it.[182]

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[179] *Smith v Chief Executive, Queensland Corrective Services* [2026] HCA 37 [57]-[58] (Edelman J).

[180] *Smith v Chief Executive, Queensland Corrective Services* [2026] HCA 37 [11] (Gordon A-CJ and Beech-Jones J), [83] (Gleeson J), [113] (Jagot J).

[181] See *Human Rights Act 2019* (Qld) s 48(5).

[182] *Wood v The King* (2022) 12 QR 101; [2022] QSC 216 [26]-[27].

283. The Discussion Paper raises questions as to the utility of this procedure and asks whether the referral process should be repealed.[183]

284. The Commission concedes that the referral power under section 49 has been rarely used and that the Supreme Court has held a number of the questions referred not to be appropriate to answer. However, even these proceedings provide guidance on the operation of the Act, and have done so with the benefit of submissions of the Attorney-General as intervener.

285. For example, *Wood v The King* (2022) 12 QR 101 considered whether section 29(7) of the Human Rights Act provides a standalone remedy. Section 29(7) provides:

> A person deprived of liberty by arrest or detention is entitled to apply to a court for a declaration or order regarding the lawfulness of the person's detention, and the court must—
>
> (a) make a decision without delay; and
>
> (b) order the release of the person if it finds the detention is unlawful.

286. Justice Davis considered that this question raised 'serious issues as to the interpretation and operation of the Act'.[184] His Honour held that section 29(7) did not vest jurisdiction in the District Court to grant a declaration that a prisoner was being held in custody unlawfully and that the appropriate remedy was to seek *habeas corpus* in the Supreme Court.[185] Although the question may otherwise have been decided on appeal had it been decided below, practical barriers facing a person in custody may have made that less likely to proceed, and despite the provisions of section 51 of the Human Right Act, the Attorney-General and Commission are not always notified of such appeals in practice.

287. In *Palmer v Australian Securities and Investments Commission* [2026] QSC 51, Hindman J held that it was inappropriate to answer the questions referred in that case. However, before reaching that finding her Honour determined a number of preliminary issues of broader relevance, including whether the Magistrates Court was acting in an administrative capacity when prosecutions were at committal stage (yes),[186] and whether the Human Rights Act applied to proceedings brought before the commencement of the Act (no).[187]

288. Cases in Victoria have also shown the potential benefit of the referral process. In *Slaveski v Smith*, a County Court judge took the view that an unrepresented person appealing an intensive corrections order in the County Court would be seriously disadvantaged by lack of legal representation, in circumstances where Victorian Legal Aid would not provide aid

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[183] *Strategic Review of the Queensland Human Rights Commission and Related Reviews* (Discussion Paper, 30 September 2026) [214]–[220].

[184] *Wood v The King* (2022) 12 QR 101; [2022] QSC 216 [49].

[185] *Wood v The King* (2022) 12 QR 101; [2022] QSC 216 [93].

[186] *Palmer v ASIC* [2026] QSC 51 [25]–[27].

[187] *Palmer v ASIC* [2026] QSC 51 [42].

due to the person's previous conduct. The appellant questioned whether he had a right to legal representation under the Charter, and the judge referred 3 questions of law to the Court of Appeal. The Court of Appeal answered all 3 questions – in the process providing significant guidance as to the Victorian Charter's interpretive provision, the scope of rights in criminal proceedings, and remedies in the context of the right to a fair hearing.[188]

289. It is now clear that the relevant court or tribunal retains control of the proceeding under section 49. It has an unfettered discretion, to be exercised in light of the relevant facts and circumstances, as to whether or not to refer questions to the Supreme Court.[189] The small number of matters referred suggests that this provision is not causing difficulties for parties or the courts. In these circumstances, the benefits of providing a mechanism to develop consistent jurisprudence, particularly where individuals may face practical barriers to accessing appeals, support retaining section 49 in its present form.

Obligations on public entities (Questions B12 – 13)

Question B12

- Should the 'procedural' limb in section 58(1)(b) be retained? If it is retained, should the consequence of non-compliance with the 'procedural' limb mean the act or decision is unlawful?

Commission Position

The Commission supports retaining the procedural limb in section 58(1)(b), including the consequences of non-compliance. It provides a positive measure aimed at reducing and eliminating harm and provides a mechanism to help build a culture in the Queensland public sector that respects and promotes human rights.

In practice, Queensland courts have not demanded onerous compliance with the procedural limb. The burden on the public sector to give proper consideration should be offset by gains in making high-quality decisions that can be demonstrably justified, reducing harm to people and requests for review.

Obligations under section 58

290. Section 58(1) places obligations on public entities to act and decide compatibly with human rights (the substantive limb) and to give proper consideration to human rights in making decisions (procedural limb).

291. The current wording of section 58(1)(a), which says it is unlawful for a public entity to 'make a decision *in a way',* implies a procedural element. Consideration could be given to whether this provision should be amended, for example, to say, it is unlawful for a public entity to 'act in a way, or make a decision, that is not compatible with human rights.'

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[188] *Slaveski v Smith* (2012) 34 VR 206.

[189] See *De Simone v Bevnol Constructions and Developments Pty Ltd* (2000) 30 VR 200 [35], cited in *Wood v The King* (2022) 12 QR 101; [2022] QSC 216, [43] (Davis J).

Need for a procedural limb

292. An article by Bruce Chen outlines the genesis for the procedural limb in Victoria as follows:

> The inclusion of the procedural obligation under the Australian Human Rights Acts is traceable to the report by the Victorian Consultation Committee. That is where the concept of giving proper consideration to relevant human rights first appeared. The Committee found there was 'strong support for an obligation to be placed on all public authorities, including government departments, agencies and enterprises, to consider the [Victorian Charter] generally in their practices and procedures.' It 'believe[d] that the first step in cultivating a culture of human rights in government is to make human rights one of the considerations that officials must consider in their day to day decision making'. However, acknowledging concerns around the traditional weaknesses of the judicial review ground of mandatory relevant considerations ('paying lip service'; 'little more than "box-ticking"'), the Committee suggested human rights must be 'properly' considered. (footnotes omitted)[190]

293. Elsewhere, the Victorian Consultation Committee said: 'by infusing human rights considerations at all levels of government, and in the policy and law making process, there is a greater prospect of preventing laws and policies which are incompatible with human rights'.[191]

294. To this, the Commission adds that the procedural limb requires public entities to proactively identify human rights issues to support decision-making that minimises potential harm. In doing so, it is more likely that public entities will satisfy their substantive obligations and, significantly, do so before causing harm. Consistent with the dialogue model of human rights, the procedural limb seeks to protect human rights through administrative practice and development of policy, rather than through litigation.[192] The 2015 Victorian Charter review noted the procedural limb 'gives the Charter 'teeth' in the everyday work of government and in government's interactions with community members.'[193]

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[190] Bruce Chen, 'Acts, Decisions and Conduct Obligations: Implications from Recent Australian Human Rights Acts Cases' (2026) 54 e1. Web, *Federal Law Review*. The author cited the Human Rights Consultation Committee, Parliament of Victoria, *Rights, Responsibilities and Respect*, (Report, 2005) which the Commission has not been able to access.

[191] Bruce Chen, 'Acts, Decisions and Conduct Obligations: Implications from Recent Australian Human Rights Acts Cases' (2026) 54 e1. Web, *Federal Law Review*.

[192] Victoria, *Parliamentary Debates*, Legislative Assembly, 4 May 2006, 1293 (Rob Hulls, Attorney-General).

[193] Michael Brett Young, *From Commitment to Culture: The 2015 Review of the Charter of Human Rights and Responsibilities Act 2006* (Report, September 2015) 68.

295. The obligation to give proper consideration is in both the ACT Human Rights Act[194] and the Victorian Charter[195]. The *Inquiry into Australia's Human Rights Framework* also recommended a procedural limb be included in the federal framework[196].

296. The New Zealand Bill of Rights Act (NZ BORA) has broad application to acts done by the 'executive' and does not impose explicit duties on public entities like Australian human rights jurisdictions.[197] In *Director-General of Health v New Health New Zealand Incorporated* [2026] NZCA 279 (29 June 2026) the Director-General of Health exercised powers under the *Health Act 1956* (NZ) to direct local authorities to fluoridate their drinking water supplies. In doing so, the Director-General did not conduct a compatibility assessment regarding the right to refuse to undergo medical treatment. Referring to previous High Court authority, the High Court found that a human rights assessment was a mandatory relevant consideration and the directions were therefore infected by error. The Court of Appeal by a majority of 4:1 overturned the High Court's decision, finding that the NZ BORA did not mandate a universal freestanding obligation to undertake a human rights assessment, and that the benefits of such a duty are far outweighed by 'well-founded concerns of practicality, undue formalism, doctrinal confusion and uncertainty'[198].

297. Although failure to consider the NZ BORA does not give rise to freestanding illegality, whether the decision-maker has done so may still be relevant to the question of whether there has been substantive compliance.[199] Further, the NZ BORA has other mechanisms that promote and protect human rights not available in Queensland. For example:

- NZ BORA is national legislation that forms part of New Zealand's constitutional framework.[200]
- It provides a direct cause of action for breach of human rights by a person or body in the performance of a public function. [201]
- Remedies for breach of human rights can include monetary compensation.[202]
- The broad application of NZ BORA to acts of the executive, also applies to acts of the legislative and judicial branches of the New Zealand Government.[203]

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[194] *Human Rights Act 2004* (ACT) s 40(B).

[195] *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 38.

[196] Parliamentary Joint Committee on Human Rights, Parliament of Australia, *Inquiry into Australia's Human Rights Framework* (Report, May 2024) [9.30].

[197] *New Zealand Bill of Rights Act 1990* (NZ) s 3(a).

[198] *Director-General of Health v New Health New Zealand Incorporated* [2026] NZCA 279 [155] (b).

[199] *Director-General of Health v New Health New Zealand Incorporated* [2026] NZCA 279 [108]–[110].

[200] Kenneth Keith, 'On the Constitution of New Zealand: An Introduction to the Foundations of the Current Form of Government', *The Constitution of New Zealand* (Web Page, 2023) < https://gg.govt.nz/office-governor-general/roles-and-functions-governor-general/constitutional-role/constitution>.

[201] *New Zealand Bill of Rights Act 1990* s 3; *Simpson v Attorney-General* [1994] 3 NZLR 667 (CA); [1994] NZCA 287 [Baigent's Case].

[202] *Simpson v Attorney-General* [1994] 3 NZLR 667 (CA); [1994] NZCA 287 (Baigent's Case).

[203] *New Zealand Bill of Rights Act 1990* s 3.

298. The UK Human Rights Act makes it unlawful for a public authority to act incompatibly with human rights but does not impose a legal obligation for public authorities to consider human rights. In contrast to Queensland's Human Rights Act, the UK Act:

- provides for a direct cause of action for breach of rights by a public authority, which includes a court or tribunal[204]
- allows for any relief or remedy within the court's power, including damages and compensation for breaches in respect of a judicial act[205]
- adopts the *European Convention on Human Rights* and is subject to the decisions of the European Court of Human Rights.[206]

What does proper consideration require?

299. The Australian Human Rights Commission's (AHRC) 2022 position paper on an Australian Human Rights Act compares Victorian, ACT, and Queensland approaches to proper consideration.[207]

300. Unlike Victoria and ACT, section 58(5) of the Queensland Human Rights Act defines proper consideration as including, 'but is not limited to — (a) identifying the human rights that may be affected by the decision; and (b) considering whether the decision would be compatible with human rights'. AHRC noted this appears to link the full proportionality test under section 13 to the procedural limb, an approach that has not been adopted by Victorian or ACT courts.[208] AHRC went on to acknowledge the potential difficulties in applying a detailed proportionality test in frontline and/or emergency decision-making and suggested adopting the 'less formal' approach of Victorian and ACT in a national human rights framework.

301. In practice, few superior court decisions in Queensland have found a failure to give proper consideration:

- ***Owen-D'Arcy v Chief Executive, Queensland Corrective Services*** (2021) 9 QR 250; [2021] QSC 273:

  A prisoner had been subject to 6-monthly orders that had the effect of holding him in solitary confinement from 2013 to 2020. The prisoner sought judicial review of the most recent order, piggy-backing relief under the Human Rights Act. In the reasons for the order, the decision-maker said she did not believe there were any alternative ways to adequately manage the risk posed by the prisoner, but did not provide any basis for

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[204] *Human Rights Act 1998* (UK) s 7.

[205] *Human Rights Act 1998* (UK) ss 8–9.

[206] *Human Rights Act 1998* (UK) Introductory text, s 1.

[207] Australian Human Rights Commission, *A Human Rights Act for Australia* (Position Paper: Free and Equal, December 2022) 144–145.

[208] For example, *Thompson v Minogue* (2021) 294 A Crim R 216, 237–8 [87]–[89], 255–6 [156]–[157], 290 [305]; *Davidson v Director-General, Justice and Community Safety Directorate* [2022] ACTSC 83.

that belief.[209] Further, the decision-maker did not appear to have given enough (if any) weight to the effect the 6-month order would have on the total length of solitary confinement, and therefore failed to balance the importance of the purpose of the limitation and the importance of preserving the human right.[210] For these reasons, the court found that the order was not compatible with human rights.

The court also found that the decision-maker had not given proper consideration to human rights. The court agreed that section 58(5) does not require formally identifying 'correct' rights, but involves an understanding in general terms of which rights may be relevant and whether, and if so, how those rights will be interfered with.[211] In this case, the decision-maker had not considered the right to humane treatment when deprived of liberty, and therefore could not have given proper consideration to a human right relevant to that decision.[212]

- ***Johnston v Commissioner of Police*** (2024) 19 QR 1; [2024] QSC 2:

  This case concerned vaccination directions issued by the Police Commissioner and Director-General for Queensland Health during the COVID-19 pandemic. On the evidence, the court was not satisfied the Police Commissioner had considered human rights at the time of making the directions, and accordingly found she had failed to give proper consideration to human rights.[213]

  Although the directions were held to be compatible with human rights, the QPS directions were declared to be unlawful under section 58 of the Human Rights Act and the respondents were ordered not to take any steps to enforce the directions.

- ***Bobeldyk v Moreton Bay City Council*** [2026] QSC 27:

  The council issued notices on people experiencing homelessness to remove their property and stop camping on public land. Council officers subsequently impounded and disposed of property. The court held that council officers had an obligation to consider human rights at the time the decisions were made, having regard to the circumstances of the individual case. For example, this may include council officers questioning each of the applicants to find out their individual circumstances prior to the issuing of the notices. While section 58 obligations would not be excluded because of difficulty, there was no difficulty in questioning the applicants in this case. As there was no evidence that consideration of human rights had occurred, the court found that

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[209] *Owen-D'Arcy v Chief Executive, Queensland Corrective Services* (2021) 9 QR 250; [2021] QSC 273 [250].

[210] *Owen-D'Arcy v Chief Executive, Queensland Corrective Services* (2021) 9 QR 250; [2021] QSC 273 [253]–[260].

[211] *Owen-D'Arcy v Chief Executive, Queensland Corrective Services* (2021) 9 QR 250; [2021] QSC 273 [136]–[137] agreeing with Emerton J in *Castles v Secretary, Department of Justice* (2010) 28 VR 141 [185]–[186].

[212] *Owen-D'Arcy v Chief Executive, Queensland Corrective Services* (2021) 9 QR 250; [2021] QSC 273 [265]–[266].

[213] *Johnston v Commissioner of Police* (2024) 19 QR 1; [2024] QSC 2 [134]–[138].

the procedural limb had been breached.[214] The court also found that the council had substantively breached human rights.

302. It is well-established that the onus of proof is on the public entity to satisfy the court that the procedural limb is complied with.[215] In *Johnston* and *Bobeldyk*, the court was not satisfied that any human rights consideration by the decision-maker had taken place. In *Owen-D'Arcy,* it appears the decision-maker's failure to take into account the total length of time the prisoner was in solitary confinement meant that she was unable to give proper consideration to human rights relevant to the decision, namely the right to humane treatment when deprived of liberty.

303. Cases where the procedural limb has been found to be satisfied include:

- ***Austin BMI Pty Ltd v Deputy Premier*** (2023) 16 QR 377; [2023] QSC 95: The applicant applied for judicial review of the Deputy Premier's decision to 'call-in' a development application. In giving proper consideration to human rights, the Deputy Premier had been assisted by a 'human rights assessment' document prepared by advisors. The court was satisfied the document demonstrated proper consideration of human rights, although it only expressly referred to the right to freedom of expression under the Human Rights Act. While the document did not expressly refer to rights to fair hearing and property, it had addressed the call-in decision's impact on the opportunity to be heard in court and discussed property rights generally.[216]
- ***BZN v Chief* Executive*, Department Children, Youth Justice and Multicultural Affairs*** [2023] QSC 266: Although the decision-maker's file note only contained a brief comment in respect of BZN's section 25 human rights of privacy, the file note indicated it was to be read with another report that made several references to the adverse impacts on BZN's mental health and dealing with BZN's confidential information. When read together, the court was satisfied the decision-maker had properly considered human rights.[217]
- ***Johnston v* Commissioner *of Police*** (2024) 19 QR 1; [2024] QSC 2: The Director-General for Queensland Health's decision to mandate vaccinations for staff included his signature on a briefing note prepared by the Chief Human Resources Officer. The briefing note identified relevant human rights and considered whether the decision would be compatible with human rights. The court found this sufficiently demonstrated proper consideration had been given to human rights in making the decision.[218]

304. In practice, Queensland courts have not demanded onerous compliance with the procedural limb. The Court of Appeal in *Mizner v State of Queensland (Corrective Services)* [2025] QCA 169 stated the requirements of proper consideration as follows:

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[214] *Bobeldyk v Moreton Bay City Council* [2026] QSC 27 [383]–[389].

[215] For example, *Bobeldyk v Moreton Bay City Council* [2026] QSC 27 [381].

[216] *Austin BMI Pty Ltd v Deputy Premier* (2023) 16 QR 377; [2023] QSC 95 [360]–[366].

[217] *BZN v Chief Executive, Department Children, Youth Justice and Multicultural Affairs* [2023] QSC 266 [255]-[259].

[218] *Johnston v Commissioner of Police* (2024) 19 QR 1; [2024] QSC 2, [242]–[265].

> The use of the adjective "proper" in s 58(1)(b) requires a standard of consideration higher than that generally applicable at common law for taking into account relevant considerations. It is an exercise that must be approached in a common sense and practical manner. As s 58(5) of the HRA makes plain, it includes, but is not limited to, identifying the relevant human rights that may be affected by the decision in question and considering whether the decision would be compatible with human rights. It involves understanding, in general terms, which of the rights of the person affected by the decision may be relevant and whether, and if so how, those rights will be interfered with by the decision that is made. It will be sufficient in most circumstances that there is some evidence that shows the decision-maker seriously turned his or her mind to the possible impact of the decision on a person's human rights and the implications thereof for the affected person, and that countervailing interests or obligations were identified. Compliance with s 58(1)(b) of the HRA need not involve a sophisticated legal exercise.[219]

305. The Supreme Court has recognised that sometimes decisions must be made in circumstances of urgency and some flexibility is appropriate.[220] Further, 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 the specific sections of the Human Rights Act.[221]

306. As demonstrated in the Victorian case of *Thompson v Minogue* [2021] VSCA 358, it may be possible to meet proper consideration requirements through carefully considered policy that guides decision-making. The policy position adopted by council in *Bobeldyk v Moreton Bay City Council* [2026] QSC 27 required the issuing, without discretion, of pre-prepared compliance notices that could result in potentially serious limitations of fundamental rights of people experiencing homelessness, and there was evidence of a council memorandum that simply stated it was not practicable to consider human rights on a case by case basis.[222] An approach consistent with the procedural obligation may have included a policy contemplating differentiated responses depending on identified individual circumstances (for example. disability, health status, history of family violence, availability of alternative accommodation). Decision-makers could be provided with a tool setting out possible impacts on rights, and questions to ask (informed by those rights) to guide decisions about whether to issue a notice, any time frame to attach, and any additional supports that might be necessary to assist compliance.

307. There has only been one Queensland case of which the Commission is aware where a finding of breach of the procedural limb has not been accompanied by a finding of breach of the substantive limb. In *Johnston v Commissioner of Police* [2024] QSC 2, the decision-

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[219] *Mizner v State of Queensland (Corrective Services)* [2025] QCA 169, [268] Crowley J (Bond JA and Gotterson AJA agreeing).

[220] *Bobeldyk v Moreton Bay City Council* [2026] QSC 27 [377] citing *Thompson v Minogue* [2021] VSCA 358; (2021) 67 VR 301 at [87], [91].

[221] *BZN v Chief Executive, Department Children, Youth Justice and Multicultural Affairs* [2023] QSC 266 [240]; *Austin BMI Pty Ltd v Deputy Premier* (2023) 16 QR 377; [2023] QSC 95 [362].

[222] *Bobeldyk v Moreton Bay City Council* [2026] QSC 27 [387].

maker was the head of a large government agency making a decision that affected all officers and staff. It is understandable that the court would, in these circumstances, hold a decision-maker to a higher standard, although in this case, the decision-maker had not satisfied the first threshold issue of having turned her mind to human rights at all.

308. In *Director General, Department of Justice v YTP* [2026] QCATA 98, the Director-General appealed a decision of the tribunal to overturn a blue card refusal on the basis that the tribunal had not considered the Human Rights Act. While the Appeal Tribunal accepted the lower tribunal had not given proper consideration to human rights, it had considered the rights of children under the paramount principle underpinning the *Working with Children (Risk Management and Screening) Act 2000* (Qld) and the failure was not material, and could not realistically have led to a different result. Accordingly, the ground of appeal did not succeed.[223]

Additional observations

309. The Commission offers the following additional observations regarding the issues with the procedural limb identified in the Discussion Paper [226]-[236]:

- The procedural limb does not require a formal statement of reasons or any written record, although it makes good administrative practice to file-note human rights considerations, given the onus is on the decision-maker to demonstrate proper consideration.
- The Commission accepts that the substantive outcome is the prime consideration. The procedural limb builds capacity to make it more likely that substantive compliance will be achieved. It also has flow-on effects for the development of laws and policies that are compatible with human rights and promoting dialogue about the nature, meaning, and scope of human rights in the public sector and in the community. The Bill is also about the everyday interactions of individuals with government.[224] The procedural limb gives individuals affected an early opportunity to ask (and have explained) how their rights have been considered and whether less restrictive alternatives have been considered.
- In operationally complex and time-sensitive environments, proper consideration may be achieved through training and operational frameworks (including high level policies).[225] Policies could also support efficient proper consideration in routine decisions, including dealing with decisions to which the exception in section 58(2) arises.
- The burden on the public sector to give proper consideration should be offset by gains in making high-quality decisions that can be demonstrably justified, reducing harm to

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[223] *Director General, Department of Justice v YTP* [2026] QCATA 98 [27]–[32].

