

**AMNESTY
INTERNATIONAL**



DEFENDING HUMAN RIGHTS

Submission to the independent review of the
Human Rights Act 2019 (Qld)

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About Amnesty International

Amnesty International is a global movement of more than 10 million people in over 160 countries - the world's biggest human rights organisation - who take injustice personally. We campaign for a world where human rights are enjoyed by all.

We investigate and expose the facts, whenever and wherever abuses happen. We lobby governments as well as other powerful groups such as companies, making sure they keep their promises and respect international law.

By telling the powerful stories of the people we work with, we mobilise millions of supporters around the world to campaign for change and to stand in the defence of activists on the frontline.

We support people to claim their rights through education and training. Our work protects and empowers people – from abolishing the death penalty to advancing sexual and reproductive rights, and from combating discrimination to defending refugees' and migrants' rights.

We help to bring torturers to justice, change oppressive laws, and free people who have been jailed just for voicing their opinion.

We speak out for anyone and everyone whose freedom or dignity are under threat and we advocate for laws and policies that ensure peoples human rights are respected.

1. Summary

1.1 Amnesty International Australia (AIA) welcomes the opportunity to provide a submission to the Independent Review of the *Human Rights Act 2019* (Qld) (“the Act”). Since its commencement in January 2020 the Act has made a difference to the lives of people in Queensland; preventing human rights abuses by requiring public authorities to consider human rights when passing laws, making decisions about policies, and delivering services, and enabling victims of human rights abuses in Queensland to seek justice and remedies when their rights have been violated.

1.2 Human rights are the fundamental freedoms and protections that belong to everyone. International law imposes an obligation on public entities to respect, protect, and facilitate human rights. The *Human Rights Act 2019* (Qld) has helped ensure public entities respect, protect, and facilitate human rights in accordance with these obligations under international law.

1.3 Amnesty welcomes the Act’s introduction in Queensland in 2019. Amnesty has long advocated for Human Rights Acts in all Australian jurisdictions, and was a member of the Human Rights Act for Queensland campaign. Amnesty activists across Queensland showed their support for an Act and raised the need for one with their MPs during the campaign.¹

1.4 The Act’s stated objectives are to protect and promote human rights, to build a culture of human rights across the Queensland public sector, and to promote a dialogue about the nature, meaning and scope of human rights.² The Act requires public entities to make decisions compatible with human rights, requires states of compatibility with human rights to be drafted for Bills, establishes a Committee responsible for examining Bills for compatibility with human rights, requires courts and tribunals to interpret laws consistent with human rights, and provides a complaints process to resolve human rights complaints.

1.5 Research conducted by the Queensland Human Rights Commission shows that the majority of people think human rights are important and relevant to them, finding 92% of people thought the protection of human rights was vital, and 85% thought human rights were personally relevant to them.³ This research is supported by polling conducted by AIA, that shows consistent strong support for human rights protections in law.⁴

1.6 Amnesty believes that the Act has helped build a culture of human rights and promoted a dialogue about human rights since it began operation in January 2020. Parliament and Departments have centred human rights in their decision making processes, training people in human rights, consulting with communities. People across Queensland have used the Act to stay

¹ Amnesty International Australia, Celebrating Human Rights Act victory in Queensland, 2019, <https://www.amnesty.org.au/celebrating-human-rights-act-victory-in-qld/>.

²s3, *Human Rights Act 2019* (Qld).

³ Queensland Human Rights Commission, 2022-2023 Annual report on the operation of the Human Rights Act 2019, 125, https://www.qhrc.qld.gov.au/data/assets/pdf_file/0009/46089/QHRC_ProgressAndPitfalls_HumanRightsActAnnualReport2022-23.pdf.

⁴ Amnesty International Australia, Human rights Barometer: Australians’ views on Human Rights Report 2023, 23, <https://drive.google.com/file/d/14x32a63PKS6G50JAGO5Mybyeb3bmnB9S/view?usp=sharing>.

in their homes with their families, to raise their children, to ensure their homes are accessible, and to fight for climate justice.

1.7 Human Rights Acts prevent human rights abuses by requiring public entities to consider human rights when making decisions, and they empower people with a tool with which everyone can fight for the fundamental rights and freedoms that belong to all of us, and hold those in power to account. They provide remedies for people whose rights have been abused. The *Human Rights Act 2019* (Qld) has fostered a culture that respects and protects human rights in the public sector, and allowed people to create fairer futures for themselves, their communities, and those around them.

