**Submission template and guidance to engage with the Independent Review of the Human Rights Act in Queensland**

**How to use this submission template:**

* Please delete this first page
* Text highlighted in green includes details you need to update, and guidance you should delete before sending your submission to the Independent Review Team

**Additional information:**

* **Submissions are due** to the Independent Review Team by **Friday 21 June 2024.**
* For further information about the Review, see the Independent Review website, ([linked here](https://www.humanrightsreview.qld.gov.au/)). This includes information such as how to contact the Independent Review Team, and provides answers to questions you may have about the submission process ([linked here](https://www.humanrightsreview.qld.gov.au/have-your-say))
* The Independent Review Team have developed a set of discussion questions, [linked here](https://www.humanrightsreview.qld.gov.au/discussion-questions/general-public). This can help you to think about what you might like to say in your submission but you don’t have to answer every question.
* As explained on the Review Webpage, ([linked here](https://www.humanrightsreview.qld.gov.au/have-your-say)) if you want to make a submission in your own language, or if providing a written submission or responding to the online survey does not meet your needs, you can contact the Independent Review Team at [admin@humanrightsreview.qld.gov.au](mailto:admin@humanrightsreview.qld.gov.au) to discuss your options.
* Although submissions won’t be published by the Review Team, the Review website explains that you are free to publicly share your own submission.

**Useful resources to support your submission:**

* The QCOSS Human Rights Network special event webinar, *Engaging with the Queensland Human Rights Act Review*, (available on demand, [linked here](https://www.youtube.com/watch?v=8Udz4jCCpgM)). The webinar features the Independent Reviewer Professor Susan Harris Rimmer, and QCOSS CEO Aimee McVeigh.
* The Queensland Human Rights Commission’s online information about the Review ([linked here](https://www.qhrc.qld.gov.au/about-us/news/news-human-rights-act-review-underway)) and their publication, *Strengthening the Human Rights Act: key issues paper*, ([linked here](https://www.qhrc.qld.gov.au/__data/assets/pdf_file/0010/48961/Stengthening-the-Human-Rights-Act-key-issues-paper.pdf)).
* The Australian Human Rights Commission report, *Revitalising Australia’s Commitment to Human Rights: Free and Equal Final Report 2023*, ([linked here](https://humanrights.gov.au/Revitalising-Australia%E2%80%99s-commitment-to-human-rights)). This report outlines a need for a National Human Rights Act. Although this report was developed for a national context, it provides insight and analysis which you may find useful for this Review as well.

**This submission template has been developed by the Queensland Council of Social Service with the support of Clayton Utz.**

Independent Review Team

*Via email:* [admin@humanrightsreview.qld.gov.au](mailto:admin@humanrightsreview.qld.gov.au)

Date

**Re: Independent Review of the *Human Rights Act 2019* (Qld) (‘the Review’)**

I/we welcome the opportunity to provide a submission to the Independent Review of the *Human Rights Act 2019* (Qld) (‘the Review’). The Review has presented an opportunity to reflect on the *Human Rights Act 2019* (Qld) (‘the Act’) and the invaluable benefits which have flowed from it. The Review has also presented an important opportunity to consider how the Act and its implementation could be further strengthened.

**Delete this guidance:** consider adding a few lines about yourself/your organisation so the Review Team understands more about your perspectives and why you are writing this submission. If you are writing this submission as an organisation, you could outline the areas you operate in, the work your organisation undertakes and the people you help. You could also flag any major points you want to emphasise in your submission. Please note you can also make an anonymous submission, and you don’t have to share information about yourself if you don’t want to. You can refer to the Review website ([linked here](https://www.humanrightsreview.qld.gov.au/have-your-say)) for further information about making an anonymous submission.

**Positive impacts of the Human Rights Act**

The Act has improved the respect, protection and fulfillment of human rights in Queensland. At a systemic level, examples of this include:

* Major agenda-setting strategies that incorporate human rights into their guiding principles, such as the *Putting Queensland Kids First Plan*.[[1]](#footnote-2)
* Groundbreaking consultations that were conducted from a human rights lens, such as the Inquiry conducted by the Women’s Safety and Justice Taskforce into coercive control and women’s experience in the criminal justice system.[[2]](#footnote-3)
* Parliamentary Inquiries that adopted human rights-based consultation practices such as the *Inquiry into the Provision and Regulation of Supported Accommodation*.[[3]](#footnote-4)
* Public Entities seeking to expand their own engagement and implementation of the Act, such as the Queensland Public Trustee’s adoption of a structured decision-making framework.[[4]](#footnote-5)
* Access to complaint and conciliation processes under the Act, which has also resulted in broader systemic change.[[5]](#footnote-6)

**Delete this guidance:** Do you have other examples of how the Act is helping to achieve positive outcomes within your community or for your organisation? Do you know examples of where individuals have had increased enjoyment of their rights or the ability to seek better protections because of the Act? You should include these examples here.

