

5 July 2024

Profession Susan Harris Rimmer  
Independent Review Team  
Human Rights Act Review

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Dear Professor Harris Rimmer

## Submission to the Independent Review of Queensland's Human Rights Act 2019

Basic Rights Queensland welcomes the opportunity to make the following submission on the operation and effectiveness of the *Human Rights Act 2019* ('the Act') since its commencement in 2020.

### About Basic Rights Queensland

Basic Rights Queensland Inc. ('BRQ') is an incorporated non-profit organisation and community legal centre registered with the Australian Charities and Not-for-profits Commission.

BRQ provides free information, advice, advocacy, and legal services in Queensland state-wide. BRQ supports vulnerable, marginalised and disadvantaged people in relation to social security, disability discrimination, and employment law and offers a specialised service for people with mental health conditions.

Working Women Queensland ('WWQ') is part of BRQ. WWQ provides free advice, support and information for vulnerable women in relation to employment related matters, including sexual harassment and discrimination. WWQ employ a team of solicitors, industrial advocates and one social worker who together offer a holistic, interdisciplinary approach. WWQ is the only specialist women's employment service of its kind in Queensland.

In 2022-23 BRQ provided services to more than 3500 Queenslanders most in need.

## Scope of the submission

This submission is informed by our knowledge and experience working with vulnerable clients and is intended to address questions in the Discussion Paper for Legal Advocates relevant to our areas of practice. The protection of human rights is essential to the work of BRQ. Our organisation is in daily contact with those groups most vulnerable to the curtailing of their rights, and those who face the most barriers in understanding or asserting those rights.

BRQ uses the Act to advocate for our clients facing complex legal issues where the Act has direct application, in addition to delivering education to a broad range of Queensland-based stakeholders through our community legal education (CLE) programs. We have drawn from this practice to produce de-identified case studies that highlight the remedial operation of the Act, and offer recommendations where we have identified the Act has not provided sufficient protections.

It is our view that the review presents an important opportunity to ensure the Act continues to reflect the values and aspirations of the Queensland community and improve the extent to which the Act can meet its objectives of protecting and promoting human rights; building a culture that promotes human rights; and promoting a dialogue about the nature, meaning and scope of human rights.<sup>1</sup>

## Response to Discussion Paper for Legal Advocates

### BRQ's use of the *Human Rights Act*

BRQ operates a disability discrimination practice that offers legal assistance to vulnerable clients as well as taking direct referrals from the Queensland Human Rights Commission ('QHRC') for prospective complainants. The WWQ team advises vulnerable women employed by public entities, including functional entities such as NDIS service providers, as well as taking direct referrals from the QHRC.

Our practices provide support to clients from the initial contact and advice session, through to the drafting of complaints, as well as representation within conciliations and on referral to the Queensland Civil and Administrative Tribunal ('QCAT') and Queensland Industrial Relations Commission ('QIRC').

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<sup>1</sup> *Human Rights Act 2019* (Qld) section 3.

During our advocacy and representation within the QHRC and during early dispute resolution processes, we have observed how the Act has in some cases been the only protection that our clients have had under law. As members of marginalised and vulnerable groups, our clients are more likely to be engaged with Queensland State Departments and services that fall within the scope of the Act as Public Entities, including Queensland Health, the Queensland Police Service, the Department of Child Safety and Queensland State Schools.

The following case study demonstrates how we have utilised the Act in early dispute resolution processes to remind public entities of their obligations under this Act, and to reconsider certain actions and decisions.

#### Case study 1: Rights-based discussion for an early resolution.

Anthony\* contacted BRQ through an independent NDIS support worker as he was experiencing difficulties with a specialist disability accommodation provider and a strata management group. The strata management group issued a breach notice and invoice for repair work to Anthony, alleging he had caused minor damage to common property. The width of Anthony's wheelchair made it difficult for him to maneuver in certain areas of the complex.

We drafted a letter to the SDA provider and asked that they take responsibility for the invoice as the provider responsible for providing Anthony with safe and suitable accommodation. We also reminded the provider that as a registered NDIS service provider their acts and decisions fell within the scope of the *Human Rights Act*, and proper consideration of Anthony's rights were necessary to any decision to pass on the invoice to him. The service provider agreed to cover the invoice and to work with Anthony in ensuring future damage would not occur.

Where early attempts to engage the public entity in rights-based discussions have not been successful, BRQ has supported clients in making the initial complaint to the public entity about the alleged contravention, and in drafting complaints to the QHRC alleging contraventions of the Act and the *Anti-Discrimination Act 1991 (Qld)*.

