



# Human Rights Act 2019

Current as at 25 May 2020

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Queensland

# Human Rights Act 2019

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# Human Rights Act 2019

## An Act to respect, protect and promote human rights

### Preamble—

In enacting this Act, the Parliament of Queensland recognises—

- 1 The inherent dignity and worth of all human beings.
- 2 The equal and inalienable human rights of all human beings.
- 3 Human rights are essential in a democratic and inclusive society that respects the rule of law.
- 4 Human rights must be exercised in a way that respects the human rights and dignity of others.
- 5 Human rights should be limited only after careful consideration, and should only be limited in a way that can be justified in a free and democratic society based on human dignity, equality, freedom and the rule of law.
- 6 Although human rights belong to all individuals, human rights have a special importance for the Aboriginal peoples and Torres Strait Islander peoples of Queensland, as Australia's first people, with their distinctive and diverse spiritual, material and economic relationship with the lands, territories, waters, coastal seas and other resources with which they have a connection under Aboriginal tradition and Ailan Kastom. Of particular significance to Aboriginal peoples and Torres Strait Islander peoples of Queensland is the right to self-determination.

## **Part 1                      Preliminary**

### **Division 1                Introduction**

#### **1            Short title**

This Act may be cited as the *Human Rights Act 2019*.

#### **2            Commencement**

This Act commences on a day to be fixed by proclamation.

#### **3            Main objects of Act**

The main objects of this Act are—

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

#### **4            How main objects are primarily achieved**

The main objects are to be achieved primarily by—

- (a) stating the human rights Parliament specifically seeks to protect and promote; and
- (b) requiring public entities to act and make decisions in a way compatible with human rights; and
- (c) requiring statements of compatibility with human rights to be tabled in the Legislative Assembly for all Bills introduced in the Assembly; and
- (d) providing for a portfolio committee responsible for examining a Bill introduced in the Legislative Assembly

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- to consider whether the Bill is compatible with human rights; and
- (e) providing for Parliament, in exceptional circumstances, to override the application of this Act to a statutory provision; and
  - (f) requiring courts and tribunals to interpret statutory provisions, to the extent possible that is consistent with their purpose, in a way compatible with human rights; and
  - (g) conferring jurisdiction on the Supreme Court to declare that a statutory provision can not be interpreted in a way compatible with human rights; and
  - (h) providing for a Minister and a portfolio committee to report to the Legislative Assembly about declarations of incompatibility; and
  - (i) providing for how to resolve human rights complaints; and
  - (j) providing for the Queensland Human Rights Commission to carry out particular functions under this Act, including, for example, to promote an understanding and acceptance of human rights and this Act in Queensland.

## **5 Act binds all persons**

- (1) This Act binds all persons, including the State and, to the extent the legislative power of the Parliament permits, the Commonwealth and the other States.
- (2) This Act applies to—
  - (a) a court or tribunal, to the extent the court or tribunal has functions under part 2 and part 3, division 3; and
  - (b) the Parliament, to the extent the Parliament has functions under part 3, divisions 1, 2 and 3; and
  - (c) a public entity, to the extent the public entity has functions under part 3, division 4.

- (3) Subsection (2) does not limit or otherwise affect—
  - (a) another function conferred by this Act on an entity mentioned in the subsection; or
  - (b) a function conferred by this Act on any other entity.
- (4) Nothing in this Act makes the State liable to be prosecuted for an offence.

## Division 2 Interpretation

### 6 Definitions

The dictionary in schedule 1 defines particular words used in this Act.

### 7 Meaning of *human rights*

*Human rights* means the rights stated in part 2, divisions 2 and 3.

### 8 Meaning of *compatible with human rights*

An act, decision or statutory provision is *compatible with human rights* if the act, decision or provision—

- (a) does not limit a human right; or
- (b) limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13.

### 9 Meaning of *public entity*

- (1) Each of the following entities is a *public entity*—
  - (a) a government entity within the meaning of the *Public Service Act 2008*, section 24;
  - (b) a public service employee;

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- (c) the Queensland Police Service;
  - (d) a local government, a councillor of a local government or a local government employee;
  - (e) a Minister;
  - (f) an entity established under an Act when the entity is performing functions of a public nature;
  - (g) a member of a portfolio committee when the committee is acting in an administrative capacity;
  - (h) an entity whose functions are, or include, functions of a public nature when it is performing the functions for the State or a public entity (whether under contract or otherwise);

*Example of an entity not performing functions of a public nature for the State—*

A non-State school is not a public entity merely because it performs functions of a public nature in educating students because it is not doing so for the State.

- (i) a person, not otherwise mentioned in paragraphs (a) to (h), who is a staff member or executive officer (however called) of a public entity;
  - (j) an entity prescribed by regulation to be a public entity.
- (2) A **public entity** includes—
- (a) a registered provider when the provider is performing functions of a public nature in the State; and
  - (b) a non-State police officer, under the *Police Service Administration Act 1990*, section 5.17, while the officer—
    - (i) is appointed as a special constable under section 5.16(1) of that Act; or
    - (ii) is authorised under section 5.17(2) of that Act to exercise the powers of a police officer; or
    - (iii) is exercising a power under another law of the State.

- (3) Also, a **public entity** includes an entity for which a declaration is in force under section 60.
- (4) However, a **public entity** does not include—
  - (a) the Legislative Assembly or a person performing functions in connection with proceedings in the Assembly, except when acting in an administrative capacity; or
  - (b) a court or tribunal, except when acting in an administrative capacity; or
  - (c) an entity prescribed by regulation not to be a public entity.
- (5) In this section—

**entity** means an entity in and for Queensland.

**registered provider** means a registered provider of supports or a registered NDIS provider under the *National Disability Insurance Scheme Act 2013* (Cwlth).

## 10 When function is of a public nature

- (1) In deciding whether a function of an entity is of a public nature for this Act, any of the following matters may be considered—
  - (a) whether the function is conferred on the entity under a statutory provision;
  - (b) whether the function is connected to or generally identified with functions of government;
  - (c) whether the function is of a regulatory nature;
  - (d) whether the entity is publicly funded to perform the function;
  - (e) whether the entity is a government owned corporation.
- (2) Subsection (1) does not limit the matters that may be considered in deciding whether a function is of a public nature.

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- (3) Without limiting subsection (1) or (2), the following functions are of a public nature—
- (a) the operation of a corrective services facility under the *Corrective Services Act 2006* or another place of detention;
  - (b) the provision of any of the following—
    - (i) emergency services;
    - (ii) public health services;
    - (iii) public disability services;
    - (iv) public education, including public tertiary education and public vocational education;
    - (v) public transport;
    - (vi) a housing service by a funded provider or the State under the *Housing Act 2003*.

## Part 2 Human rights in Queensland

### Division 1 Preliminary

#### 11 Who has human rights

- (1) All individuals in Queensland have human rights.
- (2) Only individuals have human rights.

*Note—*

A corporation does not have human rights.

#### 12 Human rights are in addition to other rights and freedoms

A right or freedom not included, or only partly included, in this Act that arises or is recognised under another law must not be taken to be abrogated or limited only because the right or freedom is not included in this Act or is only partly included.

*Examples of another law—*

- the Commonwealth Constitution
- a law of the Commonwealth
- the common law
- rights under the International Covenant on Civil and Political Rights not stated in this Act
- rights under the Universal Declaration of Human Rights not stated in this Act
- rights under other international conventions
- other international laws

### **13 Human rights may be limited**

- (1) A human right may be subject under law only to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.
- (2) In deciding whether a limit on a human right is reasonable and justifiable as mentioned in subsection (1), the following factors 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, including whether the limitation helps to achieve the purpose;
  - (d) whether there are any less restrictive and reasonably available ways to achieve the purpose;
  - (e) the importance of the purpose of the limitation;
  - (f) the importance of preserving the human right, taking into account the nature and extent of the limitation on the human right;
  - (g) the balance between the matters mentioned in paragraphs (e) and (f).

