

Independent Review of Queensland's *Human Rights Act 2019*

Submission to Professor Susan Harris Rimmer
and the Review team

21 June 2024

Contents

Who we are	4
Introduction	5
Override declarations.....	5
Conclusion	8

Who we are

The Australian Lawyers Alliance (ALA) is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

We estimate that our 1,500 members represent up to 200,000 people each year in Australia. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief.

The ALA is represented in every state and territory in Australia. More information about us is available on our website.¹

The ALA office is located on the land of the Gadigal people of the Eora Nation.

¹ www.lawyersalliance.com.au.

Introduction

1. The ALA welcomes the opportunity to have input to Professor Susan Harris Rimmer and the Review team as part of the Independent Review of Queensland's *Human Rights Act 2019*.
2. ALA members commend Queensland for having a legislative human rights instrument, a feature which only exists in three jurisdictions across Australia. The ALA strongly advocated for Queensland to adopt a Human Rights Act, and ALA members were subsequently involved in stakeholder consultations in the lead-up to the *Human Rights Act 2019* (Qld) being finalised.²
3. The ALA's submission to this review will focus on override declarations, which greatly concern ALA members. When the Human Rights Bill 2018 (Qld) was being considered,³ the ALA opposed the inclusion of provisions allowing for override declarations, and we maintain that position after seeing the circumstances in which the Queensland Parliament has been willing to override the *Human Rights Act 2019* (Qld).

Override declarations

4. The ALA notes that an override declaration may be made by the Queensland Parliament such that legislation "has effect despite being incompatible with 1 or more human rights" detailed in the *Human Rights Act 2019* (Qld).⁴
5. A member of the Legislative Assembly who instigates an override declaration is required under section 44 to "make a statement to the Assembly explaining the exceptional circumstances that justify including the override declaration",⁵ although failure to make a

² See, egs, Letter from Australian Lawyers Alliance to Attorney General the Hon. Yvette D'Ath MP, 5 May 2017 <www.lawyersalliance.com.au/documents/item/925>; Australian Lawyers Alliance, Submission to the Legal Affairs and Community Safety Committee, Parliament of Queensland, *Queensland Human Rights Bill 2018* (22 November 2018) <www.lawyersalliance.com.au/documents/item/1413>; Evidence to the Legal Affairs and Safety Committee, Parliament of Queensland, Brisbane (via teleconference), 4 December 2018, 54–56 (Dr Louis Schetzer) <www.lawyersalliance.com.au/documents/item/1490>.

³ Australian Lawyers Alliance, Submission to Submission to the Legal Affairs and Community Safety Committee, Parliament of Queensland, *Queensland Human Rights Bill 2018* (22 November 2018) 11–13 <www.lawyersalliance.com.au/documents/item/1413>.

⁴ *Human Rights Act 2019* (Qld) s 43.

⁵ *Ibid* s 44.

statement about exceptional circumstances “does not affect the validity of the Act or any other law”.⁶

6. **ALA members maintain our significant concerns about the ability for the Queensland Parliament to override the *Human Rights Act 2019* (Qld), especially when the accountability mechanism under section 44 can be ignored and especially with regard to the disproportionate effect the legislation the Queensland Government has sought to pass by overriding the *Human Rights Act 2019* (Qld) has had on vulnerable Queenslanders, including children and Aboriginal and Torres Strait Islander peoples.**
7. We refer Professor Harris Rimmer and the Review team to the example of the Strengthening Community Safety Bill (Qld), which was passed by Queensland Parliament in March 2023. Changes instigated by this legislation included that children who breach bail conditions would be charged with the same offence as adults.
 - a. This was the first time the Queensland Government sought to override the *Human Rights Act 2019* (Qld), despite significant opposition from stakeholders – including from the ALA.⁷
 - b. At the time, the Queensland Government stated that this override of the *Human Rights Act 2019* (Qld) was necessary due to “an acute problem presented by a small cohort of serious repeat offenders who engage in persistent and high-risk offending”.⁸
 - c. The ALA submits that, given the disproportionate impact on vulnerable children and on Aboriginal and Torres Strait Islander children in particular, overriding the *Human Rights Act 2019* (Qld) was inappropriate to address an issue which by the Queensland Government’s own admission was limited to “a small cohort of serious repeat offenders”. This legislation instead put a larger group of vulnerable children, including Aboriginal and Torres Strait Islander children, at risk of incarceration in Queensland.

