

Embedding a culture of human rights: where to from here?

For Community Legal Centres Queensland
30 April 2024



Acknowledgement of Country

The Queensland Human Rights Commission acknowledges Aboriginal and Torres Strait Islander peoples as the First Australians and recognises their culture, history, diversity, and their deep connection to the land, waters and seas of Queensland and the Torres Strait.

We pay our respects to the traditional owners of the land we meet on today and to elders, past, present and emerging.

Today's presentation

- Refresher on the Human Rights Act
- Human rights complaints – data, advocate experience
- Human rights in the courts – advocate experience
- Reflecting on challenges: what could be improved?
- Tips for advocates



The Queensland Human Rights Commission



- Dispute resolution for human rights complaints and anti-discrimination complaints
- Promote understanding and acceptance of human rights through community education and training
- Submissions on human rights issues, including law reform, policy, and court / tribunal proceedings.



Queensland's *Human Rights Act 2019*

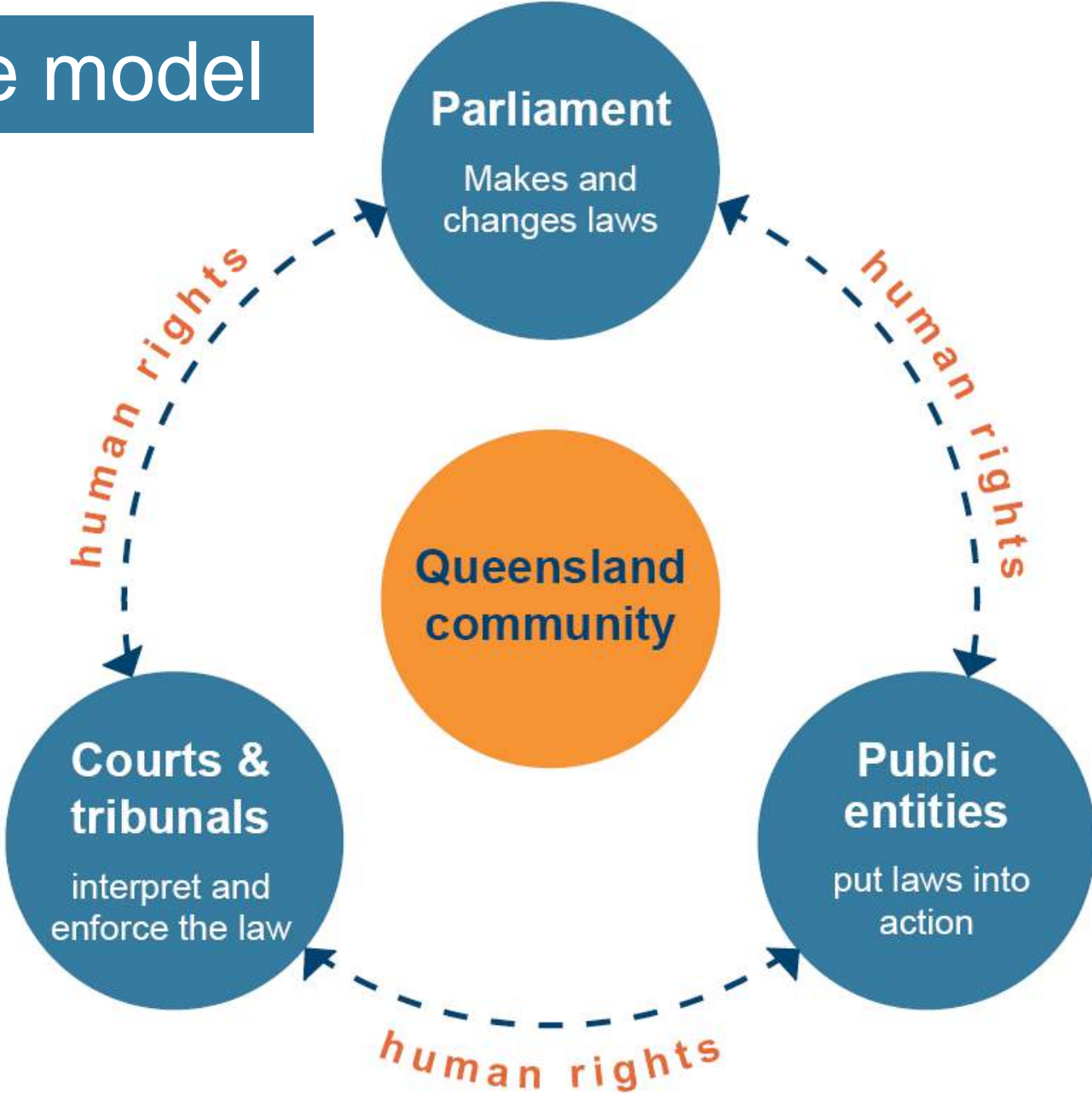
Objectives:

