

# Human rights Acts

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## Key points

- In March 2025 Greens MP Jenny Leong gave notice of a bill to establish a human rights Act in NSW. The NSW Attorney-General, Michael Daley, said that the government is open to considering the issue. As at 1 August 2025, the bill had not been introduced.
- There are some protections of human rights in NSW through the common law, the Australian Constitution, state and federal legislation, and a parliamentary scrutiny mechanism for bills. A key issue in the debate about a human rights Act is whether these protections are adequate.
- A 2001 committee report recommended, by majority, not enacting a human rights Act in NSW. A 2018 committee report noted that many stakeholders advocated for such an Act, and this needed wider debate. Several national reports have recommended a human rights Act.
- Three Australian jurisdictions have enacted human rights Acts: the ACT in 2004, Victoria in 2006 and Queensland in 2019. These Acts are all based on a dialogue model of human rights, which maintains parliamentary sovereignty.
- The Acts require government bills to be accompanied by a statement of compatibility, public entities to make decisions and act in ways that are compatible with human rights, and courts to interpret legislation consistently with human rights where possible.
- A person who believes their human rights have been breached by a public entity can complain to the entity, complain to an independent oversight body, or raise the human rights ground in legal proceedings. Courts can provide a range of remedies but not damages.
- Notable differences between the 3 Acts include the range of human rights that are protected, whether there is provision for parliament to make an override declaration, and whether individuals have a direct or indirect right of action to the courts.
- Most reviews of the 3 Acts have concluded that they are helping to protect and promote human rights. However, these reviews have identified a range of issues with the Acts and have made recommendations to improve their operation.

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# 1. Introduction

In March 2025 Greens MP Jenny Leong gave notice of a bill to establish a human rights Act in NSW. Ms Leong said it ‘would provide a holistic alternative to a patchwork approach to reform and ensure stronger legal protections for fundamental rights such as housing, freedom of protest, and education.’<sup>1</sup> The NSW Attorney-General, Michael Daley, said that the government ‘is always open to considering the issue and working constructively to determine whether this proposal is a course of action that is in the best interests of the people of New South Wales.’<sup>2</sup>

As at 1 August 2025, the bill had not been introduced. The bill is likely to be broadly based on human rights legislation enacted in the ACT (2004), Victoria (2006) and Queensland (2019). These jurisdictions adopted what is known as the ‘dialogue model’ of rights protection, which aims to facilitate a dialogue on human rights between the 3 arms of government—the executive, the parliament, and the judiciary. The Acts set out a list of human rights from one or more international treaties that Australia has ratified, and they require:

- Bills to be accompanied by a statement of compatibility with these rights
- Parliamentary committees to scrutinise bills for compatibility with these rights
- Public entities to act in a way that is compatible with these rights
- Courts to interpret legislation consistently with these rights where possible.

Parliaments can still pass laws that are incompatible with human rights and the courts do not have the power to invalidate laws on this basis. This aligns with the model of human rights protection in New Zealand and the United Kingdom, and contrasts with other international models, such as the United States, where courts can strike down laws that infringe the Bill of Rights.

The purpose of this paper is to briefly outline how human rights are currently protected, review the debate about human rights Acts in Australia, and examine the features and effectiveness of the human rights Acts in the ACT, Victoria and Queensland. This paper updates papers from the NSW Parliamentary Research Service that were published in 2006 and 2009 but does not cover international jurisdictions.<sup>3</sup>

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<sup>1</sup> J Leong, [Greens introduce bill for a NSW Human Rights Act](#) [media release], March 2025.

<sup>2</sup> M Daley, [Human Rights Legislation](#), *NSW Hansard*, 19 March 2025.

<sup>3</sup> G Griffith, [A NSW Charter of Rights? The Continuing Debate](#), NSW Parliamentary Research Service, Briefing Paper No. 5/06, May 2006; and G Griffith, [Charter of Rights Update](#), NSW Parliamentary Research Service, E-brief 1/09, January 2009.

## 2. International protection of human rights

### 2.1 Human rights treaties

In 1948, the United Nations General Assembly adopted the [Universal Declaration of Human Rights](#). In 1966 these rights were expressed in binding international covenants – the [International Covenant on Civil and Political Rights \(ICCPR\)](#) and the [International Covenant on Economic Social and Cultural Rights \(ICESCR\)](#). A list of the rights in these treaties is presented in Table 1. Australia has ratified both treaties. While this creates international obligations, treaties do not have legal force in Australia until they are given effect by federal or state legislation.

The Australian Parliamentary Joint Committee on Human Rights has published an overview of the key rights in these treaties and how the rights may be applied.<sup>4</sup> It notes that some of the rights are absolute and may never be limited, such as the right not to be subjected to torture, cruel, inhuman or degrading treatment. However, other rights can be limited provided certain standards are met; namely, that the limitation is prescribed by law, that it has a legitimate objective, and that it is rationally connected and proportionate to this objective.

Both treaties have clauses on implementation. Article 2 of the ICCPR states:

Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

Article 2 of the ICESCR states:

Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

There are a range of other human rights treaties that Australia has ratified, including:

- [International Convention on the Elimination of All Forms of Racial Discrimination](#)
- [Convention on the Elimination of All Forms of Discrimination against Women](#)
- [Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#)
- [Convention on the Rights of the Child](#)
- [Convention on the Rights of Persons with Disabilities.](#)

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<sup>4</sup> Parliamentary Joint Committee on Human Rights, [Guide to human rights](#), 2015.

**Table 1: List of human rights in ICCPR and ICESCR**

ICCPR –civil and political rights	ICESCR – economic, social and cultural rights
Right of self-determination (Art 1)	Right of self-determination (Art 1)
Non-discrimination (Art 2)	Non-discrimination (Art 2)
Equal rights of men and women (Art 3)	Equal rights of men and women (Art 3)
Right to life (Art 6)	Right to work (Art 6)
Freedom from torture (Art 7)	Right to just and favourable conditions at work (Art 7)
Freedom from slavery (Art 8)	Trade union rights (Art 8)
Right to liberty and security of person (Art 9)	Right to social security (Art 9)
Treatment in detention (Art 10)	Family life (Art 10)
Limitation on imprisonment (Art 11)	Standard of living and freedom from hunger (Art 11)
Freedom of movement (Art 12)	Right to health (Art 12)
Foreigners legally in a State (Art 13)	Right to education (Art 13)
Equality before the courts (Art 14)	Plan of action for primary education (Art 14)
Limitations on trials (Art 15)	Cultural rights (Art 15)
Recognition before the law (Art 16)	
Right to privacy (Art 17)	
Freedom of religion (Art 18)	
Freedom of opinion and expression (Art 19)	
Incitement to hatred (Art 20)	
Freedom of assembly (Art 21)	
Freedom of association (Art 22)	
Right to marry (Art 23)	
Child protection (Art 24)	
Right to participate in public affairs (Art 25)	
Right to equality before the law (Art 26)	
Minority rights (Art 27)	

Source: Based on United Nations, [Easy-to-read version of the Human Rights Covenants](#).

## 2.2 Treaty reporting requirements

Australia is required to submit periodic reports to United Nations treaty bodies, and these bodies issue concluding observations and recommendations on Australia’s compliance with treaty obligations.<sup>5</sup> For example, Australia submitted its sixth report under the ICCPR in 2016.<sup>6</sup> The UN

<sup>5</sup> Australian Attorney-General’s Department, [Treaty body reporting](#), n.d., accessed 28 April 2025.

<sup>6</sup> UN Human Rights Committee, [Consideration of reports submitted by States parties under article 40 of the Covenant – Sixth periodic reports of States parties due in 2013 – Australia](#), 2 June 2016.

Human Rights Committee adopted its concluding observations on 9 November 2017. In these observations, the committee made recommendations on a range of issues including:

- The lack of human rights legislation
- Counter-terrorism measures
- Violence against women
- Overrepresentation of Indigenous people in prison
- Mandatory immigration detention.<sup>7</sup>

### 2.3 Individual complaint mechanisms

After exhausting domestic remedies, individuals can make a complaint, known as a ‘communication’, to a treaty body that a state which has ratified the treaty has violated their human rights.<sup>8</sup> The treaty body can express views, which are not binding. An example of a communication considered by the UN Human Rights Committee is the matter of Toonen in 1994.<sup>9</sup> Mr Toonen sent a communication about a Tasmanian law that criminalised homosexual sex. The committee considered that the law was in breach of human rights including ICCPR Art 17 (right to privacy) and Article 26 (non-discrimination). The Tasmanian government subsequently repealed the offence. While this case resulted in law reform, Australia’s record of providing remedies for human rights breaches has been criticised.<sup>10</sup> Note that Australia is not a party to the complaints mechanism for the ICESCR and therefore an Australian could not make a complaint about a breach of that treaty.

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<sup>7</sup> UN Human Rights Committee, [International Covenant on Civil and Political Rights – Concluding Observations on the sixth periodic report of Australia](#), 1 December 2017.

<sup>8</sup> Australian Attorney-General’s Department, [Human rights communications](#), n.d., accessed 2 May 2025.

<sup>9</sup> N O’Neill, S Rice, R Douglas, *Retreat from Injustice: Human Rights Law in Australia*, 2<sup>nd</sup> ed, The Federation Press, 2004, p 189.

<sup>10</sup> M Chiam, ‘International Human Rights Treaties and Institutions in the Protection of Human Rights in Australia, Chapter 12 in M Groves, J Boughey and D Meagher (eds), *The Legal Protection of Rights in Australia*, Hart Publishing, 2019, p 243.

## 3. NSW protection of human rights

There are some current protections of human rights in NSW through the common law, the Australian Constitution, and state and federal legislation. There is also a parliamentary scrutiny mechanism for bills in NSW. These are discussed briefly in this section.

### 3.1 Common law rights

The common law is the body of law developed by the courts. Over the centuries since the Magna Carta in 1215 and particularly the *Bill of Rights Act 1689* (UK) the common law recognised various rights including the right against self-incrimination, immunity from search without a warrant, freedom of peaceful assembly, and the presumption of innocence.<sup>11</sup> These rights are limited in the sense that they can be modified or extinguished by legislation. However, the common law principle of legality gives some protection. It requires courts to interpret legislation in a way that does not undermine common law rights unless the parliament makes unmistakably clear its intention to do so.<sup>12</sup>

### 3.2 Constitutional rights

The Australian Constitution does not contain a bill of rights. However, the Constitution does contain some express rights such as the right to be compensated on just terms if property is acquired compulsorily (s 51(xxxi)), the right to a jury trial for federal indictable offences (s 80), and the right to move freely between states (s 92). The Australian Constitution also has been interpreted to contain some implied rights such as freedom of political communication. Constitutional rights cannot be overridden by legislation. For example, in 2013 the High Court declared a NSW electoral law invalid on the basis that it infringed the implied freedom of political communication.<sup>13</sup>

### 3.3 Legislative rights

Some federal and state legislation was introduced to protect rights in international human rights instruments.<sup>14</sup> This includes federal and state anti-discrimination legislation and privacy legislation.<sup>15</sup> In addition, many pieces of federal and state legislation contain some human rights protections such as legislation governing the criminal justice system.<sup>16</sup>

Pursuant to the [Australian Human Rights Commission Act 1986 \(Cth\)](#), the Australian Human Rights Commission has several functions including investigating and conciliating complaints about breaches of human rights (such as rights under the ICCPR). This function only applies, however,

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<sup>11</sup> Legislative Council Standing Committee on Law and Justice, [A NSW Bill of Rights](#), Parliament of NSW, October 2001, p 13.

