



# Queensland's *Human Rights* *Act 2019*

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A guide for public entities



Queensland  
**Human Rights**  
Commission

# Contents

|   |           |
|---|-----------|
| Foreword .....  | 4         |
| <b>Part 1: Human rights and the Queensland Act .....</b>  | <b>6</b>  |
| What are human rights? .....  | 7         |
| Human rights in Australia .....   | 7         |
| What is the purpose of the Queensland Human Rights Act? .....   | 8         |
| How does the Act work? .....  | 9         |
| <b>Part 2: Public entities and their obligations under the Act .....</b>  | <b>10</b> |
| What is a public entity? .....  | 11        |
| What are my obligations under the Human Rights Act? .....   | 12        |
| Reporting .....   | 12        |
| <b>Part 3: Rights protected under the Human Rights Act and their relevance to the work of public entities .....</b> | <b>13</b> |
| Right to recognition and equality before the law .....  | 15        |
| Right to life .....   | 16        |
| Right to protection from torture and cruel inhuman or degrading treatment .....                                     | 17        |
| Right to freedom from forced work .....   | 18        |
| Right to freedom of movement .....  | 18        |
| Right to freedom of thought, conscience, religion and belief .....  | 19        |
| Right to freedom of expression .....  | 20        |
| Right to peaceful assembly and freedom of association .....   | 20        |
| Right to take part in public life .....   | 21        |
| Property rights .....   | 21        |
| Right to privacy and reputation .....   | 22        |
| Right to protection of families and children .....  | 23        |
| Cultural rights - generally .....   | 24        |
| Cultural rights – Aboriginal peoples and Torres Strait Islander peoples .....                                       | 25        |
| Right to liberty and security of person .....   | 25        |
| Right to humane treatment when deprived of liberty .....  | 26        |
| Right to fair hearing .....   | 26        |
| Rights in criminal proceedings .....  | 27        |
| Rights of children in the criminal process .....  | 28        |
| Right not to be punished more than once .....   | 28        |
| Protection from retrospective criminal laws .....   | 29        |
| Right to education .....  | 29        |
| Right to health services .....  | 30        |

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|  |           |
|--|-----------|
| <b>Part 4: Building a human rights culture</b>                                       | <b>31</b> |
| Practical ideas for implementing a human rights culture                              | 32        |
| Key benefits of building a human rights culture                                      | 34        |
| <b>Part 5: Applying human rights in the workplace</b>                                | <b>35</b> |
| Exceptions   | 36        |
| Guide to acting compatibly with and limiting human rights                            | 37        |
| Case study: The Human Rights Act in action   | 38        |
| <b>Part 6: Human rights complaints and remedies</b>                                  | <b>40</b> |
| Internal complaints  | 41        |
| Independent complaints   | 41        |
| Complaints received by other agencies  | 42        |
| Raising the Act in courts and tribunals  | 42        |
| Human rights remedies  | 42        |
| <b>Part 7: Human rights legislation in action – lessons from other jurisdictions</b> | <b>43</b> |
| Policy   | 44        |
| Health   | 45        |
| Local government   | 46        |
| Police   | 46        |
| Courts   | 47        |
| Family and children’s services   | 47        |
| Housing  | 48        |
| Disability   | 48        |
| <b>Useful resources</b>  | <b>49</b> |
| <b>Supporting materials</b>  | <b>50</b> |
| <b>About the QHRC</b>  | <b>52</b> |

# Foreword

Human rights are the inalienable rights and freedoms that belong to every person simply because they are human.

The strength of the *Human Rights Act 2019* is that it protects all people and therefore operates beyond the scope of protections associated with anti-discrimination laws. Through the passage of the Act, the Queensland Parliament has declared the twenty-three human rights to be protected in law for the benefit of the five million people in Queensland who rely upon the Queensland public sector to deliver a wide variety of functions and services.

The Queensland model of human rights protection promotes a dialogue between the three arms of government - the Executive, the Parliament and the Courts – helping to build a human rights culture across all three and within the broader community. The Act obliges public entities to treat everyone with dignity, fairness and respect and protects all people from arbitrary and excessive actions that could result in the loss of life, liberty, degrading treatment or unnecessary interference into our lives. As Queensland's first Human Rights Commissioner, I am looking forward to working with public entities to create a stronger, fairer Queensland community, more grounded in the values that we all care about like fairness, inclusion, respect and compassion.

The *Human Rights Act 2019* is a very important piece of legislation for public entities. It not only reflects Queensland's public sector values and work, it compels us to act in a way that is compatible with human rights and to consider the impact on human rights when developing new laws, policies and procedures and when exercising a discretion in the performance of functions and services.

This guide has been developed as an introduction to the Human Rights Act for employees of public entities. It is intended to build an understanding of the Act and our obligations to consider human rights in the work we do. We hope you find it useful. There is more detailed information on our website and we offer training on the Human Rights Act that can be tailored to your organisation. We look forward to working with you to protect and promote the rights that belong to all of us.



**Scott McDougall**  
Queensland Human Rights Commissioner

## Aim of this guide

This guide is designed to provide key information on the Queensland *Human Rights Act 2019* to staff who work in a public entity to understand how the Act relates to what you do and how you do it. The guide provides information on how human rights are relevant and what obligations public entities have under the Act. We hope that by reading this guide you will gain increased confidence in dealing with human rights issues in your day-to-day work.

## Who is it for?

This guide is for staff in all public entities including: state and local government, the police, public schools, public health services and other bodies performing functions of a public nature.

## What is inside?

In summary this guides provides:

- information relevant to people working at all levels within any public entity;
- information on the origins, aims and scope of the *Human Rights Act 2019*;
- explanations for each right and examples of how human rights work in practice; and
- where to find more information and useful contacts.

## Importantly this guide does not provide:

- a substitute for legal advice or an exhaustive explanation of human rights law: you should always seek legal advice if you have a specific issue to deal with; or
- detailed sector specific information: the guidance contained in the guide is generic so that it is relevant for a broad range of staff in public entities.

Part 1:

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Human rights and the Queensland Act

# What are human rights?

Human rights are based on the principles of freedom, respect, equality and dignity. Human rights recognise the inherent value of each person, regardless of background, where we live, what we look like, what we think or what we believe. Human rights belong to all people by virtue of being human. The modern idea of human rights is based on the Universal Declaration of Human Rights (UDHR) adopted by the United Nations General Assembly in 1948. A key aim of the UDHR was to protect future generations and reaffirm a commitment to human rights following the experience of the preceding world wars.

## Human rights in Australia

Australia was one of 51 members who founded the United Nations (UN) and one of eight nations involved in the drafting of the Universal Declaration of Human Rights which was adopted by the UN in 1948. Since then a number of treaties have followed, most of which Australia has ratified, including:

- *International Convention on the Elimination of All Forms of Racial Discrimination 1965* (ICERD);
- *International Covenant on Civil and Political Rights 1966* (ICCPR);
- *International Covenant on Economic, Social and Cultural Rights 1966* (ICESCR);
- *Convention on the Elimination of all Forms of Discrimination Against Women 1979* (CEDAW);
- *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984* (CAT);
- *Convention on the Rights of the Child 1989* (CRC);
- *Convention on the Rights of Persons with Disabilities 2006* (CRPD);
- *Optional Protocol to the Convention against Torture 2017* (OPCAT).

Australia also supports the United Nations *Declaration on the Rights of Indigenous Peoples*.

Countries that ratify or join a treaty voluntarily accept legal obligations under international law to uphold the treaty rights. This means Australia has obligations under international law to respect, promote and protect human rights. However, these obligations are difficult to enforce until they are enshrined in domestic law.

Currently there is no national human rights legislation in Australia. Three states in Australia have human rights legislation, namely the Australian Capital Territory (ACT), Victoria, and Queensland.

Internationally countries with a human rights act include Canada, Ireland, New Zealand, and the United Kingdom.

# What is the purpose of the Queensland Human Rights Act?

The *Human Rights Act 2019* commences in full on January 1, 2020. The Act protects 23 human rights. Public entities must uphold these rights when they make decisions, create laws, set policies and provide services.

The main objects of the Act are to:

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

The Act aims to ensure that public powers and functions are exercised in a principled way and that public power is not misused. The Act complements a number of other pieces of legislation that are aimed at regulating the relationship between individuals and the state, such as the *Anti-Discrimination Act 1991*; the *Judicial Review Act 1991*; the *Ombudsman Act 2001*; the *Crime and Corruption Act 2001*; the *Right to Information Act 2009*; and the *Information Privacy Act 2009*.

## Are all human rights guaranteed, whatever the circumstances?

No. The Act acknowledges that human rights are not absolute and may be subject under the law to reasonable limits that can be justified. Limitations on rights must have a clear legal basis and they must be reasonable and demonstrably justified in the circumstances.

A right may be limited or balanced with other rights to ensure that in protecting one human right we do not impinge on others. For example, the right to freedom of expression may be limited to ensure national security and public order, or to protect people from vilification.

## Do all new laws have to be compatible with the Human Rights Act?

No. However all new Queensland laws must be accompanied by a statement of compatibility, which states whether the Bill is compatible or incompatible with the rights set out in the Act.