Our clients report mixed experiences in engaging with the initial complaint process. Many have reservations about the efficacy of a complaint to the public entity and the ability for their complaint to promote change or support the resolution of an ongoing human rights issue. By the time clients contact our organisation, they have typically made several complaints against the public entity about similar issues without effect.

In circumstances where a public entity has provided a considered response to a human rights complaint, it has helped us communicate to our client the reasons for any adverse decision made by the public entity, and in drafting a complaint that may follow to the QHRC. However, this is uncommon, which may speak to an inconsistent approach to a culture of human rights in the Queensland public sector.

Further, the Act has provided our clients with accessible language to express their experiences of the conduct of the public entity, without the need for complicated legal arguments that typically burden discrimination complaints.

### Case study 2: Human rights complaints and conciliations

Patricia\* is a NDIS participant who resided in specialist disability accommodation (SDA) owned by a Government Department and managed by a NDIS-registered service provider. The NDIS service provider also provided supported independent living services to the client under a service agreement. Both public entities made decisions purporting to end her tenancy in the SDA property when the NDIS service provider sought to end the service agreement. Detailed human rights complaints were made to each entity, citing limitations to her rights to recognition and equality before the law (section 15) and privacy and reputation (section 25). Both entities responded promptly to the complaint but argued that there was no infringement of Patricia's human rights, and even if there was, it was justified.

A complaint was made to the QHRC about unlawful discrimination and breach of human rights. While highly legalistic arguments about discrimination can result in clients disengaging during the conciliation process, the Act gave Patricia some accessible language to express how unfair the treatment had been and the impact on her. The matter was resolved at conciliation and Patricia continues to reside at the property.

We have observed how human rights arguments have impacted the decision-making of public entities through conciliation processes. However, outside of remedies such as changes to policy and training for staff, the impact may not be evident to observers where parties are subject to confidentiality clauses within settlement agreements.

### Challenges in bringing human rights complaints

For clients who have not identified some connection between a human rights issue and disability discrimination or employment law matter, our organisation is not funded to provide support to that client with a stand-alone human rights complaint. Without access to

representation, we know that complainants face a power imbalance through the complaint and conciliation processes, creating a barrier to the effective resolution of their human rights issue. It is our experience that public entities are always legally represented.

We support the comments within the QHRC issues paper that '*adequate, ongoing, and stable funding to the community legal sector could address these concerns by maximising the benefits of the internal complaint process, addressing power imbalances that arise when an individual is unrepresented, and increasing the chance of a positive outcome from individual complaints*'.<sup>2</sup>

We further draw on the statistics from the QHRC 2022-23 annual report on the operation of the Act which highlight the lack of legal representation for stand-alone human rights complaints. Only 8 stand-alone complaints involved representation, with 60 complaints proceeding on a self-represented basis,<sup>3</sup> and those stand-alone human rights complaints were less likely to be resolved.<sup>4</sup>

As explored in this submission, limited engagement by public entities with the Act, the inability to pursue a stand-alone cause of action for a human rights contravention and financial compensation being unachievable without 'piggybacking' a complaint, all contribute to challenges in bringing complaints and seeking remedies for contraventions of the Act.

**Recommendation 1:** BRQ recommends increased funding for community legal centres, including BRQ, to provide specialist legal assistance.

## Complaints and dispute resolution at the QHRC

The Act's complaint mechanism enables complaints of an alleged human rights contravention to be made to the QHRC.<sup>5</sup> This has been a beneficial point of difference with the two other human rights jurisdictions of Victoria and the Australian Capital Territory ('ACT'). Notably, the

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<sup>2</sup> Queensland Human Rights Commission, *Strengthening the Human Rights Act: Key Issues Paper*, June 2024, pg. 6 (hereafter 'Issues Paper').

<[https://www.qhrc.qld.gov.au/\\_data/assets/pdf\\_file/0010/48961/Stengthening-the-Human-Rights-Act-key-issues-paper.pdf](https://www.qhrc.qld.gov.au/_data/assets/pdf_file/0010/48961/Stengthening-the-Human-Rights-Act-key-issues-paper.pdf)>.

<sup>3</sup> Queensland Human Rights Commission, *2022-2023 Annual report on the operation of the Human Rights Act 2019*, pg. 138.