<sup>12</sup> See Australian Law Reform Commission, [Traditional Rights and Freedoms – Encroachments by Commonwealth Laws](#), ALRC Report 129, December 2015, p 36.

<sup>13</sup> [Unions NSW v New South Wales](#) [2013] HCA 58.

<sup>14</sup> Legislative Council Standing Committee on Law and Justice, [A NSW Bill of Rights](#), Parliament of NSW, October 2001, p 12-13.

<sup>15</sup> See the Commonwealth [Racial Discrimination Act 1975](#); [Sex Discrimination Act 1984](#), [Disability Discrimination Act 1992](#), and [Privacy Act 1988](#); and the NSW [Anti-Discrimination Act 1977](#) and [Privacy and Personal Information Protection Act 1988](#).

<sup>16</sup> See [Criminal Procedure Act 1986 \(NSW\)](#) and [Evidence Act 1995 \(NSW\)](#). See also [Crimes \(Administration of Sentences\) Regulation 2014](#), cl 164, which prohibits cruel, inhumane or degrading treatment of inmates, similar to ICCPR, Art 7.

where the breaches involve the Commonwealth and its agencies.<sup>17</sup> If the President of the Australian Human Rights Commission finds a breach, they may make a report to the Commonwealth Attorney-General with recommendations.

### **3.4 Parliamentary scrutiny of bills**

The NSW Parliament has a Legislation Review Committee which is required to consider any bill introduced into parliament and to report to both houses on various matters including whether the bill 'trespasses unduly on personal rights and liberties'.<sup>18</sup> The committee has similar functions in relation to regulations that are subject to disallowance by resolution of either house.<sup>19</sup> The committee regularly publishes *Legislation Review Digests*.<sup>20</sup>

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<sup>17</sup> Australian Human Rights Commission, [The complaint process for complaints about breaches of human rights by the Commonwealth](#), n.d., accessed 29 May 2025.

<sup>18</sup> [Legislation Review Act 1987](#), section 8A.

<sup>19</sup> [Legislation Review Act 1987](#), section 9.

<sup>20</sup> See NSW Parliament, [Legislation Review Committee](#), accessed 2 May 2025.

## 4. Arguments for and against a human rights Act

This section presents a summary of the arguments for and against a human rights Act. It has been taken from a report from a human rights consultation process commissioned by the Australian Government in 2009 (the process is discussed further in section 5.2).<sup>21</sup>

### 4.1 Arguments for a human rights Act

Seven main arguments have been put forward for a human rights Act.

1. **Strengthening existing protections that are inadequate:** There are gaps in the current human rights framework that would be filled by a comprehensive statement of the fundamental rights and freedoms of all Australians and a mechanism for ensuring compliance with those rights and freedoms. Such an Act would also serve as an important symbolic statement of Australian values.
2. **Protecting the marginalised and disadvantaged:** As well as providing a set of human rights against which proposed laws and policies could be assessed, a human rights Act would assist in educating individuals and groups about their rights and empowering them to call for better promotion and protection of those rights.
3. **Improving the quality and accountability of government:** The dialogue model that is the basis for existing Australian human rights Acts can generate a conversation between the judiciary, the executive and the legislature about human rights and would encourage public debate on the subject. This would improve government policy, legislation, government service delivery and judicial decisions.
4. **Contributing to a culture of respect for human rights:** Over time, implementation of a human rights Act by politicians, public sector agencies and the courts would lead to greater awareness of human rights in the community and greater consideration of and adherence to human rights principles by all sectors of the community.
5. **Improving Australia's international standing in relation to human rights:** Australia's domestic implementation of its international human rights obligations would limit future criticism for non-compliance, would reduce the number of complaints made to international treaty bodies, and would bolster Australia's credibility when commenting on human rights abuses in other jurisdictions.
6. **Bringing Australia into line with other democracies:** As the only Western democracy that does not have some form of national charter or bill of rights, Australia could be at risk of becoming isolated from developments in other similar legal systems. Australia's ability to

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<sup>21</sup> Adapted from F Brennan, [National Human Rights Consultation Report](#), Australian Government, September 2009, p xxiv – xxvi. See also Ch 13. Many other reports have outlined the arguments for and against including Legislative Council Standing Committee on Law and Justice, [A NSW Bill of Rights](#), Parliament of NSW, October 2001, Ch 5-6; Parliamentary Joint Committee on Human Rights, [Inquiry into Australia's Human Rights Framework](#), May 2024, Ch 5; Social Development Committee, [Inquiry Into the Potential for a Human Rights Act for South Australia](#), South Australian Parliament, April 2025, pp 90-105.

take part in discussions about human rights in the international arena might also be adversely affected.

7. **Generating economic benefits:** A human rights Act could generate economic benefits, reducing the economic costs associated with policies that do not protect the lives and safety of Australians.

## 4.2 Arguments against a human rights Act

Eight main arguments that have been put forward against a human rights Act.

1. **Adequacy of current human rights protections:** A human rights Act is unnecessary because Australia provides adequate protection of human rights through democratic institutions, constitutional protections, legislation and the common law. Australia enjoys greater social equity than other countries that do have a human rights Act.
2. **Undermining our tradition of parliamentary sovereignty:** There would be an unacceptable shift of power from the legislature to the judiciary if a human rights Act was introduced. Such an Act would require judges to make policy decisions, could result in courts 'rewriting' legislation, and would ultimately lead to the politicisation of the judiciary, undermining public confidence in the independence of the courts.
3. **No better human rights protections:** A human rights Act would not result in better human rights protections. Nor would it result in better laws, since parliament would either focus on pre-empting negative judicial consequences or abdicate its duty in relation to difficult policy questions, leaving them to the courts. It would not result in better government policies and services, and it would impose further costs on government agencies.
4. **Potentially negative outcomes for human rights:** A human rights Act might actually limit human rights or lead to other negative consequences for human rights protection. The very process of identifying and defining rights can limit them, and unintended or adverse consequences could flow from the protection of certain rights.
5. **Excessive and costly litigation:** If a human rights Act was introduced it would generate excessive and costly litigation, and the legal profession would be the main beneficiary. Such an Act could have adverse effects on the court system.
6. **Democratic processes and institutions offer better protection of rights:** Rights are best protected through a healthy democracy, a strong civil society and strong democratic institutions. It is the customs, attitudes and culture of a people, as expressed through their institutions, that determine the strength of a commitment to democratic values.
7. **A major economic cost:** The economic costs of introducing a human rights Act would outweigh any particular benefits the Act might have to offer.
8. **Unnecessarily legalised human rights:** A human rights Act would transform social and political questions into legal ones, and this would turn moral debates about rights into technical debates about statutory interpretation, undermining the potential for cultural change.

## 5. Past discussion of human rights Acts

### 5.1 New South Wales

In 2001 the Legislative Council Standing Committee on Law and Justice published a report on a NSW bill of rights. The report outlined the history of proposals for bills of rights in Australia, models of bills of rights in other countries, the debate about a NSW bill of rights, and parliamentary scrutiny and protection of rights. The committee, by majority, concluded that it was not in the public interest for the NSW Government to enact a statutory bill of rights.<sup>22</sup> The committee stated:

A statutory Bill [of rights] could lead to some improvement in human rights protections in some instances. However the cost of this uncertain marginal improvement is a fundamental change in the relationship between representative democracy, through an elected Parliament, and the judicial system. The independence of the Judiciary and the supremacy of Parliament are the foundations of the current system; both begin to alter under a Bill of Rights. A Bill of Rights would increase the responsibility of the Judiciary to protect human rights, giving it a role that should primarily be the responsibility of Parliament.<sup>23</sup>

Instead, the committee recommended that the NSW Parliament establish a Scrutiny of Legislation Committee. It was seen as having:

The potential to apply a systematic approach to the review of legislation at the time it is introduced, so as to alert the Parliament to possible breaches of individual rights and liberties, and provide an opportunity for Ministers to argue why they consider such breaches to be required.<sup>24</sup>

This led to the establishment of the Legislation Review Committee in 2003.

In 2006, then NSW Attorney General Bob Debus announced that he intended take a proposal to Cabinet, 'to invite public consultation on the values and rights Parliament should protect.'<sup>25</sup> This proposal did not lead to any community consultation or legislation. Several private members bills to enact a human rights Act were proposed between 2005 and 2010 but none were introduced.<sup>26</sup>

A 2018 review of the *Legislation Review Act 1987* by the Legislation Review Committee commented that many participants advocated for NSW to establish a statutory charter of human rights.<sup>27</sup> These included the NSW Bar Association, the NSW Council of Social Service (NCOSS) and the Public Interest Advocacy Centre (PIAC, now the Justice and Equity Centre). The committee concluded that it

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<sup>22</sup> Legislative Council Standing Committee on Law and Justice, [A NSW Bill of Rights](#), Parliament of NSW, October 2001, p xv. Peter Breen MLC issued a dissenting report (see Appendix 9).

<sup>23</sup> Legislative Council Standing Committee on Law and Justice, [A NSW Bill of Rights](#), Parliament of NSW, October 2001, p 110.

<sup>24</sup> Legislative Council Standing Committee on Law and Justice, [A NSW Bill of Rights](#), Parliament of NSW, October 2001, p xiv.

<sup>25</sup> G Griffith, [A NSW Charter of Rights? The Continuing Debate](#), NSW Parliamentary Research Service, Briefing Paper No. 5/06, May 2006, p 1.

<sup>26</sup> NSW Parliament, [Bills](#), accessed 6 May 2025. See for example [Human Rights Bill 2010](#). A different Bill that was introduced and negatived was the [Interpretation Amendment \(International Human Rights Obligations\) Bill 2012](#).

<sup>27</sup> Legislation Review Committee, [Inquiry into the operation of the Legislation Review Act 1987](#), Parliament of NSW, Report 1/56, November 2018, p 30.

'considers that this is a much greater issue than this current review of the operation of the [Legislation Review] Act and one that needs to involve wider debate and community process.'<sup>28</sup>

## 5.2 National

In 2009 the Australian Government established a committee chaired by Father Frank Brennan to conduct a national human rights consultation.<sup>29</sup> The committee's report in September 2009 made 31 recommendations including that Australia adopt a federal human rights Act based on the dialogue model.<sup>30</sup> The committee concluded that such an Act 'could constitute a useful, cost-effective means of repairing some of the holes in Australia's patchwork of rights protection.'<sup>31</sup> The committee noted that 'constitutional limitations might mean that significant elements of a federal Human Rights Act would not apply at the state level.'<sup>32</sup>

In 2010, the government released Australia's Human Rights Framework which did not include a human rights Act.<sup>33</sup> The Attorney-General, Robert McClelland, stated:

While there is overwhelming support for human rights in our community, many Australians remain concerned about the possible consequences of such an Act. The Government believes that the enhancement of human rights should be done in a way that as far as possible unites, rather than divides, our community.<sup>34</sup>

The Human Rights Framework included other legislative measures such as establishing a parliamentary Joint Committee on Human Rights to provide greater scrutiny of legislation and requiring each new bill to have a statement of human rights compatibility. These reforms were implemented by the [Human Rights \(Parliamentary Scrutiny\) Act 2011](#) (which remains in force). The government released a national human rights action plan in 2012.<sup>35</sup> A large part of both the framework and action plan lapsed when the Coalition was elected to government in 2013.<sup>36</sup>

In 2019, the Australian Human Rights Commission commenced a project to consider how human rights can be better protected across Australia.<sup>37</sup> Following extensive consultation, in December 2023 the commission published its final report, which made 12 recommendations including that a federal human rights Act be adopted.<sup>38</sup> The report outlined 10 ways that such an Act would make a difference including a better understanding of human rights, better decision-making, and pathways

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<sup>28</sup> Legislation Review Committee, [Inquiry into the operation of the Legislation Review Act 1987](#), Parliament of NSW, Report 1/56, November 2018, p 33.

