

# Human Rights Law in Queensland



## Contents

INTRODUCTION	2
THE QUEENSLAND HUMAN RIGHTS ACT	3
BEFORE BRINGING A HUMAN RIGHTS ACT COMPLAINT	4
THE ROLE OF PARLIAMENT	7
THE ROLE OF COURTS AND TRIBUNALS	8
THE ROLE OF PUBLIC ENTITIES	12
THE RIGHTS OF INDIVIDUALS AND THE COMPLAINT PROCESS	15
EXAMPLES OF HUMAN RIGHTS ENGAGED BY PUBLIC ENTITY ACTIONS AND DECISIONS	17
THE RIGHTS PROTECTED UNDER THE HUMAN RIGHTS ACT	23
LEGAL NOTICES	48

## Introduction

The *Human Rights Act 2019* (Qld) (Human Rights Act) aims to recognise, protect and promote the equal rights and worth of all Queenslanders. It recognises that human rights intrinsically belong to each person and brings those rights to the heart of government, judicial and legislative decision making.

Historically, Aboriginal and Torres Strait Islander peoples in Queensland have been particularly vulnerable to human rights abuses, and their rights have been significantly interfered with throughout colonisation, including by state laws and policies that permitted forced dislocation from land, removal of children and the control of wages later lost or stolen. Interference with the rights of children including through child protection laws, sexual abuse in government institutions and treatment in detention have also led to human rights violations. In line with other Western nations, women have historically faced restrictions of their rights in marriage, property ownership, employment and, in an ongoing sense, in obtaining protection from the law as victims of domestic violence. Other groups, such as Pacific South Sea Islanders who were forced to work in slavery in Queensland's agricultural industry, people with disabilities who were forcibly segregated into custodial institutions and gay men who were persecuted under historical homosexual criminal laws have experienced unique human rights abuses.

Interactions between individuals and the state continue to have the potential to erode human rights. Human rights complaints are prevalent in response to the provision of policing, child protection, housing, correctional, aged care, education and health services. From the single mother facing eviction from public housing, to the recent migrant who is over-policed for their race, the concerned citizen peacefully protesting, to children held in police watchhouses, the Human Rights Act provides a new avenue of protection. Since its commencement on 1 January 2020, the Human Rights Act has been considered in decisions about child protection, review of negative Blue Card notices, the making of non-publication orders, appeals against sentence, the supervision of released prisoners, applications for bail and parole, requests for judge-only trials and exclusions from school. Environmental decision making is an emerging human rights area, with decisions about land use and environmental laws having the potential to erode rights now and in the future.

In addition to the Human Rights Act, human rights protection exists at a local, national and international level. Existing legislative protection of human rights in Queensland include the right to peaceful assembly under the *Peaceful Assembly Act 1992* (Qld) and the prohibition of discrimination, or less favourable treatment, of people on the grounds of attributes including religion, gender or race under the *Anti-Discrimination Act 1991* (Qld). Similarly, federal laws prohibit discrimination, and the Australian Constitution contains a limited implied right to freedom of political communication. There are also human rights Acts or similar in most other similar democracies including New Zealand, Canada and the United Kingdom.

The rights in the Human Rights Act are largely derived from international law, including the *International Covenant on Civil and Political Rights* as well as the right to education and to health services, drawn from the International Covenant on Economic Social and Cultural Rights and property rights drawn from the *Universal Declaration of Human Rights*. Other key international human rights instruments, such as the Convention on the Elimination of Discrimination against Women and the *Convention on the Rights of Persons with Disabilities* are also reflected in domestic human rights laws, particularly within the state and federal anti-discrimination laws.

## The Queensland Human Rights Act

### Overview of the Act

Human Rights Act commenced in Queensland on 1 January 2020 and provides a statutory framework for the protection and promotion of human rights in Queensland.

The Human Rights Act:

- provides statutory protections for 23 human rights and freedoms. These rights are in addition to, and do not take away from, other rights and freedoms that people may have in Queensland for example at common law or under other legislation
- aims to ensure human rights are given proper consideration in the development of legislation, interpretation of laws and in public sector decision making
- only protects individuals and does not create absolute rights. Human rights may be limited and balanced in a way that is consistent with a free and democratic society based on human dignity, equality and freedom
- aims to ensure that respect for human rights is embedded in the culture of the Queensland public sector, and that public functions are exercised in a principled way that is compatible with human rights. The Act has broad ramifications for the provision of a wide range of public services and government decision making in Queensland
- provides a mechanism for human rights complaints to be made, investigated and attempted to be resolved directly with public entities and then through the Queensland Human Rights Commission (QHRC). A breach of human rights may only be raised in a court or tribunal if a person has another cause of action or legal remedy available aside from the human rights argument
- is not retrospective, meaning that it will only apply to actions or decisions from 1 January 2020 onwards.

### Objects of the Human Rights Act

The objects of the Human Rights Act are:

- to protect and promote human rights

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

## Other human rights Acts in Australia

Queensland is the third state or territory to enact specific human rights legislation, following the Australian Capital Territory's *Human Rights Act 2004* (ACT) and Victoria's *Charter of Human Rights and Responsibilities Act 2006* (Vic). The Queensland legislation is closely modelled on the Victorian Charter of Rights. The Queensland Act is the only human rights statute in Australia to include a right to health services and is joined only by the ACT legislation in protecting the right to education. The Queensland Act also has the most expansive and wide-reaching protection for cultural rights of Aboriginal and Torres Strait Islander peoples.

## Dialogue model of human rights protection

The Human Rights Act adopts a 'dialogue model' of human rights protection. This model promotes discussion or dialogue about human rights between the three arms of government: parliament, the courts and government (via public entities).

The Act places separate obligations on each arm of government, giving each an important role:

- The Queensland Parliament must consider human rights when proposing and scrutinising new laws. Parliament can still make laws that interferes with human rights, but it must be open and transparent about doing so.
- Queensland courts and tribunals must interpret the law, so far as possible consistently with its purpose, in a way that is compatible with human rights, and the Supreme Court or Court of Appeal may declare a law incompatible with human rights.
- Public entities must act or make decisions in a way that is compatible with human rights and, in making decisions, must give proper consideration to relevant human rights.

A dialogue model also preserves the existing separation between the three arms of government, ensuring that the integrity of each limb of government is maintained.

## Before Bringing a Human Rights Act Complaint

Before contemplating a Human Rights Act complaint, two important matters should be understood. Firstly, human rights will generally be raised alongside other existing legal avenues of review, appeal or complaint. Secondly, human rights may be limited.

## Other avenues of review, appeal or complaint

Generally, when a person believes that a public entity has breached their human rights, they will have a range of options to review, appeal or complain under the law that governs the decision and binds the public entity (see Table 1 for some examples). A complaint under the

Human Rights Act should usually be considered in addition to, rather than instead of, these existing options.

The Human Rights Act broadens and formalises human rights protection in Queensland. However, outcomes under the Human Rights Act must generally be achieved by agreement, with the Act limiting recourse against the public entity to a complaint and conciliation (mediation) in most cases. There is no standalone legal action, meaning that a Human Rights Act complaint cannot be brought directly before a court or tribunal if it cannot be resolved by agreement, and there is no right to seek damages (compensation) from a public entity. This means that, in most cases, a Human Rights Act complaint should generally be raised alongside existing avenues to review, appeal or complain against a public entity. These avenues will continue to provide the substantive outcomes for many complaints, for example by giving the affected person an avenue to appear before a court or tribunal and ask to set aside the decision, have orders made against the public entity and seek damages (compensation).

**Table 1:** Some examples of existing avenues to review, appeal or complain and possible recourse in addition to the Human Rights Act argument.

---

**Example 1:** A person who believes they have been discriminated against by a public entity. A discrimination complaint to the Queensland Human Rights Commission (QHRC) under the *Anti-Discrimination Act 1991* (Qld) (Anti-discrimination Act). If unresolved, a complaint to the Queensland Civil and Administration Tribunal (QCAT) or Queensland Industrial Relations Commission.

---

**Example 2:** An accused person charged with a criminal offence believes police have dealt with them unlawfully during arrest. A police complaint to Ethical Standards Command, Crime and Corruption Commission or the Queensland Ombudsman. A submission to discontinue the prosecution with reference to the Queensland Police *Service Operational Procedures Manual*. A defence or legal argument raised during court proceedings for the criminal charge.

---

**Example 3:** A victim who believes they have been treated unfairly by police. A police complaint to Ethical Standards Command, Crime and Corruption Commission or the Queensland Ombudsman. A discrimination complaint to the QHRC under the Anti-discrimination Act. If the complaint is unresolved, a complaint to QCAT.

---

**Example 4:** A parent who objects to a placement decision about a child by Child Safety. An internal complaint to Child Safety. An application to QCAT to have a Child Safety decision administratively reviewed. Where the complaint is about the care being provided at the placement, a complaint to the Office of Public Guardian.

---

**Example 5:** A person appealing a restrictive-practices decision (e.g. containing or secluding a person with a cognitive or intellectual disability) under guardianship law.  
An application to QCAT to review the decision.

---

**Example 6:** A child who has been suspended or excluded from a school, and believes the decision was discriminatory.  
A request to have the Chief Executive review the decision under relevant Department of Education procedure.  
A judicial review application to the Supreme Court.  
A discrimination complaint under the Anti-discrimination Act to the QHRC. If unresolved, an application to QCAT.

---

**Example 7:** A person reviewing a decision by Blue Card Services not to issue a positive notice.  
An internal complaint to Blue Card Services.  
An application to QCAT to review the decision.

---

Before contemplating a Human Rights Act complaint, it is essential that any other avenues of review, appeal or complaint, as well as any relevant time limits that arise, are understood. Legal advice should be sought before making the Human Rights Act complaint.

### Human rights may be limited

The Human Rights Act does not give absolute rights. Instead, the Human Rights Act provides that rights may be subject to reasonable limits that can be justified in a free and democratic society based on human dignity, equality and freedom.

In deciding whether a limit is reasonable and justifiable, the following factors listed in s 13 of the Human Rights Act may be relevant:

- a. the nature of the human right
- b. the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom
- c. the relationship between the limitation and its 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
- g. the balance between the matters mentioned under (e) and (f).

These factors are not an exhaustive list, but simply a guide derived from s 13 of the Human Rights Act. The human rights of a particular individual may also be limited when considering the competing rights and interests of other individuals or counteracting matters of public

policy. The application of Queensland, domestic and international caselaw is likely to clarify the limitations that may be placed upon human rights.

In addition, some rights contain internal limitations. For example, the right to life only prohibits arbitrary deprivation of life (s 16 Human Rights Act), the protection of assemblies is limited to peaceful assemblies (s 22 Human Rights Act), rights to vote and be elected apply only to those eligible to participate in those processes (s 23 Human Rights Act) and those detained without charge must be segregated from convicted offenders unless it is reasonably necessary to place them in unsegregated detention (s 30 Human Rights Act).

