



Environmental  
Defenders Office

# The Right to a Healthy Environment



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# Overview

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1. What are human rights?
2. Human Rights Act 2019 (Qld)
3. Right to a Healthy Environment
4. Where to next?





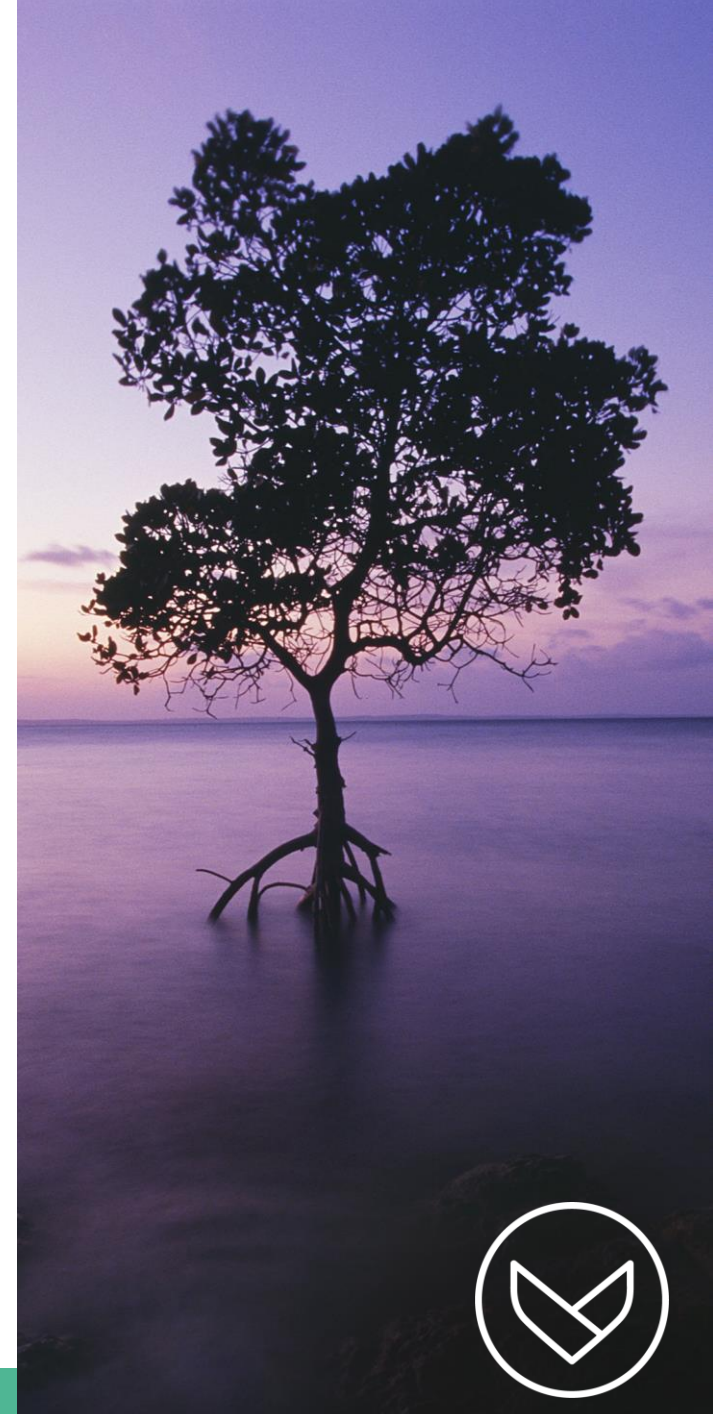
What are human rights?