These are just a select number of examples where commitments and access to human rights are improving across Queensland. Alongside the Australian Capital Territory and Victoria, Queensland’s adoption of a human rights instrument is also helping to lead the way nationally. Other jurisdictions in Australia are exploring options for human rights legislation, and there is significant support for a national Human Rights Act.[[6]](#footnote-7)

**The Act must be strengthened**

**Delete this guidance:** this section explores ways that the Act and its implementation can be strengthened. If you have practical examples that help to demonstrate a need to strengthen the Act, you can incorporate them throughout this section. You may like to include other issues and recommendations important to your organisation or community as well. You may find it helpful to read the QHRC’s publication, *Strengthening the Human Rights Act: key issues paper*, ([linked here](https://www.qhrc.qld.gov.au/__data/assets/pdf_file/0010/48961/Stengthening-the-Human-Rights-Act-key-issues-paper.pdf)).

While the Act continues to deliver powerful outcomes across the State, the Act could be improved in the following ways:

* **The Act should include a direct cause of action and provide access to compensation.**

Currently a person with a human rights complaint can make a complaint directly to the Public Entity involved and then to the Queensland Human Rights Commission.[[7]](#footnote-8)

If the complaints process does not resolve the issue, a person cannot easily pursue the issue in court and compensation is not available.

Ensuring a person can pursue their complaint in the Queensland Civil and Administrative Tribunal and making compensation available will improve protections of human rights in Queensland and also further encourage a culture of human rights within the Queensland public sector (a key objective of the Act).[[8]](#footnote-9) It is also essential to strengthen existing complaint mechanisms.[[9]](#footnote-10)

**Delete this guidance:** Public Entities can include non-government organisations.

* **The current operation of the override provision must be addressed.**

On two occasions the Human Rights Act has been overridden in Queensland.

This included changes to laws to make breach of bail an offence for children, and to maintain the ability to hold children in adult watch houses. These laws apply to children as young as just ten years old.

The use of the override provision enabled the Queensland Government to avoid justifying their decision to limit the rights of children in Queensland.

The Act requires amendment so that it can only be overridden in instances of genuinely exceptional circumstances, noting there are some rights that should never be overridden.

* **The Act should incorporate a participation duty.**

The Act does not currently incorporate a participation duty. A participation duty would require stronger processes to ensure that people are able to actively participate in decisions or the development of policies that affect them. The Australian Human Rights Commission has recommended that a general participation duty should be incorporated into a national Human Rights Act, along with specific requirements in relation to the participation of children, people with a disability, and First Nations Peoples.[[10]](#footnote-11) A similar model should be explored and adopted in Queensland.

* **The Act should be improved to better support victim survivors of gendered violence.**

The Queensland Government has committed to comprehensively responding to Domestic Family and Sexual Violence (‘DFSV’). Women and children, however, continue to experience DFSV at alarming rates. While the Act includes significant protections for offenders in the criminal justice system,[[11]](#footnote-12) it does not go far enough to support the rights of victim survivors of gendered violence whose needs are not adequately met by criminal justice processes.

* **Opportunities should be explored to improve rights to housing and an adequate standard of living.**

Queensland is experiencing a housing crisis, with an estimated 150,000 people with unmet housing need across the State.[[12]](#footnote-13) While the Act does include some protections in relation to property,[[13]](#footnote-14) further options to enhance rights to housing and an adequate standard of living should be explored.

* **Measures should be developed to strengthen processes regarding Statements of Compatibility.**

A Statement of Compatibility (‘Statement’) is required to accompany legislation introduced into Parliament.[[14]](#footnote-15) However, Statements have not always been of a consistent standard.

For example:

1. Proposed laws relating to sexual consent were accompanied by a Statement that did not include sufficient regard to the relevant human rights of sexual assault victims.[[15]](#footnote-16)
2. Recently the Queensland Community Safety Bill 2024 (Qld) sought to amend the principle of detention as a last resort in the *Youth Justice Act 1992* (Qld). The Statement said the amendment did not engage human rights.[[16]](#footnote-17) As such, the Statement did not include a human rights analysis on that proposed change. This is despite the amendments affecting critical human rights of vulnerable children.

* **The definition of ‘Public Entity’ should be reviewed.**

There is ambiguity in relation to whether some organisations, especially non-government service providers, are Public Entities, as defined by the Act.[[17]](#footnote-18) Public Entities include “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)”[[18]](#footnote-19) (referred to as “Functional Public Entities”). While the Act provides guidance in determining whether an organisation is a Functional Public Entity, further clarification is needed to address confusion for complainants and for organisations.

Current exceptions to the definition of Public Entities should also be carefully considered. For example, whether organisations performing certain functions of a public nature should be subject to the Act regardless of whether the organisation is performing those functions for the State Government or not. This has become pertinent in contexts such as private schools, private hospitals, and supported accommodation providers.

**Delete this guidance:** You may like to include your perspective on how the definition of “Public Entity” should be clarified and refined.

* **The Government must commit to further investment to support deeper implementation of the Act.**

Commitments to human rights in Queensland must be backed by additional investment. Community Legal Centres and other advocacy organisations are essential in assisting communities and individuals to understand and advocate for their human rights. The advocacy and community legal sector should be funded sustainably to fulfil this important role.