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## **14 Human rights are protected**

Nothing in this Act gives any person or other entity a right to limit to a greater extent than is provided for under this Act, or destroy, a human right of any person.

## **Division 2 Civil and political rights**

### **15 Recognition and equality before the law**

- (1) Every person has the right to recognition as a person before the law.
- (2) Every person has the right to enjoy the person's human rights without discrimination.
- (3) Every person is equal before the law and is entitled to the equal protection of the law without discrimination.
- (4) Every person has the right to equal and effective protection against discrimination.
- (5) Measures taken for the purpose of assisting or advancing persons or groups of persons disadvantaged because of discrimination do not constitute discrimination.

### **16 Right to life**

Every person has the right to life and has the right not to be arbitrarily deprived of life.

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

A person must not be—

- (a) subjected to torture; or
- (b) treated or punished in a cruel, inhuman or degrading way; or

- (c) subjected to medical or scientific experimentation or treatment without the person's full, free and informed consent.

## 18 Freedom from forced work

- (1) A person must not be held in slavery or servitude.
- (2) A person must not be made to perform forced or compulsory labour.
- (3) In this section—

*court order* includes an order made by a court of another jurisdiction.

*forced or compulsory labour* does not include—

- (a) work or service normally required of a person who is under detention because of a lawful court order or who, under a lawful court order, has been conditionally released from detention or ordered to perform work in the community; or
- (b) work or service performed under a work and development order under the *State Penalties Enforcement Act 1999*; or
- (c) work or service required because of an emergency threatening the Queensland community or a part of the Queensland community; or
- (d) work or service that forms part of normal civil obligations.

## 19 Freedom of movement

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

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## **20 Freedom of thought, conscience, religion and belief**

- (1) Every person has the right to freedom of thought, conscience, religion and belief, including—
  - (a) the freedom to have or to adopt a religion or belief of the person's choice; and
  - (b) the freedom to demonstrate the person's religion or belief in worship, observance, practice and teaching, either individually or as part of a community, in public or in private.
- (2) A person must not be coerced or restrained in a way that limits the person's freedom to have or adopt a religion or belief.

## **21 Freedom of expression**

- (1) Every person has the right to hold an opinion without interference.
- (2) Every person has the right to freedom of expression which includes the freedom to seek, receive and impart information and ideas of all kinds, whether within or outside Queensland and whether—
  - (a) orally; or
  - (b) in writing; or
  - (c) in print; or
  - (d) by way of art; or
  - (e) in another medium chosen by the person.

## **22 Peaceful assembly and freedom of association**

- (1) Every person has the right of peaceful assembly.
- (2) Every person has the right to freedom of association with others, including the right to form and join trade unions.

## **23 Taking part in public life**

- (1) Every person in Queensland has the right, and is to have the opportunity, without discrimination to participate in the conduct of public affairs, directly or through freely chosen representatives.
- (2) Every eligible person has the right, and is to have the opportunity, without discrimination—
  - (a) to vote and be elected at periodic State and local government elections that guarantee the free expression of the will of the electors; and
  - (b) to have access, on general terms of equality, to the public service and to public office.

## **24 Property rights**

- (1) All persons have the right to own property alone or in association with others.
- (2) A person must not be arbitrarily deprived of the person's property.

## **25 Privacy and reputation**

A person has the right—

- (a) not to have the person's privacy, family, home or correspondence unlawfully or arbitrarily interfered with; and
- (b) not to have the person's reputation unlawfully attacked.

## **26 Protection of families and children**

- (1) Families are the fundamental group unit of society and are entitled to be protected by society and the State.
- (2) Every child has the right, without discrimination, to the protection that is needed by the child, and is in the child's best interests, because of being a child.

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- (3) Every person born in Queensland has the right to a name and to be registered, as having been born, under a law of the State as soon as practicable after being born.

## **27 Cultural rights—generally**

All persons with a particular cultural, religious, racial or linguistic background must not be denied the right, in community with other persons of that background, to enjoy their culture, to declare and practise their religion and to use their language.

## **28 Cultural rights—Aboriginal peoples and Torres Strait Islander peoples**

- (1) Aboriginal peoples and Torres Strait Islander peoples hold distinct cultural rights.
- (2) Aboriginal peoples and Torres Strait Islander peoples must not be denied the right, with other members of their community—
- (a) to enjoy, maintain, control, protect and develop their identity and cultural heritage, including their traditional knowledge, distinctive spiritual practices, observances, beliefs and teachings; and
  - (b) to enjoy, maintain, control, protect, develop and use their language, including traditional cultural expressions; and
  - (c) to enjoy, maintain, control, protect and develop their kinship ties; and
  - (d) to 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 Aboriginal tradition or Island custom; and
  - (e) to conserve and protect the environment and productive capacity of their land, territories, waters, coastal seas and other resources.

- (3) Aboriginal peoples and Torres Strait Islander peoples have the right not to be subjected to forced assimilation or destruction of their culture.

## **29 Right to liberty and security of person**

- (1) Every person has the right to liberty and security.
- (2) A person must not be subjected to arbitrary arrest or detention.
- (3) A person must not be deprived of the person's liberty except on grounds, and in accordance with procedures, established by law.
- (4) A person who is arrested or detained must be informed at the time of arrest or detention of the reason for the arrest or detention and must be promptly informed about any proceedings to be brought against the person.
- (5) A person who is arrested or detained on a criminal charge—
  - (a) must be promptly brought before a court; and
  - (b) has the right to be brought to trial without unreasonable delay; and
  - (c) must be released if paragraph (a) or (b) is not complied with.
- (6) A person awaiting trial must not be automatically detained in custody, but the person's release may be subject to guarantees to appear—
  - (a) for trial; and
  - (b) at any other stage of the judicial proceeding; and
  - (c) if appropriate, for execution of judgment.
- (7) A person deprived of liberty by arrest or detention is entitled to apply to a court for a declaration or order regarding the lawfulness of the person's detention, and the court must—
  - (a) make a decision without delay; and

- (b) order the release of the person if it finds the detention is unlawful.
- (8) A person must not be imprisoned only because of the person's inability to perform a contractual obligation.

### **30 Humane treatment when deprived of liberty**

- (1) All persons deprived of liberty must be treated with humanity and with respect for the inherent dignity of the human person.
- (2) An accused person who is detained or a person detained without charge must be segregated from persons who have been convicted of offences, unless reasonably necessary.
- (3) An accused person who is detained or a person detained without charge must be treated in a way that is appropriate for a person who has not been convicted.

### **31 Fair hearing**

- (1) A person charged with a criminal offence or a party to a civil proceeding has the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing.
- (2) However, a court or tribunal may exclude members of media organisations, other persons or the general public from all or part of a hearing in the public interest or the interests of justice.
- (3) All judgments or decisions made by a court or tribunal in a proceeding must be publicly available.