1.8 The Act can be made stronger by amendments to add a participation duty so that people have a say in matter that impact them, a direct and independent cause of action that will allow people to take human rights matters to court, the rights to housing and to a healthy environment, to remove the override provision, among other changes. These changes will strengthen the *Human Rights Act 2019* (Qld) and move us closer to a future where everyone's human rights are protected and respected in Queensland,

2. Recommendations

AIA recommends that:

- 1) There is an increase in funding for Community Legal Centres, advocacy organisations, and the Queensland Human Rights Commission to achieve the Act's objectives to promote and protect human rights,
- 2) The Act is amended to introduce a participation duty that requires public entities to ensure the participation of First Nations peoples, people with disabilities, and children when making decisions that impact them,
- 3) The Act is amended to include the right to an adequate standard of living, including adequate housing, food, and water, and the right to a clean, healthy, and sustainable environment,
- 4) The Act is amended to include a direct and independent cause of action for breaches of human rights contained in the *Human Rights Act 2019* (Qld),
- 5) S59(3) of the Act is amended to allow for monetary damages to be awarded as a remedy,
- 6) The Act is amended to clarify absolute rights which cannot be limited; the right to be free from from torture and other cruel, inhuman or degrading treatment or punishment, freedom from forced work, freedom from imprisonment for inability to fulfil a contractual obligation, prohibition against the retrospective operation of criminal laws and the right to recognition before the law,
- 7) Measures are developed to strengthen the Statement of Compatibility process, including a requirement that all major amendments must be referred back to the Committee,
- 8) The Act is amended to remove s44, the override provision, and S31 of the Act is amended so that the right to a fair hearing also includes victims of violence and an interpretive note is added to s8 of the Act recognising the positive duties owed by public entities to take positive steps to protect rights under the Act.

3. International Legal Human Rights Framework

3.1 The entitlement of all people to be free and equal in dignity and rights is enshrined in Article 1 of the Universal Declaration of Human Rights (UDHR).

3.2 A number of key rights and freedoms have been subject to debate in Australia in recent years, including religious freedom, freedom of the press, freedom from discrimination, rights of asylum seekers, the rights of children and the rights of Indigenous people.

3.3 Australia is a party to those international treaties that protect these rights and freedoms however, our domestic laws do not adequately implement these protections in Australia. This section outlines Australia's obligations under the relevant international treaties.

Non-discrimination

3.4 Article 7 of the UDHR and Articles 2.1 and 26 of the International Covenant on Civil and Political Rights (ICCPR) and other related human rights treaties recognise the right to equality and non-discrimination.

3.5 Article 26 of the ICCPR provides that all people 'are equal before the law and are entitled without any discrimination to the equal protection of the law'. It requires State Parties to prohibit and guarantee protection against discrimination on the basis of "race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".

3.6 It is now well established that the phrase "other status" has been interpreted by human rights treaty bodies to include attributes such as age, disability, and sexual orientation, gender identity or intersex status.

3.7 Constitutional amendments must also be consistent with Australia's obligations to eliminate racial discrimination, as enshrined in the ICERD, which states: "States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law".

Religious freedom

3.8 Article 27 of the ICCPR provides particular protection for ethnic, religious, or linguistic minorities to "enjoy their own culture, to profess and practise their own religion or to use their own language".

3.9 The United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief further provides that States shall take "effective measures to prevent and eliminate discrimination on the grounds of religion or belief", including the enactment or repeal of legislation. Under the Declaration, States shall also take "all appropriate measures" to prevent intolerance on the basis of religion or belief.

3.10 Article 18 of the ICCPR provides "[e]veryone shall have the right to freedom of thought and conscience and religion. This right shall include freedom to have or to adopt a religion or belief of

his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

Freedom of Expression

3.11 Australia became a State Party to the ICCPR in 1980. Under the ICCPR, Australia is obliged to protect the rights to freedom of opinion and expression.

3.12 Article 19(2) states that: “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”

3.13 Article 19(3) states: “The exercise of the right [to freedom of expression] carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order, or of public health or morals.”

3.14 Any such limitations on freedom of expression must remain an exception. Such restrictions “may not put in jeopardy the right itself” and “must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated.”