## The Role of Parliament

### Considering human rights when making new laws

Parliament must now take the following steps to consider human rights when making new legislation in Queensland:

- When a Bill is proposed, it must be accompanied by a statement that explains whether or not the law is compatible with human rights, and to what extent it does not comply.
- The Bill will then be scrutinised by a parliamentary committee to determine its compatibility with human rights. The committee then provides a report to parliament.

Human rights must also be considered when making subordinate law such as Regulations, Rules and By-laws. In most cases:

- a human rights certificate must be tabled in parliament, stating whether the subordinate law is compatible with human rights, and to what extent it is not compatible
- the responsible committee then considers the human rights certificate when examining the subordinate legislation.

### Override declarations

Parliament has the right to allow laws that are incompatible with human rights, but must state this clearly and publicly.

Parliament may make an 'override declaration' in exceptional circumstances, stating that the law has effect despite being incompatible with human rights. This will mean that the *Human Rights Act 2019* (Qld) (Human Rights Act) will not apply to the law, and the Supreme Court cannot later declare the law incompatible with human rights. See 'The Supreme Court's declaratory power' below.

A Bill may also be introduced with an override declaration saying that all or part of the new law is incompatible with human rights. Parliament can then allow the Bill to pass with the override declaration.

## Acting in an administrative capacity

The Human Rights Act also applies directly to members of parliament when acting in an administrative capacity. This is limited to members of a parliamentary committee and a person who is performing functions in connection with parliamentary proceedings. The Human Rights Act requires these individuals to act and make decisions in a way that is compatible with human rights, and to properly consider human rights relevant to the decision when performing administrative tasks and functions.

## The Role of Courts and Tribunals

### Interpreting the law

Courts and tribunals must, as far as possible and while continuing to fulfil their purpose, interpret laws in a way that is compatible with human rights. If this is not possible, then laws must be interpreted in a way that is most compatible with human rights.

A law is compatible with human rights if it does not limit a human right, or limits a human right only to the extent that is reasonable and justifiable in a free and democratic society based on human dignity, equality and freedom.

Courts and tribunals can refer to international law and the judgements of Australian, foreign and international courts and tribunals when interpreting if a law is compatible with human rights.

### Legal proceedings

Courts and tribunals may also consider human rights, and grant relief or remedy (apart from monetary damages) for breach of human rights in some limited circumstances.

There is no direct right to bring a complaint about a Human Rights Act breach before a court or tribunal. A Human Rights Act argument can only be brought if the person has separate grounds to bring legal proceedings against the decision of a public entity (e.g. where a person claims the public entity acted unlawfully by breaching a law or exceeding the lawful exercise of power).

Where a person can bring legal proceedings against the public entity, they may be able to add an argument that the public entity has also breached the Human Rights Act. This is commonly known as the Human Rights Act complaint 'piggybacking' another legal action.

**Table 2:** Some examples of legal proceedings that may be brought against a public entity, and may be piggybacked by a Human Rights Act argument.

---

**Example 1:** A decision by Blue Card Services not to issue a positive notice for a blue card.

- The decision by Blue Card Services may be reviewed in QCAT.

- QCAT will consider the application of the *Working with Children (Risk Management and Screening) Act 2000* (Qld) during the review. The person may argue that Blue Card Services also contravened the Human Rights Act during the QCAT proceedings.

Rights that may be relevant include the right to privacy and reputation (s 25 Human Rights Act) and the right not to be tried or punished more than once (s 34 Human Rights Act).

---

**Example 2:** A decision by the Office of Fair Trading to cancel a letting agent licence after the licence holder is convicted of criminal charges.

- The decision by the Office of Fair Trading may be judicially reviewed in the Supreme Court.
- Judicial Review is concerned with whether the government has the power to do an act or make a decision, and whether the power has been lawfully exercised. See the Judicial Review chapter of the Queensland Law Handbook for a further explanation.
- Judicial review is an example of the Supreme Court exercising supervisory jurisdiction for example by granting a declaration against a public entity like the Office of Fair Trading.
- The Supreme Court will consider the *Property Occupations Act 2014* (Qld) during the judicial review. The person may also be able to argue that the Office of Fair Trading contravened the Human Rights Act.

Rights that may be relevant include the right not to be tried or punished more than once (s 34 Human Rights Act).

---

**Example 3:** A decision by police not to provide an Auslan interpreter to a victim with a hearing impairment.

- The victim may have grounds for a discrimination complaint under the Anti-discrimination Act.
- A complaint that the public entity has discriminated against the person contrary to the Anti-discrimination Act gives a direct cause of action against a public entity. This includes a right to complain to the QHRC and, if the complaint is unresolved, to QCAT.
- QCAT and the QHRC will apply the Anti-discrimination Act to determine if discrimination has occurred. The person may also be able to argue that police acted unlawfully under the Human Rights Act during the QHRC and QCAT complaint.

Rights that may be relevant include the right to recognition and equality before the law (s 15 Human Rights Act) and the right not to be treated in a cruel, inhuman or degrading way (s 17 Human Rights Act).

---

**Example 4:** A decision by the Department of Housing and Public Works to apply for a warrant of possession from QCAT, to allow the eviction of a tenant from public housing.

- The tenant may object to and appeal the warrant of possession in QCAT. This is a statutory appeal as it is allowed under the *Residential Tenancies and Rooming Accommodation Act 2008* (Qld) (RTR Act).
- During QCAT proceedings, QCAT will consider the application of the RTR Act. The tenant may also be able to argue that it would be contrary to the Human Rights Act to grant the warrant of possession.

Rights that may be relevant include the right to privacy and reputation (s 25 Human Rights Act) and right not to be treated in a cruel, inhuman and degrading way (s 17 Human Rights Act).

---

**Example 5:** An application to the Supreme Court to exclude evidence improperly obtained by police.

- The Supreme Court has an inherent jurisdiction to grant a stay or exclude evidence.
- The Supreme Court is likely to apply the *Police Powers and Responsibilities Act 2000* (Qld) and the *Evidence Act 1977* (Qld) in deciding whether to exclude the evidence. The applicant may also make arguments about the unlawfulness of the police actions under the Human Rights Act.

Rights that may be relevant include the right to privacy and reputation (s 25 Human Rights Act) and right to freedom of movement (s 19 Human Rights Act).

---

Where a court or tribunal finds that the public entity has acted contrary to their obligations under the Human Rights Act, the court or tribunal may grant a relief or remedy on the grounds that the public entity has breached the Human Rights Act. However, there is no right to seek monetary damages (compensation) for the human rights breach.

### Acting in an administrative capacity

The Human Rights Act applies directly to a court or tribunal where it is acting in an administrative capacity.

A court or tribunal exercising administrative, rather than judicial power, is a public entity. It will be obliged to act and make decisions in a way that is compatible with human rights, and to properly consider human rights relevant to the decision.

Acting in an administrative capacity includes a court or tribunal undertaking administrative tasks and making administrative decisions.

For a tribunal, this may include:

- exercising merits review jurisdiction where the tribunal reconsiders the facts and law of a public entity decision for example blue card applications and right to information requests

- hearing and determining some statutory applications such as guardianship appointments
- determining professional registration matters for example disciplinary and licensing decisions for health practitioners, teachers, legal practitioners and other professionals.

For a court, this may include:

- referring individuals to special courts for example the Murri Court or Queensland Drug and Alcohol Court
- a magistrate conducting committal proceedings to decide if there is enough evidence against an accused person charged with a serious criminal offence to commit them to trial in a higher court
- an individual judicial officer issuing a warrant.

For both courts and tribunals, it may also encompass court processes and procedures (e.g. registry functions such as arranging interpreters and listing matters) as well staffing matters (e.g. hiring staff, adopting and applying policies and procedures).

### Acting in a judicial capacity

The Human Rights Act also places an obligation on courts and tribunals to enforce, directly, the human rights that relate to court proceedings when acting in a judicial capacity.

This means that a court or tribunal, when making decisions or orders about the outcome of a legal matter, must act compatibly with human rights relevant to the proceeding.

Courts in Victoria, under a similar provision of the *Charter of Human Rights and Responsibilities Act 2006* (ACT), have been required to apply human rights, when exercising the following judicial functions:

- hearing bail applications
- conducting sentencing hearings
- accommodating self-represented parties
- reviewing mental health treatment orders
- conducting child protection proceedings
- making suppression orders.

### Referral to the Supreme Court

A question of law that relates to the application of the Human Rights Act, or a question of interpretation of a law in accordance with the Human Rights Act, may be referred to the Supreme Court.

Any party to the proceeding may apply to have the question referred to the Supreme Court, and the court or tribunal can make the referral if considered appropriate.

Once referred, the court or tribunal must not make any decisions while the referral is pending or proceed in any way that is inconsistent with the Supreme Court's decision.

## Declarations of incompatibility

The Supreme Court and Court of Appeal are empowered to make a 'declaration of inconsistent interpretation' if it considers that it is not possible to interpret a law consistently with human rights.

This opens a dialogue between the court and parliament, alerting parliament to problems in the legal system.

A declaration may be made where a question is referred to the Supreme Court (see 'Referral to the Supreme Court' above) or a question of law arises in proceedings in the Supreme Court or Court of Appeal.

The QHRC and the Attorney-General must be notified and may make submissions when the Supreme Court is considering making a declaration of inconsistent interpretation.

A declaration of inconsistent interpretation does not affect the validity, operation or enforcement of the law or give rise to any legal right or civil cause of action.

## The Role of Public Entities

### What is a public entity

The Human Rights Act places obligations on public entities. Public entities are 'in and for Queensland' and encompass government agencies and employees. Public entities include state government departments, local councils, state schools, police and non-government organisations and businesses performing a public function.

### Core public entities

Some individuals or agencies will always be a public entity under the Act. These are:

- a government entity as defined by s 24(1) of the *Public Service Act 2008* (Qld):
- a government department or part thereof
- a public service office or part thereof
- an agency, authority, commission, corporation, instrumentality, office or other entity established under an Act or under state authorisation for a public or state purpose, or part thereof
- another entity declared under Regulation to be a government entity, or part thereof
- a registry or other administrative office of a court
- a public service employee

- the Queensland Police Service
- a local government, councillor and employee of local government
- a minister
- unless otherwise described, a staff member or executive officer of a public entity
- an entity prescribed by Regulation to be a public entity
- a non-state police officer brought to Queensland and appointed or authorised to act as a police officer in Queensland to assist in responding to a terrorist act under the *Police Service Administration Act 1990* (Qld)
- an entity that has voluntarily assumed that status under the Human Rights Act.

### Functional public entities

Some individuals or bodies will only be a public entity when performing functions of a public nature:

- an entity established under an Act when performing functions of a public nature
- an entity whose functions are of, or include, a public nature when performing the functions for the state or another public entity
- a registered provider of supports or a registered NDIS provider under the *National Disability Insurance Scheme Act 2013* (Cth), when performing functions of a public nature in the state.