<sup>29</sup> For earlier developments at the national level, see Legislative Council Standing Committee on Law and Justice, [A NSW Bill of Rights](#), Parliament of NSW, October 2001, Ch 3.

<sup>30</sup> F Brennan, [National Human Rights Consultation Report](#), Australian Government, September 2009, Rec 18.

<sup>31</sup> F Brennan, [National Human Rights Consultation Report](#), Australian Government, September 2009, p 377.

<sup>32</sup> F Brennan, [National Human Rights Consultation Report](#), Australian Government, September 2009, p 305.

<sup>33</sup> Australian Government, [Australia's Human Rights Framework](#), April 2010.

<sup>34</sup> Australian Government, [Australia's Human Rights Framework](#), April 2010, p 1.

<sup>35</sup> Australian Government, [Australia's National Human Rights Action Plan](#), 2012.

<sup>36</sup> Parliamentary Joint Committee on Human Rights, [Inquiry into Australia's Human Rights Framework](#), May 2024, p 11.

<sup>37</sup> Parliamentary Joint Committee on Human Rights, [Inquiry into Australia's Human Rights Framework](#), May 2024, p 13.

<sup>38</sup> Australian Human Rights Commission, [Free & Equal, Revitalising Australia's commitment to human rights](#), 2023, Rec 13.

for addressing breaches of people’s rights.<sup>39</sup> The commission set out a model for a human rights Act, which was based on the dialogue model.<sup>40</sup> The commission stated that the Act should be restricted to federal laws and federal public authorities.<sup>41</sup>

In May 2024, the Parliamentary Joint Committee on Human Rights published a report on its inquiry into Australia’s Human Rights Framework.<sup>42</sup> The report made 17 recommendations including that the government introduce legislation to establish a human rights Act, broadly reflecting the model proposed by the Australian Human Rights Commission. The committee’s reasons included that the current piecemeal approach to human rights protection is not adequate to ensure rights and freedoms are properly protected.<sup>43</sup> Coalition members issued a dissenting report, arguing that supporters of a new Act had ‘failed to demonstrate that our current systems are not providing adequate protection of human rights or that their reform would achieve preferable outcomes.’<sup>44</sup> As at 1 August 2025, the government had not published a response to the report.

### 5.3 Other states and territories

Most other states and territories have conducted reviews into a human rights Act (Table 2).<sup>45</sup> Three jurisdictions have enacted a human rights Act – the ACT, Victoria, and Queensland.

**Table 2: Reports in other states and territories since 2001**

Year	Report
2003	ACT Bill of Rights Act Consultative Committee <a href="#">report</a> recommended the adoption of a bill of rights
2005	Victorian Human Rights Consultation Committee <a href="#">report</a> recommended the enactment of a charter of human rights and responsibilities
2007	Western Australian Consultation Committee for a Proposed WA Human Rights Act <a href="#">report</a> recommended that a human rights Act be enacted
2007	Tasmanian Law Reform Institute <a href="#">report</a> recommended that a charter of human rights and responsibilities be enacted
2016	Queensland Parliament Legal Affairs and Community Safety Committee <a href="#">report</a> recommended legislating for a human rights Act (non-government members dissented)
2024	Tasmania Law Reform Institute paper <a href="#">report</a> reiterated 2007 recommendations
2025	South Australian Parliament Social Development Committee <a href="#">report</a> recommended that a human rights Act be enacted

<sup>39</sup> Australian Human Rights Commission, *Free & Equal, Revitalising Australia’s commitment to human rights*, 2023, p 69.

<sup>40</sup> Australian Human Rights Commission, *Free & Equal, Revitalising Australia’s commitment to human rights*, 2023, p 53.

<sup>41</sup> Australian Human Rights Commission, *Free & Equal, Revitalising Australia’s commitment to human rights*, 2023, p 54.

<sup>42</sup> Parliamentary Joint Committee on Human Rights, *Inquiry into Australia’s Human Rights Framework*, May 2024.

<sup>43</sup> Parliamentary Joint Committee on Human Rights, *Inquiry into Australia’s Human Rights Framework*, May 2024, p 299.

<sup>44</sup> Parliamentary Joint Committee on Human Rights, *Inquiry into Australia’s Human Rights Framework*, May 2024, p 333.

<sup>45</sup> For earlier reports in other states and territories, see Legislative Council Standing Committee on Law and Justice, *A NSW Bill of Rights*, Parliament of NSW, October 2001, Ch 3.

## 6. Human rights Acts in the ACT, Victoria and Queensland

### 6.1 The Acts

The first Australian jurisdiction to enact a human rights Act was the ACT in 2004, followed by Victoria in 2006 and Queensland in 2019. The 3 human rights Acts are:

- [Human Rights Act 2004](#) (ACT)
- [Charter of Human Rights and Responsibilities Act 2006](#) (Vic)
- [Human Rights Act 2019](#) (Qld)

In the ACT and Victoria the Acts were enacted following public consultation which supported the introduction of human rights Acts in those jurisdictions.<sup>46</sup> As shown in Table 2, in Queensland the parliament's Legal Affairs and Community Safety Committee had recommended that human rights legislation be introduced (with non-government members dissenting).<sup>47</sup> All 3 Acts have a preamble which sets out the underlying principles upon which the Acts are based. Those principles include:

- All people are born free and equal in dignity and rights<sup>48</sup>
- All human beings have equal and inalienable human rights<sup>49</sup>
- Human rights are necessary for individuals to live lives of dignity<sup>50</sup>
- Human rights are essential in a democratic and inclusive society that respects the rule of law, human dignity, equality and freedom<sup>51</sup>
- Respecting, protecting and promoting the rights of individuals improves the welfare of the whole community.<sup>52</sup>

This section sets out the key similarities and differences between the human rights legislation of the ACT, Victoria and Queensland. This includes the dialogue model of human rights, upon which all the Acts are all based. The section then sets out the human rights which are provided in each jurisdiction and the reasonable limits test which applies to those human rights. It discusses in detail the provisions of the most recent enactment of human rights in Australia, the *Human Rights Act 2019* (Qld), while also pointing out key similarities and differences with the Acts in the ACT and Victoria.

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<sup>46</sup> Legislative Assembly for the Australian Capital Territory, [Bill of Rights Consultative Committee](#), 23 October 2003, p 4,028 and R Hulls, [Charter of Human Rights and Responsibilities Bill](#), *Hansard (Victoria)*, 4 May 2006, p 1,289 and 1,290.

<sup>47</sup> Y D'Ath, [Human Rights Bill](#), *Record of Proceedings* (Qld), 31 October 2018, p 3,184.

<sup>48</sup> [Charter of Human Rights and Responsibilities Act 2006 \(Vic\)](#), Preamble.

<sup>49</sup> [Human Rights Act 2019 \(Qld\)](#), Preamble.

<sup>50</sup> [Human Rights Act 2004 \(ACT\)](#), Preamble.

<sup>51</sup> [Charter of Human Rights and Responsibilities Act 2006 \(Vic\)](#), Preamble.

<sup>52</sup> [Human Rights Act 2004 \(ACT\)](#), Preamble.

## 6.2 Key similarities and differences

The common purpose of the human rights legislation of the ACT, Queensland and Victoria is to protect and promote human rights.<sup>53</sup> To achieve their common purpose, the Acts have established human rights frameworks that are generally similar to each other, but which also have notable points of difference. The key similarities are shown in Table 3 and the key differences in Table 4.

**Table 3: Key similarities between the human rights Acts of the ACT, Vic and Qld**

Feature	Description
Model	The dialogue model of human rights operates The sovereignty of parliament is maintained
Rights protected	A common range of civil and political rights are protected
Limits on rights	Rights can be subject to reasonable limits
Statements of compatibility	Ministers must provide statements of compatibility for government bills
Scrutiny of bills	Bills are scrutinised for human rights compatibility by committees
Public entities	Must not act in a way that is incompatible with human rights Must take human rights into account when making decisions or providing services
Courts	Must interpret legislation compatibly with human rights, so far as is possible Can issue declarations of incompatibility, which do not affect the validity of laws Can resolve actions about breaches of human rights by public entities
Oversight bodies	Provide education and advice, intervene in court proceedings, and handle complaints about breaches of human rights by public entities

Source: Based on Parliament of South Australia, 49<sup>th</sup> report of the Social Development Committee, [Inquiry into the potential for a human rights Act for South Australia](#), 29 April 2025, Appendices, Table 1, p 135-146.

<sup>53</sup> *Human Rights Act 2019* (Qld), [section 3](#); *Charter of Human Rights and Responsibilities Act 2006* (Vic), section 1(2); and *Human Right Act 2004* (ACT), [Long title](#).

**Table 4: Key differences between the human rights Acts of the ACT, Vic and Qld**

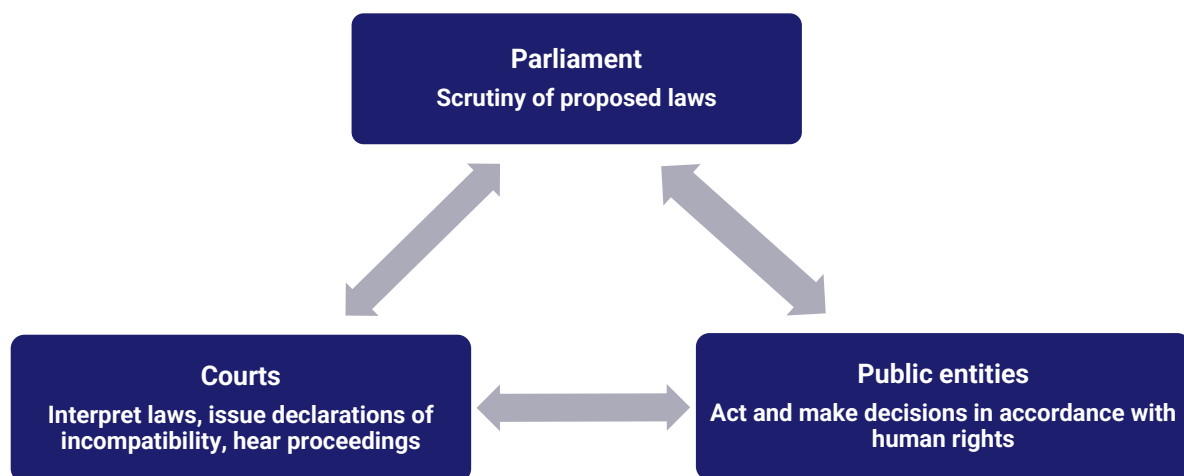
Feature	ACT	Victoria	Queensland
Additional rights protected	Right to education Right to work Right to healthy environment	Property rights	Property rights Right to education Right to health services
Statements of compatibility	Not required for private members bills or subordinate legislation	Required for private members bills and 'human rights certificate' required for subordinate legislation	Required for private members bills and 'human rights certificate' required for subordinate legislation
Scrutiny of bills and subordinate legislation	Legislative Assembly Standing Committee on Justice and Community Safety All bills and subordinate legislation must be examined	Scrutiny of Acts and Regulations Committee All bills must be examined Committee may report on human rights issues for subordinate legislation	Portfolio committees All bills must be examined For subordinate legislation, human rights issues may be considered
Parliamentary override declarations	Parliament cannot make an override declaration	Parliament can make an override declaration in 'exceptional circumstances'	Parliament can make an override declaration in 'exceptional circumstances'
Procedure after court makes declaration of incompatibility	Report must be tabled before parliament	Report must be tabled before parliament	Report must be tabled before parliament and there is a parliamentary process to review the legislation
Right of action to the courts	Individuals have a direct right of action to the courts on human rights grounds No other legal ground needed	Individuals have an indirect right of action to the courts on human rights grounds They need another legal ground upon which to bring a case to court	Individuals have an indirect right of action to the courts on human rights grounds They need another legal ground upon which to bring a case to court
Non-government organisations	Has an 'opt-in' clause that enables non-government organisations to comply with human rights obligations	Does not have an 'opt-in' clause that enables non-government organisations to comply with human rights obligations	Does not have an 'opt-in' clause that enables non-government organisations to comply with human rights obligations
Oversight bodies	ACT Human Rights Commission	Victorian Equal Opportunity and Human Rights Commission (VEOHRC) and Victorian Ombudsman	Queensland Human Rights Commission