### **32 Rights in criminal proceedings**

- (1) A person charged with a criminal offence has the right to be presumed innocent until proved guilty according to law.
- (2) A person charged with a criminal offence is entitled without discrimination to the following minimum guarantees—

- (a) to be informed promptly and in detail of the nature and reason for the charge in a language or, if necessary, a type of communication the person speaks or understands;
  - (b) to have adequate time and facilities to prepare the person's defence and to communicate with a lawyer or advisor chosen by the person;
  - (c) to be tried without unreasonable delay;
  - (d) to be tried in person, and to defend themselves personally or through legal assistance chosen by the person or, if eligible, through legal aid;
  - (e) to be told, if the person does not have legal assistance, about the right, if eligible, to legal aid;
  - (f) to have legal aid provided if the interests of justice require it, without any costs payable by the person if the person is eligible for free legal aid under the *Legal Aid Queensland Act 1997*;
  - (g) to examine, or have examined, witnesses against the person;
  - (h) to obtain the attendance and examination of witnesses on the person's behalf under the same conditions as witnesses for the prosecution;
  - (i) to have the free assistance of an interpreter if the person can not understand or speak English;
  - (j) to have the free assistance of specialised communication tools and technology, and assistants, if the person has communication or speech difficulties that require the assistance;
  - (k) not to be compelled to testify against themselves or to confess guilt.
- (3) A child charged with a criminal offence has the right to a procedure that takes account of the child's age and the desirability of promoting the child's rehabilitation.

(4) A person convicted of a criminal offence has the right to have the conviction and any sentence imposed in relation to it reviewed by a higher court in accordance with law.

(5) In this section—

*legal aid* means legal assistance given under the *Legal Aid Queensland Act 1997*.

### **33 Children in the criminal process**

(1) An accused child who is detained, or a child detained without charge, must be segregated from all detained adults.

(2) An accused child must be brought to trial as quickly as possible.

(3) A child who has been convicted of an offence must be treated in a way that is appropriate for the child's age.

### **34 Right not to be tried or punished more than once**

A person must not be tried or punished more than once for an offence in relation to which the person has already been finally convicted or acquitted in accordance with law.

### **35 Retrospective criminal laws**

(1) A person must not be found guilty of a criminal offence because of conduct that was not a criminal offence when it was engaged in.

(2) A penalty must not be imposed on any person for a criminal offence that is greater than the penalty that applied to the offence when it was committed.

(3) If a penalty for an offence is reduced after a person committed the offence but before the person is sentenced for the offence, the person is eligible for the reduced penalty.

(4) Nothing in this section affects the trial or punishment of any person for any act or omission that was a criminal offence

under international law at the time it was done or omitted to be done.

## **Division 3                    Economic, social and cultural rights**

### **36            Right to education**

- (1) Every child has the right to have access to primary and secondary education appropriate to the child's needs.
- (2) Every person has the right to have access, based on the person's abilities, to further vocational education and training that is equally accessible to all.

### **37            Right to health services**

- (1) Every person has the right to access health services without discrimination.
- (2) A person must not be refused emergency medical treatment that is immediately necessary to save the person's life or to prevent serious impairment to the person.

## **Part 3                            Application of human rights in Queensland**

### **Division 1                    Scrutiny of new legislation**

#### **38            Statements of compatibility**

- (1) A member who proposes to introduce a Bill in the Legislative Assembly must prepare a statement of compatibility for the Bill.
- (2) The statement of compatibility must state—
  - (a) whether, in the member's opinion, the Bill is compatible with human rights and, if so, how it is compatible; and

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- (b) if, in the member's opinion, a part of the Bill is not compatible with human rights, the nature and extent of the incompatibility.

*Note—*

Subsections (1) and (2) apply to Ministers introducing government Bills and members introducing private members' Bills.

- (3) A member who introduces a Bill in the Legislative Assembly, or another member acting on the member's behalf, must table the statement of compatibility prepared under this section when introducing the Bill.
- (4) The statement of compatibility is not binding on any court or tribunal.

### **39 Scrutiny of Bills and statements of compatibility by portfolio committee**

The portfolio committee responsible for examining a Bill introduced in the Legislative Assembly must—

- (a) consider the Bill and report to the Assembly about whether the Bill is not compatible with human rights; and
- (b) consider the statement of compatibility tabled for the Bill and report to the Assembly about the statement.

### **40 Scrutiny of non-Queensland laws by portfolio committee**

- (1) The Legislative Assembly may refer a non-Queensland law to a portfolio committee.
- (2) If a non-Queensland law is referred under subsection (1), the portfolio committee must consider the law and report to the Legislative Assembly about whether the law is not compatible with human rights.

## **41 Human rights certificate for subordinate legislation**

- (1) The responsible Minister for subordinate legislation must prepare a human rights certificate for the legislation.
- (1A) However, if there is more than 1 responsible Minister for the subordinate legislation, the human rights certificate for the legislation may be prepared by 1 of the responsible Ministers under the authority of the other responsible Ministers.
- (2) The human rights certificate must state—
  - (a) whether, in the opinion of the Minister preparing the certificate, the subordinate legislation is compatible with human rights and, if so, how it is compatible; and
  - (b) if, in the opinion of the Minister preparing the certificate, a part of the subordinate legislation is not compatible with human rights, the nature and extent of the incompatibility.
- (3) When subordinate legislation is tabled in the Legislative Assembly, it must be accompanied by the human rights certificate prepared under this section for the legislation.

*Note—*

See the *Statutory Instruments Act 1992*, section 49 for the requirement to table subordinate legislation.

- (4) The portfolio committee responsible for examining the subordinate legislation may, in examining the legislation, also consider the human rights certificate.
- (4A) This section does not apply in relation to subordinate legislation that is—
  - (a) a proclamation or other instrument that fixes a single day for the commencement of all of the provisions of an Act that are not in force; or
  - (b) an instrument, other than a regulation, of a type prescribed by regulation.
- (4B) The Minister may recommend to the Governor in Council the making of a regulation under subsection (4A)(b) only if the

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Minister is satisfied an instrument of that type will not directly or indirectly limit a human right.

(5) In this section—

*responsible Minister*, for subordinate legislation, means the Minister who administers the law or provision of the law under which the subordinate legislation is made.

## 42 No effect on application of laws

A failure to comply with this division in relation to a Bill that becomes an Act, a non-Queensland law or subordinate legislation does not affect the validity of the Act, law, subordinate legislation or any other law.

## Division 2 Override declarations

### 43 Override by Parliament

- (1) Parliament may expressly declare in an Act that the Act or another Act, or a provision of the Act or another Act, has effect despite being incompatible with 1 or more human rights or despite anything else in this Act.
- (2) A declaration under subsection (1) is an *override declaration*.
- (3) If an override declaration is made in relation to an Act or a provision of an Act, the declaration extends to a statutory instrument made under the Act or provision.
- (4) It is the intention of Parliament that an override declaration will only be made in exceptional circumstances.

*Examples of exceptional circumstances—*

war, a state of emergency, an exceptional crisis situation constituting a threat to public safety, health or order

#### **44 Statement about exceptional circumstances**

- (1) A member who introduces in the Legislative Assembly a Bill containing an override declaration, or another member acting on the member's behalf, must make a statement to the Assembly explaining the exceptional circumstances that justify including the override declaration.
- (2) The statement under subsection (1) must be made when introducing the Bill.
- (3) If the override declaration is contained in an amendment in consideration of a Bill, the statement under subsection (1) must be made—
  - (a) by the member who moves the amendment or another member acting on the member's behalf; and
  - (b) when the amendment is moved.

#### **45 Effect and expiry of override declaration**

- (1) If an override declaration is made in relation to an Act or a provision of an Act, this Act does not apply to the Act or provision to the extent of the declaration while the declaration is in force.

*Note—*

If this Act does not apply to an Act or provision of an Act for which an override declaration has been made, the Supreme Court can not make a declaration of incompatibility in relation to the Act or provision (see section 53(3)). Also, the requirement under section 48 to interpret the Act or provision in a way that is compatible with human rights does not apply (see section 48(5)).

- (2) A provision of an Act containing an override declaration expires 5 years after the day on which the provision commences or on an earlier day stated in the Act.

#### **46 Re-enacting override declaration**

- (1) Parliament may, at any time, re-enact an override declaration.

