



Placing People at the Heart of Policy

First independent review
of the Human Rights Act 2019 (Qld)

Final report

Professor Susan Harris Rimmer
30 September 2024

Dedication

This report is dedicated to Queensland advocates who support the human rights and promote the dignity of the most marginalised members of their community. We see you and we salute you.

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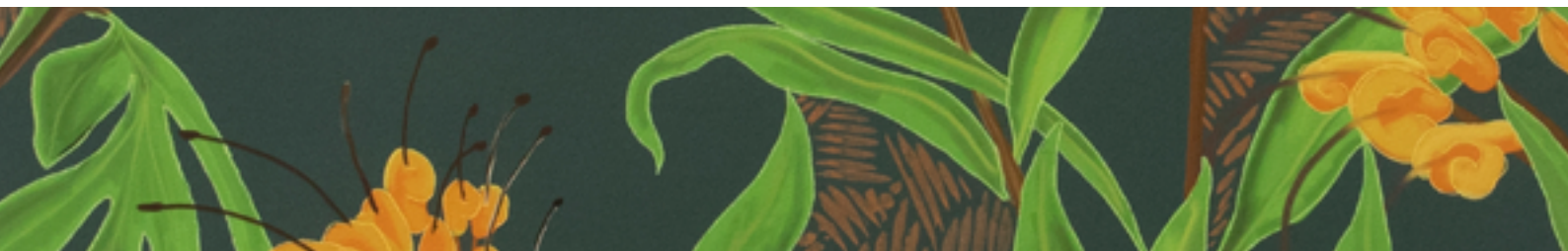
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Website artwork by Department of Justice and the Attorney-General



About the Artwork

Dylan Mooney *Grevillea Venusta* – Grevillea, 2022 digital illustration hand-painted with Yuwi ochre 120 x 88 cm

Intertwined investigates our relationship with native flora and by extension, Australian culture. Rather than focussing on cuttings and arrangements in the still life genre, Mooney's digital illustrations observe living plants as a way of highlighting the continuation of Indigenous culture, resistance to introduced species, and connection to Country — redefining the still life genre by celebrating resilience.

About the Artist

'It's about telling our story of resilience, thriving, survival, how far we've come as a people, what we've achieved ... and where we'll be in the future.'

Dylan Mooney is a proud Yuwi, Torres Strait and South Sea Islander man from Mackay in North Queensland working across painting, printmaking, digital illustration and drawing.

Influenced by history, culture and family, Mooney responds to community stories, current affairs and social media. Armed with a rich cultural upbringing, Mooney now translates the knowledge and stories passed down to him, through art. Legally blind, the digital medium's backlit display allows the artist to produce a high-impact illustrative style with bright, saturated colour that reflects his experiences with keen political energy and insight.

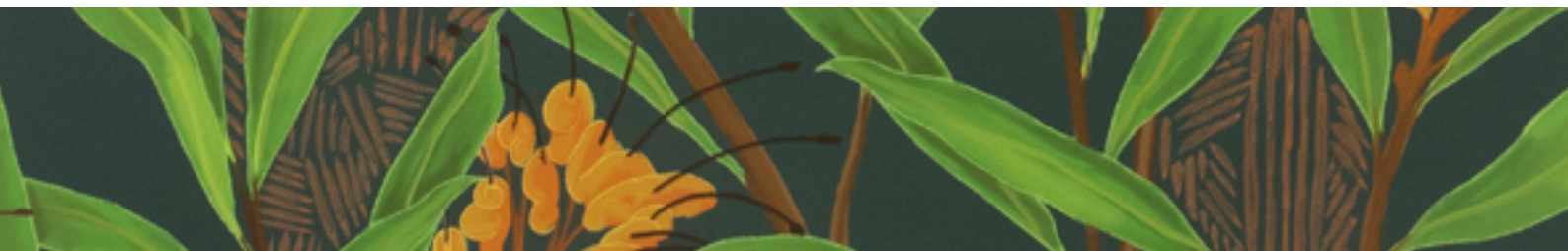
This blending of digital technology and social commentary is a uniting of the artist's sense of optimism – pride within the works exude with profoundness and substance.

Dylan is among artists who are rethinking digital technologies and artistic practices to consider contemporary issues around identity, desire and representation. Interested in the ways in which we can reframe the conversation around some of the voices that have been left out, the artist has made an important body of work that embodies a shift in representation of queer love among people of colour.

Dylan Mooney won the Brisbane Portrait Prize in 2023, and became a member of the board of Museums of History NSW in 2022.

Acknowledgement of Country

I acknowledge and pay respects to Aboriginal and Torres Strait Islander peoples as the Traditional Custodians of Country throughout Queensland. This respect is extended to Elders past, present and emerging.



30 September 2024

The Hon Yvette D'Ath MP

Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence

1 William Street Brisbane QLD 4000

Email: attorney@ministerial.qld.gov.au

Dear Attorney-General

Placing People at the Heart of Policy

It is my pleasure to provide to you the Final Report of the First Independent Review of the Human Rights Act 2019 as required by section 95 of the Act, covering the period of 1 January 2020 to 1 July 2023.

Thank you for the opportunity to serve.



Professor Susan Harris Rimmer

Independent Reviewer

Terms of Reference

First independent review of the Human Rights Act 2019 (Qld)

Pursuant to section 95(1) of the *Human Rights Act 2019* I, YVETTE D'ATH, Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence, ask Professor Susan Harris Rimmer to inquire into, and report by 20 September 2024 on the operation of the Act before 1 July 2023.

BACKGROUND

The *Human Rights Act 2019* (the Act) commenced in full on 1 January 2020.

Queensland was the third jurisdiction to adopt a human rights legislation, following the *Human Rights Act 2004* (ACT) and the *Charter of Human Rights and Responsibilities 2006* (Vic).

The main objects of the Act are:

- to protect and promote human rights;
- 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.

The Act protects fundamental human rights that are recognised in international covenants including the International Covenant on Civil and Political Rights, the Universal Declaration of Human Rights, the United Nations Declaration on the Rights of Indigenous People and the International Covenant on Economic, Social and Cultural Rights. The Act primarily protects civil and political rights but it also protects two economic and social rights drawn from the ICESCR (the right to education and right to health services). The Act also explicitly recognises cultural rights and, in particular, the distinct cultural rights of Aboriginal peoples and Torres Strait Islander peoples.

The Act imposes obligations on all three arms of government:

- the legislature (Parliament must consider human rights when proposing and scrutinising new laws);
- the judiciary (courts and tribunals, must interpret legislation in a way that is compatible with human rights so far as it is possible to do so); and
- the executive (public entities must act and make decisions in a way that is compatible with human rights and in making a decision, must give proper consideration to human rights relevant to the decision).

The Act provides for a complaints and dispute resolution process, the first of any Australian state or territory jurisdiction. The Queensland Human Rights Commission (QHRC) has a dispute resolution (complaints handling and conciliation) function. The QHRC also plays an important role in providing information and education about human rights and the Act.

FIRST INDEPENDENT REVIEW OF THE ACT

Section 95 of the Act requires the operation of the Act to be independently reviewed by an appropriately qualified person as soon as practicable after 1 July 2023.

It is intended that the first review of the Act will be a targeted review aimed at the effectiveness of the current provisions in the Act, including any issues that have arisen in relation to its operative provisions since the Act's substantive provisions commenced on 1 January 2020 up to 30 June 2023.

In this respect the review will provide an opportunity to assess how well the Act has been implemented and how well it is meeting its objective of building a culture of human rights across the Queensland public sector.

However, pursuant to section 95(4) of the Act, the reviewer will also be required to specifically consider:

- whether additional human rights should be included as human rights under the Act;
- whether further or different provision should be made in the Act with respect to remedies available under the Act; and
- whether the amendments made by the Act to the *Corrective Services Act 2006* and the *Youth Justice Act 1992* are operating effectively.

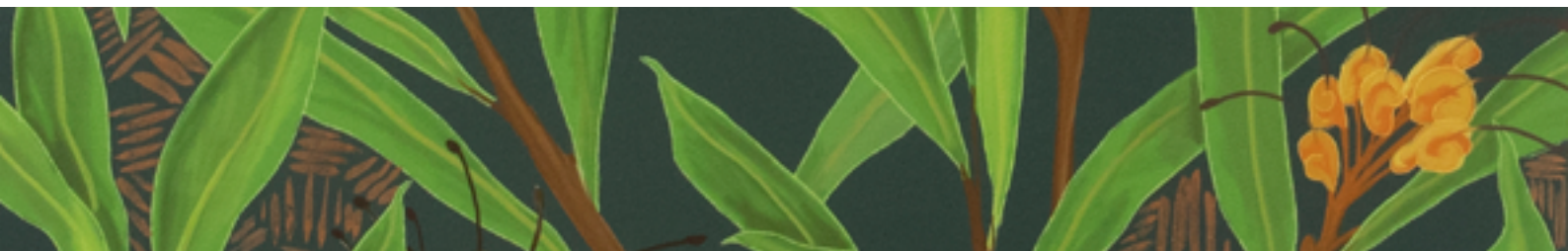
The matters in section 95(4) will ensure the Act continues to reflect the values and aspirations of the Queensland community.

Scope

The review of the *Human Rights Act 2019* (the Act) should consider:

1. the extent to which implementation of the Act has helped to build a culture of human rights in the Queensland public sector including the role of support, education, training and guidance provided by the Queensland Government and the Queensland Human Rights Commission;
2. the matters referred to in section 95(4) of the Act, namely;
 - a. whether additional human rights should be included as human rights under the Act, including, but not limited to, rights under—
 - i. the International Covenant on Economic, Social and Cultural Rights; or
 - ii. the Convention on the Rights of the Child; or
 - iii. the Convention on the Rights of Persons with Disabilities; or
 - iv. the Convention on the Elimination of All Forms of Discrimination against Women;
 - b. whether further or different provision should be made in the Act about proceedings that may be brought or remedies that may be awarded in relation to acts or decisions of public entities made unlawful because of the Act;
 - c. whether the amendments made by the Act to the *Corrective Services Act 2006* and the *Youth Justice Act 1992* are operating effectively, or whether further or different provision should be made for the interrelationship between the Act and those Acts.
3. the effectiveness, and whether there is a need for reform, of the provisions of the Act in relation to:
 - a. existing protected rights (Part 2, Divisions 2 and 3 of the Act);
 - b. the scrutiny of legislation and regulation by Parliament (Part 3, Divisions 1 and 2 of the Act);
 - c. court and tribunal proceedings, including the interpretation of laws (Part 3, Division 3 of the Act);
 - d. the obligations of public entities to act and make decisions in a way that is compatible with human rights and to properly consider human rights in making a decision (section 58 of the Act);

- e. the provisions in relation to human rights complaints and dispute resolution (Part 4, Division 2 of the Act);
4. whether (as recommended by the Women’s Safety and Justice Taskforce in its Report - Hear her voice – Report two – Women and girls’ experiences across the criminal justice system and the Legal Affairs and Safety Committee Report on the Inquiry into Support provided to Victims of Crime (Report No. 48, 57th Parliament, May 2023)) the recognition of victims’ rights under the Charter of Victims’ rights in the *Victims of Crime Assistance Act 2009* should be incorporated into the Act; and
5. any other matter the Reviewer considers appropriate and relevant.



Terminology

<i>ACT Human Rights Act</i>	<i>Human Rights Act 2004 (ACT)</i>
ADA	<i>Anti-Discrimination Act 1991 (Qld)</i>
CSA	<i>Corrective Services Act 2006 (Qld)</i>
department / DJAG	Department of Justice and Attorney-General
FLP	fundamental legislative principle
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ Qld	International Commission of Jurists Queensland
LSA	<i>Legislative Standards Act 1992 (Qld)</i>
OQPC	Office of the Queensland Parliamentary Counsel
PJCHR	Parliamentary Joint Committee on Human Rights
QCAT	Queensland Civil and Administrative Tribunal
QCOSS	Queensland Council of Social Service
QFCC	Queensland Family and Child Commission
<i>QHRA</i>	<i>Human Rights Act 2019 (Qld)</i>
QHRC	Queensland Human Rights Commission
QLS	Queensland Law Society
UDHR	Universal Declaration of Human Rights
UNCRC	United Nations Convention on the Rights of the Child
UNCRPD	United Nations Convention on the Rights of Persons with Disabilities
UNDRIIP	United Nations Declaration on the Rights of Indigenous Peoples
Victorian Charter	<i>Charter of Human Rights and Responsibilities 2006 (VIC)</i>
<i>VOCA</i>	<i>Victims of Crime Assistance Act 2009 (Qld)</i>
YAC	Youth Advocacy Centre Inc
YJA	<i>Youth Justice Act 1992 (Qld)</i>

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Executive Summary: the indivisible link between good governance and human rights

Queensland is an exceptional place in every sense. It was the first jurisdiction in Australia to consider (but reject) legislative human rights protections in colonial times in the context of anti-slavery debates¹ and has a tumultuous human rights history.² It has been the site of key national human rights decisions such as the Mabo cases in the High Court of Australia,³ and United Nations Human Rights Committee complaints.⁴ Queensland has struggled with government corruption in the past, with the Moonlight State ABC Four Corners report and Fitzgerald Inquiry in the 1980s still animating good governance and anti-corruption measures in the state today.⁵

Queensland is the only unicameral jurisdiction in the Commonwealth, it is the only state where the majority of its 5.617 million population lives outside the capital, and it is one of the largest Australian states by geography (1,730,648 square kilometres) with world-renowned natural heritage areas and unique ecosystems.⁶ Queensland is home to roughly 237,000 Aboriginal and Torres Strait Islanders from over 150 language groups (4.6% of the population).⁷

Queensland is also the most disaster-affected state in Australia, having been hit by more than 80 significant natural disaster events in the past decade,⁸ and is already facing intense climate impacts, especially in Far North Queensland. As an Australian state that relies heavily on mining revenue, Queensland is undergoing a transformation of its economy towards net zero carbon emissions⁹ which has very real human consequences for communities, as will climate adaptation challenges more generally.

The birth of the *Human Rights Act 2019* on 1 January 2020 was also exceptional, as it was immediately challenged by the pandemic, requiring many delicate and difficult choices to be made to limit certain rights for public health objectives. As the Caxton Community Legal Centre submission stated, “The pandemic also upended existing processes, services, ways of doing, and long-settled norms.”¹⁰

I can attest, having conducted this review and listened to the views of hundreds of Queenslanders, that the Act has helped to promote and protect human rights in Queensland. The Act has generally delivered on the expectations of those community advocates who urged its passing – that it would enhance the quality of Queensland’s democracy between elections for the least powerful, provide a yardstick to measure government actions, assist marginalised people to feel a sense of dignity and standing, and require public entities and leaders to consider the impact of their day-to-day decisions on the human rights of those in Queensland.

But the overwhelming feedback is that the initial momentum has slowed or stalled, particularly in light of the use of the overrides of the Act in the youth justice area. The perception is that, after a rocky start, the Queensland Legislative Assembly, the Government and the Leadership Board have deprioritised the *Human Rights Act* in recent years and that a renewed surge of support is required to embed a human rights culture in Queensland. This is a similar story to the early years of the ACT and Victoria human rights legislation but perhaps amplified by the pandemic and the early use of the overrides.

The recommendations in this report are designed to address four overarching themes distilled from feedback to the Review.

1 Renée Jeffery, ‘Human rights in Australia’s early international relations: unity, prosperity, and the abolition of slavery’ (2024) 78(1) *Australian Journal of International Affairs* 58, 66-71.

2 ‘Queensland human rights timeline’, *Queensland Human Rights Commission* (Web Page, 24 January 2023) <<https://www.qhrc.qld.gov.au/resources/Qld-human-rights-timeline>>.

3 *Mabo v Queensland (No 1)* (1988) 166 CLR 186; *Mabo v Queensland (No 2)* (1992) 175 CLR 1.

4 United Nations Human Rights Committee, *Decision on Daniel Billy and others v Australia (Torres Strait Islanders Petition)*, 135th sess, UN Doc CCPR/C/135/D/3624/2019 (18 September 2023).

5 Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct, *Report of a Commission of Inquiry pursuant to orders in Council*, (Final Report, 3 July 1989) <<https://www.ccc.qld.gov.au/sites/default/files/Docs/Publications/CCC/The-Fitzgerald-Inquiry-Report-1989.pdf>>. See also Peter Coaldrake, *Let the sunshine in: Review of culture and accountability in the Queensland public sector* (Final Report, 28 June 2022) 10-16 <<https://www.coaldrakereview.qld.gov.au/assets/custom/docs/coaldrake-review-final-report-28-june-2022.pdf>>.

6 ‘Interesting facts about Queensland’, *Queensland Government* (Web Page, 7 December 2017) <<https://www.qld.gov.au/about/about-queensland/statistics-facts/facts>>; ‘Queensland population counter’, *Queensland Government’s Statistician’s Office* (Web Page, 14 June 2024) <<https://www.qgso.qld.gov.au/statistics/theme/population/population-estimates/state-territories/qld-population-counter>>.

7 ‘Queensland: Aboriginal and Torres Strait Islander population summary’, Australian Bureau of Statistics (Web Page, 1 July 2022) <<https://www.abs.gov.au/articles/queensland-aboriginal-and-torres-strait-islander-population-summary>>.

8 Queensland Reconstruction Authority, *Resilient Queensland in Action* (February 2020) <https://www.qra.qld.gov.au/sites/default/files/2020-02/0501_Resilient%20Queensland%20in%20Action_V22_LR_February2020.pdf>.

9 Queensland Government, *Queensland’s 2035 Clean Economy Pathway* (February 2024) <https://www.epw.qld.gov.au/__data/assets/pdf_file/0028/48493/queensland-2035-clean-economy-pathway.pdf>.

10 Caxton Community Legal Centre, Submission No 63 to Independent Reviewer, *First Independent Review of the Human Rights Act 2019* (5 July 2024) 1.

1. The Human Rights Act is a good governance tool

The overwhelming feedback from the public sector consultations is that the *Human Rights Act* is best understood as a tool used to increase the integrity of decision-making in relation to most marginalised people; an exercise in due diligence and risk management in good place-based decision-making; and an expression of public purpose values. As the Coaldrake Report states:

the heart of the challenge for government in the 21st century [is] – to satisfy the individual’s expectations to have their needs met and rights respected while maintaining an umbrella of service for the community.¹¹

Many officials explained that the processes required by the Act to consider avenues of action that were least restrictive of rights had fostered innovation and solutions-based thinking. The link between the Act and integrity processes was explained as avoiding any capture by the best-resourced and most vocal stakeholders and requiring consideration of the silent but adversely affected minority. A rights analysis could also expose problems with utilitarian assumptions, or how particular interventions might play out in remote or rural communities, or how to balance competing rights. Examples given included the complex rights issues involved with alcohol management plans in remote communities or enabling access to national parks for people with disabilities.

Officials cited the synergies between the *Human Rights Act* and new *Public Sector Act 2022* which seeks to improve responsiveness to the community and reframe the relationship with Aboriginal and Torres Strait Islander peoples in Queensland.¹² They referenced synergy with the 2022 Coaldrake review *Let the Sunshine In*¹³ in terms of providing frank and fearless advice to Ministers, deepening participation in government decisions and avoiding undue influence by lobbyists. Officials are often challenged to broaden or deepen their consultation processes. As the Final Report states:

There also has been a rising and now persistent emphasis on supporting the rights of people to express their specific needs and concerns and to be heard, and to be assured of fair treatment.¹⁴

Many also mentioned avoiding the mistakes that the Royal Commission into the Robodebt Scheme revealed by the federal public service ignoring the rights of vulnerable people.¹⁵ The community sector also noted that the Act had had positive benefits for the manner in which vulnerable Queenslanders were treated by public entities, and that many problems could be solved by correspondence.

2. A dialogue model of human rights requires meaningful feedback loops

The advantage of a dialogue model such as that enshrined in the *Human Rights Act* (as opposed to constitutional entrenchment) is to prevent human rights violations occurring in the first place, and that is its key, yet often hard to quantify, measure of success. If legislation and policy proposals are properly analysed by the public sector through a human rights lens and then checked in the Parliament, if people in Queensland can complain in a timely accessible and cheap process, if courts can provide feedback on incompatible executive actions, then there should be created a virtuous circle of rights compliance. As Dr Julie Debeljak explains in a national context; modern human rights instruments establish an inter-institutional dialogue between the arms of government about the definition, scope and limits of democracy and human rights: ‘With such models, all arms of government have a legitimate and constructive role to play in interpreting and enforcing the guaranteed human rights; and no arm has a monopoly over human rights’.¹⁶ If a dialogue model of human rights is to be successful in Queensland, more feedback loops are required. As one government official noted:

...only the executive is engaged in a dialogue at this point and the one-way dialogue is always that there

11 Peter Coaldrake, *Let the sunshine in: Review of culture and accountability in the Queensland public sector* (Final Report, 28 June 2022) 9 <<https://www.coaldrakereview.qld.gov.au/assets/custom/docs/coaldrake-review-final-report-28-june-2022.pdf>>.

12 *Public Sector Act 2022* (Qld) s 4, pt 3 s 21.

13 Peter Coaldrake, *Let the sunshine in: Review of culture and accountability in the Queensland public sector* (Final Report, 28 June 2022) <<https://www.coaldrakereview.qld.gov.au/assets/custom/docs/coaldrake-review-final-report-28-june-2022.pdf>>.

14 *Ibid* 11.

15 *Royal Commission into the Robodebt Scheme* (Final Report, 7 July 2023) <<https://robodebt.royalcommission.gov.au/publications/report>>.

16 Julie Debeljak, Submission No 15 to Parliamentary Joint Committee on Human Rights, *Inquiry into Australia’s Human Rights Framework* (June 2023) 26.

*is no incompatibility.*¹⁷

Several recommendations in this review therefore seek to deepen feedback loops at every level.

3. There is significant demoralisation of all actors due to the real or perceived de-prioritisation of the *Human Rights Act* since 2022, but particularly Aboriginal and Torres Strait Islander stakeholders

Stakeholders reported a feeling of demoralisation in relation to human rights challenges in Queensland since the pandemic. These were attributed to the manner and substance of the overrides in the youth justice area described below, the lack of meaningful remedies for unresolved complaints and the lack of resourcing of the Act for meaningful cultural change inside the public sector. The lack of funding and certainty for the Human Rights Unit in the Department of Justice and Attorney-General was pointed out by external actors.

Compared to Victoria, it was felt overrides were used too early in the Act's life and on a profound issue of children's rights in detention. The overrides demoralised those inside and outside government already concerned that the Act could be a 'toothless tiger', or a law with no consequences. This was underscored by the disruption of public sector actors in frontline human rights portfolios by frequent machinery of government changes.

Many Aboriginal and Torres Strait Islander stakeholders also reported feeling demoralised by the Queensland 'No' vote on the Voice referendum,¹⁸ the youth justice overrides that disproportionately affect Aboriginal and Torres Strait Islander children, prominent billboards in Townsville by the Katter's Australian Party stating 'Send 'em out bush'¹⁹ and the lack of bipartisan support for the Path to Treaty process.²⁰

4. Queensland needs more focus on positive rights

Much of the feedback received by the Reviewer was affected by the human impacts of the cost of living crisis and the need for the Queensland Government to focus more on delivering positive rights. As Anatole France once said, 'the law, in its majestic equality, forbids the rich as well as the poor to sleep under bridges, to beg in the streets and to steal bread'.²¹ This can be seen in the overwhelming support for the right to adequate housing. There was a general feeling that the Act was being implemented by the government in a manner that was compliance-based and risk averse as opposed to promoting the aims of the Act in positive interventions. Even the statements of compatibility are framed in negative terms. Some of the most successful examples of human rights compliant policies are where human rights are at the heart of the strategic vision, such as the *Our Place: A First Nations Housing and Homelessness Roadmap 2031*. The vision is stated as:

*Every First Nations person in Queensland has a safe and secure place to call home that meets personal, location and cultural needs. This home provides the foundations to thrive.*²²

The recommendations of this review relate to these four themes and are thereby focused on renewed commitment and leadership to deliver a culture of human rights in Queensland, one which will deliver many lateral benefits to reputation and ability to build social cohesion as Queensland undergoes transformative change. Crucial recommendations relate to the need for a remedy for unresolved human rights complaints, explicit and intentional leadership by Directors-General and Ministers, and crucial resources for human rights prevention, including dedicated full time, highly qualified human rights advisors in frontline agencies.

17 Government Consultation Synthesis Report.

18 Bridget Judd et al, 'Queenslanders voted against the Voice to Parliament – more than any other state or territory in Australia', *ABC News* (online, 15 October 2023) <<https://www.abc.net.au/news/2023-10-15/queensland-voice-to-parliament-vote-results/102977008>>.

19 Katter's Australian Party, 'Make Townsville Safe Again – Send 'em bush!' (Media Release, 1 September 2023) <<https://kap.org.au/make-townsville-safe-again-send-em-bush/>>.

20 Kate McKenna and Rachel Riga, 'Queensland Opposition Leader David Crisafulli says Path Treaty "will only create further division", retracts support for laws', *ABC News* (online, 19 October 2023) <<https://www.abc.net.au/news/2023-10-19/david-crisafulli-backflips-on-path-to-treaty-support-queensland/102984166>>.

21 Anatole France, *Le Lys Rouge (The Red Lily)* (Calmann-Lévy, 1894) ch 7.

22 Department of Housing, Local Government, Planning and Public Works, *Our Place: A First Nations Housing and Homelessness Roadmap 2031* (April 2024) 4 <<https://www.housing.qld.gov.au/initiatives/first-nations-housing-and-homelessness>>.

Queensland's human rights challenges

Queensland Population 5,586,000	
Approximately 150,000 households across Queensland with unmet housing needs in 2023.	Hal Pawson, Andrew Clarke, Joelle Moore, Ryan van den Nouwelant and Matthew Ng, A blueprint to tackle Queensland's housing crisis, 2023, Queensland Council of Social Service, p.5 https://www.qcoss.org.au/wp-content/uploads/2023/03/Hal-Pawson-Report-2023-Final.pdf
3400 children under 12 years of age experienced homelessness or lived in severely overcrowded housing in 2023	Queensland Family and Child Commission. Queensland Child Rights Report 2023, p. 9 https://www.qfcc.qld.gov.au/child-rights/report
42% of women in Queensland had experienced violence since the age of 15, including: 24% (479,900) who experienced sexual violence and 34% (671,500) who experienced physical violence	Australian Bureau of Statistics, Personal Safety, Australia: 2021-22 financial year, 15 March 2023, https://www.abs.gov.au/statistics/people/crime-and-justice/personal-safety-australia/latest-release#about-this-release
29% of women in Queensland had experienced violence, emotional abuse, or economic abuse by a cohabiting partner since the age of 15, including: 20% (398,500) who experienced partner violence (physical and/or sexual) 23% (457,200) who experienced partner emotional abuse 17% (338,500) who experienced partner economic abuse	Australian Bureau of Statistics, Personal Safety, Australia: 2021-22 financial year, 15 March 2023, https://www.abs.gov.au/statistics/people/crime-and-justice/personal-safety-australia/latest-release#about-this-release
27% of households with children experienced food insecurity	Queensland Child Rights Report 2023, p. 9 https://www.qfcc.qld.gov.au/child-rights/report
23% of Queensland households are actively going hungry, reducing their food intake, skipping meals or going entire days without eating.	Foodbank Hunger Report 2023 https://www.foodbank.org.au/food-insecurity-grows-due-to-cost-of-living-crisis/?state=qld
Children in watchhouses 8030 – number of times a child was held in custody in a watchhouse of police station in 2021-2022, 144 of those for over a week 164 incidents of self harm by children in custody 275 Queensland children in youth detention on an average day in 2022	Queensland Child Rights Report 2023, p. 9 Queensland Child Rights Report 2023, p. 31 and 38
In 2021-2022, Aboriginal and Torres Strait Islander children 21.4 times more likely to be in youth detention than non-indigenous children and young people	Queensland Child Rights Report 2023, p. 21

<p>Median age of death (right to adequate standard of living)</p> <p>The median age of death in Brisbane is 82 years; yet in parts of Far North Queensland it is 51 years, a difference of 31 years in the same state.</p>	<p>Health and Wellbeing Queensland https://hw.qld.gov.au/gen-q/</p> <p>Based on Public Health Information Development Unit (PHIDU), Torrens University Australia material from: Social Health Atlas of Australia: Local Government Areas (online) 2018. Accessed 18 January 2022 [/socialhealthatlasofaustralia.com.au/data#social-health-atlas-of-australia-local-government-areas].</p>
<p>In 2017–18, adults in the most disadvantaged areas reported higher levels of psychological distress. The standardised prevalence of high or very high levels of psychological distress was in Queensland: 1.5 times higher for those in the most disadvantaged areas compared to the least disadvantaged areas (19.6% compared to 12.7%, respectively).</p> <p>In 2017–18 the standardised prevalence of high or very high psychological distress was 14.0% in Queensland</p> <p>Among those who experienced symptoms of a mental disorder in the past 12 months, less than half (47.1%) received care from their GP, a mental health practitioner, or other health professional.</p>	<p>https://www.choreport.health.qld.gov.au/our-health/mental-health</p>
<p>1.4 million in unauthorised restrictive practices in Qld for NDIS participants in 2021-2022 (nationally)</p> <p>3,209 unauthorised restrictive practices in Qld for NDIS participants from April 2022- April 2023</p> <p>Unauthorised restrictive practices to manage challenging behaviours in disability care, residential aged care, and hospitals and health care facilities - environmental, chemical, seclusion, physical and mechanical.</p>	<p>https://www.abc.net.au/news/2023-05-19/qld-ndis-rise-in-instances-of-unauthorised-restrictive-practices/102356712</p> <p>NDIS Commission Performance Report Q3, p.33</p> <p>https://www.ndiscommission.gov.au/sites/default/files/2023-08/Q4%20Quarterly%20Performance%20Report%202023.pdf</p>
<p>81,918 suspensions and exclusions were issued in Queensland’s public schools in 2023.</p> <p>Of these, 20,924 (26%) involved Aboriginal and Torres Strait Islander students, even though Indigenous students only make up only 11% of the student population.</p> <p>In 2022, almost half the students given short suspensions had a disability.</p> <p>In 2022, 684 short suspensions were handed out to prep students in Queensland</p> <p>171 suspensions were given to Indigenous students who were in prep.</p>	<p>https://qed.qld.gov.au/publications/reports/statistics/schooling/students</p> <p>https://www.abc.net.au/news/2024-05-30/suspensions-school-students-queensland-government-teacher/103906296</p> <p>https://theconversation.com/aboriginal-children-as-young-as-5-are-getting-suspended-from-school-we-cant-close-the-gap-if-this-is-happening-235889</p> <p>Tamara Walsh and Kathryn Thomas, ‘Children with Special Needs and the Right to Education’ June 2015, UQ Research Series</p>
<p>Prisoner numbers have increased from 5,537 in 2010 to 9,589 in 2022.</p> <p>The growth in the rate of imprisonment of Aboriginal and Torres Strait Islander and women prisoners has exceeded the general population.</p> <p>“Prisons have been overcrowded since 2014–15, with resultant impacts on officers, prisoners and prison infrastructure. Considered together, these impacts present a fundamental challenge to Queensland Corrective Services in achieving its statutory objective of humane containment.”</p>	<p><i>Prison overcrowding and other matters report: An investigation in response to a reference by the Legal Affairs and Safety Committee of the Queensland Parliament</i> Queensland Ombudsman and Inspector of Detention Services, Anthony Reilly</p>

Climate impacts in the Torres Strait and impact on human rights

The UN Human Rights Committee found that Australia's failure to adequately protect indigenous Torres Islanders against adverse impacts of climate change violated their rights to enjoy their culture and be free from arbitrary interferences with their private life, family and home.

The Federal Court will hand down in late 2024 a decision in *Pabai Pabai and Guy Paul Kabai v. Commonwealth of Australia* on similar issues. The applicants allege that the Commonwealth owes a duty of care to Torres Strait Islanders to take reasonable steps to protect them, their culture and traditional way of life, and their environment from harms caused by climate change, and that the government has breached this duty as the targets are not consistent with the best available science.

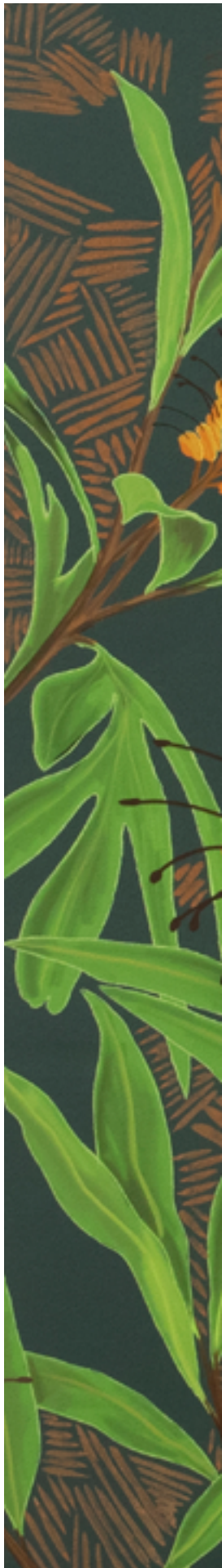
United Nations Human Rights Committee. Decision on Daniel Billy and others v Australia (Torres Strait Islanders Petition), 18 September 2023, CCPR/C/135/D/3624/2019.

Pabai Pabai and Guy Paul Kabai v. Commonwealth of Australia <https://www.fedcourt.gov.au/services/access-to-files-and-transcripts/online-files/pabai-v-australia>



Good news stories

Queensland Music Trails	https://qldmusictrails.com/
Transport and Main Roads Accessibility and Inclusion Strategy Easy Read Version	https://www.tmr.qld.gov.au/_/media/aboutus/our-organisation/accessibilityinclusionstrategy/ais-easy-read.pdf
Torres Strait Islander traditional child rearing practice	https://www.dsdsatsip.qld.gov.au/our-work/aboriginal-torres-strait-islander-partnerships/family-social-programs/torres-strait-islander-traditional-child-rearing-practice
Blue Card kinship reforms	https://statements.qld.gov.au/statements/100573
Partnering for inclusive housing with Queenslanders with disability 2024-2027	https://www.housing.qld.gov.au/__data/assets/pdf_file/0028/61957/partnering-for-inclusive-housing-with-queenslanders-with-disability-2024-2027.pdf
QCOSS housing campaign Town of Nowhere	https://townofnowhere.com/
Corrective services and Queensland Human Rights Commission reforms of strip-searching female prisoners	https://www.qhrc.qld.gov.au/__data/assets/pdf_file/0007/45187/QHRC_StrippedOfOurDignity_FullReport.pdf
Contribution to jurisprudence by President Fleur Kingham of the Land Court in <i>Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors</i> (No 6) [2022] QLC 21, 25 November 2022.	https://www.queenslandjudgments.com.au/caselaw/qlc/2022/21 .
Contribution to jurisprudence by Coroner Nerida Wilson in Coronial Inquest into Rheumatic Heart Disease Doomadgee Cluster, 30 June 2023	https://www.courts.qld.gov.au/__data/assets/pdf_file/0006/770109/cif-booth-sandy-george-20230630.pdf .
Public Advocate, Better Pathways: Improving Queensland's delivery of acute mental health services, August 2022	https://www.justice.qld.gov.au/__data/assets/pdf_file/0009/737487/20220808-mh-issues-paper-final-.pdf
Queensland Family and Child Commission, Youth Friendly version of the <i>Queensland Child Rights Report 2023</i>	https://www.qfcc.qld.gov.au/child-rights/report/summary
Community Legal Centres of Queensland 2023 Success Stories	https://www.communitylegalqld.org.au/story
Queenslanders with Disability Game Changers report on Developing an inclusive employment legacy from the Brisbane 2032 Olympic and Paralympic Games	https://qdn.org.au/our-work/game-changers-report/
Queensland Health, Making Tracks Together - Queensland's Aboriginal and Torres Strait Islander Health Equity Framework	https://www.health.qld.gov.au/public-health/groups/atsihealth/making-tracks-together-queenslands-atsi-health-equity-framework
Department of Housing, Local Government, Planning and Public Works (Qld), 10 April 2024 Our place: a First Nations housing and homelessness roadmap 2031 Acknowledge the past, prepare for the future, act now	https://www.housing.qld.gov.au/__data/assets/pdf_file/0020/51662/our-place-a-first-nations-housing-and-homelessness-action-plan-2024-2027.pdf
Health and Wellbeing Qld, Making Healthy Happen 2032	https://hw.qld.gov.au/making-healthy-happen/
Housing principles for inclusive communities	https://www.housing.qld.gov.au/initiatives/housing-principles-inclusive-communities



Defining and measuring a human rights culture

1. *Expanded application of human rights indicators*

The Queensland Government should resource the Queensland Human Rights Commission to adapt their seven human rights indicators to respond to the needs of the full range of public entities, as a framework for assessing the development of a human rights culture in Queensland and to aid more meaningful reporting.

2. *Feedback loops for public entities*

The Queensland Government should resource the Queensland Human Rights Commission to respond to annual reports from state government public entities, and provide feedback on how they're progressing, including examples of good practice.

3. *Human rights audits for a renewed commitment to the Human Rights Act*

The Queensland Government should resource all public entities to undertake an internal audit of its legislation and policies and procedures for compatibility with human rights, and to consider what the main issues of human rights concern are for their portfolio. These audits of their implementation of the *Human Rights Act*, and any subsequent changes to policies, practices and induction training should be submitted to the Queensland Human Rights Commission within one year of this report being tabled to inform the next legislative review.

4. *Holistic review and amendment of existing Queensland legislation*

The Queensland Government should resource the Human Rights Unit in the Department of Justice and Attorney-General to:

- undertake a holistic review of existing Queensland legislation, as audited by line agencies, to ensure compliance with the *Human Rights Act*; and
- identify and recommend a sequence for necessary amendments.

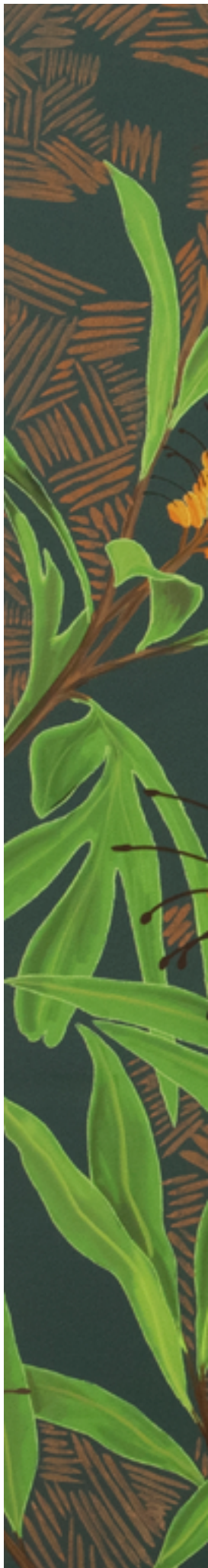
5. *Monitoring attitudes to human rights in government departments*

State government departments, with co-ordination and support from the Human Rights Unit in the Department of Justice and Attorney-General, should:

- analyse *Working for Queensland* survey responses to 'I understand how the QHRA applies to my work' within the department and across employee levels
- take concrete steps to address neutral and negative responses across the department.

6. *Monitoring attitudes to human rights in local governments*

The Queensland Government should resource the Queensland Human Rights Commission to engage in an annual survey of local government employees, modelled on the *Working for Queensland* survey questions, to measure their views on the implementation of the *Human Rights Act*.



7. *Monitoring key stakeholder attitudes to human rights*

The Queensland Government should resource the Queensland Human Rights Commission to engage in an annual survey of key stakeholders (eg Legal Aid, Community Legal Centres, NGOs) to ascertain their views on the implementation of the *Human Rights Act*.

8. *Measuring attitudes to human rights in the Queensland community*

The Queensland Government should resource the Queensland Human Rights Commission to commission a biennial longitudinal study of human rights awareness in Queensland in the general public.

Role of Queensland Government

9. *Building Queensland's human rights culture*

The Queensland Government should make a public statement of commitment to human rights and Ministers should explicitly reinforce in their dealings with departments and agencies their expectation that they should act compatibly with human rights.

10. *Leading human rights in the Queensland public sector*

The Queensland Leadership Board should establish a standing senior leadership group to champion the *Human Rights Act* across the public sector.

11. *Role and responsibilities of Human Rights Unit*

The Human Rights Unit should be established as a permanent unit within the Department of Justice and Attorney-General to provide a centralised focus of expertise on human rights which can be drawn upon by other state government public entities.

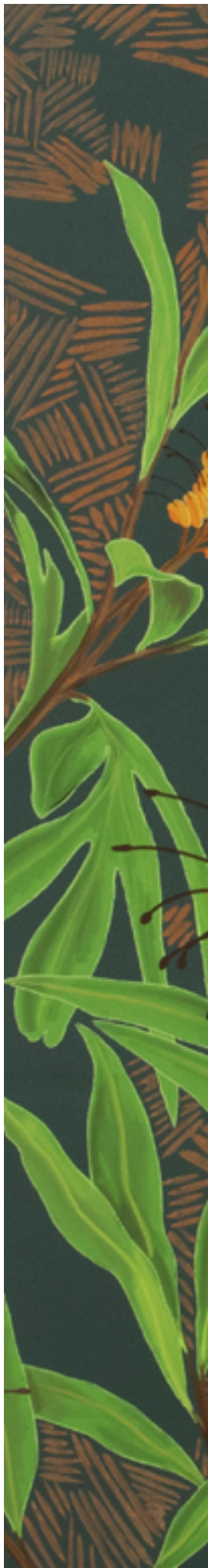
The Human Rights Unit should:

- be appropriately resourced to at least 8 FTE for a certain and minimum five-year period, including one staff member dedicated to communications;
- be appropriately staffed by personnel with appropriate qualifications in human rights and human rights education to provide advice, develop and maintain human rights resources for use within the Queensland Government, and deliver specialist training on human rights to other public sector agencies;
- create at least two designated Aboriginal and Torres Strait Islander positions within the Human Rights Unit.

The different roles and responsibilities of the Human Rights Unit, the Queensland Human Rights Commission and Crown Law should be made clear to all public entities and managed cooperatively.

12. *Designated human rights roles in public entities*

Key human rights roles and units should be designated within all public entities and holders of those roles should join the Human Rights Inter-Departmental Committee.



13. Designated human rights roles in frontline agencies

Frontline agencies for human rights including the Queensland Police Service, Corrections, Disability, Seniors, Child Safety, Aboriginal and Torres Strait Islander Affairs, Homelessness, Women's Safety Taskforce and Youth Justice should have dedicated full time, highly qualified human rights advisors.

14. Queensland reviews and inquiries

Every review or inquiry initiated by the Queensland Government, including references to the Queensland Law Reform Commission, should ensure that the Terms of Reference include consideration of the *Human Rights Act*.

15. Incentives to reward human rights excellence in the public sector

The Queensland Government should establish a category of the Premier's Award, or similar sector-wide reward scheme, to incentivise excellent human rights initiatives in the Queensland public sector.

16. Resourcing

The Queensland Government should signal its renewed commitment to a human rights culture by allocating additional and sustained resources for the four years until the next legislative review to:

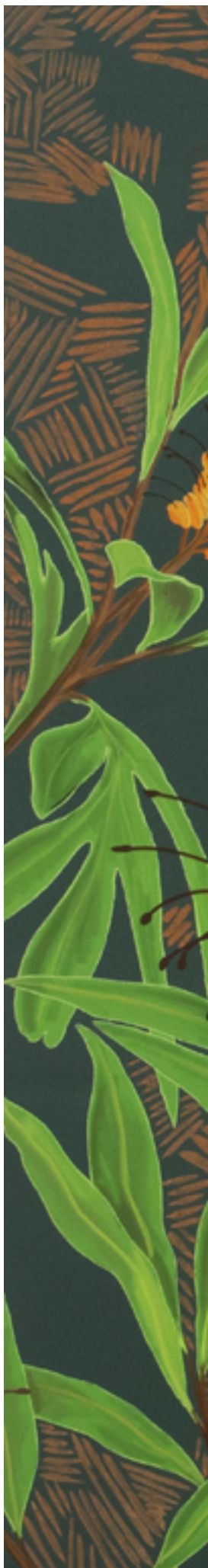
- enable a significant and ongoing commitment to human rights education across Queensland through a special funding scheme for community organisations, especially in remote and regional locations;
- fund community education and advocacy work around the *Human Rights Act* across Queensland through an expanded team at the Queensland Human Rights Commission;
- embed and expand the role of the Human Rights Unit in the Department of Justice and Attorney-General as noted above;
- audit the implementation of the *Human Rights Act* by Queensland's public entities;
- enable public entities to comply with proposed participation obligations;
- review existing Queensland legislation to ensure compliance with the *Human Rights Act*;
- establish a new Human Rights and Scrutiny Committee in the Legislative Assembly; and
- introduce mechanisms to monitor progress on human rights.

Role of Queensland Human Rights Commission

17. Investigatory powers

The *Human Rights Act* should be amended to:

- give the Commission expanded functions to conduct investigations, inquiries and reviews beyond its existing function under section 61(c) of the *Human Rights Act* in order to identify, review and produce reports on systemic matters affecting the human rights of those in Queensland;
- at a minimum enable the Commission to both review and monitor public entity policies, programs, procedures practice and services; and
- empower the Commission to seek information for the purpose of deciding whether to commence a review under section 61(c) of the Act, and to enable the Commission to monitor and evaluate the implementation of recommendations made in a review under section 61(c) of the Act.



Section 91(2) of the *Human Rights Act*, prescribing information to be included in the annual report on the operation of the *Human Rights Act*, should be amended so that section 91(2)(e), requiring reporting on the number of human rights complaints, refers to both the number of human rights complaints made or referred to the Commissioner, and the number of human rights complaints *finalised* by the Commissioner in the reporting period.

18. Designated roles

New and additional funding should be provided for two FTE designated roles for Aboriginal and Torres Strait Islander people, and two FTE people with lived experience of disability in the complaints and policy teams of the Commission.

19. Public entity response to recommendations

The *Human Rights Act* should be amended to:

- require a public entity that is the subject of recommendations made under section 88(4) to publish a response to the recommendations within three months;
- expand the Commission's functions to include monitoring implementation of recommendations made to public entities under section 88(4).

20. Monitoring unresolved complaints

The Attorney-General should provide a Terms of Reference to the Queensland Law Reform Commission, with appropriate resourcing, requesting that it review on a regular basis the unresolved human rights complaints sitting with the Queensland Human Rights Commission, with a view to making recommendations around cultural and systemic law reform issues.