[224] Queensland Parliament, *Parliamentary Debates*, Legislative Assembly, 31 October 2018, 3186 (Yvette D'Ath, Attorney-General and Minister for Justice).

[225] See for example, the unresolved complaint report summarised as 'Release of information by health service' and available as a full report from the Commission's website at Queensland Human Rights Commission, *Unresolved Human Rights Complaints* (Web Page, 10 September 2026) <https://www.qhrc.qld.gov.au/legal/unresolved-human-rights-complaints>.

people and requests for review. As proper consideration becomes 'normative,'[226] the burden on the public sector should reduce.

- The concern that an otherwise meritorious decision could be found unlawful because of failure to give proper consideration has not manifested in court and tribunal decisions (noting the decisions that have found a failure to give proper consideration, including the result in *YTP,* discussed above). If the Human Rights Act was amended to remove or reduce the consequences of failing to give proper consideration, the Commission would be concerned about the affect this may have on the public sector's priorities to give proper consideration and develop a human rights culture, potential uncertainty about the role of proper consideration in assessing the substantive limb, and the reduced opportunity for guidance from the court on the application of the procedural limb.

Question B13

- What remedies should be available for a contravention of section 58(1) of the HRA?

Commission Position

The Commission supports enforcement of human rights through judicial processes, either through section 59 (piggyback provision) and/or through a direct right of action.

The Commission comments on the potential effect of amending section 59 in the ways proposed by the Discussion Paper.

In relation to the remaining issues posed, the Commission refers and relies on its submissions to the Harris Rimmer Review regarding remedies that should be available for a contravention of section 58(1) of the Human Rights Act.

310. Section 59 enables a person to seek relief or remedy from the courts on the ground of unlawfulness arising under section 58, provided the person 'may seek' the relief or remedy on a separate cause of action (other cause of action). The human rights ground is said to 'piggy-back' on the other cause of action. There is no other right of action for a breach of section 58 by a public entity.

311. The preliminary view in the Discussion Paper is that section 59 has created considerable uncertainty and, if it is retained, it should be amended.

Retaining the s 59 – the piggy-back provision

312. Enforceability and judicial discussion of human rights are essential for the promotion and protection of human rights, even within a dialogue model.[227] For example, the public

[226] *Bare v IBAC* (2015) 48 VR 129 [235], [299].

[227] See Australian Human Rights Commission, *Free and Equal: an Australian Conversation on Human Rights* (Position Paper, December 2022) 268-270. Access to an effective remedy is generally required by international law, for example *International Covenant on Civil and Political Rights,* Article 2; *Convention Against Torture,* Article 14; *Convention on the Elimination of all Forms of Discrimination Against Women,*

discussion of human rights of people experiencing homelessness and the council's subsequent exploration of different ways to treat them humanely and with dignity is unlikely to have occurred without *Bobeldyk*.

313. Queensland adopted Victoria's piggy-back provision. That model, which encourages compliance rather than a strong enforcement and compliance model was considered a 'sensible and measured' approach to introducing a human rights framework into Queensland.[228] ACT allows a person to start a proceeding in the Supreme Court against the public entity, or rely on the person's rights under the Human Rights Act in other legal proceedings[229]. The *Inquiry into Australia's Human Rights Framework* recommends a standalone cause of action for all rights and flexible remedies.[230] As outlined above, both UK and New Zealand have standalone causes of action and access to damages.[231]

314. The Commission's submission to the Harris Rimmer Review supported strengthening remedies under the Human Rights Act, including implementing a direct right of action to the courts for breach of section 58.[232] The advantage of a direct right of action over a piggy-back is that it avoids legal argument, and therefore court resources, over whether the legal tests under section 59 have been fulfilled; and does not compel an applicant to litigate the other cause of action. The purpose of the piggy-back provision, to avoid increased litigation by creating a right to new remedies[233], has not eventuated in the ACT[234].

315. The Commission supports retaining the piggy-back provision to enable human rights to be enforced, unless it is replaced with a direct right of action in the appropriate court or tribunal.

Amendment to section 59 – the piggy-back provision

316. As noted by the Discussion Paper, *Chief Executive, Department of Environment Science & Innovation v Nagana Yarrbayn Wangan & Jagalingou Cultural Custodians* [2026] QCA 7 (*Nagana*) has helped clarify (although the issue was not decisive) that the other cause

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Article 2; *International Convention on the Elimination of all Forms of Racial Discrimination,* Article 6; *Convention on the Rights of People with Disabilities,* Article 4.

[228] Queensland Parliament, *Parliamentary Debates*, Legislative Assembly, 29 February 2019, 376 (Yvette D'Ath, Attorney-General and Minister for Justice).

[229] *Human Rights Act 2004* (ACT) s 40C(2)(a).

[230] Parliamentary Joint Committee on Human Rights, Parliament of Australia, *Inquiry into Australia's Human Rights Framework* (Report, May 2024) [9.37]–[9.40].

[231] See our response to Question B12, at [97] and [98].

[232] Queensland Human Rights Commission, Submission to Independent Reviewer, *Review of Queensland's Human Rights Act 2019* (8 July 2024) [128]-[144], Recommendations 2.2–2.5.

[233] Queensland Parliament, *Parliamentary Debates*, Legislative Assembly, 31 October 2018, 3185 (Yvette D'Ath, Attorney-General and Minister for Justice).

[234] Observed by *Strategic Review of the Queensland Human Rights Commission and Related Reviews* (Discussion Paper, 30 September 2026) [255](c).

of action must be bona fide and arguable, whether or not a person is ultimately successful on that ground.[235]

317. In *Nagana*, the Attorney-General argued that human rights were not eligible for consideration as rights for the purpose of the second limb of *Tang*[236] on the basis that the Human Rights Act does not establish them as 'freestanding rights'.[237] The Court of Appeal disagreed: while human rights recognised by the Human Rights Act are not freestanding in the sense of being incapable of independent enforcement, that does not deprive them of their significance as rights, and were therefore relevant to the application of the second limb of *Tang*.[238]

318. In *Anderson v President of the Parole Board of Queensland* [2025] QSC 123, the court considered a Restricted Prisoner Declaration that blocked a 70-year-old prisoner with serious health issues from applying for parole for 8.5 years. Such declarations can only be made if the President is satisfied it is in the 'public interest to do so'.[239] The Court found the length of the declaration invalid because the President had failed to consider the prisoner's human rights. An issue on appeal was that requiring the President to have regard to human rights under the Human Rights Act would give free-standing operation to human rights. In response, the Commission's submitted:[240]

> Instead, what is clear from both the terms used in s 59 and the extrinsic materials, is that the Act does not provide a new 'stand-alone legal remedy'. Section 59 *HR Act* permits a person who *'may seek any relief or remedy… on the ground that the act or decision was, other than because of section 58, unlawful'* (s 59(1)) to seek the relief or remedy on the ground of a breach of s 58 (s 59(2)) (emphasis added). In so providing, s 59 adopts an expressly narrower scope than s 39(1) of the *Charter of Human Rights and Responsibilities Act 2006* (Vic), which identifies the pre-existing cause of action in the following terms: *"If, otherwise than because of this Charter, a person may seek …".*
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> Section 59 is *"both conditional and supplementary;"* it provides a *new ground* for relief conditional on the availability of a pre-existing cause of action for that relief on a non-s 58 ground of unlawfulness. It does not by its terms or

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[235] *Chief Executive, Department of Environment Science & Innovation v Nagana Yarrbayn Wangan & Jagalingou Cultural Custodians* [2026] QCA 7 [171].

[236] In determining whether a decision is a decision to which the *Judicial Review Act 1991* applies, the courts apply a two-limb test set out in *Griffith University v Tang* (2005) 221 CLR 99 [89]: 'first, the decision must be expressly or impliedly required or authorised by the enactment; and, secondly, the decision must itself confer, alter or otherwise affect legal rights or obligations'.

[237] *Chief Executive, Department of Environment Science & Innovation v Nagana Yarrbayn Wangan & Jagalingou Cultural Custodians* [2026] QCA 7 [119].

[238] *Chief Executive, Department of Environment Science & Innovation v Nagana Yarrbayn Wangan & Jagalingou Cultural Custodians* [2026] QCA 7 [118]-[127].

[239] *Corrective Services Act 2006* (Qld) s 175H.

[240] Queensland Human Rights Commission, 'Submission on behalf of the Queensland Human Rights Commission', Submission in *Anderson v President of the Parole Board Queensland*, B.S. 9292/23, [4]-[5].

> intent exclude other operative provisions of the *HR Act* which 'protect and promote' the statutory human rights recognised in it – such as s 48(1) – and which may attend the pre-existing cause of action. Section 48 is not on any reading of the *HR Act* limited by s 59. Rather, subject to an override declaration, it applies to construction of all statutory provisions – whenever enacted and in any setting. (footnotes omitted)

319. The Court of Appeal, in dismissing the appeal, did not grapple with this issue.[241]

320. In response to the specific issues relating to the amendment of section 59 set out in the Discussion Paper,[242] the Commission's view is that:

- There is benefit in clarifying through amendment of section 59, or the addition of a legislative note, that the other cause of action supporting a piggy-back claim must be bona fide and arguable, consistent with the judgment in *Nagana*.
- If section 59 is amended to clarify that a person making a piggy-back claim must also litigate the other cause of action, this will necessarily encourage litigation on issues that might not otherwise be litigated. On the other hand, if it is not a requirement to litigate the other cause of action, then it may be difficult to determine the threshold requirements for s 59, that is, whether the other cause of action is bona fide and arguable.
- The Commission would be concerned about clarifying in legislation that human rights enacted in the Human Rights Act do not give rise to any freestanding rights of action. Even without those words being incorporated into the Act, the concept has given rise to unnecessary, technical arguments about why the Act does not apply, rather than how it does apply, contrary to the overall purpose of the Human Rights Act. Giving express acknowledgement in the Act is likely to exacerbate the problem and may have unintended consequences, such as the ousting of claims that have a basis in common law or other statutory rights, as well as under other provisions of the Human Rights Act.
- The Commission notes that s 59(3) prevents awards of damages for human rights claims and is supportive of a recommendation that it be repealed.

Additional remedies

321. The Discussion Paper also provides additional considerations at paragraph [255] in relation to remedies under the Human Rights Act. For completeness, we provide some further information about each:

- **Referral of human rights complaints for determination:** Our previous position has recommended that the Commission be able to refer human rights complaints to a tribunal for determination. This would align with access to the tribunal for complaints

[241] *President, Parole Board Queensland v Anderson* [2026] QCA 216.

[242] *Strategic Review of the Queensland Human Rights Commission and Related Reviews* (Discussion Paper, 30 September 2026) [254].

under the Anti-Discrimination Act.[243] The Commission acknowledges the additional jurisdiction this would confer on the tribunals which already have heavy workloads within broad jurisdictions.

- **What remedies should be available:** In its previous submission, the Commission supported courts and tribunals having discretion to order the full range of remedies within their power, including damages.[244] Under the UK Human Rights Act, courts may grant such relief or remedy, or make such order, within its powers as it considers just and appropriate.[245]
- The Discussion Paper at [251] states that it is uncertain what remedies a court or tribunal can award where the applicant only establishes a breach of section 58(1) of the Human Rights Act, and has not made out the other cause of action, because s 58(6) provides 'an act or decision is not invalid merely because' of a contravention of s58(1). This could be because the word 'merely' is overlooked. The Commission considers the current position under the Human Rights Act is that a court or tribunal can make any orders within its powers, except for damages due to s 59(3).
- **Separate cause of action:** The Commission supports a direct cause of action for a contravention of section 58(1) against a public entity, as discussed above at [312] to [314]. Enforcement mechanisms provide an avenue for redress and improvement where mediation and dialogue are not enough, do not prejudice the sovereignty of parliament, and are not inconsistent with the dialogue model.
- **Separate ground of review under the Judicial Review Act:** The suggested addition of a contravention of section 58(1) as a ground of judicial review may assist to avoid technical arguments regarding the application of section 59, or having to canvass non-human rights arguments in judicial review proceedings. If such an amendment is made, enforcement of human rights through section 59 and/or a direct cause of action should still be maintained.

Application of the HRA to courts and tribunals (Question B14)

Question B14

- Should section 5(2)(a) of the HRA be repealed?

Commission Position

The Commission supports retaining s 5(2)(a) of the Human Rights Act because of its role in the dialogue model.

322. Section 5 of the HRA relevantly provides:

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[243] Queensland Human Rights Commission, Submission to Independent Reviewer, *Review of Queensland's Human Rights Act 2019* (8 July 2024) [131]–[134] Recommendation 2.2.

[244] Queensland Human Rights Commission, Submission to Independent Reviewer, *Review of Queensland's Human Rights Act 2019* (8 July 2024) [139]–[141] Recommendation 2.4.

[245] *Human Rights Act 1998* (UK) s 8(1).

> (2) This Act applies to—
>
> (a) a court or tribunal, to the extent the court or tribunal has functions under part 2 and part 3, division 3….

323. The functions courts and tribunals have under part 3, division 3 are (i) interpreting laws to the extent possible in a way that is compatible with human rights (s 48), (ii) referring questions to the Supreme Court, and (iii) making declarations of incompatibility (s 53) and giving them to the Attorney-General (s 55). As discussed elsewhere in this submission, these are each integral aspects of the dialogue model which underpins Queensland's approach to human rights.

324. The Discussion Paper notes that none of the provisions in Part 2 expressly confer a function (or power) on a court or tribunal. As noted in the Discussion Paper, this aspect of the provision has given rise to uncertainty, but courts in Victoria and Queensland have generally applied what is described as the 'intermediate construction' to identify what functions are relevant under part 2.[246] Under this construction, the functions under Part 2 are the 'functions of applying or enforcing those human rights that relate to court or tribunal proceedings'.[247]

325. In Queensland, like in later cases in Victoria, courts have focussed on the nature of the function the court is performing to identify rights that relate to that function.[248] For example in *Innes v Electoral Commission of Queensland (No 2)* (2020) 5 QR 623, Ryan J identified the function of the Court of Disputed Returns in that case of hearing disputes about the election of a person. Her Honour held that function seemed to include 'applying or enforcing the right to take part in public life (s 23 HR Act) as a human right relating to the Court's proceeding'.[249] In *Attorney-General for the State of Queensland v Grant (No 2)* [2022] QSC 252, Applegarth J found that the court's function in that case was to decide whether to make a supervision order or to make a continuing detention order in circumstances where it found that a supervision order would ensure adequate protection of the community. His Honour held that the discretion that the court was exercising in the circumstances of that case involved the application of at least the right to liberty (s 29(2)) and the right to humane treatment when deprived of liberty (s 30(1)).[250]

326. In *Grant*, Applegarth J noted that:

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[246] *Strategic Review of the Queensland Human Rights Commission and Related Reviews* (Discussion Paper, 30 September 2026), [256]–[261].

[247] *Innes v Electoral Commission of Queensland (No 2)* (2020) 5 QR 623; [2020 QSC 293 [222] (Ryan J) citing with approval *Kracke v Mental Health Review Board* [2009] VCAT 646 [250] (Bell J). See also *Attorney-General for the State of Queensland v Grant (No 2)* [2022] QSC 252 [73], [96], [101] (Applegarth J).

[248] See, for example, *Innes v Electoral Commission of Queensland (No 2)* (2020) 5 QR 623; [2020 QSC 293]230] (Ryan J); *Attorney-General for the State of Queensland v Grant (No 2)* [2022] QSC 252 [75] (Applegarth J).

[249] *Innes v Electoral Commission of Queensland (No 2)* (2020) 5 QR 623; [2020] QSC 293]233].

[250] *Attorney-General for the State of Queensland v Grant (No 2)* [2022] QSC 252 [130].

> Any difficulty that may arise in identifying the rights that relate to the Court's function is not a sufficient reason to adopt either a narrow or wide construction in preference to an intermediate construction. Courts often face difficulty in applying statutory provisions. Any difficulty is reduced by the incremental development of approaches to the task.[251]

327. The Court of Appeal handed down the first appellate judgment concerning this provision in 2026, in *Huang v Body Corporate for the Dorchester CTS 10749* [2026] QCA 147. The Review's preliminary view expressed in the Discussion Paper is that, following the decision in *Huang*, section 5(2)(a) has no work to do and should be repealed.

328. The Commission considers that the Court's decision in *Huang* provides further guidance as to the proper application of section 5(2)(a), however it does not share the view that it leaves no work for the provision to do. The Court states that its conclusions as to the proper interpretation of section 5(2)(a) of the Human Rights Act are set out at [73] to [81] of its judgment.[252] These paragraphs confirm the 'intermediate interpretation' discussed by Bell J in *Kracke* and adopted by earlier Queensland Supreme Court decisions.[253] As explained by Bradley JA further at [81]:

> The "direct application" of any of the human rights in part 2, divisions 2 and 3 to a court or tribunal is to be determined by reference to the function the particular court or tribunal is performing. This will differ according to the issues before the forum and the terms of the relevant human right, because these will frame the relationship of the human right to the function the court or tribunal is performing.

329. The judgment also confirms that section 5(2)(a) does not require a court or tribunal to undertake its own inquiries to identify all human rights that are at stake in, or could be affected by, a decision it is to make (such as in that case, the right not to be arbitrarily deprived of property).[254] That is, the court or tribunal is not required to 'directly apply' each human right when acting judicially in deciding each dispute.[255]

330. The Commission observes that:

- Paragraph [73] holds that human rights protected by the Human Rights Act must be considered by courts and tribunals when relevant to performing their functions under section 48 (interpretation) and section 53 (statement of incompatibility) (that is the Part 3 Division 3 functions).

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[251] *Attorney-General for the State of Queensland v Grant (No 2)* [2022] QSC 252 [86].

[252] *Huang v Body Corporate for the Dorchester CTS 10749* [2026] QCA 147 [103].

[253] *Huang v Body Corporate for the Dorchester CTS 10749* [2026] QCA 147 [77], citing *Re Kracke* [250] (Bell J). Bell J said: 'The intermediate interpretation is that the functions under Part 2 referred to in s 6(2)(b) are the functions of applying or enforcing those human rights that relate to court and tribunal proceedings'. See above [325]–[326].

[254] *Huang v Body Corporate for the Dorchester CTS 10749* [2026] QCA 147 [91].

[255] *Huang v Body Corporate for the Dorchester CTS 10749* [2026] QCA 147 [78].

- Paragraphs [74] and [75] explain that certain civil and political rights in Part 2 Divisions 2 and 3 have obvious application to the functions of courts and tribunals and are 'plainly intended to apply directly to courts and tribunals'. These include section 31(2) (power to exclude persons from hearings), section 31(3) (requiring judgments of courts and tribunals to be published), section 34 (prohibition of double jeopardy), and section 35 (retrospective criminal laws).[256] Courts and tribunals also apply the rights protected in section 31(1) (fair hearing), section 32(1), (2) and (4) (rights of the accused in criminal process), sections 32(3) and 33 (rights of children in the criminal process), section 34 (right not be punished more than once), section 35 (presumption against retrospective operation of criminal laws).[257] Other rights, including section 15 (equality), section 29(5) (bringing a person detained on a criminal charge promptly before a court and to trial without reasonable delay) and section 29(7) (entitlement to apply for declaration regarding lawfulness of detention) 'have an obvious application to the functions of courts and tribunals'.[258]

Definitions (Questions B15 – B18)

Question B15

- Should the definition of "court" be amended to include the Land Court, the Land Appeal Court, the Planning and Environment Court, the Mental Health Court, and the Industrial Court of Queensland?

Commission Position

Yes. The Commission supports changing the definition of 'court' as proposed by the Discussion Paper.

Question B16

- Should the definition of 'discrimination' be amended to make it clear it is exhaustive?

Commission Position

The Commission supports clarifying whether the definition of 'discrimination' in the Human Rights Act is intended by Parliament to be exhaustive or inclusive.

The Commission draws the Review's attention to issues relevant to whether the definition of discrimination should be exhaustive.

[256] *Huang v Body Corporate for the Dorchester CTS 10749* [2026] QCA 147 [74].

[257] *Huang v Body Corporate for the Dorchester CTS 10749* [2026] QCA 147 [75].

[258] *Huang v Body Corporate for the Dorchester CTS 10749* [2026] QCA 147 [74].

Clarity needed

331. Discrimination is defined in Schedule 1 of the Human Rights Act to *include* direct discrimination or indirect discrimination within the meaning of the Anti-Discrimination Act, on the basis of an attribute stated in section 7 of that Act.

332. The courts have taken two different approaches to the interpretation of discrimination under the Human Rights Act:

- discrimination is limited to direct and indirect discrimination on the basis of attributes protected by the Anti-Discrimination Act.[259] (the 'exhaustive interpretation')
- discrimination is broader than discrimination under the Anti-Discrimination Act and may extend to discrimination on 'analogous grounds'.[260] (the 'inclusive interpretation')

333. As a result, there is continuing uncertainty as to whether forms of discrimination, not prohibited by the Anti-Discrimination Act, are intended to be captured by this definition. This uncertainty creates risks for compliance. When the law is not sufficiently clear and precise, duty-bearers may find it difficult to understand what their obligations are, and may be less likely to comply with them. The Commission supports amendments to the Human Rights Act that would clarify whether Parliament intended an exhaustive or an inclusive meaning of discrimination.

Exhaustive or inclusive?

334. The Commission acknowledges that an exhaustive definition would provide greater clarity to duty-bearers. The Victorian Charter definition of discrimination is so constrained. The ACT Human Rights Act does not define discrimination but provides legislative notes that provides the following examples of discrimination: 'Discrimination because of race, colour, sex, sexual orientation, language, religion, political or other opinion, national or social origin, property, birth, disability or other status.'[261]

335. However, the Commission draws the Review's attention to the following issues which justifies careful consideration of whether the definition of discrimination should be exhaustive.