- (2) This division applies in relation to a re-enacted override declaration.

#### **47 No effect on validity**

A failure to comply with section 44 in relation to a Bill that becomes an Act does not affect the validity of the Act or any other law.

### **Division 3 Interpretation of laws**

#### **48 Interpretation**

- (1) All statutory provisions must, to the extent possible that is consistent with their purpose, be interpreted in a way that is compatible with human rights.
- (2) If a statutory provision can not be interpreted in a way that is compatible with human rights, the provision must, to the extent possible that is consistent with its purpose, be interpreted in a way that is most compatible with human rights.
- (3) International law and the judgments of domestic, foreign and international courts and tribunals relevant to a human right may be considered in interpreting a statutory provision.
- (4) This section does not affect the validity of—
  - (a) an Act or provision of an Act that is not compatible with human rights; or
  - (b) a statutory instrument or provision of a statutory instrument that is not compatible with human rights and is empowered to be so by the Act under which it is made.
- (5) This section does not apply to a statutory provision the subject of an override declaration that is in force.

## **49 Referral to Supreme Court**

- (1) This section applies if, in a proceeding before a court or tribunal—
  - (a) a question of law arises that relates to the application of this Act; or
  - (b) a question arises in relation to the interpretation of a statutory provision in accordance with this Act.
- (2) The question may be referred to the Supreme Court if—
  - (a) a party to the proceeding has made an application for referral; and
  - (b) the court or tribunal considers the question is appropriate to be decided by the Supreme Court.
- (3) If a question is referred under subsection (2), the court or tribunal referring the question must not—
  - (a) make a decision about the matter to which the question is relevant while the referral is pending; or
  - (b) proceed in a way or make a decision that is inconsistent with the Supreme Court's decision on the question.
- (4) If a question is referred under subsection (2) by the Trial Division of the Supreme Court, the referral is to be made to the Court of Appeal.
- (5) Despite any other Act, if a question arises of a kind mentioned in subsection (1), the question may only be referred to the Supreme Court under this section.

## **50 Intervention by Attorney-General**

- (1) The Attorney-General may, for the State, intervene in and be joined as a party to a proceeding before a court or tribunal in which—
  - (a) a question of law arises that relates to the application of this Act; or
  - (b) a question arises in relation to the interpretation of a statutory provision in accordance with this Act.

- (2) If the Attorney-General intervenes, the Attorney-General becomes a party to the proceeding for the purpose of any appeal from an order made in the proceeding.

## **51 Intervention by commission**

- (1) The commission may intervene in and be joined as a party to a proceeding before a court or tribunal in which—
- (a) a question of law arises that relates to the application of this Act; or
  - (b) a question arises in relation to the interpretation of a statutory provision in accordance with this Act.
- (2) If the commission intervenes, the commission becomes a party to the proceeding for the purpose of any appeal from an order made in the proceeding.

## **52 Notice to Attorney-General and commission**

- (1) A party to a proceeding must give notice in the approved form to the Attorney-General and the commission if—
- (a) for a proceeding in the Supreme Court or District Court—a question of law arises that relates to the application of this Act or a question arises in relation to the interpretation of a statutory provision in accordance with this Act; or
  - (b) for any proceeding—a question is referred to the Supreme Court under section 49.
- (2) However, the notice need not be given to—
- (a) the Attorney-General, if the State is a party to the proceeding; or
  - (b) the commission, if the commission is a party to the proceeding.
- (3) Nothing in this section requires a court or tribunal to adjourn a proceeding in relation to which the notice is given.

### **53 Declaration of incompatibility**

- (1) This section applies if—
  - (a) in a proceeding in the Supreme Court a question of law arises that relates to the application of this Act or a question arises in relation to the interpretation of a statutory provision in accordance with this Act; or
  - (b) a question is referred to the Supreme Court under section 49; or
  - (c) an appeal before the Court of Appeal relates to a question mentioned in paragraph (a).
- (2) The Supreme Court may, in a proceeding, make a declaration (a ***declaration of incompatibility***) to the effect that the court is of the opinion that a statutory provision can not be interpreted in a way compatible with human rights.
- (3) However, the Supreme Court can not make a declaration of incompatibility about a statutory provision if an override declaration is in force in relation to the provision.
- (4) If the Supreme Court is considering making a declaration of incompatibility, the court must give notice of that fact in the approved form to the Attorney-General and the commission.
- (5) The Supreme Court must not make a declaration of incompatibility unless the court is satisfied—
  - (a) a notice has been given to the Attorney-General and the commission under subsection (4); and
  - (b) a reasonable opportunity has been given to the Attorney-General and the commission to intervene in the proceeding or to make submissions about the proposed declaration.
- (6) For the *Supreme Court of Queensland Act 1991*, section 62, a declaration of incompatibility is taken to be an order of the court in the Trial Division.

### **54 Effect of declaration of incompatibility**

A declaration of incompatibility does not—

- (a) affect in any way the validity of the statutory provision for which the declaration was made; or
- (b) create in any person any legal right or give rise to any civil cause of action.

## **55 Giving copies of declaration of incompatibility**

- (1) The Supreme Court must give a copy of a declaration of incompatibility to the Attorney-General within 7 days after—
  - (a) if the period for filing an appeal in relation to the proceeding in which the declaration was made has ended without an appeal having been filed—the end of that period; or
  - (b) if an appeal has been filed in relation to the proceeding and, on appeal, the declaration is upheld—the appeal has been finalised.

### *Example—*

If the Trial Division of the Supreme Court makes a declaration of incompatibility (based on a referral of a question from QCAT) and on appeal the Court of Appeal upholds the declaration, a copy of the declaration must be given to the Attorney-General within 7 days after the Court of Appeal's decision.

- (2) The Attorney-General must, as soon as practicable, give a copy of a declaration of incompatibility received under subsection (1) to the Minister administering the statutory provision for which the declaration was made, unless the Minister is the Attorney-General.

## **56 Action by Minister on declaration of incompatibility**

- (1) The Minister administering a statutory provision for which a declaration of incompatibility was made must—
  - (a) within 6 sitting days after receiving the declaration, table a copy of the declaration in the Legislative Assembly; and
  - (b) within 6 months after receiving the declaration—

- (i) prepare a written response to the declaration; and
  - (ii) table a copy of the response in the Assembly.
- (2) In preparing the response mentioned in subsection (1)(b), the Minister must consider the portfolio committee's report to the Legislative Assembly under section 57 on the declaration of incompatibility.
- (3) Despite the *Parliament of Queensland Act 2001*, section 9, the declaration of incompatibility is not proceedings in the Assembly under that section.

## **57 Action by portfolio committee on declaration of incompatibility**

- (1) The Legislative Assembly must refer a declaration of incompatibility tabled under section 56 to a portfolio committee.
- (2) If a declaration of incompatibility is referred under subsection (1), the portfolio committee must—
  - (a) consider the declaration; and
  - (b) report on the declaration to the Legislative Assembly within 3 months after it is referred.
- (3) The report may include any recommendations about the declaration the portfolio committee considers appropriate.

## **Division 4 Obligations on public entities**

### **58 Conduct of public entities**

- (1) It is unlawful for a public entity—
  - (a) to act or make a decision in a way that is not compatible with human rights; or
  - (b) in making a decision, to fail to give proper consideration to a human right relevant to the decision.

- (2) Subsection (1) does not apply to a public entity if the entity could not reasonably have acted differently or made a different decision because of a statutory provision, a law of the Commonwealth or another State or otherwise under law.

*Example—*

A public entity is acting to give effect to a statutory provision that is not compatible with human rights.