- protect and promote human rights
- help build a culture in Qld public sector that respects and promotes human rights
- promote a dialogue about human rights.

Recognises 'inherent dignity and worth of all human beings'.



The dialogue model



Rights protected under the Act

Twenty one civil and political rights - s15 to s35

Two economic, social and cultural rights - s36 & s37

s 15 Right to recognition & equality before the law

s 16 Right to life

s 17 Protection from torture & cruel, inhuman or degrading treatment

s 18 Freedom from forced work

s 19 Freedom of movement

s 20 Freedom of thought, conscience, religion & belief

s 21 Freedom of expression

s 22 Peaceful assembly & freedom of association

s 23 Taking part in public life

s 24 Property rights

s 25 Privacy and reputation

s 26 Protection of families and children

s 27 Cultural rights – generally

s 28 Cultural rights – Aboriginal peoples and Torres Strait Islander peoples

s 29 Right to liberty and security of person

s 30 Humane treatment when deprived of liberty

s 31 Fair hearing

s 32 Rights in criminal proceedings

s 33 Children in the criminal process

s 34 Right not to be tried or punished more than once

s 35 Retrospective criminal laws

s 36 Right to education

s 37 Right to health services



Compatibility with human rights: 8, 13

An act, decision or statutory provision is ***compatible with human rights*** if:

- it does not limit a human right; or
- it limits a human right only to the extent that is **reasonable and demonstrably justifiable** in accordance with section 13.

Step 1: Which rights are relevant?

Step 2: What's the impact? Are rights limited?

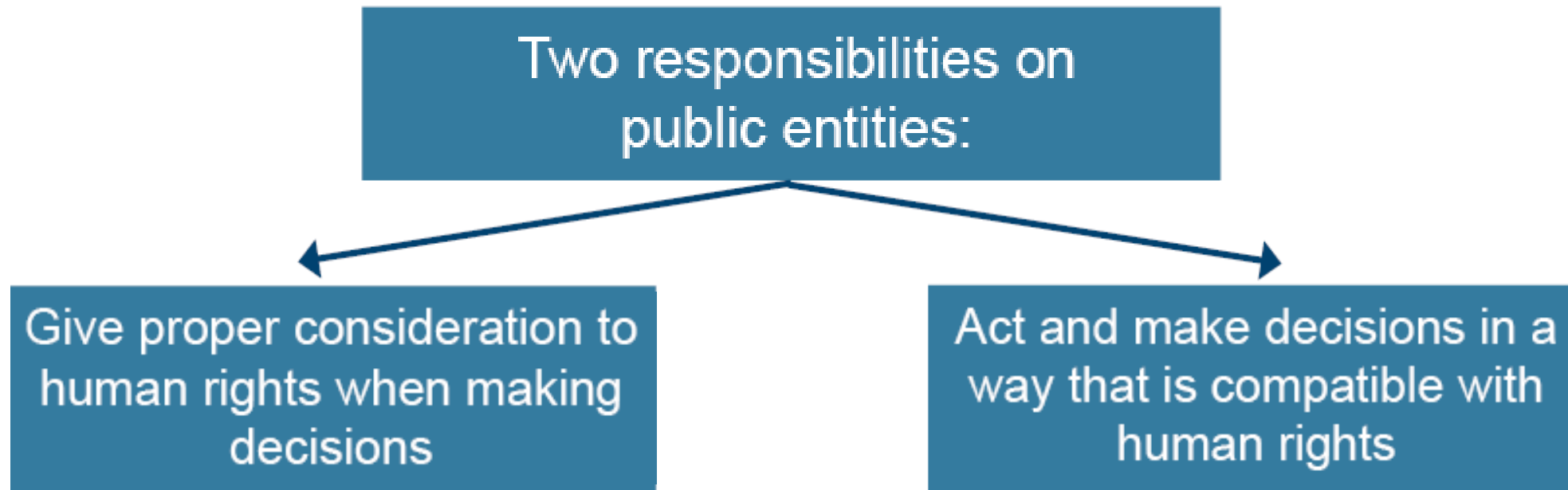
Step 3: Is the limitation **reasonable and justifiable?**:

- **Lawful**; legal authority / framework?
- **Legitimate**; purpose?
- **Rational**; effectively achieves purpose?
- **Necessary**; least restrictive way?
- **Fair and balanced**; benefits outweigh harm?



Responsibilities of public entities: s58

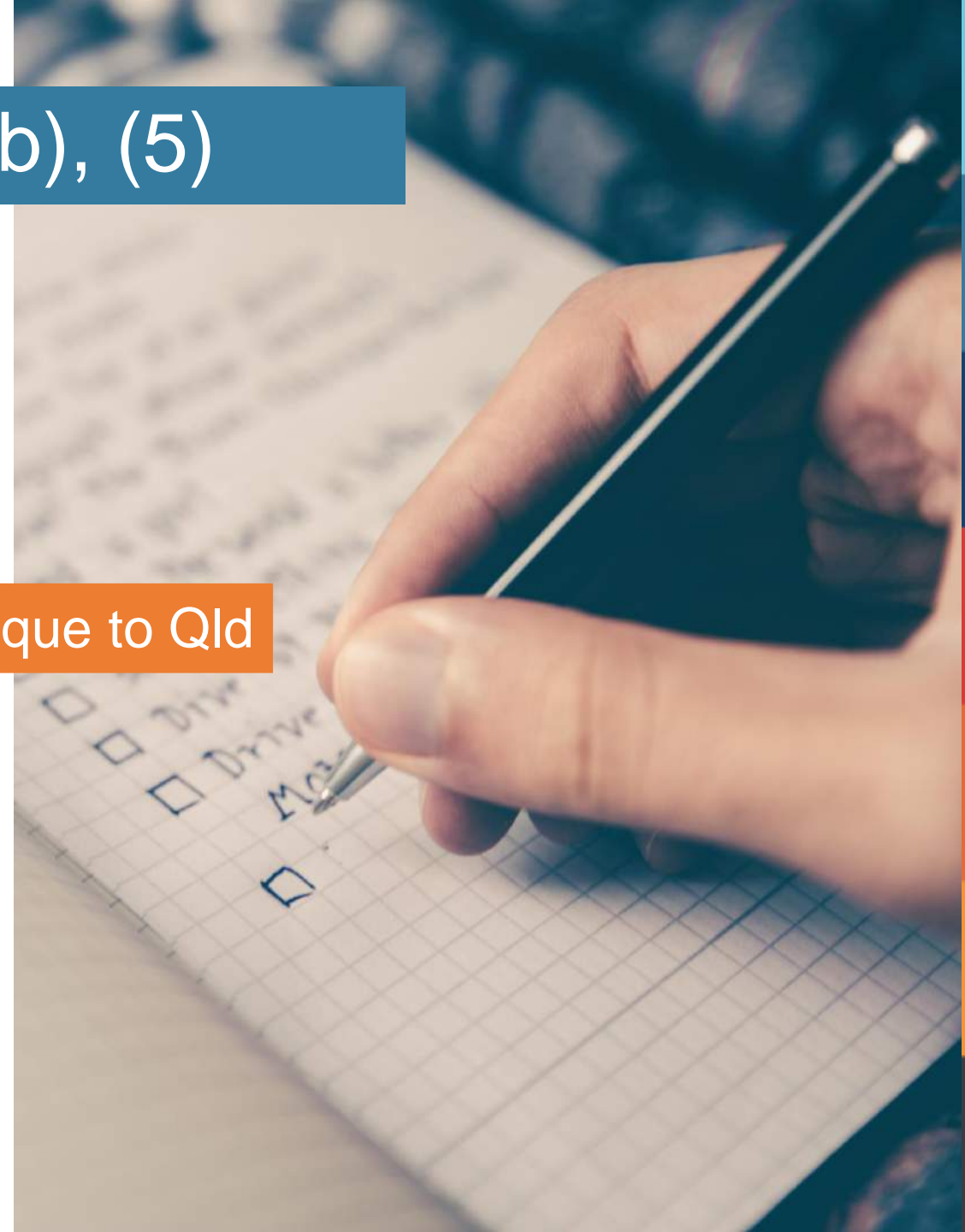
Public entities must act and make decisions in a way that is compatible with human rights.