Source: Based on Parliament of South Australia, 49<sup>th</sup> report of the Social Development Committee, [Inquiry into the potential for a human rights Act for South Australia](#), 29 April 2025, Appendices, Table 1, p 135-146.

### 6.3 Dialogue model

The *Human Rights Act 2004* (ACT), *Charter of Human Rights and Responsibilities Act 2006* (Vic) and *Human Rights Act 2019* (Qld) all establish dialogue models to protect and promote human rights.<sup>54</sup> A dialogue model incorporates formal processes that are designed to share responsibility for protecting and promoting human rights across the executive (public entities), parliament and the courts, while maintaining parliamentary sovereignty.<sup>55</sup> The essential features of a dialogue model of human rights are shown in Figure 1.

**Figure 1: The dialogue model of human rights**



Source: NSW Parliamentary Research Service

Under the dialogue model, human rights are provided in an ordinary Act of parliament that can be amended by parliament in the same way as any other Act. Moreover, an Act that is incompatible with human rights legislation cannot be held to be invalid by the courts. For these reasons, the dialogue model maintains parliamentary sovereignty. In contrast, under the constitutional model that exists in the United States, human rights are incorporated directly into the constitution and only can be amended in accordance with the provisions set out in the Constitution, such as a referendum. Further, an Act of Parliament can be held to be invalid by the courts if it is incompatible with the constitutionally enshrined human rights. Griffith notes that a 'major flaw of the US model from the perspective of the Westminster parliamentary system of government is that it makes judges the ultimate arbiters in conflicts over human rights.'<sup>56</sup>

<sup>54</sup> Parliament of South Australia, 49<sup>th</sup> report of the Social Development Committee, *Inquiry into the potential for a human rights Act for South Australia*, 29 April 2025, p 58. The Social Development Committee notes that the United Kingdom and New Zealand have also adopted dialogue models in, respectively, the *Human Rights Act 1998* (UK) and *Human Rights Act 1993* (NZ).

<sup>55</sup> Australian Human Rights Commission, *Revitalising Australia's Commitment to Human Rights: Free & Equal Final Report 2023*, 2023, p 54. Note that the human rights Acts do not use the term 'the executive'. Instead, the Acts use the terms 'public authority' (in the case of the Australian Capital Territory and Victoria) and 'public entity' (in the case of Queensland). To accord with the Queensland Act, the term 'public entity' is used in this paper.

<sup>56</sup> G Griffith, *A NSW Charter of Rights? The continuing debate*, May 2006, NSW Parliamentary Research Service, Briefing Paper No. 5/06, p 14.

## 6.4 The human rights which are protected and their limits

The human rights which are protected in the ACT, Victoria and Queensland are shown in Table 5. Those human rights are based on the human rights that exist at international law, in such treaties as the ICCPR and the ICESCR, as well as in the United Nations General Assembly resolution on the human right to a clean, healthy and sustainable environment.<sup>57</sup>

**Table 5: Human rights protected in the ACT, Victoria and Queensland**

Human right	ACT	Victoria	Queensland
Recognition and equality before the law	✓	✓	✓
Right to life	✓	✓	✓
Protection from torture and cruel, inhuman or degrading treatment <sup>58</sup>	✓	✓	✓
Protection of the family and children	✓	✓	✓
Privacy and reputation	✓	✓	✓
Freedom of movement	✓	✓	✓
Freedom of thought, conscience, religion and belief	✓	✓	✓
Peaceful assembly and freedom of association	✓	✓	✓
Freedom of expression	✓	✓	✓
Taking part in public life	✓	✓	✓
Right to liberty and security of person	✓	✓	✓
Humane treatment when deprived of liberty	✓	✓	✓
Children in the criminal process	✓	✓	✓
Fair trial	✓	✓	✓
Rights in criminal proceedings	✓	✓	✓
Compensation for wrongful conviction	✓	✗	✗
Right not to be tried or punished more than once	✓	✓	✓
Retrospective criminal laws	✓	✓	✓
Freedom from forced work	✓	✓	✓
Cultural rights (including of Aboriginal and Torres Strait Islander peoples and other minorities)	✓	✓	✓
Right to education	✓	✗	✓
Right to work and other work-related rights	✓	✗	✗
Right to a healthy environment	✓	✗	✗
Property rights	✗	✓	✓
Right to health services	✗	✗	✓

<sup>57</sup> Section 27C of the *Human Rights Act 2004* (ACT), which provides for the right to a healthy environment, was inserted into the *Human Rights Act 2004* (ACT) by the *Human Rights (Healthy Environment) Amendment Act 2024* (ACT).

<sup>58</sup> Including medical or scientific experimentation or treatment without consent.

On 10 April 2025 the [Human Rights \(Housing\) Amendment Bill](#) (ACT) was introduced into the ACT Legislative Assembly. The Bill proposes to amend the *Human Rights Act 2004* (ACT) to enshrine the 'right to adequate housing' for everyone.<sup>59</sup> A committee inquiry has recommended that the Legislative Assembly enact the Bill.<sup>60</sup> Under the proposed right to adequate housing, no one may be unlawfully or arbitrarily evicted or have an essential utility unlawfully or arbitrarily withdrawn.

Each of the 3 human rights Acts provides a 'reasonable limits' test which sets out when and to what extent the human rights which are protected can be limited. The reasonable limits tests are all expressed in similar terms.<sup>61</sup> Queensland's reasonable limits test, and the factors that can be used to assist in the application of the reasonable limits test, are set out in section 13 of the *Human Rights Act 2019* (Qld) and shown in Box 1. The ACT and Victoria each have fewer factors that can be used to assist in the application of the reasonable limits test.<sup>62</sup>

#### **Box 1: The test for when human rights may be limited in Queensland**

- (1) A human right may be subject under law only to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.
- (2) In deciding whether a limit on a human right is reasonable and justifiable ... the following factors may be relevant—
  - (a) the nature of the human right;
  - (b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom;
  - (c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose;
  - (d) whether there are any less restrictive and reasonably available ways to achieve the purpose;
  - (e) the importance of the purpose of the limitation;
  - (f) the importance of preserving the human right, taking into account the nature and extent of the limitation on the human right;
  - (g) the balance between the matters mentioned in paragraphs (e) and (f).

Source: Section 13(1) and (2) of the *Human Rights Act 2019* (Qld)

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<sup>59</sup> See proposed section 27D.

<sup>60</sup> Legislative Assembly for the ACT, *Inquiry into the Human Rights (Housing) Amendment Bill 2025*, July 2025, p v.

<sup>61</sup> See: section 28(1) of the *Human Rights Act 2004* (ACT), section 7(2) of the *Charter of Human Rights and Responsibilities Act 2006* (Vic) and section 13(1) of the *Human Rights Act 2019* (Qld).

<sup>62</sup> Section 28(2) of the *Human Rights Act 2004* (ACT) and section 7(2) of the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

The 3 Acts also impose specific limits on the right to life, so that it does not affect the lawfulness of abortion. In the ACT, the right to life applies to a person from the time of birth.<sup>63</sup> In Victoria, section 48 of the *Charter of Human Rights and Responsibilities Act 2006* (Vic) expressly states that the charter does not affect any law applicable to abortion. In Queensland, section 106 of the *Human Rights Act 2019* (Qld) states that the Act does not affect 'any law relating to termination of pregnancy or the killing of an unborn child'.

## 6.5 Compatibility statements for bills

In Queensland, a member of parliament who proposes to introduce a bill in the Legislative Assembly must prepare a statement of compatibility for the bill. This provision applies to ministers introducing government bills and members of parliament introducing private members bills. The statement of compatibility must state whether the bill is compatible or incompatible with human rights. The statement of compatibility must also state how the bill is compatible with human rights or, alternatively, the nature and extent of the incompatibility.<sup>64</sup> The statement of compatibility must be tabled when the bill is introduced.<sup>65</sup> The statement of compatibility is not binding on any court or tribunal.<sup>66</sup>

The minister responsible for subordinate legislation must prepare a human rights certificate for subordinate legislation.<sup>67</sup> The human rights certificate must state whether the subordinate legislation is compatible or not compatible with human rights. The human rights certificate must also state how the subordinate legislation is compatible with human rights or, alternatively, the nature and extent of the incompatibility.<sup>68</sup> The human rights certificate must accompany the subordinate legislation when it is tabled in the Legislative Assembly.<sup>69</sup>

A failure to comply with the requirements relating to statements of compatibility and human rights certificates for subordinate legislation does not affect the validity of an Act, law, subordinate legislation or any other law.<sup>70</sup>

In the ACT, the Attorney General must prepare a compatibility statement for 'each bill presented to the Legislative Assembly by a Minister'.<sup>71</sup> The *Human Rights Act 2004* (ACT) '... does not subject regulations and other secondary legislation to the statement of compatibility requirement'.<sup>72</sup> In

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<sup>63</sup> *Human Rights Act 2004* (ACT), section 9(2).

<sup>64</sup> *Human Rights Act 2019* (Qld), section 38(1) and (2).

<sup>65</sup> *Human Rights Act 2019* (Qld), section 38(3).

<sup>66</sup> *Human Rights Act 2019* (Qld), section 38(4).

<sup>67</sup> *Human Rights Act 2019* (Qld), section 41(1). If there is more than 1 responsible minister, 1 of the responsible ministers may prepare the human rights certificate under the authority of the other responsible ministers: section 41(1A). The requirement for a human rights certificate does not apply to 2 types of subordinate legislation described in section 40(4A). The first type is an instrument that fixes a single day for the commencement of all the provisions of an Act that are not in force. The second type is an instrument, other than a regulation, which is prescribed by regulation, provided the minister is satisfied that the instrument will not directly or indirectly limit a human right.

<sup>68</sup> *Human Rights Act 2019* (Qld), section 41(2).

