

**FACT SHEET:**

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# The role of courts and tribunals under the *Human Rights Act 2019*

Although Queensland courts and tribunals are independent of government, they have important duties under the *Human Rights Act 2019*.

## Direct application

The Act applies to courts and tribunals when they are performing functions that are relevant to the rights protected under the Act. This includes both the judicial and administrative functions of courts and tribunals.

Judicial functions include the work courts and tribunals do in hearing cases and handing down judgements. Examples of the human rights that will apply to judicial functions include:

- equality before the law;
- fair hearing; and
- rights in criminal proceedings.

## Acting in an administrative capacity

Under the Act, public entities are obligated:

- to act and make decisions in a way that is compatible with human rights; and
- when making a decision, to give proper consideration to human rights relevant to the decision.

The obligations on public entities apply to courts and tribunals when they are acting in an administrative capacity. Examples of when courts and tribunals may be acting in an administrative capacity include:

- staffing matters;
- registry functions (including managing records, receiving and processing appeals, and listing cases); and
- developing and applying policies and procedures.

Much of the work of some tribunals involve acting in an administrative capacity, for example:

- reviewing administrative decisions of government agencies;
- disciplinary proceedings;
- appointing guardians and administrators; and
- reviewing involuntary treatment orders.

Some of the work of courts involve acting in an administrative capacity, for example committal proceedings.

## Interpreting legislation

The Act requires that all legislation is to be interpreted in a way that is compatible with human rights, to the extent that is consistent with the purpose of the legislation.

If a legislation cannot be interpreted that way, it is to be interpreted in a way that is *most* compatible with human rights, to the extent that is consistent with purpose of the legislation.

‘Compatible with human rights’ means the provision does not limit a human right, or limits a human right only to the extent that it is reasonable and demonstrably justifiable in a free and democratic society based on human dignity, equality, and freedom. The Act sets out factors that may be relevant in deciding whether a limit on a human right is reasonable and justifiable.

## Referral to Supreme Court

In court or tribunal proceedings, there may be a question of law about the application of the Act, or a question about the interpretation of a statutory provision in the way the Act requires. These questions may be referred to the Supreme Court to decide.

## Declaration of incompatibility

The Supreme Court or the Court of Appeal may make a declaration of incompatibility, if the Court considers that a legislation cannot be interpreted in a way that is compatible with human rights.

There is a process for a declaration of incompatibility to be brought to the attention of Parliament. If a declaration is made, it is up to Parliament to decide what to do about it. A declaration does not make the legislation invalid.

## Intervention

The Attorney-General and the Queensland Human Rights Commission have the right to intervene in proceedings in courts and tribunals where there is a question of law about the application of the Act or the interpretation of a legislation in the way the Act requires.