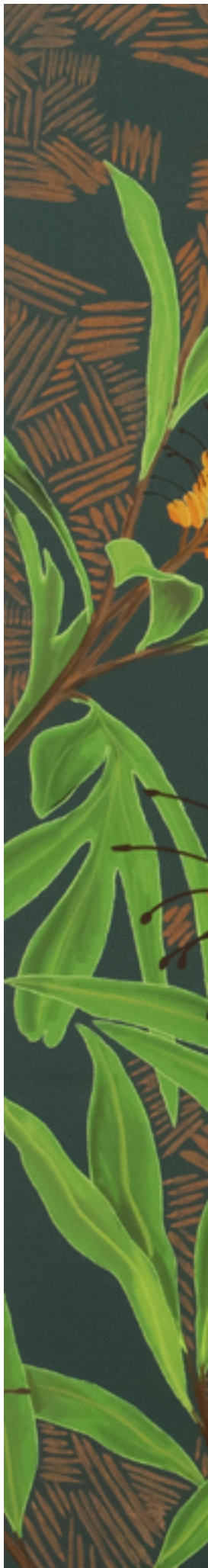
21. Systemic matters affecting the human rights of those in Queensland

The Attorney-General should consider the following referrals to the Queensland Human Rights Commission under section 61(b), or the Queensland Law Reform Commission where appropriate, to examine as a matter of priority the following systemic issues raised with the reviewer:

- The health, social and cultural impact on children of their detention in watchhouses and police stations for periods longer than 48 hours.
- The long-term trends of involuntary treatment in Queensland's mental health system.
- The adequacy of resources to identify and appropriately treat mental health and cognitive impairment in adult and youth detention and throughout subsequent transitions to community.
- Access to food security in remote Queensland communities.
- Access to preventative and acute mental health services in remote and regional Queensland.
- The impact of climate change on the human rights of those living in coastal communities in Far North Queensland.
- The compatibility of section 28 of the *Human Rights Act* with the *Aboriginal Cultural Heritage Act 2003*.
- The impact of extreme heat events on the human rights of those in Queensland.
- Birth injuries in Queensland.

22. Role of Crown Law

The Queensland Government should be cognisant of equality of arms issues and model litigant values when using Crown Law in human rights conciliation processes and piggyback proceedings in the Queensland Civil and Administrative Tribunal against unrepresented and often vulnerable complainants. The Queensland Government should fund appropriate support and



representation for complainants in these circumstances.

Where possible, public entities should be channelling enquiries for advice and training requests to the Human Rights Unit in the Department of Justice and Attorney-General in the first instance to strengthen coherence across the public sector.

Education, training, support and guidance

23. Human rights education – public entities

All public entities (assisted by the Human Rights Unit in the Department of Justice and Attorney-General and the Queensland Human Rights Commission) should support staff at all levels to understand the value of applying human rights to their work, beyond merely a requirement of law or risk management tool.

24. Communities of practice

The Queensland Human Rights Commission should facilitate opportunities for public and community sector workers to share experience and expertise on the Act. Such opportunities could include Human Rights Network events, the production of good practice guidance, the establishment of communities of practice sponsored by a senior executive, and the use of existing networks.

The Queensland Human Rights Commission should facilitate a formal network of statutory commissioners whose remit covers human rights issues (such as the Mental Health Commissioner, the Family and Child Commissioner, the Ombudsman, head of Queensland Law Reform Commission, head of Health and Wellbeing Qld, the Health Ombudsman, Victims' Commissioner, the Privacy Commissioner, the Public Advocate and Public Guardian) to share practice and challenges.

25. Human rights training and awareness across government

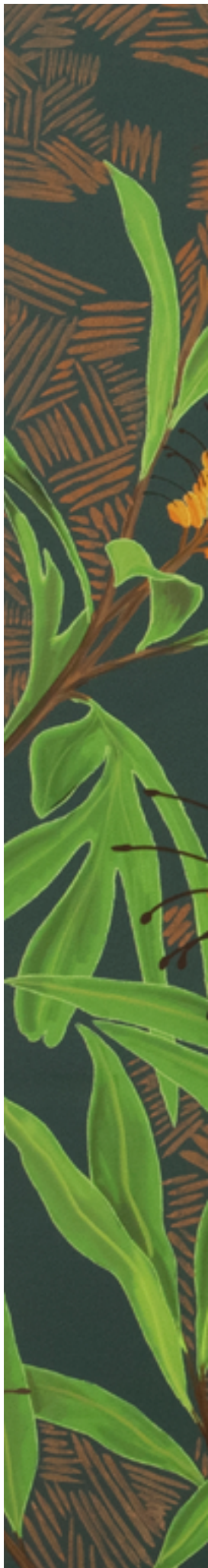
Intensive and ongoing training on the *Human Rights Act* should be implemented across all levels of government.

The Queensland Human Rights Commission should be given responsibility and allocated appropriate resources to lead human rights education within the public sector to:

- leaders across the Queensland public sector, to ensure that they can influence a positive culture of human rights;
- local government councillors;
- staff of Queensland public sector departments, agencies and local government; and
- other organisations that perform functions of a public nature on behalf of the state and have obligations under the Act.

To be most effective, this training should be tailored to specific agencies and roles and should provide detailed and practical examples of the application of the *Human Rights Act* to the particular work of those agencies and officers, and in the places where the target beneficiaries of rights are located for that portfolio.

Training should be delivered in person where possible by professionally trained experts in consultation with front line staff who understand the operational aspects of the work area.



Training should be evidence-based, delivered via diverse methods including online and face to face, and should be conducted over multiple periods rather than in single sessions. Training should be regularly evaluated to enable continuous improvement.

26. Human rights training – public entities

All public entities should be provided with adequate resourcing and support to deliver customised human rights training to their staff and to integrate human rights considerations across all staff training. Human rights training should be regular, interactive and targeted – focusing on the rights most often engaged by the entity’s decisions and actions.

Training programs for public entities should explicitly spell out the steps required to comply with the obligation to properly consider human rights in decision-making processes. Training programs should also include practical guidance on how to integrate proportionality in decision-making processes.

27. Human rights training – graduates

Graduates to the Queensland public sector should receive specialised induction training and placed into cohorts that offer career-long support for human rights education. A pilot should be rolled out for the Policy Futures 2025 cohort and evaluated in four years’ time.

28. Human rights education – judiciary and legal profession

The Queensland Government should resource the National Judicial College of Australia to regularly educate judicial officers, magistrates and tribunal members on how the *Human Rights Act* operates, potentially in conjunction with professional development for the legal profession. If a Judicial Commission of Queensland is established, that body should also contribute to the professional development of judicial officers on operation and interpretation of the Human Rights Act.

29. Human rights training – judiciary and legal profession

Judicial officers and tribunal members should be provided with training that focuses on interpretive and jurisprudential developments at both the Australian and international level. Training programs need to be ongoing to keep up to date with current developments and include opportunities for regular refresher courses. Targeted funding should also be provided for training programs for the legal profession.

30. Human rights training – parliamentarians

To encourage more effective parliamentary scrutiny,

- the Queensland Human Rights Commission should offer a human rights briefing to all new parliamentarians; and
- the secretariat of the proposed Human Rights and Scrutiny Committee should arrange for human rights induction training for members of the Committee. In the alternative, portfolio committee members should be offered tailored human rights briefings in the new parliament.

31. Human Rights guidance

The Human Rights Unit in the Department of Justice and Attorney-General should produce accessible and up to date guidance materials to complement formal training sessions and assist public servants to:

- understand human rights principles and developments in context of government priorities;

and

- implement the *Human Rights Act* including the proposed participation obligations.

These materials should be intelligible to those without formal legal training and provide a guide to research and links to other sources of more detailed information and human rights cases from Australia and internationally.

32. Plain English and Easy Read Complaints Guidance

The Queensland Human Rights Commission should produce plain English guides and visual guides on:

- o how to make complaints under the Act
- o limitations and how rights are balanced.

33. Human rights education – community

The Queensland Human Rights Commission should continue to direct specific resources to building community understanding of the *Human Rights Act*, how it may apply to individuals and communities, and how remedies can be accessed. In particular, translating the *Human Rights Act* and discrimination laws into accessible guidance for marginalised groups or places should be a priority.

The Queensland Government should provide significant and ongoing resources to the Queensland Human Rights Commission for human rights education for the community, including in primary and secondary schools, to enhance community awareness of human rights protections under the *Human Rights Act*.

The Queensland Government should allocate additional and sustained resources for the four years until the next legislative review to enable a significant and ongoing commitment to human rights education across Queensland through a special funding scheme for community organisations, especially in remote and regional locations.

34. Support for local government

The State government and relevant State government departments should provide further support to local government entities for *Human Rights Act* implementation activities, informed by consultation with local government.

35. Support for community organisations

Measures should be put into place to support community organisations who have opted in to become a public entity. This could be in the form of funding for them to seek training, or the provision of free training from the Queensland Human Rights Commission.

Organisations that currently provide or could provide human rights training in Queensland should also be provided with targeted funding to expand their current efforts.

Self-represented litigants should be provided with support materials by the Supreme Court in relation to the direct right of action (if enacted).





Effectiveness of *Human Rights Act 2019 (Qld)*

36. Amendments to existing protected rights

- All future amendments to the *Human Rights Act* should be pursued in alignment with prospective amendments to the *Anti-Discrimination Act 1991 (Qld)*, to ensure synergy between the two legislative regimes.
- Section 13 of the *Human Rights Act* should be amended to clarify that limitations to absolute rights within the ICCPR cannot be justified.
- The definition of ‘discrimination’ in the *Human Rights Act* should be amended to clarify that it includes discrimination on the basis of attributes listed under section 7 of the *Anti-Discrimination Act* and analogous grounds of discrimination.
- The *Human Rights Act* should be amended to clarify that the right to security is distinct from the right to liberty. This could be achieved through an interpretive note, or alternatively, each right could be given its own section.
- To ensure clarity of interpretation, the *Human Rights Act* should be amended so that the right not to be subjected to medical or scientific treatment without a person’s full, free and informed consent is set out alongside the right to privacy (section 25) or the right to health services (section 37) rather than within section 17 on the right to protection from torture or cruel, inhuman or degrading treatment.
- Section 28 on cultural rights of Aboriginal and Torres Strait Islander peoples in the *Human Rights Act* requires detailed guidance material produced by the Commission in consultation with Aboriginal and Torres Strait Islander communities that specifies that the section should be interpreted with reference to the UN Declaration on the Rights of Indigenous Peoples, especially the right of self-determination. The section should be read in conjunction with the preamble to the *Human Rights Act*, as well as the reframing provisions of the *Public Sector Act 2022* (in particular section 4(b)(i), section 19(2)(a) and section 21(2)(c)), and the *Path to Treaty Act 2023* (section(2)(a)). Difficulties with resolving questions of cultural rights between Aboriginal and Torres Strait Islander communities should be resolved by a panel of appropriately qualified Aboriginal and Torres Strait Islander Elders.

37. Repeal override provisions

The override provisions, Division 2 of Part 3 of the *Human Rights Act*, should be repealed.

38. Improve scrutiny of legislation and regulation by Parliament

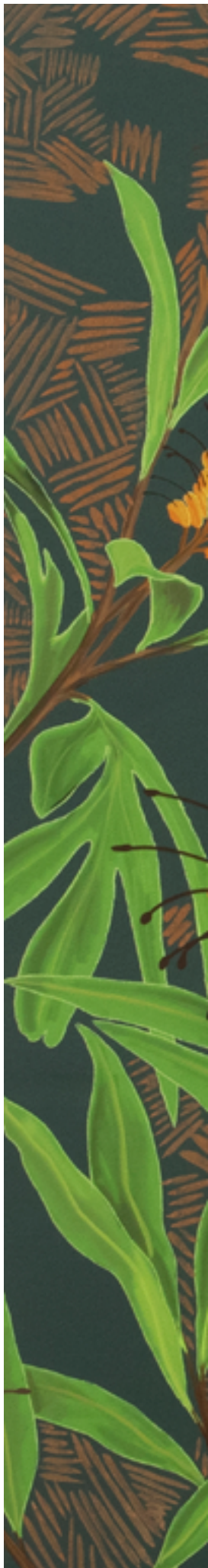
The Human Rights Unit in the Department of Justice and Attorney-General should be resourced to provide guidance material and good practice examples of statements of compatibility, briefings and certificates for the wider public sector.

The Human Rights Unit in the Department of Justice and Attorney-General should clarify to instructing agencies that the compatibility statement and portfolio committee reports perform different functions under the *Human Rights Act*. Ministers should be encouraged to take any Committee’s concerns back to their departments for reconsideration, rather than relying on the compatibility statement as proof of compatibility.

Human rights certificate and statement of compatibility processes should be reviewed periodically by the Office of the Queensland Parliamentary Counsel to identify any issues for reform in the drafting templates.

39. Legislative proposals

The Queensland Government should facilitate the identification of human rights impacts of legislative proposals and options for addressing them by consulting the Human Rights Unit in the Department of Justice and Attorney-General at an early stage of developing legislation and drafting statements of compatibility.



40. Statements of Compatibility – consultation

The *Human Rights Act* should be amended to require that Statements of Compatibility contain a description of the nature of any consultation undertaken on the Bill (including by reference to the participation duty) and if no consultation took place, explain why.

41. Statements of Compatibility – Exposure drafts of Bills

When drafts of Bills raising significant human rights issues are exposed for public comment, they should be accompanied by a draft statement of compatibility so that the community is able to consider and respond to these issues.

42. Statements of Compatibility – Private Members' Bills

Private Members' Bills dealing with significant human rights issues should include a draft statement of compatibility so that the community is able to consider and respond to these issues.

43. Create new Human Rights and Scrutiny Committee

Section 93 of the *Parliament of Queensland Act 2001* should be amended to establish a new Human Rights and Scrutiny Committee, or alternatively such a committee could be established as a select committee for a specific period.

The proposed Human Rights and Scrutiny Committee should be supported by its own Secretariat, appropriately staffed and resourced, including a dedicated Human Rights Adviser, similar to the Victorian model. If the current Human Rights Advisory Panel is maintained, their advice should be monitored and overseen by this committee.

All Bills should be scrutinised, at a threshold level, by this proposed Human Rights and Scrutiny Committee for significant human rights impacts before being referred to the relevant portfolio committee.

The *Human Rights Act* should be amended to require all major amendments to Bills with potential human rights impacts to be referred to the relevant portfolio committee (or designated members of it) for scrutiny.

44. Parliamentary Scrutiny – amendments

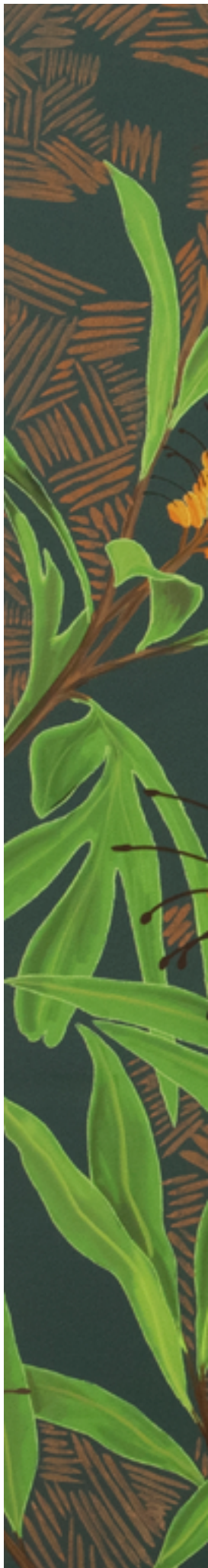
All amendments introduced on the floor of the Legislative Assembly seeking to restrict human rights should be referred to the proposed Human Rights and Scrutiny Committee or relevant portfolio committee.

The terms of reference for the proposed Human Rights and Scrutiny Committee should include clear powers to consider and report on provisions of Acts that it did not consider when a Bill was before Parliament (within a limited time).

Members of Parliament are encouraged to provide a short statement on the human rights compatibility of their proposed amendments to Parliament.

45. Parliamentary Scrutiny – consultation

The terms of reference for the proposed Human Rights and Scrutiny Committee should include clear powers to assess the adequacy of consultation processes detailed in Statements of Compatibility.



46. Parliamentary Scrutiny – subordinate legislation

The terms of reference for the proposed Human Rights and Scrutiny Committee should require it to:

- report on any significant Human Rights Act issues raised by subordinate legislation;
- publish all human rights certificates in an online repository maintained by the Committee;
- report to Parliament if it corresponds with a Minister about the human rights impact of any statutory rule or legislative instrument or considers the statutory rule or legislative instrument limits human rights.

47. Parliamentary Scrutiny – Private Members’ Bills

The terms of reference for the proposed Human Rights and Scrutiny Committee should require it to report on any significant *Human Rights Act* issues raised by Private Members’ Bills. The requirement to explain non-responses to the proposed Human Rights and Scrutiny Committee reports should extend to both government and Private Members’ Bills.

Members of parliament who introduce Bills should be encouraged to publish amended Statements of Compatibility to accurately reflect any changes or clarifications following Parliamentary committee scrutiny.

48. Public engagement in legislative process

To support and enhance public engagement in the legislative process:

- the Queensland Government should consider measures to ensure that the new proposed Human Rights and Scrutiny Committee has sufficient time to scrutinise Bills that raise significant human rights and Fundamental Legislative Principles issues; and
- the Committee should reinstate an Alerts Digest and refer to the content of submissions made to it in its Alert Digests on Bills.

49. Court and tribunal proceedings

The *Human Rights Act* should be amended to facilitate the Queensland Human Rights Commission’s and Attorney-General’s access to (confidential) court and tribunal proceeding information for the purpose of deciding whether to intervene in court or tribunal proceedings.

The *Human Rights Act* should be amended to allow the Queensland Human Rights Commission to act as an amicus curiae in court proceedings raising significant human rights issues, in addition to its existing intervention function.

The Queensland Government should, in consultation with the judiciary, provide specific funding to an appropriate body to develop materials to support judicial decision-making, such as a Queensland Human Rights Act bench book, similar to the Judicial College of Victoria’s *Charter of Human Rights Bench Book*.

The Equal Treatment and Youth Justice bench books should be updated to include the Queensland Human Rights Act and associated practice.

50. Participation obligations on public entities

The *Human Rights Act* should be amended so that public entities have an express duty to ensure the participation of:

- First Nations peoples in decisions that directly or disproportionately affect First Nations peoples (based on articles 18 and 19 of UNDRIP (collective consultation rights));
- children in decisions that directly or disproportionately affect children (based on articles 3 and 12 of the UNCRC (best interests and ‘right to be heard’));
- people with disabilities in decisions that directly or disproportionately affect people with disabilities (based on articles 4(3) and 12 of the UNCRPD (participation and equal recognition before the law)).

The legislative note regarding the example of non-state schools under section 9(1)(h) of the *Human Rights Act* cannot be justified and should be removed.

51. Complaints and dispute resolution provisions - alignment with Anti-Discrimination Act

The *Human Rights Act* should be aligned with recommendations to reform similar complaints processes under the *Anti-Discrimination Act* as it may be amended, including timeframes.

The *Human Rights Act* should be amended to include a prohibition against victimisation, based on section 129 of the *Anti-Discrimination Act*.

52. Requirements for making human rights complaint to commissioner

Section 65 of the *Human Rights Act*, which requires a complaint about an alleged contravention of the Act to be made to the relevant public entity prior to any complaint to the Queensland Human Rights Commission, should be repealed.

In the alternative,

- section 65(1)(b) of the *Human Rights Act* should be amended to reduce the required period after making a complaint to a public entity from 45 business days to 30 business days; and
- all public entities (assisted by the Human Rights Unit of the Department of Justice and Attorney-General and the Queensland Human Rights Commission) should improve their ability to consistently identify, record and respond to human rights complaints on a substantive basis.

53. Complaints clearing house

The new complaints clearing house process (as recommended by the Coaldrake Review) should:

- include as a principle a special focus and training on reasonable adjustments required by the most vulnerable people in Queensland to access a complaints process; and
- create a referral mechanism to the Queensland Human Rights Commission.

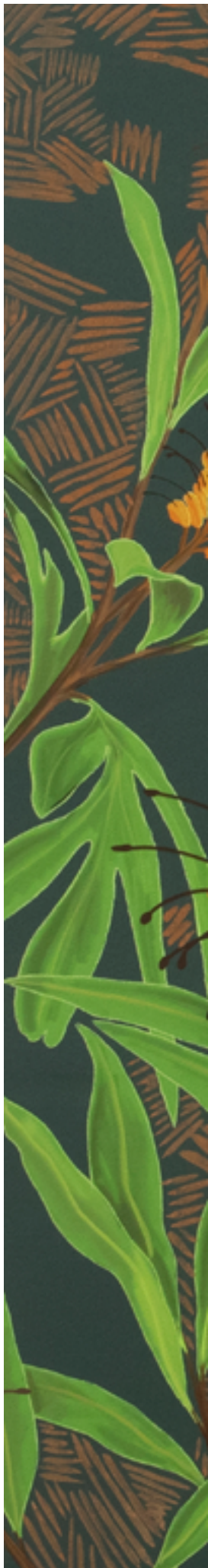
54. Effective dispute resolution

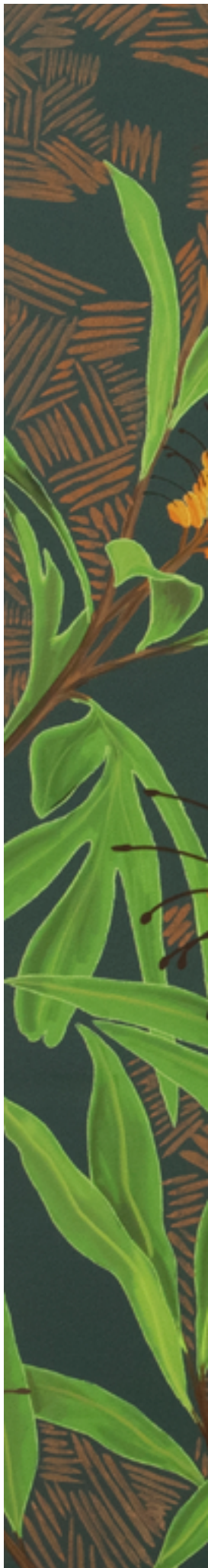
Principles of effective dispute resolution should be enshrined in the *Human Rights Act*. These principles should include:

- Dispute resolution should be provided as early as possible.
- The type of dispute resolution offered should be appropriate to the nature of the complaint.
- The dispute resolution process should be fair to all parties.
- Dispute resolution should be consistent with the objectives of the *Human Rights Act*.

55. Enhanced flexibility in complaints

The *Human Rights Act* should be amended to clarify that verbal complaints can be accepted and transcribed by the Queensland Human Rights Commission.





The scope of the Queensland Human Rights Commission’s discretion to refuse to deal or continue to deal with a complaint in sections 70(1)(a) and (b) should be clarified by way of legislative amendment or explanatory guidance by an appropriate expert.

The *Human Rights Act* should be amended to expressly identify the Queensland Human Rights Commission’s discretion to refuse to deal with a complaint if the Commissioner considers there is no utility in dealing with the complaint, because the processes available under the *Human Rights Act* are unlikely to achieve a satisfactory result.

Additional human rights

56. New rights to be added to Act

The *Human Rights Act* should be amended to include the following new rights:

- (a) Right to adequate housing
- (b) Right to a clean, healthy and sustainable environment
- (c) Right to live free from gender-based violence

57. New preambular text

The preamble to the *Human Rights Act* should be amended to require public authorities to consider the priorities and interests of future generations in government policy and decision-making.

58. Next review to consider further new rights

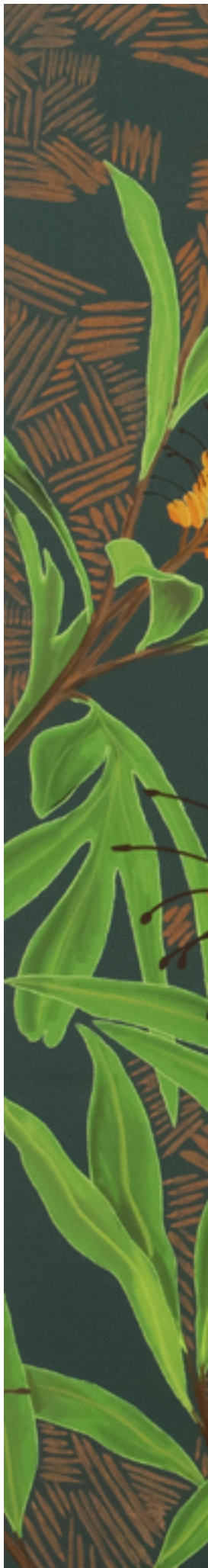
Prior to the next review of the *Human Rights Act*, as prescribed by section 96, the Attorney-General should provide terms of reference to the Queensland Law Reform Commission with appropriate resourcing to explore the value of several additional human rights:

- (a) Right to self-determination for Aboriginal and Torres Strait Islander Peoples, and Self-Determination Reform Framework.
- (b) Right to access government information and services in accessible formats and right to access the internet for essential government services.
- (c) Right to compensation for wrongful conviction.
- (d) Rights-based approaches to disasters.

Remedies

59. QHRC to explore effective remedies through conciliation process

In their next annual human rights report, the Queensland Human Rights Commission should reflect on how the current conciliation process can enhance the provision of effective remedies.



60. QHRC referral to tribunal for unresolved complaints

The *Human Rights Act* should be amended to allow the Queensland Human Rights Commission to refer unresolved human rights complaints, and complaints that are otherwise unsuited to the Commission's dispute resolution process, to the Queensland Civil and Administrative Tribunal for determination and effective remedy.

The Queensland Civil and Administrative Tribunal should receive appropriate resourcing for such cases and an investment in judicial leadership, such as a new Deputy President with responsibility for human rights, anti-discrimination and restrictive practices cases.

61. Create an independent cause of action

The *Human Rights Act* should be amended to enable a person to commence proceedings in the Supreme Court of Queensland against a public entity for an alleged contravention of the Act in its own right, independent of any other cause of action, partially modelled on section 40C of the *Human Rights Act 2004* (ACT).

62. Enable access to remedies

The *Human Rights Act* should be amended to allow courts and tribunals considering human rights claims to order the full range of remedies within their power, including damages. This should align with the orders available for unlawful discrimination under the proposed updated anti-discrimination legislation for Queensland.

63. Support for legal and peer representation

To address equality of arms issues and improve access to justice, the Queensland Government should provide appropriate levels of long-term funding for legal assistance to complainants with human rights claims. This should include legal advice, education and casework services, and peer advocate representation in human rights complaints and legal proceedings.

Amendments to Corrective Services Act 2006 (Qld) and the Youth Justice Act 1992 (Qld)

64. Amend the Corrective Services Act 2006 (Qld)

The *Corrective Services Act 2006* (Qld) be amended to repeal section 5A.

65. Amend the Youth Justice Act 1992 (Qld)

The *Youth Justice Act 1992* (Qld) be amended to repeal subsections (7) and (8) of section 263.



Recognition of victims' rights

66. Commissioner Review

The Victims' Commissioner should conduct an immediate review of the rights in the Charter of victims' rights, taking into consideration national and international developments in victims' rights.

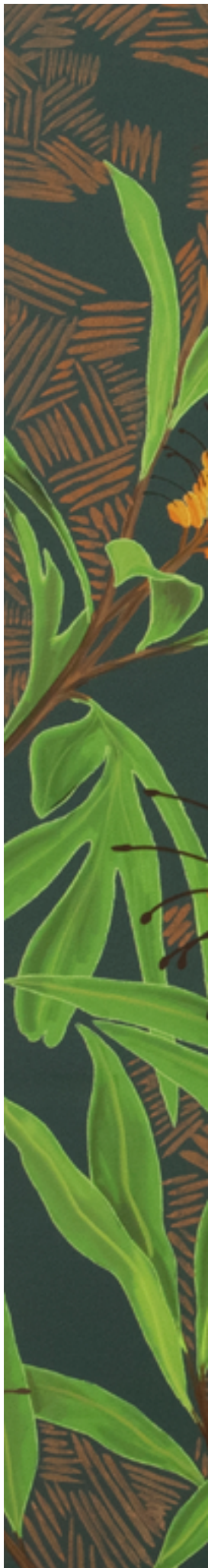
67. New right to be created

A new right should be incorporated into the *Human Rights Act* that recognises victims should be treated in a respectful and trauma-informed manner, which includes providing information in a timely manner that reduces the stress and trauma on victims.

- a. This new right should include being treated with courtesy, compassion, respect and dignity by investigatory and prosecuting agencies, and to being provided relevant information (unless a victim has elected not to receive information) in a timely manner.
- b. This new right should refer to the Charter of victims' rights (in the *Victims' Commissioner and Sexual Violence Review Board Act 2024* (Qld)) for more detailed protections and support.
- c. In recognising a victims' right to respectful and trauma-informed engagement, the right should make mention of the need to take into account a victim's age, disability, gender identity, cultural and racial identity, religion, sexual identity, and parental, family, carer or kinship responsibilities, including a specific right to an interpreter for non-English speaking victims and a right to culturally safe processes and support. There should also be an acknowledgement that children who commit crimes are often themselves victims of violence, abuse and neglect, and provision needs to be made for this.
- d. The new right should relate to victims (and their families and any witnesses to the crime) who suffer personal (not financial/property) harm, in particular victims of serious violent crimes and for Domestic Family Violence victims in civil proceedings (who might be applying for Domestic Violence Order).

68. Complaint pathway to Human Rights Commission

Victims of crime can make a complaint to the Victims' Commissioner, who, if necessary, can then refer the complainant to the Queensland Human Rights Commission for enforceability without needing to make a complaint to the justice sector agency first.



Additional Areas of Reform

69. Create a Brisbane Olympics and Paralympics human rights legacy

That the Brisbane 2032 Organising Committee include an explicit commitment to further strengthening human rights outcomes in their overall legacy, welcoming the existing commitments to disability employment. Further goals should be added on gender inclusion and climate adaptation measures that ensure the ability of all Queenslanders to participate in exercise and activity all year round.

70. Review of the Mental Health Act 2016 in 2026 to explicitly include human rights issues

When the *Mental Health Act 2016* is reviewed in 2026, the terms of reference should ensure alignment with the Human Rights Act and key human rights issues.

1 *Human Rights Act 2019 (Qld)*

1.1 Background

Queensland is the third jurisdiction in Australia to adopt a human rights charter. The Act was enacted in 2019 and came into force on 1 January 2020. Queensland followed the Australian Capital Territory (ACT), which adopted the *Human Rights Act 2004* (ACT), and Victoria, which adopted the *Charter of Human Rights and Responsibilities 2006* (Vic). A number of proposals for human rights statutes followed at both State and federal levels, without success. Ultimately, there was a 14-year gap before the third sub-national statute was adopted. It was, perhaps, surprising that the third ‘cab off the rank’ should be Queensland, which is often perceived to be the most conservative Australian jurisdiction, but in fact the Country Party tabled a human rights bill in 1959.²³

The impetus for the Act was heavily influenced by Queensland’s political history, although it also drew on the experience of reform in the ACT and Victoria in this area. There was an increasingly settled view within the Queensland ALP that the Bjelke-Petersen era had been a time of human rights violations on a scale that other Australian jurisdictions had not experienced, and which affected Queensland’s reputation as a modern state.

When in Opposition, the Queensland ALP had concerns with the *Vicious Lawless Association Disestablishment Act 2013* (VLAD), which targeted motorcycle gangs. As the VLAD Bill was going through Parliament, independent MP Peter Wellington expressed his deep concern about the ability to protect rights in a unicameral parliament. When the ALP formed a minority government in January 2015, it required the support of Mr Wellington, and the new Premier, Annastacia Palaszczuk, gave him a written assurance that her government would seek advice from the Department of Justice and Attorney-General about a possible Bill of Rights for Queensland in exchange for his support.²⁴

The new Queensland Human Rights Commission (QHRC) included in its first Annual Report a ‘History of human rights in Queensland’, which underlined the specific contribution a historic view of human rights breaches made to the passage of the legislation:

*The timelines have been produced here to: acknowledge the human rights abuses and failings of the past; reinforce the need for the Human Rights Act; be a reminder that these are fragile freedoms; and that the lives of people are enhanced when human rights are respected.*²⁵

The 2016 preliminary inquiry into the Act, and the 2018 inquiry on the Bill, received a very large number of submissions from the public — 492 submissions in 2016, and 284 in 2018, mostly in support of human rights legislation. There was also a well-organised community campaign that raised 28,000 signatures on a petition to support the Bill. Many submissions from welfare organisations to the inquiry referred to the idea that human rights are not equally distributed in Queensland, based on data that shows inequality generally worsens with regional placement, and is particularly evident in issues surrounding poverty, youth suicide, health and access to water. Based on the experience in Victoria and ACT, people with disabilities, those facing homelessness, and Aboriginal and Torres Strait Islander people seemed likely to benefit most from the Act.²⁶

The parliamentary discourse surrounding the passage of the legislation was colourful and over in a matter of four hours due to the unicameral nature of the Queensland Parliament.

1.2 Overview of the *Human Rights Act 2019 (Qld)*

As noted, Queensland was the third jurisdiction in Australia to adopt human rights legislation. The main objects of the *Hu-*

23 The Constitution (Declaration of Rights) Bill 1959 (Qld). Available at <https://documents.parliament.qld.gov.au/TableOffice/TabledPapers/1959/3559T317003.pdf>

24 Letters of Exchange re Government on Confidence Motions (Letters of Exchange) between Peter Wellington MP and Premier Palaszczuk dated 5 February 2015.

25 Queensland Human Rights Commission, *Putting People First: the first annual report on the operation of the Human Rights Act 2019* (Report 2019-20), November 2020, 23.

26 See further Emma Phillips and Aimee McVeigh, ‘The grassroots campaign for a Human Rights Act in Queensland: A case study of modern Australian law reform’ (2020) 45(1) *Alternative Law Journal* 31.

man Rights Act 2019 (Qld) (*QHRA*) are:

- to protect and promote human rights;
- 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.

The Act protects fundamental human rights that are recognised in international covenants including the International Covenant on Civil and Political Rights (ICCPR), the Universal Declaration of Human Rights (UDHR), the United Nations Declaration on the Rights of Indigenous People (UNDRIP) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). The Act primarily protects civil and political rights, but it also protects two economic and social rights drawn from the ICESCR (the right to education and right to health services). The Act also explicitly recognises cultural rights and, in particular, the distinct cultural rights of Aboriginal peoples and Torres Strait Islander peoples.

The Act imposes obligations on all three arms of government:

- the legislature (Parliament must consider human rights when proposing and scrutinising new laws);
- the judiciary (courts and tribunals, must interpret legislation in a way that is compatible with human rights so far as it is possible to do so); and
- the executive (public entities must act and make decisions in a way that is compatible with human rights and in making a decision, must give proper consideration to human rights relevant to the decision).

The Act provides for a complaints and dispute resolution process, the first of any Australian state or territory jurisdiction. The QHRC has a dispute resolution (complaints handling and conciliation) function. The QHRC also plays an important role in providing information and education about human rights and the Act.

2 First independent review of the *Human Rights Act 2019* (Qld)

2.1 Background to review

On 27 February 2024, the Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence, appointed Professor Susan Harris Rimmer to undertake an independent review of the *QHRA* and, in accordance with section 95 of the Act, report by 20 September 2024 on the operation of the Act before 1 July 2023. See Terms of Reference above.

2.2 Review team

A review team was formed to support Professor Harris Rimmer. Please see Appendix A for review team profiles.

2.3 Conduct of review

The Reviewer and review team committed:

- To comprehensively consider the terms of reference and provide clear and actionable recommendations to the Attorney-General and Parliament which contextualise the Act within Queensland's governance frameworks;
- Within the time-frame available, to reach out to as many stakeholders as possible and canvas a diverse range of views as possible;
- To listen to and prioritise the voices of those underserved Queensland citizens that may be most affected by lack of

human rights protections;

- Provide a report which is well-structured, easy to understand, accessible and provides the best possible evidence for the recommendations;
- Provide a report that will serve the community and Parliament as a human rights education tool where possible; and
- To be informed by Queensland’s human rights history and consider likely human rights issues for the future.

2.3.1 Previous public surveys

In July 2021, Professor Susan Harris Rimmer and Professor Sarah Joseph conducted a human rights survey with CoreData of 1,000 people in Queensland to gain insights on human rights across demographics including gender, income and location. The results of that survey are reported in the University of Queensland Law Journal.²⁷ Overall, the results demonstrated that Queenslanders were supportive of human rights but not so knowledgeable of its then new *QHRA*. People were also generally positive about the level of protection and respect for human rights provided by the Queensland government, government bodies, and private bodies.

With the generous financial assistance of the QHRC, the survey ran again in June 2023, with 1024 people participating. The 2023 results confirmed that Queenslanders are enthusiastic about human rights. They were more knowledgeable of the Act compared to 2021, and slightly more optimistic that it will make a difference. In contrast, Queenslanders were slightly less positive about levels of human rights protection in Queensland, including in certain scenarios (e.g. regional and remote Queensland) and in most of the institutions raised in the questionnaire. Queensland is unique as being a jurisdiction where human rights issues were experienced personally by the majority of people during COVID-19, so the Act was quickly associated with the needs of the majority rather than only the marginalised.

In terms of human rights priorities, the 2023 survey findings were similar to outcomes in 2021. Queenslanders were concerned about the rights of children and the elderly. There were also increases in concern over housing rights and victims of crime. Having said that, “freedom” was the dominant concern, particularly freedom of speech, in the free text answers regarding the most important right. This was the same as in 2021.

The results of the two surveys were drawn on by the review team conducting this independent review. Please see Appendix B for a summary of the 2023 outcomes, and salient differences (and similarities) with the 2021 results.

2.3.2 Literature review

In undertaking the review, the team considered:

- the Legal Affairs and Community Safety Committee’s 2016 report, *Inquiry into a possible Human Rights Act for Queensland*,²⁸
- the Legal Affairs and Community Safety Committee’s report into the *Human Rights Bill 2018*²⁹ and submissions to the Committee;
- reports reviewing the ACT’s *Human Rights Act 2004*³⁰ and the Victorian *Charter of Human Rights and Responsibilities*

27 Sarah Joseph, Susan Harris Rimmer and Chris Lane, ‘What Did Queenslanders Think of Human Rights in 2021? An Attitudinal Survey’ (2022) 41(3) *The University of Queensland Law Journal* 363 <<https://journal.law.uq.edu.au/index.php/uqlj/article/view/6245>>.

28 Legal Affairs and Community Safety Committee, Parliament of Queensland, *Inquiry into a possible Human Rights Act for Queensland* (Report No. 30, 55th Parliament, June 2016) <<https://documents.parliament.qld.gov.au/tableOffice/TabledPapers/2016/5516T1030.pdf>>.

29 Legal Affairs and Community Safety Committee, Parliament of Queensland, *Human Rights Bill 2018* (Report No. 26, 56th Parliament, February 2019) <<https://documents.parliament.qld.gov.au/TabledPapers/2019/5619T7.pdf>>.

30 The ACT Human Rights Act Research Project, *The Human Rights Act 2004 (ACT): The First Five Years of Operation – A Report to the ACT Department of Justice and Community Safety* (May 2019) <<https://regnet.anu.edu.au/Centre-International-Governance-and-Justice/Australias-first-bill-rights>>; Hilary Charlesworth, Andrew Byrnes, Renuka Thilagaratnam and Katharine Young, *Australian Capital Territory Economic, Social and Cultural Rights Research Project* (Australian Research Council Linkage Project LP0989167, September 2010) <<https://regnet.anu.edu.au/Centre-International-Governance-and-Justice/ACT-economic-social-and-cultural-rights-project>>.

Act 2006 (VIC);³¹

- Jones and Billings' *An Annotated Guide to the Human Rights Act 2019* (Qld);³²
- Evans and Petrie's *Annotated Queensland Human Rights Act*;³³
- the Queensland Human Rights Commission's four annual reports on the operation of the *Human Rights Act 2019*;³⁴
- the Australian Human Rights Commission's *Revitalising Australia's commitment to human rights* report;³⁵ and
- the Commonwealth Parliament's Parliamentary Joint Committee on Human Rights' *Inquiry into Australia's Human Rights Framework*³⁶ and *Example Human Rights Bill 2024*.³⁷

2.3.3 Discussion papers

In May and June 2024 the review team produced three discussion papers to help guide submissions to the independent review:

- Discussion Paper for General Public³⁸
- Discussion Paper for Public Sector and Public Authorities³⁹
- Discussion Paper: Potential New Rights⁴⁰

Each of the discussion papers were published on the independent review's website and promoted through LinkedIn.

Please see Appendix C for the discussion questions that appeared in the General Public and Public Sector and Public Authorities discussion papers.

2.3.4 Online survey

An online survey on Survey Monkey was open to the public between 13 May and 17 July 2024. The survey was promoted through LinkedIn, at review consultations and through Queensland newspapers. A total of 127 participants completed the online survey.

Please see Appendix D for an overview of the online survey findings.

31 Victorian Parliament (Scrutiny of Acts and Regulations Committee of Parliament), *Review of the Charter of Human Rights and Responsibilities Act 2006* (September 2011) <<https://www.parliament.vic.gov.au/4a2e9d/globalassets/committee-publication-record-documents/committee-36/publication-284/review-charter-human-rights-report-2011.pdf>>; Michael Brett Young, *From Commitment to Culture: The 2015 Review of the Charter of Human Rights and Responsibilities Act 2006* (September 2015) <<https://vpls.sdp.sirsidynix.net.au/client/search/asset/1295292/0>>.

32 Nicky Jones and Peter Billings, *An Annotated Guide to the Human Rights Act 2019 (Qld)* (LexisNexis Butterworths Australia, 2023).

33 Kylie Evans and Nicholas Petrie, *Annotated Queensland Human Rights Act*. (LawBook Company, 2023).

34 'Human Rights Act annual reports', *Queensland Human Rights Commission* (Web Page, 30 November 2023) <<https://www.qhrc.qld.gov.au/resources/reports>>.

35 Australian Human Rights Commission, *Revitalising Australia's commitment to human rights: Free & Equal Final Report 2023* (November 2023) <https://humanrights.gov.au/sites/default/files/2311_freeequal_finalreport_1_1.pdf>.

36 Parliamentary Joint Committee on Human Rights, Parliament of Australia, *Inquiry into Australia's Human Rights Framework* (Report, May 2024) <https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/HumanRightsFramework/Report>.

37 Ibid, *Appendix 5 – Example Human Rights Bill 2024* <https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/HumanRightsFramework/Report/Appendix_5_-_Example_Human_Rights_Bill_2024>.

38 'For the general public', *Independent Review of the Human Rights Act* (Web Page, 15 May 2024) <<https://www.humanrightsreview.qld.gov.au/discussion-questions/general-public>>.

39 'For Public Sector and Public Authorities', *Independent Review of the Human Rights Act* (Web Page, 15 May 2024) <<https://www.humanrightsreview.qld.gov.au/discussion-questions/public-sector>>.

40 'Discussion Paper: Potential New Rights', *Independent Review of the Human Rights Act*, (PDF, June 2024) <https://www.humanrightsreview.qld.gov.au/__data/assets/pdf_file/0007/805453/qhra-review-discussion-paper-new-rights-1.pdf>.

2.3.5 Stakeholder and public consultations

In undertaking the review, the review team was committed to canvassing a diverse range of views and met with as many stakeholders as possible within the timeframes available. In addition to meetings with public entities and peak bodies, Professor Harris Rimmer and members of the review team undertook a number of public consultations, in Brisbane (the New Rights forums on 15 and 16 July), Thursday Island, Palm Island, Townsville and Cherbourg.

Please see Appendix E for list of stakeholder and public consultations.

2.3.6 Submissions

An invitation for electronic or written submissions to the review opened on 15 May 2024 and closed on 21 June 2024, with several extensions granted. There was an opportunity for anonymous submissions.

Given time constraints, the Reviewer decided to not publish individual submissions, instead producing and publishing de-identified summaries of submissions received on the review website.

Individuals and organisations making submission were free to publicly share their own submissions.

Please see Appendix F for list of submissions received, and Appendix G for synthesis reports of the submissions and consultations.

3 Building a culture of human rights in Queensland

One of the three main objects of the *QHRA* is: “to help build a culture in the Queensland public sector that respects and promotes human rights.”⁴¹ In introducing the Bill in October 2018 the Attorney General emphasised:

*This Human Rights Bill is about changing the culture of the public sector by putting people first in all that we do. This is about a modern Queensland, a fair Queensland and a responsive Queensland... The primary aim of this Bill is to ensure that respect for human rights is embedded in the culture of the Queensland public sector and that public functions are exercised in a principled way that is compatible with human rights.*⁴²

The Independent Reviewer was asked to consider:

the extent to which implementation of the Act has helped to build a culture of human rights in the Queensland public sector including the role of support, education, training and guidance provided by the Queensland Government and the Queensland Human Rights Commission.

The review team met with representatives of more than 20 departments and other state government public entities (see Appendix E) and hosted a forum with the Human Rights Inter-Departmental Committee (HRIDC), comprising representatives from Queensland Government departments. In addition, a dozen state government public entities including four departments made written submissions to the review (see Appendix F). The Reviewer attempted to make contact with representatives from councils and council associations on several occasions and received a written submission from one local government council, the Sunshine Coast Council.

Overall, the Reviewer was impressed by the goodwill expressed by departmental officers towards human rights as compatible with public sector ethics and values, and the genuine commitment within most state government public entities to the implementation of the *QHRA*. However, the Reviewer also consistently heard that implementation of the Act had been challenging, with the impact of the pandemic and repeated machinery of government changes particularly cited as limiting

⁴¹ *Human Rights Act 2019* (Qld) s 3(b).

⁴² Queensland, *Parliamentary Debates*, Legislative Assembly, 31 October 2018, 3184 (Yvette D’Ath, Attorney-General and Minister for Justice).

factors by departmental officers. The Review observed a preoccupation with compliance and risk management amongst many agencies, rather than a commitment to promoting the value of human rights in decision making. It was clear in many of our consultations that the use of the override provisions by the Queensland government had left many departmental officers feeling deflated.

As documented in the four QHRC annual reports on the operation of the *QHRA*, and the good news stories featured above, solid foundations have been built since the commencement of the Act in January 2020.⁴³ However, the Reviewer was not convinced that *all* state government public entities, including local councils, have adequately turned their minds to implementation of the Act. I believe there is a need for a renewed commitment and reset across government, backed by significant resources, to the implementation of the Act and the promotion of a robust human rights culture.

3.1 Defining and measuring a human rights culture

A human rights culture has been defined by the Queensland Government as:

*a pattern of shared attitudes, values and behaviours that influence the policy-making, decisions and practices of government to uphold the human rights of all Queenslanders.*⁴⁴

The QHRC has adopted a cascading cultural change model, where “human rights culture starts with legislation and flows down through regulations, policies, procedures and services through to the individual.”⁴⁵ Under this model, the QHRC has developed a comprehensive set of seven indicators of a human rights culture:

Indicator 1: Education and staff development

Indicator 2: Community consultation and engagement about human rights

Indicator 3: Awareness raising and support for related entities (including functional public entities engaged by the public entities i.e. contractors)

Indicator 4: Reviews and development of legislation or subordinate legislation / local laws or subordinate local laws

Indicator 5: Review of policies and procedures

Indicator 6; Implementation of internal complaint management for human rights complaints

Indicator 7: Future plans to further the goals

The QHRC has used questions attached to each of the indicators to survey a selection of eight or nine state government public entities (selected because of the relevance of their work to the human rights of people of Queensland) and six to eight local governments (a small cross-section of metropolitan, regional and remote councils) each year. The Commission has then reported on its survey findings against the seven indicators in their annual reports.

The Reviewer endorses the QHRC’s seven indicators of a human rights culture as appropriate measures for this initial stage of implementation of the Act. As familiarity and operation of the Act matures, it is anticipated that the Commission may need to develop new indicators and measures, such as those employed in the Victorian Equal Opportunity & Human Rights Commission’s human rights culture indicator framework.⁴⁶

Amongst its designated functions, section 61 of the *QHRA* provides that the Commission is “to review public entities’ pol-

⁴³ ‘Human Rights Act annual reports’, *Queensland Human Rights Commission* (Web Page, 30 November 2023) <<https://www.qhrc.qld.gov.au/resources/reports>>.

