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LEGAL PRACTICE



Human rights in Australia

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In Australia, 'human rights' are protected and promoted under both Federal Law and State Law. In essence, they are a basic set of rights and freedoms available to everyone at all times. In this article, we look at the differences between the Federal and State laws and your options if your human rights are breached.

What are human rights?

Federal laws

Human rights are defined in the *Australian Human Rights Commission Act 1986* (AHRC Act) as the rights and freedoms contained in specific international instruments that are scheduled to, or declared under, the AHRC Act.

These instruments are:

- International Covenant on Civil and Political Rights
- Convention on the Rights of Persons with Disabilities
- Convention on the Rights of the Child
- Declaration of the Rights of the Child
- Declaration on the Rights of Disabled Persons

- Declaration on the Rights of Mentally Retarded Persons
- Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief.

Human rights are based on principles of dignity, equality and mutual respect, which are shared across cultures, religions and philosophies. They are about being treated fairly, treating others fairly and having the ability to make genuine choices in our daily lives.

State laws (Queensland)

On 1 January 2020, the *Human Rights Act 2019* (HR Act) commenced in Queensland. The Act protects the rights of everyone in Queensland and its main objectives are:

1. to protect and promote human rights; and
2. to help build a culture in the Queensland public sector that respects and promotes human rights; and
3. to help promote a dialogue about the nature, meaning and scope of human rights.

The HR Act protects 23 human rights consisting of:

- right to recognition and equality before the law;
- right to life;
- right to protection from torture and cruel, inhuman or degrading treatment;
- right to freedom from forced work;
- right to freedom of movement;
- right to freedom of thought, conscience, religion and belief;
- right to freedom of expression;
- right to peaceful assembly and freedom of association;
- right to taking part in public life;
- property rights;
- right to privacy and reputation;
- right to protection of families and children;
- cultural rights – generally;
- cultural rights – Aboriginal peoples and Torres Strait Islander peoples;
- right to liberty and security of person;
- right to humane treatment when deprived of liberty;

•right to a fair hearing;

•rights in criminal proceedings;

•rights of children in the criminal process;

•right not to be tried or punished more than once;

•retrospective criminal laws;

•right to education; and

•right to health services.

How are these rights protected and enforced?

The Australian Human Rights Commission (AHRC) protects and promotes human rights in Australia and internationally. It is an independent statutory organisation established under Federal law.

The Queensland Human Rights Commission (QHRC) is an independent statutory body established under the *Queensland Anti-Discrimination Act 1991*. The QHRC protects and promotes human rights in Queensland.

How does a person make a complaint about a breach of their human rights?

A person can make a complaint to the AHRC or QHRC by completing a complaint form.

1. You can download the AHRC form here.
2. You can lodge a complaint with QHRC here.

Any person can make a complaint regardless of residency, citizenship or visa status.

Complaints can only be made by the person affected by the breach and not by a third party. An exception to this is where a person wishes to make a complaint on behalf of a child or person with disability. Generally, this person will need to be a parent or guardian of the person affected.

What is the timeframe for making complaints?

AHRC

Where a person is complaining to the AHRC under the *Sex Discrimination Act 1984*, they have 24 months from the date of the incident to make the complaint.

For complaints alleging human rights breaches in employment, under the International Labour Organisation Convention, the timeframe is 12 months.

QHRC

Where a person is complaining to the QHRC alleging human rights breaches, the following steps should be taken:

- The person should make their complaint to the government department or service they are complaining about.
- The government department should respond to the complaint.
- If 45 business days has passed and no response has been received or if a person is not satisfied with the response, they can complain to the QHRC in writing.

What happens after a complaint is made to the Commission?

Once a complaint is lodged, the Commission (either AHRC or QHRC depending where you lodged your complaint) will assess the complaint as to whether there may have been a contravention of the law.

If the Commission considers there hasn't been a contravention of the law, the person making the complaint ('the complainant') will be informed and the matter will not proceed further. If the Commission considers there has been a contravention of the law, it will send the complaint to the person accused of the breach ('the respondent'), seeking their response.

Following that, the complainant and respondent will be directed to attend a conciliation conference to try and resolve the matter. At such a conference, an impartial third party will assist the parties to consider different options to resolve the complaint. This may be by way of an apology, change of policy, compensation or other outcome.

Where matters are unable to be resolved, they may then be referred to a Commission or Tribunal for a hearing.

Get Help

Making complaints or responding to them can be difficult and complex, particularly due to the often sensitive issues involved. Should you wish to seek assistance with a human rights matter, please contact us.

If you're facing unjust or unfair treatment, along with your human rights options, you may also want to consider legal recourse under discrimination laws. You can find out more detail about this, in our article "What does the law say about discrimination?"

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