

Submission by



qai

Queensland
Advocacy
for Inclusion

Independent review of the Queensland Human Rights Act

To Professor Susan Rimmer

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About Queensland Advocacy for Inclusion

Queensland Advocacy for Inclusion (QAI) is an independent, community-based advocacy organisation and community legal service that provides individual and systems advocacy for people with disability. Our purpose is to advocate for the protection and advancement of the needs, rights, and lives of people with disability in Queensland. QAI's Management Committee is comprised of a majority of persons with disability, whose wisdom and lived experience guides our work and values.

QAI has been engaged in systems advocacy for over thirty years, advocating for change through campaigns directed at attitudinal, law and policy reform.

QAI also provides individual advocacy services in the areas of human rights, disability discrimination, guardianship and administration, involuntary mental health treatment, criminal justice, NDIS access and appeals, and non-legal advocacy for young people with disability including in relation to education. Our individual advocacy experience informs our understanding and prioritisation of systemic advocacy issues.

Since 1 January 2022, QAI has also been funded by the Queensland Government to establish and co-ordinate the Queensland Independent Disability Advocacy Network (QIDAN). QIDAN members work collaboratively to raise the profile of disability advocacy while also working towards attitudinal, policy and legislative change for people with disability in Queensland.

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QAI's recommendations

1. Amend the *Human Rights Act 2019* (Qld) to include all rights enshrined in the Convention on the Rights of Persons with Disabilities (CRPD).
2. Amend the *Human Rights Act 2019* (Qld) to include a *participation duty* and *equal access to justice duty* as recommended by the Australian Human Rights Commission in their proposal for a national Human Rights Act.
3. Amend the *Human Rights Act 2019* (Qld) to include a right to an adequate standard of living and right to housing.
4. Section 43 of the *Human Rights Act 2019* (Qld) and the ability of government to override it should be repealed. Alternatively, greater constraints around its use should be introduced. For example, shorter time frames and minimum requirements for consultation.
5. Providers of residential services under the *Residential Services (Accreditation) Act 2022* (Qld) should be designated as public entities under the *Human Rights Act 2019* (Qld).
6. Private schools should be designated as public entities under the *Human Rights Act 2019* (Qld).
7. Sustainable long-term funding for legal assistance and advocacy services is needed to support people to bring human rights complaints.
8. Complainants should be able to bring a complaint based on human rights as an independent cause of action before the courts rather than having to piggy-back the complaint to another type of legal action.
9. Complainants should have access to the full range of available remedies, including compensation when a court finds there has been a breach of the the *Human Rights Act 2019* (Qld).

Background

QAI was a key member of the alliance which initiated the campaign for a Human Rights Act in Queensland. QAI was involved in the campaign steering committee from its inception and auspiced the campaign to give it legal status. The Human Rights for Queensland Alliance raised community awareness and support for legislative protection of human rights, lobbied key Members of Parliament and provided input into the preferred content and form of the Act. In 2019, five years of consistent work, including brainstorming, strategizing, lobbying politicians, raising public awareness, writing letters and submissions, appearing at public hearings, hosting events and engaging with the media, was rewarded with the passage of the *Human Rights Act 2019 (Qld)*.

Further, in 2020, QAI became the first organisation in Queensland to voluntarily opt-in to be bound by the *Human Rights Act 2019 (Qld)*.

Introduction

QAI welcomes the opportunity to contribute to the independent review of the *Human Rights Act 2019* (Qld) (**'the HRA'**). QAI has been a long-time campaigner for greater human rights protections for people with disability through implementation of, and compliance with, Australia's international human rights obligations. The enactment of Queensland's HRA represented a significant milestone in the meaningful fulfilment of these obligations. Its inclusion of the right to education and the right to health, both economic, social, and cultural rights, makes the HRA particularly significant. It has helped build a culture of human rights in government decision-making that is improving accountability. It can provide individuals with redress in situations where their rights have been breached. And it is helping government departments develop policies that are creating inclusive and accessible communities.