Additional funding should also be targeted towards implementation of the Act, supporting greater adoption of human rights obligations among public entities, capacity building, and education activities. Increased funding should also support important mechanisms and processes which take place under the Act, including conciliation and complaint functions, and other vital activities undertaken by the QHRC.

Queensland’s Human Rights Act has created positive change in Queensland, as we continue to develop a human rights respecting culture. Now is the time to ensure the Act is strengthened and supported to provide greater access to justice and to promote equality, opportunity and wellbeing for all Queenslanders.

Thank you for the opportunity to provide a submission to the Review.

Yours sincerely,

[***OPTIONAL\**:** Author’s name]

[***OPTIONAL\**:** Organisation / group name]

[***OPTIONAL\****: Contact details]

*\* You do not need to include your name and details if you do not want to. Please refer to the Review website (*[*linked here*](https://www.humanrightsreview.qld.gov.au/have-your-say)*) for further information about making an anonymous submission.*

1. State of Queensland. (2024). *Putting Queensland Kids first, Giving our kids the opportunity of a lifetime*. Department of Premier and Cabinet, p 17.

   <https://www.qld.gov.au/__data/assets/pdf_file/0030/486039/putting-qld-kids-first.pdf> [↑](#footnote-ref-2)
2. Women’s Safety and Justice Taskforce. *Terms of Reference*.

   <https://www.justice.qld.gov.au/__data/assets/pdf_file/0010/672706/womens-safety-justice-taskforce-tor.pdf> [↑](#footnote-ref-3)
3. Queensland Advocacy for Inclusion and Queenslanders with Disability Network. *Fact Sheet: inquiry into Supported Accommodation in Queensland*. <https://documents.parliament.qld.gov.au/com/CSSC-0A12/IPRSAQ-00AB/Information%20for%20Residents%20prepared%20by%20Queensland%20Advocacy%20for%20Inclusion%20(QAI)%20and%20Queenslanders%20with%20Disability%20Network%20(QDN).pdf#page=1> [↑](#footnote-ref-4)
4. Public Trustee. *Our Structured Decision-Making Framework*.

   <https://pt.qld.gov.au/other-services/structured-decision-making-framework/> [↑](#footnote-ref-5)
5. Queensland Human Rights Commission. (2024). *Strengthening the Human Rights Act: key issues paper*, p 5.

   <https://www.qhrc.qld.gov.au/__data/assets/pdf_file/0010/48961/Stengthening-the-Human-Rights-Act-key-issues-paper.pdf> [↑](#footnote-ref-6)
6. Commonwealth of Australia. (2024). *Inquiry into Australia’s Human Rights Framework*. Parliamentary Joint Committee on Human Rights.

   <https://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/RB000210/toc_pdf/InquiryintoAustralia'sHumanRightsFramework.pdf> [↑](#footnote-ref-7)
7. Human Rights Act 2019 (Qld) ss 64, 65. [↑](#footnote-ref-8)
8. Similar to the pathway for complaints and availability of damages under the *Anti-Discrimination Act 1991* (Qld). [↑](#footnote-ref-9)
9. Queensland Human Rights Commission. (2024). *Strengthening the Human Rights Act: key issues paper*, p 5-7.

   <https://www.qhrc.qld.gov.au/__data/assets/pdf_file/0010/48961/Stengthening-the-Human-Rights-Act-key-issues-paper.pdf> [↑](#footnote-ref-10)
10. Australian Human Rights Commission. (2023). *Revitalising Australia’s Commitment to Human Rights: Free and Equal Final Report 2023*, p 187-188.

    <https://humanrights.gov.au/sites/default/files/2311_freeequal_finalreport_1_1.pdf> [↑](#footnote-ref-11)
11. See, for example, *Human Rights Act 2019* (Qld) ss 29, 31, 32, 33, 35. [↑](#footnote-ref-12)
12. Pawson H, Clarke A, van den Nouwelant R, Petersen H, Moore J, Sigler T. (2024). *Breaking Ground, progress update and assessment of Queensland’s housing crisis*, p 81.

    <https://www.qcoss.org.au/wp-content/uploads/2024/06/Report_Breaking-Ground_Progress-update-of-Queensland-Housing-Crisis_web.pdf> [↑](#footnote-ref-13)
13. *Human Rights Act 2019* (Qld) ss 24, 25. [↑](#footnote-ref-14)
14. *Human Rights Act 2019* (Qld) s 38. [↑](#footnote-ref-15)
15. State of Queensland. (2020). Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Bill 2020 Statement of Compatibility.

    <https://documents.parliament.qld.gov.au/tp/2020/5720T247.pdf> [↑](#footnote-ref-16)
16. State of Queensland. (2024). Queensland Community Safety Bill 2024 Statement of Compatibility. Mark Ryan MP, Minister for Police and Community Safety.

    <https://documents.parliament.qld.gov.au/bills/2024/3202/5724T724-dfd9.pdf> [↑](#footnote-ref-17)
17. *Human Rights Act 2019* (Qld) s 9. [↑](#footnote-ref-18)
18. *Human Rights Act 2019* (Qld) s 9(1)(h). [↑](#footnote-ref-19)