The Human Rights Act also stipulates certain functions as being of a public nature such as:

- operation of a corrective services facility or place of detention
- provision of emergency services, public health services, public disability services, public education (including tertiary and vocational education), public transport and housing services by a funded provider or the state.

Otherwise, the assessment of whether a function is public in nature will be on a case-by-case basis, focusing on the function, rather than the entity. The Human Rights Act provides a non-exhaustive list of relevant factors that may be considered including whether the function is conferred under statute (s 10(1)(a) Human Rights Act), the entity is publicly funded to perform it (s 10(1)(d) Human Rights Act) and whether the function is of a regulatory nature (s 10(1)(c) Human Rights Act).

### Public entity acting in an administrative capacity

Some entities will only be considered public entities when acting in an administrative capacity:

- parliament, or a person performing functions in connection with proceedings in the Assembly
- a court or tribunal.

## Excluded public entities

The Human Rights Act expressly excludes the following from obligations as public entities:

- A public entity that acts in accordance with a law that does not permit the public entity to act or decide differently, even where it would be incompatible with human rights.
- A body established for a religious purpose where the act or decision is made in accordance with the doctrine of the religion and is necessary to avoid offending the religious sensitivities of the people of the religion. This mirrors the exemption in the *Anti-Discrimination Act 1991* (Qld) (Anti-discrimination Act).
- A decision of a private nature for example a decision made by a public entity employee outside of work.
- An entity may also be prescribed by the *Human Rights Regulation 2019* (Qld) (Human Rights Regulation) not to be a public entity.

## Public entities making decisions and acting

Under the Human Rights Act, public entities must act or make a decision in a way that is compatible with human rights and give proper consideration to relevant human rights when making decisions.

Section 58(1) of the Human Rights Act says it is unlawful for a public entity to:

- to act or make a decision in a way that is not compatible with human rights
- in making a decision, fail to give proper consideration to a human right relevant to the decision.

This section is the key operative provision of the Human Rights Act and places both substantive and procedural obligations on public entities.

The substantive obligation is that the action or decision of the public entity must not limit the human right or, if it does, must only do so to the extent that is reasonable and justified in accordance with the Human Rights Act.

As to the procedural requirement, giving proper consideration to a relevant human right would include identifying the human right that may be affected, and considering whether the decision would be compatible with that human right. Public entities will be required to:

- understand in general terms the rights that may be relevant
- establish whether the rights will be interfered with by the decision
- seriously consider the possible impacts of the decision on a person's human rights (including implications for the person)
- balance or weigh up the competing public and private interests as against protection of the human rights.

Failing to comply with s 58(1) of the Human Rights Act is not an offence and does not invalidate the act or decision. Instead, it gives a person affected by the action or decision the right to make a complaint under the Human Rights Act.

## The Rights of Individuals and the Complaint Process

People can complain to the QHRC about a breach of their human rights and can add human rights arguments to other legal actions they may bring against the public entity.

### 1 Find out what avenues exist to review, appeal or complain about a decision

Before making a complaint, the person should first ensure they understand all possible ways to review, appeal or complain about the decision.

This may include recourse under the Human Rights Act, but is likely to extend to other avenues such as internal and external complaint avenues and appealing the decision in a court or tribunal. See 'Other avenues of review, appeal or complaint' above.

The person should then, with knowledge of any applicable time limits, decide whether they wish to use these other avenues before, alongside or after making a Human Rights Act complaint.

**Table 3:** Some examples of possible complaint processes.

---

**Example 1:** A person wants to make a discrimination complaint against police.

- The person writes to police about the Human Rights Act breach.
- The person waits 45 business days, and then complains about both the Human Rights Act breach and discrimination to the QHRC within **one (1) year** of the discrimination occurring.

---

**Example 2:** A student is excluded from a public school three weeks before significant exams.

- The student writes to the Department of Education, asking them to review the decision under the relevant education law, policy and Human Rights Act.
- The student simultaneously makes a Human Rights Act complaint to the QHRC. The QHRC is satisfied exceptional circumstances exist, and accepts the complaint before 45 days has passed since the student wrote to the Department of Education.
- The student has made both the Department of Education and QHRC complaints within **one (1) year** of the exclusion decision.

---

**Example 3:** An accused person wishes to complain about human rights violations during an arrest.

- The accused person makes arguments during court proceedings for the criminal matter, for example that the arrest was unlawful.
  - The charge is dismissed and the accused person then makes a Human Rights Act complaint to the QHRC within **one (1) year** of the arrest.
- 

## 2 Complaint to the public entity

If a person believes that a Queensland public entity has breached the Human Rights Act, they must first make a complaint directly to the public entity and allow 45 business days to respond.

In exceptional circumstances, the QHRC may accept an urgent complaint before 45 business days has passed since the complaint was made to the public entity. However, the person will still need to have complained to the public entity first.

## 3 Complaint to the Queensland Human Rights Commission

If the person is unable to resolve the complaint directly with the public entity, they can then lodge a complaint with the QHRC.

A complaint must be lodged with the QHRC within **one (1) year** of the act or decision being complained about.

The QHRC is empowered to resolve disputes between individuals and public entities where a breach of human rights is alleged, and exercise other functions under the Act.

The QHRC must give reasonable help to a complainant who needs help to put the complaint in writing, may make preliminary enquiries to decide how to deal with the complaint and direct a public entity to give relevant information about the complaint.

The QHRC must only refuse to deal with a complaint if the complaint is frivolous, trivial, vexatious, misconceived or lacking in substance.

With no separate and enforceable cause of action under the Human Rights Act, the QHRC complaints mechanism will be the most important safeguard for making sure public entities are held accountable for breaches of human rights in Queensland.

## 4 Conciliation Conference at the Queensland Human Rights Commission

If the QHRC accepts a human rights complaint, it may conduct a conciliation conference to try and resolve the complaint in a way that is informal, quick and efficient.

This dispute resolution model aims to resolve disputes between the person making the complaint and the public entity without enforcement in a court or tribunal.

The QHRC can direct any person to take part in the conciliation conference, and the complainant must attend aside for in limited circumstances such as where they are a child or person with impaired capacity. The QHRC may consent to a support person or representative attending with the complainant.

If the complaint is not resolved at conciliation, the QHRC can publish deidentified reports about the matters raised and recommend actions it considers should be taken to act compatibly with human rights.

## 5 Limited enforcement mechanism

There is no stand-alone legal remedy for contravention of the Human Rights Act. This means that a person who is complaining about a breach of their human rights cannot apply directly to a court or tribunal to resolve the complaint if it is not resolved in the QHRC.

However, where the person can bring another sort of legal action against the public entity they may include Human Rights Act arguments in that legal action.

For example, where a discrimination complaint remains unresolved after a conciliation conference in the QHRC, the complainant may bring the discrimination complaint to the Queensland Civil and Administrative Tribunal. Human rights arguments may also be raised during these proceedings.

There is no right to seek monetary damages either during the QHRC complaints process or in later legal proceedings for contravention of the Human Rights Act.

If the complainant has no other grounds for legal action against the public entity aside from a Human Rights Act complaint, then the QHRC conciliation conference will be the end of the complaint process.

## Examples of Human Rights Engaged by Public Entity Actions and Decisions

Table 4 sets out some common interactions between individuals and public entities that may constitute a human rights breach, and the human rights that may be infringed.

These examples have been adapted from Victorian and Australian Capital Territory cases under their respective human rights legislation. Each example provides the relevant law, process and policy as it would apply to a similar example in Queensland, as well as a summary of any relevant Queensland decisions.

**Table 4:** Some case examples where human rights may be engaged in similar Queensland proceedings.

---

**Example 1: A tenant and their children are evicted from public housing**

A tenant living in public housing with their children is alleged to have used the premises for illegal purposes. The public housing provider applies for an order that, if granted, will result in the eviction of the tenant and their children from the property. The order (a warrant of possession) is issued by the tribunal, and the tenant judicially reviews the decision in the Supreme Court. The tenant argues that the decision was incompatible and failed to consider their human rights. The Supreme Court considers the tenants human rights during the judicial review and declared that the warrant of possession has no legal effect. The tenant was able to stay in the public housing property.

Case reference: *Burgess & Anor v Director of Housing & Anor* [2014] VSC 648

Queensland law: In Queensland, the Department of Housing and Public Works can apply to the QCAT for a warrant of possession under the RTR Act. A QCAT decision may be judicially reviewed in the Supreme Court of Queensland in some circumstances.

- The right to the protection of families and children (s 26 *Human Rights Act 2019* (Qld) (Human Rights Act)) may be raised by the tenant, with the decision maker being required to take into account the tenants' rights to protection of their family group, and the best interest of any child affected by the decision.
- The rights to privacy and reputation (s 25 *Human Rights Act*), which encompass a right to not have the person's family and home unlawfully and arbitrarily interfered with.
- The right not to be treated in a cruel, inhuman or degrading way (s 17 *Human Rights Act*) by being evicted from the tenancy.
- The right to freedom of movement (s 19 *Human Rights Act*) including the right to choose where to live.

---

**Example 2: Children detained in an adult prison**

A riot at a youth detention facility causes extensive damage. There are not enough secure beds to house the young people in detention. A unit is established at a maximum-security adult prison. A number of children and young people are transferred to the unit. The conditions are harsh, austere and unsuitable for young people. Initially, all young people were placed in solitary confinement for several days. Young people were handcuffed when moved between cells and the exercise area. A group of children bring a judicial review, and also argue that the detention is unlawful under human rights law. In two decisions, the Supreme Court held that the orders establishing the unit and the transfer decisions were invalid, and the young people were ordered to be returned to a remand centre.

Case reference: *Certain Children by their Litigation Guardian Sister Marie Brigid Arthur v Minister for Families and Children* [2016] VSC 796 (21 December 2016)

Queensland law: In Queensland, judicial review applications are determined by the Supreme Court.

- The right to protection from torture and cruel, inhuman and degrading treatment (s 17 Human Rights Act).
- The right for every child, without discrimination, to such protection as is in their best interests by reasons of being a child under the right to protection of families and children (s 26 Human Rights Act).
- The right of all persons deprived of liberty to be treated with humanity, and with respect for their inherent dignity under the right to humane treatment when deprived of liberty (s 30 Human Rights Act).
- The rights of children in the criminal process (s 33 Human Rights Act), which includes the right of children on remand to be segregated from detained adults.
- The rights in criminal proceedings (s 32 Human Rights Act) including the rights of children who are charged, including those held on remand, to a procedure that takes into account their age and the promotion of their rehabilitation.

---

**Example 3: Appeal against a negative notice for working with children**

A person is convicted of a serious criminal offence that is not related to children. Ten years later, the person applies for a working with children check so that they can work as a bus driver. The application is refused on the grounds that the person is an unjustifiable risk. The applicant commences proceedings to review the decision. The Supreme Court held that the decision had not applied the 'unjustifiable risk' test correctly, and also that the tribunal had failed to consider the person's human rights including the right to work, which is contained in international human rights law.