<[https://www.qhrc.qld.gov.au/\\_data/assets/pdf\\_file/0009/46089/QHRC\\_ProgressAndPitfalls\\_HumanRightsActAnnualReport2022-23.pdf](https://www.qhrc.qld.gov.au/_data/assets/pdf_file/0009/46089/QHRC_ProgressAndPitfalls_HumanRightsActAnnualReport2022-23.pdf)>.

<sup>4</sup> Issues Paper, pg. 5.

<sup>5</sup> *Human Rights Act 2019* (Qld) section 64(1).

ACT has since introduced the *Human Rights (Complaints) Legislation Amendment Bill 2023 (ACT)* which provides a complaint pathway to the ACT Human Rights Commission from 11 June 2024.

An individual is first required to make a complaint to the public entity, which has 45 business days to respond to the complaint, to be eligible to make a complaint to the QHRC.<sup>6</sup> In our experience, this lengthy response period has served as a deterrent to clients in following through with a human rights complaint, particularly where they are experiencing other forms of disadvantage. The lack of resolution during this period impacts the psychological and physical health of our clients and is further compounded by the waiting time of up to six months from lodgement of the complaint at the QHRC to conciliation.

We note that the QHRC have the discretion to accept a complaint prior to the 45 business days having lapsed, however the language used within the Act limits this discretion to circumstances where the QHRC considers it appropriate because of 'exceptional circumstances'.<sup>7</sup> Whilst our clients' experiences relying on this section have been positive, further guidance as to those circumstances that meet the requirements of 'exceptional circumstances' would be useful when advising complainants seeking to make a more urgent complaint.

We further support increasing the time limit to commence a complaint under the Act to two years. As identified within the QHRC's Building Belonging Report, the extension of this time limit will give complainants more opportunity to obtain advice and representation, will decrease the stress and mental burden in bringing the complaint and allow the complainant to remove themselves from the setting in which the contravention occurred (for example, changing SDA providers or employers).<sup>8</sup>

Our clients often highlight barriers they have faced in bringing their complaints within the current 1-year time limit, including:

- Living with a physical or psychological injury or disability.
- Not being aware of their legal rights and options.

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<sup>6</sup> *Human Rights Act 2019 (Qld)* section 65.

<sup>7</sup> *Human Rights Act 2019 (Qld)* section 65(2).

<sup>8</sup> Queensland Human Rights Commission, *Building Belonging: Review of Queensland's Anti-Discrimination Act 1991*, July 2022, pgs. 153-156.

- Attempting to resolve their complaint through another jurisdiction or in commencing another cause of action that often involves upfront legal costs (such as engaging a personal injury lawyer or seeking legal advice on private nuisance).
- Engaging with the initial complaint process directly to the public entity and waiting for the 45-day time limit to lapse to be able to bring the complaint.
- Making right to information requests with the public entity to better understand the contravention and also to inform the complaint.
- A lack of clarity when engaging with the public entity directly around whether the complaint has been closed, or whether the escalation of a complaint (for example, to the NDIS Quality and Safeguard Commission) will resolve the complaint without the need to continue within the QHRC.
- Periods of incarceration.
- Ongoing child protection or family law proceedings that take precedence to human rights complaints.

**Recommendation 2:** BRQ supports a reduction of the 45-day timeframe for public entities to respond to human rights complaints to 28 days.

**Recommendation 3:** BRQ supports the QHRC issuing guidance on what constitutes ‘exceptional circumstances’ and its expedited complaint handling processes.

**Recommendation 4:** BRQ supports extending the time limit for making complaints to the QHRC to two years.

## Proceedings and remedies available under the Act

BRQ supports the recommendation in the QHRC Issues Paper that the Act be amended to include a standalone cause of action for human rights complaints with a full range of remedies.<sup>9</sup>

While section 58(1) creates a ground of unlawfulness for a contravention of human rights obligations, section 59(1) does not permit a person to seek relief under an independent cause of action for the human rights contravention alone. In a situation where a person’s complaint about an alleged contravention of human rights cannot be resolved through conciliation, there is no further avenue to seek relief unless the human rights complaint can be ‘piggy-backed’ to

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<sup>9</sup> Issues Paper, pg. 4.

a separate cause of action, such as a discrimination claim or an expensive and complex judicial review proceeding. In our experience, this lack of legal consequence for human rights contraventions limits the willingness of public entities to engage in early dispute resolution and undermines the effectiveness of conciliation processes.

