

## Fact sheet: Courts and tribunals and human rights

The *Human Rights Act 2019* (the Act) respects, protects, and promotes the human rights of all people in Queensland.

Courts and tribunals have an important role to play under the Act, including through:

- protecting human rights for people using courts and tribunals
- interpreting laws to check if they are compatible with human rights
- making decisions about legal disputes in human rights cases.

### How do courts and tribunals protect human rights?

Courts and tribunals must enforce human rights in court and tribunal proceedings. For example:

- right to recognition and equality before the law (section 15 of the Act)
- right to a fair hearing (section 31 of the Act)
- rights in criminal proceedings (section 32 of the Act).

Courts and tribunals protect these rights by making sure everyone can access the legal system.

#### Case study: Protecting the right to a fair hearing in Victoria

*Harkness v Roberts; Kyriazis v County Court of Victoria (No 2)* [2017] VSC 646

This case was about the right to a fair hearing, protected under the Victorian *Charter of Human Rights and Responsibilities Act 2006*. The police charged Mr Harkness with road safety offences. He represented himself in court, and the magistrate found him guilty of the offences and convicted him.

During the court case, the magistrate did not check whether Mr Harkness knew about legal procedures or understood the law. The Supreme Court said that the magistrate did not help Mr Harkness enough during the court case to make sure that he had a fair hearing. This breached his right to a fair hearing protected by the Victorian Charter.



## When does a court or tribunal have obligations under the Act?

Courts and tribunals act differently for different types of work. Courts and tribunals are public entities under the Act when they are acting in an administrative capacity. This might include when they are:

- hiring staff
- making policies and procedures
- conducting committal proceedings
- listing cases
- issuing warrants.

When courts and tribunals are acting as public entities, they have to act and make decisions in a way that is consistent with human rights law.

When courts and tribunals are acting judicially—for example, when sentencing a person who has been found guilty of a crime—the Act does not apply in the same way. Understanding whether a court or tribunal is acting administratively or judicially can be complex.

## How should the courts interpret the law?

When courts and tribunals are acting in a judicial capacity (e.g. sentencing a person who has been found guilty of a crime), the Act applies to them in a different way. Courts and tribunals must interpret (or read and apply) the laws made by Parliament in a way that is compatible with human rights. They can only do this in a way that is consistent with the purpose of the law they are interpreting.

If a court or tribunal can't read and apply another law in a way that is compatible with human rights, they must interpret that law in a way that is *most* compatible with human rights. They can only do this in a way that is consistent with the purpose of the law they are interpreting.

*Compatible with human rights* has a special meaning under the Act.<sup>1</sup> It means that:

- a law doesn't limit a human right; OR
- a law only limits a human right in a way that is reasonable and justified.

The Act shows courts and tribunals what to consider when they are interpreting the law.<sup>2</sup> Limits on human rights should be consistent with the values of a free and democratic society based on human dignity, equality and freedom.

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<sup>1</sup> See section 8 of the Act.

<sup>2</sup> See section 13 of the Act for factors to consider when deciding if a limit on a human right is reasonable and justifiable.

## What if another law isn't compatible with human rights?

If the court can't read and apply the law in a way that is compatible with human rights, they can say that the law is not compatible with human rights. This is called a declaration of incompatibility.<sup>3</sup> Only the Supreme Court or Court of Appeal can make a declaration. Lower courts and tribunals can ask the Supreme Court to consider questions about interpreting laws, including interpreting the *Human Rights Act 2019*.<sup>4</sup>

A declaration of incompatibility doesn't mean the law is invalid or stops operating. The Supreme Court will give a copy of the declaration to the Attorney-General. The Attorney-General will give a copy to the Minister who is responsible for the relevant law.<sup>5</sup> The Minister then presents a copy of the declaration in Parliament. A portfolio committee will report back to Parliament about the declaration within three months.<sup>6</sup> Then the Minister must provide a response that reflects on the portfolio committee's report.<sup>7</sup> The Parliament decides what to do about the declaration of incompatibility. They can decide to change the law to be compatible with human rights, or they can decide to leave the law as it is. For example, the Parliament might decide the law should stay the same because it achieves an important purpose.

This process starts a dialogue about human rights: the courts and the Parliament discuss how the law affects individual's human rights, and whether the law needs to be changed. The courts can start this conversation, but only the Parliament can change the law. The courts cannot do this.

## Who can participate in court cases about human rights?

The Attorney-General and the Queensland Human Rights Commission (QHRC) both have a right to participate in court cases about how the Act applies, or how another law should be interpreted.<sup>8</sup> The Attorney-General and the QHRC might want to tell the court about how they think the law should be interpreted, or about how human rights should be applied.

When the Attorney-General or the QHRC participate in court cases, they do not represent either side or become advocates for the original parties of the case. The Attorney-General and the QHRC get a formal notice when the Act is part of a case in the District or Supreme Court.<sup>9</sup> Then they can decide whether they want to participate in the case.

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<sup>3</sup> See section 53 of the Act.

<sup>4</sup> See section 49 of the Act.

<sup>5</sup> See sections 55 and 56 of the Act.

<sup>6</sup> See section 57 of the Act.

<sup>7</sup> See section 56 of the Act.

<sup>8</sup> See sections 50 and 51 of the Act.

<sup>9</sup> See section 52 of the Act.

## When can someone bring a human rights complaint to a court or tribunal?

A person can't go straight to a court or tribunal with only a human rights complaint. They need to have another claim that they can take to a court or tribunal (e.g. an anti-discrimination claim). Then they can add their human rights complaint to that claim and go to a court or tribunal.<sup>10</sup> There is no compensation available for human rights complaints through any court process.<sup>11</sup>

**You can find more information about human rights in Queensland at [www.forgov.qld.gov.au/humanrights](http://www.forgov.qld.gov.au/humanrights)**

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<sup>10</sup> See section 59 of the Act.

<sup>11</sup> See section 59(3) of the Act.