336. **First,** changes to the Anti-Discrimination Act, including the meaning of discrimination and indirect discrimination, are being considered by this Review to ensure it captures all relevant conduct.

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[259] *Johnston v Commissioner of Police* (2024) 19 QR 1, [2024] QSC 2 [294]–[295] (Martin SJA), and more recently *Bobeldyk & Anor v Moreton Bay City Council; Eichin & Ors v Moreton Bay City Council* [2026] QSC 27 [424] (Smith J).

[260] *Austin BMI Pty Ltd v Deputy Premier* (2023) 16 QR 377, [2023] QSC 95 [317]-[320] (Freeburn J); see also *Mizner v State of Queensland (Corrective Services)* [2025] QCA 169 [197], in which the Court of Appeal found no error of law where QCAT noted the concept of discrimination under the Human Rights Act was not limited to those covered by the Anti-Discrimination Act, without elaborating further on the scope of s 15 of the Human Rights Act.

[261] See for example, *Human Rights Act 2004* (ACT) s 8(3).

337. **Second,** the right to recognition and equality before the law under section 15 of the Human Rights Act is framed by reference to the right to enjoy human rights and protection of the law without 'discrimination', and the right to equal and effective protection from 'discrimination'.

338. Section 15 is drawn from Articles 15 and 26 of the *International Covenant on Civil and Political Rights.*[262] When elaborating on the meaning of discrimination in the ICCPR, the Office of the High Commissioner for Human Rights said:

> …the term "discrimination" as used in the Covenant should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth **or other status**, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms (emphasis added)[263]

339. Adopting an exhaustive definition of discrimination in the Human Rights Act means the scope of section 15 would be necessarily narrower than the right in international law.[264]

340. **Third**, discrimination appears in rights other than the right to recognition and equality before the law,[265] and the right to equality and freedom from discrimination permeates all human rights.[266] By making the definition of discrimination exhaustive, it may lead to an overly technical approach to the meaning of discrimination that reduces intended protections under the Human Rights Act.

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[262] Explanatory Notes, Human Rights Bill 2018 (Qld) 3, 18.

[263] United Nations, Human Rights Committee, *CCPR General Comment No 18: Non-discrimination*, 37th sess, (10 November 1989) [6].

[264] *Re Lifestyle Communities Ltd (No 3)* [2009] 31 VAR 286; [2009] VCAT 1869 [163].

[265] See *Human Rights Act 2019* (Qld) ss 23(2) (Taking part in public life), 26(2) (Protection of families and children), s 32(2) (Rights in criminal proceedings), 37(1) (Right to health services).

[266] Explanatory Notes, Human Rights Bill 2018 (Qld) 19.

Question B17

- Should section 9(4)(b) of the HRA be amended so that a court or tribunal is not a public entity for the purposes of the application of the Act, irrespective of whether it is acting judicially or administratively?

Commission position

The Commission supports the current definition of public entity as including courts and tribunals when acting in an administrative capacity, given the value it contributes to administrative decision-making and the protection and rich discussion of human rights in decisions where a court or tribunal has been a public entity.

However, consideration could be given to clarifying that a human rights complaint to the Commission cannot be made about proceedings in a court or tribunal.

341. If courts and tribunals acting administratively were not public entities with human rights obligations then:

- courts and tribunals who conduct a merits review and step into the shoes of the original decision-maker may not be required to apply the same set of considerations as the original decision-maker;
- significant human rights protections and discussion achieved in jurisdictions such as mental health tribunals, guardianship and administration, exemption from discrimination laws, and the Land Court would not have been realised;[267]
- courts and tribunals acting administratively would not have a mandate to consider the human implications of their decision or apply a framework that can help justify complex or difficult decisions.[268]

342. The Commission acknowledges that distinguishing between when a court or tribunal is acting in an administrative or judicial capacity can be difficult. However, this difficulty has been navigated for many years in other Australian human rights jurisdictions and in

[267] See, for example, *Waratah Coal Pty Ltd v Youth Verdict (No 6)* [2022] QLC 21; *Re Kracke* [2009] VCAT 646; *PJB v Melbourne Health & Anor (Patrick's case)* [2011] VSC 327; *Re Lifestyle Communities Ltd (No 3)* [2009] VCAT 1869; [2009] 31 VAR 286.

[268] See eg, *Ross v Callinicos* [2024] QCAT 455 (tree dispute); *Hickey v Commissioner of Police* [2023] QDC 181 (extension of restraining order – although the Magistrate was acting judicially, the court considered whether the decision was compatible with human rights).

constitutional law.[269] There is also increasing clarity through jurisprudence, for example, the recent decision in *Huang.* [270]

343. The Commission supports the current definition of public entity as including courts and tribunals when acting in an administrative capacity. However, to address concerns about a court or tribunal being the subject of a human rights complaint, the Human Rights Act might clarify that a human rights complaint to the Commission may not be made about proceedings in a court or tribunal.

Question B18

- Do sections 9(1)(h), 9(2)(a) and 10 of the HRA require amendment to clarify what constitutes a functional public entity, for example non-government service providers?

Commission Position

The Commission considers the uncertainty regarding whether non-government service providers are public entities would be best addressed through improved guidance and education to these service providers.

344. The definition of public entity includes:

- an entity established under an Act when the entity is performing functions of a public nature (section 9(1)(f));
- an entity whose functions include functions *of a public nature* when that entity is performing the functions *for the State or a public entity* (under section 9(1)(h)); and
- a registered provider when the provider is performing functions *of a public nature* in the State (section 9(2)(a)).

345. These are known as functional public entities, who are only public entities when performing certain functions, as distinct to core public entities who are always public entities, no matter what functions they are performing.[271]

346. The Explanatory Note to the Human Rights Bill 2018 provides:

> The inclusion of functional public entities reflects the modern operation of the government, where non-government entities, including non-government

[269] See by way of example, *New South Wales v Wojciechowska* (2025) 283 CLR 148, 159–160 [15]–[17] and *Re Kracke* (2009) 29 VAR 1, 65-71 [267]-[298]. The Department of Justice's Human Rights Unit has also created a resource to help create awareness about human rights obligations under the Human Rights Act. See Queensland Government, *Factsheet: Courts and tribunals and human rights* (Online factsheet) <https://www.forgov.qld.gov.au/__data/assets/pdf_file/0035/183977/courts-and-tribunals-and-protected-human-rights.pdf> which gives examples on when courts and tribunals are public entities acting in an administrative capacity.

[270] *Huang v Body Corporate for the Dorchester* [2026] QCA 147, [40]–[55].

[271] Explanatory Note, Human Rights Bill 2018 (Qld) 14. Entities established under an Act when the entity is performing functions of a public nature under s 9(1)(f) are also functional public entities.

> organisations, private companies and government owned corporations, are engaged, in various ways, to deliver services to the public on behalf of the government or another public entity. An example of a functional public entity is a private company managing a prison, or a non-government organisation providing a public housing service.

347. Non-government service providers can be public entities, when performing functions of a public nature *and* if doing so for the State or for another public entity (or in the case of a registered NDIS provider, when they are performing functions of a public nature in Queensland).

348. The Commission acknowledges a lack of awareness among community service organisational about the Human Rights Act and ambiguity about whether their activities are captured in the definition of functional public entities. Overall, these concerns stem from both a lack of penetration with education and awareness activities with this sector; and complexity in operational functions and funding and contracting arrangements within the non-government sector.

349. As such, it may be more appropriate to address any uncertainty about whether a non-government service provider may be a public entity through improved guidance or education. This should include guidance on the content of public entity obligations, and the value-add of considering human rights whether or not it is a legal requirement. As we explore in our submission to Part A of this review, the Commission has recently launched its Education Strategy 2026-2030 which includes introducing capability building services.

350. Expressly identifying non-government service providers are public entities would expand their obligations under the Human Rights Act to all their functions, which may have unintended consequences. It might also capture non-government service providers who are not public entities under the current definition.

351. The Commission has developed some resources for functional public entities. The Department of Justice's Human Rights Unit has also developed a resource to help identify whether an organisation is a functional public entity.[272] Further resources and educational activities are necessary.

[272] See Queensland Government, *Factsheet: The Role of Public Entities* (Online Factsheet) <https://www.forgov.qld.gov.au/__data/assets/pdf_file/0026/183158/public-entities-and-human-rights-factsheet.pdf>.

Amendments to the CSA and YJA (Question B19)

Question B19

- Should section 5A of the Corrective Services Act 2006 and section 263(7)-(8) of the Youth Justice Act 1992 be retained?

Commission Position

Section 5A of the *Corrective Services Act 2006* and sections 263 (7) and (8) into the *Youth Justice Act 1992* should not be retained as they are unnecessary and appear to create confusion.

352. Section 5A of the *Corrective Services Act 2006* (Qld) provides that corrective service officers does not contravene section 58(1) only because they take additional factors into account when making decisions about the segregation of convicted and non-convicted prisoners, and the management of prisoners where it is not practicable to provide the prisoner with their own room. The additional factors are:

    - the security and good management of corrective services facilities; and
    - the safe custody and welfare of all prisoners.

353. Similarly, section 263 of the *Youth Justice Act 1992* (Qld) provides that the chief executive does not contravene section 58(1) the Human Rights Act only because they take additional factors into account when making decisions about whether to segregate accused children from convicted children in youth detention centres. The additional factors are:

    - the safety and wellbeing of a child on remand and other detainees; and
    - the chief executive's responsibilities and obligations under section 263.

354. As pointed out by the Discussion Paper at [289], these additional factors can already be considered when assessing an act or decision for compatibility under sections 8 and 13 of the Human Rights Act. It is difficult to envisage how a court could conclude a breach of section 58(1) *only because* the decision-maker took the described additional factors into account, rendering the provisions unnecessary. Inclusion of the provisions appear to only create confusion, as identified in *Mizner v State of Queensland (Corrective Services)* [2025] QCA 169.[273]

355. The Commission agrees that the provisions should be repealed.

[273] *Mizner v State of Queensland (Corrective Services)* [2025] QCA 169 See [232] (respondents provided inconsistent submissions as to the effect of s 5A of the Corrective Services Act) and [241] (tribunal erred in its construction and application of s 5A of the Corrective Services Act).

Further review of the HRA and other issues (Questions B20 - B21)

Question B20

- Is a further review of the HRA necessary and, if so, in what timeframe?

Commission Position

A further review of the Human Rights Act, aligned with the next strategic review of the Commission in 5 years, may be desirable.

356. As a relatively recent enactment, the Human Rights Act continues to evolve in its operation and application. The Discussion Paper reflects on the importance of the Human Rights Act for the people of Queensland, and its broad application and scope. Once this current and second review is complete, there will be no further mechanism requiring an independent legislative review of the operation of the Human Rights Act. The Human Rights Act will have been in place for 7 years at the time this Review report is to be delivered.

357. At the same time, legislative reviews do provide some uncertainty about what the law could or should be, which may not be helpful for the continued certainty about human rights laws in Queensland.

358. On balance, the Commission considers that a further legislative review of the Human Rights Act may be desirable. Aligning this review with the next strategic review of the Commission in 5 years will, as observed by the Discussion Paper, have advantages and efficiencies.

Question B21

- Are there any other issues that you would like to raise about the operation of the HRA?

Commission position

Section 91(2)(e) requires the annual report on the operation of the Human Rights Act report on the number of human rights complaints 'made or referred to the commissioner'. The Commission suggests this be amended to require reporting on the number of human rights complaints 'finalised by the commissioner to facilitate accurate reporting'.

359. The Commission's annual report under section 91 of the Human Rights Act aims to create a valuable resource for government, parliament, and the community on the operationalisation of the Act and the degree to which it is achieving its objectives.[274] It

[274] Explanatory Notes, Human Rights Bill 2018 (Qld) 44.

also provides some oversight on how the Act is operating in practice, while encouraging public entities to maintain their focus on development of a human rights culture.

360. While the Commission supports the continued reporting requirements in section 91, we would like to raise a minor issue for consideration.

361. Section 91(2)(e) requires that the Commissioner report on the number of complaints 'made or referred to the Commissioner'. Complaints received by the Commission are not categorises as falling under the Anti-Discrimination Act or the Human Rights Act until the matter has been assessed. This may take several months. The delay between receipt of the complaint and assessment means the Commission cannot accurately report on the number of complaints 'made or referred'.

362. To resolve this issue, the Commission suggests section 91(2)(e) should be amended to require reporting on the number of human rights complaints that were *finalised* by the commissioner in a given year. In both the Commission's annual report, and its report on the operation of the Human Rights Act, the Commission reports on complaints that have been *finalised* within the financial year. As well as overcoming practical concerns caused by a delay between receipt and assessment of a complaint, this is a more meaningful reporting metric, because the Commission is not reporting on matters that are in progress. When reporting on finalised complaints, the Commission is able to say how many were accepted, how many have been closed, what complaints were about, and what outcomes were achieved through the process.

Part C – Review of the Respect at Work Act

Recommendations

363. The structure of this submission and recommendations follows the questions asked in the Discussion Paper. A summary of the Commission's responses and recommendations is at **Appendix A**.

Context to Commission's submission on Part C

364. In July 2022, the Commission's report on its legislative review of the Anti-Discrimination Act, *Building Belonging: Review of Queensland's Anti-Discrimination Act 1991* (**Building Belonging report**), was tabled in the Queensland Parliament. The methodology for that review is outlined in the report, and submissions received are published on the Commission's website.[275]

365. The Commission affirms our position in the Building Belonging report together with our submission to the Department of Justice and Attorney-General in response to the consultation draft of the Anti-Discrimination Bill 2024 dated 22 March 2024 (**Draft Anti-Discrimination Bill 2024**).

366. For this submission, we only respond to questions where we can provide updated information or new insights to those presented in the Building Belonging report. We also provide a response to questions about vilification.

367. As outlined in the Discussion Paper, Part C of this Review arises primarily from concerns that some of the proposed amendments to the Anit-Discrimination Act may have unintended consequences which have not been properly considered.

368. The Commission observes that most of the concerns outlined were raised, and thoroughly considered, during the Building Belonging Review[276]. It therefore follows that these concerns were not unintended. Where new concerns are raised, we provide further commentary.

369. As many of the discussion questions are framed as inviting submissions on unintended consequences, the Review may primarily receive submissions that identify concerns with the *Respect At Work and Other Matters Amendment Act 2024* (Qld) (**RAW Act**) proposals. Stakeholders who support the reforms made those submissions at an earlier

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[275] Queensland Human Rights Commission, *Building Belonging: Review of Queensland's Anti-Discrimination Act 1991* (Report, July 2022) 37. Queensland Human Rights Commission, *Submissions to the review* (Web Page) <https://www.qhrc.qld.gov.au/our-work/major-reviews2/review-of-queenslands-anti-discrimination-act/submissions-to-the-review>.

[276] In respect of vilification, concerns were raised in submissions to the Parliamentary Inquiry into Serious Vilification and Hate Crimes, draft Anti-Discrimination Bill 2024 and the Respect At Work and Other Matters Amendment Bill 2024.

time, and are now, as noted by the Discussion Paper, experiencing consultation fatigue.[277]

370. The Commission continues to support any opportunity to strengthen Queensland's discrimination laws.

Equitable outcomes (Question C1)

Question C1

- Does the phrase 'equality of opportunity' require any amendment?

Commission position

The long title, preamble, and purposes of the Anti-Discrimination Act should include reference to achieving formal and substantive equality.

371. The Building Belonging Review recommended that the objects of the Anti-Discrimination Act should be amended to include 'to promote and facilitate the progressive realisation of substantive equality as far as reasonably practicable…'.[278]

372. This is to reflect recommendations directed towards the progressive realisation of substantive equality. For example, a duty to make reasonable accommodations and a positive duty to prevent discrimination, sexual harassment, and other prohibited conduct as far as possible. We also recommended this language be reflected in changes to the Acts long title and preamble.

373. While not diminishing the need for formal equality, the shortcomings of treating all people the same (formal equality model) are generally recognised. Formal equality suggests that all people should be treated the same regardless of their differences. However, as rights, entitlements, opportunities, and access are not equally distributed throughout society, a one size fits all approach will not achieve 'substantive equality'.[279] As such, our position is that the Act should seek to achieve both formal and substantive equality.

374. As observed by the Discussion Paper, our report did not recommend the term 'equitable outcomes'. This terminology was introduced by the RAW Act, which substituted 'equality of opportunity' with the phrase 'equal opportunity and equitable outcomes' in the long title, preamble, and purpose of the Anti-Discrimination Act.

375. The Discussion Paper suggests adopting the language of 'substantive equality' may introduce uncertainty and subjectivity into the Anti-Discrimination Act.

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[277] *Strategic Review of the Queensland Human Rights Commission and Related Reviews* (Discussion Paper, 30 September 2026) i, Foreword.

[278] Queensland Human Rights Commission, *Building Belonging: Review of Queensland's Anti-Discrimination Act 1991* (Report, July 2022) 20, Recommendation 2.3.

[279] Australian Law Reform Commission, *Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (ALRC Report 133, December 2017) 23.

376. We observe that language to define underlying concepts can be imprecise. Terminology in this area is subject to ongoing academic research, political discourse, and evolving social meanings.

377. However, the Commission notes the term 'substantive equality' is currently employed by Commonwealth anti-discrimination legislation.[280] Consistency across anti-discrimination legislation is likely to aid interpretation and assist in achieving consistent outcomes. This was one reason for the Commission adopting this language.

Prohibited conduct on the basis of sex? (Questions C2 – C3)

Question C2, C3

- Are there any unintended consequences of introducing a new prohibition on "harassment on the basis of sex"?
- Are there any unintended consequences of introducing a new prohibition on subjecting a person to a work environment that is hostile on the basis of sex?

Commission position

The provisions which prohibit harassment on the basis of sex and subjecting a person to a work environment that is hostile on the basis of sex should not be commenced.

378. The Respect at Work Act, if commenced, would amend the Anti-Discrimination Act to prohibit 'harassment on the basis of sex' and 'subjecting a person to a work environment that is hostile on the basis of sex'.

379. As observed in the Discussion Paper, these provisions were not recommended by the Commission's Building Belonging report. They were included in response to the Australian Human Rights Commission's *Respect@Work* report on its inquiry into sexual harassment in Australian workplaces.[281] Recommendations of that report were to the Australian Government to amend to the *Sex Discrimination Act 1984* (Cth) (Sex Discrimination Act).

380. The terms of reference for the Building Belonging Review asked the Commission to consider recommendations made by the *Respect@Work* report. We specifically considered the report's recommendations including that 2 new provisions be introduced into the Sex Discrimination Act to prohibit:

- sex based harassment, also referred to as harassment on the basis of sex
- creating an intimidating, hostile, humiliating or offensive environment on the basis of sex, also referred to as work environment hostile on the basis of sex.

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[280] *Sex Discrimination Act 1984* (Cth) ss 3(e), 7D(1); *Fair Work Act 2009* s 195(4).

[281] Australian Human Rights Commission, *Respect@Work: National Inquiry into Sexual Harassment in the Australian Workplaces* (Report, 2020).

381. After careful review, the Commission concluded the current sexual harassment laws in Queensland are working well and substantially cover the conduct these provisions sought to address.

382. The current test for sexual harassment under the Queensland Anti-Discrimination Act is simple and broadly defined. Introducing additional prohibitions risks undermining existing protections and is likely to make the law harder to understand. Detailed reasons for this view are available in the Building Belonging report pages 134 to 143. Our view remains unchanged.

383. Recommendations of the Building Belonging Review were designed holistically to better address and prevent discrimination and sexual harassment. In articulating the Commission's position that these 2 additional prohibitions on the basis of sex are unnecessary,[282] we refer to the need to:

- simplify and improve the tests for direct and indirect discrimination as per our draft provisions
- introduce a positive duty to prevent discrimination before it occurs
- include an example in the Anti-Discrimination Act that covers hostile work environments.

384. These reforms will better ensure adequate protection from the harms of harassment on the basis of sex and hostile work environments.

New attributes (Questions C7 – C8)

Question C7

- ### What are the unintended consequences of retaining the new attribute 'a combination of two or more of any of the above attributes'?

Commission position

The Commission sets out the background to the development of reforms for the protection from discrimination on combined grounds to give context to the amendments proposed to sections 7 and 8 of the Anti-Discrimination Act.

Instead of a new attribute recognising discrimination on combined grounds, the Commission prefers the definitions of discrimination be amended to refer to discrimination because the person has one or more attributes and retaining the RAW Act's proposed section 8(2).

385. Gaps in protection from discrimination on combined grounds (also referred to as 'intersectional discrimination') under the Anti-Discrimination Act was identified as a key issue in the Building Belonging Review. The disconnect between the Anti-Discrimination

[282] Queensland Human Rights Commission, *Building Belonging: Review of Queensland's Anti-Discrimination Act 1991* (Report, July 2022) 137–138 and 141.

Act and the reality of experience for many people was repeatedly raised. The review noted that combined grounds discrimination has been recognised as one of the cultural and systemic drivers of discrimination and sexual harassment.[283]

386. The Building Belonging Review recommended that definitions of direct and indirect discrimination expressly provide that discrimination can occur on the basis of one or more attributes, or because of the effect of a combination of attributes.[284] This was adopted from the Canadian approach to ensure the cumulative effect of the attributes is considered, rather than only additive effects.[285]

387. Amendments under the RAW Act to the Anti-Discrimination Act protect against discrimination on combined grounds by:

- inserting the following attribute in section 7: 'a combination of 2 or more of any of the above attributes'
- stating the meaning of 'discrimination on the basis of an attribute' under a new section 8(2) for a person who has 2 or more attributes includes discrimination in relation to: any of the attributes, or 2 or more of the attributes, or the combined effect of 2 or more of the attributes.