Case reference: *ZZ v Secretary, Department of Justice & anor* [2013] VSC 267

Queensland law: In Queensland, Blue Cards are regulated by Blue Card Services under the *Working with Children (Risk Management and Screening) Act 2000* (Qld). A decision by Blue Card Services can be reviewed in QCAT. A QCAT decision may be judicially reviewed in the Supreme Court in some circumstances.

- The right to privacy and reputation (s 25 Human Rights Act), which includes the right not to have privacy, family, home or correspondence unlawfully or arbitrarily interfered with.
- The rights of children, including the right to protection of families and children (s 26 Human Rights Act) will also be engaged when interpreting the working with children legislation, which places a positive obligation on the relevant government department to protect children from harm.

Another right that may be engaged where a court or tribunal refers to international law when interpreting the *Working with Children (Risk Management and Screening) Act 2000* (Qld), based on the Victorian case is the right to work as recognised in article 23(1) of

the UDHR, which states that everyone has a right to work and article 6(1) of the ICESCR, which states that Australia, as a party, recognises the right to work and to safeguard this right.

---

**Example 4: Application for specialist medical treatment in detention**

A 45-year-old female prisoner is diagnosed with age-related infertility. The prisoner commenced IVF treatment before her incarceration. She is due to have her next birthday whilst in prison, and will no longer be eligible for IVF treatment after she turns 46. She requires a permit to leave prison and obtain IVF treatment. She makes an application for health leave. The request is refused. The prisoner applies to the Supreme Court for a judicial review of the decision. The Supreme Court finds that the prisoner has the right to continue to undergo IVF treatment, but that eligibility for permits will be considered on a visit-by-visit basis.

Case reference: *Castles v Secretary to the Department of Justice & Ors* [2010] VSC 310 (9 July 2010)

Queensland law: In Queensland, health leave is regulated by the *Corrective Services Act 2006* (Qld). A decision by Queensland Corrective Services may be judicially reviewed in the Supreme Court in some circumstances.

- The rights of the prisoner to enjoy her human rights without discrimination, part of the right to recognition and equality before the law (s 15 Human Rights Act).
- The right to privacy (s 25 Human Rights Act) including the right not to have the person's privacy or family unlawfully or arbitrarily interfered with.
- The rights of a detained person to be treated with humanity and respect for their inherent dignity under the right to humane treatment when deprived of liberty (s 30 Human Rights Act).

---

**Example 5: A review of an involuntary treatment order**

A person is subject to an involuntary treatment order. Under mental health legislation, the order must be reviewed by a mental health review board at least every 12 months after an initial review. The person's treatment order has been in place for over two years without review. The person applies to the tribunal, arguing that the failure of the board to review the treatment order made them invalid and contravened their human rights. The tribunal held that the board had breached the person's right to a fair hearing by failing to conduct reviews of the involuntary treatment order within a reasonable time.

Case reference: *Kracke v Mental Health Review Board* [2009] VCAT 646 (23 April 2009)

Queensland law: Treatment authorities are made under the *Mental Health Act 2016* (Qld) in Queensland, and can be reviewed by the Mental Health Review Tribunal.

- The right to a fair hearing (s 31 Human Rights Act), which includes the right to have the proceeding decided by a competent, independent and impartial court or tribunal.

- The right to protection from torture and cruel, inhuman or degrading treatment (s 17 Human Rights Act), which includes a right not to be subject to medical treatment without the person's informed consent.
- The right to privacy (s 25 Human Rights Act) including the right not to have the person's privacy, family, home or correspondence unlawfully or arbitrarily interfered with.
- The right to liberty and security of the person (s 29 Human Rights Act), which encompasses a right to not have liberty interfered with except on lawful grounds.
- The right to freedom of movement (s 19 Human Rights Act) including the right to choose where to live and to move freely within Queensland.

---

**Example 6: Unlawful questioning by police**

Two young black African men were driving their car. Uniformed police stopped the vehicle randomly for a licence and registration check. Police then asked the driver for permission to search the vehicle. The passenger, who was upset at the delay, left the vehicle and walked along the footpath. Police repeatedly asked the passenger for his name and address. When the passenger abusively refused, he was arrested for offensive language. During the arrest, he allegedly assaulted the police officer and was charged with this and other street offences. During the summary trial, the passenger made an application to the magistrate to exclude the evidence obtained by police after the arrest, which they argued was unlawful under both statutory law and human rights law. The evidence was excluded and, on appeal to the Supreme Court, police were found to have breached the passenger's human rights to movement and privacy.

Case reference: *Director of Public Prosecutions v Kaba* [2014] VSC 52 (18 December 2014)

Queensland law: Police searches are governed by the *Police Powers and Responsibilities Act 2000* (Qld) in Queensland and the admissibility of evidence may also require consideration of the *Evidence Act 1977* (Qld).

- The right to freedom of movement (s 19 Human Rights Act) to move freely within Queensland.
- In repeatedly asking the passenger for his name and address, police may have contravened the passenger's right under the right to privacy (s 25 Human Rights Act) not to have his privacy interfered with.
- The right to liberty and security of the person (s 21 Human Rights Act) with reference to the passenger's rights to exit the vehicle and walk along the public footpath.

---

**Example 7: The appointment of a guardian in QCAT**

An elderly person is hospitalised and then transferred to an interim aged-care facility. There is evidence that they lack capacity to make decisions, including about personal, health and financial matters. An application to QCAT is lodged by the hospital social worker at the hospital under the *Guardianship and Administration Act 2000* (Qld) to appoint the Public

Guardian and Public Trustee as guardian and administrator. QCAT considered the elderly person's human rights, before being satisfied that the limits imposed on those rights were justified under the Human Rights Act.

Case reference: The above example is based on the Queensland case of GCS [2020] QCAT 206.

The following human rights may be engaged during the QCAT proceedings:

- Property rights (s 24 Human Rights Act), which includes the right to own property and not be arbitrarily deprived of it.
- The right to freedom of movement (s 19 Human Rights Act) including the right to choose where to live and not be restricted in movement within Queensland
- The right to privacy (s 25 Human Rights Act) including the right not to have the elderly person's privacy, family, home or correspondence unlawfully or arbitrarily interfered with.
- The right to protection from torture and cruel, inhuman or degrading treatment (s 17 Human Rights Act), which prohibits medical treatment without free and informed consent.
- The right to recognition and equality before the law (s 15 Human Rights Act), which includes the right to be recognised as a person before the law.
- The right to liberty and security of the person (s 29 Human Rights Act), which encompasses a right to not have liberty interfered with except on lawful grounds.

---

**Example 8: Self-represented litigant judicially reviews a decision not to allow appeal out of time**

A teacher is convicted of a number of criminal charges. The teacher abandoned their appeal when they are advised, incorrectly, that it would not affect their teaching career. Three years later, the teacher lodged an appeal against the criminal conviction. The teacher was self-represented and had no legal background. The judge dismissed the appeal without directing the teacher's attention to the law governing leave to proceed with an out of time appeal. The teacher then sought a judicial review of the judge's decision.

Case reference: *Tomasevic v Travaglini & Anor* [2007] VSC 337 (13 September 2007)

Queensland law: In Queensland, a judicial review is determined by the Supreme Court.

- The right to a fair hearing (s 31 Human Rights Act) will be relevant to the way the hearing is conducted, which may include providing assistance to a self-represented litigant.
- The rights in criminal proceedings (s 32 Human Rights Act) including the rights to minimum guarantees during the trial.

- The right to recognition and equality before the law (s 15 Human Rights Act) may also be raised, for example if the teacher had a disability that impacted on their ability to self-represent.

---

**Example 9: Child charged with a serious crime and is awaiting sentencing**

A 15-year-old child is charged with attempted murder and other serious charges. The child pleaded guilty and was being held on remand waiting for sentencing in the Supreme Court. An application is brought for directions about how the child should be held in custody, and how court appearances leading up to and including the sentence hearing should be conducted. The Supreme Court makes orders including that the child will not be handcuffed or detained with adult prisoners, that neither the judge nor barristers will wear robes or wigs and that the child can sit with their lawyer or with family or friends during proceedings.

Case reference: *DPP v SL* [2016] VSC 714 (26 November 2016)

Queensland law: In Queensland, the application would be dealt with by the court hearing the sentencing proceedings.

- The rights of children in the criminal process (s 23 Human Rights Act), which includes that accused children detained on remand should be segregated from adults.
- The rights in criminal proceedings (s 32 Human Rights Act) including the rights of a child charged with a criminal offence to a procedure that takes account of their age, and promotes rehabilitation.
- The right to recognition and equality before the law (s 15 Human Rights Act), which includes the right to equal treatment before the law.
- The right to the protection of families and children (s 26 Human Rights Act), which states that every child has the right, without discrimination, to such protection as is in their best interest and needed by them as a child.

---

These factual scenarios have been adapted from Australian cases. They are provided by way of example only, and are not a substitute for legal advice.

## The Rights Protected Under the Human Rights Act

### Recognition and Equality Before the Law

Section 15 of the Human Rights Act recognises the equal dignity of every person and their right to equally enjoy their human rights and be protected by the law without discrimination.

This section contains standalone rights as well as additional protections for other Human Rights Act rights.

Subsection 15(1) provides that every person has the right to recognition as a person before the law. This right allows people to enjoy their legal rights, for example when entering contracts, commencing legal proceedings, defending themselves and being treated like a legal person when interacting with government departments and during the administration of law.

Subsection 15(2) provides that every person has the right to enjoy their human rights without discrimination. The right to recognition and equality before the law is not limited to discrimination where established as unlawful under the Anti-discrimination Act. Subsection 15(2) provides protection from discrimination as defined in the Anti-discrimination Act and in a more general sense. This right ensures that Human Rights Act rights are enjoyed equally by all people and without discrimination. For a detailed explanation what discrimination means under the Anti-discrimination Act see the *Discrimination and Human Rights* chapter.

Subsections 15(3) and 15(4) provide separate but overlapping rights, which act independently from the other rights in the Human Rights Act.

Subsection 15(3) contains the right to legal personality. This section has two elements. One, it says that every person is equal before the law. This is a procedural right, which means that when the law is being applied or enforced, it should not be done in a discriminatory or arbitrary way. It is directed towards the administration rather than the content of laws; and two, that every person is entitled to equal protection of the law without discrimination. This protects the right of all people to be equally protected by the law from discrimination including laws that are discriminatory in nature.

Subsection 15(4) contains the right to equality. It says that every person is entitled to equal and effective protection against discrimination. This is a substantive right, which means that the content of laws should not be discriminatory, and they should protect people from discrimination.

