

5 July 2024

Independent Review Team
Queensland Human Rights Act Review

By email: admin@humanrightsreview.qld.gov.au

Dear Colleagues

Independent Review of the Human Rights Act ('the Review')

Thank you for the opportunity to provide feedback in relation to the above.

About QCOSS

Queensland Council of Social Service (QCOSS) is Queensland's peak body for the social service sector. Our vision is to achieve equality, opportunity, and wellbeing for all Queenslanders.

QCOSS was part of a large coalition, which worked together to advocate for a Human Rights Act to be introduced in Queensland. We welcomed the Queensland Government's introduction of the *Human Rights Act 2019 (Qld)* ('the Act') and have remained actively involved in its implementation.

We regularly seek feedback from our members for their perspectives regarding implementation of the Act. We deliver capacity building materials and activities across Queensland to the community service sector as they seek to embed human rights into their operations. We engage actively in systemic advocacy informed by our members and driven by the fundamental need to respect, protect and fulfil human rights.

In relation to the Review, QCOSS has aimed to understand and draw upon the perspectives of our sector to inform our submission while also working to support and empower the sector in their own engagement with the review.

Our webinar, *Engaging with the Human Rights Act Review* attracted nearly 400 registrations from community sector professionals, and other interested stakeholders. The recording of this webinar has since received nearly 130 views.

QCOSS' position

QCOSS and our members strongly support Queensland having a Human Rights Act. Overwhelming feedback from our sector supports the proposition that the Act is helping to deliver positive outcomes for communities, clients and service users. There is also very strong support for the Act to be strengthened.

The value of the Act is particularly pronounced for our community service sector members who work with some of Queensland's most disadvantaged communities and vulnerable individuals. Many of our members see the powerful results of having a Human Rights Act firsthand. They see the positive impacts of policies that are informed and shaped by human rights. They can help their clients access additional avenues for raising and resolving concerns. They can advocate for decisions to deliver better outcomes for their service users. They can embed human rights



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frameworks into their own areas of practice. They attest to the outcomes of investment that has been driven by commitments to foster a more equal society.

Our members are also intimately familiar with the gaps in our systems and safety nets. We have received consistent feedback that the Act needs to be strengthened. Many of our members can see clear opportunities in this respect which have the potential to change lives and re-define systems.

Our submission makes the following recommendations based on themes that have emerged throughout our engagement with community service organisations:

1. Complaint resolution mechanisms must be improved and expanded
2. The current operation of the override provision must be addressed
3. Measures should be developed to strengthen Statement of Compatibility processes
4. The definition of “Public Entity” should be reviewed
5. The Act should be improved to support participation rights
6. Further opportunities to support the right of First Nations Peoples to self-determination should be explored
7. The Act should be improved to better support victim survivors of gendered violence
8. Opportunities should be explored to improve rights to housing and an adequate standard of living
9. Further opportunities to support the rights of children should be explored
10. The Government must commit to further investment to support deeper implementation of the Act.

Positive impacts of the Human Rights Act and a developing human rights culture

A key object of the Act is to build a culture that respects and promotes human rights. QCOSS has seen firsthand how 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
- The development and implementation of *Making Tracks Together, Queensland’s Aboriginal and Torres Strait Islander Health Equity Framework*, which is underpinned by strong themes of co-design, co-implementation and the rights of Aboriginal and Torres Strait Islander Peoples to self-determination.
- 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
- Parliamentary Inquiries that adopted human rights-based consultation practices such as the *Inquiry into the Provision and Regulation of Supported Accommodation*.³

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

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

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](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)

- 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
- Access to complaint and conciliation processes under the Act, which has also resulted in broader systemic change.⁵

The Act has also created a helpful lens for organisations engaged in systemic advocacy. In our own advocacy, QCOSS regularly draws upon the Act and broader human rights principles in calling for a fair and just approach to law and policy. We regularly see our community service members harness a human rights lens in their own systemic advocacy.

Our members have shared reflections that the Act has opened conversations about rights respecting practices in a range of settings. Insights have indicated a growing human rights culture, where Public Entities are becoming more receptive to these conversations, and that the maturity in understanding obligations under the Act continues to develop.

In 2021 QCOSS partnered with the Department of Communities, Housing and Digital Economy (DCHDE) and the housing and homelessness sector to build understanding of the Act, increase confidence to work compatibly with the Act, and support the sector to use the Act for person-centred service delivery.⁶ The *Human Rights, Housing and Homelessness* project included the development of a series of case studies exploring how the Act assisted with good decision making for housing and homelessness services.