Proper consideration: s58 (1)(b), (5)

- s58(1)(b) - unlawful for a public entity, in making a decision, to fail to give proper consideration to a human right relevant to the decision.
- s58(5) giving proper consideration to a human right in making a decision includes, but is not 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.

Unique to Qld

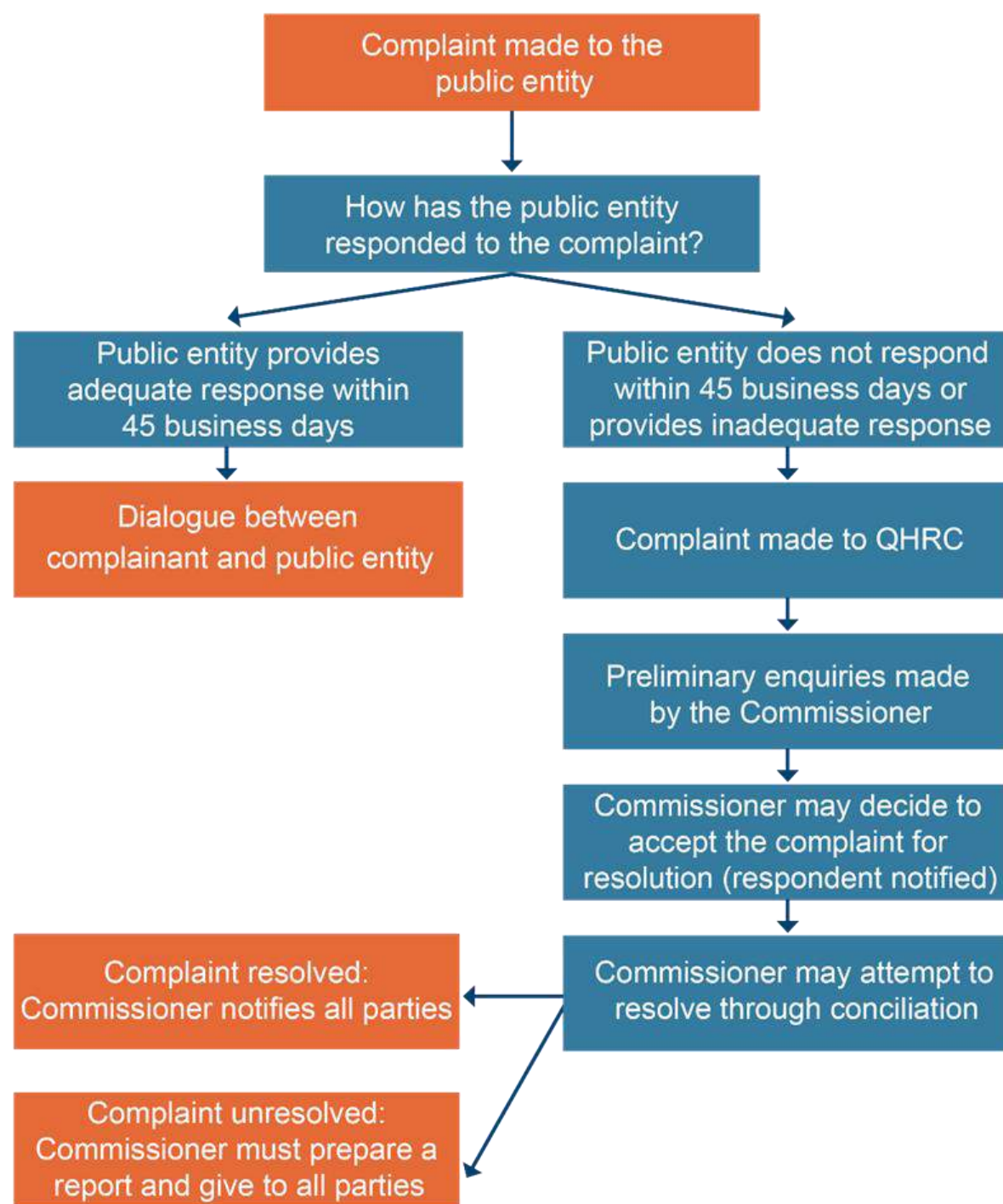


Human rights complaints to the Commission



Human Rights Act complaint process

Human rights grounds can also be 'piggy-backed' onto a complaint against a public entity made under the *Anti-Discrimination Act*.



Snapshot of human rights complaints

44% were COVID-19-related complaints (43% 2021-22)