### Limitation

Subsection 15(5) limits the right to recognition and equality before the law. It makes it clear that measures taken to assist or advance people or groups who are disadvantaged or vulnerable are not discriminatory. This means that, for example, a program that addresses disadvantage experienced by certain groups (e.g. Aboriginal and Torres Strait Islander peoples or people with disabilities) will not be considered discriminatory.

The right to recognition and equality before the law will be subject to the general limitation provision in s 13 of the Human Rights Act. This provides human rights may be subject under law to reasonable limits, which are justified in a free and democratic society. See 'Human Rights may be Limited' for further explanation.

### Examples

The right to recognition and equality before the law in s 15 of the Human Rights Act may be engaged in the following circumstances:

- complaints against police about the use of excessive force during an arrest (e.g. where it is alleged the use of force was motivated by racial discrimination)
- discrimination complaints against a public entity (e.g. a complaint against local council for banning a rate payer who was diagnosed with disabilities from accessing any council premises after he made thousands of complaints about perceived safety and corruption issues)
- complaints in relation to the procedures followed in hearings, courts and tribunals by self-represented applicants including those with disabilities
- determination of hearing and detention proceedings for children charged with serious offences. Courts have also been required to apply the right during sentence hearings for children.

These examples have been adapted from Australian cases. They are provided by way of example only, and are not a substitute for legal advice.

## The right to life

Section 16 of the Human Rights Act states that every person has the right to life and the right not to be arbitrarily deprived of life.

Under s 16, public entities have both a negative obligation to avoid arbitrarily depriving a person of life as well as certain positive obligations, such as protecting the life of people in their care. The right to life also overlaps with the right to access health services, which includes the right not to be refused emergency medical treatment immediately necessary to save a person's life.

Section 16 does not affect any law that permits the termination of pregnancy, which has been decriminalised in Queensland.

## Limitations

Section 16 of the Human Rights Act has an internal limitation—it only prohibits arbitrary deprivation of life. It is likely that deaths caused by public entities and excused by defences such as provocation or self-defence under the *Criminal Act 1899* (Qld) will not be considered arbitrary. See 'Defences against Criminal Charges' in the Offenders and Victims chapter for more information.

The right to life will also be subject to the general limitation provision in s 13 of the Human Rights Act. This provides human rights may be subject under law to reasonable limits, which are justified in a free and democratic society. See 'Human Rights may be Limited' for further explanation.

## Examples

The right to life in s 16 of the Human Rights Act may be engaged in the following circumstances:

- coronial court proceedings under the *Coroners Act 2003* (Qld), including where it is alleged the death has been caused by a public entity such as police
- applications brought by a hospital seeking a declaration to allow the withdrawal or withholding of life-sustaining medical treatment.

This right is also likely to be raised whenever someone dies in the care of a public entity (e.g. in a death-in-custody complaint against police, where the use of force results in death, and where the delivery of medical treatment, or failure to provide it, by a public health service results in a death).

These examples have been adapted from Australian cases. They are provided by way of example only, and are not a substitute for legal advice.

### Protection from torture and cruel, inhuman or degrading treatment

Section 17 of the Human Rights Act prohibits three types of conduct by public entities: torture, cruel, inhuman or degrading treatment, and medical or scientific experimentation or treatment without consent. In Victoria, treatment has been interpreted broadly as behaving or dealing with someone in a certain way, giving medical care or attention, or applying a process or substance to someone.

Subsection 17(a) protects people from torture. Torture requires intentional infliction of a high degree of suffering (e.g. severe mental or physical pain).

Subsection 17(b) protects people from cruel, inhuman or degrading treatment. Treatment that is cruel or inhuman must also involve severe pain or suffering, but does not necessarily have to be intentionally inflicted. Determining whether treatment has been degrading will be a subjective test that focuses less on suffering and more on humiliation.

Subsection 17(c) prohibits medical or scientific experimentation or treatment without free and informed consent. Consent must be voluntary and the person must be given sufficient information for an informed decision to be made.

### Limitations

The right to protection from torture and cruel, inhuman or degrading treatment will be subject to the general limitation provision in s 13 of the Human Rights Act. This provides human rights may be subject under law to reasonable limits, which are justified in a free and democratic society. See 'Human Rights may be Limited' for further explanation.

### Examples

The right to protection from torture and cruel, inhuman or degrading treatment may be engaged in the following circumstances:

- making decisions about involuntary treatment orders and prescribing drugs with serious side effects under the *Mental Health Act 2016* (Qld)

- making transfer decisions for children held in detention (e.g. where children are relocated to an adult correctional facility where conditions are harsher, access to facilities limited and correctional officers are not trained to work with children)
- determining hearing, detention and sentencing proceedings for children
- investigating complaints against police for the use of excessive force during an arrest
- the Department of Housing considering evicting a tenant from public housing. Section 17 is likely to be broad enough to encompass forced evictions.

These examples have been adapted from Australian cases. They are provided by way of example only, and are not a substitute for legal advice.

## Freedom from forced work

Section 18 of the Human Rights Act protects people from slavery and certain forms of forced work.

Subsection 18(1) states that a person must not be held in slavery or servitude. It acknowledges that exercising powers of ownership over another is inherently wrong and that people should not be subject to conditions violating their dignity and integrity. However, as with subs 17(a), which provides the right to freedom from torture, it will only apply in extreme or severe cases.

Subsection 18(2) prevents a person from being made to perform forced or compulsory labour. This means work that a person has not voluntarily offered to do, but is done under threat of penalty.

### Limitations

Subsection 18(2) prohibits forced or compulsory labour and does not include work or service:

- required because of a court order
- performed under a State Penalties Enforcement Registry work and development order
- performed during emergencies or undertaken as part of normal civil obligations (such as jury duty).

The right to freedom from forced work will be subject to the general limitation provision in s 13 of the Human Rights Act. This provides human rights may be subject under law to reasonable limits, which are justified in a free and democratic society. See 'Human Rights may be Limited' for further explanation.

### Examples

There have been no reported Australian cases on the right to freedom from forced work, however, it is likely the right will be engaged:

- where a policy or law requires a person to work under threat or penalty, or to be forced into service for example military conscription.

- where there has been any exercise of powers of ownership over another, and this is permitted by a policy, law decision or action of a public entity (e.g. where people are forced to work in conditions of slavery including people trafficking and sex trafficking).

## Freedom of movement

Section 19 of the Human Rights Act provides that people who are in Queensland lawfully have the right to enter and leave Queensland, to move around freely within Queensland and to choose where to live.

Section 19 places a negative obligation on public entities in Queensland, preventing them from unduly restricting an individual's movement within, to and from Queensland, including for residential purposes. Section 19 aims to protect the rights of Queenslanders to move freely in the state, and live where they wish. It is aimed at restrictions on movement that fall short of actual detention.

## Limitations

The right to freedom of movement only applies to people lawfully in Queensland. It does not place a positive obligation on public entities to facilitate free movement for example by providing public transport or other similar initiatives.

Section 19 will also be subject to the general limitation provision in s 13 of the Human Rights Act. This provides human rights may be subject under law to reasonable limits, which are justified in a free and democratic society. See 'Human Rights may be Limited' for further explanation.

## Examples

The right to freedom of movement in s 19 of the Human Rights Act may be engaged when:

- applying laws that limit freedom of movement (e.g. trespass laws, powers exercised under licensing laws, police powers, mental health laws, bail and sentencing powers)
- exercising emergency powers by the state such as under public health law and counter-terrorism laws
- making decisions by a public entity, court or tribunal about where a person should live (e.g. during proceedings under guardianship or mental health law)
- reviewing an application to end a public housing tenancy, where it is likely that a person's right to freedom to choose where to live will be reasonably limited by state resources
- considering eviction of a tenant from public housing, including determining whether a person's right to freedom to choose where to live may be reasonably limited by the state's resources
- failing to review an involuntary treatment order as required by the *Mental Health Act 2016* (Qld) (e.g. because statutory review timeframes were not adhered to).

These examples have been adapted from Australian cases. They are provided by way of example only, and are not a substitute for legal advice.

## Freedom of thought, conscience, religion and belief

Section 20 of the Human Rights Act protects freedom of thought, conscience, religion and belief, and the freedom to demonstrate that belief. The focus of this right is on personal autonomy, not only in terms of possessing thoughts and beliefs, but how people manifest them through religious observances, worship, teaching and other practices.

The right in subs 20(1) specifically includes the freedom to:

- have or adopt a religion or belief of the person's choice
- demonstrate religion or belief in worship, observance, practice and teaching, individually or in community, in private or in public.

Subsection 20(2) prohibits coercion or restraint that limits a person's freedom to have or adopt a religion or belief.

The right is expressed in broad terms, and is likely to cover a range of beliefs, including personal, academic, social, atheist and agnostic beliefs, as well as providing protection for both traditional and alternative religious beliefs.

### Limitations

The right to freedom of thought, conscience, religion and belief will be subject to the general limitation provision in s 13 of the Human Rights Act. This provides human rights may be subject under law to reasonable limits, which are justified in a free and democratic society. See 'Human Rights may be Limited' for further explanation.

### Examples

The right to freedom of thought, conscience, religion and belief may be engaged:

- in exemption applications under the *Anti-Discrimination Act 1991* (Qld) (e.g. an exemption by the Queensland Electoral Commission to consider the political activities of applicants during recruitment)
- during discrimination proceedings (e.g. proceedings brought in relation to the treatment of children opting out of religious education in state schools or when considering whether religious groups have the right to exclude certain participants)
- possibly, in a complaint against a university (provided it can be shown to be a public entity) on the basis that the right extends to academic views as a right to freedom of thought and belief
- in the course of an applications to access documents and other materials held by a public entity for use in an artwork.

The right has also been raised in planning cases in Victoria where it has been confirmed that planning decision makers must consider human rights when making planning decisions and understanding the social effects of these decisions (e.g. decisions about the location of a place of worship such as a mosque or church).

These examples have been adapted from Australian cases. They are provided by way of example only, and are not a substitute for legal advice.

## Freedom of expression

Section 21 of the Human Rights Act protects two distinct rights:

- the right of individuals to hold opinions without interference
- the right of every person to seek, receive and impart information and ideas regardless of the means of communication.

Subsection 21(1) protects the right to hold an opinion without interference, which is considered a fundamental component of a person's right to privacy. An 'opinion' is likely to be interpreted broadly and include political, academic, personal, moral, religious and other opinions.

Subsection 21(2) protects the freedom of expression including the rights to express or transmit information, opinion or belief. A person may exercise this right by seeking, receiving and imparting information and ideas within or outside Queensland. A broad range of mediums of expression are explicitly protected including oral, written, print and artistic mediums.

The right to hold and express an opinion under s 21 are integral to the exercise of other rights under the Human Rights Act, such as cultural rights (ss 27, 28 Human Rights Act) and the freedom of thought, conscience and religion (s 20 Human Rights Act).

## Limitations

The right in s 21 does not contain any express internal limitation. However, the right is likely to be limited in similar ways to the implied constitutional right of freedom of political communication.