<sup>69</sup> *Human Rights Act 2019* (Qld), section 41(3).

<sup>70</sup> *Human Rights Act 2019* (Qld), section 42.

<sup>71</sup> *Human Rights Act 2004* (ACT), section 37.

<sup>72</sup> J Debeljak and L Grenfell, *Law Making and Human Rights*, 2020, p 186, [6.130].

Victoria, a member of parliament who proposes to introduce a bill into either house must prepare a statement of compatibility for the bill.<sup>73</sup> Human rights certificates must be prepared for legislative instruments under section 12D(1) of the [Subordinate Legislation Act 1994](#) (Vic).

## 6.6 Committee scrutiny of bills

In Queensland, committee scrutiny must be conducted by the portfolio committee that is responsible for examining a bill. The committee must report to the Legislative Assembly on the statement of compatibility that has been prepared for the bill and on whether the bill is not compatible with human rights.<sup>74</sup> The portfolio committee that is responsible for examining subordinate legislation may, as part of its examination, consider the human rights certificate which must be prepared for the subordinate legislation.<sup>75</sup> A failure to comply with the requirements relating to committee scrutiny of bills does not affect the validity of an Act, law, subordinate legislation or any other law.<sup>76</sup>

In the ACT, all bills and subordinate laws must be examined by the Legislative Assembly Standing Committee on Justice and Community Safety.<sup>77</sup> In Victoria, any bill introduced into parliament must be considered by the Scrutiny of Acts and Regulations Committee.<sup>78</sup> The committee may examine any statutory rule for its compatibility with human rights.<sup>79</sup>

## 6.7 Override declarations by Parliament

The ACT's dialogue model of human rights does not have an override declaration. In contrast, Queensland and Victoria have override declarations.<sup>80</sup> In Queensland, parliament may expressly declare in any Act that an Act or specific provision has effect despite being incompatible with one or more human rights.<sup>81</sup> If such an override declaration is made, the declaration extends to a statutory instrument made under the Act or provision.<sup>82</sup>

Override declarations are to be made only in 'exceptional circumstances' such as 'war, a state of emergency, an exceptional crisis situation constituting a threat to public safety, health or order'.<sup>83</sup> The

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<sup>73</sup> *Charter of Human Rights and Responsibilities Act 2006* (Vic), section 28(1) and (2). A note to these provisions states that they apply to '... Ministers introducing government Bills and members of Parliament introducing non-government Bills.'

<sup>74</sup> *Human Rights Act 2019* (Qld), section 39.

<sup>75</sup> *Human Rights Act 2019* (Qld), section 41(4). A failure to comply with the provisions relating to committee scrutiny of bills and subordinate legislation does not affect the validity of any law: *Human Rights Act 2019* (Qld), section 42.

<sup>76</sup> *Human Rights Act 2019* (Qld), section 42.

<sup>77</sup> *Human Rights Act 2004* (ACT), section 38. Legislative Assembly of the Australian Capital Territory, [Legislative Assembly Standing Committee on Justice and Community Safety](#), n.d., accessed 17 June 2025. The ACT Legislative Assembly resolved to establish a standing committee on Justice and Community Safety, and provide it with a human rights scrutiny role, on 2 December 2020.

<sup>78</sup> *Charter of Human Rights and Responsibilities Act 2006* (Vic), section 30.

<sup>79</sup> *Subordinate Legislation Act 1994* (Vic), section 21(1)(ha). See also: [Charter of Human Rights and Responsibilities Act 2006](#) (Vic), note to section 30.

<sup>80</sup> The Victorian override provision is section 31 of the [Charter of Human Rights and Responsibilities Act 2006](#) (Vic).

<sup>81</sup> *Human Rights Act 2019* (Qld), section 43(1).

<sup>82</sup> *Human Rights Act 2019* (Qld), section 43(3).

<sup>83</sup> *Human Rights Act 2019* (Qld), section 43(4).

provision of the *Human Rights Act 2019* (Qld) that enables override declarations to be made is section 43, which is shown in Box 2.

### Box 2: Override by Parliament

- (1) Parliament may expressly declare in an Act that the Act or another Act, or a provision of the Act or another Act, has effect despite being incompatible with 1 or more human rights or despite anything else in this Act.
- (2) A declaration under subsection (1) is an override declaration.
- (3) If an override declaration is made in relation to an Act or a provision of an Act, the declaration extends to a statutory instrument made under the Act or provision.
- (4) It is the intention of Parliament that an override declaration will only be made in exceptional circumstances.

*Examples of exceptional circumstances—*

war, a state of emergency, an exceptional crisis situation constituting a threat to public safety, health or order

Source: Section 43 of the *Human Rights Act 2019* (Qld)

A member who introduces a bill containing an override declaration must make a statement to the Legislative Assembly that explains the exceptional circumstances that justify including the override declaration in the bill.<sup>84</sup> Similar requirements apply where the override declaration is contained in an amendment in consideration of a bill.<sup>85</sup> A failure to comply with these requirements does not affect the validity of the Act or any other law.<sup>86</sup>

If an override declaration is made, the *Human Rights Act 2019* (Qld) does not apply to the Act or to the provision which is the subject of the override declaration, while the declaration is in force. This means that the Supreme Court cannot make a declaration of incompatibility in relation to the Act or to the provision that is the subject of the declaration, and the requirement to interpret the Act or provision in a way that is compatible with human rights does not apply.<sup>87</sup>

Override declarations expire 5 years after the day on which they commence, or on an earlier day that is stated in the Act in which they appear.<sup>88</sup> However, parliament may, at any time, re-enact an override declaration.<sup>89</sup>

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<sup>84</sup> *Human Rights Act 2019* (Qld), section 44.

<sup>85</sup> *Human Rights Act 2019* (Qld), section 44.

<sup>86</sup> *Human Rights Act 2019* (Qld), section 47.

<sup>87</sup> *Human Rights Act 2019* (Qld), section 45(1). Interpretation requirements and declarations of incompatibility are discussed below, at 6.9.1 and 6.9.2.

<sup>88</sup> *Human Rights Act 2019* (Qld), section 45(2).

<sup>89</sup> *Human Rights Act 2019* (Qld), section 46.

In Queensland 3 Acts have contained override declarations, all relating to youth justice.<sup>90</sup> The recent use of override declarations in Queensland to introduce youth justice law reform is discussed in Box 3. In Victoria 4 Acts have contained override declarations, most relating to parole.<sup>91</sup>

### Box 3: Override declarations used for youth justice reform

An override declaration is contained in [section 175A\(12\)](#) of the *Youth Justice Act 1992* (Qld), which sets out 'significant offences to which adult penalties apply'. The Making Queensland Safer (Adult Crime, Adult Time) Amendment Bill 2025 added a further 20 offences to section 175A.

In the [Statement of Compatibility](#) for the Making Queensland Safer (Adult Crime, Adult Time) Amendment Bill 2025, Laura Gerber MP, Minister for Youth Justice and Victim Support and Minister for Corrective Services, said:

The provisions inserted by the amendments are subject to the override declaration in existing section 175A of the [Youth Justice] Act which provides that the section has effect despite being incompatible with human rights, and despite anything else in the [Human Rights (HR) Act].

Because the [Making Queensland Safer (Adult Crime, Adult Time) Amendment] Bill does not contain an override declaration, a statement of exceptional circumstances is not required by section 44 of the [Human Rights] Act. However, I am of the view that the current situation with respect to youth crime in Queensland presents an exceptional crisis situation constituting a threat to public safety such that the addition of the new offences within the scope of the override declaration in section 175A of the [Youth Justice] Act is justified.

Another youth justice reform with an override declaration is [section 29\(1\)](#) of the *Bail Act 1980* (Qld), which makes it an offence to breach conditions of bail, with a maximum penalty of 2 years imprisonment. Section 29(3) states that section 29 has effect in relation to a defendant who is a child despite being incompatible with human rights.

These override declarations have been contentious. At issue is whether youth crime in Queensland constitutes 'exceptional circumstances', such as a 'war, a state of emergency, an exceptional crisis situation constituting a threat to public safety, health or order'.<sup>92</sup>

## 6.8 The role of public entities

Under the dialogue model of human rights in the ACT, Victoria and Queensland, the role of public entities is to act and make decisions in accordance with human rights. Different terminology is used

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<sup>90</sup> [Strengthening Community Safety Act 2023](#); [The Child Protection \(Offender Reporting and Offender Prohibition Order\) and Other Legislation Amendment Act 2023](#); [Making Queensland Safer Act 2024](#). The [Making Queensland Safer \(Adult Crime, Adult Time\) Amendment Act 2025](#) amended provisions that were already the subject of an override declaration.

<sup>91</sup> See [Legal Profession Uniform Law Application Act 2014](#); [Corrections Amendment \(Parole\) Act 2014](#); [Corrections Amendment \(Parole\) Act 2018](#) and [Corrections Amendment \(Parole Reform\) Act 2023](#).

<sup>92</sup> See, for instance: Human Rights Law Centre, [Making Queensland Safer Act 2024](#), n.d., accessed 29 July 2025 and Queensland Human Rights Commission, [Making Queensland Safer Bill: Submission to Justice, Integrity and Community Safety Commission](#), 4 December 2024, p 20.

in the 3 jurisdictions, with the ACT and Victoria using the term 'public authorities' and Queensland using the term 'public entities'. There is no material difference between the two terms. Essentially, they are both defined broadly to refer to the executive and the public sector.

In Queensland, a public entity includes a public sector government entity, a public service employee, the Queensland Police Service, a local government and a minister, as well as entities which have requested to be subject to public entity human rights obligations.<sup>93</sup> The definition of public entity specifically excludes the Legislative Assembly and courts and tribunals, except when they are acting in an administrative capacity.<sup>94</sup>

It is unlawful for a Queensland public entity to act or to make a decision in a way that is not compatible with human rights or, when making a decision, to fail to give proper consideration to a relevant human right.<sup>95</sup> As discussed in sections 6.9 and 6.10, where a person believes that a public entity in Queensland has acted unlawfully by acting or making a decision in a way that is not compatible with a human right, or failing to properly consider a relevant human right, the person can raise the matter with the public entity, make a complaint to the independent oversight body (the Queensland Human Rights Commission) or, if another ground exists for commencing legal proceedings against the public entity, add the human rights ground to those proceedings.

The public entity does not act unlawfully if the entity could not reasonably have acted differently or made a different decision because of a statutory provision, a law of the Commonwealth or another state, or otherwise under law.<sup>96</sup> Further, breaches of human rights by public entities do not invalidate the actions of public entities.<sup>97</sup> Nor do they constitute an offence against the *Human Rights Act 2019* (Qld) or another Act.<sup>98</sup>

The requirement for public entities to conduct themselves in accordance with human rights does not apply to a body established for a religious purpose if the act or decision is done or made in accordance with the doctrine of the religion concerned and is necessary to avoid offending the religious sensitivities of the people of the religion.<sup>99</sup>

## 6.9 The role of the courts

In the ACT, Victoria and Queensland, the role of the courts is to interpret laws in accordance with human rights so far as it is possible to do so, issue declarations of incompatibility (which do not affect the validity of laws) and hear proceedings relating to alleged breaches of human rights. The Queensland provisions are discussed in detail below.

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<sup>93</sup> *Human Rights Act 2019* (Qld), sections 9 and 60(1)–(3).

<sup>94</sup> *Human Rights Act 2019* (Qld), section 9 (4).