388. The Discussion Paper says it is not clear why section 7 needs to expressly protect 'a combination of 2 or more of any of the above attributes' is necessary in view of new section 8(2). The definition of direct discrimination under section 10(1) of the Anti-Discrimination Act was amended by the RAW Act to provide that direct discrimination on the basis of an attribute happens if a person treats another person unfavourably 'because the other person has an attribute'. Similarly, indirect discrimination occurs if the effect of a term disadvantages another person 'because the other person has an attribute'. Despite section 8(2), this drafting may make it problematic for complainants seeking protection on combined grounds, where section 7 only offers a list of standalone attributes. It may, as heard by the Building Belonging Review, lead to legal advice that complainants choose the attribute that is the clearest, when the conduct in fact occurs based on the way in which the attributes intersect.[286]

389. The Building Belonging Review also heard that people who have combined attributes may be protected if the law explicitly recognised them and would make the legislation more accessible.[287]

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[283] Queensland Human Rights Commission, *Building Belonging: Review of Queensland's Anti-Discrimination Act 1991* (Report, July 2022) 50–52.

[284] Queensland Human Rights Commission, *Building Belonging: Review of Queensland's Anti-Discrimination Act 1991* (Report, July 2022) 20, recommendations 3.2, 3.3.

[285] Queensland Human Rights Commission, *Building Belonging: Review of Queensland's Anti-Discrimination Act 1991* (Report, July 2022) 105, 108–109.

[286] Queensland Human Rights Commission, *Building Belonging: Review of Queensland's Anti-Discrimination Act 1991* (Report, July 2022) 106.

[287] Queensland Human Rights Commission, *Building Belonging: Review of Queensland's Anti-Discrimination Act 1991* (Report, July 2022) 105.

390. However, instead of adding an attribute, the Building Belonging Review recommended amending the definition of direct and indirect discrimination to expressly provide that discrimination can occur on the basis of one or more attributes, or because of the effect of a combination of attributes, and the Act should not use the singular language of 'an attribute'.[288]

Question C8

- Should the definition of 'homelessness' in s 52 of the Respect at Work Act be repealed?

Commission position

Yes. In accordance with the position set out in Building Belonging[289], and referred to in the Discussion Paper, 'homelessness' should not be defined.

When does a person discriminate? (Question C10)

Question C10

- Are there any unintended consequences of retaining the new definitions of 'direct discrimination' and 'indirect discrimination'?

Commission position

The Commission is supportive of amendments to the definitions of direct discrimination and indirect discrimination made by the RAW Act and considers this to be a priority area for reform to improve accessibility to protections against discrimination.

391. A priority concern in the Building Belonging Review was to ensure the definition of discrimination is easy to understand and avoids unnecessary technicalities that dilute the effectiveness of the law.[290]

392. The RAW Act amendments simplify definitions of direct and indirect discrimination and make the Act more accessible for the reasons outlined in the Discussion Paper. The RAW Act amendments do not implement Building Belonging recommendations that definitions of discrimination expressly provide that discrimination can occur on the basis of one or more attributes, or because of the effect of a combination of attributes.[291] This is discussed in more detail in relation to Question C7.

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[288] Queensland Human Rights Commission, *Building Belonging: Review of Queensland's Anti-Discrimination Act 1991* (Report, July 2022) 109-110, recommendations 3.2, 3.3.

[289] Queensland Human Rights Commission, *Building Belonging: Review of Queensland's Anti-Discrimination Act 1991* (Report, July 2022) 333–338.

[290] Queensland Human Rights Commission, *Building Belonging: Review of Queensland's Anti-Discrimination Act 1991* (Report, July 2022) 13–14.

[291] Queensland Human Rights Commission, *Building Belonging: Review of Queensland's Anti-Discrimination Act 1991* (Report, July 2022) 20–21, recommendation 3.

393. The Commission is supportive of amendments to the definitions of direct discrimination and indirect discrimination made by the RAW Act.

Burden of proof (Question C11)

Question C11

- Should the current burden of proof be changed to a 'shifting' burden of proof and, if so:

  (a) should a 'shifting' burden of proof apply only to complaints of direct discrimination?

  (b) what should a complainant be required to prove prior to the burden shifting to the respondent?

Commission position

The Commission continues its support for a shifting burden of proof in relation to direct discrimination as set out in the Building Belonging report.

The Commission supports the burden of proof for indirect discrimination complaints set out in section 205 of the Anti-Discrimination Act and retained in section 11(3) inserted by the RAW Act. The Commission has set out commentary from the RAW Act Explanatory Notes, which in turn is drawn from UK case law, to assist with understanding the application of the shifting burden of proof.

Should there be a shifting burden of proof?

394. The burden of proof provisions that currently apply to complaints provide:

> **204 Burden of proof—general principle**
>
> It is for the complainant to prove, on the balance of probabilities, that the respondent contravened the Act, subject to the requirements in sections 205 and 206.
>
> **205 Burden of proof—indirect discrimination**
>
> In a case involving an allegation of indirect discrimination, the respondent must prove, on the balance of probabilities, that a term complained of is reasonable.
>
> **206 Burden of proof—exemptions**
>
> If the respondent wishes to rely on an exemption, the respondent must raise the issue and prove, on the balance of probabilities, that it applies.[292]

[292] See *Anti-Discrimination Act 1991* (Qld) s 285AA.

395. The Building Belonging Review found there were sound reasons to depart from the current burden of proof provisions for direct discrimination and to adopt a 'shared burden of proof'. This included:

    - Respondents are often the only people holding key information about reasons for the treatment or the state of mind that led to the treatment.
    - Significant power imbalances characterise many discrimination cases and requiring the complainant to take on the entire burden of proof is a genuine deterrent to making a complaint.
    - Retaining the whole burden of proof is too onerous for complainants, especially when unrepresented.
    - Time and costs may be saved by adopting an approach that gets quickly to the key issues.[293]

396. These reasons are reflected in the Explanatory Note to the RAW Bill as justifying departure from the common law principles regarding burden of proof in civil claims.[294]

Application of the shifting burden

397. After considering a number of models, the Building Belonging Review recommended the introduction of a shared burden of proof based on section 136 of the *Equality Act 2010* (UK) (UK Equality Act).[295]

398. The RAW Act implements this recommendation by replacing sections 204 to 205 of the Anti-Discrimination Act (dealing with burden of proof generally and burden of proof for indirect discrimination) with section 204, which is modelled on section 136 of the UK Equality Act.[296] The meaning of indirect discrimination in section 11 is also replaced, including a new section 11(3).

399. The new section 204(3) states that the burden of proof set out in sections 204(1) and (2) applies *in addition* to any other provisions of the Act that provide for who has the onus of proving a particular matter. Legislative notes to section 204(3) give the following examples:

    - Section 11(3) (Meaning of indirect discrimination): the person imposing or proposing to impose the condition, requirement or practice has the onus of proving, on the balance of probabilities, the condition, requirement or practice is reasonable;[297]

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[293] Queensland Human Rights Commission, *Building Belonging: Review of Queensland's Anti-Discrimination Act 1991* (Report, July 2022) 193–195.

[294] Explanatory Notes for Amendments to be Moved During Consideration in Detail, Respect at Work and Other Matters Amendment Bill 2024 (Qld) 8–9.

[295] Queensland Human Rights Commission, *Building Belonging: Review of Queensland's Anti-Discrimination Act 1991* (Report, July 2022) 203, recommendation 13.

[296] *Respect at Work and Other Matters Amendment Act 2024* (Qld) s 47A replacing ss 204–206.

[297] This essentially moves existing section 205 (Burden of proof—indirect discrimination) to the definition of indirect discrimination.

- Section 205 (Burden of proof–exemption): the person seeking to rely on the exemption has the onus of proving, on the balance of probabilities, the exemption applies.

400. Drawing from UK jurisprudence where the shared burden of proof has had detailed consideration, the explanatory note to the RAW Bill 2024 describes a 2-stage test:

> The first stage requires the complainant to prove, on the balance of probabilities, facts from which the tribunal could conclude that the respondent had committed an unlawful act of discrimination. At the first stage of the analysis, the complainant is not required to prove the reason for the conduct, and the tribunal does not consider the reasons in determining whether the complainant has established a prima facie case for discrimination. In the case of direct discrimination under the AD Act, then, new section 204 may require a complainant at the first stage to prove facts which show the complainant has an attribute listed in section 7 of the AD Act, and that they suffered unfavourable treatment. If the complainant does not discharge the burden to present a prima facie case, the complaint will fail.
>
> Where a prima facie case is established, the second stage of the process then shifts the burden of proof to the respondent. To discharge the burden, the respondent must prove, on the balance of probabilities, that the reason for their impugned conduct was not because the complainant had a protected attribute, or that there was some other non discriminatory reason, or that they otherwise did not contravene the AD Act. Since facts which are relevant to this determination are normally in the possession of the respondent, 'a tribunal would normally expect cogent evidence to discharge that burden of proof' (see (13) of annex 1 of *Wong v Igen*). If the respondent fails to discharge the burden of proof on the balance of probabilities, the complainant will succeed.[298]

401. The example given in the UK Explanatory Notes for direct discrimination is:

> A man of Chinese ethnic origin applies for a promotion at work but is not given an interview for the job. He finds that a number of white colleagues were given interviews despite having less experience and fewer qualifications. He brings a case for race discrimination before the employment tribunal and provides sufficient evidence to show that he had been treated less favourably because of his ethnic origin. It would then be up to his employer to prove that she had not discriminated against him in the promotion process.[299]

402. Burden of proof is a matter for complaints that have been referred to the tribunal. The Commission's dispute resolution function does not request or require evidence, although Commission staff may discuss the burden of proof tests with complaint parties during conciliation as part of reality testing, and consideration of the burden of proof tests is a factor the parties may consider when considering options to resolve the complaint or refer to tribunal.

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[298] Explanatory Notes for Amendments to be Moved During Consideration in Detail, Respect at Work and Other Matters Amendment Bill 2024 (Qld) 14.

[299] 'Section 136: Burden of proof', *Equality Act 2010* (Web Page) <https://www.legislation.gov.uk/ukpga/2010/15/notes/division/3/9/5/1>.

Should the shifting burden only apply to complaints of direct discrimination?

403. The focus of discussion in the Building Belonging report was the onus of proof in relation to direct discrimination complaints.

404. This is because for indirect discrimination, once the complainant has demonstrated a term they cannot comply with and with which a higher proportion of people without the attribute can comply with, the onus shifts to the respondent to prove the term was reasonable.[300] This application of the burden of proof to indirect discrimination should be maintained.

405. There is merit in considering whether the shifting burden should apply to other unlawful conduct under the Anti-Discrimination Act.

Positive duty (Questions C12 - C13)

Question C12

- Are there any unintended consequences that may arise if the positive duty were implemented in Queensland?

Commission position

The Commission continues to support implementation of a positive duty, and provides further information in relation to concerns raised by the Discussion paper.

406. The Building Belonging Review recommended that the Anti-Discrimination Act be amended to include a positive duty for duty holders to take reasonable and proportionate measures to eliminate discrimination, sexual harassment, and other prohibited conduct.[301]

407. The RAW Act implements this recommendation and provides that the duty will apply to all people with obligations under the Act if conducting a business or undertaking.[302]

408. The Discussion Paper summarises the benefits of a positive duty as outlined in the Building Belonging report and discusses the implementation of similar duties in other Australian jurisdictions.

409. It highlights the following concerns that were raised during the Building Belonging Review about the commencement of the positive duty in Queensland:

    - There is potential for inconsistency and duplication with existing duties under other laws and regulations.[303]

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[300] *Anti-Discrimination Act 1991* (Qld) ss 11, 205.

[301] Queensland Human Rights Commission, *Building Belonging: Review of Queensland's Anti-Discrimination Act 1991* (Report, July 2022) 25 recommendation 15.

[302] *Respect at Work and Other Matters Amendment Act 2024* (Qld) s 131I.

[303] See Queensland Human Rights Commission, *Building Belonging: Review of Queensland's Anti-Discrimination Act 1991* (Report, July 2022) 223–224 and 225–227.

- There may be increased regulatory burden for duty bearers and associated costs, particularly for small to medium sized businesses or agencies.[304]
- There is a risk that compliance with the positive duty will become a tick box exercise rather than resulting in genuine measures to prevent unlawful conduct.[305]
- The Commission would be required to take on regulatory functions which may give rise to conflict with the Commission's complaints handling function.[306]

410. The Discussion Paper also notes that following introduction of the RAW Bill, concerns were raised by religious bodies and schools as to whether the positive duty would require them to promote values within their organisations inconsistent with their beliefs, which was also considered during the Commission's review.[307]

411. Each of these potential limitations were considered and addressed in the Building Belonging Review. These limitations, or consequences, were considered not to outweigh the benefits.[308]

412. In relation to these concerns, we make the following additional observations based on new insights since publication of the Building Belonging report.

Reducing potential for inconsistency and duplication with other laws and regulations

413. During the Building Belonging Review, the Commission was conscious of the need to ensure any proposed positive duty was consistent with or complementary to existing duties under other legislation.

414. In particular, we carefully considered potentially overlapping duties owed under the *Work Health and Safety Act 2011* (Qld) (Work Health and Safety Act). We concluded that overlap between the positive duty in Work Health and Safety Act and under the Anti-Discrimination Act is likely to be limited, and to the extent that overlap exists, is likely to be mutually reinforcing.[309]

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[304] See Queensland Human Rights Commission, *Building Belonging: Review of Queensland's Anti-Discrimination Act 1991* (Report, July 2022) 221–222.

[305] See Queensland Human Rights Commission, *Building Belonging: Review of Queensland's Anti-Discrimination Act 1991* (Report, July 2022) 222.

[306] See Queensland Human Rights Commission, *Building Belonging: Review of Queensland's Anti-Discrimination Act 1991* (Report, July 2022) 234–235.

[307] See Queensland Human Rights Commission, *Building Belonging: Review of Queensland's Anti-Discrimination Act 1991* (Report, July 2022) 225.

[308] See See Queensland Human Rights Commission, *Building Belonging: Review of Queensland's Anti-Discrimination Act 1991* (Report, July 2022) 221–235.

[309] See Queensland Human Rights Commission, *Building Belonging: Review of Queensland's Anti-Discrimination Act 1991* (Report, July 2022) 225–227.

415. This view was supported by the Queensland Law Society's submission to the portfolio committee inquiry into the RAW Bill.[310] Notably, the Queensland Law Society commented they do not consider the Work Health and Safety Act duty is currently being discharged in a way that adequately deals with the causes and impacts of discrimination and sexual harassment.

416. The Commission also considered the potential overlap with the existing vicarious liability provisions in the Anti-Discrimination Act. We considered that the obligations were distinct and complementary. No action can be taken about a failure to meet the requirement of vicarious liability unless a person lodges a complaint. The reactive nature of vicarious liability provisions therefore provides limited capacity to meet the aims and benefits of prevention, which is the focus of the positive duty.

417. Following passage of the RAW Act, the Commission commenced work to prepare for the proposed positive duty, in anticipation of its legislated commencement on 1 July 2026. During this time, we took steps to reduce potential inconsistency and duplication with other laws and regulations.

418. This included partnering with Australian Human Rights Commission (**AHRC**) staff to establish a formal Australian Commission of Human Rights Agencies Positive Duty Working Group. The terms of reference for that group include to identify opportunities to leverage existing work on positive duty across jurisdictions and reduce fragmentation of regimes where possible.

419. We also participated in the inaugural National Regulator Roundtable in 2024 and subsequently in 2025, a partnership between relevant interjurisdictional government agencies with positive duties, including work, health and safety regulators. This Roundtable was specifically designed to create dialogue, share information, and to manage and reduce duplication across human rights and work health and safety jurisdictions, and the Commission was a key initial contributor. Our participation in these forums has reduced since commencement of the RAW Act was paused.

Increased regulatory burden for duty bearers and associated costs

420. The Discussion Paper notes that the general position of other Australian jurisdictions that have introduced a positive duty is that the positive duty has been 'misconstrued as imposing a heavy regulatory burden.'[311] Rather, the duty can be considered a positive reframing of the negative obligations which already exist in the Anti-Discrimination Act. Duty holders already have a responsibility not to unlawfully discriminate, harass, or engage in associated objectionable conduct. To avoid vicarious liability for discrimination, employers must be able to demonstrate that they took steps to avoid the discrimination

[310] Queensland Law Society, Submission No 37 to Community Safety and Legal Affairs Committee, Parliament of Queensland, *Inquiry into the Respect at Work and Other Matters Amendment Bill 2024* (8 July 2024) 6.

[311] *Strategic Review of the Queensland Human Rights Commission and Related Reviews* (Discussion Paper, 30 September 2026) [438].

occurring. This aligns with the Commission's understanding of the impact of the proposed positive duty.

421. The Commission's 'enforcement' of the positive duty as proposed by the RAW Act is only by way of investigation by the Commission, which can have a number of possible outcomes outlined in our response to Questions C15 and C16. The only outcome which is 'enforceable' is if the commissioner applies to a tribunal for an order to enforce a compliance notice.[312] In line with the approach taken by AHRC, the Commission's intention was to work cooperatively with organisations to assist them to better understand their obligations in relation to the duty and the purpose and benefits of meeting those obligations.

422. Following passage of the RAW Act, the Commission commenced preparation of guidelines to assist duty holders to comply with the proposed positive duty in anticipation of its legislated commencement on 1 July 2026.

423. Consultation conducted by the Commission on these guidelines indicated that as long as requirements remain complementary to other compliance obligations and are framed sensibly, businesses could see the productive potential of the reforms, especially in terms of staff attraction and retention and minimisation of disputes.

424. To ease the regulatory burden on duty-bearers attempting to interpret and comply with their various obligations under federal and state based anti-discrimination legislation, the Commission collaborated closely with the AHRC when drafting the guidelines and departed from the AHRC *Guidelines for complying with the positive duty*[313] only where absolutely necessary.

425. When the commencement of the RAW Act was 'paused' the guidelines were substantially progressed.

Capacity to achieve genuine cultural change and the prevention of unlawful conduct

426. The positive duty is designed to encourage proactive engagement with the Act. This engagement is intended to support duty holders to better understand their obligations and the purpose of those obligations. A positive duty to eliminate discrimination helps to shift the burden away from complainants and ensure that organisations turn their minds to practical and innovative ways of tackling discrimination.

427. Under the RAW Act, the Commission's regulatory role involves publishing guidelines, delivering education, raising awareness, conducting investigations, and, where necessary, seeking undertakings and issuing compliance notices. This was described as having three levels, with the greatest amount of 'effort spend' in the first level and the least frequently used functions in the third level.

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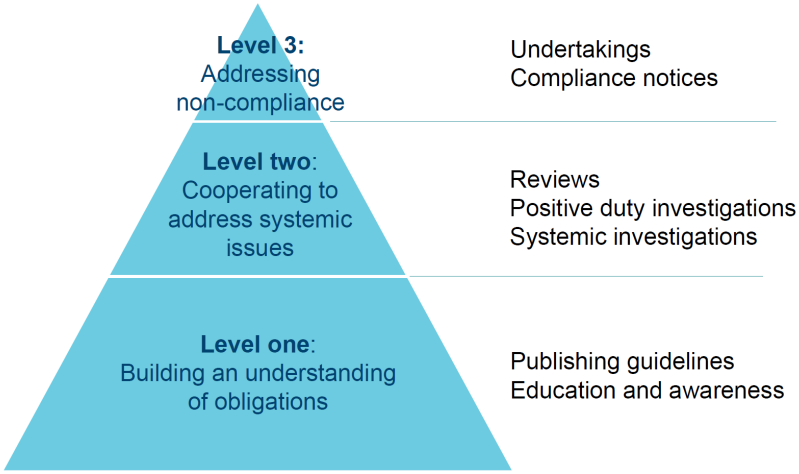
[312] *Respect at Work Act 2024* (Qld) s 39, inserting new s 173M.

[313] Australian Human Rights Commission, *Guidelines for Complying with the Positive Duty under the Sex Discrimination Act 1984 (Cth)* (Guidelines, 2023).

- **Level one**: Building an understanding of obligations.
- **Level two**: Cooperating with duty holders to address systemic issues
- **Level three**: Addressing non-compliance

428. This is illustrated in the figure below.

Figure 5: Regulatory pyramid diagram showing functions and powers proposed by the RAW Act



429. Given the Commission's anticipated resourcing and the number of entities with duties under the Anti-Discrimination Act, the Commission was focused on education and encouraging proactive participation, rather than taking a regulatory enforcement approach.

430. The AHRC reported the following in relation to the effect of the positive duty introduced into the *Sex Discrimination Act 1984* (Cth):

> While cultural change takes time, there are positive signs about the impact of the positive duty. In early 2025, the Australian Human Resources Institute surveyed 619 senior decision-makers. They reported that the Respect@Work reforms, including the positive duty, had the biggest positive impact of any workplace change in the previous 3 years. Approximately one in 3 organisations reported making changes directly because of the Respect@Work reforms.

431. AHRC also notes that with their input, industry bodies and associations are producing guidance and education materials that align with and reinforce AHRC's resources on the positive duty.[314]

[314] For example, the Australian Institute of Company Directors produced a resource for company directors about the positive duty. The Australian Industry Group produced a suite of materials including a template Prevention and Response Plan for its members. See Australian Human Rights Commission, 'Two Years of Promoting Positive Duty Compliance: Building Safer, More Respectful Workplaces' (Web

432. In 2020, Dominique Allen conducted a review of the impact of the various mechanisms for preventing discrimination in the *Equal Opportunity Act 2010* (Vic).[315] In relation to the positive duty, the review found staff at the Victorian Equal Opportunity and Human Rights Commission (**VEOHRC**) reported that the positive duty was 'another great tool in our toolbox in terms of education around the Act's obligations' and that 'for us it helps when we're conciliating to bring people's attention to it.' At the same time, it also heard from a number of solicitors and barristers that in their experience, employers had limited knowledge of the duty.

433. Taking into account these perspectives, it appears as though even absent strong enforcement mechanisms, positive duties have significant potential to achieve positive cultural change in preventing discrimination and sexual harassment. However, it could be inferred from the Allen review that if a positive duty is to be largely unenforceable, its impact will be in some part dependent on the capacity of the relevant commission to use it as an educative tool.

434. Noting the difficulties and importance of assessing the impact of a positive duty, should a positive duty be commenced in Queensland, the Commission intends to develop a Monitoring, Evaluation, Accountability, and Learning (MEAL) framework. This would involve impact logging, where we log examples and actions taken as a result of the positive duty through conversations and engagements, and preparation of case studies tracking short, middle, and long term outcomes of implementing the positive duty guideline.