Resolution rate by complaint type

Anti-Discrimination Act only complaints



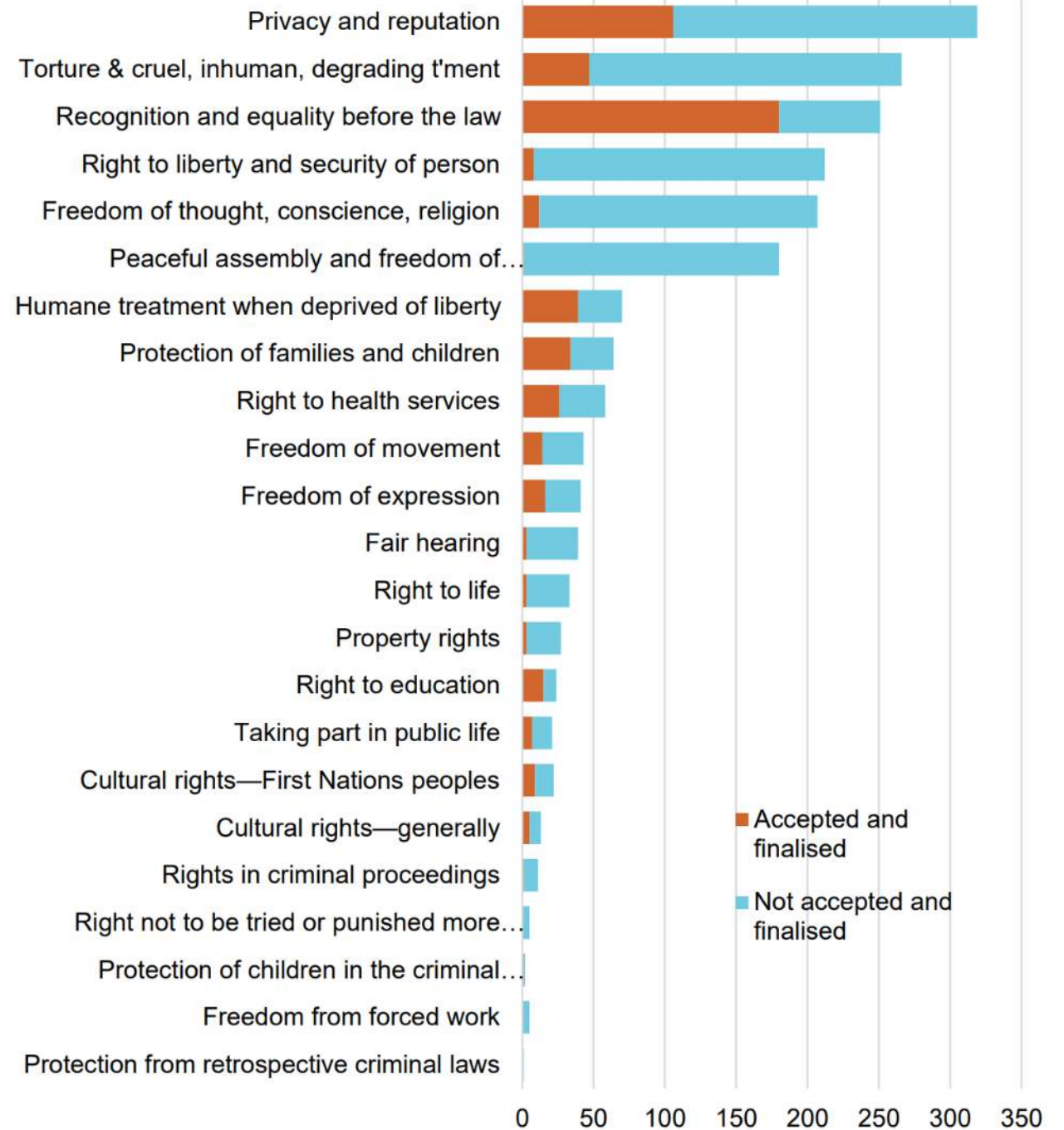
Piggy-back complaints



Human Rights Act only complaints

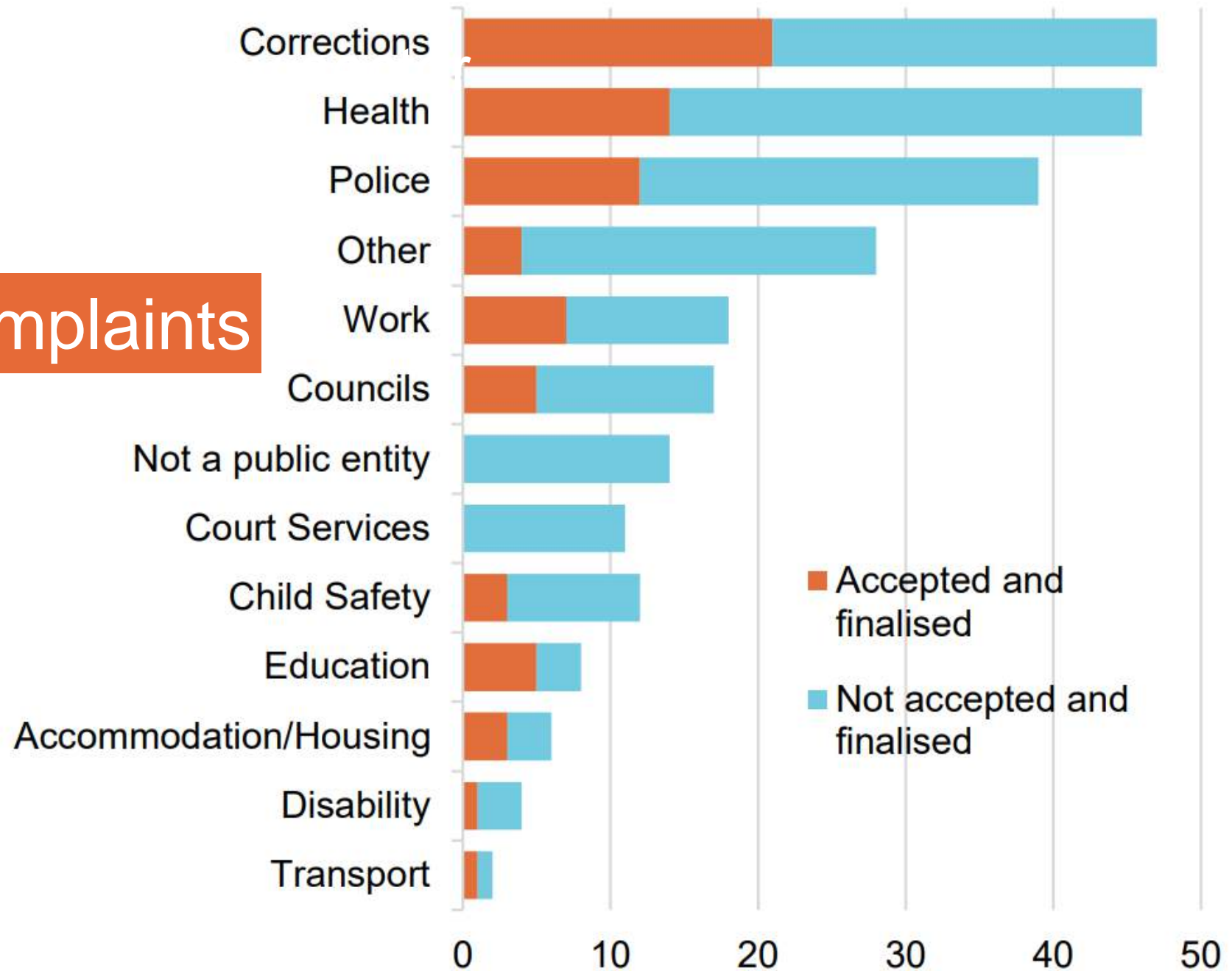


Breakdown by human rights engaged



Finalised complaints

by sector



Complainant legal representation

Legal representative	Anti-Discrimination Act only complaints	Piggy-back complaints	Human Rights Act only complaints
CLC / Legal Aid	23	13	3
Industrial advocate	29	7	0
Other	42	11	2
Private lawyer	31	11	3
Self-represented	242	132	60



Advocate experience

Eloise Dalton, Acting Director

Working Women Queensland,
Basic Rights Queensland



Human rights in courts and tribunals



Human rights in court proceedings

Human rights issues arise in court/tribunal proceedings where:

- Legislative provision requiring **statutory interpretation** (s 48)
- The court / tribunal is a **public entity** with obligations under s 58(1)
- The respondent is a public entity and a breach of human rights can be **piggy-backed** under s 59
- The court / tribunal functions involves **direct application** of rights (s 5(2)(a))

But there still needs to be a cause of action that is not under the *Human Rights Act 2019*: *Wood v The King & Anor* [2022] QSC 216



Key Queensland cases

- *Owen-D'Arcy v Chief Executive, Queensland Corrective Services* [2021] QSC 273
- *Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors (No 6)* [2022] QLC 21
- *Johnston v Commissioner of Police* [2024] QSC 2 (2023)

Case notes:

<https://www.qhrc.qld.gov.au/resources/legal-information/case-notes-human-rights>