With regard to local government, some councils in Victoria have adopted a process for documenting the compatibility or incompatibility of new or reviewed policies, local laws, or decisions with the Victorian Charter of Human Rights and Responsibilities and including them in Reports to Council. Below is an example from Banyule City Council. The contents were part of the Council Meeting Agenda on Monday the 18th of March, 2019.

### *HUMAN RIGHTS CHARTER*

*In developing this report to Council, the subject matter has been considered in accordance with the requirements of the Victorian Charter of Human Rights and Responsibilities. It is considered that the subject matter does not conflict with any human rights issues but supports the principles in the Charter. Consumer Directed Care has a strong human rights and philosophical basis. The market driven system being implemented by the Commonwealth provides for better access to a variety of providers with a broader and more flexible range of services. This report also supports the continuation of Council provided services, particularly for more vulnerable members of the community, where other providers may not be available.*

# How does the Act work?

The Act works by placing obligations on the three arms of government: the legislature (Parliament), the judiciary (courts and tribunals), and the executive (public entities). The Act creates a 'dialogue model' of rights that is designed to ensure that human rights are considered in the development of laws and policies, in the delivery of public services, and in government decision-making.

The Act protects human rights in three key ways by:

- acting as a filter for new legislation – all new laws to go before Parliament require a statement of compatibility with the Act;
- placing an obligation on courts and tribunals to interpret all Queensland laws, to the extent possible, in a way that is compatible with human rights; and
- making it unlawful for a public entity to act in a way that is incompatible with human rights or failing to give proper consideration to human rights when making decisions.

Refer to pages 50 and 51 in the supporting materials for information on the role and obligations of Parliament, the courts and the executive.

Part 2:

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Public entities and their  
obligations under the Act

# What is a public entity?

The Human Rights Act states that public entities have to act compatibly with human rights and give proper consideration to human rights when making decisions – but what is a public entity?

A public entity is an organisation or body providing services to the public on behalf of the State or another public entity. For the purposes of the Human Rights Act, a public entity is operating ‘in and for Queensland’. This means that federal public services and entities are not included. There are three types of public entities: core, functional and ‘opt in’. Public entities with responsibilities under the Act include;

| CORE   | FUNCTIONAL                        | OPT IN  |
|--|-----------------------------------|---|
| Ministers  | emergency services                | An organisation may choose to be subject to obligations under the Act by asking the Minister in writing, to declare them an entity. This allows community sector organisations to make public statements of their commitment to human rights. |
| public service employees   | public health services            |   |
| Queensland Police  | public disability services        |   |
| Councillors  | NDIS registered providers         |   |
| local government employees   | public transport                  |   |
| members of parliamentary committees when acting in administrative capacity   | state schools                     |   |
| Courts and tribunals when acting in administrative capacity (e.g. when hiring staff, listing cases, adopting policies and procedures, undertaking committal proceedings, and issuing warrants) | vocational education and training |   |
|  | state funded housing providers    |   |
|  | private company managing a prison |   |

Public entities are defined as ‘carrying out functions of a public nature’ for the State. In determining whether this is the case, it can help to think about whether the function is connected to the functions of government, and/or whether the entity is publicly funded to perform it.

Including organisations funded to provide public services recognises that non-government entities are often engaged by government to deliver services to the public on their behalf. Examples of this include a private company funded to run a prison, or a non-government organisation providing a public housing service.

Private schools are not public entities, nor are private health services unless they are providing public health services.

Parliamentary committees, courts and tribunals are only ‘public entities’ for the purposes of the Act when they are acting in an administrative capacity. Otherwise, they are excluded from the obligations imposed on public entities. Issuing warrants and listing cases are examples of the administrative role of a court or tribunal. The decisions made by a judge or tribunal about the outcome of a hearing is a judicial function and not an administrative one.

Parliament is also excluded from the definition of ‘public entity’ under the Act, although it has other responsibilities in regards to human rights. Refer to pages 50 and 51 the supporting materials for information on the role and obligations of Parliament, the courts and the executive.

Organisations may also choose to be declared a public entity by regulation under the Act. Section 9 of the Act provides guidance on which organisations may be public entities.

# What are my obligations under the Human Rights Act?

The way public sector employee's work can have a significant impact on a person's human rights and how they are protected. Public entities have an obligation to treat people in accordance with their human rights and therefore public sector employees and employees of functional and 'opt in' public entities must understand human rights and take them into account in their day-to day work. These obligations are both substantive and procedural:

- **substantive obligation** - under clause 58(1)(a), it is unlawful for a public entity to act or make a decision in a way that is incompatible with a human right; and
- **procedural obligation** – under clause 58(1)(b), it is unlawful for a public entity, in making a decision, to fail to give proper consideration to a relevant human right.

By understanding and considering human rights when delivering services, developing policies and procedures, designing projects, managing risks, making decisions, managing complaints and creating new laws, you can play an important role in protecting rights for all people in Queensland.

When it comes to decision making, the rights of one person may need to be balanced against the rights of others or the broader community. If you have to restrict somebody's rights you must ensure the restriction is no greater than is needed to achieve your goal. This is called 'proportionality'. Any limits applied must be demonstrably justifiable in a free and democratic society based on human dignity, equality, and freedom and take relevant factors into account.

## Reporting

Public entities that are required to report under the *Financial Accountability Act 2009* will be required to include in that report information about their compliance with the Human Rights Act. This information will include details of any:

- actions taken during the reporting period to further the objects of the legislation;
- human rights complaints received by the entity, including number and outcomes; and
- review of policies, programs, procedures, practices or services undertaken in relation to their compatibility with human rights.

Although local government does not have reporting obligations under the *Financial Accountability Act 2009*, in Victoria councils have worked in partnership with Victorian Equal Opportunity and Human Rights Commission to measure local government compliance with the Victorian Charter of Human Rights and Responsibilities. In 2013 and 2014, 97% of councils in Victoria undertook a survey to measure their compliance with the Victorian Charter of Human Rights and Responsibilities.

## Part 3:

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Rights protected under the Human Rights Act and their relevance to the work of public entities

By working in a public entity you are at the front end of Queensland's human rights obligations, since you make decisions that directly affect the everyday lives of Queensland residents. This is regardless of whether you deal directly with the public or not.

The Act sets out 23 rights, most of which are adapted from the human rights detailed in the International Covenant on Civil and Political Rights (ICCPR). It also protects two rights drawn from the International Covenant on Economic, Social and Cultural Rights (ICESCR) – the right to education and right to health services - and one right drawn from the Universal Declaration of Human Rights (UDHR) - property rights. The Act also explicitly recognises cultural rights and, in particular, the distinct cultural rights of Aboriginal peoples and Torres Strait Islander peoples.

Below is a list of the rights set out in the Act, and how they may be relevant to your work. To understand and apply human rights:

- remember that human rights apply to all people in Queensland including people in custody and detention;
- get to know the rights in the Act and how they apply to your work; and
- interpret the rights broadly and create a list of your own triggers that may engage human rights in your work.

# Right to recognition and equality before the law

## Section 15 of the Queensland *Human Rights Act 2019*

Every person has the right to recognition as a person before the law and the right to enjoy their human rights without discrimination. Every person is equal before the law and is entitled to equal protection of the law without discrimination. Every person is entitled to equal and effective protection against discrimination.

This section is modelled on Articles 16 and 26 of the ICCPR.

### May be relevant to your work if you are involved in:

- providing for the delivery of an entitlement or service to some groups but not others
- assisting or recognising the interests of Aboriginal persons or members of other ethnic groups
- creating policy or procedures that are stated in neutral terms but have a disproportionate impact on a sector of the community whose members have one or more protected attributes under the *Anti-Discrimination Act 1991* (for example, sex, race, age or disability)
- dealing with any of the human rights set out in the Human Rights Act in a discriminatory way: for example, if the legislation or policy curtails freedom of expression or prohibits industrial activity
- setting age brackets that are expressed as protective measures, graduated entitlements (for example, driver licensing), or statements of legal capacity (for example, voting)
- establishing eligibility requirements for access to services or assistance (such as legal aid)
- taking steps to diminish or eliminate conditions that have resulted in specific groups within society being disadvantaged (positive discrimination)
- regulating access to infrastructure and public facilities including building, roads, transport, schools, housing and hospitals
- affecting information and communications services including electronic services
- regulating access to public services including education, healthcare, the justice system, courts, voting and advocacy
- providing for mobility aids, assistive devices and technologies designed for people with disabilities
- setting standards or guidelines for access to facilities and services to ensure businesses that provide public services take into account access for people with disabilities.

# Right to life

## Section 16 of the Queensland *Human Rights Act 2019*

Every person has the right to life and the right not to be deprived of life. The right not to be deprived of life is limited to arbitrary deprivation of life.

This section is modelled on Article 6(1) of the ICCPR.

### May be relevant to your work if you are involved in:

- policy decisions that may undermine or threaten someone's life or put their life at risk
- caring for people or protecting them from danger
- investigating deaths where people were in the care of public entities
- providing essential services, how and whether these services can be accessed in a way that impacts on the welfare or safety of persons (such as medical or welfare services)
- developing procedures for the management of people held in care
- creating or amending laws, policy, or practices permitting law enforcement officers to use force, including the use of weapons (such as aerosols, batons, taser guns) in the course of their duties
- creating or amending laws withholding or requiring medical treatment, or coronial inquests
- investigating the conduct of public entities, especially when people die while in the care of public entities, for example, deaths in custody or of children in the child protection system
- exercising the power of arrest
- performing your duties as a police officer, prison officer or parole officer
- suspecting someone's life is at risk.