⁴⁴ ‘Building a culture of human rights’, *Queensland Government* (Web Page, 28 May 2024) <<https://www.forgov.qld.gov.au/service-delivery-and-community-support/deliver-public-services/comply-with-the-human-rights-act/building-a-culture-of-human-rights>>.

⁴⁵ Queensland Human Rights Commission, Submission No 77 to Independent Reviewer, *First Independent Review of the Human Rights Act 2019* (8 July 2024).

⁴⁶ ‘Guide to building human rights culture’, *Victorian Equal Opportunity & Human Rights Commission* (Web Page) <<https://www.humanrights.vic.gov.au/resources/guide-to-building-human-rights-culture/>>.

icies, programs, procedures, practices and services in relation to their compatibility with human rights.”⁴⁷ Acknowledging the resource constraints experienced by the Commission, the Reviewer is concerned that the current oversight provided by the Commission’s surveying of its indicators of a human rights culture is too narrow. Table A below lists the state government public entities surveyed by the Commission over the past four years, also illustrating the frequency of machinery of government changes to these key agencies over this period. The Reviewer agrees that these state government public entities are those most likely to engage human rights issues, but the development of a robust human rights culture across the public sector requires transparency and accountability measures to apply to *all* state government public entities.

Table A: State government public entities surveyed by Queensland Human Rights Commission, 2019-23

2019-20	2020-21	2021-22	2022-23
Department of Communities, Disability Services and Seniors	Department of Communities, Housing and Digital Economy	Department of Communities, Housing and Digital Economy	Department of Child Safety, Seniors and Disability Services
	Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships	Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships	Department of Treaty, Aboriginal and Torres Strait Islander Partnerships, Communities and the Arts
Department of Child Safety, Youth and Women	Department of Children, Youth Justice and Multicultural Affairs	Department of Children, Youth Justice and Multicultural Affairs	
Department of Youth Justice			Department of Youth Justice, Employment, Small Business and Training
Department of Housing and Public Works			Department of Housing
Queensland Health	Queensland Health	Queensland Health	Queensland Health
Queensland Police Service	Queensland Police Service	Queensland Police Service	Queensland Police Service
Queensland Corrective Services	Queensland Corrective Services	Queensland Corrective Services	Queensland Corrective Services
Department of Education	Department of Education	Department of Education	Department of Education
Queensland Civil and Administrative Tribunal	Queensland Civil and Administrative Tribunal	Queensland Civil and Administrative Tribunal	Queensland Civil and Administrative Tribunal

Similarly, Table B below lists the local governments surveyed by the Commission, against the indicators, over the past four years. In total, only 14 of 77 Queensland local councils have been measured against the Commission’s human rights indicators.

Table B: Local governments surveyed by Queensland Human Rights Commission, 2019-23

2019-20	2020-21	2021-22	2022-23
Livingstone Shire Council			
Redland City Council			
Western Downs Regional Council			
Ipswich City Council	Ipswich City Council	Ipswich City Council	Ipswich City Council
Noosa Shire Council			
Brisbane City Council	Brisbane City Council	Brisbane City Council	Brisbane City Council

47 Human Rights Act 2019 (Qld) s 61.

Torres Shire Council			
Tablelands Regional Council			
	Mackay Regional Council	Mackay Regional Council	
	Gold Coast City Council		Council of City of Gold Coast (City of Gold Coast)
	Logan City Council	Logan City Council	Logan City Council
	Sunshine Coast Council	Sunshine Coast Council	Sunshine Coast Council
		Mornington Shire Council	Mornington Shire Council
		Flinders Shire Council	Flinders Shire Council

In my view, the Commission’s indicators should be adapted as required and applied to the full range of public entities under the Act, including all government departments, local councils, courts and tribunals, schools and hospitals etc. To assist in the development of a human rights culture, all such public entities should be required to report annually against the indicators to the Commission, with the Commission providing feedback on their progress.

Recommendations

Expanded application of the human rights indicators

The Queensland Government should resource the Queensland Human Rights Commission to adapt their seven human rights indicators to respond to the needs of the full range of public entities, as a framework for assessing the development of a human rights culture in Queensland and to aid more meaningful reporting.

Feedback loops for public entities

The Queensland Government should resource the Queensland Human Rights Commission to respond to annual reports from state government public entities, and provide feedback on how they’re progressing, including examples of good practice.

Given the narrow application of the QHRC’s human rights indicators to date, the Reviewer found it difficult to objectively assess the developing human rights culture within government departments and councils. All state government public entities were encouraged in 2019-20 to review existing policies and procedures for compatibility with human rights and establish processes to ensure that human rights are properly considered in the review and development of legislation, but there are currently no processes in place to document and assess this information.

I welcomed the annual *Working for Queensland* surveys, which have consistently found around 78% positive responses from state public sector employees to the statement ‘I understand how the *Human Rights Act 2019* applies to my work’.⁴⁸ However, I note that there has equally been no change in the consistently neutral and negative findings of these surveys.

Further, there are currently no processes in place to measure attitudes to the *QHRA*, and human rights more broadly, amongst local councils, key stakeholders and the broader Queensland community (other than the public surveys discussed at 2.3.1 and Appendix B of this report). Establishing new processes to monitor these constituencies will assist in future assessments of the development of a human rights culture in Queensland.

⁴⁸ ‘Working for Queensland survey’, *Queensland Government*, (Web Page, 5 April 2024) <<https://www.forgov.qld.gov.au/pay-benefits-and-policy/culture-and-inclusion/working-for-queensland-survey>>.

Recommendations

Human rights audits for a renewed commitment to the Human Rights Act

The Queensland Government should resource all public entities to undertake an internal audit of its legislation and policies and procedures for compatibility with human rights, and to consider what the main issues of human rights concern are for their portfolio. These audits of their implementation of the *Human Rights Act*, and any subsequent changes to policies, practices and induction training should be submitted to the Queensland Human Rights Commission and Queensland Public Sector Commission within one year of this report being tabled.

Holistic review and amendment of existing Queensland legislation

The Queensland Government should resource the Human Rights Unit in the Department of Justice and Attorney-General to:

- undertake a holistic review of existing Queensland legislation, as audited by line agencies, to ensure compliance with the *Human Rights Act*; and
- identify and recommend a sequence for necessary amendments.

Monitoring attitudes to human rights in government departments

State government departments, with co-ordination and support from the Human Rights Unit in the Department of Justice and Attorney-General, should:

- analyse Working for Queensland survey responses to ‘I understand how the QHRA applies to my work’ within the department and across employee levels
- take concrete steps to address neutral and negative responses across the department.

Monitoring attitudes to human rights in local governments

The Queensland Government should resource the Queensland Human Rights Commission to engage in an annual survey of local government employees, modelled on the *Working for Queensland* survey questions, to measure their views on the implementation of the *Human Rights Act*.

Monitoring key stakeholder attitudes to human rights

The Queensland Government should resource the Queensland Human Rights Commission to engage in an annual survey of key stakeholders (eg Legal Aid, Community Legal Centres, NGOs) to ascertain their views on the implementation of the *Human Rights Act*.

Measuring attitudes to human rights in the Queensland community

The Queensland Government should resource the Queensland Human Rights Commission to commission a biennial longitudinal study of human rights awareness in Queensland in the general public.

3.2 Role of Queensland Government

3.2.1 Senior leadership engagement

During consultations, the Review heard that responsibility for championing human rights within state government public entities was often attributed to one or two individuals, with less visible leadership reported in several departments. The need for senior leadership engagement across the public sector, such as public statements of commitment from Ministers and Director-Generals, and regular discussions at leadership forums was repeatedly raised. The Queensland Leadership Board should establish a standing senior leadership group to champion the *Human Rights Act* across the public sector. The

Leadership Board should encourage government departments to consult the Queensland Human Rights Commission and Human Rights Unit of the Department of Justice and Attorney-General early, and as a matter of course, on issues of human rights significance across the Government’s priorities for the electoral term.

Recommendations

Building Queensland’s human rights culture

The Queensland Government should make a public statement of commitment to human rights and Ministers should explicitly reinforce in their dealings with departments and agencies their expectation that they should act compatibly with human rights.

Embedding human rights in the Queensland public sector

The Queensland Leadership Board should establish a standing senior leadership group to champion the *Human Rights Act* across the public sector.

3.2.2 Human Rights Unit

The Department of Justice and Attorney-General established the Human Rights Unit (HRU) in May 2019 to “help prepare Queensland Government departments to embed human rights into their businesses by providing leadership, coordination and support.”⁴⁹ Since then, the HRU has:

- Convened the HRIDC, “to support capacity-building, collaboration, and cultural change across Queensland Government” including implementation activities, lesson sharing, and facilitating the distribution of information and resources.
- Developed and maintained the Human Rights Portal for Queensland Public Service employees.
- Developed and distributed communication and awareness resources, factsheets, and guides.
- Delivered one hour face to face ‘Human Rights 101’ sessions, as well as more tailored training for policy and legislation officers across Queensland Government departments.
- Provided a “central unit of human rights expertise” to Queensland Government departments, providing advice and support on their reviews of legislation, policies and procedures for compatibility with human rights, and in their preparation of statements of compatibility and human rights certificates for legislation.
- Provided advice to government departments on their human rights implementation activities, including identifying and responding to human rights complaints and understanding reporting obligations under the *QHRA*.⁵⁰

The Reviewer was advised that the HRU had undertaken this work with fluctuating and uncertain resourcing and staffing since the unit’s establishment in 2019.

Many submissions to the independent review recommended the establishment of the HRU as a permanent unit, with consistent funding, within the Department of Attorney-General and Justice. The need for a permanent HRU was also strongly supported in consultation with government departments.

A permanent HRU will not only ensure that Queensland Government departments continue to have access to a dedicated centralised repository of human rights expertise, acting as a first point of call for advice, assistance with statements of compatibility and training requests; it can also potentially lift some of the burden from the Queensland Human Rights Commission which, as an independent statutory authority, must retain a more detached role. The HRU is the appropriate body to give rights-promoting advice across the public sector as opposed to compliance advice offered within the Crown Law remit.

⁴⁹ Queensland Human Rights Commission, Submission No 77 to Independent Reviewer, *First Independent Review of the Human Rights Act 2019* (8 July 2024).

⁵⁰ Queensland Human Rights Commission, *Putting People First: The first annual report on the operation of Queensland’s Human Rights Act 2019* (Report 2019-20) November 2020, 49-50; Queensland Human Rights Commission, *Balancing Life and Liberty: The second annual report on the operation of Queensland’s Human Rights Act 2019* (Report 2020-21) November 2021, 73-74.

A permanent and appropriately resourced HRU would also be equipped to:

- expand its existing guidance materials and training programs;
- undertake a holistic review of existing Queensland legislation to ensure compliance with the *Human Rights Act* and identify and recommend a sequence for necessary amendments; and
- work with state government departments to monitor attitudes to human rights in government departments through the analysis of the *Working for Queensland* survey and follow up activities.

Given the substantial human rights issues facing Aboriginal and Torres Strait Islander peoples in Queensland, the Reviewer recommends that at least two identified positions be created in the HRU.

Recommendations

Role and responsibilities of Human Rights Unit

The Human Rights Unit should be established as a permanent unit within the Department of Justice and Attorney-General to provide a centralised focus of expertise on human rights which can be drawn upon by state government public entities.

The Human Rights Unit should:

- be appropriately resourced to at least 8 FTE for a certain and minimum five-year period, including one staff member dedicated to communications;
- be appropriately staffed by personnel with appropriate qualifications in human rights and human rights education to provide advice, develop and maintain human rights resources for use within the Queensland government, and deliver specialist training on human rights to other public sector agencies;
- create at least two designated Aboriginal and Torres Strait Islander positions within the Human Rights Unit.

The different roles and responsibilities of the Human Rights Unit, the Queensland Human Rights Commission and Crown Law should be made clear to all public entities and managed cooperatively.

The central role of the properly funded HRU is clear, but not sufficient to build a human rights culture on its own. The Reviewer concurs with the Queensland Human Rights Commission's view that:

*Maintaining a central human rights unit alone is not enough to build a human rights culture. There must be leadership and commitment across government to building a human rights culture, particularly within key departments.*⁵¹

51 Queensland Human Rights Commission, Submission No 77 to Independent Reviewer, *First Independent Review of the Human Rights Act 2019* (8 July 2024)

Recommendations

Designated human rights roles in public entities

Key human rights roles and units should be designated within all public entities and holders of those roles should join the Human Rights Inter-Departmental Committee.

Designated human rights roles in frontline agencies

Frontline agencies for human rights including the Queensland Police Service, Corrections, Disability, Seniors, Child Safety, Aboriginal and Torres Strait Islander Affairs, Homelessness, Women's Safety Taskforce and Youth Justice should have dedicated full time, highly qualified human rights advisors.

3.2.3 Promoting the value of human rights

To progress a human rights culture in Queensland's public sector, it is essential that the *QHRA* be integrated and valued at every level of government decision-making.

In its submission to the review the QHRC noted that "human rights considerations have become well embedded in reviews and inquiries conducted by government since the commencement of the Act",⁵² providing several examples. The Reviewer considers that this should become standard practice.

The Premier's Awards for Excellence recognise high performance and outstanding achievement across the Queensland public sector. Excellent human rights initiatives should be recognised and celebrated.

Recommendations

Queensland reviews and inquiries

Every review or inquiry initiated by the Queensland Government, including references to the Queensland Law Reform Commission, should ensure that the Terms of Reference include consideration of the *Human Rights Act*.

Incentives to reward human rights excellence in the public sector

The Queensland Government should establish a category of the Premier's Award, or similar sector-wide reward scheme, to incentivise excellent human rights initiatives in the Queensland public sector.

3.2.4 Resourcing

The *QHRA* commenced operation immediately prior to the onset of the COVID-10 pandemic which necessarily diverted government attention and resources in the first years of the Act's implementation. As previously noted, the HRU has experience considerable funding uncertainty since its establishment in 2019 and the QHRC in its submission stated that:

*The Commission is not resourced to reach its full potential in providing support, education, training, and guidance to the Queensland public sector, and building a culture of human rights.*⁵³

32.

52 *Ibid* 29.

53 *Ibid* 30.

There has been no allocation of funding for public information campaigns about the Act and the Reviewer was advised that implementation of the Act by local councils had been impeded by a lack of dedicated resourcing.

Concerns around inadequate funding to support the implementation of the Act were amplified in many submissions. In the Reviewer's estimation, additional and sustained resourcing is an essential prerequisite to many of the other changes recommended in this review.

Recommendations

The Queensland Government should signal its renewed commitment to a human rights culture by allocating additional and sustained resources for the four years until the next legislative review to:

- enable a significant and ongoing commitment to human rights education across Queensland through a special funding scheme for community organisations, especially in remote and regional locations;
- fund community education and advocacy work around the *Human Rights Act* across Queensland through an expanded team at the Queensland Human Rights Commission;
- embed and expand the role of the Human Rights Unit in the Department of Justice and Attorney-General as noted above;
- audit the implementation of the *Human Rights Act* by Queensland's public entities;
- enable public entities to comply with proposed participation obligations;
- review existing Queensland legislation to ensure compliance with the *Human Rights Act*;
- establish a new Human Rights and Scrutiny Committee in the Legislative Assembly;
- introduce mechanisms to monitor progress on human rights.

3.3 Role of Queensland Human Rights Commission

The role of an independent and robust Commission is fundamental to building the culture of human rights in Queensland. For this reason the Review recommends that the Commission have own motion powers, consistent with other independent statutory commissioners in Queensland, that relate to systemic human rights issues in the state.

Many of the most difficult human rights issues in Queensland involve the rights of Aboriginal and Torres Strait Islander peoples. Submission 72 noted that the Queensland Government should “adequately invest in the Queensland Human Rights Commission's Aboriginal and Torres Strait Islander Unit to ensure that Unit is resourced with appropriately trained staff to comprehensively support Aboriginal and Torres Strait Islander people throughout Queensland safely access human rights complaints processes, mechanisms, and outcomes, including conciliation and complaint function, and other vital activities undertaken by the Queensland Human Rights Commission.”⁵⁴ I agree with this reasoning, and recommend new identified positions in the Commission.

My other recommendations go towards building further feedback loops between the Commission and the community, and the public sector.

Recommendations

Investigatory powers

The *Human Rights Act* should be amended to:

- give the Commission expanded functions to conduct investigations, inquiries and reviews beyond its existing function under section 61(c) of the *Human Rights Act* in order to identify, review and produce reports on systemic matters affecting the human rights of those in Queensland;
- at a minimum enable the Commission to both review and monitor public entity policies, programs, procedures practice and services; and
- empower the Commission to seek information for the purpose of deciding whether to commence a review under section 61(c) of the Act, and to enable the Commission to monitor and evaluate the implementation of recommendations made in a review under section 61(c) of the Act.

Section 91(2) of the *Human Rights Act* prescribing information to be included in the annual report on the operation of the *Human Rights Act* should be amended so that section 91(2)(e), requiring reporting on the number of human rights complaints, refers to both the number of human rights complaints made or referred to the Commissioner, and the number of human rights complaints *finalised* by the Commissioner in the reporting period.

Designated roles

New and additional funding should be provided for two FTE designated roles for Aboriginal and Torres Strait Islander people, and two FTE people with lived experience of disability in the complaints and policy teams of the Commission.

Public entity response to recommendations

The *Human Rights Act* should be amended to:

- require a public entity that is the subject of recommendations made under section 88(4) to publish a response to the recommendations within three months;
- expand the Commission's functions to include monitoring implementation of recommendations made to public entities under section 88(4).

Monitoring unresolved complaints

The Attorney-General should provide a Term of Reference to the Queensland Law Reform Commission, with appropriate resourcing, requesting that it review on a regular basis the unresolved human rights complaints sitting with the Queensland Human Rights Commission, with a view to making recommendations around cultural and systemic law reform issues.

Systemic matters affecting the human rights of those in Queensland

The Attorney-General should consider the following referrals to the Queensland Human Rights Commission under section 61(b), or the Queensland Law Reform Commission where appropriate, to examine as a matter of priority the following systemic issues raised with the reviewer:

- The health, social and cultural impact on children of their detention in watchhouses and police stations for periods longer than 48 hours.
- The long-term trends of involuntary treatment in Queensland's mental health system.
- The adequacy of resources to identify and appropriately treat mental health and cognitive impairment in adult and youth detention and throughout subsequent transitions to community.
- Access to food security in remote Queensland communities.
- Access to preventative and acute mental health services in remote and regional Queensland.
- The impact of climate change on the human rights of those living in coastal communities in Far North Queensland.
- The compatibility of section 28 on the Human Rights Act with the *Aboriginal Cultural Heritage Act 2003*.
- The impact of extreme heat events on the human rights of those in Queensland.

3.4 Role of Crown Law

Crown Law in Queensland is a respected and highly qualified agency. Their work on the QHRA is outlined in the following terms:

Crown Law provides representation and advice to the Attorney-General in relation to intervention in proceedings in which a human rights question arises under the Act.

For further information on the Attorney-General's intervention function under the Human Rights Act, see the Human Rights Act Intervention Guidelines. This includes information about the factors the Attorney-General considers when deciding whether to intervene in a proceeding, and the Attorney-General's policy regarding costs.

Crown Law also provides advice across Queensland Government on the proper interpretation of Queensland legislation in light of the Human Rights Act.

Our lawyers also provide representation and advice to public entities in relation to human rights complaints made to the Queensland Human Rights Commission, including identifying whether a human right has been engaged and whether the measure represents a justified limit on human rights. We advise clients across Queensland Government on reasonable steps to prevent human rights breaches and how to deal with complaints.⁵⁵

Crown Law have played a substantial role in providing advice, training and drafting Statements of Compatibility during the first years of the Act's operation. However, the Reviewer is persuaded that the central repository for the whole of sector advice more appropriately sits with a well-funded and stable HRU, which has a better overview of the wider policy issues.

It was also raised with the Reviewer that it can be intimidating for members of the community making a complaint to face Crown Law in a conciliation or at Queensland Civil and Administrative Tribunal (QCAT). This is primarily an issue of lack of funding for representation in human rights matters.

Recommendations

The Queensland Government should be cognisant of equality of arms issues and model litigant values when using Crown Law in human rights conciliation processes and piggyback proceedings in the Queensland Civil and Administrative Tribunal against unrepresented and often vulnerable complainants. The Queensland Government should fund appropriate support and representation for complainants in these circumstances.

Where possible, public entities should be channelling enquiries for advice and training requests to the Human Rights Unit in the Department of Justice and Attorney-General in the first instance to strengthen coherence across the public sector.

3.5 Education, training, support and guidance

The Review heard repeatedly in consultations, and through submissions, that there was a need for widespread education, training, support and guidance to support awareness and understanding of the QHRA across multiple sectors and the general community. As the QHRC stated in their submission,

*To exercise rights and fulfil obligations, people need access to easy to understand, evidence-based, and widely available information and resources about the Act. This includes properly funded and resourced public education and awareness as well as specialised support for public entities, parliament, and courts and tribunals, so that rights can be realised.*⁵⁶

The Queensland Council of Social Service similarly submitted:

*Noting the considerable work which has already taken place to assist in building understanding of the Act, there are still clear opportunities to further develop detailed materials in assisting the community, advocates, and Public Entities to engage with the operation, implications and nuances of the Act... Additional funding should be targeted towards supporting greater adoption and understanding of human rights obligations and functions among Public Entities, including Functional Public Entities, Courts and Tribunals.*⁵⁷

There was strong support for additional, and more targeted, education and training for public entities:

*there is a key role for government in ensuring the public sector are educated on the operation of the Act in practice. ... Training requirements must be contextualised to specific service types and locations.*⁵⁸

*... training for decision makers shifts from online modules to interactive and customized training...*⁵⁹

*Provide specialised training to frontline practitioners that includes case examples to help workers better understand how to practically implement the Act in their work setting.*⁶⁰

While whole of government supporting resources have been developed to support interpretation of the Act, such as the 'Nature and scope of human rights' guide, these resources are conceptual, legalistic and not designed or tailored for a frontline audience with a wide range of skill, experience and decision-making responsibility. Provision of more practical resources and guidance would further support staff in human services agencies to identify relevant rights as part of local-level decision-making and balance the tension of competing rights when considering all

⁵⁶ Queensland Human Rights Commission, Submission No 77 to Independent Reviewer, *First Independent Review of the Human Rights Act 2019* (8 July 2024) 16.

⁵⁷ Queensland Council of Social Service, Submission No 76 to Independent Reviewer, *First Independent Review of the Human Rights Act 2019* (5 July 2024) 13.

⁵⁸ Queensland Law Society, Submission No 81 to Independent Reviewer, *First Independent Review of the Human Rights Act 2019* (12 July 2024) 4.

⁵⁹ Basic Rights Queensland, Submission No 61 to Independent Reviewer, *First Independent Review of the Human Rights Act 2019* (5 July 2024) 17.

⁶⁰ Queensland Alliance for Mental Health, Submission No 46 to Independent Reviewer, *First Independent Review of the Human Rights Act 2019* (June 2024) 21.

stakeholders in a decision.⁶¹

*From a local government perspective, further guidance regarding the most likely engaged rights specific to common areas of local government function would be helpful. Likewise, the delivery of targeted webinars or training would be of significant assistance.*⁶²

During consultations the Review was advised that responsibility for education and training of public sector staff currently falls between the HRU, the Commission and, at times, Crown Law. As discussed above, the HRU has faced funding uncertainty and the Commission noted in its submission to the review that its “capacity to engage in work that might improve understanding and fulfilment of human rights in the public sector”, including public sector training, was compromised “because complaint handling must be prioritised as a core Commission function.”⁶³ There is a need for a coherent framework for education and training of public sector staff, including opportunities for staff to meet and share their experience and expertise on the Act.

A number of submissions received by the independent review specifically raised the need for education, training, support and guidance to support the legal profession and the judiciary. For example:

*... investment in human rights training for the legal profession across different areas of practice; investment in specialist human rights advice and representation services; development of a QLS accredited specialist program in human rights law...*⁶⁴

*...it would be helpful to have some clarity about when, or alternatively, in what circumstances, courts and tribunals are required to apply human rights...*⁶⁵

As discussed in section 4.4 several submissions supported the development of Practice Directions or a Queensland Human Rights Act bench book, similar to the Judicial College of Victoria’s Charter of Human Rights Bench Book.⁶⁶

To ensure that parliamentarians are equipped to effectively scrutinise legislative proposals, it is essential that they are well briefed on the *QHRA* and human rights principles. As noted in one submission,

*The difficulties associated with effective parliamentary scrutiny of the executive in the context of policy development and legislative drafting outlined above are even more acute in single chamber parliaments, like the Queensland Parliament.*⁶⁷

Given the implementation of the *QHRA* coincided with the pandemic, no concerted public information campaign was undertaken when the Act commenced. Submissions to the independent review highlighted the need for a concerted effort targeted at public awareness raising and education:

*... there needs to be more readily available information on rights and how they can be upheld to improve the public’s awareness and understanding of the Act and human rights protections generally...*⁶⁸

*... specific resources should be developed and dedicated to education about: rights and obligations under the Act, and how it may apply to individuals and communities...*⁶⁹

61 Department of Education, Submission No 52 to Independent Reviewer, *First Independent Review of the Human Rights Act 2019* (4 July 2024) 5.

62 Sunshine Coast Council, Submission No 56 to Independent Reviewer, *First Independent Review of the Human Rights Act 2019* (19 June 2024) 2.

63 Queensland Human Rights Commission, Submission No 77 to Independent Reviewer, *First Independent Review of the Human Rights Act 2019* (8 July 2024) 30-1 [97].

64 Legal Aid Queensland, Submission No 39 to Independent Reviewer, *First Independent Review of the Human Rights Act 2019* (21 June 2024) 20.

65 Queensland Law Society, Submission No 81 to Independent Reviewer, *First Independent Review of the Human Rights Act 2019* (12 July 2024) 9.

66 Amnesty International Australia, Submission No 59 to Independent Reviewer, *First Independent Review of the Human Rights Act 2019* (5 July 2024) 9; Alice Taylor, Submission No 62 to Independent Reviewer, *First Independent Review of the Human Rights Act 2019* (5 July 2024) 2; LawRight, Submission No 73 to Independent Reviewer, *First Independent Review of the Human Rights Act 2019* (5 July 2024) 8; Queensland Human Rights Commission, Submission No 77 to Independent Reviewer, *First Independent Review of the Human Rights Act 2019* (8 July 2024) 55.

67 Julie Debeljak, Submission No 2 to Independent Reviewer, *First Independent Review of the Human Rights Act 2019* (2 July 2024) 26.

68 Queensland Law Society, Submission No 81 to Independent Reviewer, *First Independent Review of the Human Rights Act 2019* (12 July 2024) 4.

69 The Uniting Church in Australia Queensland Synod, Submission No 34 to Independent Reviewer, *First Independent Review of the Human Rights Act 2019* (27 June 2024) 18.

*support the introduction of specific resources to build community understanding of the Act and how it may apply to individuals and communities and additional resources within QCAT...*⁷⁰

Section 61 of the *QHRA* provides for the functions of the QHRC, including:

- (d) to promote an understanding and acceptance, and the public discussion, of human rights and this Act in Queensland;
- (e) to make information about human rights available to the community;
- (f) to provide education about human rights and this Act...

The Commission needs to be appropriately resourced and staffed to undertake these statutory functions.

Recommendations

Human rights education – public entities

All public entities (assisted by the Human Rights Unit in the Department of Justice and Attorney-General and the Commission) should support staff at all levels to understand the value of applying human rights to their work, beyond merely a requirement of law or risk management tool.

Communities of practice

The Queensland Human Rights Commission should facilitate opportunities for public and community sector workers to share experience and expertise on the Act. Such opportunities could include Human Rights Network events, the production of good practice guidance, the establishment of communities of practice sponsored by a senior executive, and the use of existing networks.

The Queensland Human Rights Commission should facilitate a formal network of statutory commissioners whose remit covers human rights issues (such as the Mental Health Commissioner, the Family and Child Commissioner, the Ombudsman, head of Queensland Law Reform Commission, head of Health and Wellbeing Qld, the Health Ombudsman, Victims' Commissioner, the Privacy Commissioner, the Public Advocate and Public Guardian) to share practice and challenges.

Human rights training and awareness across government

Intensive and ongoing training on the *Human Rights Act* should be implemented across all levels of government.

The Queensland Human Rights Commission should be given responsibility and allocated appropriate resources to lead human rights education within the public sector to:

- (a) leaders across the Queensland public sector, to ensure that they can influence a positive culture of human rights;
- (b) local government councillors;
- (c) staff of Queensland public sector departments, agencies and local government; and
- (d) other organisations that perform functions of a public nature on behalf of the state and have obligations under the Act.

To be most effective, this training should be tailored to specific agencies and roles and should provide detailed and practical examples of the application of the *Human Rights Act* to the particular work of those agencies and officers, and in the places where the target beneficiaries of rights are located for that portfolio.

Training should be delivered in person where possible by professionally trained experts in consultation with front line staff who understand the operational aspects of the work area.

Training should be evidence-based, delivered via diverse methods including online and face to face, and should be conducted over multiple periods rather than in single sessions. Training should be regularly evaluated to enable continuous improvement.

Human rights training – public entities

All public entities should be provided with adequate resourcing and support to deliver customised human rights training to their staff and to integrate human rights considerations across all staff training. Human rights training should be regular, interactive and targeted – focusing on the rights most often engaged by the entity’s decisions and actions.

Training programs for public entities should explicitly spell out the steps required to comply with the obligation to properly consider human rights in decision-making processes. Training programs should also include practical guidance on how to integrate proportionality in decision-making processes.

Human rights training – graduates

Graduates to the Queensland public sector should receive specialised induction training and placed into cohorts that offer career-long support for human rights education. A pilot should be rolled out for the Policy Futures 2025 cohort and evaluated in four years’ time.

Human rights education – judiciary and legal profession

The Queensland Government should resource the National Judicial College of Australia to regularly educate judicial officers, magistrates and tribunal members on how the *Human Rights Act* operates, potentially in conjunction with professional development for the legal profession. If a Judicial Commission of Queensland is established, that body should also contribute to the professional development of judicial officers on operation and interpretation of the Human Rights Act.

Human rights training – judiciary and legal profession

Judicial officers and tribunal members should be provided with training that focuses on interpretive and jurisprudential developments at both the Australian and international level. Training programs need to be ongoing to keep up to date with current developments and include opportunities for regular refresher courses. Targeted funding should also be provided for training programs for the legal profession.

Human rights training – parliamentarians

To encourage more effective parliamentary scrutiny,

- the Queensland Human Rights Commission should offer a human rights briefing to all new parliamentarians; and
- the secretariat of the proposed Human Rights and Scrutiny Committee should arrange for human rights induction training for members of the Committee. In the alternative, portfolio committee members should be offered tailored human rights briefings in the new parliament.

Human Rights guidance

The Human Rights Unit in the Department of Justice and Attorney-General should produce accessible and up to date guidance materials to complement formal training sessions and assist public servants to:

- understand human rights principles and developments in context of government priorities; and
- implement the *Human Rights Act* including the proposed participation obligations.

These materials should be intelligible to those without formal legal training and provide a guide to research and links to other sources of more detailed information and human rights cases from Australia and internationally.

The Queensland Human Rights Commission should produce plain English guides and visual guides on:

- o how to make complaints under the Act
- o limitations and how rights are balanced

Human rights education – community

The Queensland Human Rights Commission should continue to direct specific resources to building community understanding of the *Human Rights Act*, how it may apply to individuals and communities, and how remedies can be accessed. In particular, translating the *Human Rights Act* and discrimination laws into accessible guidance for marginalised groups or places should be a priority.

The Queensland Government should provide significant and ongoing resources to the Queensland Human Rights Commission for human rights education for the community, including in primary and secondary schools, to enhance community awareness of human rights protections under the *Human Rights Act*.

The Queensland Government should allocate additional and sustained resources for the four years until the next legislative review to enable a significant and ongoing commitment to human rights education across Queensland through a special funding scheme for community organisations, especially in remote and regional locations.

Support for local government

The State government and relevant State government departments should provide further support to local government entities for Human Rights Act implementation activities, informed by consultation with local government.

Support for community organisations

Measures should be put into place to support community organisations who have opted in to become a public entity. This could be in the form of funding for them to seek training, or the provision of free training from the Queensland Human Rights Commission.

Organisations that currently provide or could provide human rights training in Queensland should also be provided with targeted funding to expand their current efforts.

Self-represented litigants should be provided with support materials by the Supreme Court in relation to the direct right of action (if enacted).

4 Effectiveness of *Human Rights Act 2019* (Qld)

4.1 Existing protected rights

The review heard that the QHRA has been effective in protecting existing rights through reviews led by the QHRC, the complaints mechanism (for the most part), and by the Commission and the Attorney-General intervening in certain court proceedings.

The areas where the review heard the most problems were in the use of the overrides, complaints handling by public entities, and cursory scrutiny of human rights issues in Bills and subordinate legislation in the Queensland Legislative Assembly.

4.2 Interpretation of the *Human Rights Act*

Section 48 of the Human Rights Act requires all legislation to be interpreted in a way that is compatible with human rights, to the extent possible that is consistent with the purpose of the legislation. Section 48 forms part of the body of interpretative rules to be applied in ascertaining the meaning of a statutory provision and was drafted in a manner meant to resolve certain issues with the Victorian Charter. Section 8 of the QHRA means that the proportionality test in section 13 becomes part of the interpretative task mandated by section 48. Section 48(2) is also unique to Queensland, requiring the ‘most compatible’ interpretation.

A statutory provision is ‘compatible with human rights’ if it does not limit a human right, or limits a human right only to the extent that is reasonable and demonstrably justifiable in a free and democratic society based on human dignity, equality, and freedom. Section 13 of the Human Rights Act sets out factors that may be relevant in deciding whether a limit on a human right is reasonable and justifiable.

The issue for the Review was whether there was clarity about how to implement these key provisions of the Act shared across public entities, and whether the courts and tribunals were providing clear guidance as to proper interpretation, which is considered separately below under Part 4.5.

My recommendations in this section deal with the question of amending the Act or providing particular guidance in order to create more clarity for decision-makers. There was clear support for three key areas of reform for the Act in the submissions:

- a. Definitional alignment with the Anti-Discrimination Act, as informed by the *Building Belonging* report.
- b. Amendments that align the QHRA with provisions under international human rights law
- c. Amendments that better align the Act to the right to self-determination under international law.

There were also compelling arguments raised by Associate Professor Julie Debeljak that to ensure clarity of interpretation, section 48 of the QHRA itself should be amended to remove the words ‘that is consistently with their purpose’ from subsections 48(1) and (2) so it clearly indicates that rights-compatible interpretation can be remedial in nature.⁷¹ The Queensland Supreme Court has clearly indicated that a remedial construction is not available based on the current drafting of section 48.⁷² After a review of the limited caselaw⁷³ and commentary⁷⁴ around section 48 and section 13, I have decided that this is an issue best decided by the next legislative review of the Act.

Alignment with Anti-Discrimination Law

In May 2021, the Attorney-General asked the Commission to undertake a review of the Anti-Discrimination Act. Following

⁷¹ Submission 2.

⁷² See *Innes v Electoral Commission of Queensland (No. 2)* (2020) 5 QR 623, and *SQH v Scott* [2022] QSC 16.

⁷³ See especially reasoning by Justice Applegarth in *Australian Institute for Progress Ltd v Electoral Commission (Qld)* [2020] QSC 54; (2020) 4 QR 31.

⁷⁴ See especially Kent Blore, ‘Proportionality under the Human Rights Act 2019 (Qld): When Are the Factors in s 13(2) Necessary and Sufficient, and When Are They Not?’ [2022] 45(2) *Melbourne University Law Review* 419.

a comprehensive 14-month consultation and review, the Queensland Human Rights Commission published its final report, *Building Belonging*, which was tabled in parliament in September 2022.⁷⁵ It was hoped that during the Review term in 2024, all amendments required by the Review of the *Anti-Discrimination Act 1991* (Qld) would have been finalised by the Queensland Parliament. 14 of the 46 recommendations have been passed by the Queensland Legislative Assembly through the Respect at Work and Other Matters Amendment Bill 2024 on 10 September 2024 and will come into effect on 1 July 2025. The remaining amendments have not been tabled as yet. It seems very reasonable that all future amendments to the Human Rights Act should be pursued in alignment with prospective amendments to the *Anti-Discrimination Act 1991* (Qld), to ensure synergy between the two legislative regimes, particularly in terms of definitions. In particular, the definition of ‘discrimination’ in the Human Rights Act should be amended to clarify that it includes discrimination on the basis of attributes listed under section 7 of the *Anti-Discrimination Act 1991* (Qld) and analogous grounds of discrimination.

Alignment with international human rights law

In the course of the Review period, several anomalies in drafting have been noted that were not dealt with the passage of the Act but which have led Queensland caselaw and international human rights law jurisprudence to diverge. For example, there are some rights under international human rights law, from which the *QHRA* provisions derive, which are considered non-derogable rights. Article 4 of the International Covenant on Civil and Political Rights (ICCPR) provides for a derogation power, which allows governments to temporarily suspend the application of some rights in the exceptional circumstance of a ‘state of emergency’ and subject to certain conditions, including official notification. Recourse to the derogations regime is very rare, which is discussed further in the overrides discussion below. Certain rights are non-derogable, that is, they cannot be suspended even in a state of emergency. Article 4(2) of the ICCPR provides that no derogation is permitted for:

- right to life (art 6)
- freedom from torture or cruel, inhuman and degrading treatment or punishment; and freedom from medical or scientific experimentation without consent (art 7)
- freedom from slavery and servitude (arts 8(1) and (2))
- freedom from imprisonment for inability to fulfil a contractual obligation (art 11)
- prohibition against the retrospective operation of criminal laws (art 15)
- right to recognition before the law (art 16)
- freedom of thought, conscience and religion (art 18).⁷⁶

The submission from Professor Sarah Joseph⁷⁷ and several other learned submissions recommend that Section 13 of the *Human Rights Act* should be amended to clarify that limitations to absolute rights within the ICCPR cannot be justified, and I concur with this view.

In the same vein, several submissions also refer to the fact that the judicial reasoning in the *Johnston* case⁷⁸ has conflated terms that are separate under the ICCPR due to the drafting of the *QHRA* and therefore depart from international jurisprudence. Under international human rights law, the right to security is recognised separately to liberty and regardless of whether the person has been deprived of their liberty. The General Comment to Article 9 of the International Covenant on Civil and Political Rights, upon which section 29 of the *QHRA* is based, states that the right to security protects individuals against ‘intentional infliction of bodily or mental injury’ and obliges State parties to protect individuals from foreseeable threats to life or bodily integrity. For example, the *Human Rights Act* should be amended to clarify that the right to security is distinct from the right to liberty. This could be achieved through an interpretive note, or alternatively, each right could be given its own section.

Additionally, to ensure clarity of interpretation, the *Human Rights Act* should be amended so that the right not to be subjected to medical or scientific treatment without a person’s full, free and informed consent is set out alongside the right to privacy (section 25) or the right to health services (section 37) rather than within section 17 on the right to protection from torture or cruel, inhuman or degrading treatment which is only concerned with medical experimentation in the ICCPR.

75 Queensland Human Rights Commission, *Building belonging: Review of Queensland’s Anti-Discrimination Act 1991* (Report, July 2022).

76 See further UN Human Rights Committee General Comment No 29.

77 Submission No. 3.

78 *Johnston et al v Carroll et al* [2024] QSC 2

Finally, many submissions and government officials have called for further guidance about how self-determination principles are to be dealt with in the QHRA, particularly section 28. Section 28 on cultural rights of Aboriginal and Torres Strait Islander peoples in the Human Rights Act clearly requires detailed guidance material produced by the Commission in consultation with Aboriginal and Torres Strait Islander communities that specifies that the section should be interpreted with reference to the UN Declaration on the Rights of Indigenous Peoples, especially the right of self-determination. Submissions have noted that section should be read in conjunction with the preamble to the *Human Rights Act*, as well as the reframing provisions of the *Public Sector Act 2022* (in particular section 4(b)(i), section 19(2)(a) and section 21(2)(c)), and the *Path to Treaty Act 2023* (section(2)(a). It is also clear that the *Aboriginal Cultural Heritage Act 2003* is inconsistent with section 28 of the QHRA and this requires urgent guidance to resolve. Any further difficulties with resolving questions of cultural rights between Aboriginal and Torres Strait Islander communities should be resolved by a panel of appropriately qualified Aboriginal and Torres Strait Islander elders, as is being considered by the current QLRC inquiry into mining leases.

Recommendations

Interpretation of the Act to be aligned to Queensland discrimination law

All future amendments to the *Human Rights Act* should be pursued in alignment with prospective amendments to the *Anti-Discrimination Act 1991* (Qld), to ensure synergy between the two legislative regimes.

The definition of ‘discrimination’ in the *Human Rights Act* should be amended to clarify that it includes discrimination on the basis of attributes listed under section 7 of the *Anti-Discrimination Act 1991* (Qld) and analogous grounds of discrimination.

Interpretation of the Act to be aligned to international human rights law

Section 13 of the *Human Rights Act* should be amended to clarify that limitations to absolute rights within the ICCPR cannot be justified.

The *Human Rights Act* should be amended to clarify that the right to security is distinct from the right to liberty. This could be achieved through an interpretive note, or alternatively, each right could be given its own section.

To ensure clarity of interpretation, the *Human Rights Act* should be amended so that the right not to be subjected to medical or scientific treatment without a person’s full, free and informed consent is set out alongside the right to privacy (section 25) or the right to health services (section 37) rather than within section 17 on the right to protection from torture or cruel, inhuman or degrading treatment.

Section 28 on cultural rights of Aboriginal and Torres Strait Islander peoples in the *Human Rights Act* requires detailed guidance material produced by the Commission in consultation with Aboriginal and Torres Strait Islander communities that specifies that the section should be interpreted with reference to the UN Declaration on the Rights of Indigenous Peoples, especially the right of self-determination.

4.3 Override provisions

Division 2 of Part 3 of the *QHRA* enables Parliament to make override declarations to give effect to legislation otherwise incompatible with human rights under the Act. Section 43(4) sets out circumstances justifying override declarations:

(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

Under section 44 such override declarations must be accompanied by a statement about the exceptional circumstances, and under section 45 override provisions expire 5 years after commencement unless an earlier date is stated. However, section 46 allows overrides to be re-enacted.

The override provisions have been used twice to date, both times in relation to youth justice. The second usage occurred just after the period set for the Independent Reviewer’s considerations, but is included in the discussion below for the sake of completeness.

4.3.1 Uses of the override

The first use of the override power involved the *Strengthening Community Safety Act 2023* (Qld), which amended the *Bail Act 1980* (Qld) and the *Youth Justice Act 1992* (Qld) (*YJA*) to create a breach of bail offence for children, enable children to be declared as serious repeat offenders, and require courts to revoke conditional release orders when breached by a child, thus returning the child to detention.

The Minister’s statement of exceptional circumstances identified that the proposed amendments limited the human rights of children, including the rights to protection of their best interests, liberty, and not to be subject to retrospective increases in penalty.

Notwithstanding these limits, the Minister said the provisions were justified because of the need to respond to “the small cohort of serious repeat young offenders who engage in persistent and serious offending, in particular, offending which occurs while on bail.”⁷⁹ The amendments were introduced on 21 February 2023, referred to the relevant parliamentary committee for review with public submissions closing only three days later, and the Bill passed on 16 March. The statement expires after five years.

The second use of the override power involved the *Child Protection (Offender Reporting and Offender Prohibition) and Other Legislation Amendment Act 2023* (Qld). The Act primarily amended other legislation but also the *YJA* and the *Police Powers and Responsibilities Act 2000* (Qld).

While the amending Bill was first introduced to Parliament in October 2022, that version did not contain the proposed amendments relevant to the override. These were introduced by amendments to the Bill proposed by the Minister in August 2023, for consideration in the Bill’s third reading. Hence there was no scrutiny of those provisions by a parliamentary committee and no call for public submissions. The Bill passed the day after its tabling. Four of the amendments required an override.

Section 56 of the *YJA* had previously required children remanded in detention to be transferred by police to a youth detention centre as soon as reasonably practicable after the making of the remand order. Similarly, under section 210, children sentenced to a period of detention were required to be transported by police to a youth detention centre by police once a warrant has been issued. The 2023 amendments changed both requirements so that police must still take custody of children in both situations, but may only deliver them to a Youth Justice facility once the chief executive notifies them that their

79 Statement of Compatibility, Strengthening Community Safety Bill 2023 (Qld) 3 <<https://www.legislation.qld.gov.au/view/pdf/bill.first.hrc/bill-2023-004>>.

custody will be accepted.⁸⁰

In effect, these amendments allow the protracted detention of children in police watchhouses. In deciding when to accept children, the chief executive must take into account considerations related to the child's needs and welfare, but also the number of children currently detained and the capacity of detention centres.⁸¹

Additionally, section 262 of the *YJA* was amended to enable police watchhouses and adult corrective service facilities to be declared as places of youth justice detention, and the *Police Powers and Responsibilities Act* was amended to allow police to transfer children held in watchhouses to another watchhouse or to a police holding cell. Finally, amendments retrospectively validated past treatment of children in police custody that was taken in good faith under sections 56(4) and section 210(2) of the *YJA*. Together, these amendments help facilitate prolonged detention of children outside of youth detention centres, especially in watchhouses.

The Minister's statement of compatibility acknowledged that all of these amendments were incompatible with the *QHRA*, and with children's rights to protection in their best interests, not to be treated or punished in a cruel, inhumane or degrading way, privacy, non-interference with family, Aboriginal and Torres Strait Islander people's maintenance of kinship ties, humane treatment when deprived of liberty, to be segregated from adult detainees, education, and health services, along with being inconsistent with both the United Nations Convention on the Rights of the Child (UNCRC) and the Beijing Rules.⁸²

Notwithstanding this, the amendments were said to be necessary because of overcrowding in youth detention centres pending the completion of two new facilities expected to occur in 2026. The expiry date of the statement is stipulated as December 2026, with provision for a one-year postponement of that expiry.

4.3.2 Summary of issues

The issues for consideration are:

- (a) Should the override power contained in sections 41 to 47 inclusive of the *QHRA* continue in its current format?
- (b) If not, should the override power should be modified and if so, how?
- (c) Or should the override provision be repealed?