The introduction of an independent cause of action, coupled with a full range of effective and accessible remedies would strengthen the preventative role of the Act by incentivising public entities to ensure policies and practices promote compliance with the Act and encourage early resolution of disputes in order to avoid litigation.

The equivalent ACT legislation enables a person to initiate proceedings against a public authority for a sole contravention of the *ACT Human Rights Act* in the Supreme Court.<sup>10</sup> We note the beneficial impact of litigation in clarifying the interpretation and operation of the Act, improving the public entities' compliance with their obligations, and the systemic change that can eventuate when one person asserts their rights. However, it is apparent that a direct cause of action to the Supreme Court is of limited benefit in practice. The ACT Human Rights Commission noted that in 19 years of the *ACT Human Rights Act's* operation, it had been mentioned in only 366 ACT Supreme Court and Court of Appeal matters.<sup>11</sup> Further, initiating litigation at the Supreme Court is often a prohibitively expensive and complicated process that is unlikely to bring relief for people who are already experiencing disadvantage.

We would support an amendment of the Act to grant original jurisdiction on QCAT to hear and determine human rights complaints due to its accessibility and lower cost. This would require additional resourcing of QCAT but would not only reduce the financial and psychological burden of accessing justice, it would also enhance the agency of individuals in asserting their rights in a less adversarial environment.

The Act currently provides for limited remedies such as an injunction, stay of proceedings, or a declaration of unlawfulness where a public entity has not complied with its obligations under section 58. However, section 59(3) precludes the possibility of damages for a contravention. A full range of effective, accessible and fair remedies, including monetary damages, is required in order to ensure that rights are respected and properly enforceable.

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<sup>10</sup> *Human Rights Act 2004* (ACT) section 40C(2).

<sup>11</sup> ACT Human Rights Commission, *Inquiry into Australia's Human Rights Framework*, 1 July 2023. pgs. 5-6. <[https://www.hrc.act.gov.au/\\_data/assets/pdf\\_file/0005/2300288/Submission-to-Parliamentary-Joint-Committee-on-Human-Rights-2023.pdf](https://www.hrc.act.gov.au/_data/assets/pdf_file/0005/2300288/Submission-to-Parliamentary-Joint-Committee-on-Human-Rights-2023.pdf)>.



We refer to the remedies available under the *Anti-Discrimination Act 1991*, including that the Tribunal may order an amount payable by the respondent that is “considered appropriate as compensation for loss or damage caused by the contravention.”<sup>12</sup> Notably, the Tribunal may also make an order “requiring the respondent to implement programs to eliminate unlawful discrimination”,<sup>13</sup> which has a broader effect beyond protecting the complainant. The remedies available under the anti-discrimination jurisdiction provide a helpful precedent in determining adequate relief for contraventions of human rights. Our clients do not wish to engage in lengthy, complex or expensive litigation, and seek modest remedies which are proportionate to the wrongs they have experienced. While practical relief to perform or stop an act, or acknowledgement of the breach can provide important relief to an individual, there are situations where the Tribunal should maintain discretion to award damages caused by the contravention where it is just and appropriate.

### Case study 3: Limited remedy, limited engagement

Byron\* was a person with an impairment who relied on a NDIS service provider for daily support. Without Byron’s knowledge or consent, the NDIS service provider forced Byron to visit an unfamiliar doctor, despite having regularly engaged with the same practitioner for over 20 years. An argument followed and Queensland Ambulance and Police became involved, transporting Byron to hospital under an emergency examination authority. Queensland Health relied on statements from the NDIS service provider about Byron’s presentation on the day that were later contradicted by medical evidence. In conciliation, Byron was able to rely on a strong discrimination argument against the NDIS provider, in addition to their rights to recognition and equality before the law (section 15) and privacy and reputation (section 25). Byron resolved the complaint against the NDIS service provider for financial compensation, an apology and a commitment to review policies and complete training. The complaint against Queensland Health focused on unlawful discrimination and the contravention of Byron’s rights under sections 15, 25 and right to health services (section 37). In the conciliation, Queensland Health remained focused on refuting the discrimination argument and Byron’s human rights complaint was not explored in any depth, other than noting that human rights in Queensland are not absolute. Without strong prospects in the discrimination argument, Byron did not pursue the human rights complaint beyond conciliation despite feeling as though his concerns were not adequately addressed within the conciliation.

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<sup>12</sup> *Anti-Discrimination Act 1991* (Qld) section 209(1)(b).

<sup>13</sup> *Anti-Discrimination Act 1991* (Qld) section 209(1)(f).