In Australia, there is an implied constitutional right to freedom of political communication, which operates in relation to political communications only. The right to freedom of expression in s 21 is a broader right. It extends to the expression of, or access to, others' beliefs or opinions, regardless of any political connection. However, as with the constitutional right, the right to freedom of expression may be limited. Relevantly, it has been accepted that the constitutional right may be limited to the right to be free from racial vilification and abuse. Similarly, it is likely the right in s 21 will be limited to expressions that do not impinge on the rights of others.

The right to freedom of expression will also be subject to the general limitation provision in s 13 of the Human Rights Act. This provides human rights may be subject under law to reasonable limits, which are justified in a free and democratic society. See 'Human Rights may be Limited' for further explanation.

## Examples

The right to freedom of expression may be engaged:

- during a review of public entity decision making (e.g. the review of a decision by a local council to ban a rate payer from accessing council facilities after they made thousands of written complaints)
- in discrimination complaints, where it is argued that the *Anti-Discrimination Act 1991* (Qld) should be interpreted as giving the right to freedom of expression
- during a review of how a professional regulatory authority has responded to a registered practitioner making controversial statements in public (e.g. where a Queensland Civil and Administrative Tribunal review is lodged against a disciplinary decision against a solicitor or psychologist for comments made in their private life)
- in the decision of a warrant of possession application to permit an eviction from public housing (e.g. where the grounds for eviction include objectionable behaviour by the tenant through words and opinions directed at neighbours).

These examples have been adapted from Australian cases. They are provided by way of example only, and are not a substitute for legal advice.

## Peaceful assembly and freedom of association

Subsection 21(1) of the Human Rights Act provides that every person has the right of peaceful assembly. It upholds the rights of people to gather for a common purpose as a means to exchange information, express opinions and participate in a protest or demonstration. It also protects the rights of persons to associate with, meet and join groups with compatible people.

Subsection 22(2) provides that every person has the right to freedom of association with others. This explicitly includes the right to form and join trade unions, but extends to all other forms of associations (e.g. by allowing people to join political, sporting or professional associations and other special interest groups).

### Limitations

Subsection 22(1) contains an internal limitation. It is specifically limited to peaceful assemblies (i.e. those that are not violent).

The right to peaceful assembly and freedom of association will also be subject to the general limitation provision in s 13 of the Human Rights Act. This provides human rights may be subject under law to reasonable limits, which are justified in a free and democratic society. See 'Human Rights may be Limited' for further explanation.

### Examples

The right to peaceful assembly and freedom of association may be engaged:

- in relation to actions and decisions by police and local council to disperse protests (e.g. the arrest of protestors and disbursement of encampments in public spaces)
- when considering a non-association order at sentence that prohibits the offender from associating or communicating with other people or an organisation (e.g. other members of an outlawed motorcycle club)

- in a discrimination complaint on the basis of association (e.g. where it is alleged that there has been discrimination on the basis of trade union activity; this may engage the right to freedom of association with others).

These examples have been adapted from Australian cases. They are provided by way of example only, and are not a substitute for legal advice.

## Taking part in public life

Section 23 of the Human Rights Act confers the right to take part in public life in Queensland. This is an integral component of the democracy, which relies on the participation of all persons in governance.

The right to take part in public life creates two classes of rights holders—every person in Queensland and every eligible person in Queensland.

Subsection 23(1) confers the broader right to participation and protects the right of all people in Queensland, regardless of citizenship, to participate in public affairs. What constitutes public affairs is not defined in the Human Rights Act, but it is likely to include all features of public administration including direct participation in public consultations, debates and assemblies and indirect participation exercised through freely chosen representatives when governing and policy decision making.

Subsection 23(2) protects the right of eligible persons to vote. This itself has two limbs. Subsection 23(2)(a) contains the right to elect and be elected. And once elected, subs 23(2)(b) protects the rights of eligible persons to access, on general terms of equality, the public service, including those elected to public office.

### Limitations

Subsection 23(2) contains internal limitation. It protects the rights of eligible persons to vote, be elected and have access to the public service.

Limitations apply to voting and eligibility criteria to be elected in Queensland. Voting eligibility criteria are dependent on the *Electoral Act 1992 (Qld)* where children, certain prisoners and non-Queensland residents are not permitted to vote. Additionally, eligibility requirements apply to those who wish to be elected including, for example, at the state level where the person must be 18 years old, an Australian citizens and resident in an electoral district for at least one month before nominating for election.

The right to take part in public life will also be subject to the general limitation provision in s 13 of the Human Rights Act. This provides human rights may be subject under law to reasonable limits, which are justified in a free and democratic society. See ‘Human Rights may be Limited’ for further explanation.

### Examples

The right to taking part in public life may be engaged:

- when the Queensland Civil and Administrative Tribunal is exercising its review jurisdiction in relation to professional conduct complaints (e.g. in relation to registered psychologist, solicitor or health practitioner, where the complaint relates to the conduct of that professional in their public life)
- during decisions by public entities when complying with legislative or policy mandated community consultation (e.g. a decision prohibiting a ratepayer from asking questions during local council proceedings due to time constraints)
- when considering whether there has been procedural fairness during public participation in decision making by a public entity (e.g. the ability to appear and present submissions during planning decisions).

These examples have been adapted from Australian cases. They are provided by way of example only, and are not a substitute for legal advice.

## Property rights

Subsection 24(1) of the Human Rights Act protects all persons' ability to own property on their own or in association with others. Subsection 24(2) states that a person must not be arbitrarily deprived of their property. This right is an extension of existing common law property rights such as interests in land, contractual rights and shares, as well as existing statutory rights.

Importantly, no right to compensation is provided under the Human Rights Act, including for interference with property rights.

## Limitations

Subsection 24(2) contains an internal limitation. It prevents arbitrary deprivation of property. Accordingly, the lawful acquisition of property by the state is not likely to be unlawful.

The property rights will also be subject to the general limitation provision in s 13 of the Human Rights Act. This provides human rights may be subject under law to reasonable limits, which are justified in a free and democratic society. See 'Human Rights may be Limited' for further explanation.

## Examples

The property rights may be engaged when:

- deciding and reviewing the application of laws and policy that force property to be dealt with in a certain way (e.g. the forced acquisitions of land or an interlocutory order of the completion of a contract for the sale of land)
- making decisions that affect property ownership (e.g. changes to a planning scheme or decisions to amend land use and how this may impact on property owners in an area)
- reviewing other local government planning guidelines and regulatory frameworks (e.g. extending the trading hours and increasing patron numbers for a hotel).

These examples have been adapted from Australian cases. They are provided by way of example only, and are not a substitute for legal advice.

## Privacy and reputation

Section 25 of the Human Rights Act protects the rights to privacy and reputation. The scope of this right is very broad, protecting not only people's personal information and acting as a safeguard from unlawful or arbitrary data collection, but also the right to a private life. It places negative obligations on a public entity, prohibiting unlawful or arbitrary interferences with home, family, integrity and other aspects of an individual's identity, communications, correspondence and character. Freedom of thought and conscience are also protected.

Subsection 25(a) prohibits unlawful or arbitrary interference with a person's privacy, family, home or correspondence. This is likely to encompass interference with one's home, family, integrity, aspects of one's individual identity, communications, correspondence and character.

Subsection 25(b) prohibits unlawful attacks on a person's reputation. It is likely that conduct that is defensible under the *Defamation Act 2005* (Qld) will not amount to an unlawful attack on a person's reputation. The *Defamation* chapter of the Queensland Law Handbook explains what will constitute defamation and defences under that Act.

## Limitations

Section 25 is a limited right, because it allows lawful and non-arbitrary interference with a person's privacy, family, home or correspondence and lawful attacks on a person's reputation.

The right to privacy and reputation will also be subject to the general limitation provision in s 13 of the Human Rights Act. This provides human rights may be subject under law to reasonable limits, which are justified in a free and democratic society. See 'Human Rights may be Limited' for further explanation.

## Examples

The rights to privacy and reputation may be engaged:

- in privacy complaints that relate to the way a public entity deals with personal information
- during decisions, appeals or reviews about guardianship, administration, child protection and public housing tenancies where the decision or order will often interfere with this human right
- where a policy is arbitrarily applied by a public entity and impacts on decisions made in these areas (e.g. a transitional housing policy being applied by a public housing provider to someone who requires transition to alternative housing within a strict timeframe)
- in relation to involuntary treatment order decisions, including in relation to the administration of medical treatment.

These examples have been adapted from Australian cases. They are provided by way of example only, and are not a substitute for legal advice.

## Protection of families and children

Section 26 of the Human Rights Act provides protection to the family unit, each child and their best interests and a positive obligation to provide legal frameworks for registering births and names.

Subsection 26(1) acknowledges that families are the fundamental unit of society and are entitled to protection. The term ‘families’ is to be understood broadly, recognising the numerous forms that families may take including extended families, Aboriginal and Torres Strait Islander kin, non-biological families or adopted families.

Subsection 26(2) provides that each child has the right, without discrimination, to protection as needed by the child and in the child’s best interests. The notion of ‘best interests of the child’ acknowledges that children must be afforded additional protection as the most vulnerable members of our society.

Subsection 26(3) provides that every person born in Queensland has the right to a name and birth registration. This right obliges the state to establish a legal framework and process for registration, which can be accessed by a child’s parents or guardians. It is unlikely the Human Rights Act will require the government to extend existing mechanisms for registering a name and birth contained in the *Births, Deaths and Marriages Registration Act 2003* (Qld).

### Limitations

The right to protection of families and children will be subject to the general limitation provision in s 13 of the Human Rights Act. This provides human rights may be subject under law to reasonable limits, which are justified in a free and democratic society. See ‘Human Rights may be Limited’ for further explanation.

### Examples

The rights to protection of families and children may be engaged:

- when the Department of Housing and Public Works is making decisions and applying for orders about public housing, including entering into tenancy agreements, eviction and warrant of possession decisions
- in the course of hearing and sentencing proceedings for children and when considering applications for bail and detention decisions for children
- during child protection proceedings, including in determining what will fall within the definition of a ‘family’.

These examples have been adapted from Australian cases. They are provided by way of example only, and are not a substitute for legal advice.

## Cultural rights—generally

Section 27 of the Human Rights Act states that people of all cultural, religious, racial or linguistic backgrounds have the right to enjoy their culture, declare and practise their religion or use their languages.

It contains three distinct rights that people can exercise alone or in community with others. These are the rights to:

- enjoy their culture
- declare and practise their religion
- use their language.

Section 27 aims to protect individuals and community practices and allows for cultural heritage to survive and develop. Culture is likely to be broadly interpreted to encompass traditional beliefs and practices and may include specific social and economic activities that have special significance to a group's tradition.

### Limitations

Cultural rights will be subject to the general limitation provision in s 13 of the Human Rights Act. This provides human rights may be subject under law to reasonable limits, which are justified in a free and democratic society. See 'Human Rights may be Limited' for further explanation.