Costs of a positive duty

435. As outlined in the Building Belonging report, and reflected in the Discussion Paper, the introduction of a positive duty will have direct costs for the public and private sector associated with updates to or development of policies, training, and compliance systems. There will be also a cost associated with implementation by the Commission, as outlined by the Discussion Paper.[316]

436. However, if the positive duty is successful in achieving its goal of culture change, these costs may be offset in the short and long term by reducing workers compensations claims, complaints management, and associated staff and legal costs. The reduction of discrimination, sexual harassment, and associated objectional conduct in the workplace may also lead to higher productivity, lower staff turnover, and reduced reputational risk.

437. Given the number of variables involved, it is difficult to measure the dollar value to these impacts without actuarial expertise. The Commission notes this is not unique to the

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Page, December 2025) <https://humanrights.gov.au/resource-hub/search-all-our-publications/reports-and-projects/projects/workplace-rights/two-years-of-the-positive-duty-building-safer,-more-respectful-workplaces>.

[315] Dominique Allen, 'An Evaluation of the Mechanisms Designed to Promote Substantive Equality in the Equal Opportunity Act 2010 (Vic)' (2020) 44(2) *Melbourne University Law Review* 459, 496.

[316] *Strategic Review of the Queensland Human Rights Commission and Related Reviews* (Discussion Paper, 30 September 2026) [449].

impact of the positive duty; detailed cost-benefit analyses are rarely conducted in respect of justice portfolio legislation because this work is time consuming, expensive, and imprecise.

438. Similar difficulties arise in relation to costing the impact of discrimination. Nevertheless, in 2021, the Disability Royal Commission estimated that the total annual economic cost associated with the systemic neglect of people with disability in Australia could be as high as $27.7 billion.[317] In 2018, the Australian Government Department of Treasury engaged Deloitte Access Economics to consider the economic impact of workplace sexual harassment and concluded that it cost the Australian economy $3.5 billion annually.[318] The Commission notes these costs are substantially higher than the amount initially invested into implementing the positive duty in Queensland.

Timing of implementation of a positive duty

439. The Discussion Paper considers that there may be benefits to delaying the implementation of a positive duty. It notes delaying commencement would mean that Queensland would have the benefit of the outcomes of the upcoming review of the positive duty under the Sex Discrimination Act and any reflections on the proposed positive duty for the *Disability Discrimination Act 1992* (Cth).

440. As discussed earlier, the intended impact of positive duties introduced in Australian jurisdictions is cultural change via education. In the absence of strong enforcement mechanisms, the achievement of cultural change takes time. If we wait until the effects of the positive duty are clear in the federal jurisdiction, the opportunity to achieve the same cultural change in Queensland will be delayed.

441. The Discussion Paper suggests that if the Commission is to take on an investigation and compliance role, it will need time to prepare and plan to take on the role of a regulator including 'time to build trust and confidence in its abilities to assume this new role and how its new powers and functions will be exercised'.[319]

442. At the time the RAW Act was paused, the Commission had commenced significant work in planning and preparation for the commencement of the duty and its regulatory role. When the commencement of the RAW Act was paused, the Commission was directed to discontinue this work. Subsequently, there has been an attrition of staff engaged in this work.

443. The Discussion Paper highlights a number of steps that could be taken in the short term towards the introduction of a positive duty without committing to implementation. For example, there could be a staged approach whereby the Commission's educative, public

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[317] *Royal Commission into Aged Care Quality and Safety* (Final Report, 2021) vol 3: Nature and extent of violence, abuse, neglect and exploitation, 19.

[318] Australian Human Rights Commission, *Respect@Work: Sexual Harassment National Inquiry Report* (Report, March 2020) 81.

[319] *Strategic Review of the Queensland Human Rights Commission and Related Reviews* (Discussion Paper, 30 September 2026) [72].

awareness and guidance functions could commence first with a view to the Commission's investigative and enforcement powers coming into force later.

444. In the Building Belonging report, the Commission clearly recommended staged implementation of the Commission's investigative and enforcement role to ensure appropriate time to prepare, and for duty holders to be provided with assistance by the Commission about how to meet their obligations. A further period of transition before commencement would be appropriate to ensure the Commission can complete this work. However, as we have already explored, it would be beneficial to progress this matter in a timely way to maintain focus and build on work already undertaken.

445. The Commission reiterates that our focus in regulating the positive duty is to support compliance through education and collaboration. Noting the proposed enforcement power to conduct an investigation into a failure to meet the positive duty would be at the discretion of the commissioner and subject to the Commission's resources, a may, in turn, reduce the timely identification and remediation of non-compliance, potentially prolonging exposure to unlawful conduct and diminishing the preventative intention of the positive duty.

446. The Commission considers the alternative mechanisms proposed for giving the Commission a more prevention focused role in addressing systemic issues (for example, through an express power to issue guidelines, or through a power to conduct systemic investigations) are appropriately complemented by the positive duty.

Religious bodies still have same exemptions

447. The Discussion Paper notes that during the parliamentary committee process for the RAW Act, some stakeholders recommended that amendments be made to clarify that the positive duty does not prevent religious bodies and schools from teaching their beliefs or require them to promote values within their organisations inconsistent with those beliefs.[320] These issues were also raised in the Building Belonging review.

448. The introduction of the positive duty in the RAW Act does not change the scope of conduct prohibited under the Anti-Discrimination Act. Rather, it requires individuals and organisations to take reasonable and proportionate steps to eliminate discrimination, sexual harassment, and associated objectionable conduct, but only to the extent that they are already prohibited from engaging in such conduct under the Act.

449. If a religious organisation is not subject to a particular prohibition because, for example, an exemption applies, then the positive duty does not apply to that conduct.

450. Religious school would not be required to change their teaching practices to comply with the positive duty unless those teaching practices are unlawful under chapters 2, 3, 4 or 5 of the Anti-Discrimination Act.

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[320] *Strategic Review of the Queensland Human Rights Commission and Related Reviews* (Discussion Paper, 30 September 2026) 433.

451. Religious organisations have been subject to a positive duty to eliminate discrimination, harassment, and creating a hostile work environment on the basis of sex under section 47C of the Sex Discrimination Act since December 2023. The Commission is not aware of any negative impacts reported by faith-based groups.

Question C13

- Would it be appropriate for the QHRC to have a regulatory and enforcement function as contemplated by the positive duty provisions?

Commission position

The Commission maintains its support for the Commission to have a regulatory and enforcement function for the reasons discussed in the Building Belonging report, which specifically considers whether it is a role for the Commission or another entity at pages 233-238.

Investigations (Questions C14 – C17)

Question C14

- Should the power to inquire into a complaint be separate from the QHRC's investigative function?

Commission position

The Commission agrees that the power to obtain information about a complaint could be separate from the Commission's power to investigate.

It is necessary for the Commission's complaint handling function that the ability to obtain information as provided by section 156 is maintained.

452. Section 154A of the Anti-Discrimination Act enables the commissioner to investigate a complaint. Section 155 states when an investigation can be initiated by the commissioner, including if an allegation is made that an offence against the Act has been committed.[321] However, section 155 does not apply to complaints that have been accepted under section 141. Under section 156, the commissioner may direct a person who has information or documents relevant to an investigation to provide the information or documents. The commissioner may enforce the direction by filing a copy with a court of competent jurisdiction. The Commission utilises these provisions to manage complaints, such as when we need to identify the proper respondent, or obtain information that may help to resolve a complaint.

453. Sections 154A to 156 appear in Chapter 7 Part 1 of the Anti-Discrimination Act entitled 'What the Queensland Human Rights Commission may do'. The RAW Act amends the heading of Chapter 7 Part 1 to 'What the Queensland commission may do—complaints'

[321] *Anti-Discrimination Act 1991* (Qld) ss 155(2)(b) and (c).

and shifts provisions relating to investigations to a new Chapter 7 Part 1A entitled 'What the commission may do—investigations and compliance'. Like the current Act, Part 1A does not apply to complaints that have been accepted under section 141.[322] However, the power to 'investigate' complaints in a way the commissioner considers appropriate and powers to require information or documents is retained by reference in section 154A to Part 1A, division 1, subdivision 2.

454. As set out in the Discussion Paper, we agree that the Commission's power to obtain information in relation to a complaint could be separated from the power to investigate other matters.[323] This would assist to clarify to the public the Commission's role in dealing with complaints, and that as an impartial dispute resolution body we do not 'investigate' individual complaints in the traditional sense of that word.

455. Importantly, the Commission must maintain the power it has under current section 156 to obtain information, which also sets out the mechanics and consequences if a request for information is not complied with. This aligns with powers of the Commission to gather information under sections 68 and 78 of the Human Rights Act in relation to human rights complaints.

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[322] *Respect at Work and Other Matters Amendment Act 2024* (Qld)s 39 inserting new ch 7, pt 1A. in *Anti-Discrimination Act 1991* (Qld).

[323] *Strategic Review of the Queensland Human Rights Commission and Related Reviews* (Discussion Paper, 30 September 2026) [468].

Question C15, C16

- Should the QHRC have a power to investigate potential systemic contraventions of the ADA?
- Should this power be subject to any conditions, for example the Minister's consent and the matter being of public interest?

Commission Position

Yes, the Commission continues to support the implementation of an express power of the Commission to investigate potential systemic contraventions of the Anti-Discrimination Act for the reasons given in the Building Belonging report[324].

The Commission supports repealing sections of the RAW Act that maintain the Commission's investigative functions under section 155 of the Anti-Discrimination Act.

In the Building Belonging report, the Commission recommended adopting an own-initiative investigation function modelled on section 127 of the *Equal Opportunity Act 2010* (Vic) and would support the adoption of similar conditions in Queensland.

The Commission does not support a condition that systemic investigations be subject to the Minister's consent, as this may have unintended consequences that reduce the independence of the Commission.

456. Section 155 of the Anti-Discrimination Act provides for circumstances in which the commissioner must or may initiate an investigation. Amendments by the RAW Act maintain these functions and add the ability for the Commission to initiate investigations in relation to compliance with the positive duty and systemic investigations.

457. The questions posed by the Discussion Paper relate to the new functions to investigate and how it integrates with existing investigative functions. The relevant provisions, and the outcomes that can be achieved as a result of those investigations, are set out in the table below.

Figure 6: Table outlining some of the commissioner's powers to investigate and possible outcomes as a result of the investigation

Power to initiate an investigation	Outcomes
Class investigation 173B(1)(a) RAW Act (adopted from s 155(2)(a) ADA): May conduct an investigation into a possible case of contravention of the ADA against a group or	Part 1A, Div 1, Subdiv 3 Action relating to contravention of the Act. Section 173H • referral to tribunal

[324] Queensland Human Rights Commission, *Building Belonging: Review of Queensland's Anti-Discrimination Act 1991* (Report, July 2022) 247-251, 256-257.

Power to initiate an investigation	Outcomes
class of people, the matter is of public concern and the Minister agrees	
Positive duty investigation 173B(2) May conduct an investigation into a person's compliance with the positive duty if the commissioner suspects the person is not complying with the positive duty	Part 1A, Div 1, Subdiv 4 Action relating to compliance with positive duty Sections 173I-173NA • help a person to prepare an undertaking • accept an undertaking • give a compliance notice • prepare a report about the investigation and publish the report, or give the report to the Minister, which must be tabled within 6 sitting days.
Systemic investigation 173B(3) May conduct an investigation into any matter relating to a contravention of the Act that is or is suspected to be systemic. 173B(4) Systemic defined as if it affects a class or group of persons, and is continuous, repetitive or forms a pattern.	Part 1A, Div 1, Subdiv 5 Action relating to systemic contravention Ss 173O-173P • prepare a report about the investigation and publish the report, or give the report to the Minister, which must be tabled within 6 sitting days. (The content and publication mechanisms of this report is identical to a report given in a positive duty investigation.)

458. In the Building Belonging Review, the existing powers to conduct investigations, including class investigations, was identified as being an insufficient basis for the Commission to conduct investigations into systemic issues. The outcome of such investigations could, at best, result in a conciliation conference and if not resolved, referral to the tribunal for determination. It does not allow for recommendations, a public report, or another outcome. This has reduced the utility of the provisions in practice and has led to misunderstandings about the Commission's role in resolving disputes.[325]

[325] Queensland Human Rights Commission, *Building Belonging: Review of Queensland's Anti-Discrimination Act 1991* (Report, July 2022) 251.

459. The Building Belonging Review recommended adoption of an own initiative investigation function modelled on section 127 of the *Equal Opportunity Act 2010* (Vic).[326] This provides:

> The Commission may conduct an investigation into any matter relating to the operation of this Act if—
>
> (a) the matter—
>
> (i) raises an issue that is serious in nature; and
>
> (ii) relates to a class or group of persons; and
>
> (iii) cannot reasonably be expected to be resolved by dispute resolution or by making an application to the Tribunal under section 122; and
>
> (b) there are reasonable grounds to suspect that one or more contraventions of this Act have occurred; and
>
> (c) the investigation would advance the objectives of this Act.

460. This drafting would enable consideration of positive duties as well as any other contraventions of the Anti-Discrimination Act. The outcomes of such an investigation, as proposed by the Building Belonging report, would include the outcomes specified for positive duty investigations under the RAW Act.[327]

461. The Commission did not expect investigative powers under section 155 of the Anti-Discrimination Act to be maintained. In our submission to the RAW Act, we recommended they be repealed because:

- The role of the Minister in directing or agreeing with the commencement of an investigation potentially compromises the actual or perceived independence of the Commission or may lead to a perception of the Commission's role being subject to political influence.
- The ability to refer a complaint to a tribunal is inconsistent with the role of the Commission to provide an impartial dispute resolution process by requiring the Commissioner to become the 'applicant' in a tribunal matter.[328]

462. The ability to conduct systemic investigations is part of the suite of regulatory measures conceptualised by the Building Belonging Review to encourage prevention and address non-compliance. Like Victoria, the Commission would take a facilitative approach to such investigations, particularly given the reality that cultural change, a key objective of such investigations, is best affected in partnership with the duty holder. Part of the process

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[326] Queensland Human Rights Commission, *Building Belonging: Review of Queensland's Anti-Discrimination Act 1991* (Report, July 2022) 250-251, recommendation 17.

[327] Queensland Human Rights Commission, *Building Belonging: Review of Queensland's Anti-Discrimination Act 1991* (Report, July 2022) 26 recommendation 18.

[328] Queensland Human Rights Commission, Submission No 36 to Community Safety and Legal Affairs Committee, Queensland Parliament, *Respect at Work and Other Matters Amendment Bill 2024* (8 July 2024) [93]-[99].

would be producing a public-facing guideline or policy on the Commission's approach to identifying relevant issues, initiating, and conducting investigations. For example, the Victorian Commission has published an investigation policy explaining how the Victorian Equal Opportunity and Human Rights Commission will exercise its investigation function under the Equal Opportunity Act.[329]

463. The Discussion Paper notes that the function to undertake systemic investigations under the RAW Act is not conditional on it being a matter of public concern and the Minister's agreement.

464. The Commission considers the definition of 'systemic' in the RAW Act, that is, 'affects a class or group of persons; and is continuous, repetitive of forms a pattern'[330] would sufficiently identify matters of 'public concern'. The Commission would be open to adopting a further condition that it 'raises an issue that is serious in nature' as outlined in the Victorian provision.

465. The Commission does not consider Ministerial consent for systemic investigations is an appropriate condition for the reasons already provided. This protects the Commission's independence and also protects the Minister from any perceived or actual allegations of interference.

Question C17

- What powers should the QHRC have following completion of an investigation into potential systemic contraventions of the ADA?

Commission position

The Commission supports the powers given to the Commission by the RAW Act following the completion of an investigation.

In relation to a positive duty investigation, the Commission may help a person to prepare an undertaking, accept an undertaking, give a compliance notice, and/or prepare and publish a report.

In relation to a systemic investigation, the Commission may prepare and publish a report.

466. The possible outcomes of a positive duty investigation or systemic investigation under the RAW Act are outlined in the table above.

467. The *Equal Opportunity Act 2010* (Vic), which provides for investigations under section 127 and does not differentiate between positive duty and systemic investigations, allows the Victorian Equal Opportunity and Human Rights Commission (**VEOHRC**) to take any action it thinks fit after conducting an investigation, including:

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[329] Victorian Equal Opportunity and Human Rights Commission, *The Equal Opportunity Act 2010 investigations policy* (Web Page) <https://www.humanrights.vic.gov.au/about-us/policies/eoa-investigations-policy/>.

[330] *Respect at Work and Other Matters Amendment Act 2024* (Qld) s 39, inserting new s 173B.

- taking no further action
- entering into an agreement with a person about action required to comply with the Equal Opportunity Act
- referring the matter to the tribunal
- making a report on the matter to the Attorney-General and
- making a report on the matter to the Parliament.[331]

468. VEOHRC may also publish a report into an investigation, whether or not the report has been made to the Attorney-General or Parliament.[332]

469. In 2017 and 2022, VEOHRC conducted investigations under section 127 of the Equal Opportunity Act into the travel insurance industry and Bakers Delight Holdings and published reports for both investigations.[333] VEOHRC has described the power to initiate investigations into systemic issues as critical to relieve the burden on individual complainants and allow the Commission to use its enforcement powers to eliminate discrimination to the greatest extent possible.[334]

470. The Australian Human Rights Commission (**AHRC**) also has the function to inquire into any matter that may relate to systemic unlawful discrimination and may perform the function at the minister's request or when AHRC thinks it is desirable to do so.[335] AHRC may report to the Minister in relation to the inquiry or publish a report in relation to the inquiry. The report can include recommendations for addressing the matter.[336]

471. The outcomes specified in the RAW Act for positive duty and systemic investigations align with the recommendations in the Building Belonging report in which each option was considered and justified.

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[331] *Equal Opportunity Act 2010* (Vic) s 139.

[332] *Equal Opportunity Act 2010* (Vic) s 142(4).

[333] See Victorian Equal Opportunity and Human Rights Commission, *Research, review and investigations* (Web Page) <https://www.humanrights.vic.gov.au/legal-and-policy/research-reviews-and-investigations/>.

[334] Victorian Equal Opportunity and Human Rights Commission, *Fair-minded Cover: Investigation into Mental Health Discrimination in Travel Insurance* (Report, 2019) 29.

[335] *Australian Human Rights Commission Act 1986* (Cth) ss 35L(1) and 35M.

[336] *Australian Human Rights Commission Act 1986* (Cth) s 35Q.

Guidelines (Questions C18 – C19)

Question C18, C19

- Should the QHRC have an express power to issue guidelines, including at the request and cost of a person or entity with duties under the ADA?
- Should compliance with a guideline issued by the QHRC be a relevant circumstance that may be taken into account in a proceeding for contravention of the ADA?

Commission position

Yes, the Commission should have an express power to develop and publish guidelines. This would require the Commission to provide guidance and support to duty holders to meet their obligations under the Anti-Discrimination Act and give the Commission a more meaningful role in preventing discrimination.

Guidelines should not be legally binding, but compliance may be relevant to court or tribunal proceedings in appropriate matters.

Making provision for duty holders to request guidelines at their own expense presents both opportunities and challenges.

472. The Commission develops resources, including web pages, factsheets, and guides to help duty holders understand their obligations under the Act, and for individuals to know their rights. These materials have educative value and are non-binding, practical tools to assist with awareness, decision-making and compliance. They are particularly useful where the law is complex, difficult to apply in practice, and when case law is limited. Where possible, these resources are updated as the law changes and as new issues or approaches to best practice emerge.

473. Under section 235 of the Anti-Discrimination Act, the Commission has a function to 'promote an understanding and acceptance, and the public discussion, of human rights.' This encompasses development of the resources mentioned above but does not include a statutory function to produce guidelines to assist organisations comply with their obligations under the Act.

474. Other human rights agencies have this function. The *Equal Opportunity Act 2010* (Vic) provides that the VEOHRC may issue practice guidelines on any matter relating to the Act. Practice guidelines are not legally binding, but a court or tribunal may take into account evidence of compliance with a guideline, if relevant to a matter before it. Notice of the publication of a guideline (or its withdrawal) must be published in the *Victoria Government Gazette* as well as in relevant media and industry publications.[337]

[337] *Equal Opportunity Act 2010* (Vic) s 150.

475. To date, the VEOHRC has produced Equal Opportunity Practice Guidelines on:

- Equal opportunity obligations for the recruitment industry and employers
- Family violence services and accommodation
- General Practice equal opportunity obligations
- Mental illness in employment
- Preventing and responding to workplace sexual harassment
- Race discrimination in the workplace
- Sex work discrimination
- Spent conviction discrimination
- Trans and gender diverse inclusion in sport
- Transgender people at work
- Guideline: LGBTIQA+ inclusive workplaces.[338]

476. Similarly, the Australian Human Rights Commission has a statutory function to prepare and produce guidelines for employers and resources to support duty holders to avoid acts or practices that are inconsistent with human rights and discrimination law, and for complying with the duty in relation to sex discrimination.[339] The Australian Commission's power to do so is set out in the Australian Human Rights Commission Act and in the 4 federal discrimination acts.[340]

477. During the Building Belonging Review, strong support for the Commission to have legislative authority to develop and produce guidelines that provide clear guidance on the practical steps an organisation should take to meet their obligations under the Anti-Discrimination Act was received.

478. The Commission supports introduction of an express power to develop guidelines. This would provide the Commission with a more meaningful role in supporting compliance with the Anti-Discrimination Act and preventing discrimination.

479. It also ensures that the Commission is providing information about how to comply with the Act before also giving it powers to undertake systemic investigations. These are complementary functions in the regulatory pyramid framework adopted by the RAW Act and illustrated in Figure 5 in relation to Question C12 above.

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[338] Victorian Equal Opportunity & Human Rights Commission, Equal opportunity practice guidelines (Web Page) <https://www.humanrights.vic.gov.au/for-organisations/guidelines/>.

[339] *Australian Human Rights Commission Act 1986* (Cth) ss 11(n), 31(h).

[340] *Racial Discrimination Act 1975* (Cth) s 20(d); *Sex Discrimination Act 1984* (Cth) s 48(1)(ga); *Disability Discrimination Act 1992* (Cth) s 67(1)(k); *Age Discrimination Act 2004* (Cth) s 53(1)(f). In relation to human rights and ILO 111 matters: *Australian Human Rights Commission Act 1986* (Cth) s 11(1)(n); ss 31(h), 35A(a).

