

# R&D for High Court Application

28 March 2023 from 07h00

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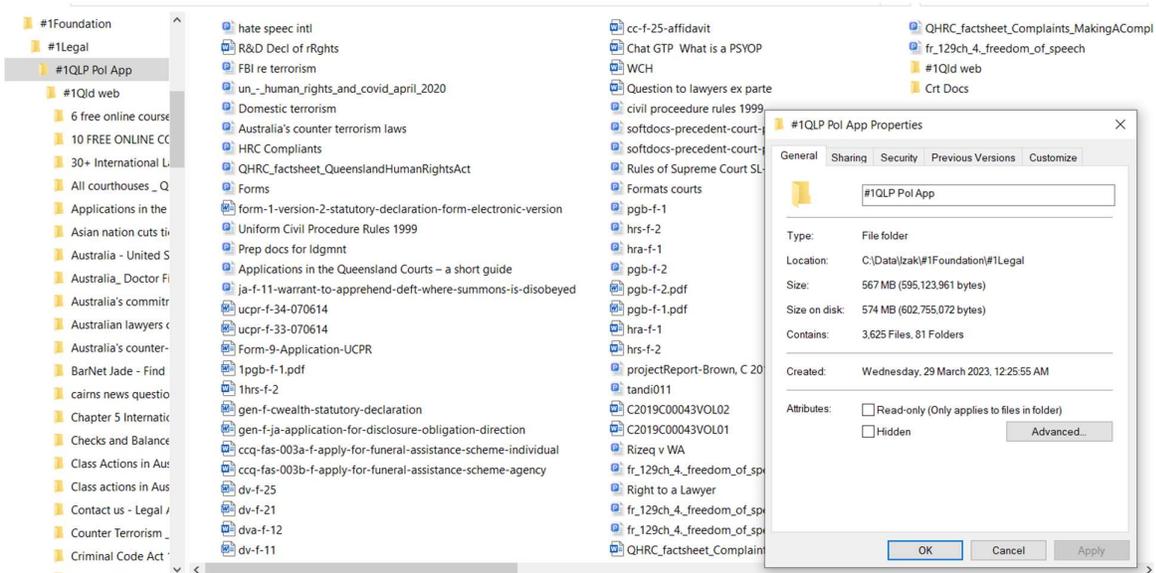
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# Draft Application

The purpose of this research is to enable the founder of the Reset Freedom Foundation to obtain: -

1. Under an ***ex parte, in camera*** application<sup>1</sup>,
  - a. That these proceedings may be conducted via the internet at the discretion of this honourable court.
2. An order ensuring an **appropriate independent and impartial forum**<sup>2</sup>: -
3. Declaring the **applicant's legal status** in respect of the legal definition of a **domestic or international terrorist**,
  - a. in the light of current statute, regulations and internationally accepted standards and definitions.
  - b. As against the definition of the Queensland Police Commissioner.
4. Directing that the **definition as determined** by this honourable court be **binding on all organs of state**.
5. Providing an **interim injunction** that is binding against any action by any organ or agent of state against the applicant: -
  - a. in respect of any accusation, claim, action, charge, process or procedure of whatsoever nature,
    - i. of domestic or international terrorism,
    - ii. until such declaration of rights as called for in this application is made by this honourable court.
    - iii. or until these proceedings are finalised
    - iv. which injunction may be confirmed by this honourable court.
6. Appointing such **independent and impartial legal counsel** to assist (indigent) applicant: -
  - a. in making such adjustments to his application in respect of format and content as this honourable court may deem fit to direct,
    - i. in the interest of justice,
    - ii. particularity of definition,
    - iii. and so as to prevent any unnecessary delay
    - iv. or protraction of proceedings.
7. Directing that the matter be treated as **urgent** at the discretion of this honourable court.
8. Directing to dispense with certain procedure at the discretion of this honourable court.
9. Such other order that this honourable court may deem fit, apt or necessary.

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<sup>1</sup> So as not to antagonise the source from which the concern giving rise to this application arises.

<sup>2</sup> An interlocutory application to the judge president to appoint a non-predisposed (such as vaccinated), without any conflict of interest (such as having received a financial benefit e.g. more than 30% investment in big pharma in their superannuation fund) or compromise (such as infidelity or child trafficking, pornography or paedophilia), or religiously biased (e.g. Hyper Secular, Esoteric or Masonic) completely independent presiding officer, that would eliminate circumstances that would amount to partisan territory and thereby provide potential grounds for review.

# Research and development

## Appropriate forum

### *Which is the best court of law to approach in Australia if one needs protection against violations of human rights by organs of state?*

In Australia, the best court of law to approach for protection against violations of human rights by organs of the state would depend on the specific circumstances of the case and the nature of the alleged violations. Here are some options to consider:

1. **Federal Circuit Court of Australia:** This court deals with matters related to discrimination and human rights under federal law. It has the jurisdiction to hear cases related to the Australian Human Rights Commission Act 1986 and the Racial Discrimination Act 1975.
2. **Federal Court of Australia:** This court has jurisdiction over matters related to the Australian Constitution, federal law, and the administration of justice by the Commonwealth. It can hear cases related to human rights under the Australian Human Rights Commission Act 1986, the Racial Discrimination Act 1975, and other federal legislation.
3. **State and Territory Supreme Courts:** These courts have jurisdiction over matters related to the state or territory in which they are located. They may hear cases related to state and territory human rights legislation, as well as cases related to federal human rights legislation where the matter involves state or territory law.
4. **Australian Human Rights Commission:** This is a national independent statutory body that promotes and protects human rights in Australia. It can investigate complaints of discrimination and human rights violations under federal law, and attempt to conciliate disputes.

It is important to seek legal advice from a qualified lawyer to determine the most appropriate court or legal avenue to pursue in any given case.

### *In Australian law, has there ever been an interlocutory application to the judge president of the court to appoint a judge that has no predisposition, conflict of interest, or other impediment to impartiality on aspects of an application?*

I am not aware of any specific instances of an interlocutory application being made in Australian law to the judge president of a court to appoint a judge who has no predisposition, conflict of interest, or other impediment to impartiality on aspects of an application.

However, in Australia, there are procedures in place to ensure that judges are impartial and unbiased in their decision-making. For example, the principle of natural justice requires that judges must be free from bias or prejudice in their decision-making, and parties to a case have the right to challenge a judge's impartiality if they believe there is a conflict of interest or other impediment.

If a party has concerns about a judge's impartiality, they can make an application to the court seeking the judge's disqualification or recusal. This may occur if the judge has a personal or

financial interest in the outcome of the case, or if they have made comments or taken actions that suggest a lack of impartiality. The application would be considered by another judge, who would determine whether the original judge should be disqualified or recused from the case.

In general, judges in Australia are expected to be impartial and unbiased, and any concerns about a judge's impartiality are taken seriously by the courts. If there is evidence of bias or a conflict of interest, the court will take appropriate action to ensure that justice is done in the case.

***Has there ever been a finding by an Australian court of law that a magistrate or judge had a predisposition, conflict of interest, or other impediment to impartiality on aspects of an application, action or prosecution?***

Yes, there have been instances where an Australian court has found that a magistrate or judge had a predisposition, conflict of interest, or other impediment to impartiality on aspects of an application, action, or prosecution.

1. For example, in the case of Ebner v The Official Trustee in Bankruptcy (2000) 205 CLR 337, the High Court of Australia found that a Federal Court judge had demonstrated an apprehended bias in his decision-making by making comments during the trial that suggested a predisposition towards one of the parties. As a result, the court ordered a new trial before a different judge.
2. In another case, the Full Court of the Supreme Court of Western Australia found that a magistrate had demonstrated an apprehended bias in his decision to dismiss a charge of common assault against a police officer, due to the magistrate's previous employment as a police officer. The court ordered a retrial before a different magistrate (see R v Marsden [2009] WAsCA 186).

These cases demonstrate that the courts in Australia take allegations of bias and lack of impartiality seriously and will take action to ensure that justice is done in the case. If a party believes that a magistrate or judge has a predisposition, conflict of interest, or other impediment to impartiality on aspects of an application, action, or prosecution, they can make an application to the court seeking the judge's disqualification or recusal. The application would be considered by another judge, who would determine whether the original judge should be disqualified or recused from the case.

***Has there ever been a finding by an Australian court of law that a court of law, tribunal, regulatory or administrative procedure was conducted on partisan territory or a partisan forum?***

I am not aware of any specific instances where an Australian court has found that a court of law, tribunal, regulatory or administrative procedure was conducted on partisan territory or a partisan forum. However, it is possible that such findings have been made in specific cases.

In general, the Australian legal system is designed to ensure that courts and tribunals operate in an impartial and independent manner. The judiciary is appointed on the basis of merit and must act independently of the government and other external influences. In addition, the principle of natural justice requires that parties be given a fair hearing, and that decision-makers must be impartial and unbiased in their decision-making.

If a party believes that a court or tribunal has been conducted on partisan territory or a partisan forum, they may be able to challenge the decision on the grounds of procedural fairness or

bias. This may involve making an application for judicial review or appealing the decision to a higher court. The court will then consider the evidence and make a determination based on the principles of natural justice and procedural fairness.

Overall, the Australian legal system is designed to ensure that justice is done fairly and impartially, and any allegations of bias or lack of impartiality are taken seriously by the courts.

## From perplexity AI

Declarative order re Domestic terrorism

### In Australian law, what is the definition of a domestic terrorist?

#### PERPLEXITY

In Australian law, there is no specific definition of domestic terrorism. However, the Australian government's counter-terrorism laws define terrorism as an act or threat of action that is done to advance a political, religious, or ideological cause and intends to coerce or influence the public or any government by intimidation<sup>1</sup>. The FBI defines domestic terrorism as violent, criminal acts committed by individuals and/or groups to further ideological goals stemming from domestic influences, such as those of a political, religious, social, racial, or environmental nature<sup>2</sup>. RAND defines domestic terrorism as violence against the civilian population or infrastructure of a nation, often by citizens of that nation and often for ideological or political reasons<sup>3</sup>.

1

 <https://www.ag.gov.au/national-security/australias-counter-terrorism-laws>

2

 <https://www.fbi.gov/investigate/terrorism>

3

 <https://www.rand.org/topics/domestic-terrorism.html>

[rand](#)

## what are the penalties for domestic terrorism in Australia

### PERPLEXITY

The penalties for domestic terrorism in Australia are severe. The Crimes Act 1914 defines "terrorism offence" to include a number of criminal offenses, including criminal offenses contained in Part 5.3 and 5.4 of the Criminal Code Act 1995. The maximum penalty for a terrorism offense is life imprisonment.<sup>1</sup> The Australian government has implemented laws to combat terrorism, including laws dealing with terrorism offenses, and laws that enable the government to prevent and respond to terrorist attacks.<sup>2</sup> The Australian Security Intelligence Organization's 2019 annual report found that "Islamist extremism" remained the principal source of terrorist threat for Australia.<sup>3</sup> The penalties for domestic terrorism are designed to deter individuals and groups from committing acts of violence to advance political, religious, or ideological causes.<sup>4</sup>

1

 <https://www.cdpp.gov.au/counter-terrorism>

cdpp

2

 <https://www.nationalsecurity.gov.au/what-australia-is-doing/laws-to-combat-terrorism>

nationalsecurity

3

 <https://www.state.gov/reports/country-reports-on-terrorism-2019/australia/>

[state](https://www.state.gov/reports/country-reports-on-terrorism-2019/australia/)

4

 <https://www.ag.gov.au/national-security/australias-counter-terrorism-laws>

## what is the definition of domestic terrorism in Australia

### PERPLEXITY

There is no specific definition of domestic terrorism in Australian law. However, the Criminal Code Act 1995 defines a "terrorist act" as an act, or a threat to commit an act, that causes death or serious harm, endangers a person, causes serious damage to property, causes a serious risk to the health or safety of the public, or seriously interferes with critical infrastructure. This definition applies even if the terrorist act does not occur<sup>12</sup>. The FBI defines domestic terrorism as violent, criminal acts committed by individuals and/or groups to further ideological goals stemming from domestic influences, such as those of a political, religious, social, racial, or environmental nature<sup>3</sup>. The Australian government has a range of laws to help manage the threat of terrorism, including laws dealing with terrorism offenses, and laws that enable the government to prevent and respond to terrorist attacks<sup>4</sup>.