<sup>95</sup> *Human Rights Act 2019* (Qld), section 58(1). Proper consideration is defined in section 58(3) as including, but not being limited to: '(a) identifying the human rights that may be affected by the decision; and (b) considering whether the decision would be compatible with human rights.'

<sup>96</sup> *Human Rights Act 2019* (Qld), section 58(2). Acts or decisions of a private nature are also excluded from the requirement for public entities to act and make decisions in accordance with human rights: section 58(4).

<sup>97</sup> *Human Rights Act 2019* (Qld), section 58(6)(a).

<sup>98</sup> *Human Rights Act 2019* (Qld), section 58(6)(b).

<sup>99</sup> *Human Rights Act 2019* (Qld), section 58(3).

### 6.9.1 Interpret laws consistently with human rights

To the extent that it is possible to do so consistently with their purpose, all statutory provisions must be interpreted in a way that is compatible with human rights.<sup>100</sup> If it is not possible to interpret a statutory provision in a way that is compatible with human rights, the provision must be interpreted, consistently with its purpose, in a way that is most compatible with human rights.<sup>101</sup> When interpreting a statutory provision, international law and the judgments of domestic, foreign and international courts and tribunals that are relevant to a human right may be considered.<sup>102</sup> The requirement to interpret statutory provisions in a way that is compatible with human rights does not apply to a provision that is the subject of an override declaration.<sup>103</sup> Nor does it affect the validity of legislation, or a legislative provision, that is not compatible with human rights.<sup>104</sup>

The Attorney-General and the Queensland Human Rights Commission must be notified of, and can intervene in, proceedings before a court or tribunal in which a question of law arises that relates to the interpretation of a statutory provision in accordance with the Act or to the application of the Act.<sup>105</sup> Such cases may be referred to the Supreme Court.<sup>106</sup>

### 6.9.2 Issue declarations of incompatibility

The Supreme Court may make a declaration of incompatibility, to the effect that a statutory provision is not able to be interpreted in a way that is compatible with human rights.<sup>107</sup> The declaration can be made in a proceeding before the Supreme Court where a question of law arises as to the interpretation of a statutory provision in accordance with the Act or a question relates to the application of the Act. Declarations of incompatibility can also be made in cases raising human rights issues that have been referred to the Supreme Court.<sup>108</sup> However, the Supreme Court cannot make a declaration of incompatibility if an override declaration is in force.<sup>109</sup> The Supreme Court also cannot make a declaration of incompatibility unless it is satisfied that notice has been given to the Attorney-General and Queensland Human Rights Commission, and that the Attorney-General and commission have been given a reasonable opportunity to intervene in the proceeding or make a submission about the proposed declaration.<sup>110</sup> A declaration of incompatibility does not affect the validity of a statutory provision, create a legal right in any person or provide a civil cause of action.<sup>111</sup>

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<sup>100</sup> *Human Rights Act 2019* (Qld), section 48(1).

<sup>101</sup> *Human Rights Act 2019* (Qld), section 48(2).

<sup>102</sup> *Human Rights Act 2019* (Qld), section 48(3).

<sup>103</sup> *Human Rights Act 2019* (Qld), section 48(5).

<sup>104</sup> *Human Rights Act 2019* (Qld), section 48(4).

<sup>105</sup> *Human Rights Act 2019* (Qld), sections 50–52. This applies to proceedings which have been referred to the Supreme Court under section 49.

<sup>106</sup> *Human Rights Act 2019* (Qld), section 49(1) and (2). The court or tribunal referring the proceeding must not make a decision about the matter to which the question relates while the referral is pending or make a decision that is inconsistent with the Supreme Court's decision on the question: *Human Rights Act 2019* (Qld), section 49(3).

<sup>107</sup> *Human Rights Act 2019* (Qld), section 53(2).

<sup>108</sup> *Human Rights Act 2019* (Qld), section 53(1). Declarations of incompatibility can also be made in an appeal before the Court of Appeal.

<sup>109</sup> *Human Rights Act 2019* (Qld), section 53(3).

<sup>110</sup> *Human Rights Act 2019* (Qld), section 53(5).

<sup>111</sup> *Human Rights Act 2019* (Qld), section 54.

Declarations of incompatibility must be tabled in the Legislative Assembly by the responsible minister within 6 sitting days after the minister has received a copy.<sup>112</sup> The Legislative Assembly, in turn, must refer the declaration of incompatibility to a portfolio committee.<sup>113</sup> The portfolio committee must report on the declaration to the Legislative Assembly within 3 months after the declaration was referred.<sup>114</sup> The minister must prepare a written response to the declaration and table a copy of the response in the Legislative Assembly within 6 months after receiving a copy of the declaration.<sup>115</sup>

Queensland courts have not made any declarations of incompatibility.<sup>116</sup> In the ACT the courts have made 2 declarations of incompatibility. In *Islam*, the court held that the presumption against bail in section 9C of the *Bail Act 1992* (ACT) was incompatible with the human right to liberty.<sup>117</sup> In *Davidson*, the court declared that clause 4.3 of the *Corrections Management (Separate Confinement) Operating Procedure 2019* (ACT) was incompatible with the right to humane treatment when deprived of liberty.<sup>118</sup> In Victoria the courts have made one declaration of incompatibility, although this was set aside on appeal.<sup>119</sup>

### 6.9.3 Hearing proceedings relating to breaches of human rights

In Queensland a person cannot directly approach the courts when they believe their human rights have been breached.<sup>120</sup> Instead, the human rights action must indirectly ‘piggy back’ another action against a public entity for unlawful conduct.<sup>121</sup> In the ‘piggy back’ proceedings, the person is not entitled to be awarded damages on the ground of unlawfulness arising under the *Human Rights Act 2019* (Qld).<sup>122</sup>

Human rights actions must also ‘piggy back’ another action in Victoria;<sup>123</sup> whereas in the ACT there is a direct right of action to the courts on the basis of an alleged breach of human rights.<sup>124</sup> Similar to Queensland, the courts in the ACT and Victoria cannot issue damages based on a breach of human rights.<sup>125</sup>

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<sup>112</sup> *Human Rights Act 2019* (Qld), section 56(1)(a). The Supreme Court is required to provide a copy of the declaration to the Attorney General, who in turn must provide a copy to the responsible Minister: section 55.

<sup>113</sup> *Human Rights Act 2019* (Qld), section 57(1).

<sup>114</sup> *Human Rights Act 2019* (Qld), section 57(2).

<sup>115</sup> *Human Rights Act 2019* (Qld), section 56(1)(b).

<sup>116</sup> See S Harris Rimmer, [Placing People at the Heart of Policy: First independent review of the Human Rights Act 2019 \(Qld\)](#), September 2024, p 66.

<sup>117</sup> [In the matter of an application for bail by Isa Islam \[2010\] ACTSC 147](#).

<sup>118</sup> [Davidson v Director-General, Justice and Community Safety Directorate \[2022\] ACTSC 83](#)

<sup>119</sup> [R v Momcilovic \[2010\] VSCA 50](#); [Momcilovic v The Queen \[2011\] HCA 34](#)

<sup>120</sup> In contrast, see: *Human Rights Act 2002* (ACT), section 40C(2), which provides a direct right of action for a breach of human rights in the ACT.

<sup>121</sup> *Human Rights Act 2019* (Qld), section 59.

<sup>122</sup> *Human Rights Act 2019* (Qld), section 59(3). Section 59 does not affect other rights that a person may have, including the rights to seek damages on grounds other than a contravention of human rights.

<sup>123</sup> *Charter of Human Rights and Responsibilities Act 2006* (Vic), section 39(1).

<sup>124</sup> *Human Rights Act 2004* (ACT), section 40C(2). See also M Stephens R Ford, T Garg and P Hart, Human Rights Acts across Australia: implications and considerations for business, [Part 3: bringing a cause of action](#), *Allens*, 6 March 2024, accessed 16 July 2025. The cause of action provided under section 40C(2) is not available where it is claimed that the contravention is in relation to the right to a healthy environment (under section 27C): *Human Rights Act 2004* (ACT), section 40C(8).

<sup>125</sup> *Human Rights Act 2004* (ACT), section 40C(6), *Charter of Human Rights and Responsibilities Act 2006* (Vic), section 39(3) and *Human Rights Act 2019* (Qld), section 59(3).

## 6.10 Independent oversight bodies

The ACT, Victoria and Queensland all have independent oversight bodies that promote human rights, provide education and advice on human rights, monitor the operation of human rights legislation, intervene in court proceedings and hear complaints about human rights.

In the ACT, the independent oversight body is the ACT Human Rights Commission, which was established by the *Human Rights Commission Act 2005* (ACT).<sup>126</sup> In Victoria, the independent oversight body is the Victorian Equal Opportunity and Human Rights Commission (VEOHRC), which operates under the *Equal Opportunity Act 2010* (Vic). However, human rights complaints in Victoria are not dealt with by VEOHRC, but by the Victorian Ombudsman.<sup>127</sup>

In Queensland, the relevant independent oversight body is the Queensland Human Rights Commission, which was established under the *Anti-Discrimination Act 1991* (Qld). This body was formerly called the Anti-Discrimination Commission Queensland but was renamed the Queensland Human Rights Commission to reflect its functions under the *Human Rights Act 2019* (Qld).<sup>128</sup>

The functions of the Queensland Human Rights Commission include:

- Dealing with human rights complaints
- Reviewing and reporting on the effect of Acts, statutory instruments and the common law on human rights
- Reviewing the policies, programs, procedures, practices and services of public entities in relation to their compatibility with human rights
- Promoting an understanding and acceptance of human rights and the *Human Rights Act 2019* (Qld)
- Making information about human rights available to the community
- Providing education about human rights and the Act
- Assisting the Attorney-General in reviews of the Act
- Advising the Attorney-General about matters relevant to the operation of the Act.<sup>129</sup>

A person may make a complaint to the Queensland Human Rights Commission if they believe they have been affected by a public entity that has contravened the Act by acting in a way or making a decision that is not compatible with human rights, or by failing to properly consider a relevant human right.<sup>130</sup> However, this complaint can only be made if the person has first complained directly to the public entity, at least 45 business days have elapsed and the person has not received an adequate response to the complaint.<sup>131</sup> The Queensland Human Rights Commission will deal with the

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<sup>126</sup> *Human Rights Commission Act 2005* (ACT), section 11.

<sup>127</sup> Victorian Equal Opportunity and Human Rights Commission, [Human rights](#), n.d., accessed 2 June 2025.

<sup>128</sup> Queensland Human Rights Commission, [About us](#), n.d., accessed 11 June 2025. See also, Queensland Human Rights Commission, *Queensland's Human Rights Act 2019: A guide for public entities*, 2019.

<sup>129</sup> *Human Rights Act 2019* (Qld), section 61.

<sup>130</sup> *Human Rights Act 2019* (Qld), section 64(1)(a). An agent of such a person can also make a complaint (section 64(1)(b)) as can a person authorised by the commissioner to make a complaint (section 64(1)(c)).