⁶ Ibid s 47.

⁷ See: Australian Lawyers Alliance, Submission to the Economics and Governance Committee, Parliament of Queensland, *Strengthening Community Safety Bill 2023* (23 February 2023) <www.lawyersalliance.com.au/documents/item/2412>.

⁸ Quoted in: Economics and Governance Committee, Parliament of Queensland, *Strengthening Community Safety Bill 2023* (Report No. 41, March 2023) 6.

- d. Yet, the Strengthening Community Safety Bill (Qld) was passed despite the clear conflict with the human rights of children in Queensland, since the *Human Rights Act 2019* (Qld) had been overridden.
8. The ALA also refers Professor Harris Rimmer and the Review team to another instance where the Queensland Parliament overrode the *Human Rights Act 2019* (Qld) in order to pass legislation which would allow the Queensland Government to hold children in police watch houses.⁹ The ALA notes that those watch houses are places designated for adults and which house adults – they are not suitable environments for children.
 - a. Again, overriding the *Human Rights Act 2019* (Qld) was met with strong opposition, including from the ALA and other human rights advocates who were concerned about the impact on vulnerable children, especially Aboriginal and Torres Strait Islander children.¹⁰ Nevertheless, the Queensland Government progressed this legislation through the Legislative Assembly.
 - b. We submit that this example also demonstrates the clear issue with the ability for Queensland Parliament to make override declarations in order to pass legislation which has devastating and cruel effects on children in Queensland, and which breaches those children’s basic human rights.
9. **The ALA, therefore, contends – in general and with regard to how the Queensland Government has made override declarations (as above) – that the override provisions in the *Human Rights Act 2019* (Qld) are neither appropriate nor necessary.**

⁹ See: *Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Act 2023* (Qld).

¹⁰ Australian Lawyers Alliance, ‘Qld youth justice law changes: breaches govt’s obligation to put interests of children first’ (Media Release, 25 August 2023) <www.lawyersalliance.com.au/news/qld-youth-justice-law-changes-breaches-govts-obligation-to-put-interests-of-children-first>; Australian Human Rights Commission, ‘National Children’s Commissioner slams ‘shocking’ new Qld youth justice laws’ (Media Release, 25 August 2023) <humanrights.gov.au/about/news/media-releases/national-childrens-commissioner-slams-shocking-new-qld-youth-justice-laws>; Andrew Messenger and Eden Gillespie, ‘‘Absolute dog act’’: Queensland Labor criticised for shock move to override state’s Human Rights Act’ (online, 23 August 2023) <www.theguardian.com/australia-news/2023/aug/23/absolute-dog-act-queensland-labor-pilloried-for-shock-move-to-override-states-human-rights-act>.

10. Crucially, the ALA contends that the override provisions directly undermine the main objects of the *Human Rights Act 2019* (Qld) itself, namely:¹¹

- (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.

11. The ALA supports calls to remove the provisions of Queensland's *Human Rights Act 2019* which enable override declarations to be made.

Conclusion

12. The Australian Lawyers Alliance (ALA) welcomes the opportunity to have input to Professor Susan Harris Rimmer and the Review team as part of the Independent Review of Queensland's *Human Rights Act 2019*.

13. The ALA is available to provide further assistance to Professor Harris Rimmer and the Review team on the issues raised in this submission.



Sarah Grace
President, Queensland Branch Committee
Australian Lawyers Alliance



Nicki Lees
Chair, Human Rights Special Interest Group
Australian Lawyers Alliance

¹¹ *Human Rights Act 2019* (Qld) s 3.