Case studies described circumstances where Queensland's human rights decision-making framework:⁷

- assisted a crisis housing provider to determine who was most in need when they allocated a crisis accommodation property
- assisted a housing provider to determine whether to issue a Notice to Leave to a tenant due to rent arrears, and whether to defer a rental debt, where the tenant had incurred a number of expenses travelling to regional Queensland several times for Sorry Business, and where those expenses had impacted their ability to pay rent
- assisted a crisis accommodation provider to decide whether to continue providing support to a tenant who had been breached for rental arrears, property damage, and neighbour complaints, where current support was not achieving the right outcomes, and where the tenant had been experiencing domestic violence
- assisted a housing provider to decide whether to enforce a Notice to Leave directive to a tenant, after discovering the tenant was experiencing serious domestic violence for which the tenant was not receiving support, and where there were signs of possible mental ill health
- assisted a housing provider to balance the progress of their growth strategy, with the disruption and impact experienced by tenants. The growth strategy would involve the divestment of older housing stock and acquisition of newer, fit-for-purpose homes to accommodate new and existing tenants
- assisted a housing service provider to determine whether to transfer an existing tenant to another property to support another individual to access urgent surgery preventing permanent vision loss, where the individual would require a suitable property in order to receive important post-operative care.

⁴ Public Trustee. *Our Structured Decision-Making Framework*.

<https://pt.qld.gov.au/other-services/structured-decision-making-framework/>

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

⁶ Queensland Council of Social Service. (2021). *Human Rights, Housing and Homelessness*.

<https://www.qcoss.org.au/project/human-rights-housing-and-homelessness/>

⁷ Queensland Council of Social Service. (2021). *Human Rights Case Study Library*.

<https://communitydoor.org.au/services/human-rights/human-rights-case-study-library>

These situations each required engagement with complex and nuanced needs, rights, obligations, and interests. By using the decision-making framework provided by the Act, decision makers were able to determine how best to deliver positive rights respecting decisions and feel confident in that process.

Through discussions with our members, we have received feedback on “stand-out” features of the Act. One member operating in the community controlled health sector has highlighted the immense significance of the right to access health services without discrimination. We have heard about the importance of mechanisms to address complaints through less formal conciliation processes with the Queensland Human Rights Commission (‘the QHRC’). We also received feedback on the timely benefits of having a Human Rights Act to guide policy and decision-making throughout the COVID-19 pandemic.

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.⁸

Complaint resolution mechanisms must be improved and expanded

Human rights instruments must be comprehensively supported by avenues to achieve efficient, effective and fair outcomes.

We support the QHRC who have outlined a number of opportunities to improve and strengthen complaint processes.⁹ This includes aligning the Act with recommendations to reform similar complaints processes under the *Anti-Discrimination Act 1991* (Qld) (‘the AD Act’), such as extending complaint timeframes. Additionally, their recommendations include promoting early resolution while reducing red tape and protecting people making complaints from victimisation. The QHRC also recommended a need to improve access to court for human rights breaches.

Our social service members agree with the need to improve initial complaint processes and to particularly improve access to remedies and the Court and Tribunal system. Currently a person with a human rights concern can make a complaint directly to the Public Entity involved and then to the QHRC.¹⁰ If the complaints process does not resolve the issue, a person cannot easily pursue the issue in court and compensation is not available. QCOSS members have emphasised that current limitations in this respect should be addressed.

Ensuring a person can pursue their complaint in the Queensland Civil and Administrative Tribunal (‘QCAT’) and making compensation and other remedies available will improve protections of human rights in Queensland and will also further encourage a culture of human rights within the Queensland public sector (a key objective of the Act).¹¹

Our members have explained that the limited enforceability of the Act has been challenging, where avenues for recourse are limited and where Public Entities are not always taking their obligations and responsibilities seriously. Many have raised that the ability to take a complaint to QCAT would result in better accountability. This could be based on the model under the AD Act where a complaint that cannot be satisfactorily conciliated in the QHRC can progress to QCAT. A direct avenue to QCAT would provide a significant incentive for Public Entities to be more engaged with the role of human rights in their operations and to resolve complaints earlier on in the process. Important questions could also be considered and tested in a more public forum. One of our members in the community legal sector explained that when human rights concerns are examined

⁸ 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

⁹ Queensland Human Rights Commission. (2024). *Strengthening the Human Rights Act: key issues paper*, pp 4-7. https://www.qhrc.qld.gov.au/_data/assets/pdf_file/0010/48961/Stengthening-the-Human-Rights-Act-key-issues-paper.pdf

¹⁰ Human Rights Act 2019 (Qld) ss 64, 65.

¹¹ Similar to the pathway for complaints and availability of damages under the *Anti-Discrimination Act 1991* (Qld).

in the Court system, those decisions can become enormously influential in shaping changes to systems, policies and practices.

QCOSS has also received feedback that there should be mechanisms for a third party to make a complaint about a human rights breach on behalf of someone else. For example, to enable an organisation or an individual to make a complaint about the treatment of young people in watchhouses.

QCOSS has also received feedback highlighting scenarios where organisations other than the QHRC may have a role to play in resolving complaints. For example, the Government has committed to establishing an independent Aboriginal and Torres Strait Islander Children's Commissioner. The views of First Nations Peoples and First Nations organisations on how this role could interact with complaint handling functions under the Act are very important.