**Recommendation 5:** BRQ supports amending the Act to include a standalone action for human rights complaints.

**Recommendation 6:** BRQ supports amending the Act to grant QCAT original jurisdiction to hear and determine human rights complaints.

**Recommendation 7:** BRQ supports the appropriate resourcing of QCAT to manage the broader workload that may result from applications to hear and determine human rights complaints.

**Recommendation 8:** BRQ supports broadening the types of remedies available to a complainant, including compensation and the implementation of programs to eliminate systemic human rights limitations, in line with the *Anti-Discrimination Act*.

## Definition of public entity

Alongside our colleagues from Community Legal Centres Queensland and Queensland Council of Social Services, we call for a broadening of the definition of public entity.

We have observed how the right to access education “appropriate to the child’s needs”,<sup>14</sup> along with other human rights protections under the Act, do not presently extend to students enrolled at non-state schools. The Act defines a public entity as ‘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).<sup>15</sup> The Act requires that public entities act and make decisions in a way that is consistent with human rights and give proper consideration to the relevant human rights engaged by a decision.<sup>16</sup> However, section 9(1)(h) provides an example in which a non-state school is not considered a public entity “merely because it performs the functions of a public nature in educating students because it is not doing so for the State”.<sup>17</sup> Schools which receive public funding should be subject to the Act

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<sup>14</sup> *Human Rights Act 2019 (Qld)* section 36(1).

<sup>15</sup> *Human Rights Act 2019 (Qld)* section 9(1)(h).

<sup>16</sup> *Human Rights Act 2019 (Qld)* section 58.

<sup>17</sup> *Human Rights Act 2019 (Qld)* section 9(1)(h).

when acting or making decisions which engage or limit the human rights of their students, staff and other stakeholders. This is a key example of why the current definition must be expanded.

While the *Anti-Discrimination Act (Qld) 1991* and *Disability Discrimination Act (Cth)* offer relief for discriminatory conduct against students with disabilities in all schools, anti-discrimination laws are a reactive approach in response to discrimination that has occurred. This places the burden on the person who has experienced the discrimination to prove that discrimination has occurred. The legacy of cases such as *Purvis v New South Wales*<sup>18</sup> and *BB v State of Queensland*,<sup>19</sup> which narrowed the circumstances in which discrimination can be found, is that schools often successfully argue that a student was not discriminated against on the basis of their disability, but rather on the basis of their behaviour. Therefore, the Act's imposition of a positive duty on public entities to provide students with disabilities with appropriate supports has been a beneficial development.

The Building Belonging report called for the implementation of positive duties, to enable a shift from a reactionary approach towards prevention through education and awareness.

The below case study highlights the way in which the Act's framework can promote a balanced, appropriate exercise of discretion, which in this case meant a young student was appropriately supported through an early resolution outcome.

#### Case study 4: Positive outcome for state school student

BRQ supported George\*, a 6-year-old student with Autism Spectrum Disorder, ADHD and global developmental delay. George was suspended a number of times due to his "challenging behaviour". His state school sought to reduce his schooling hours to part-time, then "contained" George in a separate room away from his peers and usual teacher for 2 weeks, including during break periods. The extent to which George was accessing the curriculum while he was separately contained was also unclear. The school dismissed his parents' requests for reasonable adjustments, including to have his allied health practitioners attend the school to provide recommendations, support and therapy. It was evident the Principal was not aware of their obligations under the Act, however the Regional Office promptly addressed the concerns raised following a human rights complaint and further advocacy. The Regional Office arranged to have a functional behaviour assessment

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<sup>18</sup> *Purvis v New South Wales* [2020] QCAT 496.

<sup>19</sup> *BB v State of Queensland* (2003) 202 ALR 133.

undertaken, and the recommendations of his allied health team were sought and implemented. Additional resourcing was allocated to the school to increase the number of classes and reduce class sizes, benefitting all children in that year level. This allowed George to start the new term in a classroom with fewer children and with a teacher who had a special education background. His allied health team were also permitted to attend the school to provide him with ongoing support and therapy.

BRQ routinely advises families in situations where students with disabilities have experienced practices in non-state schools which demonstrate a lack of transparency and accountability in their decision-making, such as:

- refusal of a student's enrolment or suggestions that a student may be better supported at a different school which can 'accommodate their needs'.
- additional staff members present at an enrolment interview, only for the family to be advised that the school "no longer had capacity" to accept the enrolment.
- segregating students from their peers and teachers during class time and lunch breaks.
- preventing students from participating in extra-curricular activities including sport or attending school excursions.
- only permitting the student to attend on a 'part-time' basis for reduced hours each day or access a limited curriculum via remote learning.
- suspending the student for an entire school term or excluding the student.