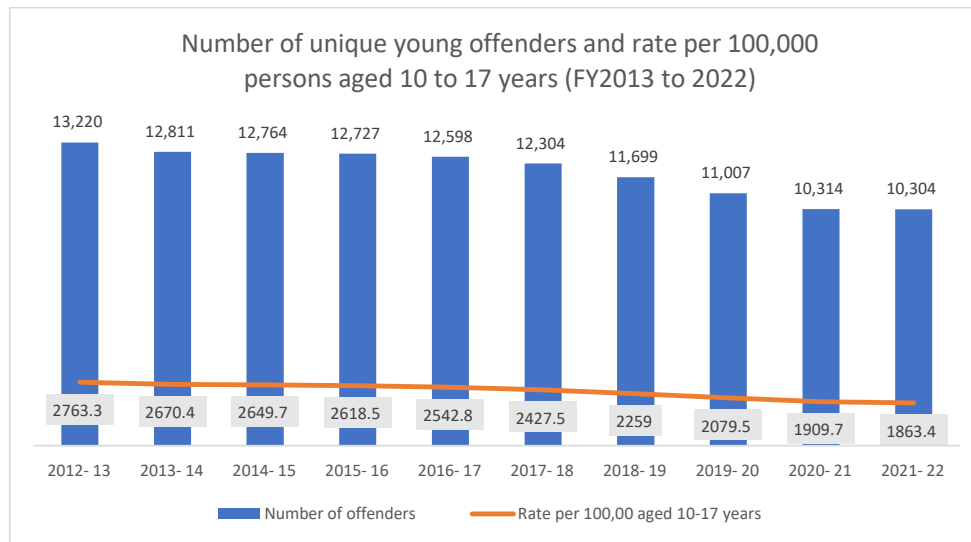
Of relevance to these issues is the growing youth detention population in Queensland, as outlined in section 7.2 of this report. As also noted, the growth in children in youth justice detention does not reflect an increase rate of young offenders, as illustrated in Figure A below, but instead changes to policy and practice.

80 *YJA*, ss 56(2) and (3), ss 210(2) and (3).

81 *YJA*, ss 56(3) and (4) and ss 210(3) and (4).

82 Statement of Compatibility, Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Bill 2022 (Qld) 14 <<https://www.legislation.qld.gov.au/view/pdf/bill.third.hrc/bill-2022-008>>.

Figure A: Trend in young offenders in Queensland 2012-2013 – 2021-2022⁸³



The Queensland Family and Child Commission (QFCC) has noted that despite the drop in rates of young people who are offending, some young people are being arrested more, are more likely to have bail refused, and are likely to be in detention on remand, with that being the case for around 90% of child detainees. Additionally, most young people released from custody return there within 12 months:

*demonstrating the failure of custodial options to address offending and reoffending.*⁸⁴

The QFCC report also details the growth in watch house detentions of young people, showing in particular that children are being held in watch houses for longer periods:

- there was a marked increase in medium-term detentions of 3 to 7 nights from 2019 to 2022; and
- for detentions lasting 8 to 15-plus days, the half year numbers for 2023 (January to June) surpassed the full-year numbers for 2022.⁸⁵

It is important to note that this growth in watch house detention preceded the use of the override in August 2023. Media reports in 2024 suggest that the current average number of children held in watch houses is almost 80 per day.⁸⁶ Recent media reports about how children in watch houses are treated has reportedly led the Queensland Police Service to initiate an internal review to address “end-to-end systemic issues.”⁸⁷

It is also important to note that, of other Australian jurisdictions with human rights legislation, the ACT does not have an override provision, while the Victorian Act has a similar provision to Queensland’s. The Victorian government has twice used the override, both in relation to adult parole matters.⁸⁸ The recent federal Parliamentary Joint Committee on Human Rights (PJCHR) report decided against recommending an override power in a Commonwealth scheme, saying:

*Based on the evidence to the committee, the committee does not propose that a federal HRA should include such an override provision. This does not mean that Parliament may not make legislation which cannot be interpreted in a way that is inconsistent with the rights included in a HRA, but rather that it may not expressly override its operation.*⁸⁹

83 Queensland Family and Child Commission, *Who’s Responsible: Understanding why young people are being held longer in Queensland watch houses* (Report, November 2023) <<https://www.qfcc.qld.gov.au/sites/default/files/2023-12/FINAL%20-%20Watchhouse%20Review%20-%20Who%27s%20Responsible%20-%20November%202023.pdf>>.

84 Ibid 27.

85 Ibid.

86 Ben Smee, ‘More than 550 issues raised on behalf of children in police lockups this year, Queensland public guardian says’, *The Guardian* (online, 9 March 2024) <<https://www.theguardian.com/australia-news/2024/mar/08/queensland-children-in-police-watch-houses>>.

87 Jemima Burt and Julia André, ‘Review into Queensland police watch houses to probe “end-to-end systemic issues”’, *ABC News* (online, 6 August 2024) <<https://www.abc.net.au/news/2024-08-06/review-queensland-police-watch-houses-systemic-issues/104188082>>.

88 See Julie Debeljak, ‘Of Parole and Public Emergencies: Why the Victorian Charter Override Provision Should be Repealed’ (2022) 45(2) *University of New South Wales Law Journal* 1.

89 Parliamentary Joint Committee on Human Rights, Parliament of Australia, *Inquiry into Australia’s Human Rights Framework* (Report, May 2024) 309 [9.36].

Finally, by way of background, it is worth noting that despite the COVID-19 pandemic giving rise to Queensland’s most prolonged emergency situation in contemporary times, and despite the swathe of rights-restricting law and policy that followed, at no time was the *QHRA* overridden. For the duration of the pandemic response during the 2020-2022 period, declarations under emergency laws were made which restricted rights, with that restriction justified by the relevant Minister in each case, under statements of compatibility. These declarations lasted 90 days only. This provides a useful model for how governments can address the most compelling of emergencies without a blanket override of the *QHRA*.

If the override is not in compliance with international law, Australia will be deemed to have breached the Convention on the Rights of the Child.⁹⁰ The National Children’s Commissioner Anne Hollonds has expressed alarm at the Queensland Government rushing through legislation to allow children to be detained indefinitely in adult detention facilities and released the *Help Way Earlier!* Report,⁹¹ leading to the establishment of a Federal Senate Inquiry into Australia’s child justice system.⁹²

Many submissions to the Independent Reviewer addressed the override provisions. All that did so were critical of either how the override had been used, or of the need for an override power at all. Multiple submissions questioned whether the two uses of the override power met the necessary threshold of exceptional circumstances required by the *QHRA*. No submission to the Independent Reviewer supported retention of the override power in its current format.

In some consultations with government agency stakeholders a counter-argument was raised. It was suggested that the principle of parliamentary sovereignty, which is integral to Queensland’s system of democracy, requires the retention of an override provision so that future Parliaments maintain their ability to legislate unfettered. As discussed, this argument was rejected by the PJCHR in its report on federal rights protection.

Other government stakeholders noted that the use of the override powers had led to a ‘chilling effect’ on human rights in Queensland, and detracted from their efforts to create a human rights culture. They questioned what the purpose of such a culture was when it could be overridden without consultation in order to meet what were seen as political imperatives. The submissions that addressed overrides uniformly agreed with this perspective.

On the argument that the principle of parliamentary sovereignty requires an override power, one submission noted:

*Statutory human rights instruments do not require override provisions to preserve parliamentary sovereignty and establish a dialogue between the arms of government about the scope and limits of human rights. Moreover, the operation of the override provision in Victoria has demonstrated that uses of the override provisions unduly elevate parliamentary sovereignty and obliterate human rights considerations from public decision making.*⁹³

Another submission noted that the Queensland override declarations affected ‘some of the most vulnerable members of our community’ most in need of rights protection. That submission concludes ‘it is [our] view that the override provision in the Act is unnecessary and undermines the developing culture of human rights that it seeks to promote’ and it advocated for the removal of section 43 from the *QHRA*.⁹⁴ This approach of removing the override altogether was supported by many other submissions.

On the issue that use of the override power had led to an undermining of human rights and detracted from a human rights culture, submissions noted:

The override power has been used by the Queensland government for the purpose of defeating legal challenges to their laws. This is not an acceptable use of the override power. Ensuring that all laws are consistent with human rights is a central objective of the Human Rights Act 2019(Qld). The ACT Human Rights Act 2004 does not have an

90 See also Article 4(1) ICCPR.

91 Australian Human Rights Commission. *Help way earlier! How Australia can transform child justice to improve safety and wellbeing* (2024), available at https://humanrights.gov.au/sites/default/files/document/publication/1807_help_way_earlier_-_accessible_o.pdf

92 On 11 September 2024, the Senate referred the Australia’s youth justice and incarceration system to the Legal and Constitutional Affairs References Committee, for inquiry and report by 26 November 2024. https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Incarceration47

93 Julie Debeljak, Submission No 2 to Independent Reviewer, *First Independent Review of the Human Rights Act 2019* (2 July 2024) 23-4.

94 Queensland Law Society, Submission No 81 to Independent Reviewer, *First Independent Review of the Human Rights Act 2019* (12 July 2024) 7.

override power. It is our recommendation that the override power be repealed.⁹⁵

And:

We strongly endorse the calls for the Human Rights Act 2019 (Qld) to be amended to remove the ability to override protected rights (section 43). The potential for this to perpetuate violations of human rights, such as we have seen with children now as young as 10 being held criminally responsible for bail breaches and being able to be held in adult watchhouses, is morally and ethically unacceptable and not in line with international standards of Minimum Age of Criminal Responsibility. Further, the ability for Parliament to override the Human Rights Act 2019 (Qld) undermines the objectives of the Act and renders it tokenistic.⁹⁶

And:

The override provision in s. 43 should be repealed. There is no need for it, as Parliaments remain able to pass laws in breach of the human rights in the Act. In Queensland's unicameral Parliament, this means that government policy that breaches human rights can generally be legislatively enacted. The override allows governments to escape human rights scrutiny entirely by removing the need for statements of compatibility and parliamentary scrutiny with regard to human rights. It undermines the efficacy of the Act and the creation of a rights-minded culture Queensland.⁹⁷

Some submissions suggested that if not repealed entirely, section 43 of the QHRA should be further clarified as follows:

As the legislation matures, and leaders become more aware of the benefits of human rights decision making, the HRA should be bolstered by appropriate restraints on the override mechanism. This could include making it available in a reduced range of circumstances, for shorter operational periods, and with increased oversight such as from a Human Rights Commissioner or Ombudsman.⁹⁸

Other submissions argued for a revised provision to clarify what constitutes genuinely exceptional circumstances,⁹⁹ or for a requirement that any claim to exceptional circumstances is publicly supported by evidence:

[the statement in support of the override is] without a proper basis and is made without any evidence or analysis of offending patterns or modelling of the impact of the proposed amendments. The conclusion is not explained or justified in any way, and, given that the deprivation of children's liberty is at stake, there is insufficient consideration of the impact of the less-restrictive alternatives, or the impact these laws will have on children who are outside the small cohort that is the target of these changes. There are many other such similar examples in other sections of the statement.¹⁰⁰

Others argued that an alternative modification would be to require more public consultation before any use of the override:

s43(4) QHRA is clear that an override is only meant to be used in exceptional circumstances, the relevant Minister deemed the involvement of 3,000 individual children a year in the statutory youth justice system out of a state population of 5.5 million, to be so. There is a clear need to depoliticise the QHRA in Queensland and to strengthen community education on human rights, including children's rights. The QHRA could be strengthened by creating a requirement for significant consultation with affected communities prior any suspension of the Act; or removing

95 Tamara Walsh and Dominique Allen, Submission No 5 to Independent Reviewer, *First Independent Review of the Human Rights Act 2019* (June 2024) 1.

96 University of Southern Queensland Social Work & Human Services, Submission No 6 to Independent Reviewer, *First Independent Review of the Human Rights Act 2019* (21 June 2024) 2.

97 Sarah Joseph and Emma Palmer, Submission No 3 to Independent Reviewer, *First Independent Review of the Human Rights Act 2019* (June 2024) 6.

98 Caxton Community Legal Centre, Submission No 63 to Independent Reviewer, *First Independent Review of the Human Rights Act 2019* (5 July 2024) 10.

99 Queensland Alliance for Mental Health, Submission No 46 to Independent Reviewer, *First Independent Review of the Human Rights Act 2019* (June 2024) 17; Queensland Council of Unions, Submission No 49 to Independent Reviewer, *First Independent Review of the Human Rights Act 2019* (21 June 2024) 12; Save the Children and 54 reasons, Submission No 30 to Independent Reviewer, *First Independent Review of the Human Rights Act 2019* (19 June 2024) 5; Soroptimist International Queensland, Submission No 31 to Independent Reviewer, *First Independent Review of the Human Rights Act 2019* (June 2024) 3.

100 Youth Advocacy Centre, Submission No 83 to Independent Reviewer, *First Independent Review of the Human Rights Act 2019* (10 July 2024) 3.

*the override provision from the Act.*¹⁰¹

If this approach were to be adopted, of retaining but better articulating the override power, it could be achieved by amending section 43(4) of the *QHRA* to achieve the following:

- (a) A definition of exceptional circumstances being incorporated into the subsection to limit the use of the override to emergency situations such as where a state of emergency has been declared under relevant legislation including for example the *Public Health Act 2005* (Qld), *Public Safety Preservation Act 1986* (Qld), *Biosecurity Act 2014* (Qld), and *Environmental Protection Act 1994* (Qld); and
- (b) Section 44 of the *QHRA* being amended to require that no override should have effect until the relevant Bill has been referred to a parliamentary committee for consideration, and that committee has had adequate time in which to review the matter including calling for public submissions and holding public hearings; and
- (c) Section 45(2) of the *QHRA* being amended to say that overrides expire no later than 90 days after the day on which the provision commences (rather than five years). Further, any re-enactment of the override should be subject to the same review procedure as that contained in paragraph (b) above. This would serve to reiterate that such powers should only be used as a short-term mechanism in the face of exceptional emergencies, and reflect the 90 days duration of other emergency declarations.

However, given there has been a clear call for change to the override provisions in the *QHRA* the Independent Reviewer considers there to be a compelling case for their repeal. As discussed, to do so would not threaten parliamentary sovereignty and parliaments could still legislate as they wish. The override power is unnecessary and sends a message that rights are less important than other political or policy goals. This is particularly the case in a state with a unicameral parliament, and where the two overrides to date were undertaken with inadequate public consultation and scrutiny.

Recommendation

Override provisions

The override provisions, Division 2 of Part 3 of the *Human Rights Act*, should be repealed.

4.4 Scrutiny of legislation and regulation by Parliament

The QHRC explains the unusual situation in Queensland with scrutiny of bills functions being undertaken by portfolio committees. The stand-alone Scrutiny of Bills committee was abolished in 2011.¹⁰²

*The Queensland Parliament has portfolio committees made up of government and non-government members of parliament, and it is their job to inquire into proposed laws before they are debated in parliament. Under the Human Rights Act, the portfolio committee responsible for examining a Bill must consider and report to the parliament about whether the Bill is compatible with human rights and consider and report to parliament about the statement of compatibility tabled with the Bill.*¹⁰³

The QHRC in their Annual Reports explore and observe “the extent to which legislation is assessed for human rights compatibility, the adequacy of statements of compatibility, and how this is discussed through the parliamentary process”.¹⁰⁴

¹⁰¹ Queensland Family & Child Commission, Submission No 80 to Independent Reviewer, *First Independent Review of the Human Rights Act 2019* (July 2024) 5.

¹⁰² Renee Easten, Queensland’s Approach to the Scrutiny of Legislation. Australia New Zealand Scrutiny of Legislation Conference, Perth, April 2016, <[https://www.parliament.wa.gov.au/WebCMS/WebCMS.nsf/resources/file-anzslc-paper-ms-renee-easten/\\$file/Session%2010%20Bonus%20paper%20Ms%20Renee%20Easten,%20Queensland’s%20approach%20to%20the%20scrutiny%20of%20legislation.pdf](https://www.parliament.wa.gov.au/WebCMS/WebCMS.nsf/resources/file-anzslc-paper-ms-renee-easten/$file/Session%2010%20Bonus%20paper%20Ms%20Renee%20Easten,%20Queensland’s%20approach%20to%20the%20scrutiny%20of%20legislation.pdf)>.

¹⁰³ Queensland Human Rights Commission, *Progress and Pitfalls: 2022-23 annual report on the operation of the Human Rights Act 2019* (Report 2022-23), November 2023, at p. 23.

¹⁰⁴ Queensland Human Rights Commission, *Progress and Pitfalls: 2022-23 annual report on the operation of the Human Rights Act 2019* (Report 2022-23),

The Commission states “there are positive signs that a human rights culture is continuing to develop” in the Queensland Parliament, and that “it remains a positive feature of the Queensland Parliament’s process that committees continue to collate and publish additional information about compatibility obtained through the inquiry process.”¹⁰⁵ Having considered the portfolio committee reports, the Reviewer agrees with this assessment. The Review also agrees with the Commission’s observation that the portfolio committee reports “often merely note that the statements of compatibility or human rights certificates provide sufficient detail”,¹⁰⁶ and generally do not “formally make recommendations or comments about human rights compatibility.”¹⁰⁷

Importantly, I observed that when committee reports do discuss deficiencies in statements of compatibility or raise other concerns about limitations on human rights, they do so without making a formal request for more information, or making a recommendation that a Bill be amended.¹⁰⁸ As the Commission states, “this usually means no further information was provided by the government to justify a limitation, nor were amendments to the Bill forthcoming.”¹⁰⁹

The Commission also observed, in relation to legislative amendments, that:

*on several occasions, amendments unrelated to the original subject matter of the Bills were made after committees had reported ... Even though these amendments were accompanied by statements of compatibility, it is deeply concerning that they were not subject to any scrutiny by a portfolio committee. This raises fundamental questions about the integrity of the legislative process.*¹¹⁰

Additionally, by having multiple committees undertaking scrutiny functions, “the formulation of clear and consistent rules and expectations for the preparation of statements of compatibility is frustrated.”¹¹¹

There have also been some instances where a committee notes several significant human rights limitations, but ultimately concludes that adequate justification has been provided to demonstrate these limitations were reasonable and demonstrably justifiable.¹¹² In one recent and significant example, despite submissions to the Economics and Governance Committee questioning whether the override declarations were necessary and appropriate, and noting that any override should occur only after extensive consultation,¹¹³ the Strengthening Community Safety Bill 2023 passed with four override declarations in place. It appears in some instances, particularly with regard to youth crime and community safety, when there is overwhelming evidence and submissions recommending a Bill not be passed because of the significant and disproportionate limitations and incompatibilities with human rights, portfolio committees ignore or contradict the evidence and determine that the Bill’s impact on human rights is justified without sufficiently explaining why.¹¹⁴

Of further concern was the discussion through the parliamentary process that implied a decision to override the QHRA is one made by the government. The QHRA makes clear it is a matter for the parliament, not the government, to make such a significant declaration.

November 2023, 26.

105 Ibid 45.

106 Queensland Human Rights Commission, *Putting People First: The first annual report on the operation of the Human Rights Act 2019* (Report 2019-20), November 2020, 31.

107 Queensland Human Rights Commission, *Balancing Life and Liberty: The second annual report on the operation of Queensland’s Human Rights Act 2019* (Report 2020-21), November 2021, 56.

108 See for example Economics and Governance Committee, *Inquiry into Brisbane Olympic and Paralympic Games Arrangements Bill 2021* (Report No 20, November 2021) 57; Legal Affairs and Safety Committee, Queensland Parliament, *Inquiry into Police Legislation (Efficiencies and Effectiveness) Amendment Bill 2021* (Report No 16, November 2021) 39; Legal Affairs and Safety Committee, Queensland Parliament, *Police Powers and Responsibilities and Other Legislation Amendment Bill 2021* (Report No 15, November 2021) 41; Community Support and Services Committee, Queensland Parliament, *Inquiry into Child Protection Reform and Other Legislation Amendment Bill 2021* (Report No 12, November 2021) 34.

109 Queensland Human Rights Commission, *Shifting the Focus: 2021-22 annual report on the operation of the Human Rights Act 2019* (Report 2021-22), November 2022, 45.

110 Queensland Human Rights Commission, *Progress and Pitfalls: 2022-23 annual report on the operation of the Human Rights Act 2019* (Report 2022-23), November 2023, 46.

111 Ibid 42.

112 See for example Legal Affairs and Safety Committee, Queensland Parliament, *Youth Justice and Other Legislation Amendment Bill 2021* (Report No 7, April 2021) 122.

113 Economics and Governance Committee, Queensland Parliament, *Strengthening Community Safety Bill 2023* (Report No. 41, March 2023) 6–7

114 Ibid.

Recommendations

The Human Rights Unit in the Department of Justice and Attorney-General should be resourced to provide guidance material and good practice examples of statements of compatibility, briefings and certificates for the wider public sector.

The Human Rights Unit in the Department of Justice and Attorney-General should clarify to instructing agencies that the compatibility statement and portfolio committee reports perform different functions under the Human Rights Act; Ministers should be encouraged to take any Committee's concerns back to their departments for reconsideration, rather than relying on the compatibility statement as proof of compatibility.

Human rights certificate and statement of compatibility processes should be reviewed periodically by the Office of the Queensland Parliamentary Counsel to identify any issues for reform in the drafting templates.

Legislative proposals

The Queensland Government should facilitate the identification of human rights impacts of legislative proposals and options for addressing them by consulting the Human Rights Unit in the Department of Justice and Attorney-General at an early stage of developing legislation and drafting statements of compatibility.

Statements of Compatibility – consultation

The *Human Rights Act* should be amended to require that Statements of Compatibility contain a description of the nature of any consultation undertaken on the bill (including by reference to the participation duty) and if no consultation took place, explain why.

Statements of Compatibility – Exposure drafts of bills

When drafts of Bills raising significant human rights issues are exposed for public comment, they should be accompanied by a draft statement of compatibility so that the community is able to consider and respond to these issues.

Statements of Compatibility – Private Members' Bills

Private Members' Bills dealing with significant human rights issues should include a draft statement of compatibility so that the community is able to consider and respond to these issues.

Human Rights and Scrutiny Committee

Section 93 of the *Parliament of Queensland Act 2001* should be amended to establish a new Human Rights and Scrutiny Committee, or alternatively such a committee could be established as a select committee for a specific period.

The proposed Human Rights and Scrutiny Committee should be supported by its own Secretariat, appropriately staffed and resourced, including a dedicated Human Rights Adviser, similar to the Victorian model. If the current Human Rights Advisory Panel is maintained, their advice should be monitored and overseen by this committee.

All Bills should be scrutinised, at a threshold level, by this proposed Human Rights and Scrutiny Committee for significant human rights impacts before being referred to the relevant portfolio committee.

The *Human Rights Act* should be amended to require all major amendment to Bills with potential human rights impacts to be referred to the relevant portfolio committee (or designated members of it) for scrutiny.

Parliamentary Scrutiny – amendments

All amendments introduced on the floor of the Legislative Assembly seeking to restrict human rights should be referred to the proposed Human Rights and Scrutiny Committee or relevant portfolio committee.

The terms of reference for the proposed Human Rights and Scrutiny Committee should include clear powers to consider and report on provisions of Acts that it did not consider when a Bill was before Parliament (within a limited time). Members of Parliament are encouraged to provide a short statement on the human rights compatibility of their proposed amendments to Parliament.

Public engagement in legislative process

To support and enhance public engagement in the legislative process:

(a) the Queensland Government should consider measures to ensure that the new proposed Human Rights and Scrutiny Committee has sufficient time to scrutinise Bills that raise significant human rights and Fundamental Legislative Principles issues; and

(b) the Committee should reinstate an Alerts Digest and refer to the content of submissions made to it in its Alert Digests on Bills.

4.5 Court and tribunal proceedings, including the interpretation of laws

The interpretation of the QHRA by the courts and tribunals has deepened our understanding of the application of the Act to particular contexts but also sometimes complicated it. Several submissions referred to key cases such as the Queensland Supreme Court decisions in *Owen-D’Arcy v Chief Executive, Queensland Corrective Services*¹¹⁵ and *Johnston v Commissioner of Police*.¹¹⁶ Summaries of these key cases can be found on the Queensland Human Rights Commission website¹¹⁷ and a full database of caselaw has been compiled by Professor Tamara Walsh and Bridget Burton at the UQ/Caxton Human Rights Case Law Project.¹¹⁸

In this section I focus on the fact that there were no declarations of incompatibility issued by the Supreme Court during the review period, and reasonably sparse interpretation by Queensland courts and tribunals of the Act during the Review period. Courts and tribunals have also considered themselves bound administratively during the review period which is recorded by the Commission in its annual reports.¹¹⁹ The expectation is that over time, more courts and tribunals will determine when they are acting administratively, and routinely take up their obligations as public entities to act and make decisions compatibly with, and give proper consideration to, human rights.

Courts and tribunals, whether public entities or not, must consider human rights when interpreting legislation. Generally, I agree with the submission from the QUT Environmental and Social Governance Research Group, which noted that ‘Queensland would benefit from a greater commitment to intersectionality in the interpretation of the QHRA’.¹²⁰ It is clear from experience with the ACT and Victorian jurisdictions that there can be a period of delay before the legal sector and judiciary fully embrace human rights legislation. But there are some cases which have achieved this intersectional focus and enriched our understanding of human rights and contributed to jurisprudence on a global scale, namely the *Waratah*

115 *Owen-D’Arcy v Chief Executive, Queensland Corrective Services* [2021] QSC 273

116 *Johnston v Commissioner of Police* [2024] QSC 2

117 <https://www.qhrc.qld.gov.au/resources/legal-information/case-notes-human-rights>

118 <https://law.uq.edu.au/research/human-rights/case-notes>

119 <https://www.qhrc.qld.gov.au/resources/reports>

120 Submission 4.

Coal case,¹²¹ the coronial investigation into the RHD Doomadgee Cluster,¹²² and the *Australian Institute for Progress* case.¹²³

4.5.1 Declarations of Incompatibility

The Supreme Court or the Court of Appeal may make a declaration of incompatibility if the court considers that a statutory provision cannot be interpreted in a way that is compatible with human rights. There were no declarations of incompatibility by the Queensland Supreme Court during the review period under section 53 of the Act. Few submissions raised the issue either. This is not surprising, as there are several factors that make such an occurrence rare in comparable jurisdictions to Queensland, such as the ACT and Victoria. These declaratory mechanisms in a dialogue model of rights legislation are intended to ‘alert the legislature and the executive that a court has identified an incompatibility between a protected human right and another statute’¹²⁴, and have been seen as many commentators as significant to the success of the model.¹²⁵ Such a declaration is accompanied by an obligation on the Attorney-General to prepare a response and to ensure that the declaration and the response are presented to parliament, preserving parliamentary sovereignty.

The first factor is that the High Court split decision in the Victorian Charter case of *Momcilovic v The Queen & Others* in 2011¹²⁶ may have had a ‘chilling effect’ on parties who might otherwise push for such a declaration. As a majority of the Court was of the view that the declaration of inconsistent interpretation made pursuant to s 36 either was invalid or ought not to have been made by the Court of Appeal in this proceeding, the Court ordered that the declaration be set aside.

The second factor is that a request for a declaration is generally made by parties to a Supreme Court action, and we can see from this extract from the *Johnston* case that no parties urged the court in that direction.

[145] The Sutton applicants, in their written submissions, say that the Court should make a declaration of incompatibility under s 53. That was the only reason for raising the question of whether the QPS Directions were statutory provisions. But no amendment to claim such a declaration in their originating application was sought.

[146] Ms Nagorcka, in her oral submissions, began to address this matter. In an exchange with her about the necessity to deal with it I observed that none of the parties had sought such a declaration. Nobody demurred to that statement. Mr Ward SC made it clear, in his oral submissions, that that relief was not pressed by him.

[147] In the submissions filed by the QHRC and the Attorney-General there was a brief but feisty disagreement about whether the QPS directions and the QAS Direction were statutory instruments. The QHRC submission that they were was not pursued.

[148] It is unnecessary, in the absence of a declaration of incompatibility being sought, for me to consider whether the QPS Directions (not being an Act or Acts) were “statutory instruments” as defined in s 7 of the Statutory Instruments Act 1992.¹²⁷

Another factor is that Australian courts have been unwilling to use the powers given under this kind of legislation.¹²⁸ The final factor is the addition of the Attorney-General and the Queensland Human Rights Commission to a proceeding would increase the costs for the parties but not lead to a remedy.

My recommendation here is to refer to the importance of training and education of judicial officers and tribunal members. They should be provided with training that focuses on interpretive and jurisprudential developments at both the Australian and international level. Training programs need to be ongoing to keep up to date with current developments and include opportunities for regular refresher courses. Targeted funding should also be provided for training programs for the legal

121 *Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors* (No 6) [2022] QLC 21, see further <https://www.hrc.org.au/human-rights-case-summaries/2023/1/12/landmark-recognition-of-human-rights-and-environmental-impacts>

122 https://www.courts.qld.gov.au/_data/assets/pdf_file/0006/770109/cif-booth-sandy-george-20230630.pdf

123 *Australian Institute for Progress Ltd v Electoral Commission (Qld)* [2020] QSC 54; (2020) 4 QR 31.

124 Dominique Dalla-Pozza and George Williams, ‘The Constitutional Validity of Declarations of Incompatibility in Australian Charters of Human Rights’ (2007) 12(1) *Deakin Law Review* 1 at p. 3.

125 Hilary Charlesworth, ‘Who Wins Under a Bill of Rights?’ (2006) *University of Queensland Law Review* 25(1) 39

126 [2011] HCA 34

127 *Johnston v Carroll* (APM, Commissioner of the Queensland Police Service) [2024] QSC 2

128 Bruce Chen, ‘The Quiet Demise of Declarations of Inconsistency under the Victorian Charter’ (2021) *Melbourne University Law Review* 44(3):928-962.

profession.

4.5.2 Interpretation of laws

Based on the Queensland Human Rights Commission Human Rights Act Annual Reports, there is information on the increasing engagement of Queensland courts and tribunals with the Act in a meaningful manner:

- In the financial year ended 30 June 2020, Queensland courts and tribunals considered or mentioned the Act in **29 matters**.
- In the financial year ending 30 June 2021, Queensland courts and tribunals considered or mentioned the Act in **59 matters**.
- In the financial year ending 30 June 2022, courts and tribunals considered or mentioned the Act in **86 matters**.
- In the financial year ending 30 June 2023, courts and tribunals considered or mentioned the Act in **202 matters**. Of these, 136 involved detailed consideration. On 66 occasions the Human Rights Act only received a minor mention by the decision-maker.¹²⁹

There is very little existing data concerning judicial use or invocation of the interpretative principles under section 48 and 13 of the QHRA. Section 58 is also the heart of the Act in terms of interpretation. Judicial consideration has been given during the Review period to the obligation on public entities to give proper consideration to human rights. The Supreme Court in *Austin BMI Pty Ltd v Deputy Premier* [2023] QSC 95 reinforced comments made in *Owen-D'Arcy v Chief Executive, Queensland Corrective Services* [2021] QSC 273 that the identification of affected human rights required for proper consideration must be approached in a 'common sense and practical manner'. In *Austin BMI Pty Ltd v Deputy Premier* [2023] QSC 95, the Court held that the decision-maker was entitled to rely on briefings from the department to demonstrate proper consideration, and that the briefing did not have to identify and consider rights that were 'not affected' by the decision. The Court also confirmed section 58(6) of the Human Rights Act makes clear that a contravention of section 58(1) obligations by a public entity when making a decision amounts to non-jurisdictional error and does not make the decision invalid.

But more information is required for a proper Review. It is not clear whether legal practitioners are putting the arguments to the Bench, or the judiciary's receptiveness to such arguments other than what appears in the reported judgment. There has not yet been an examination as to whether and how the submissions or judgements are using domestic and/or international jurisprudence to form their views. This data should be collected in order to inform the next legislative review of the Act.

In the interim, to promote consistency, the Queensland government should, in consultation with the judiciary, provide specific funding to an appropriate body to develop materials to support judicial decision-making, such as a Queensland Human Rights Act bench book, similar to the Judicial College of Victoria's *Charter of Human Rights Bench Book*. The Equal Treatment and Youth Justice bench books should be updated to include the Queensland Human Rights Act and associated practice.

There is still clearly the necessity of the Attorney-General and the Commission to play a catalytic role in shaping jurisprudence. There is information recorded on the interventions of the Queensland Human Rights Commission but the Commission does not have a formal amicus curiae role under the Act. Under sections 50 and 51, the Commission and the Attorney-General may intervene in legal proceedings. Since the commencement of the Act, the Commission and the Attorney-General have intervened in an average of 4 to 5 matters per year, not always in the same matters.¹³⁰

The Commission has recommended that the *Human Rights Act* should be amended to facilitate the Queensland Human Rights Commission's and Attorney-General's access to (confidential) court and tribunal proceeding information for the purpose of deciding whether to intervene in court or tribunal proceedings. Moreover, the Commission recommend that the *Human Rights Act* should be amended to allow it to act as an amicus curiae in court proceedings raising significant human rights issues, in addition to its existing intervention function. These provisions are sensible and I accept them at this stage of the Act's development.

129 <https://www.qhrc.qld.gov.au/resources/reports>

130 Submission 77.

Recommendations

The *Human Rights Act* should be amended to facilitate the Commission's and Attorney-General's access to (confidential) court and tribunal proceeding information for the purpose of deciding whether to intervene in court or tribunal proceedings.

The *Human Rights Act* should be amended to allow the Commission to act as an amicus curiae in court proceedings raising significant human rights issues, in addition to its existing intervention function.

The Queensland government should, in consultation with the judiciary, provide specific funding to an appropriate body to develop materials to support judicial decision-making, such as a Queensland Human Rights Act bench book, similar to the Judicial College of Victoria's *Charter of Human Rights Bench Book*.

The Equal Treatment and Youth Justice bench books should be updated to include the Queensland Human Rights Act and associated practice.

4.6 Public entity obligations

There has also been a slow burn on investing in the monitoring of the obligations on public entities (as defined in section 9) under Division 4 of the Act. These recommendations go towards increasing the support of public entities to fully engage with the Act.

Division 4 (Obligations on Public Entities) of the *Human Rights Act* should be amended to require a public entity that is the subject of recommendations made under section 88(4) to publish a response to the recommendations within three months. The Commission's functions should be amended to include monitoring implementation of recommendations made to public entities under section 88(4).

All public entities (assisted by the Human Rights Unit in the Department of Justice and Attorney-General and the Commission) should support staff at all levels to understand the value of applying human rights to their work, beyond merely a requirement of law or risk management tool.

All public entities should be provided with adequate resourcing and support to deliver customised human rights training to their staff and to integrate human rights considerations across all staff training. Human rights training should be regular, interactive and targeted – focusing on the rights most often engaged by the entity's decisions and actions.

4.6.1 Support for local government

Local councils in Queensland hold increasingly important human rights duties, including access to public buildings, public transport, pools, and parks; surveillance of people through closed circuit television; issues of sanitation, including hoarding cases; and the important areas of planning decisions and development applications. Local councils are key responders to a disaster and carry duties to vulnerable people during emergency responses. Local government actors feature in key cases about the Victorian Charter.¹³¹ The Review only received one submission from one council and little recognition that for many living in regional and remote Queensland, the relevant local council will have significant impact on the realization of human rights.

¹³¹ *Slattery v Manningham City Council* (Human Rights) [2013] VCAT 1869 (30 October 2013)

In the previous section 3.1, I have noted the urgent need to support local governments and their staff on how to comply with and promote the *QHRA*. This included measures where the Queensland Government would resource the Queensland Human Rights Commission to engage in an annual survey of local government employees, modelled on the *Working for Queensland* survey questions, to measure their views on the implementation of the *Human Rights Act*, as well as specific training and education products.

Training programs for local councils should explicitly spell out the steps required to comply with the obligation to properly consider human rights in decision-making processes. Training programs should also include practical guidance on how to integrate proportionality in decision-making processes. An excellent example is the Victorian Charter toolkit for local government actors named *Human Rights in Action Manual No. 2: Local government milestones and how to meet them*.¹³²

4.6.2 New participation duty

The most far-reaching recommendation is based on the National Framework for Human Rights discussion about specifying the participation duties for public entities.

The AHRC model proposes that a positive duty should also incorporate a binding procedural obligation to engage in participation processes where a decision disproportionately affects the rights of Aboriginal or Torres Strait Islander people, people with disability, or children. It posited that this participation duty would be procedural element of the ‘proper consideration’ limb of the positive duty.¹³³

Participation obligations on public entities

Section 58 of the *Human Rights Act* should be amended so that public entities have an express duty to ensure the participation of:

- First Nations peoples in decisions that directly or disproportionately affect First Nations peoples (based on articles 18 and 19 of UNDRIP (collective consultation rights));
- children in decisions that directly or disproportionately affect children, the views of the child being given due weight in accordance with the age and maturity of the child (based on articles 3 and 12 of the CRC (best interests and ‘right to be heard’));
- people with disabilities in decisions that directly or disproportionately affect people with disabilities (based on articles 4(3) and 12 of the CRPD (participation and equal recognition before the law)).

The language used in the international treaties underlying these obligations includes the following examples:

- UN Declaration on the Rights of Indigenous Peoples, Article 18: Indigenous peoples have the right to *participate in decision-making in matters which would affect their rights*, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.
- UN Declaration on the Rights of Indigenous Peoples, Article 19: States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent *before adopting and implementing legislative or administrative measures that may affect them*.
- Convention of the Rights of People with Disabilities, Article 4(3): *In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities*, States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations (italics added).

The Commonwealth Government is yet to respond to the Inquiry into the National Framework on Human Rights.¹³⁴ If a national human rights act is passed in 2025, it would be advisable for the Queensland Act to be aligned with it. Guidance will have to be provided on the scope of the procedural rights, including timing, where people refuse to engage, and how the decision-maker should deal with a range of conflicting feedback.

¹³² https://www.vlga.org.au/sites/default/files/0626%20VLGA%20HRK%20Man2Txt_v5_online.pdf

¹³³ Australian Human Rights Commission, Free & Equal Position Paper: A Human Rights Act for Australia, December 2022, pp. 218–219.

¹³⁴ https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/HumanRightsFramework/Report

4.6.3 Non-state schools

Finally, many submissions noted that the legislative note regarding the example of non-state schools under section 9(1)(h) of the *Human Rights Act* cannot be justified and should be removed. The current exclusion has the effect of providing non-state schools with wider exclusions than under section 41 of the *Anti-Discrimination Act 1991* (Qld). It is important that the Queensland human rights and discrimination laws become aligned.

Recommendation

Participation obligations on public entities

The *Human Rights Act* should be amended so that public entities have an express duty to ensure the participation of:

- First Nations peoples in decisions that directly or disproportionately affect First Nations peoples (based on articles 18 and 19 of UNDRIP (collective consultation rights));
- children in decisions that directly or disproportionately affect children (based on articles 3 and 12 of the CRC (best interests and ‘right to be heard’));
- people with disabilities in decisions that directly or disproportionately affect people with disabilities (based on articles 4(3) and 12 of the CRPD (participation and equal recognition before the law)).

The legislative note regarding the example of non-state schools under section 9(1)(h) of the *Human Rights Act* cannot be justified and should be removed.

4.7 Complaints and dispute resolution provisions

Part 4, division 2 of the *QHRA* establishes a human rights complaint mechanism, the first of its kind at a state or territory level in Australia and therefore without precedent. If a person believes they are the subject of a public entity’s failure to comply with their human rights obligations, they may make a complaint to the relevant public entity. If that complaint cannot be resolved with the public entity, the person may then make a human rights complaint to the QHRC. The QHRC may try to informally resolve the complaint by discussing the matter with the complainant and the public entity or, if appropriate, attempt to resolve the complaint through conciliation.

The QHRC’s submission summarises key data about complaints from paragraphs 219 to 220 and notes the significant impact of Covid-19 related complaints in the early years of the Act. Between 1 January 2020 and 30 June 2023 the Commission finalised 1,429 complaints related to the Human Rights Act. This included 787 human rights only complaints and 642 ‘piggy-back’ complaints made under the *Anti-Discrimination Act*. Of the finalised complaints, 594 complaints were accepted for resolution. Of these, 167 were Human Rights Act only matters, and 427 were piggy-back complaints. Notably, the Commission recorded 97 complaints made by Aboriginal people and Torres Strait Islander people in the first 4 years of the Act, 54 of which were accepted for resolution by the Commission.

4.7.1 Summary of issues

One of the issues raised with the Reviewer was that the 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. The QHRC’s submission notes that the approach to recording complaints varies significantly between the agencies, which it noted in its first annual report.¹³⁵

The only references in the Act to public entities and complaints are to:

- establish that only persons who have complained to the public entity and waited 45 business days for a response are

¹³⁵ Queensland Human Rights Commission, ‘Putting people first: the first annual report on the operation of Queensland’s Human Rights Act 2019’, page 109.

- able to make a complaint to the QHRC (subject to some exceptions) (section 65(1)); and
- create an annual reporting requirement for some public entities to report details of any human rights complaints received, including the number of complaints and the outcome of the complaints (section 97(2)(b)).

In the absence of statutory clarity, different departments have taken different approaches to human rights complaints, particularly in relation to when and how complaints are identified and recorded as human rights complaints. Some entities have required strict compliance with the ‘magic words’ that the complainant should use the term ‘human rights’ and identify the correct right allegedly in breach. Questions have also been raised with the reviewer about whether third parties can complain on behalf of others.

A strict legal analysis makes it clear that section 63 makes the form of the complaint determinative over the substance, but that may make it hard for vulnerable people to make a valid complaint under the Act.

We also heard many cases from advocates where their client felt real fear of recriminations from making a complaint to the public entity in the first instance. This is a material issue for many frontline agencies such as Child Safety, Police, Corrections and Youth Justice. There is no provision offering protection against victimisation in the QHRA.

Complaints under the *Anti-Discrimination Act 1991* (Qld) have been assessed by the *Building Belonging* inquiry conducted by the Queensland Human Rights Commission, and I suggest that the best way forward is to ensure that the human rights and anti-discrimination complaints processes are aligned as closely as possible in every respect.¹³⁶ Both processes are in need of reform as the Commission notes:

*The current process is prescriptive and rigid procedural timeframes and notification requirements limit the ability to deal with complaints efficiently and effectively. The Commission’s process should be reshaped to be more flexible, responsive, and tailored to the nature of the complaint.*¹³⁷

The emphasis should also be on allowing the most vulnerable and marginalised people in the state of Queensland access to the complaints mechanism, as was clearly intended. For these reasons, the Commission is the best filter of complaints. I do not see the new clearing house in the Public Sector Commission as a solution. Coaldrake’s recommendation of a complaints clearing house across the Queensland public sector is a sound one¹³⁸ but the ability to determine a substantive human rights complaint in a clearing house setting might be difficult without specialist staff.

These complex requirements make it crucial that QHRC staff are extremely well-versed in human rights issues to be able to deal with complaints in an efficient manner. Maternity Choices Australia for example submitted that the ‘QHRC’s staff needs to have comprehensive training in women and international human rights law and jurisprudence, and the aims and spirit of the CEDAW’.¹³⁹ The *QHRA* needs effective dispute resolution principles that are well socialised. The Covid-19 experience has also demonstrated that the Commission needs more flexibility and discretion in dealing with, or refusing to deal with, complaints, much like section 46PH of the *Australian Human Rights Commission Act 1986*.

¹³⁶ Queensland Human Rights Commission. *Building Belonging: Review of Queensland’s Anti-Discrimination Act 1991*, July 2022, recommendations 7-12. [Building belonging: Summary of the final report and recommendations from the Queensland Human Rights Commission Review of the Anti-Discrimination Act \(qhrc.qld.gov.au\)](https://www.qld.gov.au)

¹³⁷ Queensland Human Rights Commission. *Building Belonging: Review of Queensland’s Anti-Discrimination Act 1991*, July 2022, at p. 11.

¹³⁸ Peter Coaldrake, *Let the sunshine in: Review of culture and accountability in the Queensland public sector* (Final Report, 28 June 2022) <<https://www.coaldrakereview.qld.gov.au/assets/custom/docs/coaldrake-review-final-report-28-june-2022.pdf>>.

¹³⁹ Submission 78

Recommendations

Alignment with Anti-Discrimination Act

The *Human Rights Act* should be aligned with recommendations to reform similar complaints processes under the *Anti-Discrimination Act 1991* as it may be amended, including timeframes.

The *Human Rights Act* should be amended to include a prohibition against victimisation, based on section 129 of the *Anti-Discrimination Act 1991*.

Requirements for making human rights complaint to commissioner

Section 65 of the *Human Rights Act*, which requires a complaint about an alleged contravention of the Act to be made to the relevant public entity prior to any complaint to the Queensland Human Rights Commission, should be repealed.

In the alternative,

- section 65(1)(b) of the *Human Rights Act* should be amended to reduce the required period after making a complaint to a public entity from 45 business days to 30 business days; and
- all public entities (assisted by the Human Rights Unit of the Department of Justice and Attorney-General and the Queensland Human Rights Commission) should improve their ability to consistently identify, record and respond to human rights complaints on a substantive basis.

Complaints clearing house

The new complaints clearing house process (as recommended by the Coaldrake Review) should:

- include as a principle a special focus and training on reasonable adjustments required by the most vulnerable people in Queensland to access a complaints process; and
- create a referral mechanism to the Queensland Human Rights Commission but not screen complaints out without careful appraisal of substantive claims.

Effective dispute resolution

Principles of effective dispute resolution should be enshrined in the *Human Rights Act*. These principles should include:

- Dispute resolution should be provided as early as possible.
- The type of dispute resolution offered should be appropriate to the nature of the complaint.
- The dispute resolution process should be fair to all parties.
- Dispute resolution should be consistent with the objectives of the *Human Rights Act*.

Enhanced flexibility in complaints

The *Human Rights Act* should be amended to clarify that verbal complaints can be accepted and transcribed by the Queensland Human Rights Commission.

The scope of the Queensland Human Rights Commission's discretion to refuse to deal or continue to deal with a complaint in sections 70(1)(a) and (b) should be clarified by way of legislative amendment or explanatory guidance by an appropriate expert.

The *Human Rights Act* should be amended to expressly identify the Queensland Human Rights Commission's discretion to refuse to deal with a complaint if the Commissioner considers there is no utility in dealing with the complaint, because the processes available under the *Human Rights Act* are unlikely to achieve a satisfactory result.

5 Additional human rights

The Terms of Reference for the review, reflecting section 95(4) of the Act, required that the independent review specifically consider whether additional human rights should be included as human rights under the Act.

5.1 The legislative background

The *QHRA* currently protects 23 human rights. The Reviewer was mindful that the rights currently protected in the *QHRA* are primarily drawn from the ICCPR (as the protection of civil and political rights is often the first step in developing new human rights legislation), and that, with the exception of the rights for children in the criminal process and cultural rights for Aboriginal Peoples and Torres Strait Islander Peoples, the *QHRA* does not contain specific rights for groups of people, nor are particular groups of people, such as women, people with a disability, victims of crime or others specifically named. Economic, social and cultural rights also deserved further consideration.

The Review was interested in reconsidering this approach, and thinking ambitiously about the challenges faced by Queenslanders and those in Queensland, currently and into the future, in determining what additional rights should be recommended for inclusion under the Act. To explore these issues, provide background and encourage discussion around several potential new rights, the review team developed a *Discussion Paper: Potential New Rights*.¹⁴⁰ This paper provided a synthesis of emerging human rights considered by the UN Human Rights Council and Office of the High Commissioner for Human Rights. On 15 and 16 July 2024 the review team conducted two public New Rights Forums in Brisbane, which were attended by 37 participants. The Discussion Papers prepared for the public sector and community also encouraged submissions around new rights.

5.2 New rights

Based on consultations, I recommend that the *QHRA* be amended to include three new rights:

- the right to adequate housing
- the right to a clean, healthy and sustainable environment; and
- the right to live free from gender-based violence.