The current operation of the override provision must be addressed

On two occasions the Act has been overridden in Queensland by engaging the 'Override Provision' in Section 43 of the Act. The *Strengthening Community Safety Act 2023* (Qld) ('the Strengthening Community Safety Act') included, among other tough-on-crime laws, provisions to make breach of bail an offence for children, create serious repeat offender declarations, and reduce Court discretion in relation to children who breach a conditional release order.¹² The *Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Act 2023* (Qld) ('the Child Protection Amendment Act') included provisions to maintain the ability to hold children in adult watch houses.¹³ These laws apply to children as young as ten years old.

Through extensive engagement with our members, we have received almost universal feedback that the current operation of the provision is unacceptable. Our members have highlighted a number of flaws with the override process, including that:

- The mechanism to override the Act was only meant to apply in exceptional circumstances. Examples of 'exceptional circumstances' provided in the Act are "war, a state of emergency, an exceptional crisis situation constituting a threat to public safety, health or order."¹⁴ The statements of exceptional circumstances tabled in Parliament outlined concerns relating to serious repeat offenders in the youth justice system,¹⁵ and the demand for youth detention beds.¹⁶ Our members feel strongly that these concerns do not justify the use of the Override Provision to effectively strip vulnerable children of their human rights at a time when they should be forefront in the minds of decision-makers. This undermines the fundamental purpose of the Act to respect and promote human rights.
- Independent oversight of the Override Provision is limited.
 - The Strengthening Community Safety Act was introduced as a Bill on 21st February 2023 and was considered by the Economics and Governance Committee. Submissions to the Committee were due on the 24th of February. The Committee tabled their report on the Bill on 10th March 2023. The timeframes to review and comment on an Act were wholly inappropriate.

¹² *Strengthening Community Safety Act 2023* (Qld);

¹³ *Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Act 2023* (Qld)

¹⁴ *Human Rights Act 2019* (Qld) s 43.

¹⁵ The Hon Mark Ryan MP, Minister for Police and Corrective Services and Minister for Fire and Emergency Services. (2023). *Strengthening Community Safety Bill 2023, Statement about exceptional circumstances*. <https://documents.parliament.qld.gov.au/bills/2023/3130/Strengthening-Community-Safety-Bill-2023---Statement-about-Exceptional-Circumstances-0927.pdf>

¹⁶ The Hon Mark Ryan MP, Minister for Police and Corrective Services and Minister for Fire and Emergency Services. (2023). *Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Bill 2022, Statement about Exceptional Circumstances for amendments to be moved during consideration in detail by the Honourable Mark Ryan MP, Minister for Police and Corrective Services and Minister for Fire and Emergency Services*. <https://documents.parliament.qld.gov.au/tp/2023/5723T1198-22EA.pdf>

- Provisions engaging the override mechanism in the Child Protection Amendment Act were moved during consideration in detail. Those provisions were not subject to scrutiny from usual committee processes, and there was no opportunity for the public to provide submissions on those changes.
- Our members have raised a need for additional oversight mechanisms, and a need for clear avenues to challenge and appeal the use of the Override Provision.
- A provision which overrides the Act expires after five years.¹⁷ While some of the provisions introduced expire even earlier than this, the government has shared very little detail on their plans to wind back any of these damaging measures.

Queensland currently incarcerates more children and young people than any other State or Territory in Australia. On an average night there are 305.8 children and young people incarcerated in Queensland.¹⁸ Of the children incarcerated on an average night, nearly 70 per cent identify as First Nations children.¹⁹ The rights of vulnerable children with complex needs have been continually disregarded, and there is a clear disproportionate impact on Aboriginal and Torres Strait Islander Peoples.

In response to the Inquiry considering the Strengthening Community Safety Act, which included provisions which overrode the Act and also introduced a raft of other changes:

- The Aboriginal and Torres Strait Islander Legal Service noted, “we feel compelled to comment that given the significance of certain of the proposed changes, that we are disappointed by the short timeframe which has been provided for consultation. As the Queensland government would be well aware, the proposed measures will disproportionately affect Aboriginal and Torres Strait Islander children who are already grossly overrepresented in the criminal justice system. Such is particularly disheartening in a context of Closing the Gap and Treaty, and where Queensland's youth detention centres are already bursting at the seams such that children are being held in unlawful conditions in adult watch houses for weeks at a time in breach of their human rights.”²⁰
- The Queensland Aboriginal and Torres Strait Islander Child Protection Peak commented “it is incomprehensible to us that the Queensland Government is introducing reforms which are, in its own words “inconsistent with international standards about the best interests of the child.”**[footnote omitted]**”²¹
- The Institute of Urban Indigenous Health noted “the Statement of Compatibility that accompanies the Bill acknowledges that these reforms will have a greater impact on Aboriginal and Torres Strait Islander people and lead to more Aboriginal and Torres Strait Islander people being incarcerated for longer periods of time. IUIH is very concerned about the long-term impact of these reforms on the overall health and wellbeing of Aboriginal and Torres Strait Islander children, families and communities.”²²

These are just a select number of comments from frontline community service organisations who held considerable concerns about the rights and welfare of children in connection with the Strengthening Community Safety Act. The use of the Override Provision enabled the Queensland Government to disregard the impacts of these laws on the rights of children in Queensland. The Act

¹⁷ Human Rights Act 2019 (Qld) s 45.