# Right to protection from torture and cruel inhuman or degrading treatment

## Section 17 of the Queensland *Human Rights Act 2019*

A person must not be tortured or treated in a way that is cruel, inhuman or degrading. This includes that a person must not be subjected to medical or scientific experimentation or treatment unless they have given their full, free and informed consent.

This section is modelled on Article 7 of the ICCPR

### May be relevant to your work if you are involved in:

- caring for other people, especially those who are vulnerable because of their age (young or old) or for some other reason such as physical or mental health
- working in a place where the physical or mental well-being of a person may be inadvertently affected, causing serious physical or mental pain or suffering, or humiliating or debasing a person, e.g. nursing home, hospital
- detaining people (including children) or looking after people in detention
- protecting or providing services to victims of domestic violence and sexual assault
- creating new powers, modifying or increasing existing powers of police, inspectors or authorised officers, or other persons
- removing or restricting the right to complain about service delivery
- removing or restricting the right to complain of mistreatment by a public entity, or limits by those with a role of independent scrutiny to places of detention
- affecting the operation of detention facilities and conditions attached to all forms of state care and detention (including access to goods and services, such as medical treatment while in detention)
- creating new types of penalties (including mandatory minimum sentences, and limits to or denial of a service)
- authorising changes to rules of evidence or procedure that would allow for evidence obtained as a result of torture, inhuman or degrading treatment, to be used in courts or tribunals
- introducing or permitting corporal punishment by a public entity
- authorising a person to be searched or putting in place procedures for conducting searches
- regulating the treatment of persons located at any site for which a public entity is responsible, including: a public hospital, an approved mental health service, a prison, a government school, a disability or aged care service, and supported residential service
- allowing prolonged periods of segregation or other particularly harsh prison regimes
- implementing crisis intervention strategies or behavioural management plans that include the use of seclusion, chemical restraint or physical restraint
- defining and regulating procedures for obtaining consent to medical treatment and experiments
- regulating medical treatment of persons without their consent
- regulating the conduct of medical or scientific research.

# Right to freedom from forced work

## Section 18 of the Queensland *Human Rights Act 2019*

A person must not be made a slave or forced to work. Forced work does not include certain forms of work or service required of a person who is detained because of a lawful court order.

This section is modelled on Article 8 of the ICCPR.

### May be relevant to your work if you are involved in:

- making people work in an emergency
- regulating employers in relation to things like working conditions and work health and safety
- compelling the provision of any labour or the performance of any service under threat of a penalty
- giving a Minister or public entity the power to employ or direct people to perform work in a vital industry or during a state of emergency
- people trafficking or forced marriage.

# Right to freedom of movement

## Section 19 of the Queensland *Human Rights Act 2019*

Every person lawfully within Queensland has the right to move freely within Queensland, enter or leave Queensland, and choose where they live.

This section is modelled on Article 12 of the ICCPR.

### May be relevant to your work if you are involved in:

- limiting the ability of a person to choose where to live in Queensland
- restricting the movement of people as part of the criminal process, for example, the imposition of bail conditions
- allowing for an intervention order against a person, or enabling their detention
- proposing surveillance of an individual
- empowering public entities to restrict people's movement based on national security considerations
- compelling someone to provide information (for example, a subpoena)
- regulating access to land based on quarantine considerations, or eligibility requirements permitting exclusion from public land or premises
- restricting the conduct of public protests.

# Right to freedom of thought, conscience, religion and belief

## Section 20 of the Queensland *Human Rights Act 2019*

Every person has the right to think and believe what they want and to have or adopt a religion, free from external influence. This includes the freedom to demonstrate a religion individually or as part of a group, in public or in private.

This section is modelled on Article 18 of the ICCPR.

### May be relevant to your work if you are involved in:

- promoting, restricting or interfering with a particular religion or set of beliefs
- requiring a person to disclose their religion or belief
- affecting an individual's ability to adhere to their religion or belief
- impinging upon or disadvantaging a person because of the person's opinions, religion, thoughts or beliefs
- attempting to regulate conduct that will affect some aspect of a person's worship, observance, practice or teaching of their religion or belief
- subjecting conduct that is required or encouraged by a person's religion or beliefs to criminal penalties or fines
- restricting the capacity for people under state control (for example, prisoners) to comply with the requirements of their religion
- compelling certain acts that may be inconsistent with a religion or set of beliefs
- restricting the capacity for people in the care or control of a public entity to comply with the requirements of their religion
- setting dress codes (possibly for safety or hygiene reasons) that do not accommodate religious dress
- imposing requirements as a condition of receiving a benefit that prevent a person from adhering to their religion or belief
- requiring students to learn about particular religions or beliefs or to be taught materials that may have the effect of undermining their religious beliefs
- regulating planning or land use that may make it difficult to use or establish places of religious worship.

# Right to freedom of expression

## Section 21 of the Queensland *Human Rights Act 2019*

Every person has the right to hold and express an opinion, through speech, art, and writing (or other forms of expression) and to seek out and receive the expression of others' opinions.

This section is modelled on Article 19 of the ICCPR.

### May be relevant to your work if you are involved in:

- regulating of the manner, content and format of any public expression – the contents of a speech, publication, broadcast, display or promotion
- exercising censorship and review of materials before they are published
- making decisions in relation to the provision of information including restrictions (including access to information on the internet)
- compelling someone to provide information (for example, a subpoena)
- regulating or policing demonstrations
- developing and applying of dress codes.

# Right to peaceful assembly and freedom of association

## Section 22 of the Queensland *Human Rights Act 2019*

Every person has the right to join or form a group and to assemble. The right to assembly is limited to peaceful assemblies.

This section is modelled on Articles 21 and 22 of the ICCPR.

### May be relevant to your work if you are involved in:

- making decisions regarding public protests, demonstrations or marches
- treating people differently on the basis of their membership of a group or association, for example, trade unions
- regulating membership of groups and associations
- creating disincentives or conferring preferences for membership in a group or association (including a disclosure requirement)
- prohibiting membership in a group or association, for example a motorcycle gang.

# Right to take part in public life

## Section 23 of the Queensland *Human Rights Act 2019*

Every person in Queensland has the right and opportunity without discrimination to take part in public life. Every eligible person has the right to vote, be elected, and have access on general terms of equality to the public service and public office.

This section is modelled on Article 25 of the ICCPR.

### May be relevant to your work if you are involved in:

- limiting the ability to take part in municipal and parliamentary elections
- requiring individuals to meet certain conditions in order to be eligible to participate in municipal and parliamentary elections
- regulating how individuals vote in elections
- regulating eligibility and access to employment in the public service or appointment to public office
- establishing requirements for membership of public bodies
- regulating the conduct of elections and the electoral process
- regulating the suspension and conduct of local government
- regulating the suspension and removal of statutory office holders
- regulating electoral processes including funding of and expenditure by political parties and the drawing of electoral boundaries
- affecting communication of information and ideas about public and political issues
- affecting the ability of a person to participate in local council meetings.

# Property rights

## Section 24 of the Queensland *Human Rights Act 2019*

All person have the right to own property alone or in association with others. A person must not be arbitrarily deprived of their property.

This section is modelled on Article 17 of the UDHR.

### May be relevant to your work if you are involved in:

- providing for acquisition, seizure or forfeiture of a person's property under civil or criminal law
- taking decisions about planning, licensing or allowing people to exercise a trade or profession
- impounding or suspending registration of a motor vehicle
- conferring on a public entity a right of access to private property
- limiting or terminating property rights (for example, by legislation which establishes a limitation period)
- restricting the use of private property (for example, under planning laws)
- restricting or regulating established patterns of access (especially for commercial or business purposes) to public property
- implementing government control over its own property (for example, resumption of land).

# Right to privacy and reputation

## Section 25 of the Queensland *Human Rights Act 2019*

A person's privacy family, home and correspondence must not be unlawfully or arbitrarily interfered with. A person has the right not to have their reputation unlawfully attacked.

This section is modelled on Article 17 of the ICCPR.

### May be relevant to your work if you are involved in:

- conducting surveillance of persons for any purpose (such as closed-circuit television, CCTV)
- collecting, storing, using or publishing personal information and how that information is accessed, used or disclosed
- regulating information held on a public register
- restricting access by people to their own personal information
- providing for sharing of personal information across or within agencies
- exercising powers of entry, search, seizure, confiscation or forfeiture (including entry into a controlled environment)
- providing for a compulsory physical intervention on a person such as a DNA, blood, breath or urine test; forced gynaecological or other medical examination; or corporal punishment
- providing for treatment or testing of a patient without their consent
- exercising a professional duty of confidentiality
- changing or creating any confidentiality provisions or secrecy provisions relating to personal information
- providing for mandatory disclosure or reporting of information (including disclosure of convictions, injury or illness), or by professionals reporting abuse, for example, doctors regarding patients or teachers regarding students
- regulating a person's name, private sexual behaviour, sexuality or gender identity
- the intercepting, censoring, monitoring, or other regulation of postal articles and all other communications
- handling personal information for research or statistics
- recognising, or failing to give legal recognition to close or enduring personal relationships
- providing for the removal of children from a family unit, or a family intervention order
- regulating tenancy or eviction
- regulating a state-run care facility or mental health service
- regulating standards, consultation and procedures operating in respect of public housing
- authorising compulsory acquisition of a home or regulating planning or environmental matters that may affect a person's home.