5.2.1 Right to adequate housing

This Review recognises that Queensland, and Australia, is currently in the midst of a housing crisis, with an acute lack of affordable housing and homelessness on the rise. I heard that message loud and clear in every corner of this state.

The Queensland Government has acknowledged that homelessness is “a vicious cycle” that is particularly challenging for “people who have low income and struggle with complex health challenges, past trauma or family instability.”¹⁴¹ The lack of secure and affordable housing similarly has compound effects, with many households compromising on other essential spending, such as heating or food, or moving further away from family or community networks to meet employment and education opportunities. According to the National Housing Supply and Affordability Council, deteriorating affordability is “particularly problematic for vulnerable groups, including low-income households, single parents, young people, single pensioners, those fleeing domestic or family violence, people with disability, and First Nations Australians.”¹⁴²

Currently, the *QHRA* requires that public entities, including housing services which are funded by a provider or the state

¹⁴⁰ ‘Discussion Paper: Potential New Rights’, *Independent Review of the Human Rights Act*, (PDF, June 2024) <https://www.humanrightsreview.qld.gov.au/__data/assets/pdf_file/0007/805453/qhra-review-discussion-paper-new-rights-1.pdf>.

¹⁴¹ Work towards ending homelessness’, *Queensland Government* (Web Page, 2 August 2024) <<https://www.housing.qld.gov.au/homesforqueenslanders/initiatives/homelessness>>.

¹⁴² National Housing Supply and Affordability Council, *State of the Housing System* (May 2024) 3 <<https://nhsac.gov.au/sites/nhsac.gov.au/files/2024-05/state-of-the-housing-system-2024.pdf>>.

government under the *Housing Act 2003*, must consider an individual's human rights in the delivery of those services.¹⁴³ Tenants in social housing therefore have some existing protections under the Act. The Reviewer was advised of examples where advocates had been able to utilise the *QHRA* to achieve positive housing outcomes for their clients.¹⁴⁴

However, the Review repeatedly heard Queenslanders' concerns about the need for enhanced human rights protections in supporting access to safe and secure housing, with more than a third of submissions supporting the inclusion of a new right. For example, one organisation stated:

*... a right to housing [in] the Act... would provide a framework and avenue for households to seek to have their rights addressed when finding, getting and keeping housing. It would also most likely maintain momentum and commitment to adequate levels of resources to address unmet housing needs so that a right to housing is achievable.*¹⁴⁵

The introduction of a right to adequate housing was also the number one issue identified at both of the New Rights forums hosted by the Review.

The Reviewer recommends an amendment to the *QHRA* to include the right to adequate housing based on article 11(1) of the International Covenant of Economic, Social and Cultural Rights (ICESCR), which provides for “adequate standard of living, including adequate food, clothing and housing”. In interpreting article 11(1) of ICESCR the UN Committee on Economic, Social and Cultural Rights (CESCR) has emphasised that the right to adequate housing should not be interpreted narrowly; rather, it should be seen as the right “to live somewhere in security, peace and dignity.”¹⁴⁶ In 1991, the CESCR set out seven key elements of the right to adequate housing:

- *Legal security of tenure*, noting that “Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats.”
- *Availability of services, materials, facilities and infrastructure*, noting that “the right to adequate housing should have sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services.”
- *Affordability*, requiring that States parties take steps “to ensure that the percentage of housing-related costs is, in general, commensurate with income levels.”
- *Habitability*, in terms of providing inhabitants with “adequate space and protecting them from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors”.
- *Accessibility*, requiring that housing law and policy should take fully into account the special housing needs of disadvantaged groups, who should be accorded full and sustainable access to adequate housing resources.
- *Location*, noting that housing needs to be accessible to employment opportunities, health-care services, schools, childcare centres and other social facilities, and not located in polluted or dangerous areas.
- *Cultural adequacy*, requiring that the way housing is “constructed, the building materials used and the policies supporting these must appropriately enable the expression of cultural identity and diversity of housing.”¹⁴⁷

The right to adequate housing has been recognised in international treaties¹⁴⁸ and national instruments.¹⁴⁹ As a progressive

143 *Human Rights Act 2019* (Qld) s 10(3)(b)(vi).

144 Legal Aid Queensland, Submission No 39 to Independent Reviewer, *First Independent Review of the Human Rights Act 2019* (21 June 2024) 5; Caxton Community Legal Centre, Submission No 63 to Independent Reviewer, *First Independent Review of the Human Rights Act 2019* (5 July 2024) 7; Queensland Council of Social Service, Submission No 76 to Independent Reviewer, *First Independent Review of the Human Rights Act 2019* (5 July 2024) 3, 11.

145 Q Shelter, Submission No 79 to Independent Reviewer, *First Independent Review of the Human Rights Act 2019* (3 July 2024) 1.

146 UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant)*, UN Doc E/1992/23 (13 December 1991) [7]. See also ‘The human right to adequate housing’, *UN Special Rapporteur on the right to adequate housing* (Web Page) <<https://www.ohchr.org/en/special-procedures/sr-housing/human-right-adequate-housing>>

147 UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant)*, UN Doc E/1992/23 (13 December 1991) [8].

148 In addition to art 11(1) of ICESCR, housing rights are also referred to in: CERD, art 5(e)(iii); CEDAW, art 14(2)(h); CRC, art 27(3) and CRPD, art 28.

149 For example, *Constitution of the Republic of South Africa Act 1996* (South Africa), s 26; *The Constitution of Finland*, 11 June 1999 (731/1999), s 19. In Scotland, the *Housing (Scotland) Act 1987* and the *Homelessness etc. (Scotland) Act 2003* consolidated earlier legislation, clarifying definitions and processes to protect homeless households and those threatened with homelessness. In 2007, the National Assembly of France adopted the DALO law, which translates to ‘Enforceable Right to Housing’. The law provides a procedure to allow individuals to enforce their right to housing against the state if they are homeless or live in substandard housing conditions: See Fiona King, ‘Scotland: Delivering a Right to Housing’, (2015) 24 *Journal of Law and Social Policy* 155 <<https://doi.org/10.60082/0829-3929.1214>>; Claire Lévy-Vroelant, ‘The Right to Housing in France: Still a Long Way to Go from Intention to Implementation’ (2015) 24 *Journal of Law and Social Policy* 88 <<https://doi.org/10.60082/0829-3929.1210>>

right under the ICESCR, the introduction of the right to adequate housing would not impose an immediate obligation on the Queensland government to build or deliver housing for all Queenslanders who need it. Rather, it would require the government to take “deliberate, concrete and targeted” steps towards achieving the full realisation of the right within available resources.¹⁵⁰ This could involve effectively monitoring the full extent of homelessness and inadequate housing in Queensland, maintaining a state-wide housing strategy, ensuring coordination with local councils, and exploring appropriate public and private sector measures to address housing deficits and progress the realisation of the right.¹⁵¹

The adoption of a right to adequate housing would bring the *QHRA* into potential alignment with the Australian Human Rights Commission’s model Australian Human Rights Act¹⁵² and the Parliamentary Joint Committee on Human Rights, which recently recommended that a national Human Rights Act should include rights to an adequate standard of living, which would include rights to housing.¹⁵³

5.2.2 Right to a clean, healthy and sustainable environment

The natural environment – air, biodiversity, oceans, land and freshwater – supports human wellbeing and is a major determinant of the physical and mental health of Australians.¹⁵⁴ Queensland’s *State of the Environment 2020* report acknowledges that Queensland’s unique environment “not only provides essential life services such as clean air and water, it underpins our general health, wellbeing and happiness.”¹⁵⁵ Queensland Health’s *Prevention Strategic Framework 2017 to 2026* emphasises the link between “creating healthier environments where we live, learn, work and play to help people make healthier choices.”¹⁵⁶

The Reviewer heard community concerns about the impact of climate change, the increasing severity of natural disasters, and the loss of biodiversity and pollution. A third of written submissions to the independent review recommended the introduction of a new right to a clean, healthy and sustainable environment, which was also strongly supported at the New Rights forums hosted by the review team.

Several organisations suggested that the right to a clean, healthy, and sustainable environment was a necessary precondition for the enjoyment of other rights such as life, privacy, security of the person, equality, and cultural rights.¹⁵⁷

In supporting the introduction of a new right to a clean, healthy and sustainable environment, others highlighted the positive impact the enshrinement of the right would bring:

*...reduce environmental injustices, improve people’s quality of life, provide for stronger regulation, environmental protection laws, and improve people’s quality of life, particularly those already being impacted by climate change, pollution and loss of biodiversity.*¹⁵⁸

*..place people and communities at the heart of environmental protection, which is consistent with our current environmental laws, while recognising the many benefits of Queensland’s unique environment for the enjoyment of human rights.*¹⁵⁹

¹⁵⁰ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 3: The nature of States Parties’ Obligations (Art. 2 (1) of the Covenant)*, UN Doc E/1991/23 (14 December 1990) [1]- [2].

¹⁵¹ *Ibid* [12]-[14].

¹⁵² ‘A National Human Rights Act for Australia’, *Australian Human Rights Commission* (Web Page, 7 March 2023) <<https://humanrights.gov.au/human-rights-act-for-australia>>.

¹⁵³ Parliamentary Joint Committee on Human Rights, Parliament of Australia, *Inquiry into Australia’s Human Rights Framework* (Report, May 2024) chapter 6.

¹⁵⁴ UN Environment, *Global Environment Outlook – GEO-6: Summary for Policymakers* (2019) 588 <<https://www.unep.org/resources/global-environment-outlook-6>>; ‘Natural environment and health’, *Australian Institute of Health and Welfare* (Web Page, 2 July 2024) <<https://www.aihw.gov.au/reports/australias-health/natural-environment-and-health>>.

¹⁵⁵ Department of Environment and Science, *Queensland State of the Environment 2020: Summary* (August 2021) 2 <https://www.stateoftheenvironment.des.qld.gov.au/_media/documents/Queensland-State-of-the-Environment-2020-Summary.pdf>.

¹⁵⁶ Queensland Health, *Prevention Strategic Framework 2017 to 2026* (June 2023) 5 <https://www.health.qld.gov.au/__data/assets/pdf_file/0036/651798/prevention-strategic-framework.pdf>.

¹⁵⁷ For example, Health and Wellbeing Queensland, Submission No 53 to Independent Reviewer, *First Independent Review of the Human Rights Act 2019* (21 June 2024); Amnesty International Australia, Submission No 59 to Independent Reviewer, *First Independent Review of the Human Rights Act 2019* (5 July 2024) [5.7].

¹⁵⁸ Amnesty International Australia, Submission No 59 to Independent Reviewer, *First Independent Review of the Human Rights Act 2019* (5 July 2024) [5.8].

¹⁵⁹ Environmental Defenders Office, Submission 68 to Independent Reviewer, *First Independent Review of the Human Rights Act 2019* (5 July 2024) 9.

One organisation suggested that the right to a clean, healthy, and sustainable environment can “contribute to enhancing wellbeing into the future, requiring a balancing of short-term needs with long-term needs, and a focus on preventing problems occurring or getting worse” and “would help mitigate the health impacts of overconsumption, including obesity and chronic disease” as well as “help address the compounding social inequity exacerbated by climate change and other systemic factors, promoting wellbeing and equitable health outcomes for all individuals.”¹⁶⁰

International treaty law does not currently provide for the right to a clean, healthy and sustainable environment as a stand-alone right. However, the right to a healthy environment is an aspect of rights recognised in international human rights treaties to which Australia is a party, and reflected in several rights already recognised in the *QHRA*, such as:

- right to life (*QHRA*, s 16; ICCPR art 16(1))
- right to take part in public life (*QHRA*, s 23; ICCPR art 25)
- cultural rights of Aboriginal and Torres Strait Islander people (*QHRA*, s 28; UNDRIP, arts 8, 25, 29 and 31)

In October 2021, the United Nations Human Rights Council adopted a resolution recognising “the right to a clean, healthy and sustainable environment as a human right that is important for the enjoyment of human rights.”¹⁶¹ In July 2022, the United Nations General Assembly reaffirmed the recognition of this human right, the resolution calling upon “States, international organizations, business enterprises and other relevant stakeholders to adopt policies, to enhance international cooperation, strengthen capacity-building and continue to share good practices in order to scale up efforts to ensure a clean, healthy and sustainable environment for all.”¹⁶² Australia was among the 161 states voting in favour of the resolution.

In 2023, the ACT Government introduced a Bill to amend the ACT’s *Human Rights Act 2004*, to include the right to a healthy environment in the ACT’s human rights framework.¹⁶³ The *Human Rights (Healthy Environment) Amendment Act 2024* passed into law on 28 August 2024.

The Reviewer recommends an amendment to the *QHRA* to include the right to a healthy environment as a broad statement of principle, expressed in the same terms as the General Assembly resolution. The Reviewer endorses the wording of this new right in similar terms to the amendment to the *Human Rights Act 2004* recently passed in the ACT:

27C Right to a healthy environment

- (1) Everyone has the right to a clean, healthy and sustainable environment.
- (2) Everyone is entitled to enjoy this right without discrimination.¹⁶⁴

Given that the right to a healthy environment is a precondition to the enjoyment of many of the civil and political rights, the Reviewer recommends that the new right should be included in its own Division in Part 2 of the *QHRA*.

The adoption of this new right would bring the *QHRA* into alignment with the ACT, the Australian Human Rights Commission’s model Australian Human Rights Act,¹⁶⁵ the Parliamentary Joint Committee on Human Rights recommendation for a federal Human Rights Act,¹⁶⁶ as well as 161 United Nations Member States which recognise the right to a healthy environment through regional human rights treaties and/or national constitutions or legislation.¹⁶⁷ It will also align the Act with the jurisprudence within the Queensland case of *Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors (No 6)* [2022] QLC 21, when the Queensland Land Court recommended to the Resources Minister and the Department of Environment and

¹⁶⁰ *ibid.*

¹⁶¹ Human Rights Council, *The human right to a clean, healthy and sustainable environment*, 48th sess, UN Doc A/HRC/RES/48/13 (8 October 2021) 3..

¹⁶² United Nations General Assembly, *The human right to a clean, healthy and sustainable environment*, GA Res 76/300, UNGAOR, 76th sess, Agenda Item 74(b), UN Doc A/RES/76/300 (1 August 2022, adopted 28 July 2022).

¹⁶³ Explanatory Statement, Human Rights (Healthy Environment) Amendment Bill 2023 (ACT).

¹⁶⁴ Human Rights (Healthy Environment) Amendment Bill 2023 (ACT).

¹⁶⁵ ‘A National Human Rights Act for Australia’, *Australian Human Rights Commission* (Web Page, 7 March 2023) <<https://humanrights.gov.au/human-rights-act-for-australia>>.

¹⁶⁶ Parliamentary Joint Committee on Human Rights, Parliament of Australia, *Inquiry into Australia’s Human Rights Framework* (Report, May 2024) ch 6.

¹⁶⁷ David R. Boyd (Special Rapporteur on The Human Right to a Clean, Healthy And Sustainable Environment), *The Right to a Healthy Environment: A User’s Guide* (2024) 8 <<https://www.ohchr.org/sites/default/files/documents/issues/environment/srenvironment/activities/2024-04-22-stm-earth-day-sr-env.pdf>>

Science that a mining lease and environmental authority for the Waratah mine coal mine in the Galilee Basin be refused on several grounds, in part because the resulting limitation on human rights caused by climate change was not demonstrably justified.

The Special Rapporteur on Human Rights and the Environment has defined the right to a healthy environment as containing both substantive and procedural elements.¹⁶⁸ The six substantive elements are clean air; a safe climate; safe and sufficient water; healthy and sustainably produced food; non-toxic environments; and healthy eco-systems and biodiversity. The Special Rapporteur recognised that procedural elements are critical in order to achieve recognition of the substantive rights. The addition of the right to a clean, healthy and sustainable environment to the *QHRA* would give rise to procedural obligations on Queensland’s Parliament, Courts and Tribunals and Government departments and agencies, such as:

- legislating to make environmental information publicly accessible;
- assessing environmental impacts in decision making;
- facilitating public participation in decision making;
- providing legal standing to individual citizens or environmental organisations to file lawsuits in the public interest;
- offering access to remedies for environmental harms.¹⁶⁹

In drafting a new right to a healthy environment, and in alignment with the proposed participation obligation recommended by this review, Aboriginal and Torres Strait Islander peoples must be consulted on how best to recognise the relationship between the right to a healthy environment and the rights to culture, health and self-determination for Aboriginal and Torres Strait Islander peoples.

5.2.3 Right to live free from gender-based violence

Gender-based violence continues to be one of the most prevalent human rights abuses in Queensland and across Australia, with impacts including physical and sexual injuries as well as psychological and emotional harm that can impact on a woman’s potential to flourish and enjoy life. Violence against women and children can also cause economic security: for example, domestic and family violence is a leading driver of homelessness for women.¹⁷⁰

While the right of a person to live free from gender-based violence is not specifically provided for in the *QHRA*, gender-based violence engages several rights already protected under the *QHRA*. For example, relevant protected human rights for victims of sexual assault include the right to life (*QHRA*, s 16); freedom from torture and cruel, inhuman or degrading treatment (*QHRA*, s 17), and the right to equality (*QHRA*, s 15), noting that victims of sexual assault are predominantly women.

The need for strengthened protections in the *QHRA* related to gender-based violence – including domestic violence, sexual violence, workplace harassment, and trafficking – was supported in several submissions to the independent review.¹⁷¹

*The HRA should specifically acknowledge domestic and family violence as acts which are inconsistent with human rights and ensure that public entities bound by the act are specifically aware of their role and responsibility to take action to address domestic and family violence.*¹⁷²

168 *ibid*, 15-27.

169 *Ibid*, 16; ACT Government (Justice and Community Safety Directorate), *Right to a Healthy Environment: Discussion Paper - Public consultation to inform consideration of the introduction of a right to a healthy environment in the Human Rights Act 2004* (2022) 9 <https://www.justice.act.gov.au/__data/assets/pdf_file/0007/2072383/Discussion_Paper_-_Right_to_a_Healthy_Environment.pdf>

170 Department of Social Services (Australian Government), *National Plan to End Violence against Women and Children 2022–2032: Executive Summary* (25 September 2023) 13 <https://www.dss.gov.au/sites/default/files/documents/12_2023/national-plan-executive-summary.pdf>

171 Environment and Social Governance Research Group, Submission No 4 to Independent Reviewer, *First Independent Review of the Human Rights Act 2019* (21 June 2024) 8; Brisbane West Conservation Network, Submission No 12 to Independent Reviewer, *First Independent Review of the Human Rights Act 2019* (20 June 2024) 3; Queensland Injectors Voice for Advocacy and Action, Submission No 29 to Independent Reviewer, *First Independent Review of the Human Rights Act 2019* (21 June 2024) 7; Soroptimist International of Brisbane, Submission No 32 to Independent Reviewer, *First Independent Review of the Human Rights Act 2019* (21 June 2024); Full Stop Australia, Submission No 70 to Independent Reviewer, *First Independent Review of the Human Rights Act 2019* (July 2024); Maternity Choices Australia, Submission No 74 to Independent Reviewer, *First Independent Review of the Human Rights Act 2019* (5 July 2024); Queensland Council of Social Service, Submission No 76 to Independent Reviewer, *First Independent Review of the Human Rights Act 2019* (5 July 2024).

172 Environment and Social Governance Research Group, Submission No 4 to Independent Reviewer, *First Independent Review of the Human Rights Act 2019* (21 June 2024) 8.

The Reviewer recommends an amendment to the *QHRA* to add the right of a person to live free from gender-based violence, based on the the 2011 *Convention on Preventing and Combating Violence against Women and Domestic Violence* (known as the Istanbul Convention). Drawing on the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Istanbul Convention is a legally binding regional instrument that requires the 46 states in the Council of Europe to

*... take the necessary legislative and other measures to promote and protect the right for everyone, particularly women, to live free from violence in both the public and the private sphere.*¹⁷³

CEDAW does not explicitly mention violence against women and girls. However, in 1992 the CEDAW Committee (which monitors implementation of the Convention) clarified that discrimination against women, as defined in article 1 of the Convention, included gender-based violence.¹⁷⁴ In 2017, the CEDAW Committee further elaborated, recognising that the prohibition of gender-based violence against women had evolved into a principle of customary international law, binding all States.¹⁷⁵ The Declaration on the Elimination of Violence Against Women, adopted by the UN General Assembly in December 1993 and CEDAW Committee's General Recommendation No. 35 provided for the concept of due diligence, an obligation on States parties to take positive action to prevent gender-based violence, to investigate, prosecute and punish perpetrators of violent acts and provide reparations to victims/survivors of violence.¹⁷⁶

The addition of the right of a person to live free from gender-based violence would oblige the Queensland Government to adopt and implement measures necessary to prevent, investigate, punish and provide reparation for acts of violence perpetrated by non-state actors;¹⁷⁷ allocate appropriate financial and human resources to effectively implement policies and programmes to prevent and combat gender-based violence;¹⁷⁸ establish official bodies to ensure coordination, implementation, monitoring and evaluation of policies and measures;¹⁷⁹ and collect and make public statistical data on gender-based violence.¹⁸⁰

5.3 Preamble

5.3.1 Rights of future generations

During consultations the Reviewer heard community concern around intergenerational fairness. Environmental challenges, such as vegetation loss and degradation and pollution, and climate change are widely recognised as intergenerational issues – with future generations to inherit the more severe impacts of contemporary policy failures.¹⁸¹ The widening gap in Australia's intergenerational income and housing wealth,¹⁸² coupled with escalating university debts¹⁸³ and concerns that our tax systems favour older, wealthy Australians¹⁸⁴ have also focused attention on the long term impacts of government decision-making.

¹⁷³ *Convention on preventing and combating violence against women and domestic violence*, opened for signature 11 May 2011, CETS No 210 (entered into force 1 August 2014) art 4(1).

¹⁷⁴ Committee on the Elimination of Discrimination against Women, General recommendation No. 19: Violence against women, 1992, [6], [1] <<https://www.ohchr.org/en/treaty-bodies/cedaw/general-recommendations>>.

¹⁷⁵ Committee on the Elimination of Discrimination against Women (CEDAW Committee), General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, UN Doc CEDAW/C/GC/35 (26 July 2017) [2] <<https://www.ohchr.org/en/treaty-bodies/cedaw/general-recommendations>>.

¹⁷⁶ United Nations General Assembly (UNGA), Declaration on the Elimination of Violence against Women, adopted 20 December 1993, GA Res 48/104, A/RES/48/104; CEDAW Committee, General recommendation No. 35, [2]; UNGA, Declaration on the Elimination of Violence against Women, art 4(c).

¹⁷⁷ *Ibid* art.7.

¹⁷⁸ *Ibid* art.8.

¹⁷⁹ *Ibid* art.10.

¹⁸⁰ *Ibid* art.11.

¹⁸¹ Jodi-Ann Wang and Tiffanie Chan, 'What is meant by intergenerational climate justice?' *The London School of Economics and Political Sciences* (Web Page, 7 December 2023) <<https://www.lse.ac.uk/granthaminstitute/explainers/what-is-meant-by-intergenerational-climate-justice/>>.

¹⁸² Rachel Ong Viforj and Christopher Phelps, 'Australia's growing intergenerational housing wealth divide: trends and policy implications', *CEDA* (Web Page, 5 February 2023) <<https://www.ceda.com.au/newsandresources/opinion/built-environment-urban-planning-cities/australia-s-growing-intergenerational-housing-wealth>>.

¹⁸³ Sarah Behenna, 'HELP! Is your HECS-HELP debt compounding out of control too?' *Women's Agenda* (Web Page, 11 April 2024) <<https://womensagenda.com.au/latest/help-is-your-hecs-help-debt-compounding-out-of-control-too/>>.

¹⁸⁴ Think Forward, *Bridging the Generational Gap: Perspectives on Tax Reform from Gen Z and Millennials* (Report, November 2023) <<https://www.thinkforward.org.au/research>>.

To address these concerns, the Reviewer recommends that the preamble to the *QHRA* be amended to add a provision requiring public authorities to consider the priorities and interests of future generations in government policy and decision-making. The preambular text could draw on the United Nations Declaration on Future Generations, which recognises

*...that the decisions, actions and inactions of present generations have an intergenerational multiplier effect, and therefore resolving to ensure that present generations act with responsibility towards safeguarding the needs and interests of future generations...*¹⁸⁵

The introduction of a reference to the rights of future generations in the *QHRA* offers the opportunity to highlight the impact of short-term policy development and encourage more systemic and longer-term approaches to governance in Queensland. It would bring the *QHRA* into line with other governments who are exploring mechanisms to consider future generations within decision-making frameworks¹⁸⁶ as well as the United Nations, which has adopted a UN Declaration for Future Generations and created a Special Envoy on Future Generations.¹⁸⁷

5.4 Rights requiring further exploration

Consultations suggested that several other rights deserve further exploration before the next review of the Act, as provided for in section 96.

5.4.1 Right to self-determination for Aboriginal and Torres Strait Islander Peoples

The *QHRA* contains a reference to the right to self-determination for Aboriginal and Torres Strait Islander peoples in the Preamble:

*6 Although human rights belong to all individuals, human rights have a special importance for the Aboriginal peoples and Torres Strait Islander peoples of Queensland, as Australia's first people, with their distinctive and diverse spiritual, material and economic relationship with the lands, territories, waters, coastal seas and other resources with which they have a connection under Aboriginal tradition and Ailan Kastom. Of particular significance to Aboriginal peoples and Torres Strait Islander peoples of Queensland is the right to self-determination.*¹⁸⁸

The independent review considered whether there should be an explicit mention of the right to self-determination in section 28 (Cultural rights—Aboriginal peoples and Torres Strait Islander peoples), or as an interpretative principle more generally in the Act. I was influenced by the contemporaneous national human rights discussion, most particularly the PJCHR's recent consideration of how best to promote the rights of Aboriginal and Torres Strait Island peoples in their report on the *Inquiry into Australia's Human Rights Framework*.¹⁸⁹ I have decided to recommend new participation obligations on public entities (see discussion at 4.6.2), based in part on the collective consultation rights outlined in articles 18 and 19 of UN-DRIP. I suggest that the Queensland Government seek further advice on including the right to self-determination before the next review of the *QHRA*.

5.4.2 The right to access government information and services in accessible formats and access the internet for essential government services

During consultations, the Review heard repeatedly about the barriers faced by many Queenslanders in accessing government information and services. The challenges described extended beyond internet connectivity issues (particularly

¹⁸⁵ Declaration on Future Generations, *United Nations* (PDF) <<https://www.un.org/sites/un2.un.org/files/sotf-the-pact-for-the-future.pdf>>.

¹⁸⁶ For example, the Finnish Committee for the Future, established in 1993 and the United Kingdom's All-Party Parliamentary Group for Future Generations, established in 2018. In Wales, the *Wellbeing of Future Generations Act 2015* (Wales) established a strong political commitment to intergenerational justice through the establishment of the independent statutory role of the Welsh Commissioner for Future Generations, supported by an Office for Future Generations: 'The Well-being of Future Generations', *Welsh Government* (Web Page) <<https://www.gov.wales/well-being-of-future-generations-wales>>.

¹⁸⁷ 'Summit of the Future', *United Nations* (Web Page) <<https://www.un.org/en/common-agenda/summit-of-the-future>>. See also United Nations, *Our Common Agenda Policy Brief 1: To Think and Act for Future Generations* (2023) <<https://www.un.org/sites/un2.un.org/files/our-common-agenda-policy-brief-future-generations-en.pdf>>.

¹⁸⁸ *Human Rights Act 2019* (Qld) preamble para 6.

¹⁸⁹ Parliamentary Joint Committee on Human Rights, Parliament of Australia, *Inquiry into Australia's Human Rights Framework* (Report, May 2024).

in regional and remote areas) to also include the availability of government information and services. I heard from older Queenslanders who struggled to navigate digital systems, disability organisations who highlighted the need for materials in accessible formats, and Queenslanders from culturally and linguistically diverse backgrounds who required translated materials and interpreters to fully engage with government services.

While digital technology and the internet offer the public sector enormous opportunities in efficiently delivering services, boosting transparency and engaging with citizens, there remains a significant ‘digital divide’ between people with effective access to the internet, digital and information technologies, and those with very limited or no access.¹⁹⁰ The Australian Digital Inclusion Index shows that one in four people in Australia are still digitally excluded, with people with low levels of income, education and employment, those living in some regional areas, people aged over 65 and people with a disability at particular risk of being left behind.¹⁹¹

The right to access the internet has been recognised as an aspect of rights in international human rights instruments¹⁹² and legislatively recognised by several countries, with legislation in Finland¹⁹³ and Spain¹⁹⁴ additionally requiring specific internet speeds of at least one Megabit per second. In France and Costa Rica, constitutional court decisions have declared the right to access the internet a fundamental human right.¹⁹⁵ It has also been argued that full digital inclusion requires governments to take measures beyond mere access, to include initiatives to build confidence and security in the use of the internet to address the digital divide.¹⁹⁶

There is legislation and policies in place in Queensland aimed at improving accessibility to government information. The *Right to Information Act 2009* and *Information Privacy Act 2009* provide the basis for a whole of government right to government information,¹⁹⁷ there are guidelines around government department’s making digital services accessible,¹⁹⁸ and the Queensland Language Services Policy requires that all Queensland government agencies provide and pay for qualified interpreting services for customers who are hearing impaired or have difficulties communicating in English.¹⁹⁹ There are also some international human rights provisions addressing these issues which could be drawn on.²⁰⁰

Given the level of concern expressed to the Reviewer about these issues I suggest that they be further explored before the next review of the *QHRA*.

5.4.3 Right to compensation for wrongful conviction

Wrongful convictions can arise due to systemic factors such as eyewitness misidentification, flawed scientific or forensic evidence, outdated expert evidence, misconduct by state officials including police or prosecutors, biased investigations, faulty legal representation or when an individual makes a false confession.²⁰¹ Australia has experienced a number of high-profile wrongful convictions, including the Lindy and Michael Chamberlain case in the Northern Territory, the David

190 Australian Human Rights Commission, *Background Paper: Human Rights in Cyberspace* (September 2013) <https://humanrights.gov.au/sites/default/files/document/publication/human_rights_cyberspace.pdf>.

191 Julian Thomas et al, *Measuring Australia’s Digital Divide: Australian Digital Inclusion Index* (Report, 2023).

192 While international treaty law does not currently provide for the right to access the internet, Arts 9 and 21 of CRPD expressly refer to access to the Internet for people with disabilities, including through the use of accessible formats. The right to access the internet is also an aspect of rights recognised in Art 19 UDR and Art 19 ICCPR (freedom to seek, receive and impart information and ideas through any media) and Art 27, UDHR (right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits). See also European Union’s Parliament and Council Directive 2002/22/EC of 7 March 2002 on universal service and users’ rights relating to electronic communications networks and services [2002] OJ L 108/51, art 4.

193 *Communications Market Act* (Finland) s 60C.

194 *Law 2/11, of March 4, of Sustainable Economy* (Spain).

195 France: Decision n 2009-580 of June 10th 2009 https://www.conseil-constitutionnel.fr/sites/default/files/as/root/bank_mm/anglais/2009_580dc.pdf; Costa Rica: *Valdelomar and Sibaja v. Costa Rican Superintendence of Telecommunications* Judgment No 10-13141-0007-C, 2010-1279.

196 *World Summit on the Information Society: Plan of Action*, UN Doc WSIS-03/GENEVA/DOC (12 December 2003) para 25(c) <<http://www.un-documents.net/ws-is-poa.htm>>.

197 ‘Whole of government Right to Information’, *Queensland Government* (Web Page, 24 August 2023) <<https://www.rti.qld.gov.au>>.

198 ‘Make digital service accessible’, *Queensland Government* (Web Page, 13 December 2022) <<https://www.forgov.qld.gov.au/information-and-communication-technology/qgea-policies-standards-and-guidelines/digital-service-standard/make-digital-services-accessible>>.

199 ‘Supporting multicultural communities’, *Queensland Government* (Web Page, 27 May 2024) <<https://www.qld.gov.au/community/your-home-community/supporting-multicultural-communities>>.

200 For example, Art 19 of ICCPR refers to seeking, receiving and imparting information as part of the right to freedom of expression and Art 41 of CRPD specifically targets the provision of information in accessible formats and technologies.

201 Rachel Dioso-Villa, ‘Without Legal Obligation: Compensating the Wrongfully Convicted in Australia’ (2012) 75(3) *Albany Law Review* 1329; Rachel Dioso-Villa, ‘A Repository of Wrongful Convictions in Australia: First Steps toward Estimating Prevalence and Causal Contributing Factors’ (2015) 17 *Flinders Law Journal* 163.

Eastman case in the ACT and the Kathleen Folbigg case in New South Wales.

Currently, individuals wrongfully convicted do not have a common law or statutory right to compensation in any jurisdiction except the ACT.²⁰² In other jurisdictions, including Queensland, individuals must seek a discretionary ex gratia payment or file civil claims against those they believe to be responsible for their wrongful convictions (eg police, legal counsel, state officials). There is limited ability to challenge a conviction in the first place in order to receive compensation, as Queensland has no Criminal Case Review Commission.²⁰³

The right to compensation for wrongful conviction is drawn from Article 14(6) of the International Covenant on Civil and Political Rights (ICCPR), which provides a substantive right to compensation in case of miscarriage of justice in criminal cases. While Australia signed the ICCPR in 1972 and ratified it in 1980, it maintains a reservation on Article 14(6).²⁰⁴

The Reviewer is mindful that the possibility of wrongful convictions arising from the collection, testing and analysis of DNA samples was acknowledged by the 2022 Commission of Inquiry into Forensic DNA testing in Queensland²⁰⁵ and recommends that the right to compensation for wrongful conviction should be explored before the next review of the *QHRA*.

5.4.4 Human Rights and Disasters

The Queensland Government has released updated climate data modelling that shows the risk of disasters, including extreme heat events, increasing over time.²⁰⁶ This will have a serious impact on the human rights of those in Queensland.²⁰⁷ The UN Human Rights Committee decision on the Torres Strait complaint makes it clear that failure to take measures to prevent or mitigate the consequences of foreseeable disasters can amount to a violation of the right to life, the right to enjoy culture and be free from arbitrary interferences with private life, family and home.²⁰⁸ Some adaptation measures such as the retreat and relocation of communities away from locations of high risk, which will become more prevalent as climate impacts worsen, rezoning land and requiring managed retreat of communities also raise human rights issues given the significant impact on people's livelihoods and wellbeing.²⁰⁹

Particular urgent attention should be paid to a human rights audit of disaster evacuations in Queensland, including child safeguarding and the prevention of intimate partner and family violence during emergencies. Another urgent issue is the design and impact of capped emergency relief schemes. The Review heard that the Structural Assistance Grants of up to \$50,000 for uninsured, income-tested owner-occupiers to repair their home may render families homeless due to the inability to find adequate housing. The lack of the ability to access affordable insurance in northern Queensland will create long-term human rights challenges.

I recommend that the Queensland Disaster Management Committee should fund the Queensland Human Rights Commission to review and ensure disaster management guidelines (incorporating prevention, preparedness, response and recovery phases) incorporate a human rights lens.

202 *Human Rights Act 2004* (ACT), s 23. The right to compensation for wrongful convictions is subject to reasonable and justifiable limitations (s 28). The most prominent use of this right was by David Eastman, who in 1995 was wrongfully convicted of the murder of assistant federal police commissioner Colin Winchester. After spending 19 years in gaol, Eastman's conviction was quashed in 2014. Eastman was subsequently acquitted in a retrial in 2018. Eastman was offered an ex-gratia payment of \$3million by the ACT Government but instead made a claim under the ACT's *Human Rights Act* and was subsequently awarded \$7.02million: *Eastman v The Australian Capital Territory* [2019] ACTSC 280.

203 The Law Council of Australia, *Policy Statement on CCRC*, 27 April 2022, <https://lawcouncil.au/resources/policies-and-guidelines/policy-statement-commonwealth-criminal-cases-review-commission>.

204 'International Covenant on Civil and Political Rights', *United Nations Treaty Collection* (PDF, status at 19 August 2024) <<https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20IV/IV-4.en.pdf>>.

205 Walter Sofronoff KC, *Commission of Inquiry into Forensic DNA testing in Queensland* (Final Report, 13 December 2022) para 219 <https://www.health.qld.gov.au/__data/assets/pdf_file/0036/1196685/final-report-coi-dna-testing-qld-dec-2022.pdf>.

206 Queensland Future Climate, <https://www.longpaddock.qld.gov.au/qld-future-climate/>

207 Monica Taylor, Legally preparing for heat waves. QLS Proctor, 25 October 2023. See further the Climate Justice Observatory www.climatejusticeobservatory.com.au

208 Daniel Billy and others v Australia (Torres Strait Islanders Petition), 21 July 2022, CCPR/C/135/D/3624/2019

209 See further Annah Piggott-McKellar and Karen Vella, 'Lessons learned and policy implications from climate-related planned relocation in Fiji and Australia.' (2023) *Frontiers in Climate* 5, available at <https://www.frontiersin.org/journals/climate/articles/10.3389/fclim.2023.1032547>

Recommendations

The *Human Rights Act* should be amended to include the following new rights:

- a. Right to adequate housing
- b. Right to a clean, healthy and sustainable environment
- c. Right to live free from gender-based violence

The preamble to the *Human Rights Act* should be amended to urge public authorities to consider the priorities and interests of future generations in government policy and decision-making.

Prior to the next review of the *Human Rights Act*, as prescribed by section 96, the Attorney-General should provide terms of reference to the Queensland Law Reform Commission to explore the value of several additional human rights:

- d. Right to self-determination for Aboriginal and Torres Strait Islander Peoples, and Self-Determination Reform Framework.
- e. Right to access government information and services in accessible formats and right to access the internet for essential government services.
- f. Right to compensation for wrongful conviction.
- g. Rights-based approaches to disasters.

Victims' rights are discussed in Part 8 below.

6 Remedies

Pursuant to section 95(4) of the Act, the Independent Reviewer was required to specifically consider whether further or different provision should be made in the Act with respect to remedies available under the *QHRA*.

6.1 The legislative background

There are remedies available within the remit of the complaints and conciliation functions of the QHRC. The Commission's website notes that:

Outcomes from a conference vary and may depend on whether the complaint was dealt with under the Anti-Discrimination Act or the Human Rights Act. Common outcomes to resolve discrimination complaints include:

- *making an apology;*
- *changing organisational policy or practices;*
- *paying compensation for hurt feelings and lost wages;*
- *organising training in the workplace so that everyone understands their rights and responsibilities.*²¹⁰

People are then referred to a case studies page to see the sorts of cases and outcomes heard in the past.²¹¹

The Review received evidence where this function is working well to give complainants targeted and accessible solutions to human rights issues. Many advocates noted that more targeted information could be provided by the Commission in accessible formats as to the types of resolution provided to categories of complainants in the past, such as people living with disabilities or culturally and linguistically diverse backgrounds so better judgments can be made by an individual about

²¹⁰ 'All about conciliation', *Queensland Human Rights Commission* (PDF, December 2019) <https://www.qhrc.qld.gov.au/__data/assets/pdf_file/0006/19815/QHRC_factsheet_Complaints_AllAboutConciliation.pdf>.

²¹¹ 'Human rights case studies', *Queensland Human Rights Commission* (Web Page, 1 December 2022) <<https://www.qhrc.qld.gov.au/resources/case-studies/human-rights-case-studies>>.

whether to pursue this avenue, and make better estimates of the time investment required.

The *QHRA* currently provides limited ability for individuals whose rights have been breached by a public entity to seek remedies from a court or tribunal. Where a complaint about human rights cannot be resolved through conciliation, there is no ability to apply to a court or tribunal to resolve the issue and the complaint remains unresolved. There are currently six unresolved human rights complaints in Queensland.²¹²

In limited circumstances, a human rights complaint can be referred to a court or tribunal if it raises issues that may be dealt with under a separate cause of action. This is known as “piggybacking” of human rights complaints. In a piggybacked action, the court can award any remedies available under the separate cause of action, except for compensation. Even if the independent cause of action fails, the person may still be entitled to a remedy for the human rights contravention.

In practice, the causes of action which human rights complaints may be piggybacked on could include seeking judicial review of the public entity’s decision or conduct under the *Judicial Review Act 1991* (Cth) or seeking remedies for discrimination under the *Anti-Discrimination Act 1991* (Qld) (ADA).

Remedies that are available upon judicial review of a public entity’s decision may include, for example:

- quashing or setting aside the decision,
- referring the matter back to the original decision-maker for further consideration, or
- any action that the court considers necessary to do justice between the parties.²¹³

Remedies that are available under the ADA include, for example, specific actions to redress loss or damage suffered by the complainant or a private or public apology.²¹⁴

6.2 Summary of issues

In the Second Reading Speech, the Attorney-General and Minister for Justice said the ‘piggyback’:

...reflects a sensible and measured approach to introducing a human rights framework into the Queensland public sector landscape. This approach is consistent with the Victorian charter and the dialogue model adopted by the bill, which promotes discussion, awareness raising and education to encourage compliance with human rights rather than a strong enforcement and compliance model.²¹⁵

However, submissions to the independent review highlighted concerns about the efficacy of the ‘dialogue model’ adopted by the Act, particularly the barriers faced by people who seek to enforce their rights and the resulting limited influence on the conduct of public entities:

*Some public entities take a legalistic and adversarial approach to dispute resolution, possibly driven by a lack of legal consequence if the matter cannot be resolved.*²¹⁶

*Pursuing a complaint onto which the breach of human rights can be ‘piggy-backed’ has been found to be too demanding and expensive for many of the people with whom social workers work.*²¹⁷

*Members note the complexity of the piggy-back mechanism and the consequential barriers this creates to accessing justice.*²¹⁸

212 ‘Reports on unresolved human rights complaints’, *Queensland Human Rights Commission* (Web Page, 15 October 2020) <<https://www.qhrc.qld.gov.au/resources/legal-information/reports-on-unresolved-human-rights-complaints>>.

213 *Judicial Review Act 1991* (Cth) s 30.

214 *Anti-Discrimination Act 1991* (Qld) s 209.

215 Queensland, *Parliamentary Debates*, Legislative Assembly, 26 February 2019, 376 (Yvette D’Ath, Attorney-General and Minister for Justice).

216 Queensland Human Rights Commission, Submission No 77 to Independent Reviewer, *First Independent Review of the Human Rights Act 2019* (8 July 2024) 67.

217 Australian Association of Social Workers, Submission No 47 to Independent Reviewer, *First Independent Review of the Human Rights Act 2019* (June 2024) 10.

218 Queensland Law Society, Submission No 81 to Independent Reviewer, *First Independent Review of the Human Rights Act 2019* (12 July 2024) 6.

*Unless the claimant can find another mode of getting into the Courts, that public authority has no compulsion to adjust its behaviours when human rights are breached.*²¹⁹

The Reviewer heard strong support in submissions and consultation for amendments to the *QHRA* to provide for an independent cause of action and for courts and tribunals to be given discretion to order a broad range of remedies including compensation. Submissions argued that ensuring people can pursue complaints through the Queensland Civil and Administrative Tribunal (QCAT) and making compensation available will ensure public entities treat *QHRA* complaints seriously and incentivise them to resolve complaints early, enhancing chances of successful resolution.

Submissions pointed to the right to an effective remedy as an essential key element of international human rights law instruments including the UDHR,²²⁰ ICCPR,²²¹ *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*,²²² *Convention on the Elimination of All Forms of Discrimination against Women*,²²³ and *Convention on the Elimination of All Forms of Racial Discrimination*.²²⁴

Submissions highlighted the desirability of aligning the *QHRA* with other jurisdictions including the ACT, which provides a direct cause of action, and the UK, New Zealand and Canada, which all provide a direct cause of action and access to compensation. At the federal level, it has been recommended that a human rights act for Australia should include an independent cause of action and both a broad range of remedies, both procedural and monetary.²²⁵

In relation to establishing a federal human rights act, the Australian Human Rights Commission has argued that:

*[P]rocedural remedies will not always be effective in remedying every kind of breach. When it is not appropriate to have a decision remade – a traditional administrative law remedy – but a person has suffered loss or damages, courts should be able to provide a remedy. Otherwise, individual will be denied justice.*²²⁶

Many submissions suggested implementing remedies similar to the ones available for making a complaint of unlawful discrimination under the ADA or federal anti-discrimination law, particularly monetary compensation. Other suggested remedies include injunctions, setting aside an act or decision, remitting a matter back to a decision maker, and training for the public entity on human rights. The Reviewer notes that while such remedies are available under various other causes of action under the piggyback approach, there appears to be a lack of understanding about this process.

Only one submission indicated that it did not support implementing a standalone cause of action and access to monetary damages citing the risk that this “could risk opening the floodgates to vexatious litigation in the courts”.²²⁷ However, other submissions pointed out that, in the States and Territories which have an independent cause of action, such as Victoria, this has not led to a flood of litigation.

There were suggestions made for a specialist tribunal for human rights, anti-discrimination and restrictive practices matters, but the Reviewer is of the view that the best course to provide feedback to the public sector is to resource and train QCAT to add unresolved human rights complaints to its jurisdiction, where matters are often intertwined with discrimination issues or other administrative law matters.

219 Maurice Blackburn Lawyers, Submission No 40 to Independent Reviewer, *First Independent Review of the Human Rights Act 2019* (21 June 2024) 2.

220 *Universal Declaration of Human Rights*, GA Res 217A (III), UN GAOR, UN Doc A/810 (10 December 1948) art 8.

221 *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 2(3).

222 *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, opened for signature 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987) art 14.

223 *Convention of the Elimination of All Forms of Discrimination against Women*, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981) art 2.

224 *International Convention on the Elimination of All Forms of Racial Discrimination*, opened for signature 21 December 1965, 660 UNTS 195 (entered into force 4 January 1969) art 6.

225 Parliamentary Joint Committee on Human Rights, Parliament of Australia, *Inquiry into Australia’s Human Rights Framework* (Report, May 2024) 309-10.

226 Rosalind Croucher, ‘A new human rights framework for Australia’ (Speech, Annual Castan Centre for Human Rights Law Conference, 21 July 2023) <<https://humanrights.gov.au/about/news/speeches/new-national-human-rights-framework-australia>>.

227 Legal Aid Queensland, Submission No 39 to Independent Reviewer, *First Independent Review of the Human Rights Act 2019* (21 June 2024) 21.

Recommendations

QHRC to explore effective remedies through conciliation process

In their next annual human rights report, the Queensland Human Rights Commission should reflect on how the current conciliation process can enhance the provision of effective remedies.

QHRC referral to tribunal for unresolved complaints

The Human Rights Act should be amended to allow the Queensland Human Rights Commission to refer unresolved human rights complaints, and complaints that are otherwise unsuited to the Commission's dispute resolution process, to the Queensland Civil and Administrative Tribunal for determination and effective remedy.

The Queensland Civil and Administrative Tribunal should receive appropriate resourcing for such cases and an investment in judicial leadership such as a new Deputy President with responsibility for human rights, anti-discrimination and restrictive practices cases.

Create an independent cause of action

The Human Rights Act should be amended to enable a person to commence proceedings in the Supreme Court of Queensland against a public entity for an alleged contravention of the Act in its own right, independent of any other cause of action, partially modelled on section 40C of the *Human Rights Act 2004* (ACT).

Enable access to remedies

The *Human Rights Act* should be amended to allow courts and tribunals considering human rights claims to order the full range of remedies within their power, including damages. This should align with the orders available for unlawful discrimination under the proposed updated anti-discrimination legislation for Queensland.