- (3) Also, subsection (1) does not apply to a body established for a religious purpose if the act or decision is done or made in accordance with the doctrine of the religion concerned and is necessary to avoid offending the religious sensitivities of the people of the religion.
- (4) This section does not apply to an act or decision of a private nature.
- (5) For subsection (1)(b), giving proper consideration to a human right in making a decision includes, but is not limited to—
- (a) identifying the human rights that may be affected by the decision; and
  - (b) considering whether the decision would be compatible with human rights.
- (6) To remove any doubt, it is declared that—
- (a) an act or decision of a public entity is not invalid merely because, by doing the act or making the decision, the entity contravenes subsection (1); and
  - (b) a person does not commit an offence against this Act or another Act merely because the person acts or makes a decision in contravention of subsection (1).

## **59 Legal proceedings**

- (1) Subsection (2) applies if a person may seek any relief or remedy in relation to an act or decision of a public entity on the ground that the act or decision was, other than because of section 58, unlawful.

- (2) The person may seek the relief or remedy mentioned in subsection (1) on the ground of unlawfulness arising under section 58, even if the person may not be successful in obtaining the relief or remedy on the ground mentioned in subsection (1).
- (3) However, the person is not entitled to be awarded damages on the ground of unlawfulness arising under section 58.
- (4) This section does not affect a right a person has, other than under this Act, to seek any relief or remedy in relation to an act or decision of a public entity, including—
  - (a) a right to seek judicial review under the *Judicial Review Act 1991* or the *Uniform Civil Procedure Rules 1999*; and
  - (b) a right to seek a declaration of unlawfulness and associated relief including an injunction, a stay of proceedings or an exclusion of evidence.
- (5) A person may seek relief or remedy on a ground of unlawfulness arising under section 58 only under this section.
- (6) Nothing in this section affects a right a person may have to damages apart from the operation of this section.

## **60 Entity may choose to be subject to obligations**

- (1) An entity may ask the Minister, in writing, to declare that the entity is subject to the obligations of a public entity under this division.
- (2) If asked under subsection (1), the Minister must make the declaration by gazette notice.
- (3) The Minister must, by gazette notice, revoke the declaration if asked in writing by the entity.

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## **Part 4**                      **Queensland Human Rights Commission**

### **Division 1**                **Functions and powers of commission and commissioner under this Act**

#### **61**        **Functions**

The commission has the following functions under this Act—

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

## **62 Powers**

The commissioner has power to do all things necessary or convenient to be done for the performance of the commission's functions under this Act.

## **Division 2 Human rights complaints**

### **Subdivision 1 Preliminary**

#### **63 Meaning of *human rights complaint***

A *human rights complaint* is a complaint about an alleged contravention of section 58(1) by a public entity in relation to an act or decision of the public entity.

### **Subdivision 2 Making and referring human rights complaints**

#### **64 Who may make human rights complaint to commissioner**

- (1) The following persons may make a human rights complaint to the commissioner—
  - (a) an individual the subject of a public entity's alleged contravention of section 58(1);
  - (b) an agent of the individual;
  - (c) a person authorised in writing by the commissioner to make a complaint for the individual.
- (2) For subsection (1)(c), the commissioner may authorise a person to make a human rights complaint for an individual if satisfied the individual can not make the complaint.
- (3) Two or more persons may jointly make a human rights complaint.

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**65 Requirements for making human rights complaint to commissioner**

- (1) A person may make a human rights complaint to the commissioner only if—
- (a) the commissioner is satisfied the person has made a complaint to the public entity about the alleged contravention the subject of the complaint; and  
*Example of making a complaint for paragraph (a)—*  
a complaint made to the public entity under the entity's system or procedures for complaints management
  - (b) at least 45 business days have elapsed since the complaint mentioned in paragraph (a) was made; and
  - (c) the person has not received a response to the complaint or has received a response the person considers to be an inadequate response.
- (2) However, the commissioner may accept a complaint made before the period mentioned in subsection (1)(b) has elapsed if the commissioner considers it appropriate because of exceptional circumstances.

**66 Referral entity may deal with or refer human rights complaint**

- (1) This section applies if—
- (a) the ombudsman receives a complaint under the *Ombudsman Act 2001* and the ombudsman considers the complaint may also be a human rights complaint; or
  - (b) the health ombudsman receives a complaint under the *Health Ombudsman Act 2013* and the health ombudsman considers the complaint may also be a human rights complaint; or
  - (c) the Crime and Corruption Commission receives a complaint about corruption under the *Crime and Corruption Act 2001* and the chairperson of the commission under that Act considers the complaint may also be a human rights complaint; or

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- (d) the information commissioner receives a privacy complaint under the *Information Privacy Act 2009* and the information commissioner considers the complaint may also be a human rights complaint.
- (2) The referral entity receiving the complaint may—
- (a) deal with the complaint under the referral Act under which the complaint was made; or
  - (b) with the consent of the person who could make the human rights complaint under section 64, refer the complaint to the commissioner.

*Note—*

Under section 74, the commissioner and a referral entity may enter into an arrangement about referring complaints under a referral Act or dealing with complaints that are not referred.

## **67 Form of human rights complaint**

- (1) A human rights complaint made or referred to the commissioner must—
- (a) be written; and
  - (b) state the complainant's name and address for service; and
  - (c) include enough details to indicate the alleged contravention to which the complaint relates.
- (2) If the commissioner is satisfied the complainant needs help to put the complaint in writing, the commissioner must give reasonable help to the complainant to put the complaint in writing.

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## **Subdivision 3      Dealing with human rights complaints**

### **68      Preliminary inquiries**

The commissioner may make preliminary inquiries about a human rights complaint made or referred to the commissioner to decide how to deal with the complaint under this division.

### **69      Commissioner must refuse to deal with particular complaint**

The commissioner must refuse to deal with a human rights complaint if the commissioner considers the complaint is frivolous, trivial, vexatious, misconceived or lacking in substance.

### **70      Commissioner may refuse to deal or to continue to deal, or defer dealing, with complaint**

- (1) The commissioner may refuse to deal or to continue to deal with a human rights complaint if—
  - (a) the commissioner considers there is a more appropriate course of action available under another law to deal with the subject of the complaint; or
  - (b) the commissioner considers the subject of the complaint has been appropriately dealt with by another entity; or
  - (c) the commissioner considers the requirements under section 65 for making the complaint have not been met; or
  - (d) the complaint was not made or referred to the commissioner within 1 year after the alleged contravention to which the complaint relates happened.
- (2) The commissioner may refuse to continue to deal with a human rights complaint if—

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- (a) the complainant does not comply with a reasonable request made by the commissioner in dealing with the complaint; or  
*Example of a reasonable request—*
    - a request for information relevant to the complaint under section 78(2)
  - (b) the commissioner is satisfied on reasonable grounds the complainant, without a reasonable excuse, has not cooperated in the commissioner’s dealing with the complaint; or
  - (c) the commissioner can not make contact with the complainant.
- (3) The commissioner may defer dealing with a complaint if—
- (a) the complainant has complained to the public entity as required under section 65 but the commissioner considers the public entity has not yet had an adequate opportunity to deal with the complaint; or
  - (b) the commissioner considers it is necessary to do so to ensure the complaint is dealt with appropriately under another law.
- (4) In this section—
- law* includes—
- (a) the *National Disability Insurance Scheme Act 2013* (Cwlth) or another law of the Commonwealth; and
  - (b) a law of another State.

## **71 Notice about refusing to deal, or deferring dealing, with complaint**

- (1) If the commissioner refuses to deal, or to continue to deal, with a human rights complaint or defers dealing with a complaint, the commissioner must give the complainant and respondent notice of the refusal or deferral and the reasons for the refusal or deferral.

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- (2) However, the commissioner need not give the notice to the respondent if the commissioner considers it is not appropriate in the circumstances to do so.