# Right to protection of families and children

## Section 26 of the Queensland *Human Rights Act 2019*

Families are recognised as the fundamental unit of society and are entitled to protection. Every child has the right, without discrimination, to the protection that is in their best interest as a child. Every person born in Queensland has the right to a name and to registration of birth.

This section is modelled on Articles 23(1), 24(1), and 24(2) of the ICCPR.

### May be relevant to your work if you are involved in:

- affecting the law regarding close or enduring personal relationships or failing to give legal recognition to these relationships
- making decisions about the care of children, including children cared for by parents, guardians, informal carers, children in out-of-home care, children with a disability, parents or carers with a disability
- making decisions about the treatment of children in the criminal process, family violence and/or adoption or surrogacy
- regulating the obligations of family members towards each other, including parents and guardians towards children
- providing for the separation and removal of children from parents or guardians, or other adults responsible for their care
- regulating family contact for those in the care of public entities or enabling intervention orders to be granted between family members
- making decisions about the welfare of children within the family or in state care
- regulating family contact of prisoners or others in involuntary state care
- creating a regime for giving children access to information about biological parents when the child has been adopted or born using assisted reproductive technology.

# Cultural rights - generally

## Section 27 of the Queensland *Human Rights Act 2019*

All persons with particular cultural, religious, racial and linguistic have a right to enjoy their culture, declare and practice their religion, and use their language in community with other persons of that background.

This section is modelled on Article 27 of the ICCPR.

### May be relevant to your work if you are involved in:

- limiting or failing to support the observance of any religious practices
- addressing discrimination based on attributes including race or religion
- restricting the capacity for persons to declare or make public their affiliation to a particular racial, religious or cultural group
- limiting or prohibiting communication in languages other than English, including through the provision of information
- preventing people using their language in community with others
- limiting the ability of members of an ethnic group to take part in a cultural practice, or otherwise interfere with their distinct cultural practices
- restricting the provision of services or trade on religious holidays
- regulating access to public spaces including libraries, museums, sports facilities
- regulating cultural or religious practices around the provision of secular public education
- imposing or coercing people to do something that interferes with their distinct cultural practices, for example, wear clothes that differ from their traditional cultural attire
- regulating traditional medical practices
- licencing or providing a restriction on the preparation and serving of food.

# Cultural rights – Aboriginal peoples and Torres Strait Islander peoples

## Section 28 of the Queensland *Human Rights Act 2019*

Aboriginal peoples and Torres Strait Islander peoples hold distinct cultural rights as Australia's first people. They must not be denied the right, with other members of their community, to live life as an Aboriginal or Torres Strait Islander person who is free to practice their culture.

This section is modelled on Article 27 of the ICCPR and Articles 8, 25, 29 and 31 of the UNDRIP.

### May be relevant to your work if you are involved in:

- limiting the ability of Aboriginal or Torres Strait Islander persons to take part in a cultural practice, or otherwise interfere with their distinct cultural practices
- regulating the conduct of commercial activities on the traditional lands of Aboriginal or Torres Strait Islander persons
- restricting or interfering with the relationship between Aboriginal or Torres Strait Islander peoples and land, water and resources.

# Right to liberty and security of person

## Section 29 of the Queensland *Human Rights Act 2019*

Every person has the right to liberty and security. This right protects against the unlawful or arbitrary deprivation of liberty. If a person is arrested or detained, they are entitled to certain minimum rights, including the right to be brought to trial without reasonable delay.

This section is modelled on Articles 9 and 11 of the ICCPR.

### May be relevant to your work if you are involved in:

- arresting or detaining people including granting a power of arrest
- limiting or curtailing people's liberty such as (restrictive practices )
- reviewing the involuntary treatment of mental health patients
- providing for the interim detention of a person whether or they are suspected of committing an offence (for example, to prevent the spread of a contagious disease, or enable a person to 'sober up')
- providing for special powers of detention of people for purposes including national security
- making provision for granting of bail
- managing the security of anyone in the care of public entities, particularly those in involuntary care
- making it an offence for a person to fail to remain at a place (for example, for further questioning or to conduct a search or test by a police officer or other official)
- allowing a public entity to cordon an area and control movement within that area.

# Right to humane treatment when deprived of liberty

## Section 30 of the Queensland *Human Rights Act 2019*

A person must be treated with humanity and respect when deprived of liberty. An accused person who is detained must not be detained with convicted persons unless reasonably necessary, and must be treated in a way that is appropriate for a person who has been convicted.

This section is modelled on Article 10(1) and 10(2)(a) of the ICCPR.

### May be relevant to your work if you are involved in:

- enabling a public entity to detain individuals or relating to the conditions under which a person may be detained for example, in prisons, mental health services, prison transportation facilities
- setting standards and procedures for treatment of people who are detained (for example, use of force, dietary choice, access to private shower and toilet facilities)
- authorising a person to be held in a place with limited facilities or services for the care and safety of detainees
- enabling enforcement officers to undertake personal searches of people detained in custody or detainee visitors.

# Right to fair hearing

## Section 31 of the Queensland *Human Rights Act 2019*

A person has the right to have criminal charges or civil proceedings decided by a competent, independent and impartial court or tribunal after a fair and public hearing. There is an exception to the right to a public hearing, whereby a court or tribunal may exclude certain people from a hearing if it is in the public interest or the interests of justice.

This section is modelled on Article 14(1) of the ICCPR.

### May be relevant to your work if you are involved in:

- creating or restricting review of administrative decision making and appeals processes
- reversing the onus of proof
- regulating the rules of evidence in courts and tribunals or amending the way in which evidence is collected and presented
- regulating the procedures for challenging the impartiality and independence of courts and tribunals
- affecting the way witnesses give evidence
- regulating the way media may report on proceedings.

# Rights in criminal proceedings

## Section 32 of the Queensland *Human Rights Act 2019*

A person charged with a criminal offence has the right to be presumed innocent until proven guilty according to law, and is entitled without discrimination to receive certain minimum guarantees. A person has the right to appeal a conviction in accordance with law. A child charged with a criminal offence has the right to a procedure that takes into account their age and the desirability of promoting rehabilitation.

This section is modelled on Article 14 of the ICCPR.

### May be relevant to your work if you are involved in:

- right to be presumed innocent (including amendments to the law relating to self-incrimination)
- bringing of disciplinary actions
- treatment of children in complaint and disciplinary proceedings
- regulating aspects of criminal trial procedure for investigation and prosecution of offences, for example, establishing time limits on the lodging of complaints or appeals, or effects access of an accused to witnesses, information and evidence, filing and service charges
- establishing guidelines or procedures for the provision of assistants, translators and interpreters
- amending any guidelines or procedures enabling the accused to represent them self personally or restricts the right of an accused to choose a support person or advisor of their choice
- regulating how an accused person may appear in court, for example, security measures associated with their appearance
- limiting requirements on courts or tribunals to accord fair hearing rights for example, in relation to disclosure of evidence to an accused
- dealing with the admissibility of evidence
- restricting access to information and material to be used as evidence
- making decisions affecting the law of evidence governing examination of witnesses
- allowing special procedures for examination of witnesses, for example, the manner in which they give evidence
- creating or amending an offence that contains a presumption of fact or law and puts the legal or evidential burden on the accused to rebut the presumption
- altering the criteria or conditions under which a person may apply for or be released on bail
- amending or altering procedures under which a person is able to appeal against or review a decision
- amending the eligibility criteria for legal assistance
- considering criteria governing remedies available to people whose criminal convictions have been overturned or who have been pardoned in situations involving a miscarriage of justice
- making decisions affecting the capacity of investigators and prosecutors to prepare for trial and of courts to conduct trials through allocation of resources.

# Rights of children in the criminal process

## Section 33 of the Queensland *Human Rights Act 2019*

Children in the criminal process are entitled to special protections on the basis of their age. An accused child must not be detained with adults and must be brought to trial as quickly as possible. A convicted child must be treated in a way that is appropriate for their age.

This section is modelled on Article 10(2)(b) and 10(3) of the ICCPR.

### May be relevant to your work if you are involved in:

- enabling children to be detained for any length of time
- authorising the holding of children in amenities that have limited facilities or services for the care and safety of children
- enabling people to undertake personal searches of a detained child
- considerations impacting on the environmental design of detention centres or conditions under which children are detained
- establishing or altering programs in prisons, youth training centres and residential care settings
- affecting the speed at which a child may be brought to trial
- creating or amending procedures and the law of evidence applicable to children charged with criminal offences, including the investigation and prosecution of offences
- amending the law relating to children in criminal proceedings, including bail, adjournments and sentencing.

# Right not to be punished more than once

## Section 34 of the Queensland *Human Rights Act 2019*

A person must not be tried or punished more than once for an offence in relation to which they have already been finally acquitted or convicted according to law.