Support for legal and peer representation

To address equality of arms issues and improve access to justice, the Queensland government should provide appropriate levels of long-term funding for legal assistance to complainants with human rights claims. This should include legal advice, education and casework services, and peer advocate representation in human rights complaints and legal proceedings.

7 Amendments to *Corrective Services Act 2006* (Qld) and the *Youth Justice Act 1992* (Qld)

Section 95(4)(c) of the *QHRA* requires the first independent review of the Act to consider:

whether the amendments made by this Act to the *Corrective Services Act 2006* and the *Youth Justice Act 1992* are operating effectively, or further or different provision should be made for the interrelationship between this Act and those Acts.

7.1 The legislative background

The *QHRA* amended two prior statutes dealing with the adult corrections system and the youth justice system.

First, in section 126 of the *QHRA* as introduced, the *CSA* was amended to introduce a new section 5A into that Act. Section 5A is headed *Relationship with the Human Rights Act 2019* and provides:

- (1) This section applies to the chief executive's or a corrective services officer's consideration of—
 - (a) the *Human Rights Act 2019*, section 30(2) in relation to a prisoner admitted to a corrective services facility for detention on remand or a prisoner detained without charge; or
 - (b) the *Human Rights Act 2019*, section 30 in relation to managing a prisoner in a corrective services facility where it is not practicable for the prisoner to be provided with the prisoner's own room under section 18.²²⁸
- (2) To remove any doubt, it is declared that the chief executive or officer does not contravene the *Human Rights Act 2019*, section 58(1) only because the chief executive's or officer's consideration takes into account—
 - (a) the security and good management of corrective services facilities; or
 - (b) the safe custody and welfare of all prisoners.

Second, in section 183 of the *QHRA* as introduced, the *YJA* was amended to insert new subsections (7) and (8) into section 263 of that Act. Section 263 relates to the management of youth detention centres, and subsections (7) and (8) provide:

- (7) Subsection (8) applies in relation to the chief executive's consideration of --
 - (a) the *Human Rights Act 2019*, section 30(2) in relation to a child detained in a detention centre on remand; and
 - (b) the segregation of the child mentioned in paragraph (a) from a child detained on sentence.
- (8) To remove any doubt, it is declared that the chief executive does not contravene the *Human Rights Act 2019*, section 58(1) only because the chief executive's consideration takes into account—
 - (a) the safety and wellbeing of the child on remand and other detainees; and
 - (b) the chief executive's responsibilities and obligations under this section.

Both amendments relate to the application of section 30 of the *QHRA*. Section 30 is headed *Humane treatment when deprived of liberty* and require:

²²⁸ Queensland Ombudsman, *Prison Overcrowding and other matters report* (February 2024) 13 <<https://www.ombudsman.qld.gov.au/improve-public-administration/investigative-reports-and-casebooks/investigative-reports/prison-overcrowding-and-other-matters-report>>.

- (1) All persons deprived of liberty must be treated with humanity and with respect for the inherent dignity of the human person.
- (2) An accused person who is detained or a person detained without charge must be segregated from persons who have been convicted of offences, unless reasonably necessary.
- (3) An accused person who is detained or a person detained without charge must be treated in a way that is appropriate for a person who has not been convicted.

In effect, the amendments to both the *CSA* and *YJA* relate to the separate treatment required under section 30 of the *QHRA* of accused and non-charged people, compared to those who have been convicted and sentenced. The amendments to the *CSA* also relate to prisoners' rights to have their own room. Section 30 of the *QHRA* is modelled on articles 10(1) and 10(2) (a) of the ICCPR, reflecting the principles that people are entitled to be presumed innocent until convicted, and treated humanely during detention.

As a result of the amendments, decisions made by Corrective Services staff do not breach section 30 of the *QHRA* only because the decision maker took into account overall security, management, safety and welfare factors when making decisions about the housing of individual prisoners. Decisions made by Youth Justice staff do not breach section 30 of the *QHRA* only because the decision maker took into account overall safety and wellbeing, or the chief executive's responsibilities under the *YJA* when making decisions about housing detained children.

The amended provisions recognise that decision makers may need to balance the rights protected under the *QHRA* with the management, safety and welfare of detained adults and children.

7.2 Summary of issues

The issue for consideration is whether the amendments to the *CSA* and *YJA* are operating effectively. A secondary issue is whether the provisions serve any purpose beyond other limitations on rights already contained within the *QHRA*.

Of relevance is that the proportion of both adults and children detained prior to sentence has grown in Queensland, as shown in Figures B and C below. Recent data shows that as at 30 June 2023, only about 64% of men and 51% of women in prison were sentenced. For children, the sentenced population was only 12.5% compared to 87.5% held on remand.²²⁹ This means that a high proportion of adults, and an overwhelming majority of children, are in detention prior to being convicted. The growth in remand populations, and the growth in prisoner numbers generally, impact decision making by both Queensland Corrective Services and Youth Justice in respect of where and how people are detained.

²²⁹ Queensland Ombudsman, *Prison Overcrowding and other matters report* (February 2024) 13 <<https://www.ombudsman.qld.gov.au/improve-public-administration/investigative-reports-and-casebooks/investigative-reports/prison-overcrowding-and-other-matters-report>>.

Figure B: Unsented people in Queensland’s adult prisons 2013-2022²³⁰

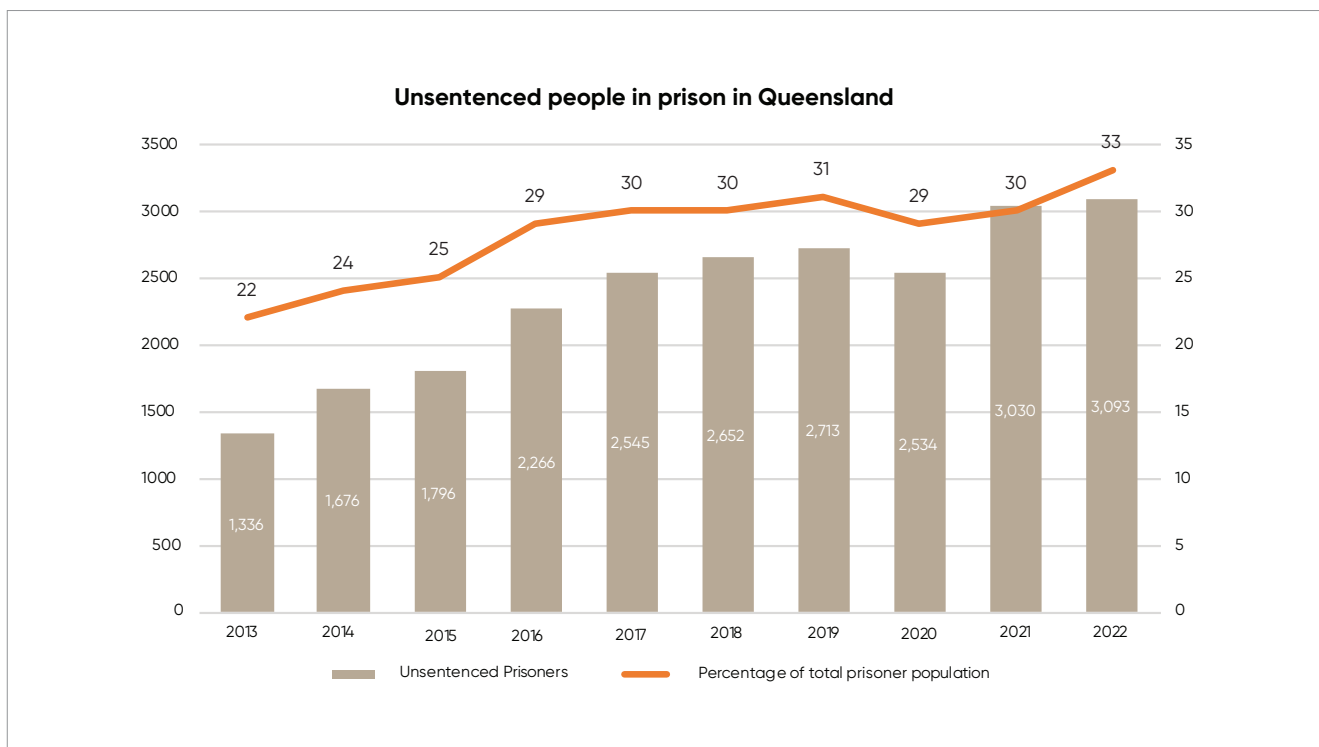
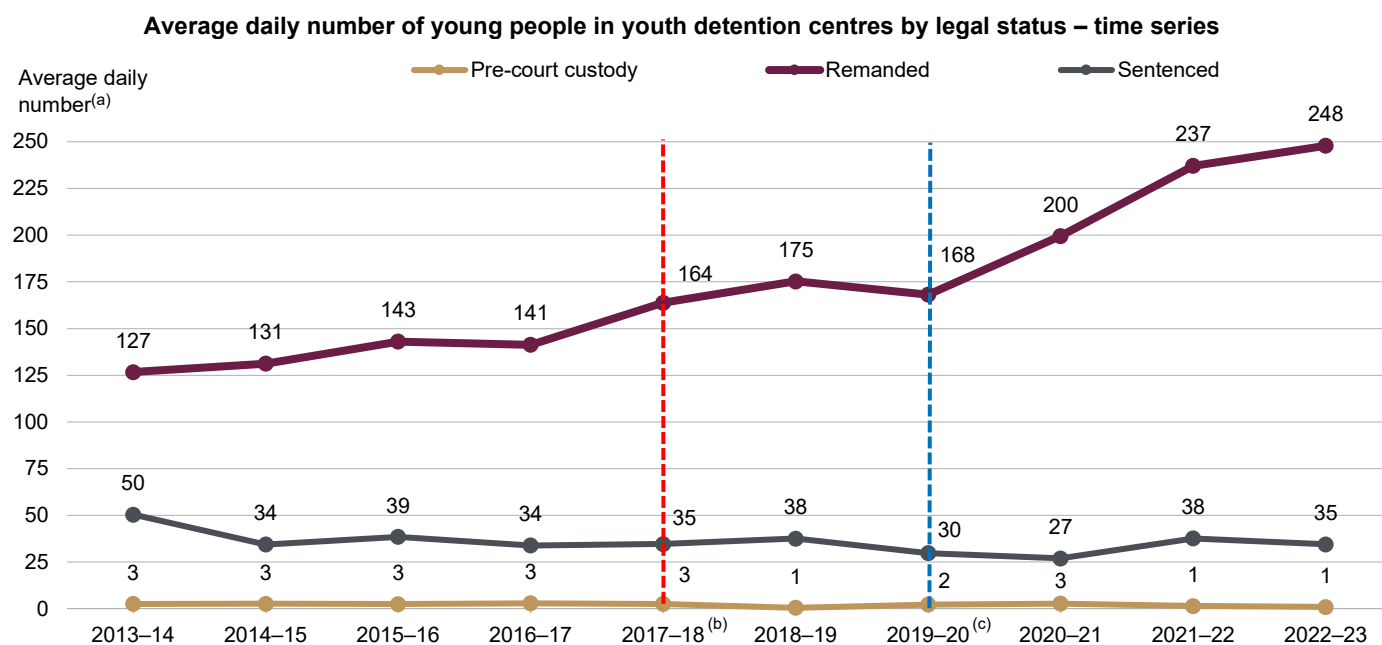


Figure C: Sentenced and unsentenced children in youth detention in Queensland 2013-14 – 2022-23²³¹

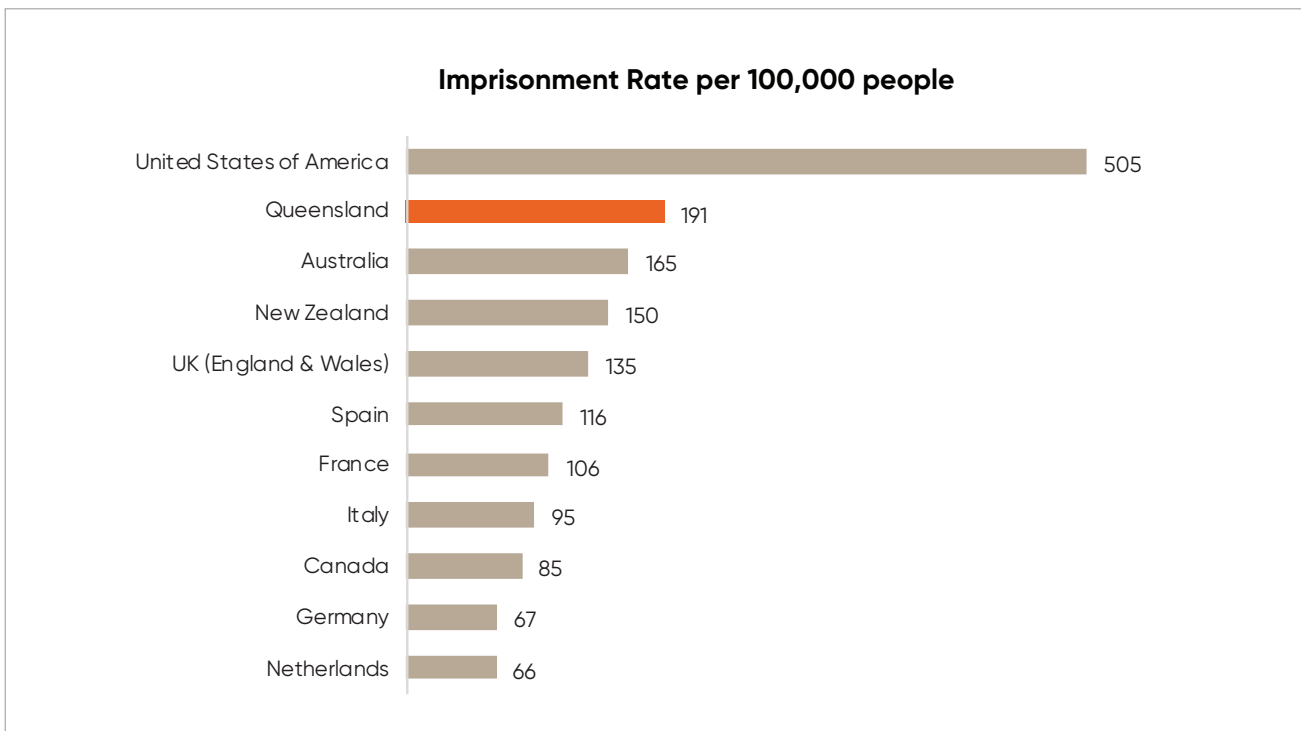


- (a) Figures have been rounded to the nearest whole number.
- (b) 17-year-old offenders are included in youth justice system from February 2018. In prior periods, child offenders were aged 10–16 years.
- (c) The COVID-19 pandemic was declared in March 2020 and resulted in social restrictions which continued into 2021–22.

The impact of the increased remand in custody of adults and children is reflected in rising overall numbers of people held in adult and youth detention. As Figure D shows, this has fueled a growth in overall numbers of detained people, which in turn has placed pressure on the detention facilities which must house them.

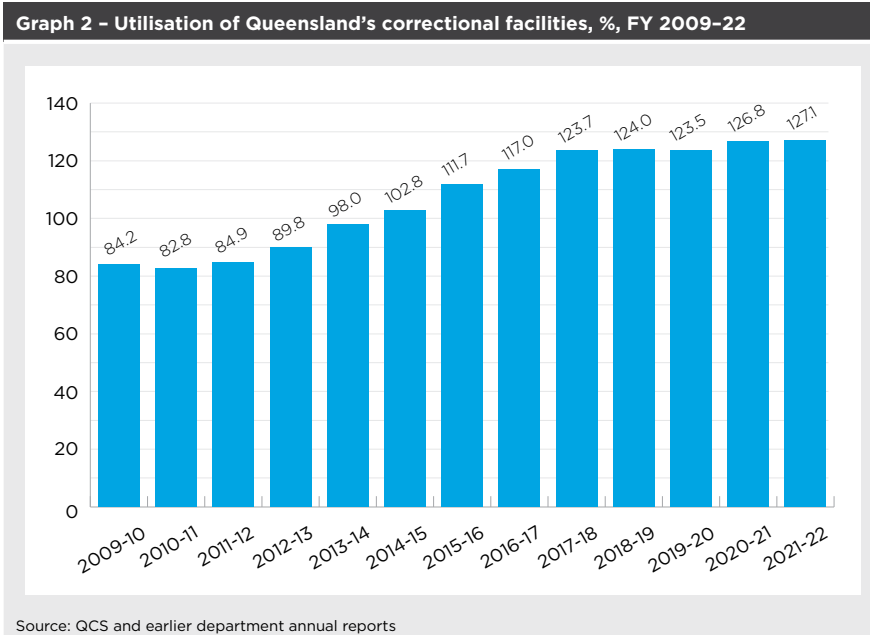
²³⁰ Queensland Ombudsman, *Prison Overcrowding and other matters report* (February 2024) 13 <<https://www.ombudsman.qld.gov.au/improve-public-administration/investigative-reports-and-casebooks/investigative-reports/prison-overcrowding-and-other-matters-report>>.
²³¹ Queensland Ombudsman, *Prison Overcrowding and other matters report* (February 2024) 13 <<https://www.ombudsman.qld.gov.au/improve-public-administration/investigative-reports-and-casebooks/investigative-reports/prison-overcrowding-and-other-matters-report>>.

Figure D: Queensland's imprisonment rate in comparative perspective²³²



This growth in numbers of people detained means that detention facilities for both adults and young people are overcrowded, with the Queensland Ombudsman noting this problem has existed since 2014-2015, as shown in Figure E.

Figure E: Growth in Queensland prison utilisation 2009-2022²³³



The Ombudsman goes on to note that:

*While s 5A of the CS Act allows for exemptions from the HR act ...in certain circumstances, it stands as an expression of Parliament's intent for how prisoners ought to be accommodated.*²³⁴

²³² Queensland Ombudsman, *Prison Overcrowding and other matters report* (February 2024) 13 <<https://www.ombudsman.qld.gov.au/improve-public-administration/investigative-reports-and-casebooks/investigative-reports/prison-overcrowding-and-other-matters-report>>.

²³³ Queensland Ombudsman, *Prison Overcrowding and other matters report* (February 2024) 13 <<https://www.ombudsman.qld.gov.au/improve-public-administration/investigative-reports-and-casebooks/investigative-reports/prison-overcrowding-and-other-matters-report>>.

²³⁴ Ibid 23.

It is also important to note that the increase in detained populations:

has been primarily driven by policy and system changes and a focus on short term risks not crime rates, such as:

- *increased reporting of crime*
- *an increase in use of prison sentences over other options*
- *an increase in recidivism rates*
- *an increase in policing effort*
- *an increased propensity for policy to use court action*
- *a significant increase in the proportion of unsentenced (remand) prisoners in the last five years.*²³⁵

Given this background, the main question for the Independent Review is whether the amendments made to the CSA and YJA are necessary to enable the relevant government agencies to manage their growing detained populations, and whether this justifies the need for specific, continuing exceptions to the QHRA.

The Independent Review received few submissions directly relating to these amendments. Of those that did comment, there was agreement that the amendments are “unnecessary and create uncertainty”,²³⁶ with another saying:

*At the time the provisions were introduced, they were described as necessary to deal with the exigent situation. The fact that they continue to be necessary six years later is an indictment of the government in terms of its management of detention centres, prisons and of the whole issue of youth justice in particular. At the time, when the Bill was introduced, it was our submission that these provisions should be subject to a sunset clause, which clearly did not happen. It is our position that these provisions should be repealed. All of the factors which these provisions allow the relevant decision-makers to take into account, are fully accommodated in section 13 of the Act.*²³⁷

Section 13 of the QHRA, as referenced in submission 26, recognises that human rights may be limited and under what circumstances that may be justifiable. This includes consideration of both the right itself and also the importance and purpose of the proposed restriction, and whether it may be achieved in less restrictive ways (section 13(2)). Additionally, section 30(2) itself recognises that the right to separate treatment may be restricted, through inclusion of the words ‘unless reasonably necessary’.

Consultations with non-government stakeholders suggested that the amendments serve no additional policy purpose beyond that already afforded by section 13 and section 30(2) of the QHRA, and indeed many of those consulted had little knowledge or understanding of what purpose the amendments had been intended to achieve.

In consultations with both Corrective Services and Youth Justice agencies, the review was advised that, to the best of participants’ knowledge, neither the amendments to the CSA or YJA had been raised in any litigation or complaints throughout the over five years of operation of the QHRA. In these consultations no arguments were advanced as to why the amendments should be retained, and neither agency involved made a submission on the matter despite being invited to do so. While there are clear policy and practical issues raised for both agencies by the increasing remand populations, there is no evidence at all that these concerns are not being addressed by section 13 and section 30(2) of the QHRA. Similar issues are being addressed by the ACT Human Rights Commission and the concerns are the same.²³⁸

Overall, it appears that the amendments made to the CSA and YJA have had no effect and serve no purpose. Submissions suggested they create confusion, and in the absence of any evidence or submissions to the contrary, they should be repealed.

²³⁵ Ibid 12-3.

²³⁶ Queensland Law Society, Submission No 81 to Independent Reviewer, *First Independent Review of the Human Rights Act 2019* (12 July 2024) 6.

²³⁷ Queensland Council for Civil Liberties, Submission No 26 to Independent Reviewer, *First Independent Review of the Human Rights Act 2019* (21 June 2024) 4.

²³⁸ ACT Human Rights Commission, ‘Amendments to corrections management act risk the ACT’s human rights record’, 6 September 2024, <<https://www.hrc.act.gov.au/news-and-events/news/amendments-to-corrections-management-act-risk-the-acts-human-rights-record>>

Recommendations

The *Corrective Services Act 2006* (Qld) be amended to repeal section 5A.

The *Youth Justice Act 1992* (Qld) be amended to repeal subsections (7) and (8) of section 263.

8 Recognition of victims' rights

The Terms of Reference for the first independent review of the QHRA specifically asked the Independent Reviewer to consider:

whether (as recommended by the Women's Safety and Justice Taskforce in its Report – Hear her voice – Report two – Women and girls' experiences across the criminal justice system and the Legal Affairs and Safety Committee Report on the Inquiry into Support provided to Victims of Crime (Report No. 48, 57th Parliament, May 2023)) the recognition of victims' rights under the Charter of Victims' rights in the Victims of Crime Assistance Act 2009 should be incorporated into the Act.

Since issuing the Terms of Reference the *Victims' Commissioner and Sexual Violence Review Board Act 2024* (Qld) (Victims' Commissioner and Sexual Violence Review Board Act) received Royal Assent on 9 May 2024, moving the Charter of victims' rights to Schedule 1 of that Act (from the *Victims of Crime Assistance Act 2009* (Qld)). The *Victims' Commissioner and Sexual Violence Review Board Act* was passed in response to the Women's Safety and Justice Taskforce second and final report, the Independent Commission of Inquiry into Queensland Police Service responses to domestic and family violence Report, and the Legal Affairs and Safety Committee Report No. 48.

All three reports highlighted the lack of support and enforceable complaints mechanisms for victims of crime, noting that issues of concern for victims were inadequately recognised by public agencies and government departments, and in legislation. All three reports recommended that a Victims' Commission be established. The focus of the reports was predominantly on victims of domestic, family and sexual violence.

8.1 The legislative background

8.1.1 Victims' rights under the *Victims' Commissioner and Sexual Violence Review Board Act 2024* (Qld)

'Victim' is broadly defined in section 6 of the *Victims' Commissioner and Sexual Violence Review Board Act* and includes a person who suffers harm because of a criminal offence committed against them or against a family member or dependent, or because they intervened to help another person who suffers harm or dies because of a criminal offence, or because they are a witness of a criminal offence committed against another person. Other situations giving rise to a person being defined as a victim under the *Victims' Commissioner and Sexual Violence Review Board Act* include when a person is pregnant but loses the child because of the commission of a criminal offence. The suffering of harm is defined in the section as including physical, psychological, emotional harm, or if a person's property is taken or destroyed or damaged, or if there is financial or economic loss.

The Charter of victims' rights, however, only covers 'affected victims' which according to section 38, is someone who suffers personal harm 'because of a relevant offence or domestic violence committed against the person' that causes 'physical, psychological or emotional harm'. Property or financial/economic loss or damage is, therefore, not included for the purposes of attracting victims' rights under the victims' charter.

The Victims' Commissioner's functions are outlined in section 9 of the *Victims' Commissioner and Sexual Violence Review Board Act* and include dealing with complaints about alleged contraventions of the victims' charter. The rights stated in the victims' charter, however, are not enforceable, do not affect the validity or give grounds for review in relation to decisions made, do not affect the operation of other laws, and do not affect any obligations of confidentiality about particular information under an Act/law (section 43). Having said that, there can be disciplinary action against a prescribed person who contravenes the rights by the government or non-government entity who is responsible for the prescribed person's conduct.

The *Victims' Commissioner and Sexual Violence Review Board Act* specifically states that the Commissioner must ensure that his/her functions are performed in a way that do not duplicate the performance of other specified entities, including

the Human Rights Commission and the Queensland Ombudsman (section 12). This means that currently there can be no duplication of complaint-handling functions. In performing the functions under the *Victims' Commissioner and Sexual Violence Review Board Act*, the Victims' Commissioner must have specific regard to:

- The vulnerability of sexual or domestic violence victims;
- The vulnerability of Aboriginal and Torres Strait islander victims;
- Victims who have characteristics that make them particularly vulnerable to harm, e.g. being female, a child, elderly or someone from a culturally and linguistically diverse background, with disability, or from the LGBTI population.

8.1.2 How are victims' rights currently reflected in the *Human Rights Act 2019* (Qld)

The *QHRA* does not explicitly recognise the rights of victims of crime as a separate category of rights. Four of the stakeholders who made submissions to the Independent Review, however, argue that many of the rights detailed in the *QHRA* sufficiently recognise, protect and support the rights of victims of crime. For example, these submissions refer to provisions in Division 1 of the *QHRA*, such as the right to recognition and equality before the law (section 15), the right to life (section 16), protection from cruel, inhuman or degrading treatment (section 17), the right to privacy (section 25), the right of families and children to be protected by society and the State (section 26), right to liberty and security (section 29) and the right to a fair hearing (section 31), despite this last right only making specific reference to 'a person charged with a criminal offence' as having a right to the charge being heard by a 'competent, independent and impartial court ... after a fair and public hearing.'

Most of the stakeholders consulted for the Review and most submissions, however, argue that these rights, particularly those that relate to criminal proceedings (in sections 31-35) do not impose a positive duty on public entities to take positive steps to protect the rights of victims of crime.

8.1.3 Victims' rights in other jurisdictions

All state and territory jurisdictions in Australia have a declaration or charter of victims' rights, and all except the Northern Territory have enshrined their declaration in law. The Northern Territory has a legal provision that authorises the incorporation of a declaration on victims' rights in law, but its declaration is an administrative statement. Whilst victims can complain if their rights are not honoured, they must do so via complaint mechanisms. Significantly, these charters do not create legally enforceable rights for victims of crime, although in the ACT, contravention of the *Victims of Crime Act 1994* (ACT), can be the subject of disciplinary proceedings against an official. A victim can also raise a concern about a justice agency that does not comply with the rights in the charter without the victim making a complaint to the justice agency, with the ACT Victims of Crime Commissioner, which sits under the Human Rights Commission. Under the *Human Rights Commission Act 2005* (ACT), a victim can either make a complaint to the Commission (section 41C(2) of the *Human Rights Commission Act*) or it can be referred to the Commission by the Victims of Crime Commissioner. No Australian jurisdiction has provided penalties for non-compliance with victims' rights.

In 1985, the United Nations General Assembly adopted the *Declaration of Basic Principles of Justice on Victims of Crime and Abuse of Power*,²³⁹ based on the conviction that 'victims should be treated with compassion and respect for their dignity' and that they are entitled to prompt redress for the harm that they have suffered, through access to the criminal justice system, reparation and services to assist their recovery. However, it is a non-binding international declaration.

In 2012, the European Union adopted a *Directive establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime* (EU Victims' Rights Directive) that applies to every EU Member State, except Denmark.²⁴⁰ The EU Victims' Rights Directive establishes minimum standards on the rights, support and protection of victims of crime,

²³⁹ United Nations General Assembly, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, GA Res 40/34, UN Doc A/RES/40/34 (29 November 1985).

²⁴⁰ *Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA* [2012] OJ L 315/57.

which Member States are expected to legally uphold. The Directive ensures that persons who have fallen victim to crime are recognised and treated with respect. They must also receive proper protection, support and access to justice. The Directive considerably strengthens the rights of victims and their family members to information, support and protection. It further strengthens the victims' procedural rights in criminal proceedings. The Directive also requires that EU countries ensure appropriate training on victims' needs for those officials who are likely to come into contact with victims.

Under the EU Victims' Rights Directive, rights include:

- right to understand and be understood
- right to receive information from the first contact with a competent authority
- right of victims when making a complaint
- right to receive information about their case
- right to interpretation and translation
- right to access victim support services
- right to be heard
- right to safeguards in the context of restorative justice services
- right to legal aid
- right to reimbursement of expenses
- right to the return of property
- right to decision on compensation from the offender in the course of criminal proceedings
- right to protection
- right to avoid contact between victim and offender
- right to protection of victims during criminal investigations
- right to protection of privacy
- right to protection of victims with specific protection needs during criminal proceedings
- right to protection of child victims during criminal proceedings

8.2 Summary of Issues

8.2.1 Should victims' rights be recognised in the *Human Rights Act 2019 (Qld)*?

Out of the 92 submissions received by the Independent Review, 31 contained a specific reference to victims of crime. Nearly 60% of those who made a comment about victims of crime agreed that victims' rights should be recognised, in some form or another, in the *QHRA*. Further support for this view was expressed by several individuals during consultation meetings. Most opponents of this view came from organisations that represented the legal profession. One of the submissions contained support for both views and a further three submissions expressed support for 'the rights of victims of gendered violence, or victim-survivors of child sexual abuse'.²⁴¹

When discussing statements of compatibility, a small number of submissions used the example of recent proposed laws relating to sexual consent to highlight the fact that they did not include 'sufficient regard to the relevant human rights of sexual assault victims',²⁴² although this did not necessarily translate into a view that the rights of victims of crime should be recognised as a separate category of rights in the *QHRA*.

Those who supported explicitly recognising the rights of victims of crime generally expressed the view that the 'rights of the offender are historically prioritised in the criminal justice system, and the human rights of the victim-survivor are given, in practice little attention or focus'.²⁴³ The submissions referred to a need for explicit recognition of the rights of victims to change the culture in various public entities that traditionally did not adequately and proactively support victim-survivors of sexual, domestic and family violence. For example, one of the submissions noted that:

²⁴¹ Basic Rights Queensland, Submission No 61 to Independent Reviewer, *First Independent Review of the Human Rights Act 2019* (5 July 2024) 15.

²⁴² Brisbane West Conservation Network, Submission No 12 to Independent Reviewer, *First Independent Review of the Human Rights Act 2019* (20 June 2024) 4.

²⁴³ Queensland Sexual Assault Network, Submission No 28 to Independent Reviewer, *First Independent Review of the Human Rights Act 2019* (20 June 2024) 4.

Victim-survivors of sexual, domestic and family violence often report feeling disempowered and retraumatised by government systems, including the justice system. ... The scale of violence and extent to which existing laws and systems are inaccessible and retraumatising to victim-survivors, demonstrates the need for a standalone right to live free from sexual, domestic and family violence. This would highlight the critical importance of ending sexual, domestic and family violence as a key priority for Queensland. ... As well as offering substantive protection to victim-survivors, a standalone right would perform an educative and value-setting function for the community. This clarifies that these forms of violence are not only criminal, and socially sanctioned, but in fact, a human rights violation.²⁴⁴

On the other hand, those that opposed incorporating additional victims' rights into the *QHRA* were concerned that it may create 'internal inconsistency with other existing rights and could potentially be used to justify limitations being imposed upon many other rights in favour of the rights of victims, which may not accord with the approach to proportionality in other jurisdictions'.²⁴⁵ In other words, there is a concern that people accused of a crime may risk losing rights if the rights of victims are recognised in the *QHRA*.

8.2.2 What would a new victims' rights provision look like under the *Human Rights Act 2019* (Qld)?

If victims' rights are recognised in the *QHRA* as a new right, it could be achieved in the following ways:

- Victims' rights could be better articulated or incorporated into existing provisions, such as including an interpretative note that separates the right to security from the right to liberty in section 29; and including a reference to victims in sections 31 (right to a fair hearing) and 32 (rights in criminal proceedings); or
- the rights of victims be recognised as a separate right and any relevant protections are included in a new and stand-alone provision that may or may not fully reflect the rights in the Charter of victims' rights; or
- a general provision recognising the rights of victims could be inserted into the *QHRA* with a cross-reference to the Charter of victims' rights in the *Victims' Commissioner and Sexual Violence Review Board Act* for more specific details regarding those rights.

Throughout the consultations and in the submissions, there was support for all three of these options. Some of those who supported recognising victims' rights, felt that without a separate, stand-alone right, victims would in practice, continue to be overlooked as important participants in the criminal justice process, because of their lack of standing in criminal trials. Two of the submissions referred to the 2016 Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* report, which recognised that victims are no longer confined to the role of witness for the prosecution in a criminal trial process. Instead, due to reforms in the way evidence is provided and tested in a criminal trial, and a victim's involvement in the sentencing process, there has been a 'shift to a criminal justice system that is increasingly responsive to victims' interests'.²⁴⁶

Regardless of the way victims' rights are recognised, there was strong support for any new victims' rights to be trauma-informed and respectful of the diversity of needs of victims, including a right to an interpreter and a right to processes and support that are culturally safe. Some of the submissions supported victims being 'acknowledged as a participant with an interest in the proceedings', along with the need to be 'treated with dignity and respect, protected from unnecessary trauma, intimidation and distress when giving evidence and protected from unreasonable delay'.²⁴⁷ A right to legal representation was also mentioned in a few of the submissions.

Imposing a positive duty or obligation on public entities to provide victims with information, 'respond to real and immediate threats of violence towards an identified individual',²⁴⁸ and 'undertake an effective investigation',²⁴⁹ would clarify any ambiguity in sections 58 and 8 of the *QHRA* that might fetter a public entity's operational duties in relation to victims of

²⁴⁴ Full Stop Australia, Submission No 70 to Independent Reviewer, *First Independent Review of the Human Rights Act 2019* (July 2024) 4-5.

²⁴⁵ Legal Aid Queensland, Submission No 39 to Independent Reviewer, *First Independent Review of the Human Rights Act 2019* (21 June 2024) 17.

²⁴⁶ Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report, August 2016) 22.

²⁴⁷ DV Connect, Submission No 67 to Independent Reviewer, *First Independent Review of the Human Rights Act 2019* (July 2024) 5.

²⁴⁸ Queensland Human Rights Commission, Submission No 77 to Independent Reviewer, *First Independent Review of the Human Rights Act 2019* (8 July 2024) 77.

²⁴⁹ Basic Rights Queensland, Submission No 61 to Independent Reviewer, *First Independent Review of the Human Rights Act 2019* (5 July 2024) 15.

crime. This could be achieved by inserting ‘legislative guidance clarifying that in some circumstances acting compatibility with human rights will require relevant public entities to take positive steps to prevent and respond to risks and allegations of harm’,²⁵⁰ and to provide victims with relevant information in a format that the victim can comprehend.

8.2.3 Should a new victims’ right cover all victims of crime?

The Women’s Safety and Justice Taskforce in recommending the recognition of victims’ rights in the Charter of victims’ rights, had specifically referred to victims of all violent offences, with a particular concern for the needs of victims of domestic, family and sexual violence and First Nations victim survivors, ‘given their particular vulnerability’.²⁵¹ The Legal Affairs and Safety Committee’s report, although heavily referencing the Women’s Safety and Justice Taskforce report, concluded that it supports the establishment of a Victims’ Commissioner and associated advocacy services, but in doing so, it

*Recommend[ed] that the Queensland Government examine how such services can be expanded to all victims of crime, so that all victims may have their interests and rights represented throughout investigation process and crime justice system and that the victims’ commissioner has a broad scope when investigating systemic issues relating to victims of crime.*²⁵²

It is therefore unclear whether only victims of violent crime (and their families and witnesses to those crimes) or all victims should be recognised under a new right in the *QHRA*.

Although this question was raised in consultation meetings, there was no firm consensus on the issue. The issue is more clearly resolved by reference to the submissions. Fourteen of the submissions specifically noted the need for improved rights for victims of violent or gendered (such as domestic, family or sexual) violence. However, two submissions referred to the fact that harm and trauma may also result from financial or economic loss.

Some submissions emphasised the fact that children or young people who commit crimes have often been victims of abuse or crimes themselves, so that

*if victims’ rights are included in the Human Rights Act, it is important that this be done in a way that reflects the balance and interdependent nature of human rights as a whole. This should include ensuring that protections for victims’ rights do not inadvertently infringe upon the rights of accused children in the justice system’.*²⁵³

Other groups of victims who were specifically mentioned throughout the review as requiring further consideration in relation to victims’ rights, include victims with disability, Aboriginal and Torres Strait Islander people, people who identify as having a diverse sex or gender identity or sexual orientation, people from a culturally or linguistically diverse background, people in prison, and people with a mental health or intellectual impairment. The Victorian Victims’ Charter and the ACT Charter of Victims’ Rights make specific mention of several of these groups of people.

8.2.4 How should complaints pertaining to victims’ rights be handled?

As with other rights, those who supported specifically recognising victims’ rights in the *QHRA*, also supported the right of victims to be able to enforce those rights. However, a couple of the submissions noted that adding more specific victim rights in the *QHRA* may undermine ‘the vital role of the new Victims Commissioner and may make complaining more confusing for victims’.²⁵⁴ Further consideration is, therefore, required of how to balance the roles and functions of the Victims’ Commissioner and the Human Rights Commissioner. Currently there can be no duplication of complaint-handling functions between the Victims’ Commissioner and those assigned to other public entities such as the Human Rights Commission and

250 Queensland Human Rights Commission, Submission No 77 to Independent Reviewer, *First Independent Review of the Human Rights Act 2019* (8 July 2024) 78.

251 Women’s Safety and Justice Taskforce, *Hear her voice: Women and girls’ experiences across the criminal justice system* (Report Two, Volume One, 2022) 14.

252 Legal Affairs and Safety Committee, Parliament of Queensland, *Inquiry into Support provided to Victims of Crime* (Report No. 48, 57th Parliament, May 2023) 8.

253 Save the Children and 54 reasons, Submission No 30 to Independent Reviewer, *First Independent Review of the Human Rights Act 2019* (19 June 2024) 5.

254 Caxton Community Legal Centre, Submission No 63 to Independent Reviewer, *First Independent Review of the Human Rights Act 2019* (5 July 2024) 11.

the Queensland Ombudsman, so if a new stand-alone victims' right is inserted in the *QHRA*, it may require victims to make a complaint to the Victims' Commissioner, in the first instance. In that case, changes to the *Victims' Commissioner and Sexual Violence Review Board Act* are needed to make the complaint enforceable, or to allow the Victims' Commissioner to refer the matter to the QHRC in certain circumstances without needing to make a complaint to the justice sector agency first.

Recommendations

The Victims' Commissioner conduct an immediate review of the rights in the Charter of victims' rights, taking into consideration national and international developments in victims' rights.

A new right be incorporated into the *Human Rights Act* that recognises victims should be treated in a respectful and trauma-informed manner that reduces the stress and trauma on victims.

- This new right should include being treated with courtesy, compassion, respect and dignity by investigatory and prosecuting agencies, and to being provided relevant information (unless a victim has elected not to receive information) in a timely manner.
- This new right should refer to the Charter of victims' rights (in the *Victims' Commissioner and Sexual Violence Review Board Act 2024* (Qld)) for more detailed protections and support.
- In recognising a victims' right to respectful and trauma-informed engagement, the right should make mention of the need to take into account a victim's age, disability, gender identity, cultural and racial identity, religion, sexual identity, and parental, family, carer or kinship responsibilities, including a specific right to an interpreter for non-English speaking victims and a right to culturally safe processes and support. There should also be an acknowledgement that children who commit crimes are often themselves victims of violence, abuse and neglect, and provision needs to be made for this.
- The new right should relate to victims (and their families and any witnesses to the crime) who suffer personal (not financial/property) harm, in particular victims of serious violent crimes and for DFV victims in civil proceedings (who might be applying for a Domestic Violence Order).

Victims of crime can make a complaint to the Victims' Commissioner, who, if necessary, can then refer the complaint to the Human Rights Commission for enforceability without needing to make a complaint to the justice sector agency first.

9 Additional areas for reform

Queensland can create a Brisbane Olympics and Paralympics human rights legacy

The Gold Coast Commonwealth Games and the Australia/New Zealand FIFA Women's World Cup took an explicit and intentional human rights approach to planning and accountability.²⁵⁵ Mega-sporting events should be able to provide evidence of a human rights legacy: job creation, urban regeneration, new public housing, increased sports participation, and improved attitudes towards people with disabilities. However, the evidence that sporting events are in themselves intrinsically human rights promoting or apolitical events does not bear up to scrutiny without a clear plan and significant investment. In fact, hosting a mega-sporting event makes the host face increased human rights scrutiny on areas of existing weakness (in Queensland's case, refugee policy, indigenous rights, rights of public assembly and environmental degradation, especially of the Great Barrier Reef). Sport itself is the subject of international human rights law. The International Olympic Committee now has human rights regulation in their host city manuals and bid processes that will bind Queensland.

I recommend that the Brisbane 2032 Organising Committee include an explicit commitment to further strengthening human rights outcomes in their overall legacy, welcoming the existing commitments to disability employment. Further goals should be added on gender inclusion and climate adaptation measures that ensure the ability of all Queenslanders to participate in exercise and activity all year round.

Review of the Mental Health Act 2016 in 2026 to explicitly include human rights issues

The *Mental Health Act 2016* is set to be reviewed in 2026 and is a crucial area to prevent human rights violations to those in Queensland. To ensure alignment with the *Human Rights Act*, the following terms of reference should be considered:

- The Chief Psychiatrist should consider developing a policy guideline and direction to work towards minimizing involuntary psychiatric treatment in Queensland. This should include involuntary psychiatric treatment in the community, including community category of Treatment Authorities and Forensic Orders.
- There should be a judicial review of all long-term Treatment Authorities and Forensic Orders (e.g., longer than 3 years).
- The 'Better Care Together' plan of Queensland Health should be evaluated against the Human Rights Act 2019 and a standardized human rights tool or indicators should be adopted for regular review of the functioning of Queensland mental health system.
- National Preventive Mechanisms (NPMs) applicable in Queensland must be implemented under the Optional Protocol to the Convention Against Torture, to monitor locked inpatient psychiatric units (including acute units in the general hospitals and medium/high secure units in Forensic facilities), to ensure that the human rights of individuals detained in locked wards are protected and promoted.
- All 'care plans' of consumers being treated in Queensland mental health services must include a section on human rights and should be provided to the person it concerns. This should include a sub-section on 'economic, social and cultural rights' as well as 'civil and political rights'. There should be regular audit of those care plans.
- The clinical reports provided to the Mental Health Review Tribunal should have a section on *Human Rights Act 2019*. The Mental Health Review Tribunal considers the rights impacted by involuntary treatment and whether that is reasonable and justified under the Human Rights Act 2019. The Mental Health Review Tribunal must conduct regular audit of those sections.
- All Queensland Health staff working in the mental health services must receive training in human rights framework, the UN CRPD, OPCAT and *Human Rights Act 2019*, and their implications on mental health service delivery.

²⁵⁵ See further Susan Harris Rimmer, 'Towards a Human Rights Legacy for Sporting Events', Australian Outlook 24 April 2018: and Independent Human Rights Context Assessment Australia and New Zealand report for FIFA <https://digitalhub.fifa.com/m/49b24d1ee5112ef2/original/kl8xzu1uqojlhmdir5qm-pdf.pdf>

Recommendations

Create a Brisbane Olympics and Paralympics human rights legacy

That the Brisbane 2032 Organising Committee include an explicit commitment to further strengthening human rights outcomes in their overall legacy, welcoming the existing commitments to disability employment. Further goals should be added on gender inclusion and climate adaptation measures that ensure the ability of all Queenslanders to participate in exercise and activity all year round.

Review of the Mental Health Act 2016 in 2026 to explicitly include human rights issues

When the Mental Health Act 2016 is reviewed in 2026, the review terms of reference should ensure alignment with the Human Rights Act and the key human rights issues raised by this review.

Appendix A – Review team



Professor Susan Harris Rimmer – Independent Reviewer

Professor Susan Harris Rimmer focuses on international human rights law, climate justice and gender equality in the Griffith Law School and is a member of the Law Futures Centre. Sue leads the Climate Justice theme of the Griffith Climate Action Beacon. She is the founder of the EveryGen coalition (www.everygen.online) which seeks to amplify the voices of current and future generations and highlight the long-term impacts of today's policy decisions. With Professor Sara Davies, Susan is co-convenor of the Griffith Gender Equality Research Network.

Susan was the 2021 winner of the Fulbright Scholarship in Australian-United States Alliance Studies (funded by DFAT) and was hosted by Georgetown University in Washington DC in 2022. She was named a Top Innovator by Uplink World Economic Forum for the Climate Justice Challenge in 2022 for the creation of the Climate Justice Observatory (www.climatejusticeobservatory.com.au). She won the Bertha Lutz Prize for research on women in diplomacy awarded by the Centre for International Studies & Diplomacy and The Diplomatic Studies Section (DPLST) of the International Studies Association (ISA) in 2021. Susan provided the independent Human Rights Assessment for the successful FIFA Women's World Cup Australia and New Zealand 2023 Bid in 2020 and was the Human Rights Adviser to GOLDOC for the 2018 Commonwealth Games.

Susan is the editor of *Climate Politics in Oceania* (MUP 2024 with Caitlin Byrne and Wes Morgan), *Futures of International Criminal Justice* (Routledge 2022, with Emma Palmer, Edwin Bikundo and Martin Clark), the *Research Handbook for Feminist Engagement with International Law* (Edward Elgar 2019, with Kate Ogg); and author of *Gender and Transitional Justice: The Women of Timor Leste* (Routledge, 2010) and over 44 refereed academic works in leading journals. In 2014 she was named one of the Westpac and Australian Financial Review's 100 Women of Influence in the Global category. Sue was named one of 100 global gender experts by Apolitical 2018 for her work on the G20, and one of 20 Queensland Voices Female Leaders in 2019.

Prior to academia, Sue was the Advocacy lead at the Australian Council for International Development (ACFID) and has also worked for the UN High Commissioner for Refugees, the National Council of Churches and the Parliamentary Library. She currently holds voluntary board positions as President of UNAA QLD and Foundations for Tomorrow.



Professor Elena Marchetti – Victims of Crime Lead

Professor Elena Marchetti is a co-Director of the Disrupting Violence Beacon and a Professor of Law in the Griffith Law School, Griffith University. She is a member of the Australian Research Council College of Experts and the Deputy Chair of the Queensland Sentencing Advisory Council. She has been the recipient of two highly competitive Australian Research Council Fellowships. The first examined the impact of using Indigenous sentencing courts for partner violence offending. The second, investigated how to better evaluate Indigenous-focused criminal justice programs. Her research focuses on sentencing processes, the justice experiences of Aboriginal and Torres people, access to justice for marginalised groups, and legal reform in the area of domestic and family violence.