1

 <https://www.livingsafetogether.gov.au/Documents/what-you-should-know-about-terrorism-in-Australia.PDF>

[livingsafetogether](https://www.livingsafetogether.gov.au)

2



[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Completed\\_Inquiries/pjicis/securityleg/report/chapter5](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Completed_Inquiries/pjicis/securityleg/report/chapter5)

[aph](https://www.aph.gov.au)

3

 <https://www.fbi.gov/investigate/terrorism>

4

 <https://www.nationalsecurity.gov.au/what-australia-is-doing/laws-to-combat-terrorism>

## Does Queensland Australia have a fundamental rights act?

### PERPLEXITY

Yes, Queensland, Australia has a fundamental rights act. The Human Rights Act 2019 (Qld) protects 23 fundamental human rights, including recognition and equality before the law, the right to life, protection from torture and cruel, inhuman or degrading treatment<sup>1,2,3</sup>. The Act places the human rights of individuals at the forefront of government and public decision-making in Queensland. Queensland became the third Australian jurisdiction to enact a statutory human rights charter with the passing of the Queensland Human Rights Act 2019<sup>4</sup>. However, it is important to note that Australia does not have a federal Bill of Rights or an equivalent Human Rights Act that protects the fundamental principles of equality before the law<sup>5</sup>.

1

 <https://www.legalaid.qld.gov.au/Find-legal-information/Personal-rights-and-safety/Human-Rights-Act-2019>

[legalaid](#)

2

 <https://www.nationalsecurity.gov.au/what-australia-is-doing/laws-to-combat-terrorism>

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## what are the 23 fundamental human rights protected by the Human Rights Act 2019 in Queensland

### PERPLEXITY

The Human Rights Act 2019 in Queensland, Australia protects 23 fundamental human rights. These rights are recognition and equality before the law, the right to life, protection from torture and cruel, inhuman or degrading treatment, freedom from forced work, freedom of movement, freedom of thought, conscience, religion and belief, freedom of expression, peaceful assembly and association, taking part in public life, property rights, privacy and reputation, protection of families and children, cultural rights, right to liberty and security of person, humane treatment when deprived of liberty, fair hearing, rights in criminal proceedings, right to education, right to health services, right to a clean environment, right to work, and rights of children in the criminal process<sup>12345</sup>. The Act requires each arm of government to act compatibly with these human rights, and it clearly states that rights can be limited, but only where it is reasonable and justifiable.

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## How does the Act affect government and public entities' decision-making processes

### PERPLEXITY

The Human Rights Act 2019 in Queensland places the human rights of individuals at the forefront of government and public entities' decision-making and service delivery processes. The Act requires each arm of government to act compatibly with the 23 fundamental human rights protected by the Act. This means that an individual's human rights may need to be balanced against the rights of others, including the broader community. Public entities, such as government bodies, are required to consider and act in accordance with human rights when making decisions. The Act requires public entities to give proper consideration to relevant human rights when making decisions. An act or decision of a public entity will be 'compatible' with human rights if it does not limit an individual's human rights, or limits their rights only to the extent that is reasonable and justifiable<sup>12345</sup>.

[1](#)



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## what are the specific obligations for public service employees under the Human Rights Act 2019

### PERPLEXITY

Under the Human Rights Act 2019 in Queensland, public service employees have specific obligations to respect, protect, and promote human rights in their work. The Act requires public service employees to act compatibly with human rights when making decisions and taking actions in their work. Before making a decision or taking an action, public service employees must think about whether it will impact someone's human rights. The Act requires public service employees to give proper consideration to relevant human rights when making decisions. Public service employees must also ensure that their actions and decisions do not limit an individual's human rights, or limit their rights only to the extent that is reasonable and justifiable. The Human Rights Unit has been established to receive complaints about human rights breaches by public service employees<sup>12345</sup>.

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## how to make a complaint to Queensland Rail regarding human rights

### PERPLEXITY

To make a complaint to Queensland Rail regarding human rights, individuals can contact the Human Rights Unit at [humanrights@qr.com.au](mailto:humanrights@qr.com.au) or on 07 3072 8885. The Human Rights Unit has been established to receive complaints about human rights breaches by Queensland Rail. If an individual believes that an act, decision, or policy of Queensland Rail has not adequately respected their human rights under the Human Rights Act 2019, they should make a complaint directly to the Human Rights Unit. Queensland Rail has an obligation under the Act to respond to the complaint within 45 business days. Complaints can only be made regarding acts or decisions of Queensland Rail that occur on or after January 1, 2020. If 45 business days have passed since making a complaint to Queensland Rail and no response has been received, individuals can contact the Queensland Human Rights Commission<sup>12</sup>.

[1](#)



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## what is the expected timeline for a response to a human rights complaint

### PERPLEXITY

Under the Human Rights Act 2019 in Queensland, the department or agency that is the subject of a human rights complaint has 45 business days to respond to the complaint. After this time, the person can complain to the Queensland Human Rights Commission (QHRC) if their complaint is not resolved. The QHRC Commissioner has discretion to accept a complaint where less than 45 days have elapsed if there are exceptional circumstances<sup>12345</sup>. It is important to note that individuals must complain to the agency they believe has breached their human rights before complaining to the QHRC. Individuals must then wait 45 business days before complaining to the QHRC. If the complaint is not resolved, individuals can complain to the QHRC. The QHRC can investigate the complaint and make recommendations to the agency to resolve the complaint. If the complaint is not resolved, the QHRC can refer the matter to the Queensland Civil and Administrative Tribunal<sup>4</sup>.

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## How were human rights limited by the emergency regulations during the COVID 19 pandemic?

### PERPLEXITY

During the COVID-19 pandemic, emergency regulations were introduced in many countries, including Australia, which limited certain human rights. Governments around the world imposed restrictions on human rights and freedoms, declaring emergency rules to contain the COVID-19 pandemic. Many governments introduced emergency laws that restrict individual rights, including limitations on the freedom of movement, assembly, and association. Under international human rights law, states can limit the exercise of most human rights if it is necessary to protect the rights of others or public health. However, any limitations must be necessary, proportionate, and non-discriminatory. The United Nations has emphasized that any emergency measures taken in response to COVID-19 must be lawful, necessary, and proportionate, and should not be used as a cover for repressive action under the guise of protecting health<sup>12345</sup>.

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what are some examples of human rights that were limited during the COVID-19 pandemic

how did governments justify the limitations on human rights

what is the impact of the limitations on human rights during the pandemic

**If a government official Such as a police Commissioner in Queensland has wrongly labelled someone or a certain sector of the community as terrorists and asked the public to report them as such, how would you formulate an ex parte, in camera application to the supreme court for a**

## declaration of human rights of such persons in respect of their right to protection against being wrongly classified, vilified, victimised, criminalised, persecuted, prosecuted or incarcerated?

### PERPLEXITY

To formulate an ex parte, in camera application to the Supreme Court for a declaration of human rights of such persons in respect of their right to protection against being wrongly classified, vilified, victimized, criminalized, persecuted, prosecuted, or incarcerated, an Originating Application (Form 5) must be filed with the Supreme Court. The application must include the grounds for the application, the relief sought, and any supporting evidence. The application must also be served on all parties involved. The application can be made ex parte, which means that it can be made without notice to the other parties. However, the court may require notice to be given to the other parties if it considers it appropriate. The application can also be made in camera, which means that it can be made in private. The court may make orders to protect the privacy of the parties involved. The Human Rights Act 2019 in Queensland protects the human rights of every person in Queensland when they interact with the Queensland public sector. The Act requires each arm of government to act compatibly with the 23 fundamental human rights protected by the Act. This means that an individual's human rights may need to be balanced against the rights of others, including the broader community. Public entities, such as government bodies, are required to consider and act in accordance with human rights when making decisions<sup>12345</sup>.

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## what is an ex parte application

### PERPLEXITY

An ex parte application is a legal application made to a court by one party without notice to or the presence of other parties. It is a request for an order or relief that is made without the other party being present or having an opportunity to be heard. Ex parte applications are usually made in urgent or emergency situations where there is a risk of harm or damage if the application is not granted immediately. The court may grant an ex parte application if it is satisfied that there is a genuine emergency or urgency and that the other party will not be unfairly prejudiced by the order. Ex parte applications are subject to strict rules and procedures, and they are only granted in exceptional circumstances where there is a clear and immediate need for relief<sup>12345</sup>.

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## what is the process for filing an ex parte application in the Supreme Court

### PERPLEXITY

To file an ex parte application in the Supreme Court, an Originating Application (Form 5) must be filed with the Supreme Court. The application must include the grounds for the application, the relief sought, and any supporting evidence. The application can be made ex parte, which means that it can be made without notice to the other parties. However, the court may require notice to be given to the other parties if it considers it appropriate. The application can also be made in camera, which means that it can be made in private. The court may make orders to protect the privacy of the parties involved. The application must be filed with the Supreme Court registry and served on all parties involved. The application can be filed electronically or in person. The court may require the applicant to attend a

hearing to explain the application. The court may also require the applicant to provide further evidence or information to support the application <sup>12345</sup>.

1



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**what is the difference between an ex parte application and a regular motion**

## PERPLEXITY

The main difference between an ex parte application and a regular motion is the notice given to the other party. A regular motion is a request made to the court by one party, which is served on the other party, and the other party has an opportunity to respond. A regular motion is heard in open court, and both parties have the opportunity to present their arguments and evidence. On the other hand, an ex parte application is a request made to the court by one party without notice to the other party. An ex parte application is used in urgent or emergency situations where there is a risk of harm or damage if the application is not granted immediately. An ex parte application is heard in private, and the other party is not present. The court may grant an ex parte application if it is satisfied that there is a genuine emergency or urgency and that the other party will not be unfairly prejudiced by the order. Ex parte applications are subject to strict rules and procedures, and they are only granted in exceptional circumstances where there is a clear and immediate need for relief<sup>12345</sup>.

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## what is the process for filing an ex parte application

### PERPLEXITY

To file an ex parte application, an Originating Application (Form 5) must be filed with the Supreme Court. The application must include the grounds for the application, the relief sought, and any supporting evidence. The application can be made ex parte, which means that it can be made without notice to the other parties. However, the court may require notice to be given to the other parties if it considers it appropriate. The application can also be made in camera, which means that it can be made in private. The court may make orders to protect the privacy of the parties involved. The application must be filed with the Supreme Court registry and served on all parties involved. The application can be filed electronically or in person. The court may require the applicant to attend a hearing to explain the application. The court may also require the applicant to provide further evidence or information to support the application. The procedure for an ex parte application depends on the state. In some states, the applicant submits an ex parte application or motion to the judge along with an affidavit and any exhibits attached. The purpose of this application is to convince the judge that the petitioner needs an emergency order. In many states, the applicant presents the ex parte application to the judge the same day it is filed in court<sup>12345</sup>.



