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# Do we have a right to a healthy environment?



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*Senior Solicitor*



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- We rely on a healthy environment for our existence and survival as a species... (duh)
- Environmental wrongs impact human rights
- Do we need our laws to implement a ‘right to a healthy environment’ to have this right protected?

Australia is one of only 15 nations globally that does not federally recognise the human right to a healthy environment



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# States and Territories

- **Victoria:** *Charter of Human Rights and Responsibilities Act 2006*
- **ACT:** *Human Rights Act 2004*
- **Queensland:** *Human Rights Act 2019*
  - Passed Feb 2019
  - 1 July 2019: Anti-Discrimination Commission of Qld becomes Qld Human Rights Commission and educative functions start
  - 1 Jan 2020: Commencement of the complaints processes

# Qld HR Act

## **3 Main objects of Act**

The main objects of this Act are—

- (a) to protect and promote human rights; and
- (b) to help build a culture in the Queensland public sector that respects and promotes human rights; and
- (c) to help promote a dialogue about the nature, meaning and scope of human rights.

# Key features - Qld HR Act

- **Parliament** - new laws must be provided with a statement of compatibility, scrutinised by Committee
- **Duties on public entities** - unlawful for a public entity to act or make a decision incompatible with, or without consideration of human rights
- **Judiciary** - can consider claims under the HR Act, but only where added to a legal action under another law



# Qld HR Act – protects 23 rights and freedoms

- Recognition and equality before the law
- Protection from torture and cruel, inhuman or degrading treatment
- Freedom of movement
- Freedom of expression
- Taking part in public life
- Privacy and reputation
- Right to liberty and security of person
- Fair hearing
- Children in criminal proceedings
- Retrospective criminal laws
- Freedom from forced work
- Freedom of thought, conscience, religion and belief
- Peaceful assembly and freedom of association
- Right to life
- Cultural rights of Aboriginal and Torres Strait Islander peoples
- Cultural rights – generally
- Property rights
- Right to health services
- Protection of families and children
- Humane treatment when deprived of liberty
- Rights in criminal proceedings
- Right not to be tried or punished more than once
- Right to education



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# Qld HR Act – Rights that might relate to the need for a healthy environment?

- Recognition and equality before the law
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- Freedom of expression
- Taking part in public life
- Privacy and reputation
- Right to liberty and security of person
- Fair hearing
- Children in criminal proceedings
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- Freedom from forced work
- Freedom of thought, conscience, religion and belief
- Peaceful assembly and freedom of association
- **Right to life**
- **Cultural rights of Aboriginal and Torres Strait Islander peoples**
- **Cultural rights – generally**
- **Property rights**
- ***Right to health services***
- Protection of families and children
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- Rights in criminal proceedings
- Right not to be tried or punished more than once
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# Qld HR Act

## 37 **Right to health services**

- (1) Every person has the right to access health services without discrimination.
- (2) A person must not be refused emergency medical treatment that is immediately necessary to save the person's life or to prevent serious impairment to the person.



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# Qld HR Act

## **15 Recognition and equality before the law**

- (1) Every person has the right to recognition as a person before the law.
- (2) Every person has the right to enjoy the person's human rights without discrimination.
- (3) Every person is equal before the law and is entitled to the equal protection of the law without discrimination.
- (4) Every person has the right to equal and effective protection against discrimination.
- (5) Measures taken for the purpose of assisting or advancing persons or groups of persons disadvantaged because of discrimination do not constitute discrimination.



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# Qld HR Act

## **24 Property rights**

- (1) All persons have the right to own property alone or in association with others.
- (2) A person must not be arbitrarily deprived of the person's property.



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# Qld HR Act

## **27 Cultural rights—generally**

All persons with a particular cultural, religious, racial or linguistic background must not be denied the right, in community with other persons of that background, to enjoy their culture, to declare and practise their religion and to use their language.

**28 Cultural rights—Aboriginal peoples and Torres Strait Islander peoples**

- (1) Aboriginal peoples and Torres Strait Islander peoples hold distinct cultural rights.
- (2) Aboriginal peoples and Torres Strait Islander peoples must not be denied the right, with other members of their community—
  - (a) to enjoy, maintain, control, protect and develop their identity and cultural heritage, including their traditional knowledge, distinctive spiritual practices, observances, beliefs and teachings; and
  - (b) to enjoy, maintain, control, protect, develop and use their language, including traditional cultural expressions; and
  - (c) to enjoy, maintain, control, protect and develop their kinship ties; and
  - (d) to maintain and strengthen their distinctive spiritual, material and economic relationship with the land, territories, waters, coastal seas and other resources with which they have a connection under Aboriginal tradition or Island custom; and
  - (e) to conserve and protect the environment and productive capacity of their land, territories, waters, coastal seas and other resources.
- (3) Aboriginal peoples and Torres Strait Islander peoples have the right not to be subjected to forced assimilation or destruction of their culture.



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# Qld HR Act

## **16 Right to life**

Every person has the right to life and has the right not to be arbitrarily deprived of life.



# Right to life

- Reflects article 6(1) of the ICCPR (International Covenant on Civil and Political Rights)
- Internationally recognised - right to life extended to include a right to a safe environment

# Oct 2018 – General Comment by UN Human Rights Committee:

26. The duty to protect life also implies that States parties should take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity. These general conditions may include high levels of criminal and gun violence, [95] pervasive traffic and industrial accidents, [96] degradation of the environment, [97], deprivation of land,

- Human Rights Committee: *“right to life is supreme”* and *“no derogation is permitted even in situations of armed conflict and other public emergencies which threatens the life of the nation.”*
- However this would need to be accepted by Qld courts.

# Right to life – How has it been interpreted in Victoria and ACT?

- No test case yet re. right to a healthy environment
- Victorian Guideline limits it to:
  - a) safeguarding the lives of persons in Victoria through the administration of the criminal law system;
  - b) undertaking effective official investigations into the circumstances of some deaths; and
  - c) protecting the lives of persons in the government's care
- ACT interpretation: “extends to life-threatening situations (such as environmental hazards) that are known (or ought to be known) to public authorities”

# Should we push for a right to a healthy environment?

- Some argue other rights are sufficient
- However, it could:
  - recognise clearly that diverse, functioning ecosystems and clean water, air, and soils are indispensable for human health and security
  - ensure the right can be pursued
  - assist in achieving other human rights e.g. right to life
  - draw on UN Special Rapporteur, John Knox, 16 principles to implement protection of right to a healthy environment



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# In Qld, it could help to provide:

- More robust decision making around new laws and proposals involving environmental impacts
- Less likelihood of litigation where right to a healthy environment considered upfront
- Address the injustices in environmental protection measures for marginalized Queenslanders

*‘Without a healthy environment, we are unable to fulfil our aspirations or even live at a level commensurate with minimum standards of human dignity.’*

— John Knox



# EDO Qld Advice Line

- Free advice service for public interest environmental legal questions
- Assisted by volunteer solicitors and students

- **Direct enquiries to:**  
[edoqld@edoqld.org.au](mailto:edoqld@edoqld.org.au)  
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