This section is modelled on Article 14(7) of the ICCPR.

### May be relevant to your work if you are involved in:

- allowing a person to be punished a second time for the same offence
- amending any criminal procedure rules relating to previous convictions and acquittals
- creating an overlap between an offence in regulations and an offence in the authorising legislation
- allowing continued incarceration of people for example convicted sex offenders, following completion of sentence.

# Protection from retrospective criminal laws

## Section 35 of the Queensland *Human Rights Act 2019*

A person must not be prosecuted or punished for conduct that was not a criminal offence at the time the conduct was engaged in. A person must not receive a penalty that is greater than the penalty that applied at the time they committed the offence.

This section is modelled on Article 15 of the ICCPR.

### May be relevant to your work if you are involved in:

- seeking to sanction a person for conduct that was not contrary to law at the time the conduct was undertaken
- applying more severe penalties for conduct by a person than those that existed at the time the conduct was undertaken
- failing to apply less severe penalties for conduct of a person if penalties have decreased since the conduct was undertaken
- expanding the range of activities that are covered by an existing criminal offence
- amending criminal law procedure that applies to trials for acts done before the legislation commences or introduces new sentencing options to apply to acts done before the legislation was operative
- changing parole conditions that apply to sentences of imprisonment imposed before the legislation commenced.

# Right to education

## Section 36 of the Queensland *Human Rights Act 2019*

Every child has the right to have access to primary and secondary education appropriate to their needs. Every person has the right to have access, based on their abilities, to further vocational education and training that is equally accessible to all.

This section is modelled on Article 13 of the ICESCR.

### May be relevant to your work if you are involved in:

- teaching or school administration (public)
- providing non-school based education
- providing vocational education and training
- working with education policy
- funding of schools or other forms of education
- working with special educational needs assessments.

# Right to health services

## Section 37 of the Queensland *Human Rights Act 2019*

Every person has the right to access health services without discrimination. A person must not be refused necessary emergency medical treatment.

This section is modelled on Article 12 of the ICESCR.

### May be relevant to your work if you are involved in:

- providing health services
- designing and implementing health services policy, procedures and services
- funding of health services
- providing interpreter services in a health setting
- managing complaints in a health setting.

Part 4:

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Building a human rights culture

Queensland can draw on the experience of other jurisdictions that already have human rights legislation. Lessons from Victoria demonstrate that a strong human rights culture facilitates better decision-making. However having the law is not enough to achieve a human rights culture which makes human rights real in everyday interactions with public entities. An effective approach in building a human rights culture includes consideration for: senior leadership and vision, operational capacity, and external input and oversight.<sup>1</sup>

Building a culture requires developing human rights literacy in communities so people understand human rights, how they are protected and what they mean for individual and organisational responsibilities.

The former UN High Commissioner for Human Rights summarised the importance of a good human rights culture:

*The culture of human rights derives its greatest strength from the informed expectations of each individual. Responsibility for the protection of human rights lies with states. But the understanding, respect and expectation of human rights by each individual is what gives human rights its daily texture, its day to day resilience.*<sup>2</sup>

Developing a human rights culture is not a linear process, and sustained focus is required to continue to embed each stage of change. To change an organisational culture to one that embraces human rights in everyday operations, a critical mass of individuals within that organisation needs knowledge and commitment to human rights.

Across many public entities, staff already take action that develops and fosters a human rights culture. Code of Conduct documents in many public entities reflect a culture of human rights. For example, the *Local Government Act 2009* reinforces the local government principles of transparent and effective processes and decision-making in the public interest; democratic representation, social inclusion and meaningful community engagement; good governance of and by local government; and the ethical and legal behaviour of councillors and local government employees. Similarly the *State Government Code of Conduct* is based around the principles of integrity, promoting public good, accountability and transparency and commitment to the system of government. Consideration of human rights is integral in the implementation of these functions.

## Practical ideas for implementing a human rights culture

Below is a list of ideas drawn from organisations in Victoria who have been implementing their Charter of Human Rights and Responsibilities over the past ten years. Experience in implementing change processes has taught us that it is best to start where you are and choose manageable, achievable strategies to implement, so that future strategies can be built on success and staff are satisfied with the outcomes of their efforts.

1. Michael Brett Young, *From Commitment to Culture: The 2015 Review of the Charter of Human Rights and Responsibilities Act 2006*, (2015), 24

2. Ibid 22.

## Activities to grow a human rights culture

| SENIOR LEADERSHIP AND ORGANISATIONAL VISION   | BUILDING STAFF CAPABILITY AND PRACTICE   | EXTERNAL PARTICIPATION AND ACCOUNTABILITY   |
|---|--|---|
| Incorporate human rights in vision and values statements  | Set minimum expectations on staff to uphold human rights   | Use internal and external communication strategies to start a conversation about human rights           |
| Make explicit internal and external commitments to building a human rights culture  | Ensure recruitment and promotion practices are aligned with human rights principles  | Provide opportunities for community members to identify human rights issues and contribute to solutions |
| Role modelling public sector values and human rights practices  | Provide all staff with introductory level human rights training  | Include human rights education in community consultations   |
| Report on the progress of implementing a human rights culture in the annual plan or other key documents                               | Include human rights training in your staff induction program  | Inform and educate service users about their human rights at different points of interaction            |
| Include commitments to human rights in business plans and annual plans  | Incorporate human rights in staff performance reviews  | Provide human rights information to community organisations and other stakeholders                      |
| Develop an action plan to implement the Human Rights Act including allocation of resources  | Implement a human rights steering group with executive leadership and representatives from across your organisation  | Implement service improvements that stem from complaints  |
| Use staff surveys to gain feedback from staff regarding their understanding of the Human Rights Act and its application to their work | Establish a Human Rights Review Panel that meets regularly and has the capacity to provide guidance to staff regarding the application of rights including limitations | Support organisations contracted to provide public functions with their human rights obligations        |
|   | Incorporate human rights in the staff code of conduct and position descriptions  | Embed human rights considerations into procurement policies and grants                                  |
|   | Review your complaints process for compatibility with human rights and accessibility   |   |
|   | Use staff surveys to gain feedback from staff regarding their understanding of the Human Rights Act and its application to their work                                  |   |
|   | Train and support human rights champions or ambassadors within your organisation to provide support and coaching for other staff                                       |   |
|   | Focus on one human right at each team meeting  |   |

# Key benefits of building a human rights culture

The Act provides public entities with a human rights lens through which it can look at legislation, policies, practices, decisions, community engagement, complaints management and service delivery and the impact these have on individuals and the community. International experience supports building a culture of human rights as a priority.

The Equality and Human Rights Commission of the United Kingdom, for example, noted in 2009 that key benefits for public entities engaging with human rights had included

*...establishing some non-negotiable service standards that apply to everyone; providing a framework for making better decisions; strengthening advocacy; helping re-energise staff and reconnect them with core public service values; managing organisational risk; and enhancing organisational reputation and distinctiveness.*<sup>3</sup>

| GOVERNMENT   | PUBLIC ENTITIES  |
|--|--|
| builds relationship with the community                                       | improves quality of service design   |
| highlights problem areas   | improves decision making   |
| improves democratic legitimacy   | helps manage organisational risk   |
| reinforces other work: eg safety, equality, multiculturalism                 | builds reputation and credibility  |
| connects Qld with international efforts to uphold human rights               | provides a framework for solving problems and a protective mechanism to support compliance with human rights law |
| STAFF  | COMMUNITY MEMBERS AND ADVOCATES  |
| inspires staff   | supports government decisions to consider rights   |
| reconnects staff with core public service values                             | establishes clear non-negotiable standards   |
| gives staff a framework to act with a moral compass when dealing with people | strengthens cases where change is needed   |
|  | empowers individuals and community participation   |
|  | contributes to a fairer and more inclusive society   |

3. Equality and Human Rights Commission, *The impact of a human rights culture on public sector organisations: Lessons from practice* (EHRC, 2009) 8.

Part 5:

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Applying human rights in the workplace

As an employee of a public entity you must give proper consideration to, and act compatibly with human rights. This applies whether or not you work directly with the public. The obligation to give proper consideration to and act compatibly with human rights requires a decision maker to:

- identify which human rights may be relevant;
- consider whether rights are being limited by your decision or action, and if so, if this is reasonable and justifiable;
- understand the possible impact of a decision or action on human rights; and
- justify the decision or action, including weighing up competing interests or obligations.

## Exceptions

Section 58 of the Act outlines exceptions in applying human rights - the obligation to give proper consideration to, and act compatibly with, human rights does not apply where:

- under another law you could not reasonably have acted differently or made a different decision;
- the act or decision is of a private nature;
- the act or decision would impede or prevent a religious body complying with religious doctrines, beliefs or principles.

Below is a guide designed to help you apply human rights particularly if you are restricting a right – either by balancing one right against another, or balancing the rights of an individual against the interests of the public.

## When can human rights be limited?

Section 13(2) of the Act provides public entities with guidance on when human rights may be limited. It lists the following factors for consideration:

- (a) the nature of the human right;
- (b) the nature of the purpose of the limitation;
- (c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose;
- (d) whether there are any less restrictive and reasonably available ways to achieve the purpose;
- (e) the importance of the purpose of the limitation;
- (f) the importance of preserving the human right, taking into account the nature and extent of the limitation on the human right; and
- (g) the balance between the matters mentioned in paragraphs (e) and (f).