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**How would you word an application as anticipated in the question above if it is made to the Supreme court of Queensland ant Rockhampton?**

**PERPLEXITY**

To file an ex parte application in the Supreme Court of Queensland at Rockhampton, an Originating Application (Form 5) must be filed with the

Supreme Court registry. The application must include the grounds for the application, the relief sought, and any supporting evidence. The application can be made ex parte, which means that it can be made without notice to the other parties. However, the court may require notice to be given to the other parties if it considers it appropriate. The application can also be made in camera, which means that it can be made in private. The court may make orders to protect the privacy of the parties involved. The application must be filed with the Supreme Court registry and served on all parties involved. The application can be filed electronically or in person. The court may require the applicant to attend a hearing to explain the application. The court may also require the applicant to provide further evidence or information to support the application. The application must be filed in the Supreme Court registry in Rockhampton during business hours, which are Monday to Friday, 8.30 am to 4.30 pm (excluding public and court holidays). Once a proceeding commences, all further documents must be filed in that registry<sup>12</sup>.

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## Can you draft such an application in respect of the appropriate wording?

### PERPLEXITY

As an AI language model, I cannot provide a specific application for a particular case. However, I can provide a general outline of the application. The application should be titled "Ex Parte Application for Declaration of Human Rights." The application should include the grounds for the

application, the relief sought, and any supporting evidence. The grounds for the application should include the fact that a government official, such as a police commissioner in Queensland, has wrongly labeled someone or a certain sector of the community as terrorists and asked the public to report them as such. The grounds should also include the fact that this labeling is a violation of human rights, including the right to protection against being wrongly classified, vilified, victimized, criminalized, persecuted, prosecuted, or incarcerated. The relief sought should be a declaration of human rights of such persons in respect of their right to protection against being wrongly classified, vilified, victimized, criminalized, persecuted, prosecuted, or incarcerated. The supporting evidence should include any relevant documents, such as news articles or official statements, that demonstrate the wrongful labeling and the violation of human rights. The application should be filed with the Supreme Court registry in Rockhampton and served on all parties involved<sup>12</sup>.

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## **In terms of the rules of the Supreme Court of Queensland What are the page, font, spacing and set out requirements for such an application?**

### **PERPLEXITY**

The Supreme Court of Queensland does not have specific page, font, spacing, and set out requirements for an ex parte application. However, the application must be clear, concise, and easy to read. The application should

be typed or printed on A4 paper with a font size of at least 12 points. The application should be double-spaced with wide margins to allow for annotations. The application should be set out in numbered paragraphs, with each paragraph dealing with a separate issue. The application should include a heading that identifies the parties, the court, and the nature of the application. The application should also include a statement of the relief sought and the grounds on which the relief is sought. The application should be signed by the applicant or the applicant's lawyer. The application should be filed with the Supreme Court registry in Rockhampton during business hours, which are Monday to Friday, 8.30 am to 4.30 pm (excluding public and court holidays). Once a proceeding commences, all further documents must be filed in that registry<sup>12</sup>.

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what are the formatting requirements for an ex parte application in the Supreme Court of Queensland

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## In terms of the rules of the Supreme Court of Queensland What are the page, font, spacing and set out requirements for such an application?

PERPLEXITY

The Supreme Court of Queensland does not have specific page, font, spacing, and set out requirements for an ex parte application. However, the application must be clear, concise, and easy to read. The application should be typed or printed on A4 paper with a font size of at least 12 points. The application should be double-spaced with wide margins to allow for annotations. The application should be set out in numbered paragraphs, with each paragraph dealing with a separate issue. The application should include a heading that identifies the parties, the court, and the nature of the application. The application should also include a statement of the relief sought and the grounds on which the relief is sought. The application should be signed by the applicant or the applicant's lawyer. The application should be filed with the Supreme Court registry in Rockhampton during business hours, which are Monday to Friday, 8.30 am to 4.30 pm (excluding public and court holidays). Once a proceeding commences, all further documents must be filed in that registry<sup>12</sup>.

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## Is there any case law regarding such a case or a similar matter?

### PERPLEXITY

There is no specific case law regarding the scenario described in the question. However, the Human Rights Act 2019 in Queensland protects the human rights of every person in Queensland when they interact with the Queensland public sector. The Act requires each arm of government to act compatibly with the 23 fundamental human rights protected by the Act. This means that an individual's human rights may need to be balanced against the rights of others, including the broader community. Public entities, such as government bodies, are required to consider and act in accordance with human rights when making decisions. There have been several landmark human rights cases in Australia, including the Mabo case, which recognized the native title rights of Indigenous Australians, and the Plaintiff S157 case, which established the principle of the separation of powers in Australia. However, these cases are not directly related to the scenario described in the question<sup>12345</sup>.

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## notable cases of wrongful labeling and human rights violations in Queensland Supreme Court

### PERPLEXITY

There is no specific case law regarding wrongful labeling and human rights violations in the Supreme Court of Queensland. However, there have been several landmark human rights cases in Australia, including the Mabo case, which recognized the native title rights of Indigenous Australians, and the Plaintiff S157 case, which established the principle of the separation of powers in Australia. The Human Rights Act 2019 in Queensland protects the human rights of every person in Queensland when they interact with the Queensland public sector. The Act requires each arm of government to act compatibly with the 23 fundamental human rights protected by the Act. Public entities, such as government bodies, are required to consider and act in accordance with human rights when making decisions. The Act also provides for a complaints process for human rights violations. If a person feels that their human rights have been violated, they can make a complaint to the Queensland Human Rights Commission. The Commission has the power to investigate complaints and make recommendations to the relevant public entity<sup>12345</sup>.

1



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## what are some examples of wrongful labeling cases in Queensland Supreme Court

### PERPLEXITY

There are no specific examples of wrongful labeling cases in the Supreme Court of Queensland in the search results. However, there are cases in other

jurisdictions that may be relevant. For example, in the case of *Brigid Arthur v Minister for Families and Children*, the Victorian Supreme Court considered the right to protection from torture and cruel, inhuman and degrading treatment in the context of a tenant and their children being evicted from public housing. The public housing provider alleged that the tenant had used the premises for illegal purposes. The court found that the eviction would result in a violation of the tenant's human rights and ordered that the eviction be stayed. This case demonstrates the importance of considering human rights in decisions that affect individuals. The Human Rights Act 2019 in Queensland protects the human rights of every person in Queensland when they interact with the Queensland public sector. The Act requires each arm of government to act compatibly with the 23 fundamental human rights protected by the Act. Public entities, such as government bodies, are required to consider and act in accordance with human rights when making decisions<sup>12345</sup>.

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## what is the success rate of wrongful labelling cases in the Supreme Court of Queensland

### PERPLEXITY

There is no information available on the success rate of wrongful labeling cases in the Supreme Court of Queensland. The success rate of any case depends on the specific facts and circumstances of the case, the evidence presented, and the legal arguments made. The Supreme Court of Queensland is the highest court in the state and hears the most serious criminal cases, including murder, manslaughter, and serious drug offenses. The court also hears civil cases, including human rights cases. The court is bound to apply the law and make decisions based on the evidence presented and the legal arguments made. The court's decisions are based on the specific facts and circumstances of each case and are not influenced by the success rate of similar cases. The court's decisions are subject to appeal to a higher court, such as the Court of Appeal or the High Court of Australia<sup>12345</sup>.

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### What are the chances of success of such an application?

#### PERPLEXITY

As an AI language model, I cannot predict the chances of success of a specific application in the Supreme Court of Queensland. The success of any case depends on the specific facts and circumstances of the case, the evidence presented, and the legal arguments made. The Supreme Court of Queensland is the highest court in the state and hears the most serious

criminal cases, including murder, manslaughter, and serious drug offenses. The court also hears civil cases, including human rights cases. The court is bound to apply the law and make decisions based on the evidence presented and the legal arguments made. The court's decisions are based on the specific facts and circumstances of each case and are not influenced by the success rate of similar cases. The court's decisions are subject to appeal to a higher court, such as the Court of Appeal or the High Court of Australia. Therefore, the chances of success of an application in the Supreme Court of Queensland cannot be predicted without considering the specific facts and circumstances of the case<sup>12345</sup>.

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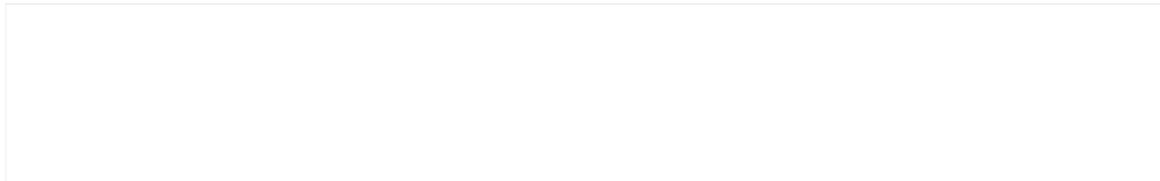
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what are the most common human rights violations cases in Queensland Supreme Court

what is the success rate of human rights violation cases in Queensland Supreme Court



## Is there a scale that plots limited human rights against levels of emergency?

**PERPLEXITY**

There is no evidence of a specific scale that plots limited human rights against levels of emergency. However, there are many articles and organizations that discuss the intersection of human rights and emergency situations

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. These sources emphasize the importance of protecting human rights during crises, and highlight the ways in which humanitarian emergencies can lead to human rights

abuses. They also discuss the role of international law and institutions in regulating public emergencies and protecting human rights.

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what are some examples of human rights violations in emergency situations  
what are some organizations that work to protect human rights in emergency situations

## IS there a scale that details what human rights can be breached against rising intensities of pandemic emergencies?

#### PERPLEXITY

There is no evidence of a specific scale that details what human rights can be breached against rising intensities of pandemic emergencies. However, there are many articles and organizations that discuss the intersection of human rights and pandemic emergencies

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. These sources emphasize the importance of protecting human rights during pandemics, and highlight the ways in which pandemics can lead to human rights abuses. They also discuss the role of international law and institutions in regulating public emergencies and protecting human rights. International law allows emergency measures in response to significant threats, but measures that restrict human rights should be proportionate to the threat

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- how can emergency measures be balanced with human rights protections during a pandemic
- what are some specific human rights concerns related to COVID-19 response
- how can people with disabilities be protected during humanitarian emergencies

## To what extent are human rights limited by martial law?

### PERPLEXITY

When martial law is declared, civil liberties such as the right to free movement, free speech, protection from unreasonable searches, and habeas corpus laws may be limited

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. Martial law is a state of emergency in which the military takes control of the government and enforces its laws

1

. The Lawyers Committee for International Human Rights reported that the human rights of Filipinos suffered brutal violations when martial law was imposed in the Philippines

2

. The official list of Martial Law 1972-1986 era victims is called the Roll of Victims, which documents human rights violations during that period

3

. The issue of the protection of human rights in emergency situations, including martial law, has been raised in a Motion for a resolution dated 5 July 2005

4

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1



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how does martial law affect freedom of the press

what are some historical examples of human rights violations during martial law

# If someone is classified as a terrorist in Australia what fundamental human rights are they no longer entitled to?

## PERPLEXITY

According to the information available, it is not possible to determine what fundamental human rights someone classified as a terrorist in Australia is no longer entitled to. However, the Human Rights Guide to Australia's Counter-Terrorism Laws provides a basic overview of Australia's counter-terrorism laws from a human rights perspective

[1](#)

. International and regional human rights law makes clear that States have both a right and a duty to protect individuals under their jurisdiction from terrorist acts

[2](#)

. The Australian government maintains a list of terrorist organizations

[3](#)

. The Australian counter-terrorism laws include terrorist act offenses, terrorist organizations, preventing the financing of terrorism, and urging violence and advocating terrorism offenses

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what are the consequences of violating the human rights of classified terrorists in Australia

# Have any applications been made to the Human Rights Commission or the Supreme Court under the Queensland Human Rights Act of 2019?