However, current limitations of the HRA mean that access to justice is piecemeal. The present review is therefore a timely opportunity to strengthen the HRA to ensure people with disability and other marginalised communities can truly benefit from its objectives.

While legislation alone is insufficient to achieve full human rights protections, the HRA is a vital part of Queensland's legislative framework and must be preserved into the future. It also requires the associated resourcing to ensure its proper implementation.

QAI's submission will cover the following topics:

1. QAI's experiences of the HRA
2. Additional human rights that should be included in the HRA
3. Human rights in the youth justice setting in Queensland
4. Additional bodies that should be public entities
5. Changes needed to better enforce the HRA.

1. QAI's experiences of the Human Rights Act

Since its introduction, QAI has found Queensland's Human Rights Act to be a powerful advocacy tool that has helped protect and uphold the human rights of many of our clients. QAI's Young Peoples Program (YPP) has found the Human Rights Act to be especially effective. YPP provides individual advocacy to children and young people with disability and most of their work involves supporting young people with disability to uphold their right to education. Since the enactment of the HRA, our advocates have noticed an increasing dialogue of human rights considerations in Queensland's state education system and that human rights discussions have become increasingly normalised.

For example, every school suspension and exclusion decision must include a statement indicating that the Principal has considered the student's human rights when making the decision, and in particular, their right to education. Even in instances where it is questionable that a student's human rights have been considered, our advocates have been able to use this as a basis for continued dialogue with the school, including in discussions regarding access to reasonable adjustments. The clear and accessible format of the legislation makes it easy to reference in conversation both with clients and public entities. This is illustrated with the following case study:

Case study 1

A young person with disability, Ryan was facing a proposed decision to refuse his enrolment at a state high school. Ryan had previously been excluded from another high school. The principal proposed to refuse his enrolment and welcomed Ryan to show cause to the contrary. QAI's advocate assisted Ryan and his mother to draft a letter to the Director-General explaining why Ryan should be permitted to enrol at the school. In the submission, the advocate emphasised Ryan's right to education, and laid out reasons why the refusal of enrolment would significantly limit this right. The advocate considered Ryan's right to education in conjunction with the legal requirement that Ryan be enrolled in school, and explained why the alternatives suggested would be more restrictive to him. Ryan and his advocate ultimately argued that, due to the causal link between Ryan's disability and his*

challenging behaviours, preventing him from enrolling would be in contravention of the Human Rights Act 2019 (Qld).

**Names have been changed to protect confidentiality*

QAI's human rights advocates have also utilised the HRA in matters relating to guardianship and administration appointments, as well as complaints regarding accessible parking, as exemplified in the following two case studies:

Case study 2

Glen was subject to an administration order appointing the Public Trustee of Queensland as his financial administrator. At a QCAT hearing, Glen's advocate submitted that there was insufficient evidence before the Tribunal supporting the notion that Glen lacked capacity to manage his own finances, or that there would be a risk to Glen if an administrator was not appointed. Further, the advocate highlighted Glen's human rights under the Human Rights Act 2019 (Qld) and submitted that QCAT must consider Glen's right to be treated equally before the law and that Glen is entitled to be free from discrimination. The advocate also submitted that human rights considerations are set out in the General Principles of the Guardianship and Administration Act 2000 (Qld), and that the Tribunal in making their decision should have respect for inherent dignity and worth, individual autonomy, the freedom to make one's own choices, and the independence of persons. QCAT ultimately decided to revoke Glen's administration order, with the Member noting in their reasons for the decision that they took Glen's human rights into consideration in deciding whether to revoke the appointment of a substitute decision maker, as raised by Glen's advocate.*

**Names have been changed to protect confidentiality*

Case study 3

Amber, a woman who uses a wheelchair for all mobility, frequents a Brisbane-based hospital for regular health services. Despite being a NDIS participant, Amber's funding does not cover taxi travel, so Amber drives herself to appointments in a modified vehicle. For several years,*