Legal status of guidelines

480. As with Victoria's approach, the Commission suggests guidelines not be legally binding, but that a court or tribunal may take into account evidence of compliance with a guideline, if relevant to a matter before it.[341]

481. This is likely to give duty holders greater confidence of meeting their obligations, and prompt proactive consideration of the guideline.

Requirement for consultation

482. In our Building Belonging report, we observed that consultation on guidelines will be critical to their success. Guidelines should be developed through community and industry stakeholder engagement to ensure they are fit for purpose in different contexts and settings, and for people at risk of, or experiencing, discrimination and sexual harassment. This will ensure guidelines are informed by the specific needs and practicalities of the relevant industry or environment.

483. Recognising this reality, the VEOHRC is required by the Equal Opportunity Act to consult with people and organisations it considers represent the areas or persons to whom the practice guidelines will relate.[342]

Recovery of costs in relation to guidelines

484. The Discussion Paper suggests an option for the Commission is to produce tailored guidelines to assist an entity comply with the Act at the entity's own cost. While this may provide an avenue for the Commission to achieve greater reach and recover costs, it should be considered carefully.

485. This approach would lead to the Commission undertaking what can be considered 'consulting work', which is effectively advisory in nature, and operates as a business model. In some ways, this may be considered an extension of Pillar 2 services that are proposed to be delivered under the Commission's new *Education Strategy 2026-2030*. A business approach presents opportunities and challenges in terms of team resourcing and work planning.

486. The Commission would need to retain and communicate its discretion as to which requests it can accept. This would allow the Commission to consider its resourcing and capacity, including its interest in producing guidance materials that address serious and/or systemic discrimination or sexual harassment issues.

487. Allowing duty holders to request and pay for a guideline suggests the guidance would be developed for that specific entity. This is dissimilar to the types of guidelines produced by other Commissions with this function where the guidelines are specifically designed to relate to sectors or industries and therefore have broader application.

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[341] *Equal Opportunity Act 2010* (Vic) s 148.

[342] *Equal Opportunity Act 2010* (Vic) s 148.

488. The Commission is not aware of any other jurisdiction in which the commission has an express power to issue guidelines at the request and cost of the person or entity with duties under the Anti-Discrimination Act. There are, as outlined in the Building Belonging report, approaches that allow for a duty holder to request an independent review, which is more diagnostic in nature. Some commissions offer consulting services that include helping to establish action plans and other bespoke education programs, however this is at the discretion of the commission rather than as an express function.

Vilification (Questions C21 – C22)

Question C21

- Are there any unintended consequences of retaining the updated definition of 'public act'?

Commission position

The Commission supports the new definition of 'public act' and has provided context for those amendments.

489. There are two aspects to the updated definition of 'public act':[343]

- specifying social media and electronic communications
- clarifying that conduct that occurs on private land or a place that is not ordinarily accessed by the general public, e.g. a place of work, an educational facility, may be a public act.

490. When introduced, the intent of the prohibition of vilification was that only private communications are not prohibited. This is based on the definition of public act and the way the provision is expressed.

Application to places not ordinarily accessed by the general public

491. People in workplaces, places of education, and hospitals are segments of the public, can experience the harmful impacts of vilification, and should have the benefit of the vilification prohibition. Some tribunal decisions have held that vilifying conduct in a closed workplace (that is, not work being carried out outside) is not a public act.

492. The distinction can be artificial – for example, a student in a training centre was vilified by an instructor in the presence of other instructors. It was held to be a public act only because it occurred in the restaurant part of the training centre that was open to the public.[344]

[343] *Respect at Work and Other Matters Amendment Act 2024* (Qld) s 21, inserting new s 124B.

[344] *Singh v Shafston Training One Pty Ltd and Anor* [2013] QCAT 8.

493. For these reasons, the Commission submitted to the Legal Affairs and Safety Committee Inquiry (**LASC Inquiry**)[345] that it should be made clear that public acts include acts that occur in workplaces and the like.

Reference to 'private land'

494. The reference to private land comes from the New South Wales definition of public act in the *Crimes Act 1900* (NSW). The LASC Inquiry recommended adopting the New South Wales criminal definition.

495. It may not be necessary to specify private land as there have been many cases where the public act has occurred on private land, in particular conduct by neighbours.[346] However, clarity is always preferable. The Commission is satisfied that inclusion of section 124B(2) and the example achieve the objective without unintended consequences.

496. Likewise, the current definition includes communications to the public through social media and electronic methods, however it is preferable that they are specified, particularly as some submitters to the LASC Inquiry expressed concern that they might not be included.

Question C22

- Are there any unintended consequences from retaining the objective incitement test in the new proposed section 124D ADA?

Commission position

The Commission sets out how new section 124D inserted by the RAW Act does not lower the threshold for the prohibition on vilification, nor does it clarify existing case law. The Commission suggests amendments to the current section 124A that would better achieve the objectives of better understanding and clarity.

497. The purpose of the new section 124D was to implement the recommendation of the LASC Inquiry to investigate lowering the threshold for the prohibition on vilification, and, according to the response of the department, to clarify existing case law and the original intent of the prohibition. It is an unintended consequence that the new section 124D may not do that, rather, it appears to make the threshold higher and change the incitement test.

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[345] Legal Affairs and Safety Committee, Queensland Parliament*, Inquiry into Serious Vilification and Hate Crimes* (Report No. 22, 31 January 2022); see also Queensland Human Rights Commission, Inquiry into serious vilification and hate crimes, Submission No 36 to Legal Affairs and Safety Committee, Parliament of Queensland, *Inquiry into Serious Vilification and Hate Crimes* (12 July 2021).

[346] For example, *Peters v Constance* [2005] QADT 9; *Wilson & McCollum v Lawson* [2008] QADT 27; *Brosnahan v Ronoff* [2011] QCAT 439; *Donovan v Tobin* [2015] QCAT 332; *Huenerberg v Murray* [2023] QCAT 175.

Meaning of 'incite'

498. When introduced in 2001, section 124A was modelled on the New South Wales prohibition, and the intent was that the then case law would apply, that is, that actual incitement was not necessary and the test for incitement is an objective one based on a hypothetical listener or viewer.

499. The test was first considered by the then Anti-Discrimination Tribunal in *Deen v Lamb* [2001] QADT 20. President Sofronoff adopted the objective test from the law of defamation described as a reader of 'fair average intelligence, and who is neither perverse nor morbid, nor of a suspicious mind, nor one who is avid of scandal', adding that it is also necessary to exclude 'those persons who are either over-sensitive to their race, religion or culture, and those who are too thick skinned to appreciate the nature of an act as one which has the relevant tendence to incite'.

500. The test was subsequently enunciated in *John Fairfax Publications Pty Ltd v Kazak (EOD)* [2002] NSWADTAP 35 as whether the ordinary reader could understand from the public act that he/she is being incited to hatred towards or serious contempt for, or severe ridicule of a person or persons on the ground of race, and the social and historical context of a public act are relevant only to the extent that they be presumed to be part of the ordinary reasonable reader's knowledge and experience of human affairs.[347]

501. The word 'incite' had been given its ordinary meaning; that is, to urge on, stimulate, prompt to action, encourage, and the like.

Focus on conduct rather than effect

502. The focus of the current prohibition is the conduct, rather than the effect of it. In *Deen v Lamb* President Sofronoff said: 'The section directs attention towards the nature of the act, not the result of it.'

503. In *Burns v Laws (No. 2)* [2007 NSWADT 47 the tribunal said that if terms such as 'capacity' or 'tendency' are employed (rather than 'incite' in the sense of urging or prompting) it should be understood that they refer to the actual effect rather than the potential or possible effect.[348]

504. By changing the prohibition from inciting the relevant emotion by a public act to 'engaging in conduct that is likely to incite ...' the focus of the prohibition shifts from the conduct itself to the effect of the conduct. That then makes the prohibition more difficult to prove. An actual audience would need to be identified and how that audience is likely to feel would need to be demonstrated.

505. There are many cases where Members of Queensland tribunals have found vilification where an actual audience was not necessary. These include:

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[347] *John Fairfax Publications Pty Ltd v Kazak* (*EOD)* [2002] NSWADTAP 35 [16] and [21].

[348] Referred to in *Valkyrie and Hill v Shelton* [2023] QCAT 302 at [55] (since overturned on appeal), and the relevant paragraphs quoted in *Burns v McKee* [2017] NSWCATAD 66 at [75].

- words shouted outside a person's home – neighbours in the vicinity were likely to have heard[349]
- words spoken loudly by a neighbour to another on various occasions – on some occasions where trades persons were present an on others where neighbours might have overhead the words[350]
- words spoken loudly by a neighbour to another on a single occasion – capable of being heard by people on a public road or footpath.[351]

Amendments to current section 124A

506. Changing the current prohibition to engaging in conduct that is likely to incite increases rather than lowers the threshold. It is not necessary to do this. The Court of Appeal has held that the current prohibition does not burden the implied freedom of political communication, or if it does, it is reasonably appropriate and adopted to serve a legitimate end in a manner compatible with the maintenance of the constitutionally prescribed system of government.[352]

507. On the other hand, lowering the threshold for vilification risks overstepping the balance between protecting freedom of speech and protection from incitement of discrimination and hostility.

508. Amendments to the current prohibition in section 124A would achieve the objectives of clarifying existing law and better understanding. Clarification would assist the public generally as well as tribunal members deciding complaints of vilification.

509. We recommend amending the current section 124A in the following ways:

a. change the word 'incite' to 'urge, promote, or encourage'
b. add subsections that provide:

- an intent to urge on, promote, or encourage is not necessary
- it is not necessary to show that anyone was actually urged, promoted, or encouraged to any of the relevant emotions
- it is not necessary to demonstrate an actual audience
- the test for whether a public act urges, promotes, or encourages a relevant emotion is whether the ordinary observer could understand from the public act that they were being urged, promoted, or encouraged to hatred towards or serious contempt for, or severe ridicule of a person or persons because of the relevant attribute.

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[349] *Peters v Constance* [2005] QADT 9 (A/President Dalton SC as she then was).

[350] *Wilson & McCollum v Lawson & Anor* [2008] QADT 27 (Member Roney).

[351] *Huenergerg v Murray* [2023] QCAT 175 (Member Roney KC).

[352] *Owen v Menzies* [2013] 2 Qd R 327; [2012] QCA 170.

Question C23

- Are there any unintended consequences of retaining the 'harm-based' prohibition on vilification in the new proposed section 124C of the ADA?

Commission position

The Commission supports opportunities to strengthen vilification laws. We provide observations about the potential application of section 124C that suggest it may not achieve the intent of harm-based protection against vilification.

510. The LASC Inquiry considered a separate harm-based protection against hate-based conduct, focusing on the impact of the hate-based conduct, and the harm caused by that conduct, as well as the threshold for a section 124A complaint. The recommendation of the LASC Inquiry was that the Queensland Government consider lowering the threshold of the civil incitement test.[353]

511. The following is a brief comparison of the current and new prohibitions of vilification:

Figure 7: Table comparing current and new prohibitions of vilification

Current s 124A - vilification	Proposed new s 124C – harmful conduct	Proposed new s 124D – inciting conduct
- incite – meaning urge, promote, encourage - test is ordinary listener, observer, reader understanding they are being urged etc - focus is on conduct – reason & outcome irrelevant	- reason – engage in public act because of attribute - test – would a reasonable person with the attribute consider it hateful, reviling, serious contemptuous, or severely ridiculing - reviling is not in existing vilification or proposed new inciting conduct	- likely to incite - focus shifts to outcome rather than conduct - what is the test? – is a reasonable person likely to be urged on to feel hatred, serious contempt, severe ridicule?

512. Arguably section 124C does not achieve the objective of lowering the threshold, even with the reasonable person test being a person with the relevant attribute. It is possible that proving a person engaged in a public act *because* of the relevant attribute introduces intent and might make it harder to prove.

513. Arguably too, conduct that would fall within section 124C would fall within the current prohibition on vilification. Potential complainants would be further assisted by the

[353] Legal Affairs and Safety Committee, Parliament of Queensland, *Inquiry into serious vilification and hate crimes* (Report No 22, January 2022) 45.

amendments the Commission suggests in relation to current section 124A in response to Question C22.

514. Having two provisions may make assessment and proof of complaints more complex.

515. At the same time, the Commission recognises the significant harm that can result from hate-based conduct and supports opportunities to strengthen Queensland's vilification protections.

Appendixes

Appendix A

Summary of Commission's position in relation to Discussion Paper questions – Part A

	Discussion Paper question	Commission position
Functions		
A1	Should there be any changes to the drafting of the QHRC's functions or powers?	The Commission observes that any changes recommended to the functions of the Commission in sections 61 of the Human Rights Act and section 235 of the Anti-Discrimination Act should have regard to the functions of the Commission as a whole, widespread across both Acts, and the different objects and purposes of those Acts. The Commission continues to support extending and enhancing the Commission's role in prevention which is discussed in more detail in Part C.
Complaints and conciliation		
A2	What is your experience of the QHRC's complaints handling process?	No response
A3	Does the QHRC appropriately determine which complaints to accept and which to reject?	No response
A4	Are there any improvements you would make to the QHRC's complaints handling processes, including to improve the efficiency of the process?	No response
A5	Does the QHRC engage appropriately with parties to a complaint, and how could they improve their engagement?	No response
A6	What is our experience (whether as a complainant or a respondent) of the conciliation conference process?	No response
A7	Is the conciliation process effective and how could it be improved?	No response
A8	Should there be more, or different, avenues to resolve complaints?	The Commission supports more avenues to resolve complaints. To demonstrate some successful initiatives, we provide information about our early resolution process as one example of alternative avenues to resolve complaints other than through conciliation conferences.

	Discussion Paper question	Commission position
Interventions		
A9	Should the QHRC have a right to appear as amicus curiae in a proceeding, whether instead of or in addition to its existing powers to intervene?	Any right for the Commission to appear as amicus curiae in a proceeding should be in addition to its existing roles in intervention. Given limitations on an amicus to inspect documents, lead evidence, examine witnesses, and identify their own issues to address, replacing the Commission's current intervention roles with an amicus function would significantly inhibit the Commission's capacity to further the objects of the Human Rights Act and the Anti-Discrimination Act through its participation in legal proceedings. The Commission's right to intervene under section 51 of the Human Rights Act and function to intervene under section 235(j) of the Anti-Discrimination Act should be retained in their current form. The Commission does not consider that additional legislative conditions on when, where, and how the Commission intervenes are necessary. However, if legislative conditions are introduced, consideration should be given to applying a consistent approach to the Attorney-General's power to intervene under the Human Rights Act. The Commission also provides contextual information about our role as intervener to supplement observations in the Discussion Paper.
A10	Should there be any conditions on when, where and how the QHRC can participate in a proceeding before a court or tribunal?	
A11	Should the QHRC's intervention function in the ADA be repealed?	The Commission recommends that the intervention function in the Anti-Discrimination Act be retained.
Education		
A12	What is your experience of the QHRC's education services and are any improvements required?	The Commission outlines recent work to review our education services, develop an education strategy, and our progress towards implementing the strategy.
Examining Acts and making submissions to public policy processes		

	Discussion Paper question	Commission position
A13	What should be the role of the QHRC in participating in public debate on policy and legislation development in Queensland?	The Commission has functions to promote the understanding and acceptance, and the public discussion of, human rights; and to undertake research to promote the purposes of the Anti-Discrimination Act. These functions are necessarily broad in scope. In carrying out these functions, at times, the Commission contributes to discussion of policy and legislation through a range of work. One of the most visible aspects of this work includes making submissions to parliamentary inquiries and to other reviews, inquiries, and bodies. We also respond to requests for consultation from Queensland Government agencies during the development of policy and legislation, which may be confidential. Examination of human rights impacts and compatibility in submissions covers a broad range of nuanced matters, as informed by factors set out in section 13 of the Human Rights Act. How the Commission contributes to public debate on development of policy and legislation reflects the overall strategic direction of the Commission.
A14	At what stage in the process for the development of policy and legislation should the QHRC be involved? For example, should the QHRC be involved earlier in the process?	The Commission acknowledges the value of early engagement in policy and legislative development; however, to date our involvement generally occurs on an ad hoc basis when consultation is sought. At the same time, involvement in such processes can have implications for the Commission's functions in promoting understanding and discussion of human rights and providing information about human rights to the community, as well as on the Commission's perceived and actual independence, which need to be managed.
A15	Would earlier involvement of the QHRC in government decision-making processes compromise the independence of the QHRC?	
Promoting understanding and public discussion		
A16	What is your experience of the engagement activities undertaken by the QHRC?	No response
A17	Are there any improvements you would recommend to the QHRC's engagement activities, including ways to better promote a culture of human rights in Queensland?	No response
The current framework – potential reforms		
A18	Do you support aligning the complaints framework in the ADA with the Draft Anti-Discrimination Bill 2024?	Yes. We suggest completing consultation on the exposure draft to the Draft Anti-Discrimination Bill 2024.

	Discussion Paper question	Commission position
A19	Should there be any further or different changes to that complaints framework?	No response
Human rights complaints process		
A20	Are there any changes that could be made to the process for making human rights complaints to public entities to better align it with other government complaints processes?	Public entities should, as far as possible, adopt a uniform and consistent approach to identifying, responding to, and recording human rights complaints, with whole-of-government guidance provided including training for complaint handlers.
A21	Should there be a prescribed process for when a complaint made to a public entity involves more than one public entity?	The Commission: • briefly outlines some challenges it has encountered in managing complaints involving multiple public entities, and • supports recommendations that will improve the process for dealing with complaints involving multiple public entities at the outset and observes the benefits for both public entities and complainants.
A22	Should the HRA specify that a 'human rights complaint' may only be made against a public entity, and not an individual in the employ of, or contracted to, that public entity?	The Commission adopts a cautious approach to naming individual respondents to human rights complaints. At times, naming individual respondents can improve overall outcomes of the dispute resolution process. Individual respondents are protected from civil liability. The capacity to name individual respondents should be maintained.
Agents and representative complaints		
A23	Would a representative action for human rights complaints be necessary or desirable?	The Commission supports the introduction of a representative complaint framework under the Human Rights Act.
Requirement to engage with public entity		
A24	Should a complainant be required to engage with the relevant public entity prior to complaining to the QHRC?	If the requirement to first raise a complaint with the public entity before making a human rights complaint to the Commission is maintained, consideration could be given to introducing an express prohibition on victimisation to help ensure people can raise concerns without fear of adverse consequences.
A25	Is the timeframe of 45 business days appropriate, including where a complaint engages multiple complaints frameworks?	The Commission suggests reducing the timeframe in section 65 of the Human Rights Act to 30 business days.
Form of complaint		

	Discussion Paper question	Commission position
A26	Should there be a prescribed form for human rights complaints for the purposes of the initial complaint to the relevant public entity and any subsequent complaint to the QHRC?	We have interpreted the Discussion Paper's reference to a 'prescribed form' as a reference to a form the complainant must use to make a valid complaint to a public entity or to the Commission. The Commission already has a complaint form which we encourage complainants to use, however, it is not required to make a valid complaint under the Human Rights Act. Having considered the benefits and disadvantages, particularly to people seeking to make a complaint, the Commission considers there should not be a prescribed (mandatory) form to make human rights complaints to public entities or to the Commission. However, there may be merit in developing a standard (optional) form that may be used for public entity human rights complaints that is aligned with the Commission's optional complaint form, provided it is carefully designed with relevant stakeholders, and the risks of public entities failing to identify human rights concerns in cases where the form is not used are mitigated.
A27	Should a person be able to make an oral complaint to the QHRC in exceptional circumstances?	Section 67(2) of the Human Rights Act requires the commissioner to give reasonable help to a complainant to put their complaint in writing where the commissioner is satisfied the complainant needs that help. This provision should be adopted by the Anti-Discrimination Act.
Powers of the QHRC		
A28	Are the QHRC's powers to enquire into human rights complaints sufficient for the purposes of its functions in dealing with and conciliating complaints?	Yes. The Commission considers the existing powers to make preliminary inquiries and to ask or direct information be provided about a complaint are sufficient to deal with human rights complaints under the Human Right Act.
A29	Should the complainant's consent be a prerequisite to any referral by the QHRC to another entity?	Yes. The Commission considers the complainant's consent about whether their complaint is referred to another entity or is to be dealt with under a different law is appropriate.
A30	Should a time limit for the making of a human rights complaint be imposed and, if so, what is the appropriate timeframe and in what circumstances (if any) would it be appropriate to accept an out of time complaint? Should this be consistent with the provisions of the Draft Anti-Discrimination Bill 2024?	The Commission considers the current discretion under section 70(1)(d) of the Human Rights Act to refuse to deal with a complaint made outside the time limit appropriately balances flexibility and fairness to the parties. Other than aligning the time limit with that under the Anti-Discrimination Act, no amendment is required. A separate test for out of time human rights complaints is unnecessary.
Progression of human rights complaints		

	Discussion Paper question	Commission position
A31	Do you support alignment, where appropriate, of the complaints processes under the HRA with the changes proposed to the ADA, while the complaint is being dealt with by the QHRC?	The Commission supports alignment of the human rights complaints framework, where possible, with the complaints framework set out in Part 9 of the Draft Anti-Discrimination Bill 2024 (Qld).
Action on dealing with human rights complaint		

A32	Should there be any changes to the reporting process where a human rights complaint is unable to be resolved at conciliation?	The Commission agrees with the proposal at [151] of the Discussion Paper that, where recommendations are made in an unresolved complaint report:
		• Within a specified timeframe, the respondent is required to respond to the recommendation.
		• Within a specified timeframe(s), the respondent is subsequently required to report on any action being taken in relation to the recommendation.
		• The Commission must/may publish on its website:
		  ○ the substance of the complaint and recommendations
		  ○ the respondent's response
		  ○ the respondent's subsequent report(s) on action taken in relation to the recommendation.