3.15 While Article 19(3) describes the general test for permissible limitations to freedom of expression, there are a small number of “very specific limitations” that are required by international law to avoid “serious injury to the human rights of others”. The two most relevant requirements for the purposes of this submission are found in:

3.16 Article 20(2) ICCPR: which establishes that “any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law”; and Article 4(a) ICERD: which establishes the requirement to “declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin.”

Freedom from Arbitrary Detention and Right to Seek Asylum

3.17 As a party to the Refugee Convention, Australia has agreed to ensure that people who meet the United Nations' definition of refugee are not sent back to a country where their life or freedom would be threatened.

3.18 Australia also has obligations not to return people who face a real risk of violation of certain human rights under the ICCPR, the Convention Against Torture (CAT) and the Convention on the Rights of the Child (CROC), known as ‘non-refoulement’ obligations. It is also prohibited to send people to third countries where they would face a real risk of violation of their human rights under these instruments.

Rights of Children

3.19 A fundamental principle in Australian law is that all decisions with regards to children should be made in the child's best interest.

3.20 Article 3 of CROC states: "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration"

3.21 Australia has an obligation under CROC to take legislative, administrative and other necessary measures to protect the rights of the child and ensure they are not subject to discrimination on any basis. Article 2 states: "States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status."

Freedom of Association

3.22 The right to freedom of assembly and association is contained in the ICCPR:

3.23 Article 21: states that "The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others."

3.24 Article 22: states that "everyone shall have the right to freedom of association with others, including the right to form and join trade unions" and "no restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others".

3.25 Article 22 of the ICCPR overlaps with Article 8 of the ICESCR, which makes clearer, in relation to trade unions, that the freedom of association includes the right to participate in lawful activities of the association

4. A culture of human rights

4.1 The *Human Rights Act 2019* (Qld) is a "dialogue model," meaning public authorities are required to consider human rights at the early stages of developing laws and policies. This model aims to prevent human rights abuses by identifying potential violations of human rights before the decision is finalised. Accordingly, an understanding of, and a culture of, human rights in the public sector is crucial to achieving the Act's objectives.

4.2 The Queensland Human Rights Commission (QHRC) produces an annual report on the operation of the Act. The 2022-2023 report notes increased engagement by state and local government entities with the Act.

4.3 The QHRC has noted that public entities have shown progress in cultivating a human rights culture. This includes through staff awareness and training, and community engagement, human rights compatibility assessment in policy developments, incorporation of human rights principles and assessments into community consultation and into complaint handling.⁵

4.4 For example, Departments including the Department of Health and the Department of Education provide training on human rights to staff including tailored training while other Departments have created communities of practice and networks of human rights champions, including the Department of Housing.

4.5 Departments have also undertaken community consultation on human rights, developed and reviewed policies and procedures, and subordinate legislation, in accordance with human rights. Department strategies have incorporated human rights into their principles. Parliamentary inquiries have also adopted human rights based consultation practices.

4.6 AIA notes the need for additional investment identified by the QHRC.⁶ Community Legal Centres and other advocacy organisations who help people understand and realise their rights through education and advocacy should be funded to allow them to fulfil this role. QHRC has also called for further funding to achieve the objectives of the Act, and to promote a culture of human rights in the public sector through capacity building, education, and to support conciliation and complaint functions. Currently, only small teams within QHRC and the Department of Justice and Attorney General provide training and resources to educate public entities on human rights and the *Human Rights Act 2019* (Qld). Resources should be made available for courts, legal centres like Victoria's Charter of Human Rights Bench Book.⁷

Recommendation 1: Increase funding in Community Legal Centres, advocacy organisations, and the Queensland Human Rights Commission to achieve the Act's objectives to promote and protect human rights.

Participation Duty

4.7 This objective to build a culture of human rights in the public sector could be strengthened by including an explicit participation duty that required public entities to ensure the participation of communities in decisions that impact them.

4.8 The Act should be amended to include a participation duty that requires public entities to ensure the participation of First Nations peoples, people with disabilities, and children when making decisions that impact them. Such a duty would be drawn on provisions of UNDRIP, CRPD,

⁵ Above, n3, 66.

⁶ Queensland Human Rights Commission, Strengthening the Human Rights Act: key issues paper, 6, https://www.qhrc.qld.gov.au/data/assets/pdf_file/0010/48961/Stengthening-the-Human-Rights-Act-key-issues-paper.pdf.