### Examples

General cultural rights, as distinct from the cultural rights of Aboriginal and Torres Strait Islander peoples, have received limited consideration in other Australian jurisdictions.

In one case, cultural rights were engaged when considering an exemption application under the *Anti-Discrimination Act 1991* (Qld) to operate a public swimming pool for women only during certain periods in order to facilitate access by Muslim women.

Cultural rights are likely to be engaged during the exercise of any statutory or policy power that regulates religious and cultural practices, including those that restrict the ability of people to observe and practise the culture and religion, as well as those that regulate religious education in state schools and the observance of religious holidays. Language rights may be relevant in the provision of translators as a procedural right and the access to translated resources and information.

This example has been adapted from reported cases in Australia. They are provided by way of example only, and are not a substitute for legal advice.

## Cultural rights of Aboriginal and Torres Strait Islander Peoples

The Human Rights Act recognises the special importance of human rights for Aboriginal and Torres Strait Islander peoples. Section 28 of the Human Rights Act recognises that Aboriginal

and Torres Strait Islander peoples hold distinct cultural rights, which must not be denied or forcibly assimilated or destroyed.

The rights encompassed in s 28 are extensive and include the right to:

- enjoy, maintain, control, protect and develop:
- their identity, cultural heritage, including traditional knowledge, distinctive spiritual practices, observances, beliefs and teachings
- use of language and traditional cultural expressions
- kinship ties
- maintain and strengthen their distinctive spiritual, material and economic relationship with the land, territories, waters, coastal seas and other resources with which they have a connection under tradition or custom
- conserve and protect the environment and productive capacity of land, territories, waters, coastal seas and other resources.

Cultural rights are likely to be interpreted as having greater breadth and significance than the cultural rights protected by s 27 of the Human Rights Act because of the history of colonisation and their unique connection with lands and seas in Queensland.

Cultural rights may be relevant in decisions about bail and other release from custody, child protection decisions including placement and addressing a child's cultural support needs and in the procedures of the specialist Murri Court. Additionally, economic regulation by a public entity that impacts on the exercise of cultural rights (e.g. rights over fishing) may require consideration of this right.

Nothing in the Human Rights Act, including s 28, affects Native Title rights or interests. Additionally, the Human Rights Act cannot be interpreted to prejudice Native Title rights and interests to the extent they are recognised and protected under Native Title law.

### Limitations

Cultural rights of Aboriginal and Torres Strait Islander peoples will be subject to the general limitation provision in s 13 of the Human Rights Act. This provides human rights may be subject under law to reasonable limits, which are justified in a free and democratic society. See 'Human Rights may be Limited' for further explanation.

### Examples

The cultural rights of Aboriginal and Torres Strait Islander peoples may be engaged:

- during bail applications brought by Aboriginal and Torres Strait Islander peoples, where cultural considerations are relevant to a bail application and refusal of bail decision under the *Bail Act 1980* (Qld)
- in the exclusion of an Aboriginal person from special courts such as the Murri Court, which may be inconsistent with both cultural rights and the right to recognition and equality before the law (s 15 Human Rights Act)

- where cultural rights are considered relevant in child protection proceedings (e.g. where an application is brought to return children to the care of their Aboriginal or Torres Strait Islander family member)
- in an application for an exemption under the *Anti-Discrimination Act 1991* (Qld) (e.g. to create and advertise a position that can only be taken by Aboriginal and Torres Strait Islander peoples).

Economic regulation may also give rise to cultural rights (e.g. where the Swedish government attempted to regulate the practice of reindeer breeding by ethnic Sami peoples). Similarly, regulation of fishing, land use and other traditionally exercised economic rights, even where those rights have adapted to modern times, are likely to require consideration of cultural rights.

These examples have been adapted from international and Australian cases. They are provided by way of example only, and are not a substitute for legal advice.

## Liberty and security of a person

Section 29 of the Human Rights Act protects individuals from unlawful arrest and detention. This means that a person must not be arrested or detained arbitrarily. This right applies to all forms of detention, not solely the criminal justice process.

Subsections 29(1) to 29(5) provide that:

- every person has the right to liberty and security
- a person must not be subject to arbitrary arrest or detention
- a person must not be deprived of liberty except on lawful grounds and in accordance with lawful procedures
- a person who is arrested or detained must be informed, at the time of the arrest or detention, of the reason and promptly informed of any proceedings brought against them.

Subsection 29(5) provides for minimum rights where a person has been arrested or detained, the breach of which may render the arrest or detention unlawful. These provide that the person:

- must be promptly brought before a court
- has the right to be brought to trial without unreasonable delay
- must be released if the above are not complied with.

The Human Rights Act does not expressly contain a right to bail. However, the issue of bail may be raised through subs 25(1), which provides the right to liberty.

## Limitations

The rights in s 29 have a number of internal limitations. A person:

- may be subject to arrest that is not arbitrary

- may be deprived of liberty on grounds and in accordance with lawful procedures
- who is arrested or detained on a criminal charge may experience reasonable delay before a trial.

The right to liberty and security of a person will also be subject to the general limitation provision in s 13 of the Human Rights Act. This provides human rights may be subject under law to reasonable limits, which are justified in a free and democratic society. See 'Human Rights may be Limited' for further explanation.

### Examples

The right to liberty and security of the person may be engaged:

- during a police arrest, where police have stopped, arrested or searched someone outside the scope of their lawful authority
- during sentencing orders, including actual imprisonment or community-based supervision
- in the course of bail and parole decisions, including whether to consider a supervised order under the *Dangerous Prisoners (Sexual Offenders Act) 2003* (Qld) or involuntary treatment orders under mental health law.

The right will also be relevant in the course of guardianship and administration decisions when determining whether there are lawful grounds to interfere with the person's liberty.

These examples have been adapted from Australian cases. They are provided by way of example only, and are not a substitute for legal advice.

### Humane treatment when deprived of liberty

Section 30 of the Human Rights Act applies to all persons deprived of liberty. This right recognises the inherent dignity of the human person, and that people deprived of their liberty must be provided with certain minimum standards of treatment.

Subsection 30(1) provides that a person must be treated with humanity and respect when they are deprived of liberty.

Subsections 30(2) and 30(3) contain specific rights for people detained without charge and state that a person detained without charge must be:

- segregated from convicted offenders, unless reasonably necessary not to segregate them (subs 30(2))
- treated in a way that is appropriate for a person who has not been convicted (subs 30(3)).

Section 30 is not limited to people detained under criminal law, but all forms of detention. For example, it may apply to people held without charge in police watchhouses, correctional facilities and mental health facilities.

## Limitations

Subsection 30(2), which provides the right of those detained without charge to be segregated from convicted offenders, is a limited right. Where it is reasonably necessary to mix those detained without segregation, it will not breach this section.

The right to humane treatment when deprived of liberty will also be subject to the general limitation provision in s 13 of the Human Rights Act. This provides human rights may be subject under law to reasonable limits, which are justified in a free and democratic society. See 'Human Rights may be Limited' for further explanation.

## Examples

The right to humane treatment when deprived of liberty may be engaged:

- during sentencing proceedings, during which the inherent dignity of the offender should be respected, regardless of the gravity of the offence
- when considering bail applications, where the right to humane treatment when deprived of liberty may be raised where the conditions of detention are not humane (e.g. where a child has been placed in extended periods of solitary confinement).
- The right will also be relevant during complaints, appeals and review applications arising out of involuntary detention (e.g. about the treatment by police during arrest, or conditions in prison or involuntary mental health facilities).

These examples have been adapted from Australian cases. They are provided by way of example only, and are not a substitute for legal advice.

## Fair hearing

Section 31 of the Human Rights Act is directed at the procedure of trials for criminal offences and civil proceedings. It protects the right to a fair and public hearing by an impartial decision maker.

Subsection 31(1) provides that a person who is:

- charged with a criminal offence has the right to have the charge decided by a competent, independent and impartial court or tribunal after a fair and public hearing
- party to a civil proceeding has the right to have the proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing.

What is 'fair' will depend on the specific facts of the case, the community interest and the interests of the victim or aggrieved party.

Subsection 31(3) states that all decisions or judgements made by a court or tribunal in a proceeding must be publicly available.

## Limitations

Section 31 contains some internal limitations. Under subs 31(2), the court or tribunal may limit the extent of a 'public hearing' by excluding the general media or other persons from the trial if this is considered in the public interest or the interest of justice.

Additionally, whilst judgements and decisions should be made public, it is likely that when subs 31(3) is read in conjunction with subs 31(2) and the general limitation provision in s 13, this right may be limited. A court or tribunal may be permitted to withhold all or part of a judgement from publication, where it is considered in the public interest or the interest of justice (e.g. where there is a need to protect the identity of those involved).

The right to a fair hearing will also be subject to the general limitation provision in s 13 of the Human Rights Act. This provides human rights may be subject under law to reasonable limits, which are justified in a free and democratic society. See 'Human Rights may be Limited' for further explanation.

### Examples

The right to a fair hearing may be engaged:

- where there has been a failure to conduct a hearing within a reasonable time (e.g. the timeframe set under the *Mental Health Act 2016* (Qld) for review of a treatment authority)
- when considering applications for non-disclosure of documents, witness names or other confidential material during or at the end of court and tribunal proceedings
- when determining whether a suppression order should be granted (e.g. prohibiting the broadcasting of a television show that may have prejudiced a jury in a criminal trial that the show was based on)
- when making a non-publication order (e.g. where there had been significant delay between the alleged professional misconduct and the Queensland Civil and Administrative Tribunal proceedings or where an applicant has special grounds for seeking the order including mental health)
- in decisions about vexatious litigants, although in Victoria it has been held that the right to access the courts under the equivalent of s 31 of the Human Rights Act is not absolute.

The right to a fair hearing has been raised in a number of Victorian appeals or judicial reviews of decisions in cases brought by self-represented litigants. In Victoria, it has been held that a judge is required to ensure that a trial is fair, by giving self-represented litigants due assistance whilst remaining judicially neutral. The assistance will vary from case to case, but the touchstones are fairness and balance, and extend to both substantive and procedural fairness. Similarly, the Human Rights Act may place a duty on courts and tribunals to ensure the unrepresented litigant knows their rights.

These examples have been adapted from Australian cases. They are provided by way of example only, and are not a substitute for legal advice.

### Rights in criminal proceedings

Section 32 of the Human Rights Act specifically protects rights to a number of minimal procedural guarantees in criminal trials.

Subsection 32(1) states that all people charged with a criminal offence have the right to be presumed innocent until proven guilty. This right puts the responsibility on the prosecution to advance their case of wrongdoing beyond reasonable doubt.