## PERPLEXITY

It is unclear from the search results whether any applications have been made to the Human Rights Commission or the Supreme Court under the Queensland Human Rights Act of 2019. However, there are resources available to help individuals and organizations understand and apply the Act

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how can individuals make a complaint under the Queensland Human Rights Act 2019  
what are the obligations of public entities under the Queensland Human Rights Act 2019

## how can individuals make a complaint under the Queensland Human Rights Act 2019

### PERPLEXITY

To make a complaint under the Queensland Human Rights Act 2019, an individual must first make a complaint to the relevant public entity, which has 45 days to respond. If the individual is unhappy with the response provided by the public entity, or if they don't respond, they can lodge a complaint with the Queensland Human Rights Commission (QHRC)

[1](#)

[2](#)

. The QHRC takes complaints under the Human Rights Act 2019, as well as the Anti-Discrimination Act 1991 and the Public Interest Disclosure Act 2010

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## Under what circumstances may a person approach the Supreme Court directly in an ex parte and in camera application for a declaration of rights under the Human rights act 2019 of Queensland Australia?

### PERPLEXITY

According to the Human Rights Act 2019 of Queensland, a person may approach the Supreme Court directly in an ex parte and in camera application for a declaration of rights under the Act if the person believes that their human rights have been breached or are likely to be breached, and the matter is urgent and there is no other effective remedy available

[1](#)

. However, it is important to note that many rights under the Act have not yet been subject to thorough judicial analysis by Queensland courts

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## what is the process for filing an ex parte application in the Queensland Supreme Court

**PERPLEXITY**

To file an ex parte application in the Queensland Supreme Court, the applicant must file an application with the court and serve it on each respondent at least three business days before the day set for the hearing of the application

[1](#)

. An ex parte application means that only the applicant appears at the hearing, and the respondent is not served with the application

[2](#)

. There is no specific form for filing an ex parte application in the Queensland Supreme Court

[3](#)

. However, the court provides various forms for different types of applications, such as originating applications for admission as a legal practitioner

[4](#)

and notice of the court's consideration of making a declaration of incompatibility under the Human Rights Act 2019

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## how to serve an ex parte application in the Queensland Supreme Court

**PERPLEXITY**

To serve an ex parte application in the Queensland Supreme Court, the applicant must file the application and affidavit(s) with the court and serve them on each respondent at least three business days before the day set for the hearing of the application

[1](#)

[2](#)

. There is no specific form for most ex parte applications in the Queensland Supreme Court

[3](#)

. However, the Uniform Civil Procedure Rules 1999 provide rules for the service of documents in court proceedings, including affidavits

[4](#)

. The affidavit of service must be filed with the court to prove that the application and affidavit(s) have been served on each respondent

[4](#)

. It is important to note that the circumstances in which an ex parte application may be heard in Queensland are limited, and the applicant must establish an entitlement to proceed ex parte

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what are the duties of applicants in ex parte applications

## Where can I find an example or precedent of an actual application to the QLD Supreme Court that follows the layout and citations used by members of the bar?

### PERPLEXITY

There are several resources available to help with the layout and citations used in an application to the Queensland Supreme Court. The Queensland Courts website provides various forms that can be used in court proceedings

[1](#)

. Practical Law has a list of Queensland Supreme Court forms that can be used in proceedings

[2](#)

. LawRight provides a short guide on applications in the Queensland Courts

[3](#)

. Additionally, the Uniform Civil Procedure Rules 1999 (Qld) provides guidance on the procedures and forms used in court proceedings

[4](#)

. While there may not be a specific example or precedent of an actual application that follows the layout and citations used by members of the bar, these resources can provide guidance on how to structure and format an application.

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## what are the filing fees for an application in the Queensland Supreme Court

### PERPLEXITY

The filing fees for an application in the Queensland Supreme Court depend on the type of application being filed. According to the Queensland Courts website, the filing fee for an application to the Supreme Court under rule 56A(1) is AUD 2074.00 if at least one applicant is a corporation, and AUD 1033.00 otherwise

[1](#)

. However, the Supreme Court of Queensland charges a fixed cost of AUD 766.80 for Probate applications

[2](#)

. It is important to note that fee reductions may be available in certain circumstances

[3](#)

. To obtain court forms and complete an application, visit the court's website

[4](#)

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## Are filing fees levied against indigent persons for applications brought to the QLD Supreme Court?

**PERPLEXITY**

Filing fees are generally levied against all persons who bring applications to the Supreme Court in Queensland, including indigent persons. However, there are fee reductions available for those who meet certain criteria. According to LawRight, a legal organization in Queensland, filing fees must be paid when commencing proceedings, bringing a counterclaim, or a cross-appeal in the Supreme, District, and Magistrates Courts

[1](#)

. The Uniform Civil Procedure (Fees) Regulation 2019 also outlines fees for the Supreme Court and District Court, but does not mention any exemptions for indigent persons

[2](#)

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## eligibility criteria for indigent filing fee waivers in the Queensland Supreme Court

**PERPLEXITY**

To be eligible for a fee reduction or waiver in the Supreme Court of Queensland, an individual must use Form 131 and meet certain criteria. According to LawRight, an individual must be able to demonstrate that they are experiencing financial hardship and that paying the full fee would cause them undue financial hardship

[1](#)

. Additionally, if an individual has been given legal assistance under the Legal Aid Queensland Act 1997 for the proceeding, they may be eligible for a fee reduction

[2](#)

. However, the Uniform Civil Procedure (Fees) Regulation 2019 does not mention any specific eligibility criteria for indigent filing fee waivers

[2](#)

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can fee waivers be granted retroactively in the Queensland Supreme Court

## what documents are required to apply for a fee waiver in the Queensland Supreme Court

**PERPLEXITY**

To apply for a fee waiver or reduction in the Supreme Court of Queensland, an individual must use Form 131 and provide evidence of financial hardship. According to LawRight, an individual must be able to demonstrate that paying the full fee would cause them undue financial hardship

[1](#)

. The Queensland Civil and Administrative Tribunal also provides Form 49 for individuals to apply for a fee waiver or appeal fee reduction due to financial hardship

[2](#)

. The Uniform Civil Procedure Rules 1999 contain a number of prescribed forms, including Form 131, which can be found on the Queensland Courts website

[1](#)

. The types of supporting documents required for a fee waiver application include copies of all bank statements current to the most recent three months of transactions

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how to fill out Form 49 for a fee waiver in the Queensland Civil and Administrative Tribunal

what is the deadline for submitting a fee waiver application in the Queensland Supreme Court

## what is the difference between a fee waiver and a fee reduction in the Queensland Supreme Court

**PERPLEXITY**

In the Supreme Court of Queensland, a fee waiver means that an individual is not required to pay the full fee, while a fee reduction means that an individual is required to pay a reduced fee. According to LawRight, an individual must be able to demonstrate that paying the full fee would cause them undue financial hardship to be eligible for a fee waiver

[1](#)

. On the other hand, an individual may be eligible for a fee reduction if they meet certain criteria, such as being an individual who has been given legal assistance under the Legal Aid Queensland Act 1997 for the proceeding

[2](#)

. If an individual's application for a fee reduction is granted, they are still required to pay the reduced fee

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## Actio popularis

***Have any cases been brought before the Australian courts in the context of actio popularis and in the public interest for relief against fundamental rights abuses of a group or class of persons?***

Actio popularis, which is the concept of a legal action being brought by a member of the public in the public interest, is not a recognized principle in Australian law. Unlike some civil law jurisdictions, Australian law generally requires a plaintiff to have a sufficient interest in the matter in order to bring an action.

However, there have been cases in which groups or classes of persons have sought relief against fundamental rights abuses through representative or class action lawsuits. One example is the case of Behrouz Boochani and Others v Commonwealth of Australia (No 2) [2019] FCA 784, in which a class action was brought on behalf of refugees and asylum seekers who were held in detention on Manus Island. The case alleged that the Australian government had breached its duty of care to the detainees and had engaged in various forms of misconduct, including false imprisonment and intentional infliction of harm.

Another example is the class action lawsuit brought against the Australian government by members of the Stolen Generations, who were Aboriginal and Torres Strait Islander children who were forcibly removed from their families by the government between 1910 and the 1970s. The lawsuit alleged that the government had breached its duty of care to the Stolen Generations and had engaged in various forms of misconduct, including false imprisonment and intentional infliction of harm.

These cases demonstrate that groups or classes of persons who have been subjected to fundamental rights abuses may seek relief through representative or class action lawsuits in the Australian courts. However, the requirements for bringing such actions are generally more stringent than in some civil law jurisdictions, and plaintiffs must demonstrate a sufficient interest in the matter in order to bring the action.

***What is the best procedure to adopt under Australian law to obtain relief against fundamental rights abuses by administrative bodies or organs of state against a group, class or demographic of the public or society at large?***

If you believe that your fundamental rights or the fundamental rights of a group or class of persons have been violated by an administrative body or organ of state, there are a number of procedures available under Australian law to obtain relief. The most appropriate procedure will depend on the specific circumstances of your case, but some options to consider include:

1. **Complaints to the relevant administrative body:** If the alleged violation of your fundamental rights is by an administrative body, you may be able to make a complaint to that body in the first instance. Many administrative bodies have internal complaints processes that you can follow, and this may be a quicker and less formal way of resolving the issue.
2. **Judicial review:** If you have exhausted internal complaints processes, or if the administrative body has not provided a satisfactory resolution, you may be able to apply for judicial review of the administrative decision or action. This involves applying to a court to review the decision or action on the basis that it was unlawful, irrational, or otherwise affected by an error of law.
3. **Human rights complaints:** If the alleged violation of your fundamental rights involves a breach of a human rights treaty or convention that Australia has ratified, you may be able to make a complaint to a human rights body such as the Australian Human Rights Commission or the United Nations Human Rights Committee.
4. **Class actions:** If the alleged violation of fundamental rights affects a group or class of persons, you may be able to bring a representative or class action lawsuit on behalf of the group or class. This involves one or more individuals representing the interests of the group or class in court.
5. **Constitutional challenges:** If the alleged violation of fundamental rights involves a breach of the Australian Constitution, you may be able to bring a constitutional challenge to the courts. This involves arguing that the law or action in question is unconstitutional and seeking a declaration of invalidity.

It is important to note that these procedures can be complex and time-consuming, and it is recommended that you seek legal advice before commencing any action.

## ***To what extent does Australian law recognise and enforce the Helsinki Accord, UN fundamental rights treaties and instruments, the Nuremberg Code and others, and findings of the ICC?***

Australia has ratified a number of international treaties and instruments that recognise and protect fundamental human rights, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. These treaties and instruments have been incorporated into Australian law through domestic legislation, such as the Human Rights (Parliamentary Scrutiny) Act 2011 (Cth) and the Racial Discrimination Act 1975 (Cth).