Amber had access to designated disabled parking bays, arranged by her specialist. Out of the blue, security guards began denying Amber access to the car park, even when spaces were available. No reasonable explanation was provided, just the direction that Amber park across the road, in a spot that would be inaccessible to her. This inability to park in an accessible car park restricted Amber's ability to access essential health services. Amber sought QAI's assistance when her attempts to resolve the matter directly through the hospital's complaints process were unsuccessful. QAI wrote to the Complaints Coordinator of the hospital, reminding the hospital of their obligations under the Human Rights Act 2019 (Qld), and expressing concern that the hospital had not given proper consideration to Amber's human rights in making the decision to deny her ongoing access to appropriate parking. The letter requested reinstatement of Amber's access, along with the introduction of protocols to ensure these rights were respected by all relevant staff. QAI's letter prompted an immediate response, along with an apologetic telephone call from the Hospital Director assuring Amber that staff were being made aware of their positive human rights obligations.

*Names have been changed to protect confidentiality

QAI is also of the view that the HRA has provided additional accountability over law reform activities. In March 2023, the HRA was expressly overridden by the Queensland Government with the enactment of the *Strengthening Community Safety Bill 2023* (Qld). This Bill sought to introduce numerous changes to Queensland's youth justice laws, such as making it a criminal offence for a young person to breach bail conditions. While advocacy attempts to halt the passing of this Bill were ultimately unsuccessful, its introduction into Parliament and eventual enactment caused a significant amount of controversy. It attracted widespread media coverage and rigorous debate and had the effect of centering human rights considerations in the law reform process. It arguably provided extra oversight of the Bill than would otherwise have been given, had the government not had to take the unprecedented step of expressly overriding human rights legislation in order to pass the Bill.

2. Additional human rights that should be included in the Human Rights Act

Convention on the Rights of Persons with Disability (CRPD)

QAI supports a HRA that gives full effect to Australia's international human rights obligations. In particular, QAI would like to see the HRA protect all rights enshrined in the Convention on the Rights of Persons with Disabilities (CRPD) included in the HRA. Research shows that people with disability are almost twice as likely to experience violence than people without disability, with particularly high rates of reported intimate partner and sexual violence.¹ The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Disability Royal Commission) also demonstrated that the segregation and exclusion of Australians with disability made violence an 'everyday experience' in homes, schools, family structures and services. People with disability reported experiencing violence from authority figures (e.g., medical professionals who used chemical restraint for managing unwanted behaviour) and being ignored when they disclosed abuse.² It suggested that current laws in Australia are failing to protect people with disabilities from violence, and do not comply with our international obligations under the CRPD.³

The Disability Royal Commission specifically called on state and territory governments to uphold the rights of people with a disability under the CRPD:

[A]s a practical matter, implementing Australia's obligations under the CRPD requires the participation of state and territory governments. Recognition of disability rights in sectors including public health, public education, public housing, child protection, and corrections requires state and territory legislation, policies and practices to be effective.

The Final Report of the Disability Royal Commission contains over 222 recommendations on how to improve laws, policies, structures and practices for people with disabilities. QAI has

¹ *Nature and extent of violence, abuse, neglect and exploitation against people with disability in Australia* (March 2021) Centre of Research Excellence in Disability and Health (CRE-DH)

² Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability: Interim Report

³ Transcript of Proceedings – Public Hearing 18 of The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability

reviewed these recommendations and considers that the HRA should be amended to implement the following recommendations. We note that these recommendations are primarily directed at federal legislative reform, however they are directly relevant and applicable to Queensland's HRA.