It is inconceivable that non-state school students may not rely on the same human rights protections that apply to their peers in state schools. It is submitted that the limitation under section 9(1)(h) of the Act should be amended to expand the definition of 'public entity' to protect the right of all children to access an education appropriate to their needs irrespective of whether they attend a state or non-state school.

The definition of public entity in the Act should be reviewed to provide further clarity, particularly in relation to non-government service providers and other functional public entities. Exceptions to the definition of public entities should be reviewed and carefully considered.

**Recommendation 9:** BRQ supports a broadening of the definition to ensure entities that receive public funding, such as non-state schools, are subject to the human rights framework.

## Additional human rights protections

BRQ supports the inclusion of additional human rights protections.

### Participation duty

The introduction of a ‘participation duty’ is a further protection that would support the Act in meeting its main objects as articulated in section 3. BRQ supports the introduction of a participation duty similar to that proposed by the AHRC to ensure that all people, particularly First Nations people, children, and people with disabilities can actively participate in relation to the development of policies and decisions that they consider directly or disproportionality impacts their lives.<sup>20</sup> BRQ considers that the duty should be extended to ensure the participation of people belonging to other marginalised groups in society, such as LGBTIQ+ communities, culturally and racially marginalised communities and older people.

The AHRC recommended a further non-binding aspect of the participation duty on proponents of legislation to facilitate participation during the law-making process and outline the participation measures undertaken within the Statement of Compatibility, noting that failure to do so would not affect the validity of the legislation.<sup>21</sup> However, we submit that this further aspect should also be binding, imposing a requirement to facilitate effective and meaningful participation of those marginalised groups in order to ensure the validity of the legislation that impacts them. This is a necessary measure to empower rights-holders as key actors in the law-making processes.

### The right to adequate housing

Access to safe, secure and affordable housing is a crucial determinant in people accessing and maintaining medical treatment, accessing education and employment, maintaining connection to country and culture, and maintaining social and family connections. Research has confirmed that access to public housing is a key component in breaking the cycle of engagement with the criminal justice system for ex-prisoners with complex needs.<sup>22</sup> Without

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<sup>20</sup> Australian Human Right Commission (2023) *Revitalising Australia’s Commitment to Human Rights: Free & Equal Final Report 2023*, pg. 58-60.

<sup>21</sup> Australian Human Right Commission (2023) *Revitalising Australia’s Commitment to Human Rights: Free & Equal Final Report 2023*, pg. 60.

<sup>22</sup> Martin, C., Reeve, R., McCausland, R., Baldry, E., Burton, P., White, R. and Thomas, S. (2021) *Exiting prison with complex support needs: the role of housing assistance*, AHURI Final Report No. 361, Australian Housing and Urban Research Institute Limited, Melbourne, <<https://www.ahuri.edu.au/research/final-reports/361>, doi:10.18408/ahuri7121201>.

a right to housing in Queensland, the Act's protection of other fundamental human rights is also limited.

The right to housing is incidentally protected under section 25 which provides that a person has the right not to have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with.<sup>23</sup> This right offers some limited protection for people who are housed but does not guarantee the right to housing for those without a home.<sup>24</sup>

In *Department of Housing and Public Works v Tenant*,<sup>25</sup> QCAT considered the Tenant's human rights limited by the decision of the Department of Housing to terminate a tenancy on the ground of objectionable behaviour. The ground of eviction fell within an exception to the moratorium on residential tenancy evictions during the initial stages of the Covid-19 pandemic. The Tribunal found that the tenant suffered from a serious psychiatric condition and ongoing drug abuse, and that her behaviour was unlikely to change without sustained psychiatric intervention and treatment. The Tribunal considered the rights engaged were the right to privacy, family, home and reputation, the freedom to choose where to live,<sup>26</sup> the right not to be treated in a cruel, inhuman or degrading way,<sup>27</sup> and the freedom of expression.<sup>28</sup> The Tribunal also considered the Tenant's son's rights as his occupancy would come to an end if his mother's tenancy was terminated. It was held that the Tenant's rights were reasonably limited, and the eviction did not constitute an arbitrary or unlawful impact on a person's right to privacy and home as the application for termination was pursuant to a provision of the *Residential Tenancies and Rooming Accommodation Act*.<sup>29</sup>

Social housing providers are 'landlords of last resort' and an eviction invariably results in homelessness. Once evicted, a person is required to reapply for social housing and may wait years before they secure housing again. It is submitted that although a right to housing under the Act may not have prevented the eviction in the case above, it would have imposed a duty on the Department to find alternate housing arrangements for the tenants to avoid their eviction into homelessness.