¹⁸ Australian Institute of Health and Welfare. (2023). *Youth detention population in Australia 2023: Table S1 – Table 15*.
<https://www.aihw.gov.au/reports/youth-justice/youth-detention-population-in-australia-2023/data>

¹⁹ Ibid.

²⁰ Aboriginal and Torres Strait Islander Legal Service (Qld). (2023). *Submission no. 67 to the Strengthening Community Safety Bill 2023*.

²¹ Queensland Aboriginal and Torres Strait Islander Child Protection Peak. (2023). *Submission no. 59 to the Strengthening Community Safety Bill 2023*.

²² Institute of Urban Indigenous Health. (2023). *Submission no. 66 to the Strengthening Community Safety Bill 2023*.
<https://documents.parliament.qld.gov.au/com/EGC-A022/YJDRAFTTIT-9F73/submissions/00000066.pdf>

should be amended to remove the Override Provision or to ensure that it can only be used in genuinely exceptional circumstances with sufficient oversight, noting there are some rights that should never be overridden.

Measures should be developed to strengthen Statement of Compatibility processes

A Statement of Compatibility ('Statement') is required to accompany legislation introduced into Parliament.²³ As understanding of the Act continues to grow, there are Statements that have approached changes to law and policy with nuance and great care. However, Statements are not always been of a consistent standard.

For example, 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.²⁴ This reflects a failure to properly reflect on how those laws could further promote the rights of women, resulting in an imbalanced human rights analysis.

There are examples where limits to human rights have been justified despite considerable concerns and available alternatives. For example, the Strengthening Community Safety Act expanded a trial of electronic monitoring devices for use on children as young as 15 years old.²⁵ The Statement thoughtfully explored a number of factors that could have supported a conclusion that expansion of the trial was not a rights respecting (nor effective) decision. Regardless, the Statement concluded that expanding the trial was compatible with the Act due to the importance of reducing recidivism.

It is important to ensure that Statements do not merely reflect a culture of justification on limits to human rights. In response to the Strengthening Community Safety Bill, YFS Legal noted:

"At a time when the Queensland Government is making significant progress towards a historic Treaty and taking steps to right historic wrongs with the Aboriginal and Torres Strait Islander peoples of Queensland, we are again faced with a government justifying discriminatory legislation which will have a significant impact on our Aboriginal and Torres Strait Islander peoples, and further contribute to the overrepresentation of Aboriginal and Torres Strait Islander people in the criminal justice system."²⁶

More recently the Queensland Community Safety Bill 2024 (Qld) ('the QCS Bill') sought to amend the principle of detention as a last resort in the *Youth Justice Act 1992* (Qld). The Statement outlined that the amendment did not engage human rights, as the amendment would only operate to clarify the existing provision.²⁷ As such, the Statement did not include any human rights analysis on that proposed amendment. This is despite the amendment engaging a number of protected human rights contained in the Act. We do not agree with the Government's view that no human rights were engaged. The principle of detention as a last resort provides important human rights protections. Any amendments to this principle therefore has the potential to engage and impact human rights. These impacts should have been included in the Statement accompanying the QCS Bill. A central purpose of the Act is to ensure that where the Government seeks to limit human rights, it does so transparently and with proper justification.

At the time of writing, the Community Safety and Legal Affairs Committee had not yet tabled their report on the QCS Bill, and it had not yet been further considered by Parliament.

²³ *Human Rights Act 2019* (Qld) s 38.

²⁴ 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>

²⁵ The Hon Mark Ryan MP, Minister for Police and Corrective Services and Minister for Fire and Emergency Services. *Strengthening Community Safety Bill 2023 Statement of Compatibility*, pp 11-17.
<https://documents.parliament.qld.gov.au/bills/2023/3130/Strengthening-Community-Safety-Bill-2023---Statement-of-Compatibility-249b.pdf>

²⁶ YFS Legal. (2023). *Submission no. 71 to the Strengthening Community Safety Bill 2023*.

<https://documents.parliament.qld.gov.au/com/EGC-A022/YJDRAFTTIT-9F73/submissions/00000071.pdf>

²⁷ State of Queensland. (2024). Queensland Community Safety Bill 2024 Statement of Compatibility. Mark Ryan MP, Minister for Police and Community Safety, p 12.
<https://documents.parliament.qld.gov.au/bills/2024/3202/5724T724-dfd9.pdf>

Robust systems, processes and requirements must be developed to support the production and operation of Statements. Feedback from one of our members recommends that there needs to be a basis for appealing or challenging the conclusions in statements of compatibility, and also raises whether there should be a mechanism to compel the Government to produce the legal advice upon which those conclusions were based.