# International Law

- International Covenant on Civil and Political Rights
- International Covenant on Economic, Social and Cultural Rights
- International Convention on the Elimination of All Forms of Racial Discrimination
- Convention on the Elimination of All Forms of Discrimination Against Women
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Convention on the Rights of the Child
- Convention on the Rights of Persons with Disabilities
- United Nations Declaration on the Rights of Indigenous Peoples





# *Human Rights Act 2019 (Qld)*

## **Parliament**

- All Bills must contain a compatibility statement
- Section 43 Override provision

## **Public Entities**

- Government entities, public service employees, police, local government, Ministers and other entities performing public functions.
- Unlawful to act in a way incompatible with human rights or failing to give proper consideration to human rights when making a decision
- Can be limited on the balance of considerations

## **Judiciary**

- Obligation to interpret all Qld laws in a way compatible with human rights



# *Human Rights Act 2019 (Qld)*

## **Dialogue model**

- Focused on discussion, awareness and education rather than enforcement and compliance

## **Enforcement**

- Complaint to Queensland Human Rights Commission
- 'Piggyback' claim against another cause of action.







# *Waratah Coal v Youth Verdict and the Bimblebox Alliance*

- Objection to the granting of a Mining Lease and Environmental Authority.
- HRA applies to Queensland Land Court administrative functions.
- Raised human rights impacts including right to life, the protection of children, and right to culture of First Nations People.
- QLC recommended refusal of the ML and EA applications as the proposal would unjustifiably limit the right to life, the protection of children, the right to culture of First Nations People, the right to property, the right of certain groups to enjoy human rights without discrimination, and the right to privacy and home.
- Climate change impacts on human rights were not the only factor but was a significant consideration



The background of the slide is a photograph of a riverbank. The upper portion shows a steep, layered rock face in shades of orange, tan, and brown. The lower portion shows the calm water of the river, which reflects the rock formations above. A dark, semi-transparent rectangular box is positioned on the left side, containing the title text. In the bottom right corner, there is a white circular logo containing a stylized 'V' or downward-pointing chevron symbol.

# The Right to a Healthy Environment





# Clean, Healthy & Sustainable

Recognised in:

- 18 October 2021 - UN Human Rights Council Resolution 48/13
- 28 July 2022 – UN General Assembly Resolution 76/300


Linked to:

- Right to the highest attainable standard of physical and mental health
- Right life
- Right to culture

The right to a healthy environment recognises that all humans have the right to live in a clean, healthy, and sustainable environment.





A photograph of a dense tropical forest with a river. The river flows from the background towards the foreground, surrounded by thick vegetation and trees. The water is calm, reflecting the surrounding greenery. The forest is lush with various types of trees and plants, creating a vibrant green scene. A large, dark, semi-transparent rectangular box is overlaid on the right side of the image, containing white text.

Clean, Healthy &  
Sustainable



# Substantive elements

1. clean air;
2. safe climate;
3. access to safe water and adequate sanitation;
4. healthy biodiversity and ecosystems;
5. toxic free environments in which to live, work, study and play; and
6. healthy and sustainably produced food.



# Procedural Elements

1. the right to information;
2. the right to participate in decision-making; and
3. access to justice.





# Standalone cause of action

- Improved Access to Justice
- Enhanced Accountability for Public Entities
- Alignment with International Standards
- Strong Precent in the ACT



# ***Human Rights Act 2004 (ACT)***

## ***August 2024 – The Human Rights (Healthy Environment) Amendment Bill 2023***

### **27C Right to a healthy environment**

- (1) Everyone has the right to a clean, healthy and sustainable environment.
- (2) Everyone is entitled to enjoy this right without discrimination.

*Note 1* Section 28 sets out what must be considered in deciding whether a limit on rights is reasonable.

*Note 2* Aboriginal and Torres Strait Islander peoples hold distinct cultural rights in relation to the land and waters and other resources (see s 27 (2) (b)).

### **40C Legal proceedings in relation to public authority actions**

(8) This section does not apply to a claim that a public authority has acted in contravention of section 40B if the contravention claimed is—

- (a) that the public authority acted in a way that is incompatible with the human right set out in section 27C (Right to a healthy environment); or
- (b) in making a decision, the public authority failed to give proper consideration to the human right set out in section 27C.