Summary of Commission's position in relation to Discussion Paper questions – Part B

	Discussion Paper question	Commission position
Limitations on human rights		
B1	Should any human rights be expressed as absolute and not subject to any limitation?	To align the Human Rights Act with Australia's obligations under international law, the Commission supports inclusion of a legislative note to section 13(2)(a) recognising that limits on rights, or aspects of rights, recognised as absolute at international law will never be justified under section 13.
B2	Should any additional human rights be recognised in the HRA?	No response
B3	Should new human rights be included in the HRA to protect victims of crime?	The Victims' Commissioner's report on the Charter of Victims' Rights Review, due in December 2026, and the government's response

	Discussion Paper question	Commission position
B4	If any new human rights are included, are there any unintended consequences in how those rights would operate alongside existing rights?	may provide guidance on whether new human rights under the Human Rights Act are needed to protect victims of crime. Rights currently protected by the Human Rights Act are drawn from international human rights treaties that Australia has ratified or supported. There are advantages to any additional human rights also finding their basis in international human rights law.
Application of human rights in Queensland		
B5	How has the process of scrutinising new legislation under the HRA operated, and are any improvements required?	To improve the quality of statements of compatibility and the process, we recommend that statements of compatibility include a description of any consultation undertaken in relation to the Bill and, where no consultation has occurred, an explanation for this. We support a requirement in the Human Rights Act that requires the Minister to respond to any deficiencies in the statement of compatibility identified by the portfolio committee. Consistent with the Victorian approach, we suggest that portfolio committees be required to consider human rights certificates and report to parliament, if they consider subordinate legislation to be incompatible with human rights.
B6	Should the override declaration provisions of the HRA be repealed?	The Commission outlines benefits of retaining the override provision in the Human Rights Act. To enhance human rights scrutiny and discussion of a proposed provision subject to an override declaration, the Review might consider whether the portfolio committee responsible for examining the Bill be expressly required to report to the Assembly about a declaration of incompatibility under section 39.
B7	Is it an appropriate function of the Supreme Court of Queensland to make declarations of incompatibility which have no effect on the validity of a statutory provision?	The Commission supports maintaining declarations of incompatibility, given its place in the dialogue model and its potential for facilitating public discussion about laws.
B8	Is it appropriate for the 'dialogue model' between the courts and Parliament to remain?	
B9	Should sections 53 to 57 of the HRA be repealed?	

	Discussion Paper question	Commission position
B10	Should the interpretation provision in the HRA be retained and, if so, should it be amended to clarify its operation?	The interpretation provision in the Human Rights Act is an integral part of the dialogue model and courts are giving increasing guidance about its operation, potential impact, and role in achieving the purposes of the Act. Section 48 should be retained in its current form, allowing the courts to develop further guidance as to its application.
B11	Should the referral process be repealed?	Although used infrequently, the referral process under section 49 provides a mechanism for the Supreme Court to clarify application of certain aspects of the Human Rights Act's operation. The Commission's view is that section 49 should be retained, particularly as any referral is subject to the discretion of the referring court or tribunal.
B12	Should the 'procedural' limb in section 58(1)(b) be retained? If it is retained, should the consequence of non-compliance with the 'procedural' limb mean the act or decision is unlawful?	The Commission supports retaining the procedural limb in section 58(1)(b), including the consequences of non-compliance. It provides a positive measure aimed at reducing and eliminating harm and provides a mechanism to help build a culture in the Queensland public sector that respects and promotes human rights. In practice, Queensland courts have not demanded onerous compliance with the procedural limb. The burden on the public sector to give proper consideration should be offset by gains in making high-quality decisions that can be demonstrably justified, reducing harm to people and requests for review.
B13	What remedies should be available for a contravention of section 58(1) of the HRA?	The Commission supports enforcement of human rights through judicial processes, either through section 59 (piggyback provision) and/or through a direct right of action. The Commission comments on the potential effect of amending section 59 in the ways proposed by the Discussion Paper. In relation to the remaining issues posed, the Commission refers and relies on its submissions to the Harris Rimmer Review regarding remedies that should be available for a contravention of section 58(1) of the Human Rights Act.
Application of the HRA to courts and tribunals		
B14	Should section 5(2)(a) of the HRA be repealed?	The Commission supports retaining s 5(2)(a) of the Human Rights Act because of its role in the dialogue model.

	Discussion Paper question	Commission position
B15	Should the definition of 'court' be amended to include the Land Court, the Land Appeal Court, the Planning and Environment Court, the Mental Health Court and the Industrial Court of Queensland?	Yes. The Commission supports changing the definition of 'court' as proposed by the Discussion Paper.
B16	Should the definition of 'discrimination' be amended to make it clear it is exhaustive?	The Commission supports clarifying whether the definition of 'discrimination' in the Human Rights Act is intended by Parliament to be exhaustive or inclusive. The Commission draws the Review's attention to issues relevant to whether the definition of discrimination should be exhaustive.
B17	Should section 9(4)(b) of the HRA be amended so that a court or tribunal is not a public entity for the purposes of the application of the Act, irrespective of whether it is acting judicially or administratively?	The Commission supports the current definition of public entity as including courts and tribunals when acting in an administrative capacity, given the value it contributes to administrative decision-making and the protection and rich discussion of human rights in decisions where a court or tribunal has been a public entity. However, consideration could be given to clarifying that a human rights complaint to the Commission cannot be made about proceedings in a court or tribunal.
B18	Do sections 9(1)(h), 9(2)(a) and 10 of the HRA require amendment to clarify what constitutes a functional public entity, for example non-government service providers?	The Commission considers the uncertainty regarding whether non-government service providers are public entities would be best addressed through improved guidance and education to these service providers.
Amendments to the Corrective Services Act 2006 and the Youth Justice Act 1992		
B19	Should section 5A of the *Corrective Services Act 2006* and section 263(7)-(8) of the *Youth Justice Act 1992* be retained?	Section 5A of the Corrective Services Act 2006 and sections 263 (7) and (8) into the Youth Justice Act 1992 should not be retained as they are unnecessary and appear to create confusion.
B20	Is a further review of the HRA necessary and, if so, in what timeframe?	A further review of the Human Rights Act, aligned with the next strategic review of the Commission in 5 years, may be desirable.
B21	Are there any other issues that you would like to raise about the operation of the HRA?	Section 91(2)(e) requires the annual report on the operation of the Human Rights Act report on the number of human rights complaints 'made or referred to the commissioner'. The Commission suggests this be amended to require reporting on the number of human rights complaints 'finalised by the commissioner to facilitate accurate reporting'.

Summary of Commission's position in relation to Discussion Paper questions – Part C

	Discussion Paper question	Commission position
Equitable Outcomes		
C1	Does the phrase 'equality of opportunity' require any amendment?	The long title, preamble, and purposes of the Anti-Discrimination Act should include reference to achieving formal and substantive equality.
Prohibited conduct on the basis of sex		
C2	Are there any unintended consequences of introducing a new prohibition on "harassment on the basis of sex"?	The provisions which prohibit harassment on the basis of sex and subjecting a person to a work environment that is hostile on the basis of sex should not be commenced.
C3	Are there any unintended consequences of introducing a new prohibition on subjecting a person to a work environment that is hostile on the basis of sex?	
New attributes		
C4	What are the unintended consequences of retaining the present definition of "irrelevant criminal record"?	No response
C5	Are there any unintended consequences of retaining the proposed new attribute of "expunged conviction"?	No response
C6	Are there any unintended consequences of retaining the present definition of "irrelevant medical record"?	No response
C7	What are the unintended consequences of retaining the new attribute "a combination of two or more of any of the above attributes"?	The Commission sets out the background to the development of reforms for the protection from discrimination on combined grounds to give context to the amendments proposed to sections 7 and 8 of the Anti-Discrimination Act. Instead of a new attribute recognising discrimination on combined grounds, the Commission prefers the definitions of discrimination be amended to refer to discrimination because the person has one or more attributes and retaining the RAW Act's proposed section 8(2).
C8	Should the definition of "homelessness" in section 52 of the Respect at Work Act be repealed?	Yes. In accordance with the position set out in Building Belonging, and referred to in the Discussion Paper, 'homelessness' should not be defined.
Other new and amended attributes		
C9	Are there any unintended consequences of retaining any or all of the other additional new or amended attributes?	No response

	Discussion Paper question	Commission position
When does a person discriminate?		
C10	Are there any unintended consequences of retaining the new definitions of "direct discrimination" and "indirect discrimination"?	The Commission is supportive of amendments to the definitions of direct discrimination and indirect discrimination made by the RAW Act and considers this to be a priority area for reform to improve accessibility to protections against discrimination.
Burden of proof		
C11	Should the current burden of proof be changed to a 'shifting' burden of proof and, if so: (a) should a 'shifting' burden of proof apply only to complaints of direct discrimination? (b) what should a complainant be required to prove prior to the burden shifting to the respondent?	The Commission continues its support for a shifting burden of proof in relation to direct discrimination as set out in the Building Belonging report. The Commission supports the burden of proof for indirect discrimination complaints set out in section 205 of the Anti-Discrimination Act and retained in section 11(3) inserted by the RAW Act. The Commission has set out commentary from the RAW Act Explanatory Notes, which in turn is drawn from UK case law, to assist with understanding the application of the shifting burden of proof.
Positive duty		
C12	Are there any unintended consequences that may arise if the positive duty were implemented in Queensland?	The Commission continues to support implementation of a positive duty, and provides further information in relation to concerns raised by the Discussion paper.
C13	Would it be appropriate for the QHRC to have a regulatory and enforcement function as contemplated by the positive duty provisions?	The Commission maintains its support for the Commission to have a regulatory and enforcement function for the reasons discussed in the Building Belonging report, which specifically considers whether it is a role for the Commission or another entity at pages 233-238.
Investigations		
C14	Should the power to inquire into a complaint be separate from the QHRC's investigative function?	The Commission agrees that the power to obtain information about a complaint could be separate from the Commission's power to investigate. It is necessary for the Commission's complaint handling function that the ability to obtain information as provided by section 156 is maintained.
C15	Should the QHRC have a power to investigate potential systemic contraventions of the ADA?	Yes, the Commission continues to support the implementation of an express power of the Commission to investigate potential systemic

	Discussion Paper question	Commission position
C16	Should this power be subject to any conditions, for example the Minister's consent and the matter being of public interest?	contraventions of the Anti-Discrimination Act for the reasons given in the Building Belonging report. The Commission supports repealing sections of the RAW Act that maintain the Commission's investigative functions under section 155 of the Anti-Discrimination Act. In the Building Belonging report, the Commission recommended adopting an own-initiative investigation function modelled on section 127 of the Equal Opportunity Act 2010 (Vic) and would support the adoption of similar conditions in Queensland. The Commission does not support a condition that systemic investigations be subject to the Minister's consent, as this may have unintended consequences that reduce the independence of the Commission.
C17	What powers should the QHRC have following completion of an investigation into potential systemic contraventions of the ADA?	The Commission supports the powers given to the Commission by the RAW Act following the completion of an investigation. In relation to a positive duty investigation, the Commission may help a person to prepare an undertaking, accept an undertaking, give a compliance notice, and/or prepare and publish a report. In relation to a systemic investigation, the Commission may prepare and publish a report.
Guidelines		
C18	Should the QHRC have an express power to issue guidelines, including at the request and cost of a person or entity with duties under the ADA?	Yes, the Commission should have an express power to develop and publish guidelines. This would require the Commission to provide guidance and support to duty holders to meet their obligations under the Anti-Discrimination Act and give the Commission a more meaningful role in preventing discrimination. Guidelines should not be legally binding, but compliance may be relevant to court or tribunal proceedings in appropriate matters. Making provision for duty holders to request guidelines at their own expense presents both opportunities and challenges.
C19	Should compliance with a guideline issued by the QHRC be a relevant circumstance that may be taken into account in a proceeding for contravention of the ADA?	
Vilification		

	Discussion Paper question	Commission position
C20	Are there any unintended consequences of prohibiting vilification on the additional grounds of sex, age, impairment and the updated definition of sexual orientation?	No response
C21	Are there any unintended consequences of retaining the updated definition of "public act"?	The Commission supports the new definition of 'public act' and has provided context for those amendments.
C22	Are there any unintended consequences of retaining the objective incitement test in the new proposed section 124D of the ADA?	The Commission sets out how new section 124D inserted by the RAW Act does not lower the threshold for the prohibition on vilification, nor does it clarify existing case law. The Commission suggests amendments to the current section 124A that would better achieve the objectives of better understanding and clarity.
C23	Are there any unintended consequences of retaining the "harm-based" prohibition on vilification in the new proposed section 124C of the ADA?	The Commission supports opportunities to strengthen vilification laws. We provide observations about the potential application of section 124C that suggest it may not achieve the intent of harm-based protection against vilification.

Appendix B

Commission interventions under the Human Rights Act from 1 January 2020 to 30 June 2026

Date received	Matter Name	Description	Court	Status / Outcome
10/03/2020	The Australian Institute for Progress Ltd v Electoral Commission of Queensland BS2246/20	Electoral funding and financial disclosure	Supreme Court	*The Australian Institute for Progress Ltd v Electoral Commission of Queensland* (2020) 4 QR 31
7/08/2020	Attorney-General v McKinnon Sri and Others 8613/20	Application for injunction to stop protest.	Supreme Court	*Attorney-General v Sri* [2020] QSC 246
11/09/2020	Owen-D'Arcy v Chief Executive, Queensland Corrective Services 472/2020	Judicial review of maximum security orders	Supreme Court	*Owen-D'Arcy v Chief Executive, Queensland Corrective Services* (2021) 9 QR 250
21/10/2020	SQH v Scott 11211/20	Whether applicant had reasonable excuse not to answer question of Crime and Corruption Commission	Supreme Court	*SQH v Scott* (2022) 10 QR 215
1/12/2020	Attorney-General v a forensic patient 0161/20	Meaning of 'unacceptable risk' in approving limited community treatment.	Mental Health Court	Appeal dismissed. No decision published.
23/04/2021	Mental Health Court No. 2	Appeal of conditions imposed in forensic order.	Mental Health Court	*Attorney-General v GLH* [2021] QMHC 4

Date received	Matter Name	Description	Court	Status / Outcome
29/09/2021	Johnston v Carroll BS 11254/21	Challenge to Queensland Police Service directions for all staff (with exceptions process) to be vaccinated.	Supreme Court	*Johnston v Commissioner of the Queensland Police Service* (2024) 19 QR 1
29/09/2021	Witthahn v Wakefield BS 11258/21	Challenge to Queensland Health directions for staff to be vaccinated.	Supreme Court	*Johnston v Commissioner of the Queensland Police Service* (2024) 19 QR 1
18/10/2021	Sutton and others v Commissioner of the Queensland Police Service BS12168/21	Challenge to Queensland Police Service directions for staff to be vaccinated	Supreme Court	*Johnston v Commissioner of the Queensland Police Service* (2024) 19 QR 1
12/01/2022	Forrester v Aitken (Chief Health Officer) 554/22	Judicial Review of Chief Health Officer direction requiring workers in high-risk settings to be vaccinated.	Supreme Court	Discontinued.
13/01/2022	Baxter v Gerrard (Chief Health Officer) BS 508/22	Judicial review of Chief Health Officer direction - Workers in a health care setting (COVID 19 Vaccination requirements) Direction (No 2)	Supreme Court	Matter pending
17/01/2022	Aitken v Aitken (Chief Health Officer) 3/22	Judicial review of Chief Health Officer direction requiring teachers to be vaccinated	Supreme Court	Matter pending
27/01/2022	Ishiyama v Aitken (Chief Health Officer) 367/22	Judicial review of Chief Health Officer direction requiring workers in high-risk settings to be vaccinated.	Supreme Court	Matter pending

Date received	Matter Name	Description	Court	Status / Outcome
7/02/2022	Hunt v Gerrard (Chief Health Officer) 966/22	Judicial review of Chief Health Officer's Public Health and Social Measures Direction	Supreme Court	Matter pending
25/03/2022	RHD Doomadgee Cluster Inquest - Inquest into the deaths of Yvette Michelle Wilma Booth, Adele Estelle Sandy, and Shakaya George	Coronial inquest into the deaths of 3 Aboriginal women from Doomadgee whose deaths were the result of complications from Rheumatic Heart Disease	Coroners Court	Findings date: 30/06/2023
10/05/2022	Inquest into the death of Selesa Tafaifa	Death in custody following use of force (Townsville Women's Correctional Centre)	Coroners Court	Findings date: 29/10/2025
1/09/2022	Attorney-General v Grant 4853/22	Application under *Dangerous Prisoners (Sexual Offenders) Act* 2003	Supreme Court	*Attorney-General v Grant (No 2)* (2022) 12 QR 357
15/02/2023	Application to revoke bail	Application under section 19B of *Bail Act 1980* (Qld) to revoke Magistrates court bail for two children	Supreme Court	Discontinued
11/05/2023	Application regarding exclusion of evidence	Application under section 590AA of the *Criminal Code Act 1899* (Qld) to exclude evidence in criminal proceedings.	District Court	Department of Public Prosecutions discontinued charges on morning of hearing.

Date received	Matter Name	Description	Court	Status / Outcome
2/08/2023	Youth Empowered Towards Independence Inc v Queensland Police Service and Youth Justice	Habeas corpus application for transfer of children from watch house detention to youth detention	Supreme Court	*Youth Empowered Towards Independence Inc v Commissioner of Queensland Police Service* [2023] QSC 174
13/10/2023	Inquest into the death of Milton Harrison George	Coroner's Inquest into death in custody	Coroners Court	Adjourned for findings
25/06/2024	Anderson v Parole Board of Queensland BS9292/23	Judicial review of restricted prisoner declaration	Supreme Court	*Anderson v President, Parole Board Queensland* [2025] QSC 123
9/07/2024	Inquest into the death of Wayne Thomas Kerle	Inquest into multifactorial death shortly after arrest for drug possession.	Coroners Court	Findings date: 26/06/2026
26/08/2024	Huang v Body Corporate for the Dorchester CTS	Body corporate dispute - whether adjudicator's decision was 'of a private nature' under s 58(4) exception; whether adjudicator acting in a judicial capacity.	Court of Appeal	*Huang v Body Corporate for the Dorchester CTS 10749* [2026] QCA 147
28/01/2025	Inquest into the death of a child	Death of young person in care.	Coroners Court	Active intervention
9/04/2025	Smith v Chief Executive, Queensland Corrective Services	Appeal of costs and substantive decision	Court of Appeal	*Smith v Chief Executive, Queensland Corrective Services* [2026] QCA 99
14/04/2025	Inquest into the death of a child	Death of 14-year-old boy in care after passenger in stolen vehicle	Coroners Court	Adjourned for findings
27/05/2025	Bobeldyk & Bobeldyk v Moreton Bay City Council	Judicial Review of decision to issue compliance notices and seizing and disposing of belongings of homeless people.	Supreme Court	*Bobeldyk & Anor v Moreton Bay City Council; Eichin & Ors v Moreton Bay City Council* [2026] QSC 27

Date received	Matter Name	Description	Court	Status / Outcome
3/07/2025	Eichin and Ors v Moreton Bay City Council	Judicial Review of decision to issue compliance notices and seizing and disposing of belongings of homeless people.	Supreme Court	*Bobeldyk & Anor v Moreton Bay City Council; Eichin & Ors v Moreton Bay City Council* [2026] QSC 27
9/07/2025	President Parole Board of Queensland v Anderson	Appeal of previous matter intervened in.	Court of Appeal	*President of the Parole Board Queensland v Anderson* [2026] QCA 216
10/07/2025	Department of Environment Science and Innovation v Nagana Yarrbayn Wangan	Judicial review of decision not to take action in relation to mining activities causing harm to culturally significant Springs.	Court of Appeal	*Chief Executive, Department of Environment, Science and Innovation v Nagana Yarrbayn Wangan and Jagalingou Cultural Custodians Ltd* [2026] QCA 7
23/06/2026	Smith v Chief Executive, Queensland Corrective Services	Appeal of previous matter intervened in	High Court	*Smith v Chief Executive, Queensland Corrective Services* [2026] HCA 37

Appendix C

Published submissions made by the Queensland Human Rights Commission between 1 January 2020 and 30 October 2026

Date	Submission	Made to	Category
3/01/2020	A Better Renting Future - Consultation Regulatory Impact Statement	Department of Housing and Public Works	Qld gov
8/01/2020	Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Bill 2019 and related Inquiry	Economics and Governance Committee	Qld Parl
9/01/2020	Penalties for assaults on public officers	Queensland Sentencing Advisory Council	Qld other
31/01/2020	Religious Discrimination Bill - 2nd Exposure Draft	Australian Government, Attorney-General's Department	Aus Gov
31/01/2020	Review of consent laws and the excuse of mistake of fact	Queensland Law Reform Commission	Qld other
3/02/2020	Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Bill 2019 — Further submission	Economics and Governance Committee	Qld Parl
28/02/2020	Age of Criminal Responsibility - Working Group review	Council of Attorneys-General	Aus other
19/03/2020	Human rights and addressing violence against people with disability	Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability	Aus other
22/04/2020	Corrective Services and Other Legislation Amendment Bill 2020	Queensland Parliament, Legal Affairs and Community Safety Committee	Qld Parl
28/05/2020	Inquiry into the Australian Government's response to the COVID-19 pandemic	Australian Parliament. Senate Select Committee	Aus Parl
25/06/2020	Penalties for assaults on public officers: second submission	Queensland Sentencing Advisory Council	Qld other
6/07/2020	Disability Services and Other Legislation (Worker Screening) Amendment Bill 2020	Queensland Parliament Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee	Qld Parl
6/07/2020	Inquiry into the Queensland Government's health response to COVID-19	Queensland Parliament Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee	Qld Parl - other inquiry