The steps over the page provide a guide on using these factors to assess acts and decisions for compatibility with human rights under the Act.

# Assessing for compatibility under the Act

## Step 1: Identify relevant rights

Look through the rights protected under the Act to see which are relevant. Rights may be broader than they first seem. Detailed information on the scope of each right is available at [www.qhrc.qld.gov.au/your-rights](http://www.qhrc.qld.gov.au/your-rights).

## Step 2: Consider the impact

Will your act or decision limit or interfere with the relevant rights you've identified?

**No:** if rights are not being limited, you are acting or making decisions compatibly with human rights.

**Yes:** if human rights are being limited, or if you are unsure, you should move to step 3.

## Step 3: Determine whether the limit is reasonable and justified

Ask yourself the following questions about the act or decision being proposed:

### Is it lawful?

What law or regulation allows you to limit a person's rights? If you can't identify a law or regulation then you may not be able to limit rights.

### Is there a purpose?

What is the aim of the limitation? Does it achieve a legitimate purpose?

### Is it rational?

Will what you are doing effectively achieve your purpose?

### Is it necessary?

Is this the least restrictive way to achieve your purpose?

### Is it fair and balanced?

Do the benefits outweigh the harm caused by the limitation?

**If you answer yes to all these questions, your act or decision is likely to be compatible with human rights.**

If the act or decision appears incompatible, modify it then reassess for compatibility.

If the act or decision limits human rights, but is assessed as compatible, then you will need to document your justification for the act or decision, and the process used to consider human rights.

**It is important to remember that human rights should only be limited after careful consideration, and in a way that can be justified in a free and democratic society based on human dignity, equality, freedom and the rule of law.**

# Case study: human rights in action

The following case study is based on a discrimination case in which the Victorian Civil and Administrative Tribunal (VCAT) found there had also been a breach of the Victorian *Charter of Human Rights and Responsibilities*.

The case study is a useful example of how the Charter works in practice, including:

- the obligation for public entities to properly consider, and act compatibly with human rights;
- whether human rights have been lawfully limited;
- raising human rights under the Charter; and
- remedies for a breach of the Charter.

*Please note that the steps the council should have taken to properly consider and to act compatibly with human rights may have differed if this case study occurred in Queensland.*

## Applying the Charter to a local council's ban on a resident with a disability

A local council banned a resident with a disability from accessing any building owned, occupied or managed by the council. This meant that he could not attend any council meetings, the local pool and library or use council toilets.

The council claimed the ban was necessary to protect the health and safety of employees because the resident had made numerous complaints to the council, used comments and language that were considered offensive and inappropriate, and council staff had reported having 'highly charged' interactions with the resident.

## Proper consideration of rights

To properly consider the resident's human rights, the council should have:

- understood the rights of the resident affected by the decision (including the rights to equality, freedom of expression and participation in public life);
- understood whether and how the decision would interfere with the resident's rights (for example: consulted with the resident to identify how the decision would impact him and discuss possible adjustments to help him participate in council meetings without creating risk to staff);
- considered the impact the decision would have on the rights of all people affected (for example: conducted appropriate consultations with staff and properly documented any occupational health and safety concerns); and
- considered if the decision was justified, having balanced competing interests (for example: developed a proportionate and tailored strategy).

## Acting compatibly with rights

To act compatibly with the residents rights, the council should have:

- identified which rights were engaged;
- asked whether those rights were limited by the ban from accessing any building owned, occupied or managed by the council; and
- asked whether the limitation was lawful under the Charter.

## Limiting and balancing rights

To consider whether the ban lawfully limited the resident's rights, the council should have asked:

- whether it had **lawful authority** to impose the ban under a law or regulation (for example whether the *Occupational Health and Safety Act 2004* authorised the ban);
- was the limitation reasonably justified:
  - a) what the nature of the relevant rights were (the resident had the right to participate in public life which is a fundamental principle of our democratic system and the right to equality which protects people from isolation and exclusion and promotes human dignity);
  - b) what the purpose of the limitation was and why it was important (the purpose of the limitation was to prevent the risk that the resident's behaviour would impact on the health and safety of council staff – an important consideration for the council as an employer);
  - c) what the nature of the limitation was and how long it would last (the limitation was a ban on the resident's participation in public life and his access to council property);
  - d) what the relationship was between the limitation and the purpose (the ban should have been reasonably proportionate and tailored to its purpose of protecting the health and safety of council staff); and
  - e) whether there was a less restrictive way to achieve its purpose (the safety of staff could have been achieved in other ways such as case-managing the resident, providing training for staff, imposing a shorter ban with fewer restrictions such as allowing the resident to access toilets and libraries).

## Complaints

The resident took the case to VCAT to challenge the ban. Although there is no direct cause of action under the Charter, VCAT was able to consider whether the resident's rights were breached because he had an existing claim of discrimination under the Equal Opportunity Act for the same conduct.

In relation to the Charter claim, VCAT found that the council had discriminated against the resident on the basis of disability and that the council had breached his human rights.

Please note that in Queensland the resident would have had the option to bring their complaint to the Queensland Human Rights Commission.

## Remedies

VCAT ordered that:

- the council revoke the ban on the resident attending council buildings;
- the council pay the resident \$14,000 in compensation; and
- the CEO, directors and councillors at the council undergo training on the Charter.

VCAT also made a declaration that the council breached the resident's human rights under the Charter by maintaining the ban.

This case study is based on the following VCAT decisions:

- *Slattery v Manningham CC [2013] VCAT 1869*
- *Slattery v Manningham CC [2013] VCAT 1442 (remedies)*

Part 6:

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Human rights complaints and remedies

Under the *Human Rights Act 2019* when individuals believe a public entity has breached their human rights obligations they have the right to complain and seek remedies. There are a number of different ways that people can complain and seek a remedy in relation to their human rights under the Act. This includes:

- internal complaints;
- independent complaints; and
- raising the Act in courts and tribunals.

## Internal complaints

Under the Human Rights Act an individual must first raise a complaint directly with a public entity. Once 45 business days have elapsed the person may refer the matter to the Queensland Human Rights Commission if the complaint has not been responded to or the person is not satisfied with the response. While there is a diversity of response mechanisms for complaints, good practice processes include;

- providing an accessible complaints procedure that enables members of the public to make complaints easily;
- responding to complaints in a timely and appropriate manner including using interpreters where needed;
- learning from complaints and reviewing policies, procedures, processes and standards of practice in the organisation;
- ensuring the complaints mechanism is current, and capturing and resolving complaints effectively.

The most effective complaints management system uses a staged approach, including frontline resolution, investigation, internal review and external review. For more information on effective complaints management, including human rights complaints, see the Victorian Government's, *Good Practice Guide: Managing Complaints Involving Human Rights*, May 2017.

## Independent complaints

Individuals can also raise a complaint about human rights with the Queensland Human Rights Commission (QHRC) or another independent body.

An important provision of the Queensland Human Rights Act that doesn't exist in Victoria or the ACT, is a dispute resolution function for the Queensland Human Rights Commission to resolve complaints made under the Act. In order to accept complaints under the Act, the QHRC must be satisfied that:

- A complaint has first been made to the public entity alleged to have breached the Act.
- At least 45 business days have elapsed since the complaint was made to the public entity.
- The complainant has not received a response to their complaint, or has received an inadequate response.

If a complaint is accepted by the Commission, preliminary enquiries can be made to decide how to best deal with the complaint. The Commission can attempt to informally resolve the complaint by discussing it with the parties, or if appropriate, will attempt to resolve the complaint through a compulsory conciliation conference.

Complaints can also be referred to other complaint agencies, if the Commissioner believes they can be better dealt with under other relevant legislation. These referral agencies include the:

- Ombudsman under the *Ombudsman Act 2001*;
- Health Ombudsman under the *Health Ombudsman Act 2013*;
- Crime and Corruption Commission under the *Crime and Corruption Act 2001*;
- Information Commissioner receiving a privacy complaint under the *Information Privacy Act 2009*; and
- NDIS Commission.

## Complaints received by other agencies

If a complaint is made to another complaint agency and that agency considers the complaint may also be a human rights complaint, they can choose to deal with the complaint under their relevant legislation or refer it to the QHRC.

## Raising the Act in courts and tribunals

In some cases the complaint can be taken to a court or tribunal. While people cannot make complaints directly to courts and tribunals for breaches of the Act it is possible to raise breaches of the Human Rights Act in the process of a hearing based on another law. This is called a piggy-back. For example, a human rights complaint could be heard at Queensland Civil and Administrative Tribunal (QCAT) if a person makes a claim under the *Anti-Discrimination Act 1991*. In this case QCAT would consider both the discrimination complaint and whether or not the public entity gave appropriate consideration to human rights when making decisions and taking action.

## Human rights remedies

Where there is a breach of the Human Rights Act, a person cannot claim financial compensation. If the complaint is conciliated at the QHRC, parties to the complaint can be directed to attend the conciliation conference, and where the complaint is not resolved the QHRC can make recommendations regarding actions required of the respondent to uphold human rights. The QHRC also has the authority to publish information about a human rights complaint.