⁷ Judicial College of Victoria, Charter of Human Rights Bench Book, <https://resources.judicialcollege.vic.edu.au/article/1049904>.

and CROC. Such a duty was proposed for a federal Human Rights Act by the Parliamentary Joint Committee on Human Rights (PJCHR) in their recent report on the federal human rights framework.⁸ A participation duty would prevent human rights abuses by giving communities the ability to inform laws, policies, and services that will impact them. Participation should be active, free, meaningful, and accessible.

4.9 The participation processes for First Nations peoples should be in line with principles and standards in UNDRIP. Steps taken to ensure the participation of First Nations peoples should be included in the Statement of Compatibility. For a decision concerning an individual child, the participation duty would mean that the individual child should be consulted. This allows the best interests of the child to be considered by decision makers. The Australian Human Rights Commission has developed a set of guidelines for general participation processes.⁹

4.10 Failure to ensure and enable the participation of First Nations peoples, people with disabilities, and children would be unlawful, and give rise to a complaint or bring a complaint against the public entity for a breach of human rights, and seek remedies for the breach.

Recommendation 2: Amend the Act to introduce a participation duty that requires public entities to ensure the participation of First Nations peoples, people with disabilities, and children when making decisions that impact them.

5. Additional human rights

5.1 The Act protects 23 human rights, including those contained in the ICCPR and the ICESCR. The inclusion of both civil and political rights, and economic, social, and cultural rights is a strong foundation for human rights protections in Queensland.

5.2 For example, the Act protects the distinct cultural rights of Aboriginal and Torres Strait Islander peoples, and stipulates that they may not be denied these rights. Adrian Burragubba and his family were exercising their cultural rights when they were asked to leave following a trespassing claim by the mining company Adani. Following conciliation, the Queensland Police Service issued an apology and committed to take cultural rights into account in future. Reporting suggests that police did not ask Adrian Burragubba and his family to leave because of their protected cultural rights under the Act on a future occasion.¹⁰

5.3 The Act should be amended to include the right to an adequate standard of living, including adequate housing, food, and water. These rights are protected in Article 11 of the ICESCR.

⁸ Parliamentary Joint Committee on Human Rights, Inquiry into Australia's Human Rights Framework, 176, https://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/RB000210/toc_pdf/InquiryintoAustralia'sHumanRightsFramework.pdf.

⁹ Australian Human Rights Commission, Position paper: A Human Rights Act for Australia, 182, https://humanrights.gov.au/sites/default/files/free_equal_hra_2022_-_main_report_rgb_0_0.pdf.

¹⁰ Queensland Human Rights Commission, Human rights enquiries and complaints, 162, https://www.qhrc.qld.gov.au/data/assets/pdf_file/0018/36513/Human-Rights-Annual-Report-2020-21-Human-rights-enquiries-and-complaints.pdf.

5.4 Protection of these rights is critical at a time when 150,000 people have unmet housing needs across Queensland. According to QCOSS, the number of clients assisted by specialist homelessness services in Queensland in 2022-23 was up 9% on the previous year, compared with an increase of less than 1% nationally.¹¹ These developments underscore the need for housing to be protected as a human right, and for public entities to be required to consider that right when drafting laws, developing policies, and delivering services concerning housing.

5.5 Even without the right to housing being protected, people have used the Act to protect their rights. Tenants Queensland used the Act to help a single mother who had experienced domestic violence to avoid eviction. The tenant's housing provider had sought to terminate her lease for serious breaches caused by her ex-partner who refused to leave the premises. Tenants Queensland assisted the mother to draft a letter of complaint under the Human Rights Act, which led to the housing provider withdrawing the application for termination.¹² A protected right to an adequate standard of living, including adequate housing, food, and water would strengthen people's ability to realise their rights in the face of an unprecedented housing crisis in Queensland.

5.6 The Act should also be amended to include the right to a clean, healthy, and sustainable environment. This right was recognised by the United Nations General Assembly in July 2022.¹³ The right to a healthy environment is legally recognised in more than 80% of UN member states through constitutions, legislation, court decisions and regional treaties.¹⁴ In 2023, the ACT became the first state or territory in Australia to commit to protecting the right to a healthy environment in its Human Rights Act.¹⁵

5.7 A healthy environment is integral to the enjoyment of all human rights. Research demonstrates that state-level recognition of the right to a healthy environment contributes to improved environmental outcomes, including cleaner air, enhanced access to safe drinking water, and reduced greenhouse gas emissions. It also empowers communities to defend their rights in the face of adverse environmental impacts linked to state and corporate responsibility.¹⁶

5.8 Protecting the right to a healthy environment in the *Human Rights Act 2019 (Qld)* will reduce environmental injustices, improve people's quality of life, provide for stronger regulation,

¹¹ Queensland Council of Social Services, *Breaking Ground*, progress update and assessment of Queensland's housing crisis, 81, https://www.qcoss.org.au/wp-content/uploads/2024/06/Report_Breaking-Ground_Progress-update-of-Queensland-Housing-Crisis_web.pdf.