The definition of “Public Entity” should be reviewed

QCOSS has received feedback that the definition of “Public Entity” under the Act should be reviewed to drive greater clarity and consider appropriate scope.

Members of QCOSS include organisations who help to advocate for their clients and service users. Our membership also includes organisations who would be considered as Functional Public Entities.

There is ambiguity on whether some organisations, especially non-government service providers, are Public Entities, as defined by the Act.²⁸ 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)”²⁹ (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 and complainants for organisations.

Member feedback has highlighted difficulties in resolving human rights concerns with organisations who do not believe they have responsibilities and obligations under the Act. They have also shared experiences of difficulties in helping their clients to bring a complaint where it is unclear whether an organisation meets the definition of “Public Entity”. Our capacity building activities such as human rights webinars and workshops attract high levels of interest from community service providers. However, even among these engaged professionals, it is clear that there are many in our sector who have not yet had the opportunity to fully understand the implications of the Act for their own decisions and actions.

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. Our members have raised a need to consider this issue in a number of contexts including:

- private schools, where private school students have not been able to benefit from the protections and processes under the Act in the same way as their public school peers
- private hospitals and aged care, where significant decisions are made impacting on a person’s rights, such as their freedom of movement, right to life and rights to access to health services
- supported accommodation providers, who are providing an essential service to vulnerable people, but who may operate privately.

We acknowledge that there may be mixed views among our sector on the approach to defining who may be a Functional Public Entity. Efforts to further clarify the definition of Public Entity should be undertaken in consultation with non-government organisations.

The Act should be improved to support participation rights

The Australian Human Rights Commission 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.³⁰ The QHRC have explained that “...while arguably already protected under the current framework, explicit

²⁸ *Human Rights Act 2019* (Qld) s 9.

²⁹ *Human Rights Act 2019* (Qld) s 9(1)(h).

³⁰ 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

acknowledgement of a participation duty would provide clarity and standardise requirements for participation at all levels and areas of government.”

In discussing this with our members we received thoughtful feedback that rather than framing participation around duties, consideration should also be given on opportunities to incorporate *rights* to participate. Our members were supportive of ensuring increased participation rights for all people, with a specific focus on the participation rights of children, people with a disability, and Aboriginal and Torres Strait Islander Peoples.

The Act should be strengthened to ensure that people are able to actively participate in decisions or the development of policies that affect them. One of our webinar participants commented that while an entity is required to consider human rights when they make decisions, they may not be obliged to share what those considerations are with the person affected by the decision, noting how challenging this can be for people who are subject to significant decisions.

The development of government policy and laws is strengthened by genuine and active participation from relevant communities and groups of people. For example, core definitions, structures and funding models under the National Disability Insurance Scheme are undergoing review and fundamental transformation.³¹ These changes will require active involvement, investment and co-operation of the Queensland Government, Queensland public sector, and Queensland service providers. The Act should be strengthened to facilitate the active participation of people with a disability and disability advocates to ensure those changes are informed, co-designed and led by people with a disability.

Further opportunities to support the right of First Nations Peoples to self-determination should be explored

Several recommendations within this submission have the potential to further support the right of First Nations Peoples to self-determination, such as increased rights of participation.

QCOSS has received feedback from members operating in the Community Controlled sector on the value of cultural rights, which are already featured in the Act. They also highlight opportunities to expand and strengthen those rights, noting that a deeper realisation of cultural rights is fundamental to the realisation of self-determination. One of our members has particularly suggested a need to incorporate a more explicit understanding of the synergistic and bi-directional relationship between cultural rights in connection with health and wellbeing. They noted that this relationship is well-articulated in the National Aboriginal and Torres Strait Islander Health Plan 2021-2031.³²

The importance of Aboriginal and Torres Strait Islander Peoples’ right to self-determination is currently acknowledged in the preamble to the Act. Recently the Parliamentary Joint Committee on Human Rights provided an analysis on whether the right to self-determination could be incorporated into a proposed national Human Rights Act. They concluded that further advice was needed on this.³³ Our members have emphasised a need to consider this further in relation to Queensland’s Act as well.

Our members have shared that merely acknowledging the importance of the right to self-determination in the preamble is not sufficiently strong. Feedback has outlined that there are numerous examples where progress towards self-determination has been positive. For example, through the continued development of delegated authority, or through the development of the *Making Tracks Together, Queensland’s Aboriginal and Torres Strait Islander Health Equity*

³¹ Parliament of Australia. (2024). Inquiry into the National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No.1) Bill 2024 [Provisions].

https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/NDISAmendment2024

³² Australian Government. (2021). *National Aboriginal and Torres Strait Islander Health Plan 2021-2031*.