Submission to Strategic Review: Appendixes

Date	Submission	Made to	Category
31/07/2020	Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Bill 2020	Queensland Parliament Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee	Qld Parl
3/08/2020	Child Protection and Other Legislation Amendment Bill 2020	Queensland Parliament, Legal Affairs and Community Safety Committee	Qld Parl
27/08/2020	Response to the Consultation Regulatory Impact Statement: Proposal to include minimum accessibility standards for housing in the National Construction Code	Australian Building Codes Board	Aus other
25/09/2020	Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Bill 2020	Queensland Parliament, Legal Affairs and Community Safety Committee	Qld Parl
6/01/2021	Child Protection and Other Legislation Amendment Bill 2020 - This was a joint submission made with the Queensland Family and Child Commission, the Australian Human Rights Commission, Queensland Aboriginal and Torres Strait Islander Child Protection Peak, SNAICC, PeakCare Queensland, Queensland Council of Social Services, and the Office of the Public Guardian. It is available on the Queensland Parliament website.	Queensland Parliament, Community Support and Services Committee	Qld Parl
1/03/2021	The rights of the Indigenous child under the UN Declaration on the Rights of Indigenous Peoples	Expert Mechanism on the Rights of Indigenous Peoples Study (UN Office of the High Commissioner for Human Rights)	Other
12/03/2021	Youth Justice and Other Legislation Amendment Bill 2021	Queensland Parliament Legal Affairs and Safety Committee	Qld Parl
2/07/2021	Voluntary Assisted Dying Bill 2021	Queensland Parliament, Health and Environment Committee	Qld Parl
7/07/2021	Public Health and Other Legislation (Further Extension of Expiring Provisions) Amendment Bill 2021	Queensland Parliament, Economics and Governance Committee	Qld Parl
9/07/2021	Sex Discrimination and Fair Work (Respect at Work) Amendment Bill 2021	Australian Parliament, Senate Education and Employment Legislation Committee	Aus Parl

Submission to Strategic Review: Appendixes

Date	Submission	Made to	Category
12/07/2021	Inquiry into serious vilification and hate crimes	Queensland Parliament, Legal Affairs and Safety Committee	Qld Parl - other inquiry
13/07/2021	Housing Legislation Amendment Bill 2021	Queensland Parliament, Community Support and Services Committee	Qld Parl
6/08/2021	2021 Independent Review of Banking Code of Practice	The Banking Code Review	Aus other
1/10/2021	Child Protection Reform and Other Legislation Amendment Bill 2021	Queensland Parliament, Community Support and Services Committee	Qld Parl
8/10/2021	Police Powers and Responsibilities and Other Legislation Amendment Bill 2021	Queensland Parliament, Legal Affairs and Safety Committee	Qld Parl
11/11/2021	Inquiry into serious vilification and hate crimes: supplementary submission	Queensland Parliament, Legal Affairs and Safety Committee	Qld Parl - other inquiry
19/11/2021	Inspector of Detention Services Bill 2021	Queensland Parliament, Legal Affairs and Safety Committee	Qld Parl
22/11/2021	Working with Children (Indigenous Communities) Amendment Bill 2021	Queensland Parliament, Legal Affairs and Safety Committee	Qld Parl
30/11/2021	Criminal Law (Raising the Age of Responsibility) Amendment Bill 2021	Queensland Parliament, Community Support and Services Committee	Qld Parl
30/11/2021	Public Trustee (Advisory and Monitoring Board) Amendment Bill 2021	Queensland Parliament, Community Support and Services Committee	Qld Parl
7/01/2022	Health and Other Legislation Amendment Bill 2021	Queensland Parliament, State Development and Regional Industries Committee	Qld Parl
15/02/2022	Reforming Queensland's authorisation framework for the use of restrictive practices in NDIS and disability service	Australian Government, Department of Employment and Workplace Relations	Aus Gov
4/03/2022	Public Health (Extension of Expiring Provisions) Amendment Bill 2022	Queensland Parliament, Community Support and Services Committee	Qld Parl
17/03/2022	Nature Conservation and Other Legislation Amendment Bill 2022	Queensland Parliament, State Development and Regional Industries Committee	Qld Parl
31/03/2022	Review of Queensland Cultural Heritage Acts	Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships	Qld gov
29/04/2022	Review of Education (General Provisions) Act 2006	Department of Education	Qld gov

Submission to Strategic Review: Appendixes

Date	Submission	Made to	Category
30/06/2022	Criminal Procedure Review: Magistrates Courts	Criminal Procedure Review Team, Department of Attorney-General	Qld gov
23/08/2022	Inquiry into the decriminalisation of certain public offences, and health and welfare responses	Queensland Parliament, Community Support and Services Committee	Qld Parl - other inquiry
15/09/2022	Public Health and Other Legislation (COVID-19 Management) Amendment Bill 2022	Queensland Parliament, Health and Environment Committee	Qld Parl
28/10/2022	Public Sector Bill 2022	Queensland Parliament, Economics and Governance Committee	Qld Parl
23/12/2022	Corrective Services (Emerging Technologies and Security) and Other Legislation Amendment Bill 2022	Queensland Parliament, Education, Employment and Training Committee	Qld Parl
4/01/2023	Health and Other Legislation Amendment Bill 2022	Queensland Parliament, Health and Environment Committee	Qld Parl
11/01/2023	Births, Deaths and Marriages Registration Bill 2022	Queensland Parliament, Legal Affairs and Safety Committee	Qld Parl
11/01/2023	Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Bill 2022	Queensland Parliament, Legal Affairs and Safety Committee	Qld Parl
13/01/2023	Police Powers and Responsibilities (Jack's Law) Amendment Bill 2022	Queensland Parliament, Community Support and Services Committee	Qld Parl
23/02/2023	Religious educational institutions and anti-discrimination laws	Australian Law Reform Commission	Aus other
24/02/2023	Strengthening Community Safety Bill 2023	Queensland Parliament Economics and Governance Committee	Qld Parl
28/02/2023	Review of the Public Interest Disclosure Act 2010	Public Interest Disclosure Review	Qld other
10/03/2023	Police Powers and Other Legislation Amendment Bill 2023	Queensland Parliament, Education, Employment, Training and Skills Committee	Qld Parl
16/03/2023	Path to Treaty Bill 2023	Queensland Parliament, Legal Affairs and Safety Committee	Qld Parl
6/04/2023	Review of the Family and Child Commission Act 2014	Review Team, Department of Justice and Attorney-General	Qld gov
12/04/2023	Inquiry into support provided to victims of crime submission	Queensland Parliament, Legal Affairs and Safety Committee	Qld Parl - other inquiry
4/05/2023	Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Bill 2023	Queensland Parliament, Legal Affairs and Safety Committee	Qld Parl

Submission to Strategic Review: Appendixes

Date	Submission	Made to	Category
12/05/2023	Updating the Fair Work Act 2009 to provide stronger protections for workers against discrimination	Australian Government, Department of Employment and Workplace Relations	Aus Gov
23/05/2023	Queensland Non-State Schools Accreditation Framework Review	Independent Reviewer	Qld other
30/06/2023	Youth Justice and Child Wellbeing Reform across Australia	Children's Commissioner, Australian Human Rights Commission	Aus other
3/07/2023	Inquiry into Australia's Human Rights Framework	Australian Parliamentary Joint Committee on Human Rights	Aus Parl
6/10/2023	Review of the National Agreement on Closing the Gap	Productivity Commission	Qld other
26/10/2023	Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Bill 2023	Queensland Parliament, Legal Affairs and Safety Committee	Qld Parl
3/11/2023	Information Privacy and Other Legislation Amendment Bill 2023	Queensland Parliament, Education, Employment and Training Committee	Qld Parl
15/11/2023	Inquiry into Youth Justice Reform	Queensland Parliament, Youth Justice Reform Select Committee	Qld Parl - other inquiry
27/11/2023	Current issues and good practices in prison management – Thematic report of the Special Rapporteur on Torture	United Nations Special Rapporteur on Torture	Other
14/12/2023	Commonwealth Government COVID-19 Response Inquiry	Independent Panel, COVID-19 Response Inquiry	Qld other
21/02/2024	Putting Queensland Kids First: Consultation Draft	Queensland Department of the Premier and Cabinet	Qld gov
28/02/2024	Inquiry into Youth Justice Reform - additional submission	Queensland Parliament, Youth Justice Reform Select Committee	Qld Parl - other inquiry
29/02/2024	Corrective Services (Promoting Safety) and Other Legislation Amendment Bill 2024	Queensland Parliament, Community Safety and Legal Affairs Committee	Qld Parl
4/03/2024	Inquiry into the provision and regulation of supported accommodation in Queensland	Queensland Parliament, Community Support and Services Committee	Qld Parl - other inquiry
8/03/2024	Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Bill 2024	Queensland Parliament, Housing, Big Build and Manufacturing Committee	Qld Parl
21/03/2024	Disaster Management and Other Legislation Amendment Bill 2024	Queensland Parliament, Community Safety and Legal Affairs Committee	Qld Parl
25/03/2024	Anti-Discrimination Act draft Bill	Queensland Government, Department of Justice and Attorney-General	Qld gov

Submission to Strategic Review: Appendixes

Date	Submission	Made to	Category
27/03/2024	Education (General Provisions) and Other Legislation Amendment Bill 2024	Queensland Parliament, Education, Employment, Training and Skills Committee	Qld Parl
4/04/2024	Human rights aspects of the terms of reference of the Independent review into the Crime and Corruption Commission's reporting powers	Independent review into the Crime and Corruption Commission's reporting powers	Qld other
12/04/2024	Police Powers and Responsibilities and Other Legislation Amendment Bill 2024	Queensland Parliament, Community Support and Services Committee	Qld Parl
17/04/2024	Human rights aspects of the terms of reference of the Independent review into the Crime and Corruption Commission's reporting powers - Supplementary response	Independent review into the Crime and Corruption Commission's reporting powers	Qld other
17/05/2024	Queensland Community Safety Bill	Queensland Parliament, Community Safety and Legal Affairs Committee	Qld Parl
19/06/2024	Review of the Online Safety Act 2021 (Cth)	Australian Government, Department of Infrastructure, Transport, Regional Development, Communication and the Arts	Aus Gov
27/06/2024	Assisted Reproductive Technology Bill 2024	Queensland Parliament, Community Safety and Legal Affairs Committee	Qld Parl
5/07/2024	Disability Services (Restrictive Practices) and Other Legislation Amendment Bill 2024	Queensland Parliament, Community Support and Services Committee	Qld Parl
8/07/2024	Review of Queensland's Human Rights Act 2019	Independent Reviewer	Qld other
8/07/2024	Respect at Work and Other Matters Amendment Bill 2024	Queensland Parliament, Community Safety and Legal Affairs Committee	Qld Parl
10/07/2024	Working with Children and Other Legislation Amendment Bill 2024	Queensland Parliament, Education, Employment, Training and Skills Committee	Qld Parl
30/09/2024	Review of mining lease objections processes	Queensland Law Reform Commission	Qld other
28/10/2024	Australia's youth justice and incarceration system	Australian Senate Legal and Constitutional Affairs Committee	Aus Parl
4/12/2024	Making Queensland Safer Bill	Queensland Parliament, Justice, Integrity and Community Safety Committee	Qld Parl
11/12/2024	Watch house review consultation	Queensland Police Service	Qld gov

Submission to Strategic Review: Appendixes

Date	Submission	Made to	Category
3/03/2025	Youth Justice (Monitoring Devices) Amendment Bill 2025	Queensland Parliament, Justice, Integrity and Community Safety Committee	Qld Parl
10/04/2025	Inquiry into elder abuse in Queensland	Queensland Parliament, Education, Arts and Communities Committee	Qld Parl - other inquiry
15/04/2025	Police Powers and Responsibilities (Making Jack's Law Permanent) and Other Legislation Amendment Bill 2025	Queensland Parliament, Justice, Integrity and Community Safety Committee	Qld Parl
16/04/2025	Making Queensland Safer (Adult Crime, Adult Time) Amendment Bill 2025	Queensland Parliament, Justice, Integrity and Community Safety Committee	Qld Parl
30/05/2025	National Principles for the regulation of Assistance Animals	Australian Government Department of Social Services	Aus Gov
30/05/2025	Review of Particular Criminal Def	Queensland Law Reform Commission (QLRC)	Qld other
10/06/2025	Modern Homes standards	Productivity Commission and the Queensland Department of Housing, Local Government, Planning and Public Works	Qld other
10/06/2025	Domestic and Family Violence Protection and Other Legislation Amendment Bill 2025	Queensland Parliament, Education, Arts and Communities Committee	Qld Parl
4/07/2025	2025 Disaster events review	Office of the Inspector-General of Emergency Management	Qld other
23/07/2025	System Responses to Child Sexual Abuse	Child Death Review Board	Qld other
29/07/2025	Independent review of Stage 1 and Stage 2 hormone therapies in Queensland’s public paediatrics gender services	Independent Panel	Qld other
30/07/2025	Commission of Inquiry into Child Safety System	Child Safety Commission of Inquiry	Qld other
31/07/2025	Independent Review of the Parole Board Queensland	Submission to Mr Peter Hastie KC, Independent Review of the Parole Board Queensland	Qld other
10/09/2025	Community Protection and Public Child Sex Offender Register (Daniel's Law) Bill 2025	Queensland Parliament, Justice, Integrity and Community Safety Committee	Qld Parl
14/11/2025	Review of the Disability Discrimination Act 1992 (Cth)	Attorney-General's Department	Qld gov

Submission to Strategic Review: Appendixes

Date	Submission	Made to	Category
17/02/2026	Fighting Antisemitism and Keeping Guns out of the Hands of Terrorists and Criminals Amendment Bill 2026	Queensland Parliament, Justice, Integrity and Community Safety Committee	Qld Parl
20/02/2026	Response to Question on Notice taken during the inquiry into the Fighting Antisemitism and Keeping Guns Out of the Hands of Terrorists Bill 2026	Queensland Parliament, Justice, Integrity and Community Safety Committee	Qld Parl
7/09/2026	Breach Bail, Go to Jail and Other Legislation Amendment Bill 2026	Queensland Parliament, Justice, Integrity and Community Safety Committee	Qld Parl
18/09/2026	Queensland Protection Commission Bill 2026	Queensland Parliament, Education, Arts and Communities Committee	Qld Parl
30/09/2026	Protecting Queenslanders from Dangerous Prisoners and Strengthening Victims' Rights Amendment Bill 2026	Queensland Parliament, Justice, Integrity and Community Safety Committee	Qld Parl
2/10/2026	Response to Question on Notice taken during the inquiry into the Queensland Protection Commission Bill 2026	Queensland Parliament, Education, Arts and Communities Committee	Qld Parl
12/10/2026	Mineral Resources and Other Legislation Amendment Bill 2026	Queensland Parliament, Primary Industries and Resources Committee	Qld Parl

Appendix D

Issues relevant to conducting compatibility analysis (section 13) or analysis of exceptional circumstances (section 43)

Section 13	Relevant issues	Example
(1) A human right may be subject under law only to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.	• whether the limit is authorised by law • whether the limit is sufficiently clear and precise that it may be understood and enforced (e.g. including concerns regarding interpretation and implementation)	The submission on the **Breach Bail, Go to Jail and Other Legislation Amendment Bill 2026** identified that the proposal to require that a judge have a 'high degree of confidence' that an offender will not reoffend before granting bail, may not meet the substantive requirement in section 13(1) of being sufficiently certain. This was because 'high degree of confidence' was not defined and would necessarily involve a subjective and probabilistic assessment of future conduct.
(2)(a) the nature of the human right	• the purpose and scope of the human right/s which are proposed to be limited and the impact of the proposed limit • whether the right to be limited is recognised as an absolute right which cannot be justifiably limited at international law • literature on the impact of limits on the relevant right on rights holders • the extent of consultation on these matters, which is critical to understand the nature and extent of limits on human rights	The submission on the **Fighting Antisemitism and Keeping Guns out of the Hands of Terrorists and Criminals Amendment Bill 2026** discusses the essential nature of the right to freedom of expression and freedom of thought, conscience, religion and belief. The submission identifies that the United Nations Human Rights Committee describes these rights as 'essential for any society', and as constituting 'the foundation stone for every free and democratic society'. [p 3]
(2)(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic	• the stated purpose of the Bill or of the specific provisions being examined as outlined in the statement of compatibility or other explanatory materials	The submission on the **Youth Justice (Monitoring Devices) Amendment Bill 2025** reflects on the stated purpose of the proposed electronic monitoring trial, being to determine whether electronic monitoring is an effective measure to reduce offending

Section 13	Relevant issues	Example
society based on human dignity, equality and freedom	• whether the purpose respects the inherent value and dignity of people • whether the purpose has the effect of discriminating against a person and whether it is otherwise consistent with substantive equality • whether it undermines core democratic principles (e.g., freedom of participation, expression, association)	by children on bail and identifies that this purpose is consistent with a free and democratic society. [p 3]
(2)(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose	• the stated purpose of the Bill or specific provisions being examined as outlined in the statement of compatibility or other explanatory materials • whether or not the proposed limit on rights is likely to help to achieve the relevant purpose, • available evidence which demonstrates the relevant limit will help to achieve the purpose, and evidence to the contrary • the reliability of evidence on these points	The submission on the **Community Protection and Public Child Sex Offender Register (Daniel's Law) Bill 2025** notes that the Commission has not been able to identify any available evidence which demonstrates that the proposal to establish a public sex offender register would achieve its stated purpose to prevent sexual offending against children. In drawing this conclusion, the submission reflects on the evaluation of a nearly identical scheme in Western Australia, which found that a 'direct causal link between registers or notification schemes and the incidence of sexually based offending against children is neither supported by current research and literature nor by the architects of the legislation' as well as evidence from evaluations of similar schemes in the United States. On this basis, the submission concludes that as the evidence indicates the proposed limits on rights are unlikely to achieve their purpose to reduce sexual offending against children, the requirements in section 13(2)(c) have not been met and the Bill is not compatible [p11-13]. The submission to the **Independent Review of Stage 1 and Stage 2 hormone therapies in Queensland's public paediatrics gender services** identifies that the proposed cessation of access to hormone therapies to

Section 13	Relevant issues	Example
		protect children was capable of helping to achieve its purpose to protect children. In the context of this discussion the submission identifies substantial evidence which indicates that withholding this treatment where it is clinically indicated and safely provided has negative, rather than protective, impacts for children's health and human rights. [see e.g., p 6]
(2)(d) whether there are any less restrictive and reasonably available ways to achieve the purpose	• whether there are other ways to achieve the relevant purpose without harming rights or without causing as much harm to rights (particularly where those options are obvious and compelling) • evidence which indicates less restrictive alternatives may be more or less effective, or may or may not be available • whether the relevant public entity has considered any less restrictive options	The submission on the **Making Queensland Safer (Adult Crime, Adult Time) Amendment Bill 2025** identifies that one purpose for the Bill was to improve community trust in the justice system. The submission then identifies that a less restrictive mechanism for achieving that purpose (improving community confidence) would be to resource the Queensland Government Statisticians Office to undertake public communication and education activities to improve the community's understanding of the rates and incidence of youth crime. This was based on evidence that this form of education improves community confidence and trust in the criminal justice system.
(2)(e-g) the importance of the purpose of the limitation; the importance of preserving the human right, taking into account the nature and extent of the limitation on the human right; and the balance between these matters	• the significance of the purpose of the limitation (e.g., is it a pressing social need, or mainly administrative convenience) including whether it is to protect human rights • whether the purpose is specific and well defined, or vague • the extent of the limitation on the human right as considered in (2)(a) • whether the limit goes to the core of the right or only its periphery (including discussion of number of people affected, safeguards, and cumulative effect)	The submission the **Domestic and Family Violence Protection and Other Legislation Amendment Bill 2025** discusses that the purpose of the proposed Police Protection Direction scheme, was to improve administrative efficiency. The submission discusses that the significant limits on rights which would result from the introduction of the scheme (e.g., substantial limits on the rights of victim-survivors where they are misidentified by police as the perpetrator) may not be proportionate to the aim of improving administrative efficiency. [p 18]

Section 13	Relevant issues	Example
	• whether the good to be achieved by the limit outweighs the harms of imposing it	
Legislative and policy proposals which may result in unjustifiable limits on human rights	• the scope of powers provided to decision makers to limit human rights • safeguards and oversight mechanisms	The submission on the **Queensland Protection Commission Bill 2026** identifies that independent oversight bodies play an important role in identifying systemic child safety issues, scrutinising decisions, and raising concerns where necessary, and further that robust scrutiny (e.g., of government bodies involved in child safety) can support better outcomes for children.
Section 43	**Issues within scope**	**Example**
(4) It is the intention of Parliament that an override declaration will only be made in exceptional circumstances. Examples of exceptional circumstances— war, a state of emergency, an exceptional crisis situation constituting a threat to public safety, health or order	• discussion of what meets the threshold of 'exceptional circumstances' • evaluation of evidence presented which indicates the threshold of 'exceptional circumstances' has been met • discussion of evidence to the contrary, including where no evidence has been provided	The submission to the **Community Protection and Public Child Sex Offender Register (Daniel's Law) Bill 2025** notes the Commission has been unable to identify sufficient evidence which indicates there are exceptional circumstances which meet the threshold in section 43(4) e.g., war, state of emergency or exceptional crisis. The submission identifies evidence that there have been no more increases in the relevant type of offending. [p 8-10]

Appendix E

Published unresolved complaint reports with recommendations by the Commission (section 88 of the Human Rights Act)

Date	Respondent	Description
15 Oct 2020	Queensland Police Service Department of Health	Complaint regarding a lack of access to fresh outside air during a 14 day stay in mandatory self-funded hotel quarantine.
21 Feb 2021	Queensland Corrective Services	Complaint by Aboriginal woman who was put in isolation when admitted to prison due to the COVID-19 pandemic and deprived of medical treatment (including for her mental health), education, exercise, fresh air and reticulated water.
26 Oct 2022	Queensland Corrective Services	Complaint by Aboriginal man with criminal history and disability who was suspended from visiting his son in prison.
28 Jun 2023	Hospital and Health Service Queensland Corrective Services	Complaint by a prisoner concerning a delay in his transfer to single cell accommodation in accordance with a medical recommendation and failure to provide continuous and equivalent medical care to that available in the community.
07 Jul 2023	Department of Children, Youth Justice and Multicultural Affairs	Complaint alleging failures in communication between mother whose children had been removed from her care and the department.
24 Aug 2023	Queensland Police Service	Complaint alleging QPS failed to update complainant on progress of an investigation and ignored requests for information and assistance.
17 Mar 2025	Health Organisation	Complaint alleging decision by primary treating doctor to stop seeing a patient effectively banned the patient from accessing health organisation.
11 Apr 2025	Department of Families, Seniors, Disability Services and Child Safety Queensland Police Service	Complaint regarding the detention of a child in a watch house.
03 Oct 2025	Department of Child Safety, Seniors and Disability Services Director of Forensic Disability Administrator of the Forensic Disability Service	Complaint regarding conditions in the Forensic Disability Service including the long-term seclusion of the complainant.
27 Aug 2026	Hospital and Health Service	Complaint alleging staff member of a health service released information about a patient to Queensland Police Service.