¹² Queensland Human Rights Commission, *The First Annual Report on the Operation of Queensland's Human Rights Act 2019-20*, 112, https://www.qhrc.qld.gov.au/data/assets/pdf_file/0005/29534/Human-Rights-Act-Annual-Report-2019-20.pdf.

¹³ United Nations General Assembly, *Resolution of the human right to a clean, healthy and sustainable environment*, A/RES/76/300, <https://digitallibrary.un.org/record/3983329?ln=en&v=pdf>.

¹⁴ Amnesty International, *UN must recognise the right to a healthy environment*, <https://www.amnesty.org.au/un-right-to-healthy-environment/>.

¹⁵ Standing Committee on Justice and Community Safety, *Government Response: Inquiry into the Human Rights (Right to a Healthy Environment) Amendment Bill 2023*, 1, https://www.parliament.act.gov.au/data/assets/pdf_file/0015/2452020/b5e581cc361fdd8a38da06d27b76c744c4df6a45.pdf.

¹⁶ Above n14.

environmental protection laws, and improve people's quality of life, particularly those already being impacted by climate change, pollution and loss of biodiversity.

5.8 Both the right to an adequate standard of living and to a healthy environment rights were included in the recent PJCHR's recommendation for a federal Human Rights Act.¹⁷

Recommendation 3: The Act is amended to include the right to an adequate standard of living, including adequate housing, food, and water, and the right to a clean, healthy, and sustainable environment.

6. Proceedings and remedies

Proceedings that may be brought

6.1 Currently, if a conciliation process fails to resolve the complaint, a complainant cannot commence proceedings in Court unless the action is attached to another legal action before a Court, known as the "piggybacking" mechanism. This mechanism means that nothing more can be done if mediation fails to resolve a complaint.

6.2 AIA is concerned with the fact that the abuses of the Human Right Act does not create an independent cause of action for human rights abuses and victims of human rights abuses cannot access the Courts directing concerning their human rights complaint. The lack of an independent and direct cause of action means there are no consequences for a public authority when a complaint cannot be resolved in mediation. This does not lead to a culture in the public sector that respects and protects human rights.

6.3 The Act should be amended to allow a pathway to the courts for stand alone human rights claims alongside the piggy-back mechanism. Accordingly, if a complaint fails to be resolved through mediation, the complainant could make an application to the relevant court. This will foster a culture of human rights within the Queensland public sector, one of the Act's objectives, because there will be legal consequences if a public entity abuses human rights. In turn, alongside the requirement to consider human rights impact at the early stages of decision making, this will create a culture that respects human rights in Queensland's public entities.

6.4 A direct cause of action has been adopted in the United Kingdom, the ACT, New Zealand and Canada.¹⁸

6.4 Some issues may not be suitable for a complaints process, particularly where there is harm occurring or an imminent risk of harm. In these circumstances, where mediation is inappropriate, the complainant should be able to make an application to the relevant court.

¹⁷ Above n8, 201.

¹⁸ Above n9, 268.

6.5 This cause of action should be available for all rights contained in the Act.

6.6 Standing should be granted to those who have experienced or who represent categories of people, such as civil society groups and public interest organisations, who have experienced breaches of human rights.

Recommendation 4: The Act is amended to include a direct and independent cause of action for breaches of human rights contained in the *Human Rights Act 2019* (Qld).

Remedies that may be awarded

6.7 Although a range of remedies are available under the Act, people cannot receive compensation if their rights are breached. Courts should be able to award the full range of remedies within their power, including compensation.

6.8 People whose rights have been abused have access to effective, enforceable remedies. Remedies should be available to those whose rights have been breached. These remedies should include injunctions, orders requiring actions, and setting aside administrative decisions. If a complaint is taken to court, the court should be able to provide the usual suite of remedies including monetary damages, and the remedy should be at the discretion of the court.