Professor Janet Ransley – Youth Justice Lead

Professor Janet Ransley is a Professor in the Griffith Criminology Institute (which she led from 2018-2023) and School of Criminology and Criminal Justice (which she led from 2011-2015). Prior to joining Griffith, she held policy positions with the Queensland Legislative Assembly and the Criminal Justice Commission (now the Crime and Corruption Commission) and worked as a solicitor. She researches on criminal justice system policy and reform, equitable and effective policing and justice processes, and integrity in criminal justice, legal and political systems. She also leads the Systems Change Hub within the Transforming Corrections to Transform Lives Centre, an innovative collaboration working to create a transformative system of practice that addresses system gaps, improves pathways, and strengthens supports for imprisoned mothers and their children, so as to reduce the intergenerational transmission of offending and disadvantage.

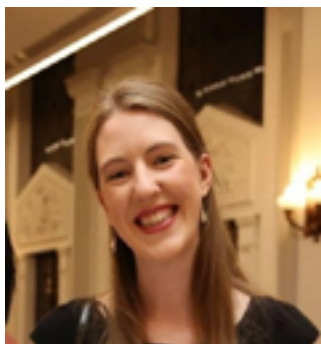


Dr Allison Henry – Policy Lead

Dr Allison Henry is a Research Fellow and Associate with the Australian Human Rights Institute at UNSW, where her research focuses on institutional responses to campus sexual violence. With more than two decades experience in law, politics, public policy and advocacy, Allison's previous roles include three years as the Managing Editor of the Australian Journal of Human Rights, five years as a Ministerial advisor in the federal parliament and three years as National Director of the Australian Republican Movement. She has also worked at the Australian Human Rights Commission and the Refugee Review Tribunal. Since 2012 Allison has run her own consulting firm, Millwood Consulting, working with a diverse range of not for profit and non-government organisations on various public policy and campaign projects.

Melanie Davies – Review Manager

Melanie Davies is the Centre Coordinator of the Law Futures Centre. She previously worked for the Prosecution Project Laureate team as the project administrator. Melanie was with the Australian Research Council Centre of Excellence in Policing and Security (“CEPS”) since shortly after its inception in 2008 in the role of centre coordinator. Prior to joining CEPS, Melanie was a paralegal at a medium sized law firm for over 15 years.



Ellie Conroy – Researcher

Ellie is a lawyer and policy professional, specialising in human rights and anti-discrimination. Through diverse experience across policy, corporate advisory, academia and community legal roles, Ellie has expertise in designing and applying human rights-based frameworks. She is passionate about intersectional and evidence-based policy design and believes in the power of diverse voices and lived experience. Ellie holds a Bachelor of Laws (Honours) and Bachelor of Commerce from the University of Queensland.



Matthew Day – Researcher

Matthew Day is a fifth-year university student, studying a Bachelor of Laws (Honours)/Bachelor of Government and International Relations at Griffith University. He is also a Research Assistant within the Griffith Law School. He has previously been a Research Assistant within Griffith University's Policy Innovation Hub, as well as for Foundations for Tomorrow. Matthew was awarded the Griffith Award for Academic Excellence in 2020-2023. He is a member of the Griffith University Student Academy of Excellence. Matthew is also a member of the 2024 U.S. Consulate General's Brisbane Youth Advisory Council.



Dr Annemarie Devereux – Peer Review of Final Report

Dr Annemarie Devereux is a lawyer, specialising in international law, human rights law and constitutional law. Within Australia, she has worked with the federal Attorney-General's Department, including as Assistant Secretary of the International Security and Human Rights Branch. She also worked as a public-interest lawyer in the community sector with the Public Interest Advocacy Centre (Sydney) and was Research Director for Chief Justice Gleeson. Shorter term engagements have included work with the Women's Policy Unit (Office of Cabinet, QLD), the Jesuit Refugee Service, and the Human Rights and Equal Opportunity Commission (now the AHRC).

Internationally, she has held a range of senior legal and human rights roles with the United Nations, including with: three successive United Nations peacekeeping missions in Timor Leste, the Counter Terrorism Committee Executive Directorate (CTED) supporting deliberations of the Security Council (New York) and the Office of the High Commissioner for Human Rights (Geneva, Nepal). In recent years, her work has focused on supporting International Commissions of Inquiry and other UN mandated human rights fact-finding/accountability-related mandates, in contexts as diverse as Timor Leste, Libya, Yemen and Sri Lanka. Alongside her legal practice, Dr Devereux continues to teach and research in the fields of international law, human rights law and constitutional law. She has taught courses at a range of Australian universities and is currently an Adjunct Professor at Griffith University.

Appendix B – Previous Public Surveys

Context see Section 2.3.1

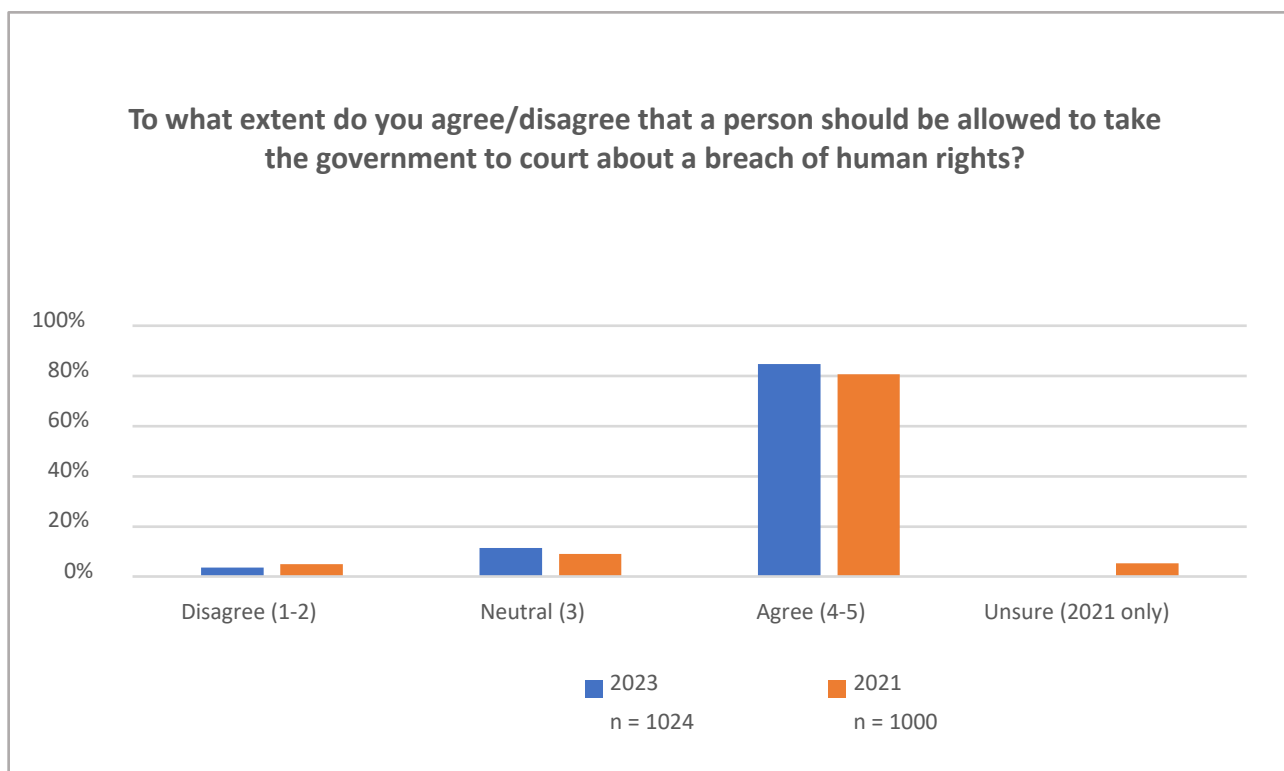
It is worth noting relevant context during the time period in which the survey was conducted, 9-23 June 2023. The most prominent human rights issue in the media at this time concerned the Queensland Government's response to a perceived escalation in youth crime, where the Act was overridden twice. Other prominent issues were the Voice Referendum, access to affordable housing, the cost of living, access to maternity services in rural areas and the Wieambilla police shooting.

Findings

Importance of rights

There was great support for the importance and relevance of human rights. Some 92% of respondents agreed that 'the protection of human rights and dignity is important', and 84.6% agreed that human rights were personally relevant to them. These numbers were marginally higher than those reported in the 2021 survey.

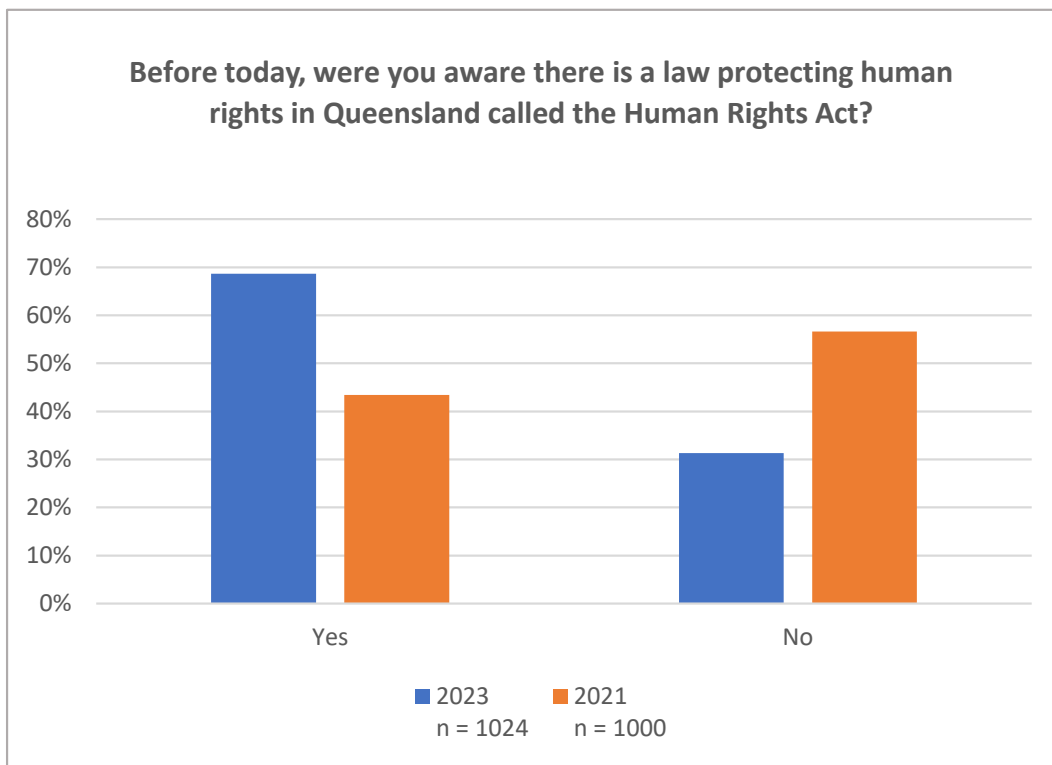
There was also very high support for the idea of holding the government to account for breaches of human rights in the courts. The numbers in agreement went up to 84.9% in favour from the already high 80.7% in 2021. This support helps to dismantle one of the main arguments, commonly made against charters of rights, that human rights are properly the domain of Parliament. Over 80% of respondents, with very little actual disagreement, think that they are also properly within the domain of the courts.



Knowledge of the Act

Knowledge of the Act improved significantly from 2021. Some 68.9% of survey participants had heard of the Act, compared to 43.4% in 2021. This may be because the Act was, at the time of the second survey, over three years old, rather than less than two. Furthermore, the government overrides mentioned above had highlighted the Act itself, rather than simply hu-

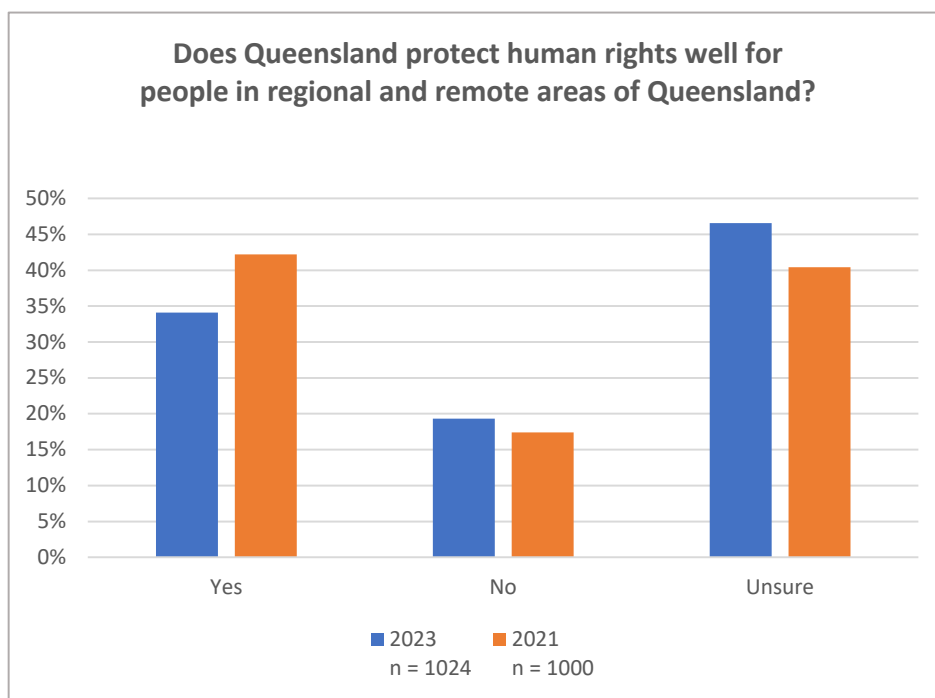
man rights generally, in news stories. In contrast, slightly fewer people had heard of the free complaints function attached to the Act: 35.9% compared to 37.2% in 2021. 57.8% felt that the Act would make a difference in protecting human rights, compared to 55.4% in 2021.

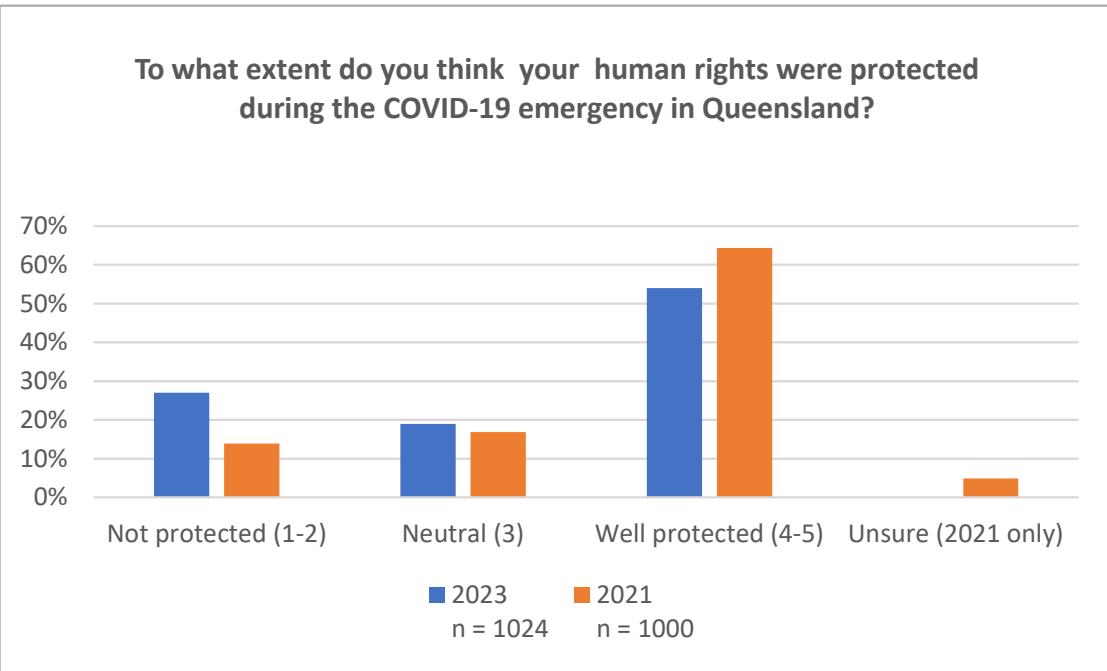
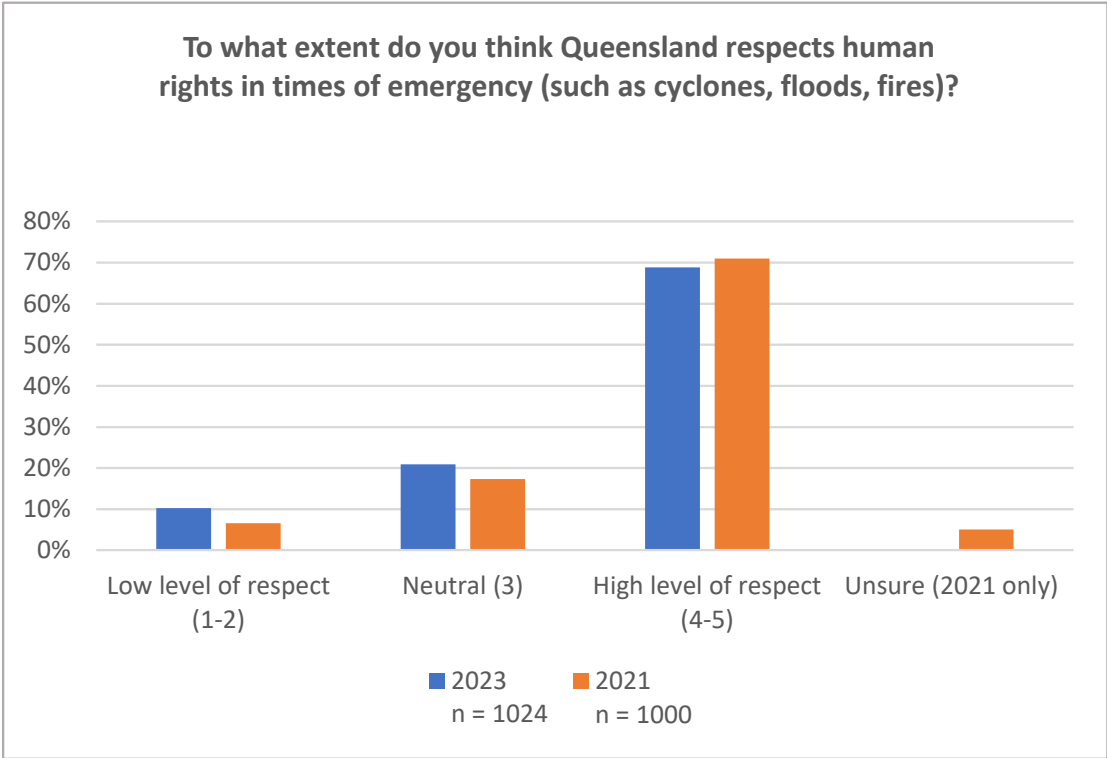


Adequacy of protection for human rights

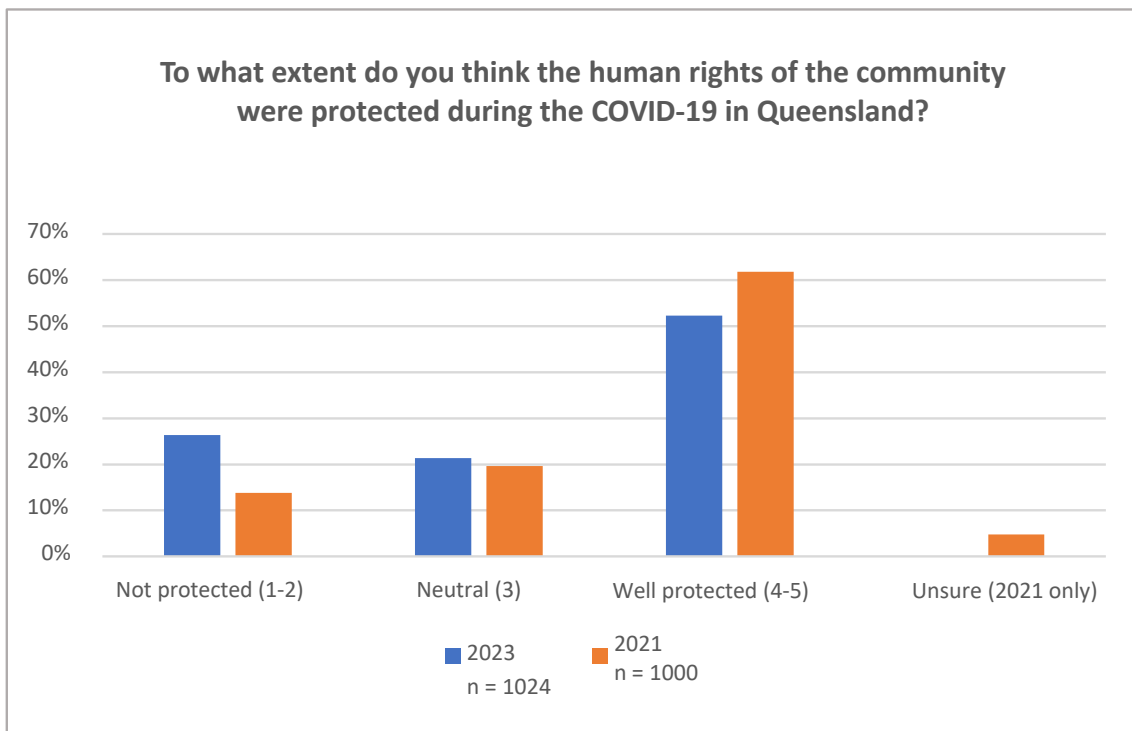
A number of questions in the survey related to the adequacy of actual respect for, and protection of, rights in Queensland – generally and in various contexts and by various bodies. With regard to the general question of whether rights were well protected in Queensland overall, the numbers in favour from both surveys were almost identical, around 64% for both. However, the numbers who disagreed almost doubled, from 7.2% to 13.1%, with a commensurate drop in neutral responses.

This marginal loss of faith in the adequacy of human rights protection in Queensland is more starkly reflected in the more precise questions, as can be seen in the following graphs.





The drop in positive responses to the COVID-19 questions, demonstrated in the graph below, may reflect dissatisfaction with the controversial vaccine mandates, which did not come into force until after the 2021 survey. It also may reflect retrospective dissatisfaction with the harsh measures taken throughout the country at the height of the pandemic. Whilst measures such as interstate (and international) border closures, for example, seemed to be popular at the time as they significantly slowed the spread of COVID-19 within Australia and Queensland, the memory of them may not be so rosy.



Institutions and human rights

As in 2021, we asked about people’s perceptions of the human rights performance of certain public and private institutions in Queensland. These institutions were, in the public sector: health services, schools, TAFE and universities, prisons, police, aged care, public service, and councils. In the private sector, the responses concerned the human rights records of employers, businesses, shopping centres, and religious institutions.

The best-performing public institutions were “TAFE and universities”, where positive responses rose from 62.1% in 2021 to 67% in 2023. Taking into account rates of both positive and negative responses (i.e. excluding neutral responses), faith in the human rights performances of schools, health services, police, the public service and councils all dropped slightly from 2021 levels. The worst public sector performers were aged care and prisons, with the most marked differences from 2021 arising with regard to the latter.

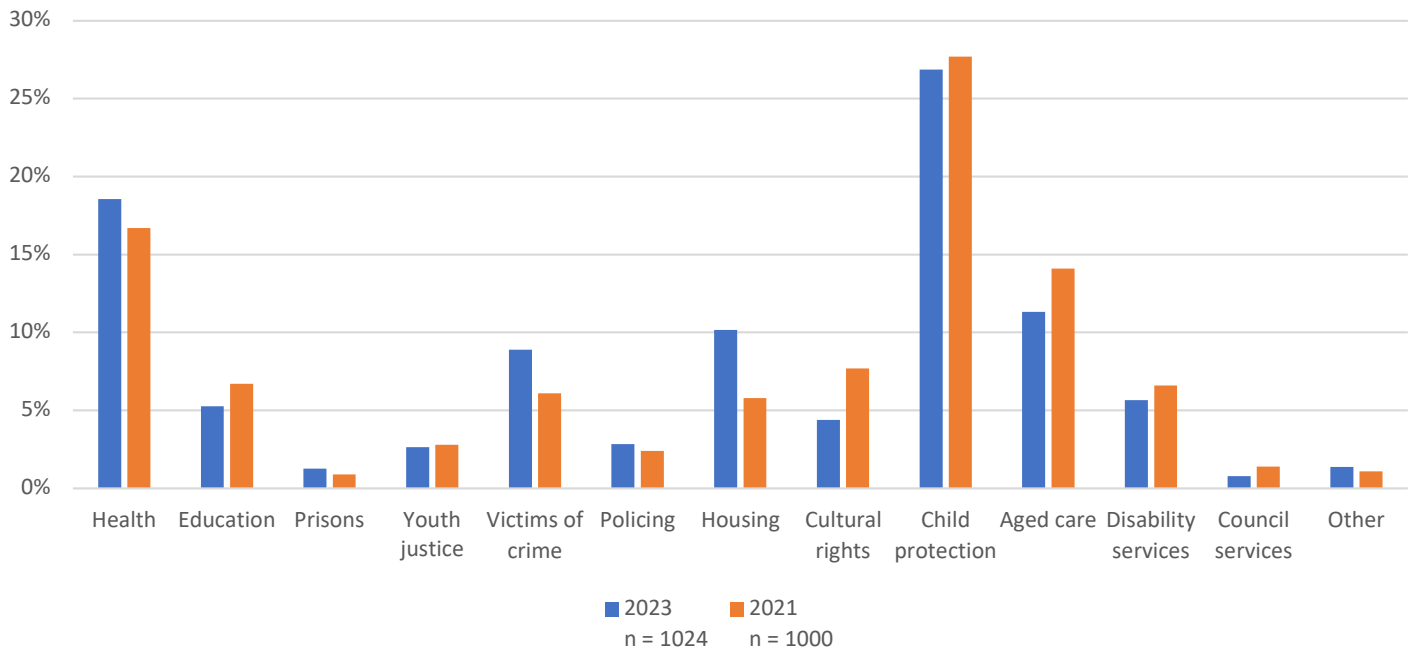
In the private sector, three of the four institutions (employers, businesses, shopping centres) attracted positive responses of just over 50%. As had been the case in 2021, the worst ranked private sector institution was “religious institutions”, with positive ratings of 48.3% (just down from 49.7% in 2021), and negative ratings of 23.4% (up from 18.3%).

The worst rated institutions overall were, as in 2021, prisons, aged care and religious institutions. All have been the subject of major inquiries into their human rights performance in recent years. The former two institutions deal with especially vulnerable people in settings where they are especially vulnerable to abuse.

What human rights issues do Queenslanders care about the most?

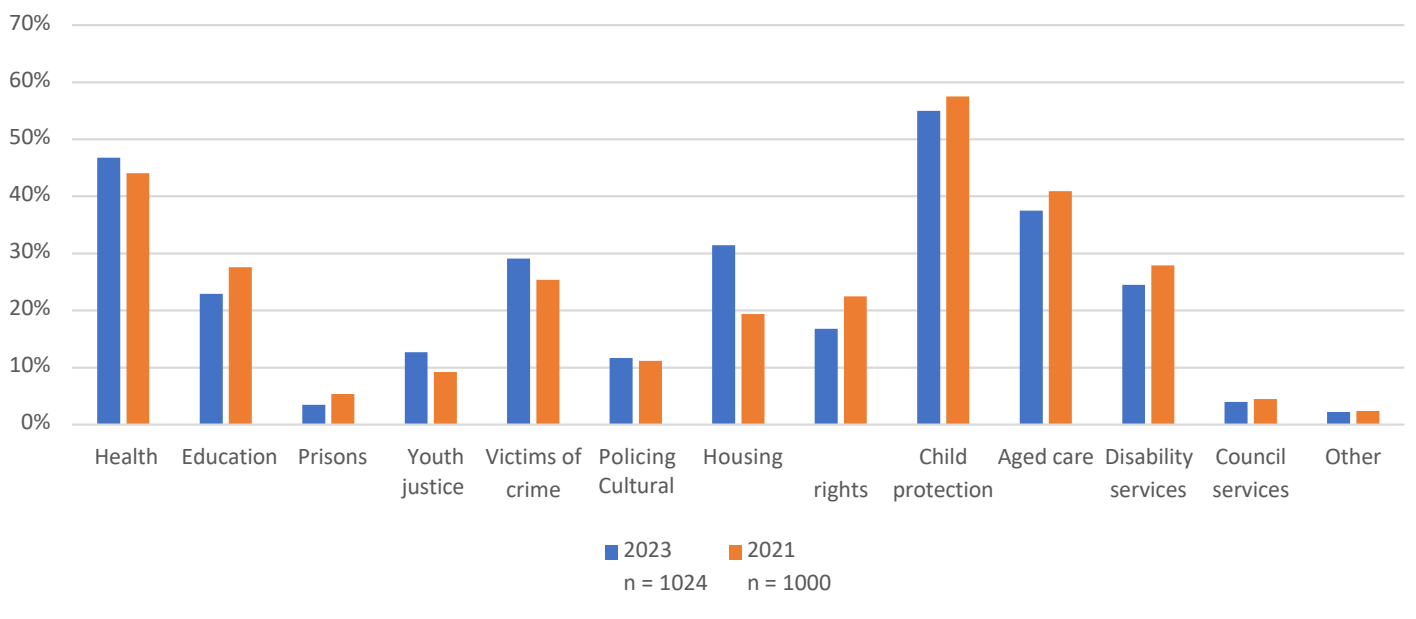
Queenslanders were most concerned about the rights of children, health and aged care. As in 2021, these three answers commanded over half of first choice responses. There was a significant rise in concern over housing, and a slight rise in concern for victims of crime. There was a drop in concern for cultural rights, which may have been a harbinger of Queensland’s strong No vote at The Voice referendum. As in 2021, concern for people in contact with the criminal justice system (aside from victims) was very low, though there was a rise off a low base in concern for youth justice.

What are the three most important areas where protection of human rights is most needed? (Rank 1)

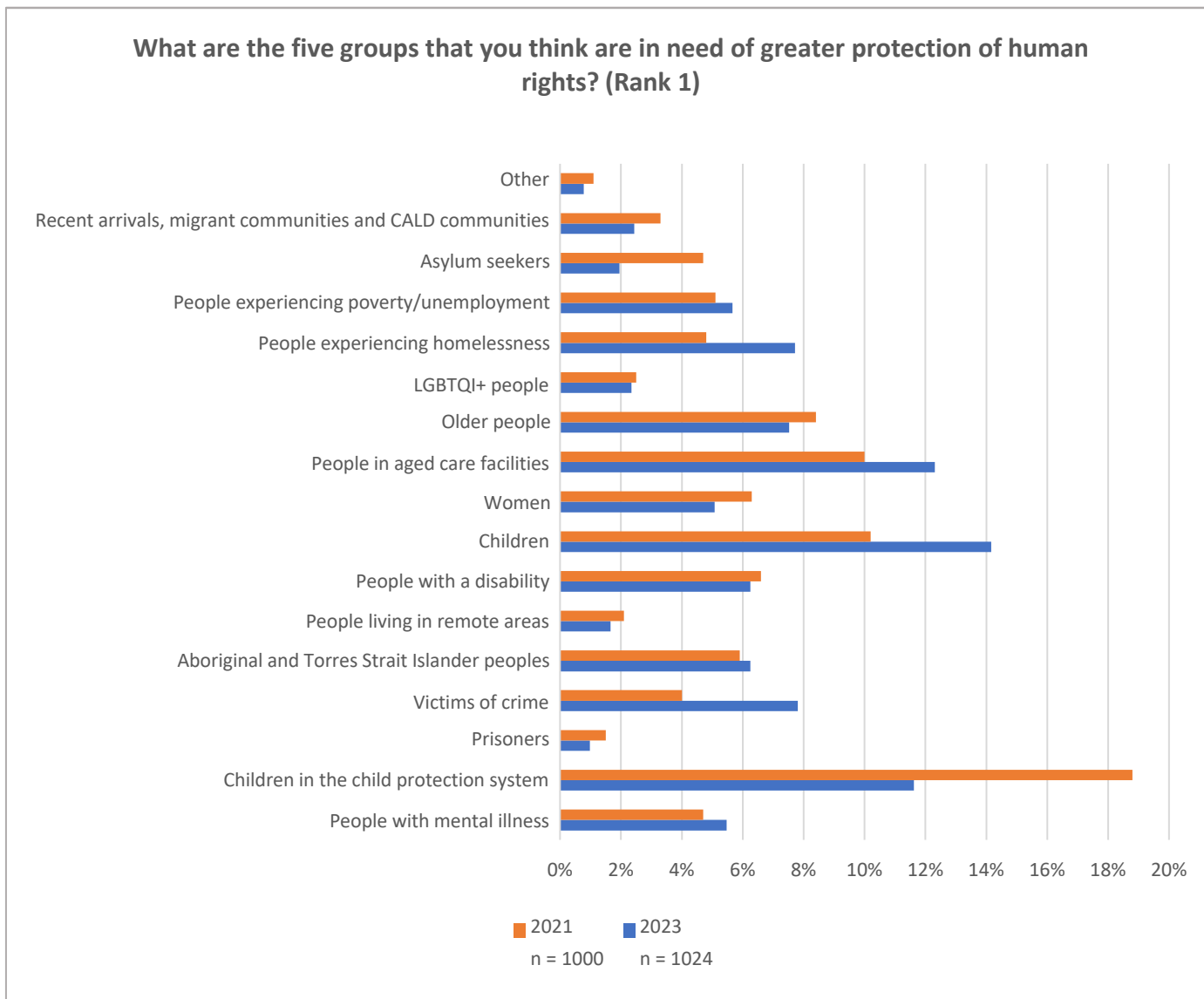


A similar picture appears when one looks at the rights that were listed in any of a respondent's top three concerns.

What are the three most important areas where protection of human rights is most needed? (Rank Any)



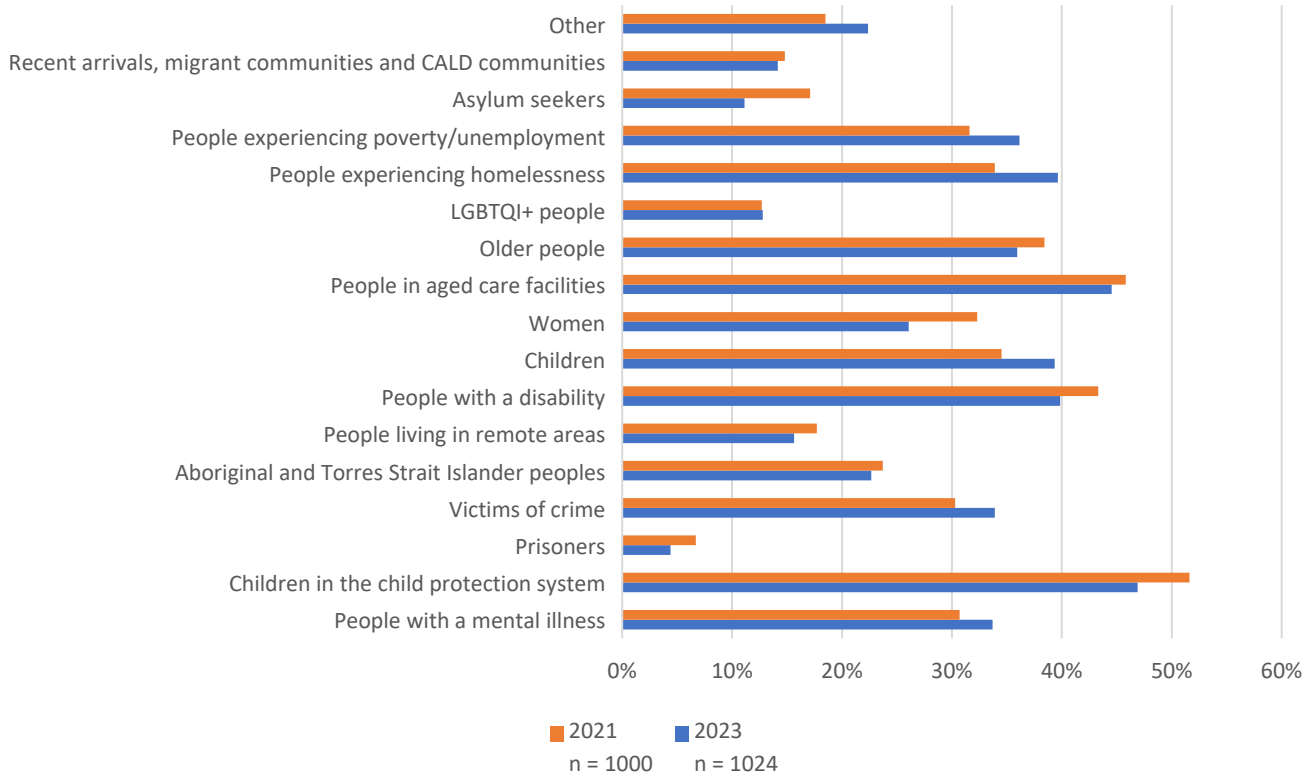
These results were also reflected in participant’s identification of the top five groups in the greatest need of human rights protection.



These results were similar at the top end to those in 2021, but there was a significant rise in concern for victims of crime and people experiencing homelessness. In 2021, the top-ranking concern was for children in the child protection system (18.8%) which has dropped in 2023, with concern for children (generally) rising instead. These results clearly reflect the reality of Queensland’s housing crisis, as well as renewed concerns over youth crime, and the victims thereof. It is notable that concern for health care and aged care rose slightly, confirming that these are perennial concerns rather than ones merely magnified by the pandemic.

The concerns even out, as can be expected, when one takes into account all ranked concerns (respondents could rank their top five), where more concern for the unemployed and people with disability is apparent.

What are the five groups that you think are in need of greater protection of human rights? (Rank Any)

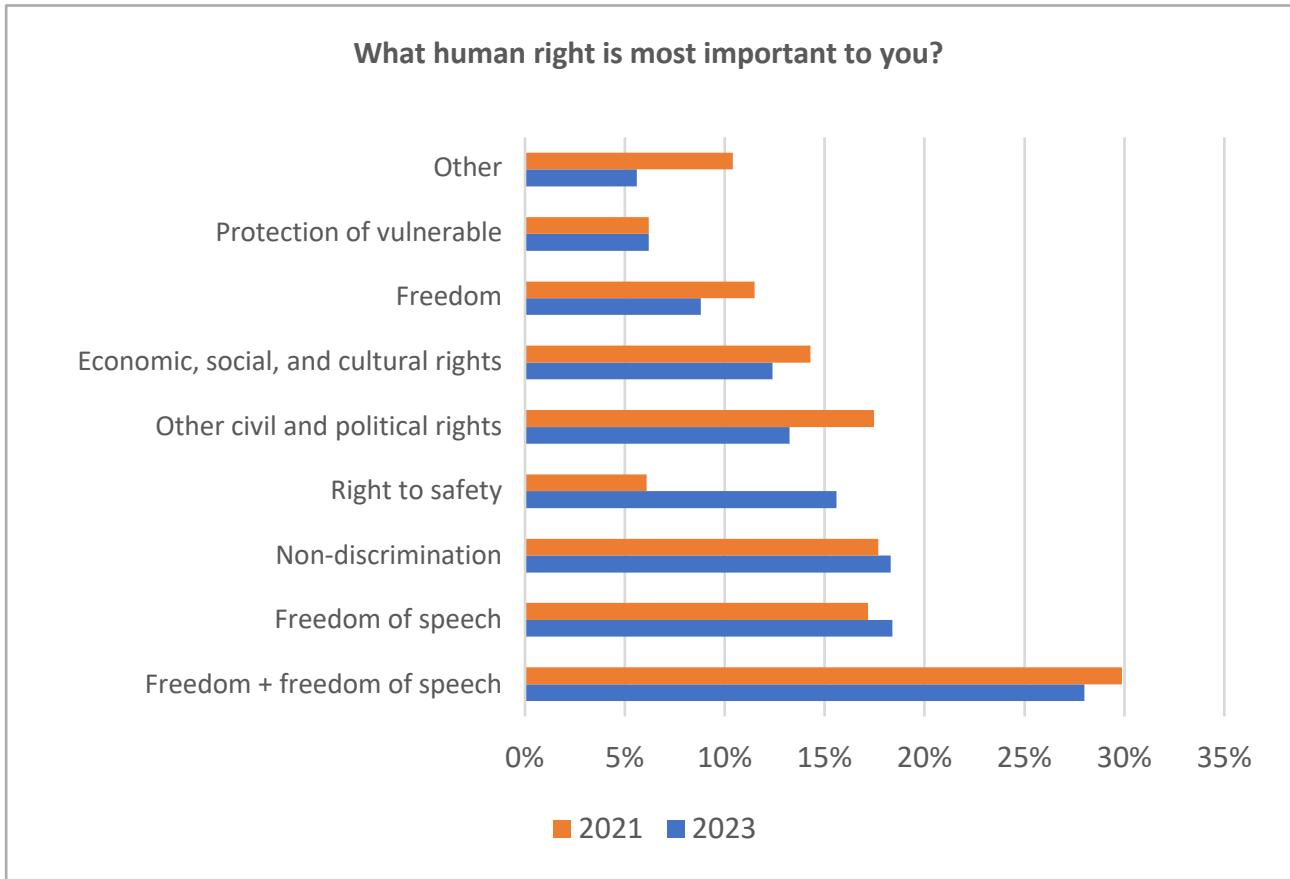


Most important rights

Respondents were given the opportunity to identify the right/s they believed to be the most important. This was a free-text answer that was not compulsory, so some failed to answer it. The answers were analysed by identifying the main categories of rights identified, and allocating a numeric value to each of those categories. The number of each digit was then counted by the Microsoft Excel program.

The results were similar to 2021. There was a large growth, of nearly 5%, in the number of people concerned with freedom of speech. The biggest drop concerns other civil and political rights, which excludes freedom of speech. Freedom of speech, coupled with the more generic “freedom”, commanded over one third of responses. One respondent stated this as: ‘being able to have my own opinion and express when something is not right.’

There was a slight rise in concerns over rights associated with safety and, perhaps surprisingly in light of cost-of-living pressures, a slight drop in concern for economic, social and cultural rights. Many respondents noted that housing was out of reach for them and one identified the most important right as “the right to having a roof over my head”. The rise in overall concern for “freedom” could be associated with memories of COVID-19 mandates, though those mandates did not target freedom of speech as such. Non-discrimination, highlighted in nearly one fifth of valid responses, remains a primary concern.



There was also a free text question where people could identify events in Queensland’s past where human rights were breached. The two most common issues raised were the treatment of Indigenous people (which commanded nearly one third of valid responses) and the restrictions, including vaccine mandates, imposed during the COVID-19 pandemic (nearly one fifth of responses). For example, one respondent noted: ‘Yes, during COVID when people were forced to be vaccinated otherwise they could not even go shopping for essentials’ and another noted ‘When, during COVID, people were stopped at borders and could not go to loved one’s funerals. At the same time sporting teams were free to come and go as they pleased.’

In 2021, concerns about the management of COVID-19 captured just under 12% of answers. Furthermore, the 2021 COVID concerns were split between concerns about pandemic restrictions, and the management of the health impacts, particularly for the vulnerable. In 2023, the answers were largely based on COVID restrictions and mandates, rather than on health impacts of contracting the virus.

New rights

Two new questions were inserted into the 2023 survey. Some 80.7% supported the addition of a new right to a clean, healthy and sustainable environment into the Act and, overwhelmingly, 90% of respondents supported the idea that the rights of future generations should be taken into account in making decisions.

Appendix C – Discussion paper questions

Discussion Paper for General Public – discussion questions

1. Have you had a personal experience related to the operation of the *Human Rights Act*? (eg made a complaint to a department or the Queensland Human Rights Commission)
 - Please tell us about your experience including any challenges you encountered.
 - Do you have any suggestions for how this could have been a better experience for you?
2. The *Human Rights Act* currently includes civil and political rights, cultural rights (general and indigenous) and some economic and social rights (education, health). Are there any other rights that you would like to see included in the Act and protected in Queensland?
 - What would including those new rights mean to you?
3. What are some examples of where the **current law does not protect human rights**?
4. Do the current laws strike the right **balance between different rights**?
5. Do you think the Act has helped to build a culture of human rights in Queensland government departments and/or in organisations delivering government services?
 - Please tell us about your experience.
 - Do you have any suggestions for how this could be improved?
6. What **other measures** (non-legislative) are required to ensure human rights are protected under the law in Queensland? (eg support, education, training and guidance to the community)
7. How could the current **complaints and dispute resolution processes** be structured to better protect human rights?
 - Please tell us about your experience.
 - Do you have any suggestions for how this could be improved?
8. The *Human Rights Act* currently requires that a complaint must ‘piggy-back’ another type of complaint to access remedies. Should a person be able to pursue a complaint based on a human rights infringement, independently?
9. The *Human Rights Act* currently provides for limited **remedies**. What remedies should be available to people whose human rights have been infringed?
10. The *Human Rights Act* made amendments to the *Corrective Services Act 2006* and the *Youth Justice Act 1992*.
 - Are the amendments made by the Act operating effectively?
 - Do you think these changes were fair?
11. The *Human Rights Act* says that in certain circumstances Parliament can pass laws even though they breach the Act.
 - Has the Parliament’s power to override the *Human Rights Act* be used appropriately?
 - Do you think any changes need to be made to this power?
12. Should **victims’ rights** be incorporated into the Act?
13. What are the **future challenges to human rights** you think Queensland will face?

Discussion Paper for Public Sector and Public Authorities – discussion questions

1. To what extent has the implementation of the Act helped to **build a culture of human rights** in the Queensland public sector?
 - Noting the Working for Queensland survey 2023 results of 77% for the ‘Human rights and my job’ question, how would you best characterise the way the HRA is talked about in your department?
 - o It is seen as an administrative burden
 - o It is seen as a risk management tool
 - o It is seen as an expression of our values
 - o It is seen as an aspiration only
 - Can you suggest any process improvements for using the Act?
 - How does the Act work with key strategic documents for your department - such as charter letters, the Queensland Plan, the Code of Conduct, the Even Better Public Sector Strategy?
 - Can you name a difference in a policy measure because of the Act?
 - How does the Act influence your ethical practice as a public servant?
 - Has your organisation found the Act challenging or helpful in the following activities?
 - o Policy development
 - o Regulation
 - o Monitoring and evaluation of programs
 - o Budget measures
 - o Stakeholders/co-design
 - o Operational/program decisions
 - o Legislative development
 - o Complaints
 - o Litigation
 - o Interactions with the public?
2. What is your assessment of the role of support, education, training and guidance provided by the Queensland Government? What would help your organisation?
3. What is your assessment of the role of support, education, training and guidance provided by the Queensland Human Rights Commission? What would help your organisation?
4. Should any additional human rights be included as protected rights under the Act, including, but not limited to, rights under—
 - i.* the International Covenant on Economic, Social and Cultural Rights; or
 - ii.* the Convention on the Rights of the Child; or
 - iii.* the Convention on the Rights of Persons with Disabilities; or
 - iv.* the Convention on the Elimination of All Forms of Discrimination against Women?