Advocate experience

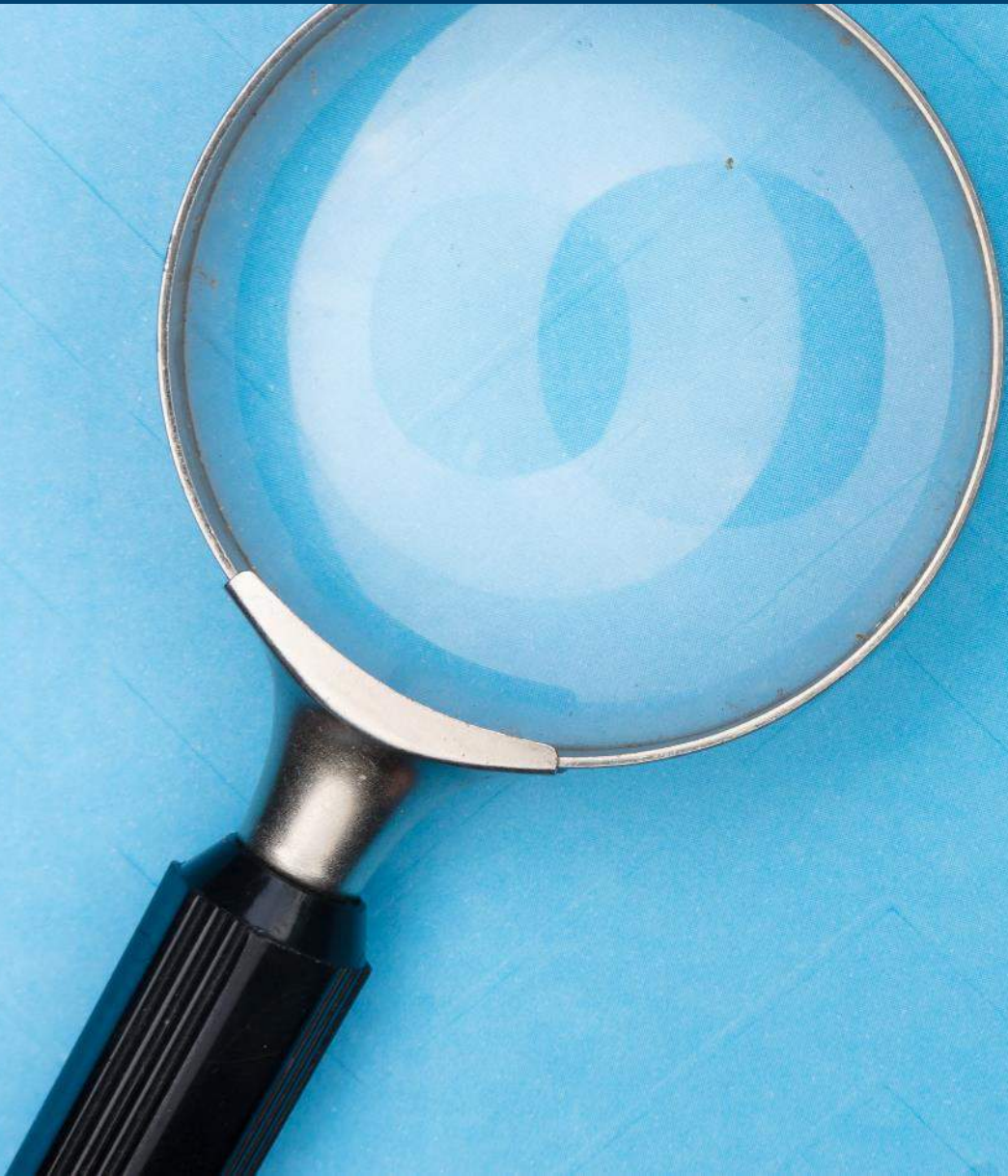
Helen Blaber, Director/Principal Solicitor
Prisoners Legal Service



Where to from
here?



Reflecting on the challenges



How could the Human Rights Act be improved?

Tips for human rights advocacy

USEFUL RESOURCES

[Explanatory Note to the Human Rights Bill 2018](#)

Queensland Human Rights Commission: www.qhrc.qld.gov.au

- [Table of rights](#) (with corresponding international law and Victorian Charter references)
- [fact sheets](#) with case examples
- Queensland [case notes](#)
- Human Rights Act [annual reports](#)
- [Subscribe](#) to 'The Brief' – our email bulletin for lawyers and advocates

Queensland Government

- DJAG [Human Rights Resources](#) for government

Other jurisdictions:

- Victoria Charter of Human Rights [Bench Book](#)
- Judicial College of Victoria - [Charter Case Collection](#)





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