- **Recommendation 4.2:** The objects of the HRA should include giving effect to Australia's obligations under, and the general principles set out in, the CRPD.
- **Recommendation 4.7:** The HRA should recognise that people with disability have the right to:
 - accessible information and education on how to avoid, recognise and report exploitation, violence and abuse;
 - access protection services that promote the health, welfare, dignity and autonomy of such persons;
 - access protection services that are sensitive and responsive to the different needs and experiences of people with disability, such as gender, sexual orientation, race, religion or other attributes; and
 - report allegations of exploitation, violence and abuse, with protection from victimisation for making a report.
- **Recommendation 4.12:** The HRA should include a positive duty that in the exercise of its functions, a public entity must have due regard to the need to take necessary and proportionate action to advance the policy objectives of equality, inclusion and respect for the dignity of people with disability. This would include a provision where a public entity must have due regard to the need to make adjustments for people with disability so they can enjoy their human rights without discrimination, unless it would cause an unjustifiable hardship. Positive duties are often found in the employment context, for example, the positive duty to eliminate discrimination, sexual harassment and victimisation as far as possible in the *Equal Opportunity Act 2010* (Vic).

- **Recommendation 4.20:** The HRA should establish a standalone cause of action under which a person can bring a claim that a relevant duty-holder has acted in contravention of the HRA.

It is clear from the Disability Royal Commission that Queensland will play a vital role in the successful implementation of the Final Report's recommendations. The HRA can and should be used to address some of the issues and legislative gaps identified by the Disability Royal Commission. By adopting these recommendations, it would not only demonstrate Queensland's commitment towards ensuring disability rights but also align Queensland closer with Australia's international obligations under the CRPD.

Participation duty and equal access to justice duty

In 2022, the Australian Human Rights Commission proposed a model for a national Human Rights Act in its position paper, *Free and Equal: A Human Rights Act for Australia 2022*⁴. Within the proposal, the Commission recommended the adoption of a 'participation duty' that would require public authorities to ensure the participation of persons with disabilities and other specified groups in relation to policies and decisions that directly or disproportionately affect their rights.⁵ It stated:

*The Commission's proposal for a participation duty draws on international human rights law standards and common law procedural fairness principles. It would synthesise procedures concerning consultations and set clear standards, fleshing out what participation means in relation to certain groups that are often overlooked in decision-making processes.*⁶

In relation to people with disability specifically, it stated:

Individual persons with disability should be supported to make their own decisions in all aspects of their lives, and public authorities should have processes in place to facilitate supported decision making. When decisions have an impact upon people with

⁴ Australian Human Rights Commission, *Free and Equal A Human Rights Act for Australia 2022*

⁵ *Ibid*, page 21

⁶ *Ibid*, page 21

*disabilities as a group, persons with disability, including through their representative organisations, should be consulted as part of the process.*⁷

Similarly, the Australian Human Rights Commission proposed a complementary ‘equal access to justice duty’ for public authorities. This duty would require public authorities to take active steps ensure ‘the provision of key elements of a functioning justice system’.⁸ Specifically, it would require public authorities to provide sufficient access to legal assistance, interpreters and disability support to individuals navigating the justice system. QAI considers that Queensland’s HRA should incorporate both a participation duty and equal access to justice duty.

Right to housing

In light of the current housing crisis, there has never been a more urgent need for a right to an adequate standard of living and right to housing. Queensland is experiencing an unprecedented housing crisis, with an estimated 150,000 people with unmet housing need across the State.⁹ While the Act does include some protections in relation to property,¹⁰ further options to enhance rights to housing and an adequate standard of living need to be explored. This includes the right to adequate housing, food and water and is connected to the protection of existing rights including the right to life, privacy, security of the person, education, equality and cultural rights.¹¹

⁷ Ibid, page 21

⁸ Ibid, page 22

⁹ Pawson H, Clarke A, van den Nouwelant R, Petersen H, Moore J, Sigler T. (2024). *Breaking Ground, progress update and assessment of Queensland’s housing crisis*, p 81.
https://www.qcoss.org.au/wp-content/uploads/2024/06/Report_Breaking-Ground_Progress-update-of-Queensland-Housing-Crisis_web.pdf

¹⁰ *Human Rights Act 2019* (Qld) ss 24, 25.

¹¹ Strengthening the Human Rights Act: key issues paper. (2024). Available at: https://www.qhrc.qld.gov.au/___data/assets/pdf_file/0010/48961/Stengthening-the-Human-Rights-Act-key-issues-paper.pdf [Accessed 20 Jun. 2024].