## Part 7:

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# Human rights legislation in action – lessons from other jurisdictions

Reviews in both the UK and Victoria report positive outcomes from the implementation of human rights legislation - in particular, better decision making, risk management, participatory decision-making, social progress and economic growth. While laws in both states are based on the same international conventions as Queensland's Human Rights Act, there are slight variations which mean the outcomes of similar cases may not be identical in Queensland. However, examples from other jurisdictions still provide a useful guide on how the Queensland Act may be used.

In Victoria the human rights focus has been on access to justice, housing and homelessness, equality, mental health, detention, and disability.

*The Victorian Charter has had its greatest practical impact in influencing the development and delivery of public services, particularly to marginalised or disadvantaged individuals and groups. The Charter has exerted a positive and significant influence on the way that public entities undertake their functions.<sup>4</sup>*

A review of the Human Rights Act in the United Kingdom found that:

*The Human Rights Act leads to better policy outcomes, by ensuring that the needs of all members of the UK's increasingly diverse population are appropriately considered. It promotes greater personalisation and therefore better public services.*

Below are some examples of where human rights legislation in other jurisdictions has provided protections for people, by sector.

## Policy

### The 2009 Victorian Bushfire Royal Commission and the impact of human rights on policy

Recommendation 59 of the 2009 Victorian Bushfires Royal Commission was that the Department of Sustainability and Environment amend the *Code of Practice for Fire Management on Public Land* in part 'to include an explicit risk-analysis model for more objective and transparent resolution of competing objectives, where human life is the highest priority'.

The principles now state 'Protection of human life as the highest priority: The protection of human life (emergency services personnel and the community) will be given priority over all other obligations in bushfire management'.

The prioritisation of the preservation of life has now been extended to all emergencies through the State's strategic control priorities.

This prioritisation is an example of a guiding mission that operationalises the right to life and balances it with competing rights and interests such as the protection of property. Putting people at the front of this high-level policy statement affects how operational decisions are made. So, it is important to get these guiding principles right to achieve a human rights consistent culture in the rest of the organisation. That is, referencing the Charter is not what matters, but rather achieving human rights outcomes on the ground. This example shows how a single statement brought the most fundamental of human rights to the front of decision making in emergency management.

4. Human Rights Law Centre, *Victoria's Charter of Human Rights and Responsibilities in Action* (HRLC, 2012) 6.

5. Department of Constitutional Affairs (UK), *Review of the Implementation of the Human Rights Act*, (the department, 2006)

# Health

## Right to life, duty to protect from suicide

**United Kingdom: *Rabone and Anor v Pennine Care NHS Foundation Trust* [2012] UKSC**

A woman with a recurring depressive disorder had attempted suicide on several occasions. She was initially assessed by the hospital as being at high risk of deliberate self-harm and suicide. Following treatment, she was reassessed as moderate to high risk of self-harm. Her father was concerned about her condition and urged the hospital not to allow her home on leave or to discharge her too soon. However, the woman asked for home leave and was granted it for two days and nights against her parents' wishes. During her home leave she committed suicide. The Supreme Court held that the hospital had a duty to take reasonable steps to protect her from the real and immediate risk of suicide. The Court found that the hospital had failed to do what was reasonable to prevent the risk.

## Compulsory mental health treatment order and human rights

**Victoria: *PBU & NJE v Mental Health Tribunal* [2018] VSC 564 (1 November 2018)**

The Victorian Supreme Court has confirmed that the capacity test under the *Mental Health Act 2014* (Vic) (MHA) must be interpreted and applied in a way that is compatible with the human rights of persons receiving compulsory mental health treatment under the Victorian *Charter of Human Rights and Responsibilities Act 2006* (Charter). This decision has significant implications for the human rights of persons with mental illness, and particularly for patients who may be subject to compulsory mental health treatment under the MHA.

Justice Bell determined that VCAT misinterpreted and misapplied the capacity test in section 68 MHA in ways that undermined PBU and NJE's human rights to self-determination, to be free of non-consensual medical treatment and to personal inviolability which are protected by the Charter.

## Mentally ill woman prevented from living at home

**Victoria: *Antunovic v Dawson* (2010) 30 VR 255, [2010] VSC 377**

This case involved an application by a mentally ill woman who had been forced to live at a community care unit under a community treatment order, despite the fact that the order did not contain a condition requiring her to live at any particular place.

The applicant argued that the respondent's refusal to allow her to return home constituted an infringement of her common law right to personal liberty, as well as her human rights to freedom of movement and liberty and security of the person.

The application was granted.

# Local government

## Permission to construct a mosque

**Victoria:** *Hoskin v Greater Bendigo City Council and Anor (2015) VCAT 1124*

In this case, the Australian Islamic Mission Inc. sought a permit to construct a mosque. The City of Greater Bendigo granted the permit. Eleven objectors to the mosque development took the case to VCAT arguing that an Islamic mosque was an intrinsically unacceptable land use because of the very nature of Islam. VCAT determined to grant the permit as it was not satisfied that the granting of the permit would likely result in any significant social effects. The human rights relevant to the Bendigo mosque case were the rights to freedom of culture, religion and belief.

## Right to take part in public life

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

Mr. Slattery argued that the ban from access to council premises was unlawful under s38(1) of the Charter and that Manningham Council had acted in a way which was incompatible with or failed to give proper consideration to his human rights to participate in the conduct of public affairs without discrimination (s18), to freedom of expression (s15) and to enjoy their human rights without discrimination (s8(2)).

Manningham Council had identified particular behaviours of Mr Slattery's as difficult for staff to deal with, including a compulsion to make complaints, using aggressive and offensive language and insulting staff.

In this case, the Victorian Civil and Administrative Tribunal (VCAT) found that the Council had breached Mr Slattery's human rights by banning him from attending all council buildings on the basis that he posed a health and safety risk to Council staff. The ban was considered disproportionately excessive and incompatible with Mr Slattery's right to take part in public life, freedom of expression, and the right to enjoy his human rights without discrimination.

# Police

## Right to hold a political demonstration

**Victoria:** *Victoria Police v Anderson & Ors (Magistrates Court, 23 July 2012)*

In this case, people had gathered outside Max Brenner's Chocolate Bar in a Melbourne shopping complex, to protest the political and social interests of the store. They were charged with trespassing after QV management and Victoria Police asked them to leave and they refused. The Magistrates' Court dismissed the trespass charges. It found that the protestors had gone to the complex to hold a political demonstration, which they had a right to do. The Court said that to find the protestors guilty of trespass would not be compatible with their right to freedom of expression.

# Courts

## Court to consider cultural rights

**Victoria:** *Cemino v Cannan and Ors [2018] VSC 535*

In April 2017, Mr Zayden Cemino applied to the Magistrates' Court in Echuca to transfer the criminal charges he was facing to the Koori Court in Shepparton for sentencing. Mr Cemino's solicitor told the Magistrate that Mr Cemino wanted to go before his Elders in the Koori Court, where he would have felt more comfortable discussing circumstances around his actions, including the recent passing of his mother, a Yorta Yorta woman.

The Magistrates' Court in Echuca refused the application. This was overturned in the Supreme Court where Justice Ginnane found that courts must consider the distinct cultural rights of Aboriginal people and their right to equality when making decisions.

# Family and children's services

## Children not to be held in an adult prison

**Victoria:** *Certain Children by their litigation guardian Sister Marie Brigid Arthur v Minister for Families and Children & Ors [2017] VSC 251 (11 May 2017)*

A series of incidents occurred at the Parkville youth justice precinct in November 2016 that significantly reduced its capacity. In order to accommodate children who could no longer be housed at Parkville, the government established the Grevillea unit of Barwon adult prison as a youth justice centre under the *Children Youth and Families Act 2005* (CYF Act).

Victorian Supreme Court has ruled it to be unlawful.

The Court found that two rights under the Charter were engaged and breached:

- Section 17(2), which stipulates that every child is entitled to protection based on his or her best interests. The Court referred to this as the paramount consideration in the case of juvenile detention concerning vulnerable children.
- Section 22(1), which stipulates that all persons deprived of liberty must be treated with humanity and respect for the inherent dignity of the human person.

# Housing

## Eviction without justification

### **Victoria: *Goode v Common Equity Housing Limited (Human Rights) [2016] VCAT 93***

Ms Goode commenced proceedings at VCAT against Common Equity Housing Limited (CEHL), a social housing provider, claiming it illegally discriminated against her and acted inconsistently with her human rights.

To determine whether CEHL had complied with the Charter, VCAT was required to determine whether CEHL was a 'public entity' subject to the Charter.

To determine whether CEHL was a functional public entity under section 4(1)(c), VCAT was required to consider two questions:

1. Was CEHL exercising functions of a public nature?
2. Was CEHL exercising its function on behalf of the State?

After considering the submissions, the Tribunal held that the functions being exercised by CEHL were of a public nature. On balance, the Tribunal held that CEHL was exercising its function on behalf of the State. Accordingly, CEHL was a public entity under section 4(1) of the Charter, so had to act compatibly with the Charter when exercising its social housing function.