<sup>131</sup> *Human Rights Act 2019* (Qld), section 65(1). If there are exceptional circumstance, the commission may accept the complaint earlier than 45 days: section 65(2).

complaint in accordance with the processes established under Part 4 Division 2 of the *Human Rights Act 2019* (Qld), which can include referring human rights complaints to other relevant public entities<sup>132</sup> or conducting conciliation conferences.<sup>133</sup>

As soon as practicable after the end of each financial year, the Queensland Human Rights Commission must prepare an annual report on the operation of the *Human Rights Act 2019* (Qld) that includes information on a range of factors specified in the Act, including details of all declarations of incompatibility and override declarations, as well as the number and outcome of human rights complaints.<sup>134</sup> The Attorney-General must table a copy of each annual report in the Legislative Assembly within 6 sitting days after receiving the report.<sup>135</sup>

The number of human rights complaints to the Queensland Human Rights Commission and the Victorian Ombudsman and are shown in Figures 2 and 3. Note that complaints data is not published in the Victorian Ombudsman's annual reports prior to 2020-2021. In June 2024, the ACT complaints mechanism commenced but complaints data is not yet available.

It should be noted that, in total, more complaints are made directly to agencies than to the independent oversight bodies. For instance, in Queensland in 2023-24, 1,902 complaints were made to the Department of Education, 2,698 complaints were made to the Queensland Police Service and 80 complaints were made to the Department of Child Safety, Seniors and Disability Services.<sup>136</sup>

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<sup>132</sup> Such as the Ombudsman, Health Ombudsman or Crime and Corruption Commission: *Human Rights Act 2019* (Qld), section 73.

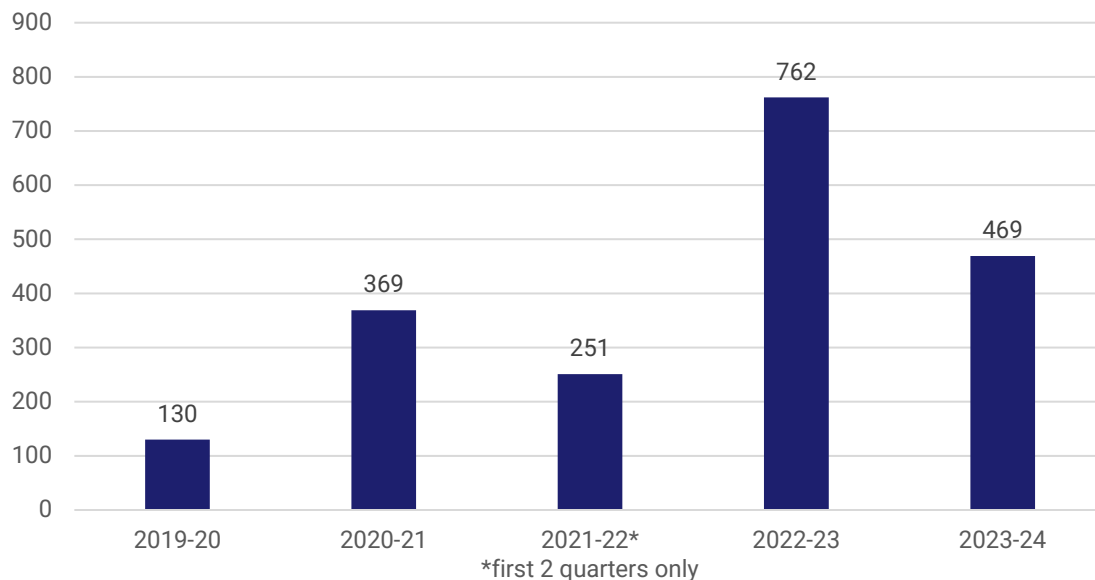
<sup>133</sup> *Human Rights Act 2019* (Qld), section 79.

<sup>134</sup> *Human Rights Act 2019* (Qld), section 91. Other reports relating to the performance or functions of the Queensland Human Rights Commission can be prepared under section 92.

<sup>135</sup> *Human Rights Act 2019* (Qld), section 94. The Attorney General must also table any report that he or she has requested the Queensland Human Rights Commission to prepare under section 92(3).

<sup>136</sup> Queensland Human Rights Commission, *2023-24 Annual Report on the operation of Queensland's Human Rights Act 2019*, 2024, p 70–71.

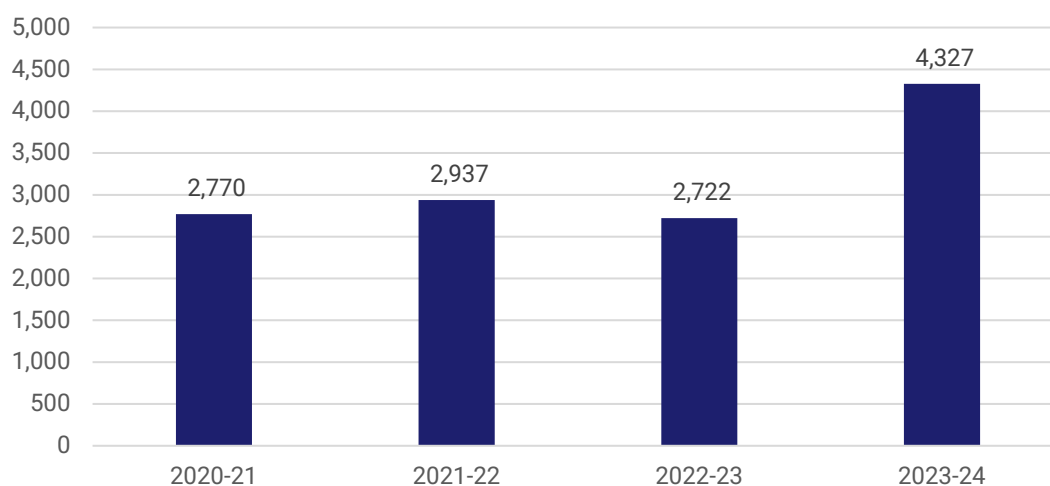
**Figure 2: Human rights complaints to Queensland Human Rights Commission**



Source: [Human Rights Act Annual Reports 2019-20 to 2023-24](#)

Note: The [2021-22 annual report](#) stated 'the total number of human rights complaints lodged with the Commission during the reporting period is not ascertainable, due to the large increase in complaints lodged and the impact this has had on assessment timeframes and reporting. Complete data is however available for the first two quarters of the financial year from 1 July 2021 to 31 December 2021.'

**Figure 3 Human rights complaints to Victorian Ombudsman**



Source: [Victorian Ombudsman, Annual Reports 2021 to 2023-24](#)

Note: The [2023-24 annual report](#) noted that the sizeable increase in the number of complaints in 2023-24 was mainly due to a change in how it recorded matters in its case management system.

### 6.11 Legislative review

The enactment of human rights legislation represents major legal reform. For that reason, the human rights legislation of the ACT, Victoria and Queensland were all enacted with requirements for legislative review. The requirements were for review over 2 periods of time, one short term and one medium term, although the periods of time differed across the jurisdictions. With respect to Queensland, the *Human Rights Act 2019* (Qld) was enacted with requirements for legislative review after approximately 3 and 7 years of operation.<sup>137</sup>

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<sup>137</sup> *Human Rights Act 2019* (Qld), sections 95 and 96.

## 7. Commentary on the effectiveness of these Acts

### 7.1 Australian Capital Territory

In 2009 the Australian National University published a report on the first 5 years of operation of the ACT Human Rights Act.<sup>138</sup> The report concluded:

After almost five years of operation, the HRA has overall succeeded in creating a fledgling human rights culture in the ACT. It is important to recall that the major test of the real success of the HRA is the extent to which it has shaped the policy-making and legislative process, as well as the delivery of services in the ACT. Notwithstanding the fairly limited in-depth examination of the HRA in the courts since its enactment, the progress in these other areas, which is less immediately visible, has been significant. It has brought human rights questions explicitly into the consideration of policy and legislation, thereby improving their quality...<sup>139</sup>

The report made 30 recommendations to strengthen the operation of the Act. These included some recommendations for legislative amendment such as:

- The Human Rights Commissioner should be given a complaints-handling function
- The Supreme Court should be given a limited power to award damages
- There should be ongoing reviews of the Act's operation on a 5 yearly cycle.

The government's response supported several recommendations but did not support the first 2 recommendations listed above (the Human Rights Commission was ultimately given a complaint-handling function through legislative amendment in 2023).<sup>140</sup>

There have not been any subsequent reviews but there has been some academic and other commentary. In a 2019 publication, Rice commented that while there are plenty of quantitative indicators on how the ACT Human Rights Act is being used within government and the community, the objective of achieving a human rights culture in the ACT 'is unmonitored and unassessed'.<sup>141</sup>

In a 2019 performance audit report, the Auditor-General examined the role of the Human Rights Unit within the Justice and Community Safety Directorate in providing support to ACT Government agencies in relation to human rights.<sup>142</sup> It commented that the Human Rights Unit provides effective advice to ACT Government agencies in relation to bills. However, it stated that the Human Rights Unit

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<sup>138</sup> ACT Human Rights Research Project, *The Human Rights Act 2004 (Act): The First Five Years of Operation: a Report to the ACT Department of Justice and Community Safety*, Department of Justice and Community Safety, May 2009.

<sup>139</sup> ACT Human Rights Research Project, *The Human Rights Act 2004 (Act): The First Five Years of Operation: a Report to the ACT Department of Justice and Community Safety*, Department of Justice and Community Safety, May 2009, p 7.

<sup>140</sup> See ACT Government, *Government Response Australian National University Human Rights Research Project Report The Human Rights Act 2004 (ACT): The First Five Years of Operation*, March 2012.

<sup>141</sup> S Rice, 'Culture, What Culture?' Why We Don't Know if the ACT Human Rights Act is Working, chapter 10, in M Groves, J Boughey and D Meagher (eds), *The Legal Protection of Rights in Australia*, Hart Publishing, 2019, p 205.

<sup>142</sup> ACT Auditor-General, *Recognition And Implementation Of Obligations Under The Human Rights Act 2004*, Report No.2 /2019, February 2019, p 1.

could improve the provision of information and guidance material on human rights with respect to day-to-day decision-making. In addition, it commented that the quality and comprehensiveness of annual reporting by ACT government agencies on human rights activities was varied.<sup>143</sup>

In a 2024 journal article, Walsh and Allen investigated the impact and influence of the ACT Human Rights Act in its first 20 years of operation.<sup>144</sup> They interviewed 29 lawyers and public servants who worked with complainants or respondents in human rights matters. The article observed:

The [Act] is having its greatest impact outside the courtroom by influencing decision-making processes within the executive (including the scrutiny of Bills) and as a mechanism for resolving disputes early on. However, barriers are preventing greater use by the ACT community including lack of awareness and education, and limited use of the [Act] by the legal profession.<sup>145</sup>

## 7.2 Victoria

In 2011, the Scrutiny of Acts and Regulations Committee (SARC) completed a 4-year review of the charter.<sup>146</sup> The terms of reference for the review included the effects of the charter in various areas and the benefits and costs of the charter. The committee made some comments on effectiveness but was unable to reach a conclusion on whether the benefits of the charter outweighed the costs.<sup>147</sup> A majority considered that only Division 1 of Part 3 of the charter (scrutiny of new laws) be retained, and that Divisions 3 (interpretation of laws) and Divisions 4 (obligations of public authorities) be repealed. A minority favoured retaining all of Part 3 of the charter, with the modifications recommended.<sup>148</sup> No significant changes were made to the charter following the review.