3. Human rights in the youth justice setting in Queensland

QAI is deeply concerned about abrupt changes to Queensland's youth justice laws that occurred in 2023 that were, by the government's own concession, 'incompatible with human rights' and required unprecedented moves to override the HRA. Under section 43 of the HRA, Parliament reserves the power to enact legislation that may be incompatible with the HRA through an 'override' declaration. Since the HRA came into force in 2020, Parliament has exercised the right to override the HRA on the following two occasions:

- On 16 March 2023, the Queensland Parliament passed the *Strengthening Community Safety Act 2023* (Qld). This Act overrode section 33(3) of the HRA, which protects the right of children convicted of an offence to be treated in a way that is appropriate to their age, by enabling children who violate their bail conditions to be subject to charges equivalent to those faced by adults.
- On 25 August 2023, the Queensland Parliament passed the *Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Act 2023* (Qld). This Act overrode section 33(1) of the HRA, which requires that a child must be detained separately from adults, by allowing for the incarceration of minors in police watchhouses which are intended for adult detainees.

Section 43(4) of the HRA states that an override declaration should only be utilised in 'exceptional circumstances'. The HRA identifies examples of exceptional circumstances, such as war, a state of emergency, and an exceptional crisis situation constituting threat to public safety, health or order. During the heights of the Covid-19 pandemic, circumstances that were arguably exceptional, the government did not seek to override the HRA at all. In Victoria, where the Charter of Human Rights and Responsibilities also contains an override provision, since the enactment of the Charter 18 years ago, override declarations have been issued on just three occasions.

However, the use of section 43 in the youth justice context in Queensland has demonstrated the perils of its existence. That is, the risk that it is used in the very situations where the

protections of the HRA are needed the most. In QAI's experience, human rights violations occur frequently in the youth justice setting, as is evidenced by the following case study:

Case study 4

Jaxon is a child with disability who was being held in a youth detention centre on remand. For the majority of the time that Jaxon was in custody on remand, he was detained in a "behavioural" unit that was segregated from the other units and the other children. Jaxon explained that the unit detained four children who were only allowed out to socialise with the other children in the youth detention centre for a couple of hours each day. Jaxon reported that he was often "section bound", meaning he wasn't able to leave his section to attend school or training, or participate in sport. Jaxon's segregation prevented him from participating in activities that other children had access to and inhibited meaningful interactions with other children.*

During Jaxon's engagement with YPP, his advocates observed his mood to become very low, and noticed that he was gradually involved in an increasing number of incidences. His advocates grew concerned that these incidences were largely caused by staff at the detention centre frequently misinterpreting behaviours associated with Jaxon's disability as acts of defiance and non-compliance. Jaxon consistently reported to his advocates that he was being held in a solitary cell after these incidences would occur, sometimes being held overnight. At one point in time, he was being placed in a solitary cell every second day. In the solitary cell, Jaxon was not provided with bedding, food or water. During one such incident, Jaxon reported that he got into a physical altercation with a staff member and sustained injuries. He was then forced in a solitary unit without any medical care. When his advocates asked if he would like to raise a complaint about the staff member who caused his injuries, Jaxon replied that he didn't see the point in complaining because "staff look after other staff".

Jaxon confided to his advocates that he and the other children in youth detention were subjected to regular extended lockdowns, where they would be held in their cells alone for days at a time. Jaxon and other children were advised by staff that the lockdowns were due to staffing shortages, as there were not enough people working on a given day to appropriately staff the centre.

Jaxon requested to see a psychologist on a number of occasions but was told by the staff at the youth detention centre that he couldn't because the psychologists were "too busy". The advocates also asked his youth workers and child safety officers to connect Jaxon to a mental health practitioner, but the requests were denied. Due to Jaxon's disability, history of childhood trauma, experiences of isolation and segregation, and changes in mood and behaviour, his advocates believed that he should have been prioritised for mental health support. What is more, Jaxon did not have access to other types of support services for the majority of his time in remand. This includes services like positive behavioural supports.