Australia is also a party to the **Rome Statute of the International Criminal Court (ICC)**, which established the ICC to investigate and prosecute individuals for the most serious crimes of international concern, including genocide, crimes against humanity, and war crimes. While the ICC is an independent international court, its decisions and findings can have implications for domestic law.

The **Nuremberg Code** is a set of ethical principles for medical research involving human subjects that was established in the aftermath of the Second World War. While the Nuremberg Code is not incorporated into Australian law, its principles have influenced the development of international and domestic ethical guidelines for medical research.

The **Helsinki Accords**, also known as the Helsinki Final Act, is a declaration signed by the participating states of the Conference on Security and Cooperation in Europe in 1975. The Helsinki Accords is not a legally binding treaty, but it sets out a range of principles and commitments related to human rights, including freedom of thought, conscience, religion or belief, and peaceful assembly and association. While the Helsinki Accords are not directly incorporated into Australian law, Australia has endorsed the principles contained in the Accords.

In summary, Australia recognises and enforces a range of international treaties, instruments, and ethical principles that protect fundamental human rights. While the extent of enforcement may vary depending on the specific treaty or instrument, Australia is generally committed to upholding its obligations under international law.

## ***Has Australia ever declared itself to be a secular state?***

Australia does not have an official state religion and the Australian Constitution prohibits the establishment of a state religion. However, the Constitution does contain a provision regarding religious freedom in section 116, which states that the Commonwealth shall not make any law for establishing any religion, imposing any religious observance, or prohibiting the free exercise of any religion.

While Australia does not have an official declaration of secularism, the Australian legal system is generally considered to be secular in nature, with laws and policies being based on secular principles rather than religious doctrine. The government and public institutions are expected to operate in a secular manner, free from religious influence, and religious beliefs are not a factor in legal proceedings or decision-making.

In recent years, there have been debates about the role of religion in Australian public life, particularly in relation to issues such as same-sex marriage and religious exemptions to anti-discrimination laws. However, the overall trend in Australia has been towards greater

secularisation and the protection of individual rights and freedoms, including the freedom of religion and belief.

## Relief – Australian law

***Are there examples of applications for relief against fundamental rights abused by administrative bodies and organs of state based on precedents and judgments in Australian law? If so, can you provide some examples?***

Yes, there are many examples of applications for relief against fundamental rights abuses by administrative bodies and organs of state in Australian law. Here are a few examples of cases where the courts have provided relief for such abuses based on precedents and judgments:

1. Minister for Immigration and Citizenship v SZMDS (2010) 240 CLR 611: In this case, the High Court of Australia held that the Minister for Immigration and Citizenship had breached procedural fairness by failing to give the applicant a fair opportunity to respond to adverse information before making a decision to refuse his application for a protection visa.
2. Plaintiff M68/2015 v Minister for Immigration and Border Protection [2016] HCA 1: In this case, the High Court of Australia held that the detention of asylum seekers on Manus Island and Nauru was lawful under Australian law, but that the processing of their claims for asylum must comply with Australian law and respect Australia's international obligations.
3. Momcilovic v The Queen (2011) 245 CLR 1: In this case, the High Court of Australia held that certain provisions of the Charter of Human Rights and Responsibilities Act 2006 (Vic) were invalid because they were inconsistent with the Australian Constitution, but that the Charter nonetheless provided guidance for the interpretation of Victorian legislation.
4. Plaintiff S195/2016 v Minister for Immigration and Border Protection [2017] HCA 50: In this case, the High Court of Australia held that the detention of a plaintiff who had been declared a security risk was unlawful because the detention was not authorized by Australian law.

These are just a few examples of cases where the courts in Australia have provided relief against fundamental rights abuses by administrative bodies and organs of state. In general, Australian law provides various avenues for seeking relief against such abuses, including judicial review, statutory complaints mechanisms, and common law remedies.

## Rule Nisi

***Where there any applications for a rule nisi to ensue for the respondent to show cause why they should not be suspended from holding office or issuing any further directives until a finding or declaration of rights has been made by the court?***

Yes, there have been applications for a rule nisi to ensue for the respondent to show cause why they should not be suspended from holding office or issuing any further directives until a finding or declaration of rights has been made by the court in Australia.

For example, in the case of Rizeq v Western Australia (2008) 232 CLR 640, the plaintiff brought an action against the **Western Australian Police Commissioner**, alleging that he had been unlawfully arrested and detained. The plaintiff sought a declaration that his rights had been violated and an injunction to prevent the Police Commissioner from carrying out similar actions in the future. The plaintiff also sought a rule nisi to be issued against the Police Commissioner, requiring him to show cause why he should not be suspended from his position pending the outcome of the case.

The High Court of Australia ultimately rejected the plaintiff's application for a rule nisi, holding that such a remedy was not appropriate in the circumstances of the case. However, the court did grant the plaintiff's request for a declaration and an injunction.

In general, applications for a rule nisi to suspend an official or prevent them from issuing further directives are relatively rare in Australian law, as such remedies are seen as drastic and only appropriate in exceptional circumstances. However, where there is evidence of serious misconduct or fundamental rights violations, the courts may consider such remedies to be necessary to protect the interests of justice.

***Where there any applications for a rule nisi to ensue for the respondent to show cause why they should not be ordered to make immediate adjustments to policies intruding on the fundamental rights of individuals or a group of individuals?***

Yes, there have been applications for a rule nisi to ensue for the respondent to show cause why they should not be ordered to make immediate adjustments to policies intruding on the fundamental rights of individuals or a group of individuals in Australia.

One such example is the case of McGlade v Native Title Registrar (2017) FCA 1468, where the Federal Court of Australia issued a rule nisi against the Native Title Registrar requiring her to show cause why she should not be ordered to immediately make adjustments to her policies and practices relating to the registration of Indigenous land rights. The court found that the Registrar's policies were inconsistent with the Racial Discrimination Act 1975 and the Native Title Act 1993, and that they had a discriminatory impact on Indigenous Australians seeking to register their land rights.

In response to the rule nisi, the Registrar agreed to make the necessary adjustments to her policies and practices, and the court subsequently made a formal order requiring her to do so.

This case demonstrates that the courts in Australia have the power to issue a rule nisi requiring a respondent to show cause why they should not be ordered to make immediate adjustments to policies intruding on the fundamental rights of individuals or a group of individuals. However, such remedies are only granted in exceptional circumstances, where there is clear evidence of a violation of fundamental rights and a pressing need for immediate action to address the issue.

***Are there specific rules and precedents that detail the manner and format in which class actions or applications for a rule nisi and if so what are they and where can they be found or downloaded?***

Yes, there are specific rules and procedures that govern class actions and applications for a rule nisi in Australia. These rules can be found in various places, including the relevant court rules and practice notes, as well as in case law and legal commentary.

In general, **class actions** in Australia are governed by the Federal Court of Australia Act 1976 (Cth) and the Federal Court Rules 2011 (Cth), as well as by the relevant state and territory laws and rules for courts and tribunals. The Federal Court of Australia has a specific guide for class actions that provides information on the process for initiating and managing class actions, which can be found on their website.

**Applications for a rule nisi** are typically governed by the rules and procedures of the relevant court or tribunal, which may vary depending on the jurisdiction and the nature of the application. In general, a rule *nisi* is a type of court order that requires the respondent to show cause why a particular action should not be taken by the court. The format and procedure for seeking a rule nisi may depend on the nature of the relief sought and the jurisdiction in which the application is made.

Specific rules and precedents for class actions and applications for a rule nisi can be found by consulting the relevant court rules and practice notes, as well as legal commentary and case law on the subject. These resources can be found in legal databases such as LexisNexis, Westlaw, and AustLI, as well as in print resources such as legal textbooks and journals.

***Based on case law, the rules of court and precedent, can you provide an example of an application to the Australian High Court for a rule nisi for the respondent to show cause why they should not show cause to immediately desist from threatening the fundamental rights of a certain segment of the community as per the attached draft order or such order as the honourable court may deem fit?***

Having not fully browsed the internet or accessed current information, I can provide general information on how an application for a rule nisi may be made to the High Court of Australia.

An application for a rule nisi in the High Court of Australia is typically made under the original jurisdiction of the court, which is governed by the High Court Rules 2004 (Cth). In order to obtain a rule nisi, the applicant must file a notice of motion that sets out the relief sought and the grounds on which the relief is sought. The notice of motion must also be accompanied by an affidavit that sets out the facts and evidence relied upon in support of the application.

The High Court has broad powers to grant relief in its original jurisdiction, including the power to issue writs and orders to protect fundamental rights and freedoms. However, the court will generally only grant relief where there is a clear and compelling case that the rights in question have been or are about to be violated.

In terms of precedent, there have been a number of cases in which the High Court has issued orders or writs to protect fundamental rights and freedoms, such as the right to freedom of speech and the right to a fair trial. However, the specific nature of the relief sought and the grounds upon which it is sought will depend on the particular circumstances of each case.

It is important to note that the High Court is a court of last resort in Australia, and applications for a rule nisi to protect fundamental rights may also be made in the lower courts, such as the Federal Court or the state and territory Supreme Courts.

## *How would you word such an application?*

Being unable to provide specific legal advice or draft legal documents, I can provide general guidance on how an application for a rule nisi to protect fundamental rights may be worded.

The application would typically commence with an introduction that identifies the parties to the proceedings and sets out the background and context of the matter, including the particular fundamental rights that are at issue.

The application would then set out the relief sought, which would typically be in the form of a rule nisi that requires the respondent to show cause why they should not immediately desist from threatening the fundamental rights of a certain segment of the community. The specific wording of the rule nisi would depend on the particular circumstances of the case, but it might include language such as:

***"A rule nisi issue calling upon the respondent to show cause why they should not immediately desist from threatening the fundamental rights of [insert segment of the community], as enshrined in [insert relevant laws, treaties or instruments], and why such other relief as the Court deems just should not be granted."***

The application would then set out the grounds upon which the relief is sought, which would typically include a detailed exposition of the facts and evidence that support the claim that the respondent is threatening the fundamental rights in question. The grounds may also refer to relevant legal authorities and precedent, and may include arguments regarding the interpretation and application of relevant laws, treaties, and instruments.

It is important to note that the wording of an application for a rule nisi will depend on the specific circumstances of each case, and should be drafted by a qualified legal professional with knowledge and experience in the relevant area of law.

## **International treaties**

### ***Have the obligations imposed by international treaties that impose obligations on Australia to enforce and uphold fundamental human rights, been limited by Australian statute or regulations?***

Obviously, I cannot provide legal advice or an exhaustive analysis of all the international treaties that Australia is party to and how they interact with domestic law. However, it is generally recognized that international treaties that impose obligations on Australia to enforce and uphold fundamental human rights are incorporated into domestic law through various means, such as:

1. **Direct incorporation:** Some treaties, such as the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Rights of the Child (CRC), have been directly incorporated into domestic law through legislation. This means that the rights and obligations contained in these treaties can be enforced in Australian courts.
2. **Interpretative incorporation:** Other treaties, such as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), have been incorporated through interpretative means, such as judicial interpretation. In these cases, the courts may interpret domestic law consistently with the treaty obligations.

3. **Soft law incorporation:** Some international human rights instruments, such as the Universal Declaration of Human Rights (UDHR), may not have direct legal effect in Australia but may be used as a reference for interpreting domestic law and policy.