<https://www.health.gov.au/sites/default/files/documents/2022/06/national-aboriginal-and-torres-strait-islander-health-plan-2021-2031.pdf>

³³ Commonwealth of Australia. (2024). *Inquiry into Australia’s Human Rights Framework*. Parliamentary Joint Committee on Human Rights, pp 302, 311-12.

https://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/RB000210/toc_pdf/InquiryintoAustralia'sHumanRightsFramework.pdf.

Framework. However, feedback has also outlined that commitments to self-determination have not been reflected in a sufficiently consistent way in other settings.

Feedback has included that a more explicit right to self-determination could lead to better implementation across the whole of government. This is particularly important in the pursuit of Queensland's commitments under the *National Agreement on Closing the Gap*. QCOSS has also received feedback on the need to see stronger implementation in the context of procurement policy, where Government procurement should play a major role in ensuring that services and initiatives to meet the needs of First Nations communities are led and delivered by First Nations Peoples. QCOSS notes that the Independent Review Team intends to engage widely with First Nations communities. We strongly encourage these efforts to engage with Aboriginal and Torres Strait Islander Peoples and First Nations organisations and communities on how to further support rights to self-determination under the Act, and how the Act can be strengthened in other ways to support Aboriginal and Torres Strait Islander Peoples.

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

Gendered violence, including Domestic, Family and Sexual Violence ('DFSV') continues to impact the lives of many in our community, particularly women and children. Offences for breach of a domestic violence (protection) order in Queensland increased by 24.8 per cent in the 2022-23 financial year, compared to the previous financial year.³⁴ Of the reported 3,306 sexual offenders in 2022-23, 95.6 per cent were identified as male.³⁵ Reporting of gendered violence to police also remains far lower than actual rates of occurrence. In 2021-22, nationally only 31.4 per cent of women reported feeling safe walking alone in their local area after dark, compared to 64.7 per cent of men.³⁶ We also know that large numbers of children interacting with the youth justice system have experienced domestic and family violence.³⁷

On 13 April 2024 the Queensland Government announced QCOSS as the state's new peak body for the Domestic and Family Violence sector. Domestic and family violence services are currently experiencing levels of demand that grossly outstrips the resourced capacity they have to provide services.

The Queensland Government has demonstrated commitments to improving prevention, response and recovery in relation to DFSV. Recent efforts in this space have included significant momentum in implementing the recommendations of the Women's Safety and Justice Taskforce. This has involved a substantial law reform agenda, and investment.³⁸ QCOSS has welcomed these important steps and looks forward to continuing to work with DFSV services and with government in navigating further opportunities to end gendered violence.

There is an opportunity to strengthen the Act to better support victim-survivors of gendered violence. While the Act includes significant protections for offenders in the criminal justice system,³⁹ it does not go far enough to support the rights of victim-survivors of gendered violence.

In considering how the Act can best be strengthened in this regard, QCOSS encourages the Independent Review Team to connect with other bodies who are considering similar questions. For example, the Queensland Sentencing Advisory Council, who are currently reviewing sentencing for sexual violence offences and domestic violence offences.

³⁴ State of Queensland. (2023). *Gender Equality Report Cards 2023, Queensland Women's Strategy 2022-27*. https://www.women.qld.gov.au/_data/assets/pdf_file/0019/224092/gender-equality-report-card-2023.pdf

³⁵ State of Queensland. (2023). *Gender Equality Report Cards 2023, Queensland Women's Strategy 2022-27*. https://www.women.qld.gov.au/_data/assets/pdf_file/0019/224092/gender-equality-report-card-2023.pdf

³⁶ State of Queensland. (2023). *Gender Equality Report Cards 2023, Queensland Women's Strategy 2022-27*. https://www.women.qld.gov.au/_data/assets/pdf_file/0019/224092/gender-equality-report-card-2023.pdf

³⁷ State of Queensland. (2024). *A Safer Queensland, Queensland Youth Justice Strategy 2024-2028*. Department of Youth Justice, p 11. <https://desbt.qld.gov.au/youth-justice/reform/strategy>

³⁸ State of Queensland. (2024). *Women's Budget Statement, Queensland Budget 2024-2025*, pp 27-28. https://budget.qld.gov.au/files/Budget_2024-25_Womens_Budget_Statement.pdf

³⁹ See, for example, *Human Rights Act 2019* (Qld) ss 29, 31, 32, 33, 35.

We highlight the analysis provided by the Queensland Human Rights Commission on how the Act can be strengthened to include better protections for victims of violence. We also highlight calls from the Queensland Sexual Assault Network in relation to how the Act can be strengthened to support victims-survivors of gendered violence, with a particular focus on victim-survivors of sexual violence.

As well as recommending that this Review consider victims' rights and the Charter of Victims' rights, the Women's Safety and Justice Taskforce recommended that the Victims' Commissioner should conduct a review into the operation of the Victims Charter.⁴⁰

QCOSS encourages the Independent Review Team to engage closely with key stakeholders as identified by the Women's Safety and Justice Taskforce as well as the office of the Victims' Commissioner.