Jaxon frequently expressed to his advocates that his main concern was accessing housing once released. Jaxon had no income or savings and no rental history, and he understood how difficult it was to access social housing. Despite his concerns, Jaxon was excited about returning to the community and making a new life for himself. Jaxon's advocates tried to connect him with a transitional program that offered many services including assistance with housing. However, Jaxon's child safety officer insisted that they had already made a referral to the transitional program. Whilst on remand, Jaxon turned eighteen, and shortly after his eighteenth birthday he was released from the detention centre with all charges being dropped. Unfortunately, once released, Jaxon and his advocate learned that his child safety officers had never made the referral to the transitional program and Jaxon quickly became homeless post his release. Neither child safety nor his detention centre youth worker provided Jaxon with a phone, so he had no way of contacting his loved ones, his advocates, or any other services.

Jaxon's advocates tried to reconnect with Jaxon on several occasions after his release, but quickly lost contact as he had no phone or reliable living situation. In their last phone call with Jaxon, his advocates learned that he had been staying at friend's place until he was physically assaulted by an intruder who stole his possessions, leading him again to having no place to stay. The advocates tried to contact his child safety officer and youth worker to see what further support they could provide to Jaxon, but both services advised that they had ceased all engagement with him. Jaxon's advocates later learned that he had been arrested and was being held in an adult correctional facility.

**Name has been changed to protect identity*

**Names have been changed to protect confidentiality*

Not only were these legislative and policy changes contrary to evidence-based reform, but they also occurred following woefully inadequate consultation processes and arose due to mounting public concern about youth justice (arguably driven in part by alarmist media reporting) rather than exceptional circumstances, as is the intention behind the provision. QAI therefore recommends the override provision of the HRA be repealed. Alternatively, QAI recommends that significantly greater constraints around its use be introduced, such as shorter timeframes and minimum standards for stakeholder consultation.

The purpose of a time limitation on override declarations is to avoid abuse of the ability for Parliament to pass legislation that explicitly does not comply with the HRA. Currently, section 45 includes an automatic expiry date of 5 years for override declarations. In QAI's view, this time period is far too long, particularly given that override declarations are intended to be used to address 'exceptional circumstances'.

In addition, the two override declarations in 2023 were issued by the Queensland Parliament without consultation, and at very short notice. For example, the Bill containing the override declaration in relation to criminalising breach of bail by children was introduced to Parliament on 21 February 2023 and declared urgent. Parliament referred the Bill to a Committee, who were required to consider the Bill and report back to Parliament on it, by 10 March 2023. Submissions were due to the Committee on 24 February 2023, meaning organisations and individuals with comments or concerns on the Bill had just 3 days to respond, which placed significant pressure on community organisations.

QAI considers that relevant organisations and individuals should be properly consulted by Parliament prior to an override declaration being issued. This consultation period is particularly necessary in Queensland, where there is only one house of Parliament, reducing the checks and balances on Parliament's power.

4. Additional organisations that should be public entities under the Human Rights Act

The HRA predominantly places obligations on "public entities", which most commonly capture departments of the Queensland Government (e.g. Department of Education). Based on QAI's experience advocating for Queenslanders with a disability, there are gaps in the human rights protections available to Queenslanders based on the type of organisation they are interacting with. Two of the key types of organisations that, in QAI's view should also be subject to the obligations on public entities in the HRA, are:

- supported accommodation providers; and
- private schools.

Supported accommodation providers

It is well recognised that the majority of residents living in supported accommodation facilities live with disability, many of whom have complex care needs.¹² It is also well recognized that people with disability and in particular, people with complex care needs who live in congregated care settings, are at increased risk of abuse, violence, neglect and exploitation. This means that the need for human rights protections in supported accommodation settings is vital, yet the application of the HRA in these settings is currently limited. This is particularly concerning given the evidence of “decrepit, unsuitable and substandard living conditions”¹³ presented to the recent inquiry into the provision and regulation of supported accommodation in Queensland.