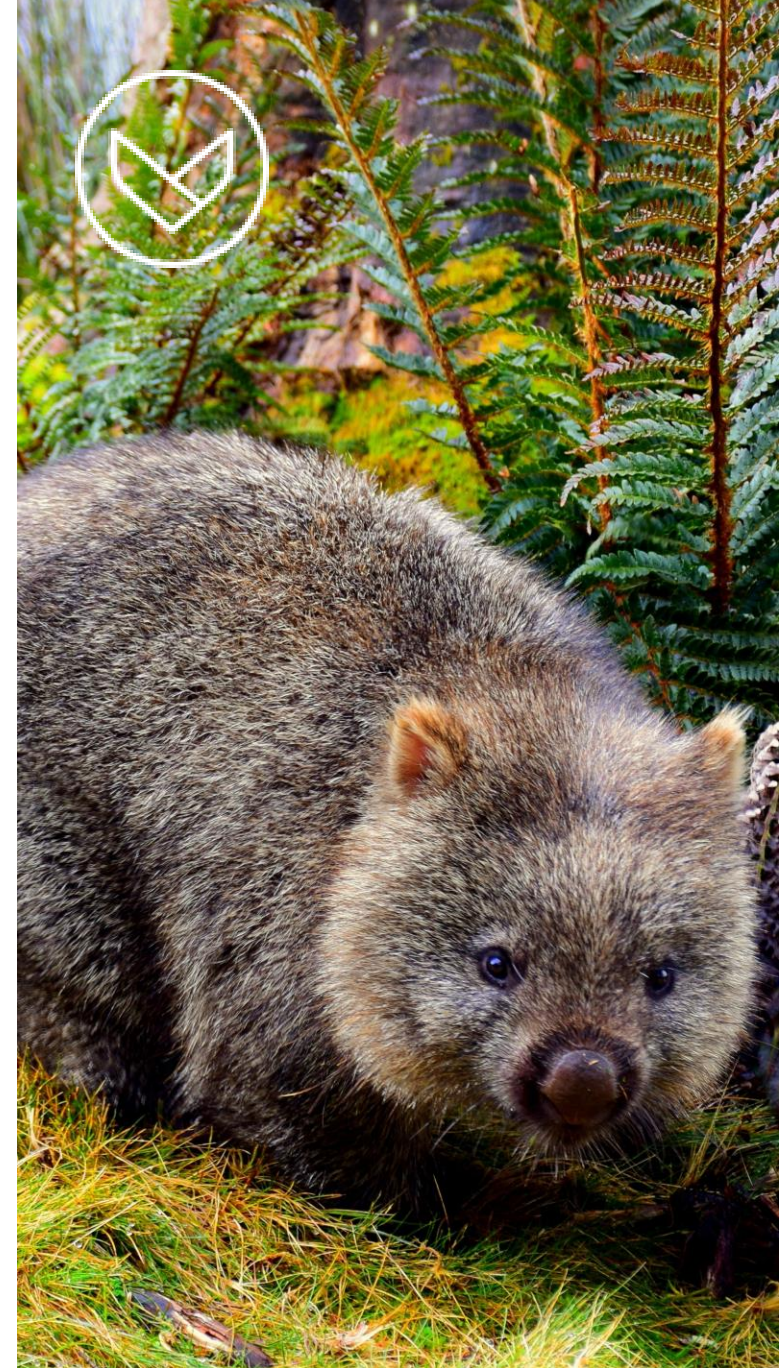
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Where to now?



# 2024 Independent Review into the Human Rights Act

- Independent review required under s95
- Terms of reference included consideration of additional rights
- 70 recommendations including a right to a clean, healthy and sustainable environment and for an independent cause of action
- Qld Crisafulli government has rejected the recommendations commenting only on the recommendations relating to rights of victims





Thank you.