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.⁴¹ There are examples where advocates have been able to successfully achieve positive housing outcomes for their clients using the Act.⁴² However, further options to enhance rights to housing and an adequate standard of living should be explored.

The Australian Human Rights Commission and the Parliamentary Joint Committee on Human Rights recently recommended that a national Human Rights Act should include rights to an adequate standard of living, which would include rights to housing.^{43,44}

There are also international examples that demonstrate how a right to housing could be included in the Act, such as:

- The "right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions" in the International Covenant on Economic, Social and Culture Rights (ICESCR). This right encapsulates seven elements that make up housing, being, security of tenure, availability of services, materials, facilities and infrastructure, affordability, habitability, accessibility, location and cultural adequacy.⁴⁵ However, the right to housing is not an entitlement to state-provided or subsidised dwellings; instead, it aims to improve peoples' living conditions in connection with housing;⁴⁶
- The European Social Charter (Revised) (Social Charter) includes an undertaking to take measures designed:
 - i. to promote access to housing of an acceptable standard;

⁴⁰ Women's Safety and Justice Taskforce. (2022). *Hear Her Voice, Report Two, Women and girls' experiences across the criminal justice system*. Recommendations 18-19, (p 14).
https://www.womenstaskforce.qld.gov.au/_data/assets/pdf_file/0008/723842/Hear-her-voice-Report-2-Volume-1.pdf

⁴¹ 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.qcooss.org.au/wp-content/uploads/2024/06/Report_Breaking-Ground_Progress-update-of-Queensland-Housing-Crisis_web.pdf

⁴² Human Rights Act. *Case 4: Expectant mother holds on to her tenancy*.
<https://www.humanrightsact.org.au/101-cases/2022/10/26/case-4-expectant-mother-holds-on-to-her-tenancy-dpntl>

⁴³ Australian Human Rights Commission. (2023). *Revitalising Australia's Commitment to Human Rights: Free and Equal Final Report 2023*, p 180.
https://humanrights.gov.au/sites/default/files/2311_freeequal_finalreport_1_1.pdf

⁴⁴ Commonwealth of Australia. (2024). *Inquiry into Australia's Human Rights Framework, Illustrative Human Rights bill 2024, clause 39*. Parliamentary Joint Committee on Human Rights.
https://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/RB000210/toc_pdf/InquiryintoAustralia'sHumanRightsFramework.pdf

⁴⁵ Committee on Economic, Social and Cultural Rights, General Comment No 4: The Right to Adequate Housing (Art 11(1) of the Covenant), UN Doc E/1992/23 (13 December 1991) at [8].

⁴⁶ Jessie Hohmann, A right to Housing for the Victorian Charter of Human Rights and Responsibilities? *Monash University Law Review* (Vol 48. No 2) p 145.

- ii. to prevent and reduce homelessness with a view to its gradual elimination;
 - iii. to make the price of housing accessible to those without adequate resources.⁴⁷
- Section 26 of the Constitution of the Republic of South Africa Act 1996 (South African Constitution) provides that:
 - i. everyone has the right to have access to adequate housing;
 - ii. the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right;
 - iii. no one may be evicted from their home, or have their home demolished, without an order of court made after considering all relevant circumstances. No legislation may permit arbitrary evictions.⁴⁸
- In Canada, while a right to housing is not included in the *Canadian Charter of Rights and Freedoms*, their *National Housing Strategy Act* recognises housing as a human right and establishes a human rights-based approach to housing.⁴⁹

QCOSS has received feedback that when engaging with Public Entities in relation to housing it can be difficult to successfully raise human rights concerns, despite protections for relevant rights such as the right to privacy. Our members have outlined that rights to housing or an adequate standard of living reflected more explicitly in the Act would create clearer signals and expectations on rights and obligations in these settings. This could result in better rights-respecting outcomes in a range of areas, such as decisions made in relation to government owned tenancies.

Further opportunities to support the rights of children should be explored

The Act should operate to guide Public Entities to engage with and understand the special care and attention required in respecting, protecting and fulfilling the rights of children, which is outlined in the preamble to the convention on the rights of the child.⁵⁰ QCOSS encourages the Independent Review Team to consider whether this principle is sufficiently embedded in the Act.

Recently the Queensland Government released their response to the Parliamentary Youth Justice Reform Select Committee draft interim report. The response included acceptance of a recommendation “that the Queensland Government reform the Youth Justice sector and Act to ensure there are consequences for [actions] and put the rights of victims above the rights of offenders.”⁵¹

The Queensland Government should not seek to put the rights of victims above the rights of children who are in contact with the youth justice system. It is possible to ensure the community feels safe, and that victims are appropriately supported, while also respecting the human rights of children. It is also important to remain mindful that there are significant numbers of children and young people in contact with the youth justice system who have experienced domestic and family violence. These children are victims.