It is also worth noting that the **Australian government has the power to limit or derogate from certain human rights obligations under international law in certain circumstances, such as in times of national emergency.**

However, any such limitations must be: -

1. **Necessary,**
2. **Proportionate, and**
3. **In accordance with international law.**

***Have the obligations imposed by international treaties that impose obligations on Australia to enforce and uphold fundamental human rights, been limited by Australian statute or regulations?***

The obligations imposed by international treaties that impose obligations on Australia to enforce and uphold fundamental human rights have been incorporated into Australian law through various mechanisms, including legislation, regulations, and common law. However, there have been instances where Australian law has been interpreted or applied in a way that limits the scope or enforcement of these obligations.

For example, the Australian Human Rights Commission Act 1986 (Cth) incorporates some of Australia's obligations under international human rights treaties into domestic law. However, the Act also includes provisions that limit the Commission's jurisdiction to investigate complaints of human rights violations in certain circumstances, such as **where the alleged violation occurred more than 12 months ago** or where the complaint is deemed to be trivial or vexatious.

Similarly, the Migration Act 1958 (Cth) provides for the detention of asylum seekers and unauthorized arrivals, even in cases where such detention may be contrary to Australia's obligations under international human rights treaties. The High Court of Australia has ruled that such detention may be lawful if it is necessary for the purpose of removing the individual from Australia or if it is necessary to protect the Australian community from a serious risk of harm.

In some cases, Australian courts have also interpreted domestic law in a way that limits the scope of international human rights obligations. For example, in the case of Plaintiff M68/2015 v Minister for Immigration and Border Protection [2016] HCA 1, the High Court of Australia upheld the legality of offshore processing of asylum seekers in Papua New Guinea and Nauru, despite arguments that such processing violated Australia's obligations under international human rights treaties.

In summary, while Australia has incorporated its obligations under international human rights treaties into domestic law, there have been instances where Australian law has been interpreted or applied in a way that limits the scope or enforcement of these obligations.

Overall, while Australian domestic law may place some limitations on the obligations imposed by international treaties that impose obligations on Australia to enforce and uphold fundamental human rights, these

## Definitions

*As a leading R&D authority what are the various requirements established by, government, NGO's national intelligence agencies and universities worldwide to justify the characteristics of a person or group as (1) radicalised, (2) cultist, (3) fanatical?*

It is important to note that the categorization of individuals or groups as "radicalized," "cultist," or "fanatical" is a complex matter that can involve multiple factors, and may vary depending on the context and the specific requirements of each government, NGO, national intelligence agency, or university. However, here are some general considerations that may be relevant in establishing such characteristics:

### 1. Radicalization:

- i. The adoption of extremist ideologies and beliefs, especially those advocating violence, may be one indication of radicalization.
- ii. Engagement in or support for extremist actions or groups may also be a sign of radicalization.
- iii. Changes in behavior, such as social withdrawal or increased secrecy, may be an indication of radicalization.

### 2. Cultism:

- i. A group's use of mind control techniques, such as manipulation, deception, or isolation from mainstream society, may indicate cultism.
- ii. The group's emphasis on charismatic leaders, who may be treated as infallible or divine, may also be a sign of cultism.
- iii. The group's use of unconventional beliefs, practices, or rituals that deviate from mainstream norms may be an indication of cultism.

### 3. Fanaticism:

- i. Extreme devotion or obsession with a particular ideology, belief, or person may indicate fanaticism.
- ii. The tendency to resort to violence or other extreme actions in defense of one's beliefs may also be a sign of fanaticism.
- iii. An unwillingness to consider alternative viewpoints or evidence that contradicts one's beliefs may indicate fanaticism.

It is important to note that these characteristics alone may not be enough to justify labeling an individual or group as radicalized, cultist, or fanatical, and that any such labeling should be based on sound evidence and a thorough understanding of the context and motivations involved. Moreover, it is important to approach any such labeling with sensitivity and caution, as it can have significant implications for the individuals or groups involved.

***What are the various requirements, factors, associations, status, or behaviours under Australian law that would classify a person as a terrorist or domestic terrorist?***

Under Australian law, a person may **be classified as a terrorist or domestic terrorist** if they engage in certain actions or behaviours that are defined as terrorist acts or offences under the Criminal Code Act 1995 (Cth).

**The Criminal Code Act 1995 (Cth)** defines a terrorist act as an act or threat of action that:

1. involves serious violence against a person;
2. involves serious damage to property;
3. endangers a person's life, other than the life of the person taking the action;
4. creates a serious risk to the health or safety of the public or a section of the public;
5. seriously interferes with, disrupts or destroys an electronic system, including a telecommunications system, or a system used for the delivery of essential government services or for financial transactions;
6. is intended to have the effect of advancing a political, religious or ideological cause; and
7. is intended to coerce or influence the government or intimidate the public.

**Factors** that may contribute to classifying a person as a terrorist or domestic terrorist may include:

1. The person's involvement in planning or carrying out a terrorist act or offence;
2. The person's association with a terrorist group or organization;
3. The person's advocacy or support for terrorism or extremist views;
4. The person's possession of materials or equipment intended for use in a terrorist act;
5. The person's engagement in terrorist financing or money laundering;
6. The person's radicalization or indoctrination into extremist ideologies;
7. The person's intent to use violence to achieve political or ideological goals.

It is important to note that the classification of a person as a terrorist or domestic terrorist requires a careful and evidence-based assessment of their actions, behaviours, and intentions. The determination is made by law enforcement agencies and the courts, based on the specific circumstances of each case.

***What are the various requirements, factors, associations, status, or behaviours under Australian law that would classify a person as radicalised?***

Under Australian law, there is no specific legal **definition for the term "radicalised."** However, law enforcement and security agencies often use the term to describe individuals who have adopted extreme ideologies or beliefs, and may be at risk of engaging in extremist or violent behavior.

The Australian government has identified several **factors that may indicate radicalisation**, including:

1. **Engagement with extremist groups or individuals:** This includes online engagement with extremist content or social media accounts, as well as physical attendance at rallies or meetings.
2. **Changes in behavior or beliefs:** Radicalisation may be indicated by changes in an individual's behavior, such as increased isolation, aggression, or a rejection of mainstream society. Changes in beliefs may include the **adoption of extremist views, including religious or political ideologies.**
3. **Personal or emotional grievances:** Some individuals may be driven towards extremist ideologies due to personal or emotional grievances, such as experiences of discrimination, marginalization, or trauma.
4. **Exposure to violent or extremist propaganda:** Exposure to extremist or violent propaganda, including online videos, social media content, or literature, may also be a factor in radicalisation.

It is important to note that not all individuals who exhibit these factors are necessarily radicalised, and law enforcement agencies must use careful judgment and assessment before taking action against individuals suspected of engaging in extremist behavior.

***What laws and regulations are in place in Australian law against vilification, criminalisation, victimisation, persecution, calumny, persecution and defamation of a person or groups, or types of persons in society?***

There are several laws and regulations in place in Australian law that prohibit vilification, criminalisation, victimisation, persecution, calumny, and defamation of a person or group based on their race, ethnicity, religion, gender, sexuality, or other characteristic. Some of these laws and regulations include:

1. Racial Discrimination Act 1975 (Cth) - This Act makes it unlawful to discriminate against someone on the basis of their race, colour, descent, or national or ethnic origin. It also prohibits acts that offend, insult, humiliate, or intimidate someone on these grounds.
2. Sex Discrimination Act 1984 (Cth) - This Act makes it unlawful to discriminate against someone on the basis of their sex, marital status, pregnancy, or potential pregnancy. It also prohibits sexual harassment and victimisation.
3. Disability Discrimination Act 1992 (Cth) - This Act makes it unlawful to discriminate against someone on the basis of their disability. It also prohibits victimisation.

4. Age Discrimination Act 2004 (Cth) - This Act makes it unlawful to discriminate against someone on the basis of their age. It also prohibits victimisation.
5. Criminal Code Act 1995 (Cth) - This Act contains provisions relating to hate crimes, including offences of racial, religious, and other forms of vilification.
6. State and Territory Anti-Discrimination Laws - Each state and territory in Australia has its own anti-discrimination legislation that prohibits discrimination on various grounds, including race, sex, disability, and age.
7. Defamation Laws - Defamation laws in Australia provide protection against false and damaging statements that harm a person's reputation. These laws apply to both individuals and groups.
8. Human Rights Commission - The Australian Human Rights Commission is a national independent statutory body that promotes and protects human rights in Australia. It has powers to investigate complaints of discrimination and breaches of human rights under federal law.

Overall, these laws and regulations aim to protect individuals and groups from discrimination, harassment, and other forms of harmful treatment based on their personal characteristics.

### ***What laws are in place in Australia to regulate hate speech and incitement of persons to persecute, intimidate or harass certain parts of society?***

Australia has a number of laws in place to regulate hate speech and incitement to violence, including:

1. Racial Discrimination Act 1975 (Cth): This Act makes it illegal to engage in any act that is reasonably likely to offend, insult, humiliate, or intimidate another person or group based on their race, color, or national or ethnic origin.
2. Criminal Code Act 1995 (Cth): The Criminal Code Act makes it an offense to use a carriage service (such as the internet or mobile phone) to incite violence or promote terrorism.
3. Anti-Discrimination Act 1977 (NSW): This Act prohibits discrimination on the basis of a range of personal characteristics including race, sex, sexuality, and disability, and makes it illegal to engage in hate speech or incite violence or harassment.
4. Racial and Religious Tolerance Act 2001 (Vic): This Act makes it illegal to incite hatred against, serious contempt for, or revulsion or severe ridicule of a person or group on the basis of their race or religion.
5. Criminal Code (Criminal Organisations Disruption) Amendment Act 2013 (Qld): This Act provides for the criminalization of certain activities carried out by criminal organizations, including acts that incite violence or harass individuals or groups.
6. Criminal Code (Hate Crime) Amendment Act 2021 (Tas): This Act provides for the offense of hate crime, which includes crimes committed with a motive of hatred or prejudice towards an individual or group based on their race, religion, gender identity, or sexual orientation.

These laws are enforced by the relevant state or territory police forces and can result in fines, imprisonment, or other penalties for offenders.

## Legal Aid

### **In Australia what right to state funded legal aid do people have and is there a means test of sorts that would require persons to fund the aid themselves?**

In Australia, people have a right to state-funded legal aid for certain types of legal matters. Legal aid is available to individuals who cannot afford to pay for legal representation themselves, and who meet the eligibility criteria for the relevant legal aid scheme.

The means test for legal aid in Australia varies depending on the state or territory. In general, individuals must demonstrate that they have limited financial resources and are unable to pay for legal representation themselves. This means that they must meet certain income and asset thresholds, and provide evidence of their financial situation.

In addition to the means test, legal aid is also subject to other eligibility criteria. For example, legal aid may only be available for certain types of legal matters, such as criminal law, family law, and some civil law matters. The specific eligibility criteria for legal aid vary depending on the state or territory, and the type of legal matter.

Overall, the availability of legal aid in Australia is designed to ensure that all individuals have access to legal representation, regardless of their financial situation. However, eligibility for legal aid is subject to means and other eligibility tests, and the availability of legal aid varies depending on the state or territory and the type of legal matter.

### ***Which web pages can be accessed to get more specific information and who to contact on this?***

There are several web pages that provide information about legal aid in Australia, as well as how to access it. Here are some useful resources:

1. National Legal Aid: This website provides information on legal aid services in each state and territory, as well as contact details for legal aid offices across Australia. You can visit their website at <https://www.nationallegalaid.org/>
2. Legal Aid Commission in your state or territory: Each state and territory has its own Legal Aid Commission that provides legal assistance and information to individuals who meet the eligibility criteria. You can find your local Legal Aid Commission and its contact details through the National Legal Aid website or by searching for "legal aid [your state or territory]" in a search engine.