Recommendation 5: S59(3) of the Act is amended to allow for monetary damages to be awarded as a remedy.

7. Provisions relating to existing protected rights

7.1 Although a central tenet of human rights is there is no hierarchy of rights, many rights do come with inbuilt limitations to accommodate the protection of other human rights. Other rights are absolute, including the right to be free from torture and other cruel, inhuman or degrading treatment or punishment, freedom from forced work, freedom from imprisonment for inability to fulfil a contractual obligation, prohibition against the retrospective operation of criminal laws and the right to recognition before the law, and should not be limited in any circumstances.

7.2. The Act does not currently define which human rights are jus cogens and can not be limited, allowing all rights to be limited provided the limitation is reasonable and justifiable.

7.3 The Act should include a clause specifying that the rights to freedom from torture and other cruel, inhuman or degrading treatment or punishment, freedom from forced work, freedom from imprisonment for inability to fulfil a contractual obligation, prohibition against the retrospective operation of criminal laws, and right to recognition before the law cannot be limited.

Recommendation 6: Amend the Act to clarify absolute rights which cannot be limited; the right to be free from from torture and other cruel, inhuman or degrading treatment or punishment,

freedom from forced work, freedom from imprisonment for inability to fulfil a contractual obligation, prohibition against the retrospective operation of criminal laws and the right to recognition before the law.

8. Scrutiny of legislation and regulation by Parliament

Statements of Compatibility

8.1 S38 of the Act required a statement of compatibility to accompany legislation into Parliament. These statements are an important requirement to ensure Queensland's laws respect human rights. Bills have been amended after human rights issues were raised during committee processes. The QHRC has noted that the culture of human rights in Queensland's Parliament is continuing to develop, and that the Parliamentary processes are becoming more transparent and accountable.¹⁹

8.2 The statements have not been of a consistent standard. Notably, the statement of compatibility for the *Queensland Community Safety Bill 2024* (Qld), which removed the principle of detention as a last resort in the *Youth Justice Act 1992* (Qld), said the amendment did not engage human rights, and the Statement did not include a human rights analysis of the Bill.²⁰ Amnesty was one of 180 organisations that opposed this Bill because it undeniably infringed on human rights.²¹ Proposed laws concerning sexual consent were accompanied by a Statement of Compatibility that did not include sufficient consideration of the relevant human rights of sexual assault victims.²²

8.3 Amendments have also been added to unrelated Bills to avoid the Parliamentary Committee process and human rights scrutiny. A Bill concerning community sector long service leave was amended to include changes to youth justice bail and COVID-19 quarantine after the Committee stage.

8.4 Measures should be developed to strengthen the Statement of Compatibility process. For example, all major amendments should be referred back to the Committee for human rights scrutiny.

¹⁹ Above n3, 33.

²⁰ Minister for Police and Community Safety, Queensland Community Safety Bill 2024 Statement of Compatibility, <https://documents.parliament.qld.gov.au/bills/2024/3202/5724T724-dfd9.pdf>.

²¹ Justice and Equity Centre, Joint letter to Queensland Government regarding suspension of Human Rights Act, <https://piac.asn.au/2023/08/25/joint-letter-to-queensland-government-regarding-suspension-of-human-rights-act/>.

²² Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence, Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Bill 2020 Statement of Compatibility, <https://www.legislation.qld.gov.au/view/html/bill.third.hrc/bill-2020-044#bill-2020-044>.

Recommendation 7: Develop measures to strengthen the Statement of Compatibility process, including a requirement that all major amendments must be referred back to the Committee.

Override declarations

8.5 S43 of the Act allows Parliament to declare that an Act or provision is incompatible with human rights and to override the *Human Rights Act 2019* (Qld). The Queensland government has invoked the override declaration twice since the Act's commencement. Both of these instances involved youth justice, and both were condemned by human rights organisations and community members. This means the *Human Rights Act 2019* (Qld) does not apply to two laws, including specific protections for children in the criminal process, such as s33(3) which states that '[a] child who has been convicted of an offence must be treated in a way that is appropriate for the child's age'.

8.6 S44 stipulates that the member introducing a Bill containing an override declaration must make a statement to the Legislative Assembly explaining the exceptional circumstances justifying the use of the override declaration. Exceptional circumstances listed in the Act include war, a state of emergency, or an exceptional crisis constituting a threat to public safety, health or order.