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<sup>23</sup> *Human Rights Act 2019* (Qld) section 25(a).

<sup>24</sup> Queensland Human Rights Commission, *2019-2020 Annual report on the operation of the Human Rights Act 2019*, pg. 112, 113 <[https://www.qhrc.qld.gov.au/\\_data/assets/pdf\\_file/0005/29534/Human-Rights-Act-Annual-Report-2019-20.pdf](https://www.qhrc.qld.gov.au/_data/assets/pdf_file/0005/29534/Human-Rights-Act-Annual-Report-2019-20.pdf)>.

<sup>25</sup> *Department of Housing and Public Works v Tenant* [2020] QCAT 144.

<sup>26</sup> *Human Rights Act 2019* (Qld) section 19.

<sup>27</sup> *Human Rights Act 2019* (Qld) section 17(b).

<sup>28</sup> *Human Rights Act 2019* (Qld) section 21(2).

<sup>29</sup> *Residential Tenancies and Rooming Accommodation Act 2008* (Qld) section 345A.

BRQ supports Recommendation 34 of the Victorian Parliamentary Inquiry into Homelessness to include a right to housing in Victoria's Charter of Human Rights and Responsibilities Act,<sup>30</sup> and refers to the beneficial impact of an enacted right to housing on Finland and Scotland's housing and homelessness strategies.

## Victims' rights

BRQ acknowledges the rights and positive obligations contained within the Act in its current format, and the remedial impact of those protections for victims of crimes. However, we echo those concerns that the Act does not adequately support the rights of victims of gendered violence, or victim-survivors of child sexual abuse.

We support reform as proposed within the Issues Paper to broaden the scope of the positive obligations to make some duties, including the duty to undertake an effective investigation, even clearer.<sup>31</sup> We further support the incorporation of victims' rights from the Queensland Victim's Rights Charter, which in its current format is legally unenforceable,<sup>32</sup> into Queensland's Act as recommended in the report of the Queensland Women's Safety and Justice Taskforce.<sup>33</sup>

We finally note that any existing victims' rights would be supported by the right for a complainant to commence a stand-alone human rights complaint.

## Right to clean, healthy and safe environment

BRQ supports the addition of a right to a clean, healthy and safe environment. On 28 July 2022 the UN General Assembly reaffirmed the recognition of this right, with Australia voting in favour of the resolution aside another 160 UN Member States.<sup>34</sup> Acknowledging this right has been supported at a Commonwealth level, as well as the jurisprudence within the Queensland case of *Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors (No 6)* [2022] QLC 21, we consider this right should be codified within the Act.

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<sup>30</sup> Parliament of Victoria, Legislative Council Legal and Social Issues Committee Inquiry into Homelessness in Victoria, pg. 195 - 200, < <https://nla.gov.au/nla.obj-3290708335/view>>.

<sup>31</sup> Issues paper, pages 9-10.

<sup>32</sup> *Victims of Crime Assistance Act 2009* (Qld), section 7.

<sup>33</sup> Women's Safety and Justice Taskforce, *Hear her voice – Report two – Women and girls' experiences across the criminal justice system* and the Legal Affairs and Safety Committee Report on the Inquiry into Support provided to Victims of Crime (Report No. 48, 57th Parliament, May 2023, page 13.

<sup>34</sup> UN General Assembly, *The human right to a clean, healthy and sustainable environment*, UN Doc. A/RES/76/300 (28 July 2022).

We support the recommendations of the Environmental Defenders Office in their submission to a Human Rights Act in South Australia,<sup>35</sup> and that this right should not be limited to an exhaustive list of substantive elements (such as the right to clean air, clean water, or safe food) and/or procedural elements but is defined broadly to include the right to a ‘clean’, ‘healthy’ and ‘sustainable’ environment.<sup>36</sup> The explicit inclusion of this right reinforces our Federal and State commitments to sustainable practices, the preservation of First Nations’ cultural heritage, and climate change.