# Disability

## Supported accommodation

### **Victoria: *AVW v Nadrasca Ltd (Residential Tenancies) [2017] VCAT 1462***

VCAT considered the legality of a notice to vacate issued against a disabled, long-term supported accommodation resident. The VACT member considered that as Nadrasca was a provider of residential services that were publicly funded, it was acting as a public entity and the Human Rights Charter therefore applied.

Accordingly Nadrasca was required to give proper consideration to AVW's rights when making a decision to issue a notice to vacate including pursuant to section 13 of the Charter, which relates to the right not to have their privacy, family or home unlawfully or arbitrarily interfered with. Importantly VCAT considered whether Nadrasca, as an experienced service provider with strong knowledge of the applicant's complex dual disability and needs, had adequately provided the applicant with support and management.

The VCAT member considered that, in circumstances where the applicant was a disabled person and the making of the possession order would have a significant impact on the applicant and the 'right to home is particularly important to a person with a dual disability', Nadrasca did not take reasonable steps in attempting to resolve the applicant's behaviors. VCAT subsequently found that the notice to vacate was invalid and could not form a basis for possession.

# Useful Resources

## Queensland Human Rights Act 2019

<https://www.legislation.qld.gov.au/view/html/bill.first.exp/bill-2018-076/lh>

## Queensland Human Rights Bill 2018 Explanatory Notes

<https://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2018/5618T1768.pdf>

*Human Rights: Human Lives, A Guide to the Human Rights Act for Public Entities, Equality and Human Rights Commission, UK 2014*

*From Commitment to Culture: the 2015 Review of the Charter of Human Rights and Responsibilities Act 2006* Michael Brett Young, Melbourne 2015

*The Charter of Human Rights and Responsibilities: A guide for Victorian public sector workers* VEOHRC, Melbourne 2014

*The Charter of Human Rights and Responsibilities: A guide for Victorian public sector workers* VEOHRC, Melbourne 2019

*Good Practice Guide: Managing Complaints Involving Human Rights*, May 2017 Victorian Government, Melbourne 2017

Pyrenees Shire Human Rights Charter Guidelines, June 2010

*Darebin Human Rights Action Plan 2012-2015*, City of Darebin, Melbourne

*The Charter of Human Rights and Responsibilities: Local government and the operation of the Charter in 2013 and 2014*, VEOHRC, Melbourne 2014

*The Australian Charter of Health Care Rights in Victoria*, Melbourne 2017

The Department of Planning and Community Development (Vic) *Guidelines for Local Laws Manual*, Melbourne, Feb 2010

The Department of Planning and Community Development (Vic) *Guidelines for Local Laws Resource Book*, Melbourne Feb 2010

## Websites

ACT HR Commission <http://hrc.act.gov.au/>

Australian Human Rights Commission <https://www.humanrights.gov.au/>

Victorian Equal Opportunity and Human Rights Commission <https://www.humanrightscommission.vic.gov.au/>

The Human Rights Law Centre <https://www.hrlc.org.au/>

Rights Info <https://rightsinfo.org/>

# Supporting Material

Each of the three arms of government will have an important role to play: the judiciary through interpretation of laws and adjudicating rights; the legislature through scrutinizing legislation and making laws; and the executive through developing policy and administrative decision-making.

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## PARTS OF BILL

## ROLE AND OBLIGATIONS IMPOSED BY BILL

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### PARLIAMENT

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#### Part 3, Divisions 1 and 2

Parliament will scrutinise all legislative proposals (Bills and subordinate legislation) for compatibility with human rights. The Bill requires:

- all Bills introduced into Parliament to be accompanied by a **statement of compatibility** (clause 38);
- statements of compatibility to state whether, in the opinion of the member who introduces the Bill, the Bill is compatible with human rights and the nature and extent of any incompatibility (clause 38);
- the portfolio committee responsible for examining a Bill to report to the Legislative Assembly about any incompatibility with human rights (clause 39);
- a Minister responsible for subordinate legislation to prepare a **human rights certificate** to accompany the legislation when it is tabled in the Legislative Assembly (clause 41); and
- a human rights certificate to state whether in the Minister's opinion the subordinate legislation is compatible with human rights (clause 41(2)).

The Bill also provides for Parliament, in exceptional circumstances, to make an **override declaration** in relation to an Act or a provision in an Act (clause 43). If an override declaration is made, the Human Rights Act (HR Act) does not apply to the Act or provision to the extent of the declaration while the declaration is in force (clause 45).

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## COURTS

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### Part 3, Division 3

So far as is possible to do so, courts and tribunals must interpret legislation in a way that is compatible with human rights. The Bill requires:

- all statutory provisions, to the extent possible consistent with their purpose, **be interpreted in a way that is compatible with human rights** (clause 48(1)); and
- if a statutory provision cannot be interpreted in a way that is compatible with human rights, the provision must, to the extent possible consistent with its purpose, **be interpreted in a way that is most compatible with human rights** (clause 48(2)).

The Bill also provides that the Supreme Court may, in a proceeding, make a **declaration of incompatibility** to the effect that the court is of the opinion that a statutory provision cannot be interpreted in a way compatible with human rights (clause 53).

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## EXECUTIVE (PUBLIC ENTITIES)

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### Part 3, Division 4

So far as is possible to do so, courts and tribunals must interpret legislation in a way that is compatible with human rights. The Bill requires:

- all statutory provisions, to the extent possible consistent with their purpose, **be interpreted in a way that is compatible with human rights** (clause 48(1)); and
- if a statutory provision cannot be interpreted in a way that is compatible with human rights, the provision must, to the extent possible consistent with its purpose, **be interpreted in a way that is most compatible with human rights** (clause 48(2)).

The Bill also provides that the Supreme Court may, in a proceeding, make a **declaration of incompatibility** to the effect that the court is of the opinion that a statutory provision cannot be interpreted in a way compatible with human rights (clause 53).

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# About the QHRC

We are an independent statutory body established under the Queensland *Human Rights Act 2019*. We were formerly the Anti-Discrimination Commission Queensland, and still handle complaints and training on discrimination, vilification, victimisation and sexual harassment, under the *Anti-Discrimination Act 1991* (Qld).

The Commission has a number of functions under the Human Rights Act including:

- promoting an understanding and acceptance of human rights;
- providing education about human rights;
- dealing with human rights complaints; and
- reporting annually to Parliament about the Act.

We have offices in Brisbane, Cairns, Townsville and Rockhampton.

## Training

As the leading authority on the *Human Rights Act 2019*, QHRC is responsible for delivering practical training to help public entities and the community understand their rights and responsibilities under the Act, and to help organisations promote and protect people's human rights.

For details on the training offered by the QHRC please go to [www.qhrc.qld.gov.au/training](http://www.qhrc.qld.gov.au/training), or contact our training team at [training@qhrc.qld.gov.au](mailto:training@qhrc.qld.gov.au).

## Complaints, information and enquires

The QHRC has a free enquiry service which can provide information about the Human Rights Act, rights and responsibilities under the Act, the QHRC complaints process, and referrals to other support or complaint agencies where relevant.

You can read more about our complaints process and conciliation on our website at [www.qhrc.qld.gov.au](http://www.qhrc.qld.gov.au), or contact our enquiry line on 1300 130 670.

**STATEWIDE**  
tollfree 1300 130 670  
info@qhrc.qld.gov.au  
qhrc.qld.gov.au  
fax 07 3193 9979



Queensland  
**Human Rights  
Commission**

**South East Queensland office**

Level 20, 53 Albert St  
Brisbane Q 4000  
(corner of Albert and Margaret Streets)  
City East Post Shop  
PO Box 15565  
City East Q 4002  
1300 130 670

**Central Queensland office**

Level 1, James Larcombe Place  
209 Bolsover Street  
Rockhampton Q 4700

PO Box 1390  
Rockhampton Q 4700  
1300 130 670 or 4933 5104

**North Queensland office**

Ground Floor, 187-209 Stanley St  
Townsville Q 4810

PO Box 1566  
Townsville Q 4810  
1300 130 670 or 4421 4000

**Far North Queensland Office**

Ground Floor, 10 Grove Street  
Cairns Q 4870

PO Box 4699  
Cairns Q 4870  
1300 130 670 or 4037 2100

The Queensland Human Rights Commission operates a telephone information and enquiry service.

People with a hearing or speech impairment can call through the National Relay Service:

- Speak & Listen users, phone 1300 555 727 then ask for 1300 130 670
- Internet Relay users, connect to the National Relay Service (see [www.relayservice.com.au](http://www.relayservice.com.au) for details) and then ask for 1300 130 670.

The National Relay Service website includes information about the options available to people who are deaf, or have a hearing or speech impairment. They can also contact 1800 555 660 or [helpdesk@relayservice.com.au](mailto:helpdesk@relayservice.com.au) for information or support.

Callers who want to speak to us in a language other than English can contact TIS (Translating and Interpreting Service) on 131 450 from anywhere in Australia. Our website also has brief information on discrimination, sexual harassment, vilification and how to contact the commission in thirty languages.

## Contact us

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STATEWIDE ENQUIRY LINE: 1300 130 670

[WWW.QHRC.QLD.GOV.AU](http://WWW.QHRC.QLD.GOV.AU)

[TRAINING@QHRC.QLD.GOV.AU](mailto:TRAINING@QHRC.QLD.GOV.AU)



Queensland  
**Human Rights  
Commission**