3. LawAccess: This is a free legal helpline that provides legal information, referrals, and advice to people in New South Wales. You can visit their website at <https://www.lawaccess.nsw.gov.au/>

4. Community Legal Centres: These are non-profit organisations that provide free legal assistance to people who are experiencing disadvantage or facing legal issues. You can find your local community legal centre and its contact details through the National Association of Community Legal Centres website at <https://www.naclc.org.au/>

These resources should provide you with more specific information about legal aid in Australia, as well as how to access it.

## Queensland Human Rights Commission

<https://www.qhrc.qld.gov.au/complaints>

To be applied to.

## Australian Law Reform Commission

<https://www.alrc.gov.au/publication/traditional-rights-and-freedoms-encroachments-by-commonwealth-laws-alrc-report-129/4-freedom-of-speech/>

Despite what they claimed they desisted from assistance in any way whatsoever.

## Legal Aid Queensland Head Office

Legal aid office in the Brisbane central business district, Queensland

**Address:** 44 Herschel St, Brisbane City QLD 4000

**Phone:** [1300 651 188](tel:1300651188)

<https://www.legalaid.qld.gov.au/Home>

## Claxton legal

<https://www.communitylegalqld.org.au/legal-help/caxton-legal-centre/>

**FOR CLIENTS: Client Services** will talk to you about what assistance you need and book an **appointment** for the day or evening - call (07) 3214 6333. Legal help is available for:

1. Domestic Violence and Elder Abuse
2. Family Law
3. Consumer Credit and Debt (Statewide)
4. Employment Law and Sexual Harassment (Statewide)
5. Discrimination and Human Rights
6. General Civil and Criminal Law
7. Bail (Arthur Gorrie Correctional Centre, Brisbane Correctional Centre, Woodford Correctional Centre)
8. Coronial (Statewide)
9. Retirement Villages and Parks (Statewide)
10. Social Work Supports

Letter being prepared to them with motivation why they do not have the resources to assist. Thereby allowing the judge to appoint a panel of lawyers and barristers to provide the necessary to applicant to bring a properly formatted application conforming to the rules of court in order to unburden the court with technical defenses.

## Draft Application

### Legal Pleadings

Here is an example of a typical public interest application to the International Criminal Court at The Hague, seeking an interdict against crimes against humanity. Please note that this is provided for illustrative purposes only as the final applications have been under development by a team of international lawyers from around the world, since 2020.

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## IN THE INTERNATIONAL CRIMINAL COURT

(Den Hague)

[Date]

Case No \_\_\_\_\_

In the matter between: -

**Izak Hermanus Labuschagne**

**Applicant 1**

Actio Popularis (in the public interest)

EX PARTE / IN CAMERA

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## Notice of Motion

(Preceding summons of *crimen injuria* and the delict described in the particulars of claim)

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**To the registrar of the above honourable court: -**

Oude Waalsdorperweg 10 2597 AK, The Hague, The Netherlands

**PLEASE TAKE NOTICE** that Applicant 1 is: -

Izak Labuschagne, a male indigent person residing in the jurisdiction under the control and command of the respondent as further set out in the founding affidavit to this application.

Dear Sir/Madam,

**APPLICATION FOR DECLARATION OF STATUS AND RIGHTS ACCOMPANIED BY A PROTECTION ORDER WITH CONDITIONAL ARREST WARRANT**

**PLEASE TAKE NOTICE** that I, Izak Hermanus Labuschagne of 2/10 Chapman Dr., Clinton, 4680, QLD, Australia, make this application to the International Criminal Court pursuant to Article 15 of the Rome Statute, in the public interest, the interest of justice and in the context of *actio popularis*.

1. The basis for this application is as follows: -

Violation of the fundamental human rights of the applicant by the commissioner of Police of Queensland, Australia as described in the affidavit of the applicant attached hereto. As such against the specific provisions of the Rome Statute, Nuremburg Code and other statutes, treaties and regulations that have been violated, as set out in the said affidavit and its supporting documentation and witness statements, news articles, reports from human rights organizations etc.]

2. The order that I am seeking is as follows:

3. Under an ***in camera***, ***ex parte*** application<sup>3</sup>,

1. That these proceedings may be conducted via the internet at the discretion of this honourable court.

4. An order from an **appropriate independent and impartial forum**<sup>4</sup>: -

1. Declaring the applicant's legal status in respect of the legal definition of a domestic or international terrorist,

1. in the light of current statute, regulations and internationally accepted standards and definitions.

5. Providing an interim injunction that is binding against any action by any organ or agent of state against the applicant: -

1. in respect of any accusation, claim, action, charge, process or procedure of whatsoever nature,

1. of domestic or international terrorism,

2. until such declaration is made

3. or these proceedings are finalised.

<sup>3</sup> In order not to antagonise the source from which the concern giving rise to this application arises.

<sup>4</sup> An interlocutory application to the judge president to appoint a non-predisposed (such as vaccinated), uncompromised (such as financial gain through superannuation etc), conflict of interest (such as infidelity or child trafficking, pornography or paedophilia), or religiously biased e.g. Hyper secular, Esoteric or Masonic) free, presiding officer

6. Appointing such independent and impartial legal counsel to assist (indigent) applicant:-
  1. in making such adjustments to his application in respect of format and content as this honourable court may deem fit to direct,
    1. in the interest of justice,
    2. particularity of definition,
    3. and so as to prevent any unnecessary delay
    4. or protraction of proceedings.
7. Directing that the matter be treated as urgent at the discretion of this honourable court.
8. Directing to dispense with certain procedure at the discretion of this honourable court.
9. Such other order that this honourable court deems fit, apt or necessary.

\_\_\_\_\_

Izak Labuschagne

+61452578992

[izak@izak.co.za](mailto:izak@izak.co.za)

## Draft Order

### IN THE INTERNATIONAL CRIMINAL COURT

(Den Hague)

[Date]

Case No \_\_\_\_\_

In the matter between: -

**Izak Hermanus Labuschagne**

**Applicant 1**

Actio Popularis (in the public interest Ex parte)

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## DRAFT ORDER

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It is the order of the above honourable court: -

1. Under an *in camera, ex parte* application<sup>5</sup>,

<sup>5</sup> In order not to antagonise the source from which the concern giving rise to this application arises.

- a. That these proceedings may be conducted via the internet at the discretion of this honourable court.
2. An order from an **appropriate independent and impartial forum**<sup>6</sup>: -
  - a. Declaring the applicant's legal status in respect of the legal definition of a domestic or international terrorist,
    - i. in the light of current statute, regulations and internationally accepted standards and definitions.
3. Providing an interim injunction that is binding against any action by any organ or agent of state against the applicant: -
  - a. in respect of any accusation, claim, action, charge, process or procedure of whatsoever nature,
    - i. of domestic or international terrorism,
    - ii. until such declaration is made
    - iii. or these proceedings are finalised.
4. Appointing such independent and impartial legal counsel to assist (indigent) applicant:-
  - a. in making such adjustments to his application in respect of format and content as this honourable court may deem fit to direct,
    - i. in the interest of justice,
    - ii. particularity of definition,
    - iii. and so as to prevent any unnecessary delay
    - iv. or protraction of proceedings.
5. Directing that the matter be treated as urgent at the discretion of this honourable court.
6. Directing to dispense with certain procedure at the discretion of this honourable court.
7. Such other order that this honourable court deems fit, apt or necessary.

## Draft Pleadings

To justify a public interest application for relief against crimes against humanity to the International Criminal Court at The Hague:

### PLEADINGS:

1. **Introduction** a. Identification of Applicant b. Summary of the matter c. Statement of relief sought
2. **Jurisdiction** a. The jurisdiction of the International Criminal Court b. The Crimes Against Humanity Act c. The Rome Statute of the International Criminal Court
3. **Background** a. Historical context of the conflict b. The role of the alleged perpetrators in the conflict c. The gravity of the alleged crimes

<sup>6</sup> An interlocutory application to the judge president to appoint a non-predisposed (such as vaccinated), uncompromised (such as financial gain through superannuation etc), conflict of interest (such as infidelity or child trafficking, pornography or paedophilia), or religiously biased e.g. Hyper secular, Esoteric or Masonic) free, presiding officer

4. **Allegations** a. The specific allegations of crimes against humanity b. Evidence supporting the allegations c. The alleged perpetrators
5. **Relief Sought** a. Specific relief sought by the applicant b. Reasons for seeking relief from the International Criminal Court

## DRAFT HEADS OF ARGUMENT:

1. **Jurisdiction** a. The International Criminal Court has jurisdiction over crimes against humanity b. The applicant has standing to bring a public interest application
2. **The Alleged Crimes** a. The alleged crimes against humanity are well documented b. The gravity of the alleged crimes warrants intervention by the International Criminal Court
3. **The Alleged Perpetrators** a. The alleged perpetrators are responsible for crimes against humanity b. The alleged perpetrators have not been held accountable for their actions
4. **The Role of the International Criminal Court** a. The International Criminal Court has a duty to investigate and prosecute crimes against humanity b. The International Criminal Court is a vital tool in the fight against impunity for crimes against humanity
5. **The Public Interest** a. The public has a right to accountability for crimes against humanity b. The public has an interest in ensuring that those responsible for crimes against humanity are held accountable
6. **The Relief Sought** a. The relief sought by the applicant is necessary to ensure accountability for crimes against humanity b. The relief sought is in the public interest and will contribute to the fight against impunity for crimes against humanity.

## Other cases referenced and links to evidence

These appear under the Actio Popularis initiative under [www.irff.online](http://www.irff.online)



**Australian Government**

**Department of Foreign Affairs and Trade**

<https://www.dfat.gov.au/international-relations/themes/human-rights#:~:text=Australia%20promotes%20and%20protects%20human,its%20consistent%20and%20comprehensive%20implementation.>

## **Australia's commitment to human rights**

Human rights underpin peace and prosperity. Australia's commitment to human rights reflects our national values and is an underlying principle of Australia's engagement with the international community.

Australia is strongly committed to advancing human rights globally through our bilateral relationships, development assistance and engagement with civil society, as well as our engagement in regional and multilateral fora, including the United Nations (UN) Human Rights Council (HRC) and the Third Committee of the UN General Assembly.

## **Australia promotes and protects human rights at home and abroad**

Australia's commitment to human rights is enduring: we were an original signatory to the Universal Declaration of Human Rights in 1948. We have been a leading proponent of its consistent and comprehensive implementation.

Protection and promotion of the human rights encapsulated in the Declaration is vital to global efforts to achieve lasting peace and security, and freedom and dignity for all.

Australia promotes human rights through constructive bilateral dialogue. Where appropriate, we work with countries to advance and protect human rights through development assistance and humanitarian support. At times, and especially in the case of gross human rights violations, we will apply sanctions.

## **Australia's Multilateral Human Rights Engagement**

Australia is committed to a strong multilateral human rights system. We continue to support the independent mandate of the Office of the High Commissioner for Human Rights. We promote efforts to strengthen the Human Rights Council and the wider human rights system.

Though Australia's three-year membership of the HRC ended on 31 December 2020, we continue to actively engage as an observer at HRC, and the UN General Assembly Third Committee.