### Protection from victimisation

BRQ supports the inclusion of additional protections for complainants exercising their rights under the Act. Currently, the Act does not contain similar protections to those found in federal and state discrimination laws,<sup>37</sup> leaving complainants’ vulnerable to retaliatory action for having commenced a complaint, and often discouraged from proceeding due to perceived threats, such as eviction from housing. We further support, as far as practical, the reframing of this protection as a positive obligation for the public entity to take reasonable and proportionate measures to eliminate victimisation when notified of the complaint.

**Recommendation 10:** BRQ recommends the introduction of further protections under the Act such as a participation duty, right to adequate housing, victims’ rights through the incorporation of the Queensland *Victim’s Rights Charter*, right to a clean, healthy and safe environment, and a protection from victimisation.

### Role of the QHRC and additional measures to support protection

BRQ recognises the role of the QHRC in fostering a culture of human rights in Queensland, however the successful operation of the Act requires participation and engagement by public entities. We have observed through all levels of advocacy that there has been an aversion to effective engagement with the Act by public entities that stifles implementation of the Act in Queensland.

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<sup>35</sup> Environmental Defenders Office, *Submission to the Inquiry into the Potential for a Human Rights Act for South Australia*, 23 February 2024, pages 9-10.

<sup>36</sup> Environmental Defenders Office, *Submission on the Right to a Healthy Environment*, 31 August 2022, pages 16-21.

<sup>37</sup> *Anti-Discrimination Act 1991* (Qld) sections 129-131; *Disability Discrimination Act 1992* (Cth) s 42; *Sex Discrimination Act 1984* (Cth) s 94; *Race Discrimination Act 1975* (Cth) s 27(2); *Age Discrimination Act 2004* (Cth) section 51.



Our clients' experiences have demonstrated that in those limited circumstances where a compatibility assessment was provided, or where a decision made by a public entity explicitly required a consideration under the Act (for example in making an assessment order under the *Mental Health Act 2016*) there was a failure to identify the rights relevant to the decision or action, the assessment was brief and there was limited consideration to whether there were any less restrictive and reasonably available ways to achieve the same purpose.

#### Case study 5: Samantha's statement of compatibility

Samantha\* had contacted BRQ to complain about the impacts of a major infrastructure project that had commenced construction near her home. We supported Samantha to obtain a copy of the 'Human Rights Compatibility Assessment' purported to have been undertaken at the time construction commenced. The public entity had identified rights that may have been impacted by the decision in the assessment, however, failed to identify the protection from torture and cruel, inhuman or degrading treatment (section 17), which was central to the complaint. Further, the compatibility assessment had relied upon section 58(2) of the Act as a blanket exemption to the public entity's broad decisions which were arguably outside the scope of the authorising legislation. In assessing less restrictive or reasonably available alternatives, the public entity considered narrow alternatives that were achievable through policy but were not possible in this instance as Samantha's home did not meet legislative criteria to allow for attenuation works. At the time of our involvement, and around 18-months after the compatibility assessment, a functional public entity operating through the public department proposed to relocate Samantha to temporary accommodation for the remainder of the project. Samantha found that this temporary accommodation had a remedial impact. However, if this option had been offered at an earlier date Samantha would have been spared from significant harm caused by the impacts of construction.

BRQ acknowledges that the process of identifying those rights relevant to a decision or action is not simple and that consideration of less restrictive means or reasonably available ways to achieve the purpose requires a measured and informed approach. We support reform as proposed in the Issues paper, that training for decision makers shifts from online modules to interactive and customized training administered by the QHRC, and that public entities create human rights units in each government department to promote the spread of specialised knowledge across the Queensland public sector.<sup>38</sup>

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<sup>38</sup> Issues paper, page 14.

Improved resourcing and support for decision makers would improve the quality of decisions at an early stage and relieve pressure on the QHRC and courts by reducing contraventions of the Act and identifying less restrictive alternatives at an early stage. We further support the introduction of specific resources to build community understanding of the Act and how it may apply to individuals and communities and additional resources within QCAT, acknowledging the significant delays in complaints being listed for hearings within this jurisdiction.<sup>39</sup>

**Recommendation 11:** BRQ supports increased resourcing for training of decision-makers and building community understanding.

We thank you for the opportunity to participate in this review process and we welcome any opportunity to provide further input in the review process.

If you would like further information or would like to discuss the submission, please contact Nali Wardill on (07) 3421 2536.

Yours sincerely



Sam Tracy  
Director, Basic Rights Queensland



Eloise Dalton  
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<sup>39</sup> Issues paper, page 14.