When applying a human rights-based framework, any proposed limitation to human rights must be demonstrably justified as reasonable through the balancing of a range of factors. It is not appropriate to indefinitely establish a de-valuation of the human rights of children in the youth justice context. Agreement to recommendations such as these, along with a raft of recent law reform aimed at implementing tougher youth justice legislation, do not reflect an understanding of how any limits to the rights of children ought to be approached.

⁴⁷ Social Charter, Art 31.

⁴⁸ South African Constitution s 26.

⁴⁹ Van den Berg, R. (2019). *A primer on Housing Rights in Canada*. Parliament of Canada.
https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/201916E

⁵⁰ United Nations Convention on the Rights of the Child, November 20, 1989, *Preamble*.
<https://www.unicef.org.au/united-nations-convention-on-the-rights-of-the-child>

⁵¹ State of Queensland. (2024). *Queensland Government Response to the Interim Report: Inquiry into ongoing reform to the Youth Justice system and support for victims of crime*.
<https://documents.parliament.qld.gov.au/tp/2024/5724T725-B9B9.pdf>

There is also an inconsistency in how human rights is shaping policy, investment and decision-making in relation to children. For example, the *Putting Queensland Kids First* plan includes guiding principles that incorporate human rights considerations. The new Youth Justice Strategy, on the other hand, does not sufficiently refer to the rights of children and does not include details on how the Government's human rights obligations to children will be incorporated in youth justice strategy.⁵² There appears to be an assessment of deserving and undeserving children – where one group of children is entitled to rights protections and the other is not. This is clearly unacceptable in a right-respecting jurisdiction.

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

A major theme that has emerged through all our engagement with social service organisations in connection with the Review has been the need to not only strengthen the Act itself, but to strengthen how it is implemented. Our members have often reflected that while they were pleased Queensland had a human rights instrument to guide decision making and complaint resolution during the COVID-19 pandemic, the initial implementation of the Act was also disrupted in many ways. Our members are, however, hopeful that the implementation of the Act will continue to gain momentum in the coming years.

Many in our sector appreciate that the Act is still relatively new and can see major areas where the potential of the Act has not yet been fully realised, understanding that change takes time. For Queensland's rights respecting culture to mature more fully, commitments to human rights in Queensland must be backed by additional investment in services, resources, structures and capacity building.

Major areas to help strengthen the implementation of the Act identified by our members have included:

- **Further funding for advocacy services:** Community Legal Centres and other advocacy organisations are essential in assisting communities and individuals to understand and advocate for their human rights. The community legal sector should be funded sustainably to fulfil this important role. Other kinds of advocacy organisations are also essential in assisting people to access their human rights.
- **Investment to support Public Entities to embed human rights obligations and responsibilities:** Additional funding should be targeted towards supporting greater adoption and understanding of human rights obligations and functions among Public Entities, including Functional Public Entities, Courts and Tribunals.
- **Embedding an understanding of human rights within educational programs that provide qualifications for entry into key workforces:** Incorporating human rights training within important programs of study will result in more competence within key workforces, such as those working in health and education settings or in the criminal justice system.
- **Investment to support increased education and awareness for the broader community:** Education and awareness activities among the broader community are vital to ensure people understand their rights and can understand how they can adopt human rights respecting ideas and practices within their own lives and interactions.
- **Funding to support detailed guidance in understanding the Act:** Noting the considerable work which has already taken place to assist in building understanding of the Act, there are still clear opportunities to further develop detailed materials in assisting the community, advocates, and Public Entities to engage with the operation, implications and nuances of the Act.
- **Broader investment in services and programs should be demonstrably driven by a human rights lens:** A commitment to human rights should play a greater role in driving and

⁵² State of Queensland. (2024). *A Safer Queensland, Queensland Youth Justice Strategy 2024-2028*. Department of Youth Justice.
<https://desbt.qld.gov.au/youth-justice/reform/strategy>

articulating areas of government investment, informed by comprehensive data and evidence-based policy. For example, increased funding for health and allied health services in recognition of the right to access health services without discrimination,⁵³ increased funding to support children and families in recognition that families are the fundamental group unit of society,⁵⁴ increased funding for the education system, acknowledging the right to education,⁵⁵ increased funding for Courts, Tribunals, legal advocates, and other advocates in recognition of the right to a fair trial.⁵⁶ Applying a human rights lens to government investment can also help to identify areas of spending which are not consistent with commitments to human rights, such as the recent funding allocated to two new youth detention centres.

Conclusion

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 again for the opportunity to provide our submission. If you have any questions, please contact Aimee McVeigh, Chief Executive Officer at aimee@qcross.org.au.

Yours sincerely



Aimee McVeigh
Chief Executive Officer

⁵³ *Human Rights Act 2019* (Qld) s 37.

⁵⁴ *Human Rights Act 2019* (Qld) s 36.

⁵⁵ *Human Rights Act 2019* (Qld) s 26.

⁵⁶ *Human Rights Act 2019* (Qld) s 31.