8.7 Neither of the circumstances in which the Act was overridden could be considered an exceptional circumstance. The government attempted to justify their use of the override provision on the grounds of community safety.

8.8 Amnesty condemned the use of the override provision to suspend the *Human Rights Act 2019* (Qld) to allow adult watch houses to be used as youth detention centres. Indigenous Rights campaigner Kacey Terrman said "These changes in law undeniably violate children's rights and exacerbate the human rights emergency in Queensland's already broken youth justice system that disproportionately affects Aboriginal and Torres Straits Islander children."²³

8.9 AIA also condemned the decision to override the *Human Rights Act 2019* (Qld) to overturn breach of bail legislation to make breach of bail a criminal offence.²⁴ The government acknowledged that the amendments were 'incompatible with human rights.'

8.10 Both of these Bills were passed through Parliament with little consultation with civil society, the community, young people, legal experts, and Aboriginal and Torres Strait Islander organisations and communities.

8.11 These laws infringe significantly on young people's human rights. They mean more children will be imprisoned, and more will be sent to adult watchhouses, where they will be held in small

²³ Amnesty International Australia, Queensland's rushed amendment violate children's human rights, <https://www.amnesty.org.au/abhorrent-qld-labors-rushed-amendments-violate-childrens-human-rights>

²⁴ Amnesty International Australia, The looming human rights emergency in Queensland, <https://www.amnesty.org.au/why-does-the-government-keep-doing-the-same-thing-and-expect-a-different-result-the-looming-human-rights-emergency-in-qld/>.

cells without fresh air, sunlight or the ability to gain an education. A 2019 investigation by Amnesty uncovered 2,655 breaches of domestic and international law in the use of the watch houses to detain children as young as 10; failing to provide children with adequate clean clothes, underwear and personal hygiene products; the institutional use of violence; the use of isolation as a form of punishment; failure to provide adequate health and mental health care; and failure to provide access to adequate education.²⁵

8.12 The significant human rights impacts of these Bills, the lack of consultation, and the fact that the circumstances could not be considered exceptional circumstances as contained in the *Human Rights Act 2019* (Qld), demonstrate the need to remove the override provision from the Act. The override provision does not meet the objectives of the Act, indeed, it detracts from those objectives. Rather, incompatibility should be assessed using Statements of Compatibility, Parliamentary scrutiny, and through the complaints process and the Courts to consider the justifiability of limitations of rights and the interpretation of laws for compatibility with human rights contained in the *Human Rights Act 2019* (Qld). Courts cannot render an Act invalid if they decide that it is consistent with the *Human Rights Act 2019* (Qld) and can rather only issue a declaration of inconsistent interpretation. Even without an override provision the Parliament can legislate laws that are not compatible with human rights under the principles of Parliamentary sovereignty.

Recommendation 8: The Act is amended to remove s44, the override provision.

9. Court and tribunal proceedings

9.1 S48 of the Act requires all laws to be interpreted consistently with human rights. Queensland courts doubled their references to or consideration of human rights in 2022-2023, considering the Act on 136 occasions, compared to the previous year.²⁶

10.2 For example, the Land Court of Queensland recommended refusing a mining lease and environmental authority due to concerns about the impact on human rights, including the right to life, Aboriginal and Torres Strait Islander cultural rights, and property rights. The Court held that the application for a mining lease in the Galilee Basin would limit human rights because of the limitation on human rights caused by climate change. The Court also considered that climate change would have an impact on the cultural rights of Aboriginal and Torres Strait Islander peoples, noting that people displaced from their country would put the survival of their culture at risk, and that the rights of children were at risk. The Land Court also considered the cultural rights of First Nations witnesses who wished to give evidence on Country, finding that cultural rights would be limited if evidence was confined to witness statements and not conducted on Country.²⁷

10.3 This demonstrates the impact of requiring laws to be interpreted consistently with human rights, and importance of this to creating a future where rights are protected and respected, and this will be strengthened by including an independent, direct cause of actions.

²⁵ Above n24.

²⁶ Above n3, 52.

²⁷ *Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors (No 6)* [2022] QLC 21.

10. Human rights complaints and dispute resolution

10.1 The Act provides for a complaints process for alleged abuses of human rights contained in the Act. These provisions allow for conciliation through the public entity concerned, and then, if the complaint is not resolved, through the QHRC. Mediation in an appropriate, accessible, and low-cost, means to resolve many human rights complaints.