*Example of circumstances for subsection (2)—*

The respondent is not aware of the complaint or has not been contacted by the commissioner in relation to the complaint.

## **72 When complaint lapses**

- (1) If the commissioner refuses to deal, or to continue to deal, with a human rights complaint—
- (a) the complaint lapses; and
  - (b) the complainant can not make a further complaint relating to the alleged contravention the subject of the complaint.
- (2) Subsection (1)(b) does not apply to a human rights complaint the commissioner refuses to deal with under section 70(1)(c).

## **73 Commissioner may refer human rights complaint to other entities**

- (1) If the subject of a human rights complaint could be the subject of a complaint under the *Ombudsman Act 2001*, the commissioner may refer the human rights complaint to the ombudsman.
- (2) If the subject of a human rights complaint could be the subject of a health service complaint under the *Health Ombudsman Act 2013*, the commissioner may refer the human rights complaint to the health ombudsman.
- (3) If the subject of a human rights complaint could be the subject of a complaint about corruption made under the *Crime and Corruption Act 2001*, the commissioner may refer the human rights complaint to the Crime and Corruption Commission.
- (4) If the subject of a human rights complaint could be the subject of a privacy complaint under the *Information Privacy Act*

2009, the commissioner may refer the human rights complaint to the information commissioner.

- (5) If the subject of a human rights complaint could be the subject of an NDIS complaint, the commissioner may refer the human rights complaint to the NDIS commissioner.
- (6) However, the commissioner may only refer a human rights complaint under this section—
  - (a) with the complainant’s consent; and
  - (b) if the commissioner considers the complaint would be more appropriately dealt with by the entity to whom it is referred.
- (7) If the commissioner refers a human rights complaint to an entity under this section, the commissioner—
  - (a) may, with the consent of the complainant, give the entity information about the complaint obtained by the commissioner under this part; and
  - (b) must give the complainant a notice stating the complaint has been referred to the entity.
- (8) In this section—

*NDIS complaint* means a complaint mentioned in the *National Disability Insurance Scheme Act 2013* (Cwlth), section 181G.

## 74 Commissioner may enter into arrangements with other entities

- (1) The commissioner and a referral entity may enter into an arrangement about—
  - (a) the human rights complaints the commissioner should refer to the entity because they would be more appropriately dealt with by the entity; or
  - (b) the complaints made under a referral Act the referral entity should refer to the commissioner because they—

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- (i) relate to decisions or other actions for which the commission has jurisdiction; and
    - (ii) would be more appropriately dealt with by the commission under this part; or
  - (c) how to deal with a complaint or other matter under a referral Act that could also form the basis of a human rights complaint; or
  - (d) cooperating in the performance of the commissioner's and the entity's functions to ensure the effective operation of this part and a referral Act.
- (2) The commissioner and the NDIS commissioner may enter into an arrangement about—
- (a) the human rights complaints the commissioner should refer to the NDIS commissioner because they would be more appropriately dealt with by the NDIS commissioner; or
  - (b) cooperating in the performance of the commissioner's and the NDIS commissioner's functions to ensure the effective operation of this part and the *National Disability Insurance Scheme Act 2013* (Cwlth).
- (3) If an arrangement provides for a referral as mentioned in subsection (1)(a) or (b) or (2)(a), the arrangement must also provide for how the referral is made.
- (4) The commissioner and an entity with whom an arrangement has been entered into under this section may perform their functions in accordance with the arrangement.

## **75 Dealing with human rights complaint under *Anti-Discrimination Act 1991***

- (1) This section applies if the commissioner considers a human rights complaint made or referred to the commissioner would be more appropriately dealt with by the commission as a complaint about an alleged contravention of the *Anti-Discrimination Act 1991*.

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- (2) The commissioner may, with the consent of the complainant, deal with the complaint under the *Anti-Discrimination Act 1991* as an alleged contravention of that Act.
- (3) For dealing with the complaint as mentioned in subsection (2), the complaint—
  - (a) is taken to be a complaint about an alleged contravention of the *Anti-Discrimination Act 1991* that is accepted by the commissioner under section 141 of that Act; and
  - (b) is taken to be made on the day the human rights complaint was made or referred.

## **76 Acceptance of human rights complaint by commissioner**

- (1) If the commissioner decides to accept a human rights complaint for resolution by the commission, the commissioner must give the complainant and respondent notice of its acceptance.
- (2) The notice must state—
  - (a) the role of the commission in trying to resolve the complaint; and
  - (b) the powers the commissioner may exercise in trying to resolve the complaint.
- (3) The notice given to the respondent must also state—
  - (a) the substance of the complaint; and
  - (b) that the respondent will be given an opportunity to make submissions in writing in response to the complaint; and
  - (c) that the respondent must advise the commissioner of the respondent's address for service; and
  - (d) that the commissioner may seek information or documents from the respondent in relation to the complaint.

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**77 Dealing with human rights complaint—generally**

- (1) If the commissioner decides to accept a human rights complaint for resolution by the commission, the commissioner may take the reasonable action the commissioner considers appropriate to try to resolve the complaint.
- (2) Without limiting subsection (1), the commissioner may—
  - (a) ask the respondent to make submissions to the commission in writing in response to the complaint; or
  - (b) give the complainant a copy of the respondent’s written submissions; or
  - (c) ask or direct the complainant or respondent to give the commissioner information relevant to the complaint, including under section 78; or
  - (d) make enquiries of, and discuss the complaint with, the complainant and the respondent; or
  - (e) cause the complaint to be conciliated under subdivision 4.

**78 Commissioner may ask or direct relevant entity to give information**

- (1) This section applies in relation to the commissioner for making preliminary inquiries under section 68 or dealing with a human rights complaint under this division.
- (2) The commissioner may, by notice given to a relevant entity for the complaint, ask or direct the entity to give the commissioner information about the complaint within the reasonable period stated in the notice.
- (3) The notice must state the purpose for making the request.
- (4) For information in an electronic document, compliance with the request or direction requires the giving of a clear image or written version of the electronic document.
- (5) The entity must comply with a direction unless the entity has a reasonable excuse.

- (6) It is a reasonable excuse for an entity to fail to comply with a direction because, for example, complying with the direction would require the entity to disclose information that is the subject of legal professional privilege.
- (7) The commissioner may enforce a direction by filing a copy of it with a court of competent jurisdiction.
- (8) The direction is then enforceable as if it were an order of the court.
- (9) In this section—  
*information* includes a document.  
*relevant entity*, for a human rights complaint, means—
  - (a) the complainant or respondent for the complaint; or
  - (b) another entity the commissioner considers has information relevant to the complaint in the entity's possession or control.

## **Subdivision 4      Conciliation of human rights complaints**

### **79      Commissioner may conduct conciliation conference**

If the commissioner decides to accept a human rights complaint for resolution by the commission, the commissioner may conduct a conference (a *conciliation conference*) under this subdivision for the purpose of conciliating the complaint.

### **80      Purpose of conciliation**

The purpose of conciliation of a human rights complaint is to promote the resolution of the complaint in a way that is informal, quick and efficient.

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## 81 Attendance at conciliation conference

- (1) The commissioner may direct a person to take part in a conciliation conference.
- (2) The commissioner may enforce the direction by filing a copy of it with a court of competent jurisdiction.
- (3) The direction is then enforceable as if it were an order of the court.

## 82 Attendance by complainant

- (1) The complainant for a human rights complaint the subject of conciliation must attend the conciliation conference in person unless—
  - (a) the complainant is a child or a person with impaired capacity; or
  - (b) the commissioner consents to another person attending the conciliation conference for the complainant.
- (2) The complainant may, with the commissioner's consent, be accompanied at the conciliation conference by a support person.
- (3) In this section—

*impaired capacity* see the *Guardianship and Administration Act 2000*, schedule 4.