During the inquiry, QAI was engaged by the Department of Housing to support residents to share their stories. We visited multiple level 3 residential services and spoke to over 200

¹² Public Advocate (Qld), *'Safe, secure and affordable'? The need for an inquiry into supported accommodation in Queensland*, August 2023, page 19

¹³ Inquiry into the provision and regulation of supported accommodation in Queensland Report No. 44, 57th Parliament Community Support and Services Committee. (2024). Available at: <https://documents.parliament.qld.gov.au/tp/2024/5724T904-06B2.pdf> [Accessed 20 Jun. 2024]., page ix

residents. We heard of people being unable to leave their rooms. Of people self-harming and being exposed to drugs and alcohol. Of injuries and requests to call an ambulance that were ignored. Of 30 people sharing 3 toilets and 3 showers. Of a hot water system that had not worked for more than 2 years. Of people having their access to money, phones and identification restricted. Of people being hungry and feeling lonely and disconnected. We saw rats and cockroaches, dirt and mould. We also felt the extremity of the summer's heatwave exacerbated by poor building design and unmitigated by fans or air conditioning.

These experiences engage multiple rights under the HRA, including the right to protection from torture and cruel, inhuman or degrading treatment and the right to property. Yet not all supported accommodation providers are subject to the HRA. In their submission to the inquiry, the Queensland Human Rights Commission stated:

“Residential services are privately owned, and do not receive Queensland State Government funding. While serving a vital public function, they are unlikely to meet the definition of a functional public entity because they do not provide their services ‘for the State’.

The definition of public entity does, however, extend to registered NDIS service providers when the provider is performing functions of a public nature in the State. Many supported accommodation providers also now concurrently operate as registered NDIS service providers, however it can be unclear when providers satisfy the criteria of performing functions of a public nature.

Human rights protections for residents in supported accommodation facilities are therefore limited. This is especially concerning given the sector's inadequate oversight mechanisms and complex regulatory environment, making accountability via alternative complaint mechanisms very difficult to achieve.

While some providers potentially come under the HRA, others would not despite performing the same role and delivering the same kind of services. This issue will become even more pertinent should the Queensland Government adopt the recommendations of the recent inquiry which recommended that the Queensland Government consider

funding personal care services provided by residential service providers to residents in level 3 supported accommodation services who are not eligible for the NDIS but who have complex support needs.¹⁴ This would arguably make those supported accommodation providers subject to the HRA as functional public entities, but only in relation to the delivery of personal care services and not in relation to the delivery of accommodation and/or food services.

This gap in coverage leaves residents of supported accommodation at risk of abuse, neglect, and exploitation and without sufficient legal safeguards. QAI therefore recommends designating all supported accommodation providers as "public entities", thereby ensuring the HRA applies to all accredited residential service providers.

Private schools

Education is a fundamental human right crucial to the development and inclusion of young people. Advocates from QAI's Young Peoples Program have encountered many instances where the rights of students in private schools are not adequately protected due to the current exemption for private schools under the HRA and there is a significant need for enhanced oversight and transparency in these settings.

Private schools receive government funding and access to state resources to provide education, yet there is often less transparency regarding their policies, making it challenging for students and families to navigate their experiences and uphold their rights. Additionally, the lack of oversight from government in relation to students' rights, particularly students who are of compulsory school age, can have significant impacts on children and their access to education.

At times, families have no alternative but to send their children to private schools, whether due to geographical constraints, needing access to boarding schools, or negative experiences with state schools. Considering the significant number of young people that attend private

¹⁴ See recommendation 10

schools and Queensland's obligation to provide an inclusive education, it is important that the rights of all students are protected.

In cases where students are managed out of private schools, there are often little appeal rights, and the consequences can be severe. One example of this is a young person in regional Queensland who was excluded from their local private school. The private school was the closest school to their home and public transport was not available to any state schools. The advocate assisted the family to make a complaint to the school and governing board about the situation. In response to the complaint, the governing board appointed private solicitors to investigate. However, the process was not transparent and did not include speaking with the young person or family despite their request to be contacted. No further complaints processes were available to the young person without the potential for expensive legal costs. If complaints processes were available through the Queensland Human Rights Commission, it would allow for greater procedural fairness and ensure that access to justice was available and accessible to all without the requirement for expensive legal assistance.