10.2 This complaints process has led to positive outcomes including changes to public entities decisions and improvements to systems and processes. Some examples of how this process has allowed people in Queensland to protect their human rights and challenge injustices are below.

10.3 A complaint was made to the Queensland Human Rights Commission by a woman with a disability residing in public housing with her child. She relied frequently on a wheelchair and requested to be transferred to a wheelchair accessible property. The parties attended conciliation and the housing provider agreed to transfer the complainant to a suitable house as soon as possible and to make necessary modifications to the current property, at the housing provider's expense.²⁸

11.4 A student reported repeated stalking from another student, and complained that her education provider failed to provide her with a safe place to study by failing to take action on her complaints. The student and the education provider attended conciliation and agreed to commence a formal investigation including reviewing CCTV footage of the alleged incidents, and also agreed to defer exams for the student.²⁹

11.5 The Queensland Benevolent Society used the complaint process to assist a couple with disabilities who faced losing custody of their child. Through the complaints process, the parents were supported to build practical and parenting skills, and were able to continue raising their child.³⁰

11.6 The QHRC has identified opportunities to improve the conciliation process, and these are supported by Amnesty International Australia.³¹ This includes reforms to the requirement to lodge an internal complaint and wait 45 days before taking the complaint to the QHRC, and reforms to protect people from victimisation.

12. Victims rights

12.1 The rights of victims are protected by rights contained in the Act including the right to life, to protection from torture and cruel, inhuman or degrading treatment, and right to security of the person.

²⁸ Above n3, 114.

²⁹ Above n 3, 116.

³⁰ Above n 12, 114.

³¹ Above n6, 5.

12.2 In the United Kingdom when Celia Peachey's mum Maria was murdered by her ex-partner, despite repeatedly asking the police for help. Celia used the *Human Rights Act 1998* to hold the police account for their failings. Celia and her family used Maria's right to life under the *Human Rights Act 1998* to push for a full investigation into why she was not protected. The resulting inquest revealed that Maria was unlawfully killed, and that police errors had contributed to her death.³²

12.3 There is a positive duty under the ICCPR and other treaties for public entities to take preventative action to protect the right to life, among other rights. The failure of Queensland police to protect women who report a serious threat of violence against them, or to carry out effective investigations into incidents of violence is a failure of this positive duty.³³

12.4 An interpretive note could be added to s8 of the Act recognising the positive duties owed by public entities to take positive steps to protect rights under the Act.

12.5 These rights also guide the treatment of victims in police investigations and court proceedings. The government should consider following the ACT by providing direction on the way public entities treat victims in police investigations and court proceedings, particularly for victim survivors of rape, family violence, domestic violence, and ensure accountability where serious failures of criminal justice occur.

12.6 The right to a fair hearing should also include victims of violence, and this could be achieved by minor changes to the wording of s31. The equivalent right in section 21 of the *Human Rights Act 2004* (ACT) stipulates that everyone has the right to have criminal charges, and rights and obligations recognised by law, decided by a competent, independent and impartial court or tribunal after a fair and public hearing.

Recommendation 8: Amend s31 of the Act so that the right to a fair hearing also includes victims of violence and add an interpretive note to s8 of the Act recognising the positive duties owed by public entities to take positive steps to protect rights under the Act.

12. Conclusion

12.1 Human rights belong to each and everyone one of us. The *Human Rights Act 2019* (Qld) has made a difference in people's lives in Queensland; centering human rights in the decisions of public entities, building a culture of human rights across the public sector, and allowing people to challenge injustice when their rights are breached, and receive remedies for these breaches. The protection of human rights is important to the people of Queensland.

12.2 It can however be be further strengthened by requiring public entities to consult with communities when making decisions and allowing people to have a say in matters in impact them, including more rights so that people can realise their rights to housing at a time of unprecedented

³² Amnesty International United Kingdom, People Like you, <https://savetheact.uk/people-like-you/>.

³³ Commission of Inquiry into Queensland Police Service responses to domestic and family violence, A Call for Change, 36–8, <https://www.qpsdfvinquiry.qld.gov.au/about/report.aspx>.

need, and take action for climate justice while facing the impacts of climate change, allowing people to take matters to court, removing the override provision, and educating more people and their human rights, among other changes.

12.3 With these changes, the *Queensland Human Rights Act 2019* (Qld) can fulfill its own objectives, alongside public entities' obligations under international law, to protect and respect human rights, and help create a fairer future for people in Queensland.