For example: rights for victims of crimes (see q. 12), digital rights, rights of nature, the right to a clean, healthy and safe environment, right to challenge a wrongful conviction, right to housing, rights of future generations?

5. Should further or different provision be made in the Act about proceedings that may be brought or remedies that may be awarded in relation to acts or decisions of public entities made unlawful because of the Act?
6. Are the amendments made by the Act to the Corrective Services Act 2006 and the Youth Justice Act 1992 operating effectively, or should further or different provision be made for the interrelationship between the Act and those Acts?
7. Please comment on the effectiveness of **existing protected rights** (Part 2, Divisions 2 and 3 of the Act); and on whether there is any need to reform these provisions of the Act?
8. Please comment on the effectiveness of the **scrutiny of legislation and regulation** by Parliament (Part 3, Divisions 1 and 2 of the Act), and on whether there is any need to reform these provisions of the Act?
9. Please comment on the effectiveness of **court and tribunal proceedings**, including the interpretation of laws (Part 3,

Division 3 of the Act), and on whether there is any need to reform these provisions of the Act?

10. Please comment on the effectiveness of the **obligations of public entities** to act and make decisions in a way that is compatible with human rights and to properly consider human rights in making a decision (section 58 of the Act), and on whether there is any need to reform these provisions of the Act?
11. Please comment on the effectiveness of the provisions in relation to human rights **complaints and dispute resolution** (Part 4, Division 2 of the Act), and on whether there is any need to reform these provisions of the Act?
12. Should the **recognition of victims' rights** under the Charter of Victims' rights in the Victims of Crime Assistance Act 2009 be incorporated into the Act? (as recommended by The Women's Safety and Justice Taskforce in its Report - Hear her voice – Report two – Women and girls' experiences across the criminal justice system and the Legal Affairs and Safety Committee Report on the Inquiry into Support provided to Victims of Crime (Report No. 48, 57th Parliament, May 2023))

The terms of reference for the Review note that any other matter the Reviewer considers appropriate and relevant may be explored. Please comment on any other issues relate to the operation of the HRA you think the Review should consider. For example: What future challenges to human rights will Queensland face? How best to ensure the Brisbane Olympics protects and promotes human rights?

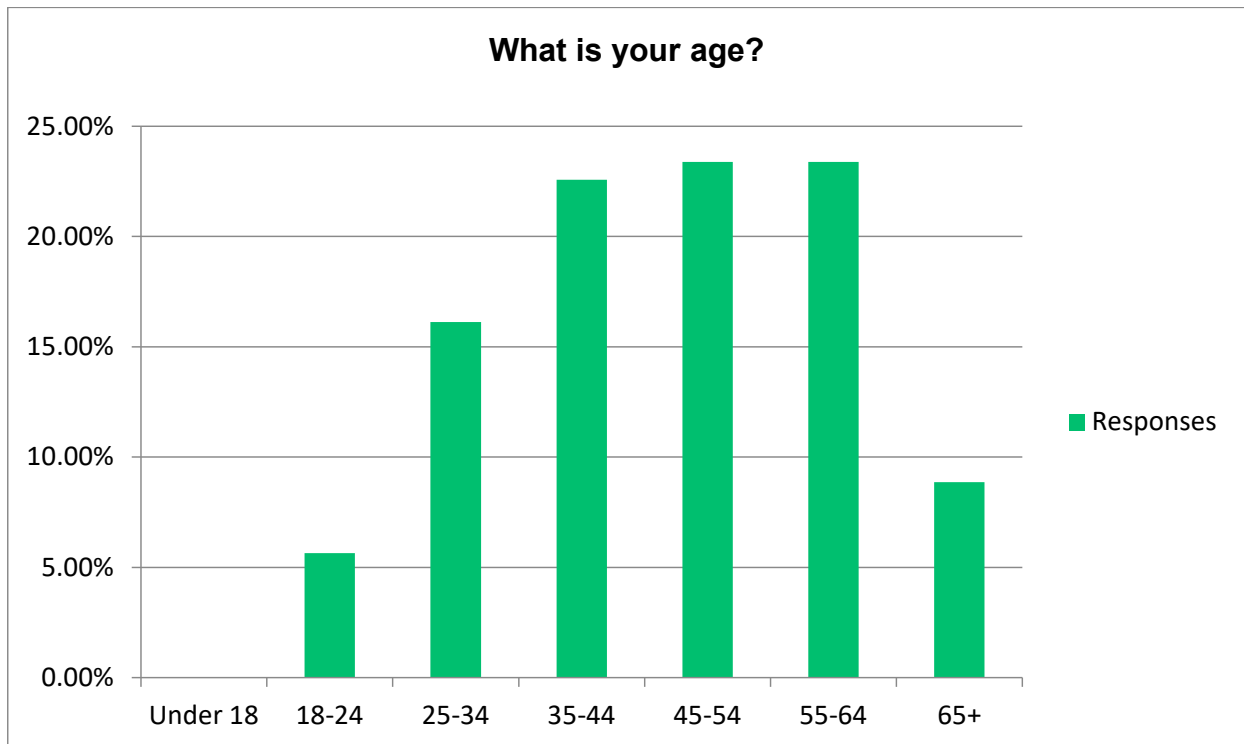
Appendix D – Online survey

Participants

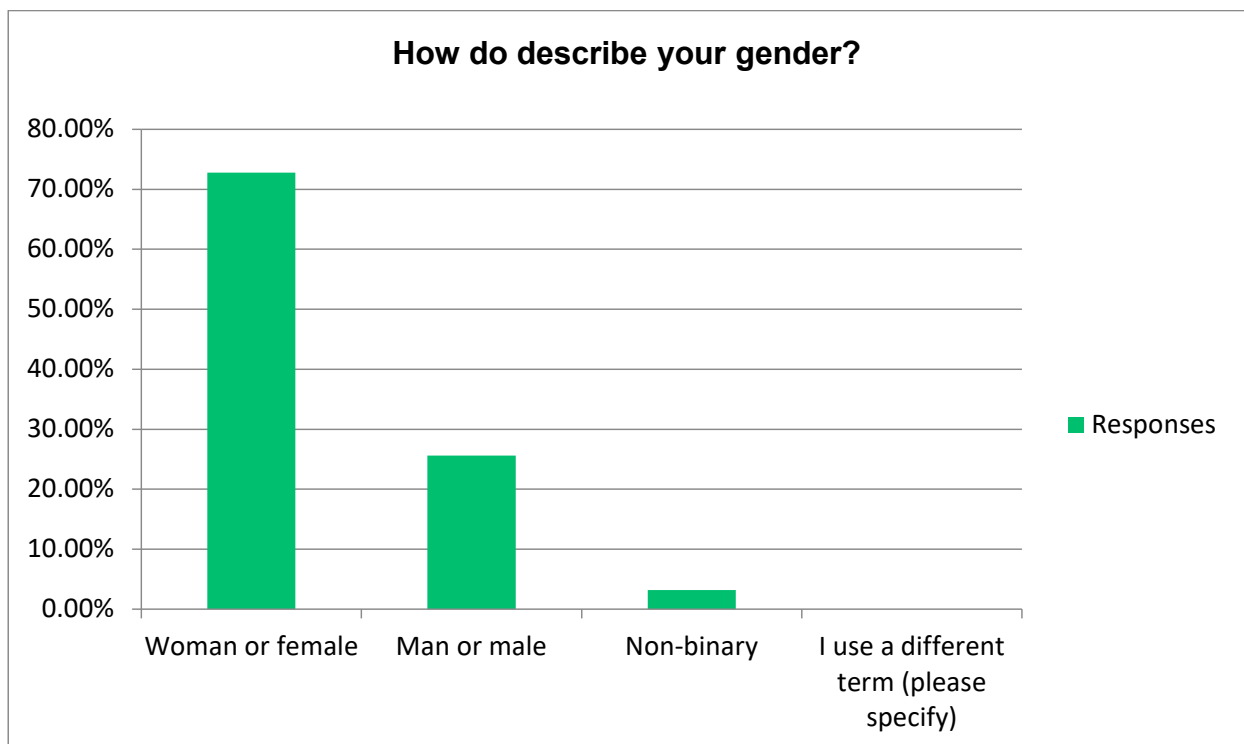
An online survey on Survey Monkey was open to the public between 13 May and 17 July 2024.

In total 127 participants completed the online survey, with 21% of respondents living outside south-east Queensland.

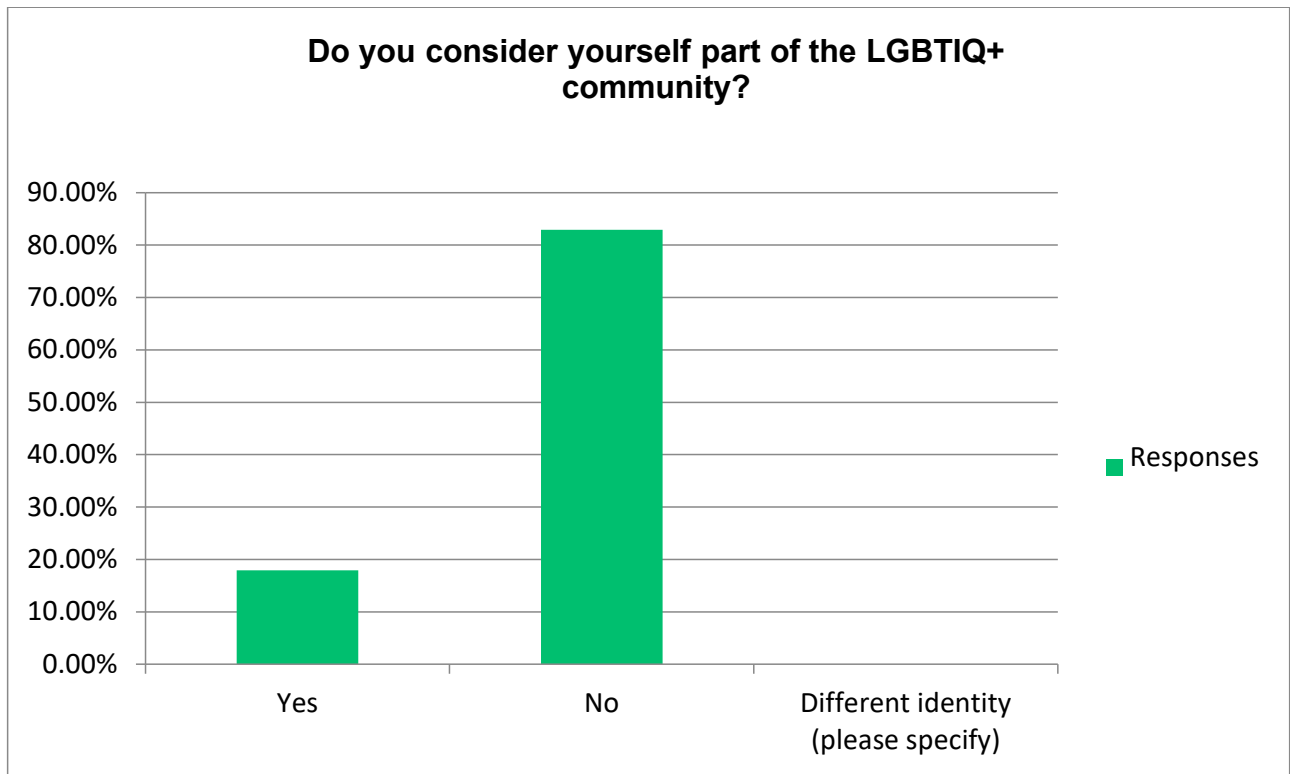
Two-third of respondents were aged 25-64 years of age:



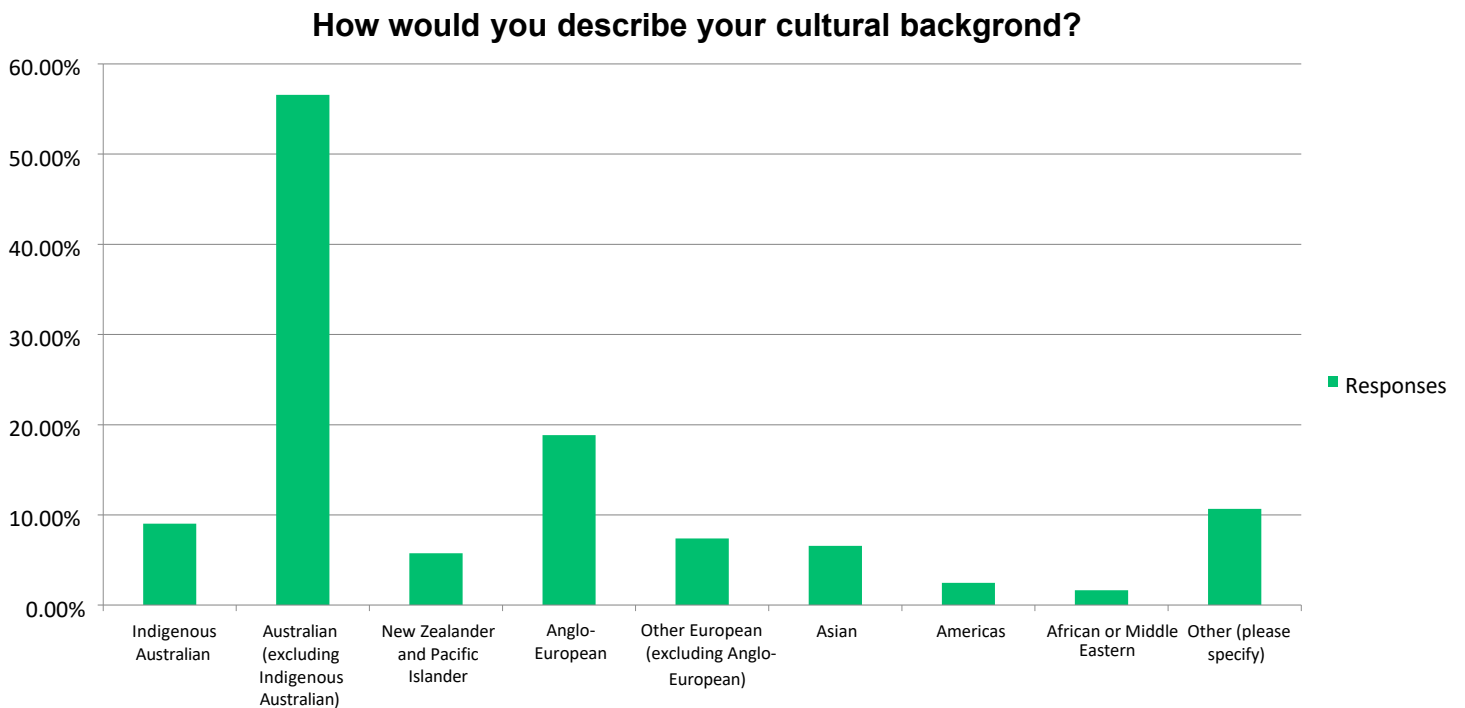
Nearly three-quarters of respondents identified as women or female:



Almost a fifth of respondents identified as part of the LGBTIQ+ community:



Almost 10% of respondents were Indigenous, and more than 55% identified as Australian. Other respondents were drawn from a range of cultural backgrounds:



Some 17% of respondents spoke a language other than English at home.

Experiences with the *Human Rights Act*

Respondents were asked to describe their experience with the *Human Rights Act*, and 60 survey participants provided

open text responses. Of these, six respondents reported no experience with the Act and four expressed personal views on general issues around human rights and discrimination.

A range of issues were raised:

- Eleven survey respondents relayed their frustration and disappointment with the operation of the *Human Rights Act* in relation to COVID matters, with several respondents commenting on the impact on their employment.
- Six survey respondents reflected on the operation of complaints mechanisms under the Act.
- Five survey respondents related their experiences around child safety issues.
- Four survey respondents talked about their experiences of the Act in relation to their role as a public servant.
- Two survey respondents reflected on their experiences as Aboriginal people.
- Two survey respondents commented on the operation of native title.
- Two survey respondents commented on education.
- Two survey respondents related their experiences, trying to use the Act around disability rights.
- Two survey respondents commented on gender identity issues.
- One survey respondent raised concerns about child support
- One respondent commented on their experience in prison.
- One survey respondent commented on the rights of unborn children.
- One respondent commented on their experience engaging with government departments around a potential forced land acquisition due to construction of a new highway.
- One respondent registered their concern about the interaction of human rights obligations and the Mental Health Act and associated statutory policies.
- One 75 year old respondent in good physical health was unhappy about the medical process required for his driver's licence.
- One respondent relayed his concerns about air pollution.
- One respondent commented on their experience being racially vilified in the public healthcare system. A public servant described being bullied in their workplace and another respondent relayed their experience being verbally abused in the workplace from a customer.

Challenges in making complaints

Survey respondents were asked whether they had encountered any challenges in making a complaint. While 58 participants responded to this question, 15 indicated they had not encountered any challenges, and another five commented that they had not made a complaint due to constraints such as the issue of concern falling outside the scope of the QHRA. Of the remaining 38 responses, four participants stated that they had experienced challenges but did not elaborate.

Seven survey respondents noted that they had been unable to make a COVID-related complaint.

Survey respondents raised issues with making complaints to public authorities. Several respondents had made multiple complaints, often without resolution. Comments included:

- *Extremely hostile approach from managers who allocated blame to the person who reported/made a complaint. Was advised that executive do not want incidents of breaches of persons human rights formally reported via incident reports.*
- *Government agencies acknowledge their position to ensure the human rights act is upheld, however have failed to provide evidence or change in behaviours reflecting that agreement.*

Several survey respondents stated that their complaints experience with the QHRC was positive:

- *The QHRC have been very helpful. My challenge has been in being brave enough to stand up and make a QHRC claim.*
- *The speed with which we received advice from QHRC & QCAT was generally very good.*

... it is easy to use and straight forward, flexible and fast.

One respondent stated that complaints were “easy to make” but “follow up and enforcement is the problem. The regulators are useless and toothless.”

Another stated that “My interaction with the QHRC has been positive, however I note that the fact that organizations which breach human rights may be incentivised to drag it to a tribunal to wear complainants down.”

Other survey respondents were frustrated by issues being out of scope, by either commencement of the legislation or rights protected by the Act.

Other survey respondents also raised issues with making complaints to the QHRC, one citing “an extensive delay from lodgment to acceptance” (which the respondent acknowledged had been addressed by the Commission) and another frustrated that they had to lodge two separate complaints “even after I found the first one so difficult to compile.”

Two survey respondents particularly highlighted the challenge associated with the need to first make a complaint to a department before escalating to the Commission, suggesting it was too onerous for many prospective complainants. One respondent stated:

You are always told to first complain internally - this is a big problem in prisons and watchhouses as the power imbalance is huge and there is valid fear of repercussions for complaining internally. If you do not do this, you are told your complaint will not be addressed. This in itself deters many prisoners from complaining.

Two survey respondents particularly highlighted the need for more legal support in making complaints, one noting the challenge in “drafting complaints from clients instructions” and another suggesting that “there should be substantially more funding put in place to assist.”

Suggestions for how complaints processes could be better

Survey respondents were asked if they had any suggestions for how complaints processes could have been a better experience for them. While 56 participants responded to this question, 9 did not have any suggestions. Some 11 respondents made suggestions associated with the COVID pandemic and another 12 respondents made policy suggestions that fall outside the ambit of the independent review.

Several respondents emphasised the need for greater enforceability and accountability:

- *Consequences for government departments that breach human rights should be much more severe.*
- *Human rights should be legally enforceable.*

Ministers should be forced to provide stronger justifications for breaching Human Rights and the decision to breach should be something that can be appealed.

I suggest you consider deferring powers to ‘override the human rights act’ to the QCCC or the Governor of Queensland. This power should NOT sit with Ministers.

Several respondents offered suggestions around public authorities:

- *Government workers trained to work from a rights-based and trauma-informed approach.*
- *False and/or misleading human rights compatibility statements should be rejected and a new statement should be demanded.*

Belligerent Govt Departments must be held to a much higher standard - delays and victimisation must be severely dealt with (compensation to the victim and such behaviours/action deemed punishable against the individual responsible in both a civil and criminal context).

A range of suggestions were offered in relation to the QHRC. Two respondents recommended more funding for the Commission. Others referred to Commission staffing and how they could better support complainants, including the Commission having in-house lawyers funded by Legal Aid “to help victims submit proper legal complaints” or advocate to assist complainants to “make the right decisions and understand the paperwork and how the system works.” Several respondents suggested procedural improvements at the QHRC, including:

- *Easier applications for the young and elderly.*
- *More transparency, evidence of how alignment with the act is enacted.*
- *A complaints portal would be useful.*
- *... prompt responses to complaints and correspondence to the QHRC...*
- *... fulsome reasons for the decisions by delegates of the QHRC ... particularly when the decision is to deny the complaint. It would make the complainant more satisfied with any decision if the qualifications of the delegate were known...*
- *Robust complaints management process of the QHRC - triaging, referral back to public entities to manage, or own right to deal with if identified as systemic or high risk issues.*
- *Systems and processes need to be simplified so they actually serve the vulnerable and marginalised.*
- *... have a video showing how it works... show different rooms ... what the conciliators role is. It is very stressful being called in to deal with a complaint against you. Also suggest where to park in information sent out.*

Further suggestions

Survey respondents were asked whether there were any other issues they’d like to tell the review team. The issues raised, of relevance to the independent review, included:

- the need to teach human rights at school
- the need for nationally consistent discrimination and human rights laws
- the need to make human rights complaints processes to be more affordable, accessible and timely
- better or further education or changes to the *Human Rights Act* to ensure that all government departments properly understand their obligations towards disabled persons
- the need for interpreters in all government services.

Several survey respondents considered whether the *Human Rights Act* should include new rights:

- *Please include occupation (sex workers), non-infectious health status (undetectable HIV) to the protections for human rights act as well as suring [sic] up protections for disabled people and LGBTIQ+ people.*
- *We need access to human rights in prison and also as ex-prisoners*
- *Better protection for people who use drugs or those who have used drugs.*
- *The Act needs to be amended to include the following rights - 1) The human right to a clean, healthy and sustainable environment. 2) The human right to housing.*

Several respondents highlighted the need for remedies in the *Human Rights Act*:

- *There needs to be penalties attached to human rights violations that require financial compensation to be paid.*
- *Rights without a remedy are no rights at all.*

Two respondents were critical of Government overrides of the QHRA, one stating:

There should be independent oversight of this. New oversight provisions should be included in amendments to the Human Rights Act 2019.

Appendix E – Stakeholder and public consultations

22 April 2024	Director-General – Department of Justice and Attorney-General
22 April 2024	Department of Justice and Attorney-General
23 April 2024	Department of Environment, Science and Innovation
30 April 2024	Queensland Human Rights Commission
7 May 2024	Department of Environment, Science and Innovation
13 May 2024	Queensland Council of Social Services (QCOSS)
13 May 2024	ACT Human Rights Commission
16 May 2024	Human Rights Inter-Departmental Committee
20 May 2024	Multicultural Australia
20 May 2024	Department of Housing, Local Government, Planning and Public Works
21 May 2024	Community Legal Centres Conference
27 May 2024	Queensland Human Rights Commission
27 May 2024	Queensland Council of Social Services (QCOSS)
28 May 2024	Queensland Department of Education
28 May 2024	AJ George – Central Queensland University
29 May 2024	Section 28 IDC subgroup – hosted by Department of Environment, Science & Innovation
29 May 2024	Department of Regional Development, Manufacturing and Water
12 June 2024	Health & Wellbeing Qld
12 June 2024	Department of Treaty, Aboriginal and Torres Strait Islander Partnerships, Communities & The Arts
13 June 2024	DJAG Human Rights Working Group Meeting
13 June 2024	Australian Human Rights Commission
17 June 2024	Independent Ministerial Advisory Council
18 June 2024	Public Sector Commission
13 June 2024	John Chesterman – Public Advocate
19 June 2024	Jon Rouse – Interim Victims Commissioner
21 June 2024	Cultural Heritage Officers Network - Department of Treaty, Aboriginal and Torres Strait Islander Partnerships, Communities & The Arts

24 June 2024	Queensland Police Service
25 June 2024	Public Sector Commission
25 June 2024	Department of the Premier and Cabinet
25 June 2024	Queensland Corrective Services
26 June 2024	Department of Agriculture and Fisheries
27 June 2024	Queensland Police Service
27 June 2024	Queenslanders with Disability Network Ltd (QDN)
27 June 2024	Department of Tourism & Sport
27 June 2024	Queensland Human Rights Academics Forum
28 June 2024	Acting Official Solicitor – Office of the Child & Family Official Solicitor
1 July 2024	Department of Treaty, Aboriginal and Torres Strait Islander Partnerships, Communities & The Arts
1 July 2024	Department of Transport and Main Roads
2 July 2024	Department of Housing
3 July 2024	Multicultural Australia
4 July 2024	Queensland Independent Disability Advocacy Network (QIDAN)
5 July 2024	Crown Law
8 July 2024	Relationships Australia
11 July 2024	Department of Youth Justice
15 July 2024	New Rights Forum, Brisbane
16 July 2024	New Rights Forum, Brisbane
17 July 2024	Dr Neeraj Gill
23 July 2024	Department of Environment, Science & Innovation
23 July 2024	Queensland Human Rights Commission
24 July 2024	Mental Health Lived Experience Peak Queensland
25 July 2024	Queensland Family and Child Commission
25 July 2024	Multicultural Affairs Queensland
26 July 2024	Magistrates Court Judges
29 July 2024	Thursday Island Community Consultation
30 July 2024	Palm Island Community Consultation

30 July 2024	Townsville Community Consultation
31 July 2024	Queensland Mental Health Commission
6 August 2024	Cherbourg community consultations (online)
7 August 2024	Department of Justice and Attorney-General
15 August 2024	Queensland Law Reform Commission
20 August 2024	Cairns Co-response Pilot Program – Relationships Australia
28 August 2024	Cooee First Nations Elders (Cleveland)

Appendix F – Submissions

- 001 – Alex Deagon
- 002 – Julie Debeljak (Castan Centre)
- 003 – Sarah Joseph and Emma Palmer
- 004 – QUT Environmental and Social Governance Research Group
- 005 – Tamara Walsh and Dominique Allen
- 006 – UniSQ Social Work and Human Services Discipline
- 007 – Julia Morgan
- 008 – Brooke Papworth
- 009 – Cathie Pauley
- 010 – Christopher Crawford
- 011 – Denis Auberson
- 012 – Diana Glynn
- 013 – Erika Fish
- 014 – Eugene White
- 015 – Heidi Brown
- 016 – Keith Bannerman
- 017 – Luba De Andrade
- 018 – Marrison Thomas
- 019 – Meegan Bool
- 020 – Michael O’Keefe
- 021 – Peter Glazebrook
- 022 – Stephen Williams
- 023 – Vicki Harland
- 024 – Australian Christian Lobby
- 025 – Family Inclusion Network
- 026 – Queensland Council for Civil Liberties
- 027 – Queensland Network of Alcohol and other Drug Agencies

028 – Queensland Sexual Assault Network

029 – Queensland Injectors Voice for Advocacy and Action

030 – Save the Children & 54 Reasons

031 – Soroptimist International (SI) Qld

032 – Soroptimist International South East Asia Pacific (Soroptimist International of Brisbane)

033 – Foodbank Queensland

034 – The Uniting Church in Australia Qld Synod

035 – National Regional, Rural, Remote and Very Remote Community Legal Network

036 – Action Ready

037 – Australian Lawyers Alliance

038 – Knowmore

039 – Legal Aid Queensland

040 – Maurice Blackburn Lawyers

041 – Queensland Advocacy for Inclusion

042 – TASC Legal and Social Justice Services

043 – Everick Heritage, Everick Foundation and Lithic Legal

044 – ARAFMI

045 – Mental Health Lived Experience Peak Queensland

046 – Queensland Alliance for Mental Health

047 – Australian Association of Social Workers

048 – Carers Queensland

049 – Queensland Council of Unions

050 – Queensland Nurses & Midwives’ Union

051 – Red Union

052 – Department of Education

053 – Health and Wellbeing Queensland

054 – Public Advocate

055 – Queensland Mental Health Commission

056 – Sunshine Coast Council

o57 – ACT Human Rights Commission

o58 – Aged and Disability Advocacy Australia

o59 – Amnesty International Australia

o60 – Australian Lawyers for Human Rights

o61 – Basic Rights Queensland

o62 – Dr Alice Taylor (Bond Faculty of Law)

o63 – Caxton Community Legal Centre

o64 – Christian Schools Australia, Australian Association of Christian Schools, Adventist Schools Australia and Associated Christian Schools

o65 – Community Legal Centres Queensland

o66 – COOEE First Nations Elders, Bayside Community Justice Group & Greater Brisbane Elders Alliance

o67 – DVConnect

o68 – Environmental Defenders Office

o69 – First Nations Women’s Legal Services Qld Inc

o70 – Full Stop Australia

o71 – Independent Ministerial Advisory Council

o72 – Institute for Urban Indigenous Health

o73 – LawRight

o74 – Maternity Choices Australia

o75 – Queensland Aboriginal and Torres Strait Islander Child Protection Peak

o76 – Queensland Council of Social Services

o77 – Queensland Human Rights Commission

o78 – Queenslanders with Disability Network

o79 – Q Shelter

o80 – Queensland Family and Child Commission

o81 – Queensland Law Society

o82 – Relationships Australia

o83 – Youth Advocacy Centre

o84 – Civil Liberties Australia

o85 – Department of Transport and Main Roads

o86 – Professor Neeraj Gill

o87 – Queensland Independent Disability Advocacy Network

o88 – Office of the Public Guardian

o89 – Department of Tourism & Sport

o90 – Multicultural Australia

o91 – Interim Victims' Commissioner

o92 – Department of Treaty, Aboriginal and Torres Strait Islander Partnerships, Communities and the Arts

Appendix G – Summary Reports of Consultations

Summary Report of Consultations with Public Entities

In May 2024 and June 2024 the Review Team produced a Discussion Paper for Public Sector and Public Authorities²⁵⁶ and a Discussion Paper: Potential New Rights.²⁵⁷ The Reviewer sent correspondence to all departments and key public entities offering the opportunity for consultation, and welcoming their submissions. Several public entities made formal submissions. The Review Team met with 34 groups of public entities, under Chatham House rules. This is a summary of the issues raised, without identifying individuals or their departments. The Review Team is grateful for the service and commitment to human rights that officials displayed, and grateful for the good faith in sharing their experience with the *Human Rights Act* (HRA).

Good governance and accountability

The overwhelming feedback from the public sector consultations was that the HRA is best understood as a tool to:

- increase the integrity of decision-making in relation to Queensland’s most marginalised people;
- inform good place-based decision-making, using the HRA as an exercise in due diligence and risk management; and
- express public purpose values.

Many officials said that the HRA merely placed a framework around principles they already held. Others said that the HRA provided space to focus more on stakeholders that have the least opportunity to intervene with government actors.

Many officials explained that the processes required by the Act, to consider avenues of action that were least restrictive of rights, had fostered innovation and solutions-based thinking. The link between the Act and integrity processes was explained as avoiding any capture by the best-resourced and most vocal stakeholders and requiring consideration of the silent but adversely affected minority. Officials referenced synergy with the 2022 Coaldrake review *Let the Sunshine In*²⁵⁸ in terms of providing frank and fearless advice to Ministers, deepening participation in government decision-making and avoiding undue influence by lobbyists.

Officials suggested that a rights analysis could assist in exposing problems with utilitarian assumptions, such as how particular interventions might play out in remote or rural communities, or how to balance competing rights. Examples given included the complex rights issues involved with alcohol management plans in remote communities or enabling access to national parks for people with disabilities. Another was providing culturally appropriate health and education services to the communities in the Torres Strait.

It was acknowledged that public entities in Queensland have a particular challenge with ensuring fairness of services for the regions outside the south-east corner.

Several officials felt the HRA would increase in importance as climate impacts accelerated across the state.

Many public entities the Review Team met with were engaged with efforts to promote the rights and wellbeing of Aboriginal

²⁵⁶ ‘For Public Sector and Public Authorities’, *Independent Review of the Human Rights Act* (Web Page, 15 May 2024) <<https://www.humanrightsreview.qld.gov.au/discussion-questions/public-sector>>.

²⁵⁷ ‘Discussion Paper: Potential New Rights’, *Independent Review of the Human Rights Act*, (PDF, June 2024) <https://www.humanrightsreview.qld.gov.au/__data/assets/pdf_file/0007/805453/qhra-review-discussion-paper-new-rights-1.pdf>.

²⁵⁸ Peter Coaldrake, *Let the sunshine in: Review of culture and accountability in the Queensland public sector* (Final Report, 28 June 2022) <<https://www.coaldrakereview.qld.gov.au/assets/custom/docs/coaldrake-review-final-report-28-june-2022.pdf>>.

and Torres Strait Islanders Peoples in Queensland. Officials cited the synergies between the HRA and *Public Sector Act 2022*, which seeks to improve responsiveness to the community and reframe the relationship with Aboriginal and Torres Strait Islander Peoples in Queensland.²⁵⁹

Many officials also mentioned the utility of the HRA in avoiding the mistakes that the Royal Commission into the Robodebt Scheme revealed, regarding the federal public service ignoring the rights of vulnerable people and breaching codes of ethics.²⁶⁰

Demoralisation

Stakeholders reported a feeling of demoralisation in relation to human rights challenges in Queensland since the pandemic. This attitude was attributed to the manner and substance of the overrides in the youth justice area, the lack of meaningful remedies for unresolved complaints and the lack of resourcing of the HRA for meaningful cultural change inside the public sector. The lack of funding and certainty for the Human Rights Unit in the Department of Justice and Attorney-General was pointed out by many officials.

Compared to Victoria, it was felt overrides were used too early in the Act's life and on a profound issue of children's rights in detention. The overrides demoralised those inside and outside government already concerned that the HRA could be a 'toothless tiger', or a law with no consequences. This was underscored by the disruption of public sector actors in frontline human rights portfolios by frequent machinery of government changes. Many officials talked of needing to 'retro-fit' human rights concerns to policy decisions that had already been made.

Several officials raised the right balance to be struck between making sure the HRA was duly considered in a material way, rather than a 'tick the box' exercise or in a manner that produced unnecessary administration.

Many officials felt that there was little to no guidance on statements of compatibility or certificates coming from the Queensland Parliament to help them refine their own practice. There was an acknowledgement that court cases are providing guidance at a high level, but these required significant resources to interpret into everyday practice.

A positive vision

Many officials raised the need for the Queensland Government to focus more on delivering positive rights. There was a general feeling that the HRA was being implemented by the government in a manner that was compliance-based and risk averse, as opposed to promoting the aims of the Act in positive interventions. Many would welcome explicit endorsement at a senior leadership level about the human rights vision for their particular portfolio. It was also suggested that statements of compatibility could be framed in more positive terms.

Some of the most successful examples of human rights compliant policies are where human rights are at the heart of the strategic vision, such as the *Our Place: A First Nations Housing and Homelessness Roadmap 2031*. Many officials were able to share policies, reforms and interactions that had benefited from a human rights approach and some of these policies feature in the Report as 'Good News Stories'.

²⁵⁹ *Public Sector Act 2022* (Qld) s 4, pt 3 s 21.

²⁶⁰ *Royal Commission into the Robodebt Scheme* (Final Report, 7 July 2023) <<https://robodebt.royalcommission.gov.au/publications/report>>.

Summary Report of submissions from legal, social work and public health academics

In May 2024 and June 2024 the Review Team produced a Discussion Paper for General Public²⁶¹ and a Discussion Paper: Potential New Rights.²⁶² An invitation for electronic or written submissions to the review opened on 15 May 2024 and closed on 21 June 2024, with several extensions granted. There was an opportunity for anonymous submissions. Given time constraints, the Review Team decided to not publish individual submissions, instead producing several de-identified summaries of submissions. Individuals and organisations making submission were free to publicly share their own submissions.

Culture of human rights

Academic stakeholders considered that the *Human Rights Act* (HRA) had been an effective step towards building a culture of human rights in Queensland. These stakeholders highlighted the general public's steadily increasing knowledge of the HRA since its introduction.

Academic stakeholders observed an ongoing challenge in which the HRA has had limited impact is the rising trends of involuntary treatment orders in mental health service provision.

Examples of where the law does not protect human rights

Academic stakeholders suggested that the override mechanism should be removed or significantly amended. Stakeholders argued that, in situations where the override provision had been used, the 'exceptional circumstances' threshold had not been met. Further, that the provision is inconsistent with the central objective of the HRA to ensure laws are consistent with human rights.

Balance between different rights

Academic stakeholders highlighted that some human rights under international law are 'absolute', meaning they cannot be limited, and the limitation of rights provision (s 13 HRA) is therefore inconsistent with international law. There was support for absolute rights to be recognised in the HRA.

Other measures required to ensure human rights are protected

A key issue raised by academics was the need for strengthened executive and parliamentary scrutiny over legislation, to ensure a continual process of reflecting human rights throughout a Bill's development. Academics also supported improved statements of compatibility, with adequate detail and consideration of human rights implications.

Further, academic stakeholders supported training and education on human rights for both public entities and the general public. Guidance for courts and tribunals on interpretation of the HRA was also suggested.

Complaints processes

Academic stakeholders supported more flexible and accessible complaints processes, including mechanisms for resolving complaints at the early stages of a dispute. Stakeholders observed the strengths of the conciliation process provided by the Queensland Human Rights Commission and supported adequate funding for this function. Stakeholders also supported alignment of complaints processes with discrimination complaint processes, including the ability to apply to the

²⁶¹ 'For the general public', *Independent Review of the Human Rights Act* (Web Page, 15 May 2024) <<https://www.humanrightsreview.qld.gov.au/discussion-questions/general-public>>.

²⁶² 'Discussion Paper: Potential New Rights', *Independent Review of the Human Rights Act*, (PDF, June 2024) <https://www.humanrightsreview.qld.gov.au/__data/assets/pdf_file/0007/805453/qhra-review-discussion-paper-new-rights-1.pdf>.

Queensland Civil and Administrative Tribunal for resolution of a complaint.

Standalone cause of action and remedies

A large majority of academic stakeholders supported the creation of a standalone cause of action for people to pursue human rights complaints without needing to piggyback another cause of action.

There was also strong support for compensation as a possible remedy where a contravention of the Act is found by a court of tribunal.

Additional rights

Academics supported the inclusion of the full range of rights guaranteed by the International Covenant on Economic, Social and Cultural Rights (ICESCR), UN Declaration on the Rights of Indigenous Peoples (UNDRIP), rights from the Convention on the Rights of Persons with Disabilities (CRPD), rights from the Convention on the Rights of the Child), and rights from the Convention on the Elimination of All Forms of Discrimination against Women.

Academics strongly supported the inclusion of:

- the right to an adequate standard of living (including housing) (ICESCR)
- the right to a clean healthy and sustainable environment (ICESCR), and
- the right to self-determination for Indigenous peoples in accordance with the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).

Summary Report of submissions from Legal Services including community legal centres, private legal service providers and lawyers associations

In May 2024 and June 2024 the Review Team produced a Discussion Paper for General Public²⁶³ and a Discussion Paper: Potential New Rights.²⁶⁴ An invitation for electronic or written submissions to the review opened on 15 May 2024 and closed on 21 June 2024, with several extensions granted. There was an opportunity for anonymous submissions. Given time constraints, the Review Team decided to not publish individual submissions, instead producing several de-identified summaries of submissions. Individuals and organisations making submission were free to publicly share their own submissions.

Experience related to the operation of the Act

Legal services stakeholders considered that the *Human Rights Act* (HRA) had broadly had a positive impact in their work. They shared examples where they had been able to use the Act to achieve good outcomes for their clients. The HRA had also been a useful framework for advocacy work.

Stakeholders shared that they had most often utilised the HRA in advising clients on:

- guardianship and administration matters
- blue card matters
- school suspensions and exclusions
- issues relating to police treatment
- child protection matters
- issues relating to healthcare.

Culture of human rights

Many legal services stakeholders shared examples of the positive impact of the HRA on government decision-making, particularly the increased transparency in legislative changes. However, stakeholders also shared examples of ongoing challenges where the HRA had a limited impact on public entities' decision making, particularly policing.

Examples of where the law does not protect human rights

Legal services stakeholders observed that, in situations where the override provision had been used, it had unjustifiably limited human rights. Many legal services stakeholders suggested that the override mechanism should be removed or significantly amended.

Several stakeholders also suggested that persons who make complaints about human rights should be protected from victimisation.

Balance between different rights

Many legal services stakeholders highlighted that some human rights under international law are 'absolute', meaning they cannot be limited, and the limitation of rights provision (s 13 HRA) is therefore inconsistent with international law. There

²⁶³ 'For the general public', *Independent Review of the Human Rights Act* (Web Page, 15 May 2024) <<https://www.humanrightsreview.qld.gov.au/discussion-questions/general-public>>.

²⁶⁴ 'Discussion Paper: Potential New Rights', *Independent Review of the Human Rights Act*, (PDF, June 2024) <https://www.humanrightsreview.qld.gov.au/__data/assets/pdf_file/0007/805453/qhra-review-discussion-paper-new-rights-1.pdf>.

was support for absolute rights to be recognised in the HRA.

Other measures required to ensure human rights are protected

Legal services stakeholders promoted the critical role of community legal centres and community organisations in helping people to understand and enforce their rights under the HRA. They raised lack of appropriate resourcing and funding for these organisations as a key issue.

Stakeholders also argued that public entities required more training and guidance to understand their human rights obligations.

Complaints processes

Several legal services stakeholders shared that the requirement to make internal complaints to the department in the first instance (s 65 HRA) created a barrier for many people. Such complaints were generally considered ineffective in resolving human rights issues. However, stakeholders believed that complaints to the Queensland Human Rights Commission were handled relatively effectively.

Standalone cause of action and remedies

The majority of legal services stakeholders supported the creation of a standalone cause of action for people to pursue human rights complaints without needing to piggyback another cause of action.

There was also strong support for compensation as a possible remedy where a contravention of the Act is found by a court of tribunal.

Additional rights

Legal services stakeholders strongly supported the inclusion of additional rights, particularly the right to an adequate standard of living (including housing) and the right to a clean health and sustainable environment, as per the International Covenant on Economic, Social and Cultural Rights.

Victim's rights

Legal services stakeholders supported strengthened protections for the rights of victims, particularly victims of family and domestic violence, sexual violence, child abuse and other crime.

Summary Report of submissions from advocacy bodies, professional associations, community groups, and service providers

In May 2024 and June 2024 the Review Team produced a Discussion Paper for General Public²⁶⁵ and a Discussion Paper: Potential New Rights.²⁶⁶ An invitation for electronic or written submissions to the review opened on 15 May 2024 and closed on 21 June 2024, with several extensions granted. There was an opportunity for anonymous submissions. Given time constraints, the Review Team decided to not publish individual submissions, instead producing several de-identified summaries of submissions. Individuals and organisations making submission were free to publicly share their own submissions.

Experience related to the operation of the Act

Advocacy and community bodies shared broadly positive feedback of their experiences in relation to the operation of the *Human Rights Act* (HRA). Stakeholders shared examples where they had been able to use the Act to achieve good outcomes for their clients. The HRA had also been a useful framework for advocacy work.

For disability service providers, they had most often utilised the HRA in advising clients on:

- issues relating to healthcare
- issues relating to police
- child protection matters, and
- issues involving Queensland State schools.

Advocacy and community stakeholders also shared that the Act has helped to improve decision-making for non-public entities in the community service sector, particularly housing and homelessness services.

Culture of human rights

Advocacy and community stakeholders observed that the Act had positively impacted the development of a culture of human rights across the public service. Stakeholders highlighted, for example:

- the introduction of several major government policies and strategies which have incorporated human rights principles and approaches
- partnerships with government departments
- reflections around how the Act had opened conversations about rights-respecting practices in a range of settings with public entities
- maturity in understanding obligations under the Act continues to develop.

However, advocacy and community stakeholders noted there can be inconsistency across departments.

Advocacy and community stakeholders also highlighted ongoing challenges regarding access to healthcare services without discrimination, particularly for women, Aboriginal and Torres Strait Islander peoples, and people with disabilities. Further, that access to healthcare services for people in rural and regional areas was a key issue.

²⁶⁵ 'For the general public', *Independent Review of the Human Rights Act* (Web Page, 15 May 2024) <<https://www.humanrightsreview.qld.gov.au/discussion-questions/general-public>>.

²⁶⁶ 'Discussion Paper: Potential New Rights', *Independent Review of the Human Rights Act*, (PDF, June 2024) <https://www.humanrightsreview.qld.gov.au/__data/assets/pdf_file/0007/805453/qhra-review-discussion-paper-new-rights-1.pdf>.

Examples of where the law does not protect human rights

Several advocacy and community stakeholders argued that the definition of public entities should be amended to extend to private entities which receive public funds such, such as non-State schools, private hospitals and supported accommodation providers.

Stakeholders also observed that, in situations where the override provision had been used, it had unjustifiably limited human rights. Advocacy and community stakeholders shared concerns about the rights and welfare of children affected by laws which invoked the override provision.

Stakeholders suggested that the override mechanism should be removed or significantly amended.

Balance between different rights

Advocacy and community stakeholders highlighted that some human rights under international law are ‘absolute’, meaning they cannot be limited, and the limitation of rights provision (s 13 HRA) is therefore inconsistent with international law. There was support for absolute rights to be recognised in the HRA.

Other measures required to ensure human rights are protected

Stakeholders highlighted resourcing and support for community organisations and advocates. Additional training and education for public entities on human rights was also suggested.

Many advocacy and community stakeholders supported the inclusion of participation duty to involve people in decisions or the development of policies that affects them, with specific requirements in relation to the participation of children, people with a disability, and First Nations Peoples.

Complaints processes

Several advocacy and community stakeholders shared that the requirement to make internal complaints to the department in the first instance (s 65 HRA) created a barrier for many people, particularly for people who fear victimisation for making a complaint, such as people in correctional facilities. Stakeholders also shared that conciliation process is sometimes an inappropriate mechanism for resolving human rights issues where there is a significant power imbalance between the government agency and the person making the complaint.

Standalone cause of action and remedies

A large majority of advocacy and community stakeholders supported the creation of a standalone cause of action for people to pursue human rights complaints without needing to piggyback another cause of action.

There was also strong support for compensation as a possible remedy where a contravention of the Act is found by a court of tribunal.

Additional rights

Stakeholders strongly supported the inclusion of additional rights, particularly the right to an adequate standard of living (including housing) and the right to a clean health and sustainable environment, as per the International Covenant on Economic, Social and Cultural Rights. Advocacy and community stakeholders supported the right to self-determination for Indigenous peoples in accordance with the UN Declaration on the Rights of Indigenous Peoples. Disability services providers and advocacy bodies highlighted rights from the Convention on the Rights of Persons with Disabilities should also be

included in the HRA.

Amendments to the *Corrective Services Act 2006* and *Youth Justice Act 1992*

Advocacy and community stakeholders supported the repeal of the relevant amendments to the *Corrective Services Act 2006* and *Youth Justice Act 1992*.

Victim's rights

A key issue for specialist sexual violence and domestic and family violence advocates and service providers was for victims' rights and protections for victims of gendered violence to be better incorporated into the HRA.

Future challenges to human rights

Some advocacy and community stakeholders noted the impacts of environment degradation, disasters and climate change as issues which are likely have a continuing impact on human rights into the future.