Parents of students with disability who attend private schools are also often shocked when told their schools do not come under the HRA and commonly say things to the effect of 'what is the point if it doesn't cover all kids?'. Ensuring students' rights in all educational settings is crucial for individual students and for fostering an equitable and inclusive education environment and culture for all.

5. Changes needed to better enforce the Human Rights Act

There are additional reforms needed to better enforce the HRA. Individuals pursuing human rights complaints or court matters often require advocacy, legal advice and representation, however in Queensland, there is a noticeable gap in such services for low-income individuals due to a lack of any specific funding dedicated to human rights issues. Community legal centres (CLCs) and advocacy services cannot support clients beyond the funding they receive, which leads to individuals being turned away by CLCs and advocacy services, resulting in individuals either choosing not to pursue human rights claims or pursuing them without the

assistance of legal or advocacy support. This is in contrast to the majority of public entities that are the subject of human rights claims that are equipped with legal representation. By committing to sustainable long-term funding for legal assistance services, the Queensland Government can address these power imbalances between most complainants and the respective public entities and significantly improve access to justice for vulnerable Queenslanders.

While QAI welcomes the Queensland Government's commitment in the recent budget to providing an additional \$14.4 million in funding to CLCs, it is important that the Queensland Government remain engaged with the community sector regarding whether this investment is sufficient to address the unmet legal need in the Queensland community, particularly as it relates to human rights.

QAI is also of the view that complainants should be able to bring a complaint based on human rights as an independent cause of action before the courts rather than having to piggy-back the complaint to another type of legal action. Complainants should also have access to the full range of available remedies, including compensation when a court finds there has been a breach of the HRA.

QAI shares the view expressed by the Queensland Human Rights Commission in their discussion paper:

“...some public entities take a legalistic and adversarial approach to dispute resolution, possibly driven by a lack of legal consequence if the matter cannot be resolved. This does not achieve the goals of the Act’s dialogue model to build a culture in the Queensland public sector that respects and promotes human rights.”¹⁵

Allowing stand-alone human rights complaints to go before the courts and greater access to remedies such as compensation would help to overcome this. The current requirement for piggy-back complaints and a lack of access to compensation creates barriers for people

¹⁵ Strengthening the Human Rights Act: key issues paper. (2024). Available at: https://www.qhrc.qld.gov.au/__data/assets/pdf_file/0010/48961/Stengthening-the-Human-Rights-Act-key-issues-paper.pdf [Accessed 20 Jun. 2024].

seeking justice. The following scenario demonstrates the limitations of the current approach and is typical of many situations encountered by QAI.

Case study 5

QAI assisted Cara, who made a complaint against a government entity to the Queensland Human Rights Commission about a significant breach of her human rights.*

Cara included allegations of disability discrimination in her complaint and sought to rely on the piggy-back provision under the Human Rights Act to refer her matter to QCAT after her QHRC conciliation conference was unsuccessful in resolving the complaint.

While Cara had strong prospects for success at QCAT arguing that her human rights had been breached, her discrimination complaint was not likely to be successful.

Cara ultimately wanted to achieve compensation for the loss she experienced as a result of her human rights breach. However, given the limited outcomes that can be achieved through a human rights matter at QCAT, Cara decided to withdraw her matter altogether as she felt there were no other outcomes that could awarded by QCAT that would resolve her complaint.

**Names have been changed to protect confidentiality*

Finally, there is also need for a greater understanding of the HRA among many public entities, including hospitals and health services, as well as the broader community more generally. More targeted community legal education is therefore required to ensure the objectives of the HRA are fully realised for all Queenslanders.

Conclusion

QAI is grateful for the opportunity to contribute to this review. We are happy to provide further information or clarification of any of the matters raised in this submission upon request.