## 83 Representation

- (1) A person may be represented by another person (a *representative*) at a conciliation conference only with the commissioner's consent.
- (2) The commissioner may give consent for subsection (1) if satisfied—
  - (a) it is appropriate in the circumstances for the person to be represented; and

- (b) the person's representation by the representative would help the conciliation; and
  - (c) the representative has sufficient knowledge of matters relating to the complaint to effectively represent the person.
- (3) The commissioner may—
- (a) give the consent on conditions the commissioner considers reasonable; and
  - (b) withdraw the consent if the person or the representative does not comply with the conditions.

#### **84 Use of interpreters and other persons**

A person may be helped at a conciliation conference by—

- (a) an interpreter; or
- (b) another person necessary or desirable to make the conciliation conference intelligible to the person, including, for example, a person with appropriate cultural or social knowledge and experience.

#### **85 Conduct of conciliation conference**

- (1) In conducting a conciliation conference, the commissioner is not bound by the rules of evidence.
- (2) A conciliation conference must be held in private.

#### **86 Confidentiality of conciliation conference**

Nothing said or done in the course of a conciliation conference for a human rights complaint is admissible in any criminal, civil or administrative proceeding, unless the complainant and respondent for the complaint agree.

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**87 Conciliation does not affect other rights**

A person's participation in a conciliation conference under this division does not affect a right the person may have to seek any relief or remedy the person may have in relation to a contravention of section 58(1).

**Subdivision 5 Action on dealing with human rights complaint**

**88 Report about unresolved human rights complaint**

- (1) This section applies in relation to a human rights complaint accepted by the commissioner for resolution by the commission if the commissioner considers the complaint has not been resolved by conciliation or otherwise.
- (2) The commissioner must prepare a report about the complaint as soon as practicable after the commission has finished dealing with the complaint.
- (3) The report must include—
  - (a) the substance of the complaint; and
  - (b) the actions taken to try to resolve the complaint.
- (4) The report may include details of action the commissioner considers the respondent for the complaint should take to ensure its acts and decisions are compatible with human rights.
- (5) The commissioner must give a copy of the report to the complainant and respondent.
- (6) The report is not admissible in a proceeding in relation to a contravention of this Act, unless the complainant and respondent agree.

**89 Notice about resolved human rights complaint**

- (1) This section applies in relation to a human rights complaint accepted by the commissioner for resolution by the

commission if the commissioner considers the complaint has been resolved.

- (2) The commissioner must, as soon as practicable after the complaint is resolved, give the complainant and respondent a notice stating—
  - (a) the outcome of the resolution of the complaint; and
  - (b) that the commission has finished dealing with the complaint.

## **90 Commissioner may publish information**

- (1) The commissioner may publish information about a human rights complaint that the commission has finished dealing with.
- (2) The publication—
  - (a) may include the substance of the complaint; and
  - (b) may draw on information about the complaint contained in a report prepared under section 88 or a notice given under section 89; and
  - (c) must not include personal information about an individual unless the information has previously been published, or given for the purpose of publication, by the individual.

## **Division 3 Reporting requirements**

### **91 Annual report**

- (1) As soon as practicable after the end of each financial year, the commissioner must prepare a report (an *annual report*) about the operation of this Act during the year.
- (2) The report must include the following information for the financial year—

- (a) details of any examination of the interaction between this Act and other Acts, statutory instruments and the common law;
  - (b) details of all declarations of incompatibility made;
  - (c) details of all override declarations made;
  - (d) details of all interventions by the Attorney-General or the commission under section 50 or 51;
  - (e) the number of human rights complaints made or referred to the commissioner;
  - (f) the outcome of human rights complaints accepted by the commissioner for resolution by the commission, including whether or not the complaints were resolved by conciliation or otherwise;
  - (g) the number of human rights complaints resolved by the commission;
  - (h) the number of conciliation conferences conducted under this part;
  - (i) the number of public entities that were asked or directed to take part in a conciliation conference, and the number that failed to comply with a direction to take part;
  - (j) the number of human rights complaints received by particular public entities decided by the commissioner.
- (3) The report may include other information the commissioner considers appropriate, including, for example, the names of public entities and details of action, mentioned in section 88(4), relating to human rights complaints that have not been resolved.
- (4) However, the report must not include personal information about an individual unless the information has previously been published, or given for the purpose of publication, by the individual.
- (5) The commissioner must give the report to the Attorney-General as soon as practicable after it is prepared.

## **92 Other reports**

- (1) The commissioner may prepare a report about a matter relevant to the performance of the commission's or the commissioner's functions under this Act.
- (2) The commissioner must, if asked by the Attorney-General, prepare a report about a matter mentioned in subsection (1).
- (3) The commissioner must give a report prepared under subsection (2) to the Attorney-General as soon as practicable after it is prepared.
- (4) A report prepared under this section must not include personal information about an individual unless the information has previously been published, or given for the purpose of publication, by the individual.

## **93 Report containing adverse comment**

- (1) This section applies if the commissioner proposes to make an adverse comment about a person in a report prepared under section 88 or this division.
- (2) Before preparing the report, the commissioner must give the person an opportunity to make submissions to the commissioner about the proposed adverse comment.
- (3) If the person makes submissions and the commissioner still proposes to make the adverse comment, the commissioner must ensure the person's response is fairly stated in the report.
- (4) For this section, an adverse comment does not include a statement that a public entity did not participate in resolving a human rights complaint.

## **94 Attorney-General to table reports**

The Attorney-General must table a copy of each annual report, and each report given to the Attorney-General under section 92(3), in the Legislative Assembly within 6 sitting days after receiving the report.

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## Part 5                      General

### 95      **First review of Act**

- (1) The Attorney-General must ensure the operation of this Act before 1 July 2023 is reviewed as soon as practicable after that date.
- (2) The review must be carried out by an independent and appropriately qualified person.
- (3) The terms of reference for the review are the terms decided by the Attorney-General.
- (4) The review must include consideration of the following—
  - (a) whether additional human rights should be included as human rights under this Act, including, but not limited to, rights under—
    - (i) the International Covenant on Economic, Social and Cultural Rights; or
    - (ii) the Convention on the Rights of the Child; or
    - (iii) the Convention on the Rights of Persons with Disabilities; or
    - (iv) the Convention on the Elimination of All Forms of Discrimination against Women;
  - (b) whether further or different provision should be made in this Act about proceedings that may be brought or remedies that may be awarded in relation to acts or decisions of public entities made unlawful because of this Act;
  - (c) whether the amendments made by this Act to the *Corrective Services Act 2006* and the *Youth Justice Act 1992* are operating effectively, or further or different provision should be made for the interrelationship between this Act and those Acts.

- (5) The Attorney-General must table a copy of the report about the outcome of the review in the Legislative Assembly within 14 sitting days after receiving the report.

## **96 Further review of Act**

- (1) The Attorney-General must ensure the operation of this Act after 30 June 2023 is reviewed—
  - (a) as soon as practicable after 1 July 2027; or
  - (b) if the Attorney-General considers it appropriate—at any time after the Attorney-General tables the report mentioned in section 95 but before 1 July 2027.
- (2) The review must be carried out by an independent and appropriately qualified person.
- (3) The terms of reference for the review are the terms decided by the Attorney-General.
- (4) Without limiting subsection (3), the review must include consideration of the matters mentioned in section 95(4).
- (5) The Attorney-General must table a copy of the report about the outcome of the review in the Legislative Assembly within 14 sitting days after receiving the report.
- (6) The report must include a recommendation about whether a further review of this Act is necessary.