In 2015 Michael Brett Young completed an independent 8-year review of the charter.<sup>149</sup> The terms of reference were different to the 2011 review, and the report did not provide the same type of assessment of the Act's effectiveness. The report commented generally:

...it is clear to me that the Charter has helped to promote and protect human rights in Victoria. However, there is more work to be done in making the Charter as practical as it could be, in demystifying it and bringing it with[in] the reach of all Victorians.<sup>150</sup>

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<sup>143</sup> ACT Auditor-General, *Recognition And Implementation Of Obligations Under The Human Rights Act 2004*, Report No.2 /2019, February 2019, p 1.

<sup>144</sup> T Walsh and D Allen 2024, *Twenty Years Of Human Rights Protection In The Australian Capital Territory: What Have We Learned?*, *UNSW Law Journal*, 2024, 47(2), pp 391-414.

<sup>145</sup> T Walsh and D Allen 2024, *Twenty Years Of Human Rights Protection In The Australian Capital Territory: What Have We Learned?*, *UNSW Law Journal*, 2024, 47(2), p 394. See also S Mulcahy and K Seear, *A culture of rights finding its feet: parliamentary human rights scrutiny in the Australian Capital Territory*, *Journal of Legislative Studies*, 2025, 31(1), pp 192-214.

<sup>146</sup> Scrutiny of Acts and Regulations Committee, *Review of the Charter of Human Rights and Responsibilities Act 2006*, Victoria Parliament, 2011.

<sup>147</sup> Scrutiny of Acts and Regulations Committee, *Review of the Charter of Human Rights and Responsibilities Act 2006*, Victoria Parliament, 2011, pp 81, 87, 106, 114, 124, 130.

<sup>148</sup> Scrutiny of Acts and Regulations Committee, *Review of the Charter of Human Rights and Responsibilities Act 2006*, Victoria Parliament, 2011, p xx.

<sup>149</sup> M Brett Young, *From Commitment to Culture: The 2015 Review of the Charter of Human Rights and Responsibilities Act 2006*, September 2015.

<sup>150</sup> M Brett Young, *From Commitment to Culture: The 2015 Review of the Charter of Human Rights and Responsibilities Act 2006*, September 2015, p iii.

The report made 52 recommendations to make the charter more effective. These included:

- Recommendations to build a stronger human rights culture, particularly in the public sector
- Enabling the Equal Opportunity and Human Rights Commission to offer dispute resolution under the charter
- Introducing a remedies provision for breaches of human rights by public entities, modelled on section 40C of the ACT Human Rights Act.<sup>151</sup>

The Victorian Government's response accepted in full or in principle 45 of the recommendations. The second and third recommendations listed above were stated as 'under further consideration'. There have been no significant amendments to the charter since the review.

In a 2019 publication, Boughey commented on the effectiveness of the charter:

An analysis of the two reviews of the Charter and VEOHRC's nine annual reports, case law, legislative practice, and academic and professional commentary on the Charter reveals that it has had some success in achieving [its] aims over the past decade. Interestingly, however, this success has not tended to be achieved directly through the mechanisms set out in the Charter – of parliamentary scrutiny and judicial interpretation and review. As I have argued in this chapter, both of these mechanisms have fundamental flaws which make them less successful in protecting rights than many hoped. Instead, many of the best examples of legislation and administrative decision-making...have been achieved within the executive branch alone, as a result of greater cognisance about rights in developing legislation and policy, and through advocacy by lawyers on behalf of individuals or groups...<sup>152</sup>

### 7.3 Queensland

In September 2024, Professor Susan Harris Rimmer completed a review of the Human Rights Act.<sup>153</sup> The review commented overall:

...the Act has helped to promote and protect human rights in Queensland. The Act has generally delivered on the expectations of those community advocates who urged its passing – that it would enhance the quality of Queensland's democracy between elections for the least powerful, provide a yardstick to measure government actions, assist marginalised people to feel a sense of dignity and standing, and require public entities and leaders to consider the impact of their day-to-day decisions on the human rights of those in Queensland.

But the overwhelming feedback is that the initial momentum has slowed or stalled, particularly in light of the use of the overrides of the Act in the youth justice area. The perception is that, after a rocky start, the Queensland Legislative Assembly, the Government and the Leadership Board have deprioritised the Human Rights Act in recent years and that a renewed surge of support is required to embed a human

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<sup>151</sup> For a more detailed summary of the recommendations, see Victorian Equal Opportunity and Human Rights Commission, [Reform of the Charter](#), n.d., accessed 26 May 2025.

<sup>152</sup> J Boughey, *The Victorian Charter: A Slow Start or Fundamentally Flawed?*, Chapter 11 in M Groves, J Boughey and D Meagher (eds), *The Legal Protection of Rights in Australia*, Hart Publishing, 2019, p 226.

<sup>153</sup> S Harris Rimmer, [Placing People at the Heart of Policy: First independent review of the Human Rights Act 2019 \(Qld\)](#), September 2024.

rights culture in Queensland. This is a similar story to the early years of the ACT and Victoria human rights legislation but perhaps amplified by the pandemic and the early use of the overrides.<sup>154</sup>

The report made 70 recommendations including key recommendations on:

...the need for a remedy for unresolved human rights complaints, explicit and intentional leadership by Directors-General and Ministers, and crucial resources for human rights prevention, including dedicated full time, highly qualified human rights advisors in frontline agencies.<sup>155</sup>

In March 2025 the new government said it would not implement the report's recommendations, noting that 'significant enhancements to the rights of victims have already been legislated in the Making Queensland Safer Act 2024.'<sup>156</sup>

## 7.4 Case studies

In 2022, the Human Rights Law Centre published a report containing 101 case studies to 'highlight the benefits of the Charters of Rights that exist in the ACT, Victoria and Queensland.'<sup>157</sup> In 2023, the ACT Human Rights Commission published a collection of 20 human rights case studies to show that the Act 'has contributed substantially to holding the Government to account and fostering a more inclusive and respectful Canberra community.'<sup>158</sup> To illustrate how the Acts work in practice, some case examples from each of the 3 jurisdictions with human rights Acts are provided below. A summary of a 2024 Queensland decision is also provided, as an example of the way human rights operated during the COVID-19 pandemic.

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<sup>154</sup> S Harris Rimmer, *Placing People at the Heart of Policy: First independent review of the Human Rights Act 2019 (Qld)*, September 2024, p 12.

<sup>155</sup> S Harris Rimmer, *Placing People at the Heart of Policy: First independent review of the Human Rights Act 2019 (Qld)*, September 2024, p 14.

<sup>156</sup> D Frecklington, *Letter to Clerk of the Parliament*, 25 March 2025.

<sup>157</sup> Human Rights Law Centre, *Charters of Human Rights Make Our Lives Better: Here are 101 cases showing how*, 2022.

<sup>158</sup> ACT Human Rights Commission, *20<sup>th</sup> Anniversary of the Human Rights Bill: A Collection of 20 Human Rights Case Studies*, 2023, Foreword.

**Box 4: ACT – access to public school education for asylum seekers<sup>159</sup>**

The ACT Human Rights Act protects the right to education. The Human Rights and Discrimination Commissioner raised concerns with the ACT Education and Training Directorate about its policies to charge certain international students on various visa subclasses fees to attend ACT public schools. International students affected by these policies included children and young people granted refugee status, and those seeking asylum while living in Canberra. The various circumstances of these students were relevant to the reasonableness and proportionality of the directorate's policies under human rights and discrimination law. The commissioner worked with the directorate over two years to develop new policies and procedures that better met the directorate's human rights and discrimination law obligations including policies confirming that ACT public education is free for asylum seekers.

**Box 5: Victoria – imprisonment for unpaid fines of man with a cognitive disability prevented<sup>160</sup>**

Zakaria Taha had an intellectual disability. He was issued with numerous fines for different minor offences including riding a bike without a helmet and taking public transport without a ticket. After he failed to pay the fines, his case came before the Victorian Magistrates' Court. The Magistrates' Court had the power to cancel some or all of the fines if it was satisfied that there were special circumstances, like an intellectual disability, or that prison would be excessive, disproportionate or unduly harsh. However, the magistrate was not aware that Mr Taha had an intellectual disability and did not make inquiries as to whether or not he did. The magistrate ordered that Mr Taha pay off the fines by monthly instalments and that if he defaulted on the payments, he would be imprisoned for 100 days. Mr Taha defaulted on the instalment payments and challenged the Magistrates' Court decision. The Victorian Court of Appeal ruled that the Magistrates' Court decision was invalid because the court had an obligation, before making an imprisonment order, to enquire about whether the person had any special circumstances, like an intellectual disability, that would justify making a less severe order. The Court of Appeal's decision was heavily influenced by the charter and in particular the rights to equality, liberty and fair hearing.

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<sup>159</sup> Human Rights Law Centre, [Charters of Human Rights Make Our Lives Better: Here are 101 cases showing how](#), 2022, Case 16.

<sup>160</sup> Human Rights Law Centre, [Charters of Human Rights Make Our Lives Better: Here are 101 cases showing how](#), 2022, Case 22. See also [Police Toll Enforcement v Taha; State of Victoria v Brookes \[2013\] VSCA 37](#).

**Box 6: Queensland – police express regret about asking traditional custodians to move on while exercising their cultural rights<sup>161</sup>**

Adrian Burragubba, a leader of the Wangan and Jagalingou people, and his family were camping, practicing their culture and performing traditional ceremonies on a pastoral lease area. Police officers approached the group and asked them to leave, stating that an international mining company occupying the land had claimed they were ‘trespassing’. The site was the subject of an Indigenous Land Use Agreement but the family opposed the agreement and the mine, saying that Aboriginal people had been exercising their culture by fishing and hunting and performing ceremonies for more than 40,000 years.

Cultural rights of Aboriginal peoples and Torres Strait Islander peoples are specifically protected by the Queensland Human Rights Act, including the right to maintain their distinctive spiritual, material and economic relationship with the land and waters with which they hold a connection. The family told the police that they had received expert advice that they could lawfully exercise their cultural rights and responsibilities. However, the police ordered the group to pack up their equipment and leave within an hour. The family says that this caused grief and trauma.

The Queensland Police Service agreed to provide a statement of regret which was able to be shared publicly. The statement acknowledged that the events caused embarrassment, hurt and humiliation for Mr Burragubba and his extended family, that there are complex legal issues and cultural sensitivities, and that the Queensland Police Service will commit to take into account the issues in the complaint in future responses

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<sup>161</sup> Human Rights Law Centre, [Charters of Human Rights Make Our Lives Better: Here are 101 cases showing how](#), 2022, Case 88.

**Box 7: Queensland – Direction for COVID vaccinations<sup>162</sup>**

Police officers challenged 2 directions made by the Police Commissioner that required them to receive COVID-19 vaccinations by particular dates.

The Supreme Court found that the directions did limit the officers' human rights; in particular, the human right not to be subjected to medical treatment without full, free and informed consent, which is provided by section 17(c) of the *Human Rights Act 2019* (Qld). However, in the context of the COVID pandemic, this limitation was held to be reasonable and demonstrably justified, in accordance with section 13 of the Act. Nevertheless, the directions were declared unlawful because the Police Commissioner had not given proper consideration to human rights before issuing the directions, as required by section 58(1)(b) of the Act. The court ordered that the Police Commissioner could not take any steps to enforce those particular directions.

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<sup>162</sup> Queensland Human Rights Commission, [Case note: \*Johnston v Commissioner of Police\* \[2024\] QSC 2](#), 12 September 2024, accessed 16 July 2025.

**Human rights Acts**

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