Subsection 32(2) protects specific minimum rights to be afforded to accused persons, aiming to ensure they:

- are informed about the nature of and reason for the charge, in a language or other communication the person speaks or understands
- are given adequate time and facilities to prepare their defence and communicate with a lawyer they have chosen
- are tried without unreasonable delay
- are tried in person
- have the ability to access adequate legal representation, if eligible through legal aid, or choose to self-represent
- have been provided with the opportunity to obtain and examine witnesses
- have been provided with a free interpreter if they do not understand or speak English
- have been provided with free specialised communication tools, technology and assistance, if the person requires it
- are protected against self-incrimination.

Children charged with criminal offences are provided special consideration, with the right to a procedure that considers their age and the desirability of promoting rehabilitation contained in subs 32(3).

Additionally, the rights of people convicted of a criminal offence to appeal conviction and sentence is confirmed in s 32(4).

### Limitations

A person must be eligible for legal aid to access it. There is no obligation to grant legal aid beyond the discretionary power in the *Legal Aid Queensland Act 1997* (Qld). There is also no absolute right for a person who is eligible for legal aid to choose a particular lawyer to provide assistance through the grant of aid.

The rights in criminal proceedings will be subject to the general limitation provision in s 13 of the Human Rights Act. This provides human rights may be subject under law to reasonable limits, which are justified in a free and democratic society. See 'Human Rights may be Limited' for further explanation.

### Examples

The rights in criminal proceedings may be engaged:

- where there has been delay between a person being charged and going to trial for a criminal offence

- when considering an application for a permanent stay of an indictment where there has been a significant delay between an alleged crime being committed and the prosecution being commenced
- in a review of the decision to grant legal aid, although it is notable that in Victoria it has been held that a legal aid scheme that selects cases for assistance according to merit and selectively excludes other cases will not necessarily violate the right
- during an application for a judge-only trial.

These examples have been adapted from Australian cases. They are provided by way of example only, and are not a substitute for legal advice.

## Children in the criminal process

Section 33 of the Human Rights Act recognises that children in criminal processes are especially vulnerable due to their age, and that they require special protections.

Subsection 33(1) ensures that children detained must be segregated from all detained adults. This acknowledges that children have greater needs than adults and the risks associated with children being detained with adults.

Subsection 33(2) provides that when accused, children must be brought to trial as quickly as possible.

Subsection 33(3) states that when convicted, children must be treated in a manner appropriate for their age. This right may be interpreted to include an entitlement to access education, recreational activities, adequate medical care and communication and visitation from the outside world.

## Limitations

Amendments to the *Corrective Services Act 2006* (Qld) and the *Youth Justice Act 1992* (Qld) (Youth Justice Act) have limited the scope of subs 33(1) of the Human Rights Act. The effect of these amendments is that an act or decision in relation to the housing of a child detainee or adult prisoner will not be unlawful where it is permitted in accordance with additional relevant considerations under those laws.

For example, under the Youth Justice Act, a decision by the chief executive about the segregation of children detained without charge will not contravene the Human Rights Act only because their consideration also takes into account the safety and wellbeing of the child detained without charge and other detainees, and the chief executive's responsibilities and obligations under s 263 of the Youth Justice Act.

The rights of children in the criminal process will also be subject to the general limitation provision in s 13 of the Human Rights Act. This provides human rights may be subject under law to reasonable limits, which are justified in a free and democratic society. See 'Human Rights may be Limited' for further explanation.

## Examples

The rights of children in the criminal process may be engaged:

- when considering whether to charge and prosecute a child aged under 14 years in Queensland, as the *Criminal Code Act 1899* (Qld) states that a child aged between 10 and 14 years can only be criminally responsible if they had the capacity to know they should not do the criminal act
- where a child has been accused of committing an offence, in ensuring that positive steps are taken to conduct the trial quickly. Where a matter is not brought before trial quickly, the right in s 33 may be raised to lodge an application to permanently stay the prosecution
- during directions about how the criminal proceeding should be conducted against children (e.g. to minimise formality), and in applications for bail brought by children
- during appeals against sentence, where there has been a lengthy delay between an offence and the child being sentenced.

These examples have been adapted from Australian cases. They are provided by way of example only, and are not a substitute for legal advice.

## The right not to be tried or punished more than once

Section 34 of the Human Rights Act upholds the rule against double jeopardy. It states that a person must not be tried or punished more than once for an offence they have been convicted or acquitted of. It applies to criminal, quasi-criminal and regulatory offences.

However, s 34 is not likely to prevent non-criminal consequences from the same conduct or circumstances (e.g. disciplinary or professional conduct proceedings following conviction of a criminal charge).

## Limitations

The right not to be tried or punished more than once will be subject to the general limitation provision in s 13 of the Human Rights Act. This provides human rights may be subject under law to reasonable limits, which are justified in a free and democratic society. See 'Human Rights may be Limited' for further explanation.

## Examples

The rights not to be tried or punished more than once may be engaged:

- when raising the defence of double jeopardy during criminal law proceedings (e.g. where a person is charged with an alleged offence they have already been acquitted of or is charged with two separate offences arising from the one act)
- when refusing to issue or revoke a licence (e.g. a real estate, letting agent or motor dealer licence) on the basis of criminal convictions
- during disciplinary hearings and disbarment following criminal convictions (e.g. of doctors, lawyers and psychologists).

These examples have been adapted from Australian cases. They are provided by way of example only, and are not a substitute for legal advice.

## Retrospective criminal laws

Section 35 of the *Human Rights Act 2019* (Qld) (Human Rights Act) protects people from being unfairly punished where there is a change in criminal law since the offence was committed.

Under subs 35(1), if certain conduct becomes illegal only after a person has committed it, they cannot be found guilty of that offence. Subsection 35(2) provides that a person must not be punished to an extent greater than the penalty that existed at the time of the offence. However, under subsection 35(3), if the penalty decreases after a person is found guilty, they may apply for a reduced sentence.

Section 35 only applies to changes in penalty or punishment, and does not impact procedural retrospective changes to the law.

### Limitations

Section 35 is limited where the relevant conduct constituted an offence in international law at the time of its commission and was later established as an offence in Queensland. This may include crimes against humanity or war crimes that were not crimes against Queensland law when they were committed to be later punished by retrospective laws in Queensland. This limitation is contained in subs 35(5).

The rights in relation to retrospective criminal laws will also be subject to the general limitation provision in s 13 of the Human Rights Act. This provides human rights may be subject under law to reasonable limits, which are justified in a free and democratic society. See 'Human Rights may be Limited' for further explanation.

### Examples

The right to protection from retrospective criminal laws may be engaged where new criminal offences are created, or existing criminal offences are amended (e.g. where, during sentencing for a criminal offence, the maximum penalty for a criminal law has increased since the offence was committed).

This example has been adapted from an Australian case. It is provided by way of example only, and is not a substitute for legal advice.

## Right to education

Section 36 of the Human Rights Act states that a child has the right to access primary and secondary education that is appropriate to the child's needs. This right is also extended to include equal access to further vocational education and training.

Education is often referred to as a fundamental or foundational human right because the free exercise of other human rights relies on everyone having access to quality education.

Subsection 36(1) provides the right to access primary and secondary education appropriate to the child's needs. The right operates consistently with the *Education (General Provisions) Act 2006* (Qld) (Education Act) in relation to state education service delivery. The objects of the Education Act include to provide access to high-quality education that will help maximise the child's educational potential, and allow them to become an effective and informed community member, with the costs met by the state. What is appropriate to the child's needs, when read with the Education Act, is likely to require that education programs be responsive to the child's age, ability and educational needs.

Subsection 36(2) provides for a right to access, based on the person's abilities, further vocational education and training that is equally accessible to all. The provision does not specify what type of tertiary education or training the right may extend to, however, assuming eligibility for entrance, the right provides access to such education and training as would be available to others.

### Limitations

The right to education will be subject to the general limitation provision in s 13 of the Human Rights Act. This provides human rights may be subject under law to reasonable limits which are justified in a free and democratic society. See 'Human Rights may be Limited' for further explanation.

### Examples

The right to education only exists in the Australian Capital Territory, where it has received limited consideration. It is likely the rights in s 36 of the Human Rights Act may be engaged:

- in decisions about suspension and expulsion of school-age children under the Education Act
- when considering support for children with special needs, so that they can access an education that is appropriate to their needs when delivering culturally appropriate education for Aboriginal and Torres Strait Islander children, given that a child's educational needs may also be cultural.

### Right to health services

Section 37 of the Human Rights Act provides that every person has the right to access health services without discrimination. This includes the right not to be refused emergency medical treatment immediately necessary to save the person's life or prevent serious impairment.

There is no comparable right to health services in any other Australian jurisdiction.

The Human Rights Act does not contain a right to health services, but rather provides for more limited rights such as the rights:

- to access health services without discrimination
- not to be refused emergency medical treatment that is immediately necessary to save life or prevent serious impairment.

Section 37 is not intended to give rights to ‘underlying determinants of health’, such as food and water, social security, housing and environmental factors.

### Limitations

The right to health services will also be subject to the general limitation provision in s 13 of the Human Rights Act. This provides human rights may be subject under law to reasonable limits, which are justified in a free and democratic society. See ‘Human Rights may be Limited’ for further explanation.

### Examples

The right to health services is unique to Queensland. It is likely that s 37 of the Human Rights Act may be engaged:

- where a policy or law regulates the provision of health care to people under state care (e.g. those on involuntary treatment orders and prisoners)
- in ensuring access to state-supplied health services, including to mental health treatment
- in the course of a discrimination complaint (e.g. where a person is treated less favourably during delivery of state health services, or where a condition, rule or practice that applies the same to everyone has an adverse impact on people with a protected attribute).

These examples have been adapted from reported cases in Australia. They are provided by way of example only, and are not a substitute for legal advice.

## Legal Notices

### Disclaimer

The Queensland Law Handbook is produced by Caxton Legal Centre with the assistance of volunteers with legal experience in Queensland. The Handbook is intended to give general information about the law in Queensland as the date noted on each page. The content of the Queensland Law Handbook does not constitute legal advice, and if you have a specific legal problem, you should consult a professional legal advisor.

### External links

The Queensland Law Handbook provides links to a number of other websites which are not under the control of Caxton Legal Centre. These links have been provided for convenience only and may be subject to updates, revisions or other changes by the entities controlling or owning those sites. The inclusion of the link does not imply that Caxton Legal Centre endorses the content, the site owner or has any relationship with the site owner.

### Limitation of liability

To the maximum extent permitted by law, Caxton Legal Centre and the contributors to the Queensland Law Handbook are not responsible for, and do not accept any liability for, any loss, damage or injury, financial or otherwise, suffered by any person acting or relying on information contained in or omitted from the Queensland Law Handbook.

### Copyright

The content of this website is subject to copyright. You may use and reproduce the material published on this website provided you do not use it for a commercial purpose, the original meaning is retained and proper credit and a link to the Queensland Law Handbook website is provided. If the material is to be used for commercial purpose, permission from Caxton Legal Centre must be obtained.