## **97 Reporting requirements for certain public entities**

- (1) This section applies to a public entity that is required under the *Financial Accountability Act 2009*, section 63, to prepare an annual report.
- (2) The entity must include in each annual report—
  - (a) details of any actions taken during the reporting period to further the objects of this Act; and
  - (b) details of any human rights complaints received by the entity, including—

- (i) the number of complaints received; and
  - (ii) the outcome of the complaints; and
  - (iii) any other information prescribed by regulation relating to complaints; and
- (c) details of any review of policies, programs, procedures, practices or services undertaken in relation to their compatibility with human rights.

## **98 Information request for reports**

- (1) The commissioner may, by notice given to a public entity, ask the entity to give the commissioner information in the entity's possession or control, other than personal information that is not publicly available, that the commissioner reasonably requires to prepare an annual report or a report under section 92.
- (2) The notice must state—
  - (a) why the request has been made; and
  - (b) the period within which the information is to be given.
- (3) If the commissioner asks a public entity for information under this section, the entity must comply with the request unless the entity has a reasonable excuse.

Maximum penalty—100 penalty units.

- (4) The commissioner may use information obtained under this section only for the purpose for which it was requested.

## **99 Giving of information protected**

- (1) This section applies if a person, acting honestly, gives information under this Act to the commissioner or another entity in relation to a human rights complaint.
- (2) The person is not liable, civilly, criminally or under an administrative process, for giving the information.

- (3) Also, merely because the person gives the information, the person can not be held to have—
  - (a) breached any code of professional etiquette or ethics; or
  - (b) departed from accepted standards of professional conduct.

## **100 Anonymity**

- (1) If, any time while the commissioner is dealing with a human rights complaint, the commissioner considers that the preservation of anonymity of a person who is, or has been, involved in the complaint is necessary to protect the work security, privacy or any human right of the person, the commissioner may give a direction prohibiting the disclosure of information that identifies, or is likely to lead to the identification of, the person.
- (2) A person must comply with a direction unless the person has a reasonable excuse.

Maximum penalty—

- (a) in the case of an individual—35 penalty units; or
  - (b) in the case of a corporation—170 penalty units.
- (3) In this section, a reference to involvement in a complaint includes—
  - (a) making a complaint under this Act and continuing with the complaint; and
  - (b) being a respondent to a complaint; and
  - (c) giving information to a person who is performing a function under this Act.

## **101 Proceedings for offences**

The *Anti-Discrimination Act 1991*, section 226 applies in relation to a proceeding for an offence against this Act.

## **102 Address for service**

The address for service of a complainant or a respondent for a human rights complaint as advised to the commissioner must be a residential or business address, a post office box address, or an email address.

## **103 No address for service advised**

- (1) This section applies if the address for service of a party to a human rights complaint is not known—
  - (a) because of the party's failure to comply with a requirement for advising an address for service; or
  - (b) because the party is a respondent, and has not yet been notified under section 76.
- (2) The party's address for service is taken to be—
  - (a) for an individual—the individual's last known place of residence or business; or
  - (b) for a public entity—the entity's principal office.

## **104 Approved forms**

The chief executive may approve forms for use under this Act.

## **105 Regulation-making power**

The Governor in Council may make regulations under this Act.

## Part 6 Savings and transitional provisions

### 106 Act does not affect laws about termination of pregnancy

Nothing in this Act affects any law relating to termination of pregnancy or the killing of an unborn child, whether before or after the commencement of part 2.

### 107 Act does not affect native title rights and interests

- (1) Nothing in this Act affects native title rights and interests otherwise than in accordance with the *Native Title Act 1993* (Cwlth).
- (2) A provision of this Act must be interpreted and applied in a way that does not prejudice native title rights and interests to the extent the rights and interests are recognised and protected under the *Native Title Act 1993* (Cwlth).

- (3) In this section—

*affects*, in relation to native title rights and interests, see the *Native Title Act 1993* (Cwlth), section 227.

*native title rights and interests* see the *Native Title Act 1993* (Cwlth), section 223.

### 108 Application of Act—generally

- (1) This Act applies to all Acts and statutory instruments, whether passed or made before or after the commencement.
- (2) However, this Act—
  - (a) does not affect proceedings commenced or concluded before the commencement; and
  - (b) does not apply to an act, or decision made, by a public entity before the commencement.
- (3) Subsection (1) is subject to sections 106 and 107.

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# Schedule 1      Dictionary

## section 6

**act** includes a failure to act or a proposal to act.

**annual report** see section 91(1).

**approved form** means a form approved under section 104.

**commission** means the Queensland Human Rights Commission established under the *Anti-Discrimination Act 1991*.

**commissioner** means the Human Rights Commissioner under the *Anti-Discrimination Act 1991*.

**compatible with human rights** see section 8.

**complainant**, for a human rights complaint, means the individual who is the subject of the complaint.

**conciliation conference** see section 79.

**councillor**, of a local government—

(a) for the Brisbane City Council—see the *City of Brisbane Act 2010*, schedule 2; or

(b) for another local government—see the *Local Government Act 2009*, schedule 4.

**court** means the Supreme Court, the District Court, the Magistrates Court, the Childrens Court or the Coroners Court.

**declaration of incompatibility** see section 53(2).

**discrimination**, in relation to a person, includes direct discrimination or indirect discrimination, within the meaning of the *Anti-Discrimination Act 1991*, on the basis of an attribute stated in section 7 of that Act.

*Note*—

The *Anti-Discrimination Act 1991*, section 7, lists attributes in relation to which discrimination is prohibited, including, for example, age, impairment, political belief or activity, race, religious belief or religious activity, sex and sexuality.

**function** includes a power.

**health ombudsman** means the health ombudsman under the *Health Ombudsman Act 2013*.

**human rights** see section 7.

**human rights complaint** see section 63.

**information commissioner** means the information commissioner under the *Right to Information Act 2009*.

**local government employee** means—

- (a) for the Brisbane City Council—a council employee under the *City of Brisbane Act 2010*, schedule 2; or
- (b) for another local government—a local government employee under the *Local Government Act 2009*, schedule 4.

**member**, for part 3, means a member of the Legislative Assembly.

**NDIS commissioner** means the Commissioner of the NDIS Quality and Safeguards Commission under the *National Disability Insurance Scheme Act 2013* (Cwlth).

**non-Queensland law** means—

- (a) a Commonwealth law extending to the State because of a referral by the Parliament to the Commonwealth under the Commonwealth Constitution, section 51(xxxvii); or
- (b) a law of another jurisdiction applying, as in force from time to time, as a law of the State.

**notice** means written notice.

**ombudsman** means the ombudsman under the *Ombudsman Act 2001*.

**override declaration** see section 43(2).

**perform a function** includes exercise a power.

**personal information** see the *Information Privacy Act 2009*, section 12.

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**portfolio committee** means a portfolio committee established under the *Parliament of Queensland Act 2001*, section 88.

**public entity** see section 9.

**referral Act** means—

- (a) the *Crime and Corruption Act 2001*; or
- (b) the *Health Ombudsman Act 2013*; or
- (c) the *Information Privacy Act 2009*; or
- (d) the *Ombudsman Act 2001*.

**referral entity** means—

- (a) the Crime and Corruption Commission; or
- (b) the health ombudsman; or
- (c) the information commissioner; or
- (d) the ombudsman.

**respondent**, for a human rights complaint—

- (a) means the public entity that, under the complaint, is alleged to have contravened section 58(1); and
- (b) if the public entity mentioned in paragraph (a) is an individual—includes the public entity with which the individual is employed or is otherwise engaged.

**statutory provision** means an Act or statutory instrument or a provision of an Act or statutory instrument.

**trial** means the hearing of a charge, including a committal proceeding or a proceeding in which a person is to be sentenced.