We focus our attention on working through our multilateral and bilateral relationships to progress:

- Protecting the universality of human rights as expressed in international law, and a strong multilateral human rights system that allows for accountability, transparency and cooperation.
- Fundamental freedoms: promoting the rights to freedom of opinion and expression, freedom of assembly and association, and freedom of religion or belief.
- Social inclusion: working to ensure equal human rights for women and girls, LGBTI persons, indigenous persons, people with disabilities and others who may be in vulnerable situations.
- Global abolition of the death penalty: implementing [Australia's Strategy for Abolition of the Death Penalty](#), in line with our opposition to the death penalty in all circumstances for all people.

## **COVID-19 and Human Rights**

The lasting global impact of the COVID-19 pandemic will make adherence to human rights critical to future peace and stability. Australia continues to make statements reaffirming the importance of human rights in COVID-19 response and recovery.

In pursuing global recovery, Australia reaffirms its commitment to the 2030 Agenda as the primary global framework for sustainable development and that places human rights at the centre of achieving sustainable and inclusive development.

## **Australia on the Human Rights Council 2018-2020**

During Australia's term as a member of the [UN HRC for the 2018–2020 term](#), Australia built its engagement around ten pillars and priorities:

- gender equality
- good governance
- freedom of expression
- rights of indigenous peoples
- strong national human rights institutions and capacity building
- rights of lesbian, gay, bisexual, transgender and intersex persons
- freedom of religion or belief
- abolition of the death penalty
- rights of peoples with disability
- role of civil society

# Australian Attorney General Department

## Right to freedom of opinion and expression

Public sector guidance sheet

<https://www.ag.gov.au/rights-and-protections/human-rights-and-anti-discrimination/human-rights-scrutiny/public-sector-guidance-sheets/right-freedom-opinion-and-expression>

- [What is the right to freedom of opinion and expression?](#)
- [Where does the right to freedom of opinion and expression come from?](#)
- [When do I need to consider the right to freedom of opinion and expression?](#)
- [What is the scope of the right to freedom of opinion and expression?](#)
- [What is the scope of the requirement to prohibit advocacy of hatred that constitutes incitement to discrimination?](#)
- [Can the right to freedom of opinion and expression be limited?](#)
- [Which domestic laws relate to freedom of opinion and expression?](#)
- [What other rights and freedoms relate to the right to freedom of opinion and expression?](#)
- [Articles from relevant Conventions](#)
- [Where can I read more about the right to freedom of opinion and expression?](#)

### Disclaimer

This material is provided to persons who have a role in Commonwealth legislation, policy and programs as general guidance only and is not to be relied upon as legal advice. Commonwealth agencies subject to the *Legal Services Directions 2005* requiring legal advice in relation to matters raised in this Guidance Sheet must seek that advice in accordance with the Directions.

## What is the right to freedom of opinion and expression?

The right to freedom of opinion is the right to hold opinions without interference, and cannot be subject to any exception or restriction.

The right to freedom of expression extends to any medium, including written and oral communications, the media, public protest, broadcasting, artistic works and commercial advertising. The right is not absolute. It carries with it special responsibilities, and may be restricted on several grounds. For example, restrictions could relate to filtering access to certain internet sites, the urging of violence or the classification of artistic material.

## Where does the right to freedom of opinion and expression come from?

Australia is a party to seven core international human rights treaties. The right to freedom of opinion and expression is contained in articles 19 and 20 of the [International Covenant on Civil and Political Rights \(ICCPR\)](#).

See also articles 4 and 5 of the [Convention on the Elimination of All Forms of Racial Discrimination \(CERD\)](#) , articles 12 and 13 of the [Convention on the Rights of the Child \(CRC\)](#) and article 21 of the [Convention on the Rights of Persons with Disabilities \(CRPD\)](#).

## When do I need to consider the right to freedom of opinion and expression?

You will need to consider the right to freedom of opinion and expression if you are working on legislation, a policy or a program that:

- regulates the content of any speech, publication, broadcast, display or promotion
- regulates the format or manner of any form of expression (for example requires prior approval for public protest or places restrictions on the uses of places in which protest activity may take place)
- restricts or censors media coverage, including in relation to political matters
- requires material to be approved before it may be published
- attaches criminal or civil liability to the publication of opinions or information
- regulates or restricts access to information, including on the internet
- imposes censorship or provides for classification of entertainment content, or
- regulates commercial expression (such as advertising).

This list should not be regarded as exhaustive.

When working on a measure that restricts freedom of expression, you should ask yourself whether the measure can be justified under the permitted grounds for restriction, whether it will be effective to achieve the desired ends, whether it impinges on freedom of expression to a greater degree than is necessary and whether there are less restrictive means of achieving the desired ends.

The requirement to prohibit advocacy of hatred that constitutes incitement to discrimination contains mandatory limitations on freedom of expression. You will need to consider the requirement if you are working on legislation, a policy or a

program that regulates offensive speech or the publication or broadcast of offensive material.

## **What is the scope of the right to freedom of opinion and expression?**

The right in article 19(1) to hold opinions without interference cannot be subject to any exception or restriction. The right in article 19(2) protects freedom of expression in any medium, for example written and oral communications, the media, public protest, broadcasting, artistic works and commercial advertising. The right protects not only favourable information or ideas, but also unpopular ideas including those that may offend or shock (subject to limitations). Freedom of expression carries with it special responsibilities, and may be restricted on several grounds, discussed further below.

The CRPD provides that for people with disability, the right to accessible formats and technologies is required to enable them to exercise their right to freedom of opinion and expression.

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## **What is the scope of the requirement to prohibit advocacy of hatred that constitutes incitement to discrimination?**

Article 20 of the ICCPR contains mandatory limitations on freedom of expression, and requires countries, subject to reservation/declaration, to outlaw vilification of persons on national, racial or religious grounds. Australia has made a declaration in relation to article 20 to the effect that existing Commonwealth and state legislation is regarded as adequate, and that the right is reserved not to introduce any further legislation on these matters.

Article 4(a) of CERD requires countries to criminalise all dissemination of ideas based on racial superiority or hatred and incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any racial or ethnic groups. On becoming a party to CERD in 1975, Australia made a reservation in relation to Article 4(a) that it was not then in a position to criminalise all the matters covered in the article. The reservation has not been withdrawn. During Australia's Universal Periodic Review in 2011, the Australian Government committed to establishing a systematic process for the regular review of Australia's reservations to international human rights treaties.

Article 4(b) of CERD requires the criminalisation of participation in organisations which promote and incite racial discrimination.

# **Can the right to freedom of opinion and expression be limited?**

## **Derogation**

Under article 4 of the ICCPR, countries may take measures derogating from certain of their obligations under the Covenant, including the right to freedom of opinion and expression 'in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed'. Such measures may only be taken 'to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin'.

## **Limitation**

In addition, under article 19(3) freedom of expression may be limited as provided for by law and when necessary to protect the rights or reputations of others, national security, public order, or public health or morals. Limitations must be prescribed by legislation necessary to achieve the desired purpose and proportionate to the need on which the limitation is predicated.

## **Rights of reputation of others**

In a case which involved a complaint about a law prohibiting denial of the holocaust, the UN Human Rights Committee stated that the restriction of the complainant's freedom of expression was permissible as it was necessary for respect of the rights and reputations of others.

## **National security**

The national security limitation would justify prohibitions on transmission of information, including 'official secrets', which would adversely affect the security of the nation, provided the prohibition is reasonable, is effective to protect national security, and restricts freedom of expression no more than is necessary to protect national security.

## **Public order**

'Public order' is understood to mean the rules which ensure the peaceful and effective functioning of society. The limitation in article 19(3) would justify prohibitions on speech that may incite crime, violence or mass panic, provided the prohibition is reasonable, is effective to protect public order, and restricts freedom of expression no more than is necessary to protect public order.

## Public health

The public health limitation has not been tested before the Human Rights Committee.

## Public morals

The Human Rights Committee has stated that there is no universally applicable standard for what constitutes public morality. A restriction on certain pornographic material, for example pornographic material depicting minors, would be an example of a limitation on freedom of expression based on public morality. In Australia, the National Classification Scheme is designed to provide consumers with information about publications, films and computer games, to allow them to make informed decisions about appropriate entertainment material for themselves and their children. The Scheme is based on the following principles:

- adults should be able to read, hear and see what they want
- minors should be protected from material likely to harm or disturb them
- everyone should be protected from exposure to unsolicited material that they find offensive
- the need to take account of community concerns about depictions that condone or incite violence, particularly sexual violence, and the portrayal of persons in a demeaning manner.

## Which domestic laws relate to freedom of opinion and expression?

There is no Commonwealth legislation enshrining a general right to freedom of expression.

The High Court has inferred a freedom of political communication primarily from sections 7 and 24 of the *Constitution*. These provisions require that members of the Parliament be 'directly chosen by the people'. The High Court found that for this to be an informed choice, there must be free access to relevant political information. However, the Court has recognised that the implied freedom can be limited, or burdened, but only by laws that are reasonably appropriate and adapted to serving a legitimate end in a manner which is compatible with Australia's system of representative and responsible government. The freedom has been inferred by the court in declaring invalid Commonwealth laws that prohibited the broadcasting of political material in the lead-up to elections and obliged broadcasters to provide free advertising time to political parties during an election period. The right has also been held to allow the distribution in a public place of pamphlets alleging corruption by named police officers.

## Restrictions

Some restrictions on freedom of expression exist. For example, the *Criminal Code Act 1995* contains offences relating to urging by force or violence the overthrow of the Constitution or the lawful authority of the Government. The Criminal Code also contains offences relating to the use of a telecommunications carriage service in a way which is intentionally menacing, harassing or offensive, and using a carriage service to communicate content which is menacing, harassing or offensive.

Existing laws on the prohibition of advocacy of hatred that constitutes incitement to discrimination

The *Racial Discrimination Act 1975* makes it unlawful to do an act reasonably likely to offend, insult, humiliate or intimidate another person or group if the act is done because of the race, colour or national or ethnic origin of the person or group.

## **What other rights and freedoms relate to the right to freedom of opinion and expression?**

The right to freedom of opinion and expression may also be relevant to:

- the right to freedom of thought, conscience and religion in article 18 of the ICCPR
- the right to peaceful assembly in article 21 of the ICCPR
- the right to freedom of association in article 22 of the ICCPR
- the requirement to provide information to persons with disability in accessible formats and technologies in article 21 of the CRPD.

## **Articles from relevant Conventions**

### **International Covenant on Civil and Political Rights**

#### Article 19

- Everyone shall have the right to hold opinions without interference.
- Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
- The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
  - a. For respect of the rights or reputations of others;

- b. For the protection of national security or of public order (ordre public), or of public health or morals.

#### Article 20

- Any propaganda for war shall be prohibited by law.
- Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

See also: CERD articles 4 and 5; CRC articles 12 and 13; CRPD article 21.

## Where can I read more about the right to freedom of opinion and expression?

- [United Nations, Office of the High Commissioner for Human Rights \(OHCHR\), Human Rights Bodies](#) (human rights treaty bodies that monitor implementation of the core international human rights treaties)
- [UN Human Rights Committee General Comment No 34](#)
- [UN Human Rights Committee General Comment No 11](#)
- [UN Committee on the Elimination of Racial Discrimination General Recommendation No 15](#)
- [Australian Capital Television Pty Limited v Commonwealth \(1992\) 177 CLR 106](#) (on the implied right to political communication)
- [Coleman v Power \(2004\) 220 CLR 1](#) (on the implied right to political communication) (AustLII website)
- [Australian Law Reform Commission report on sedition](#)
- [Australian Government website on classification](#)

## Minimum guarantees in criminal proceedings

Public sector guidance sheet

- [What are minimum guarantees in criminal proceedings?](#)
- [Where do minimum guarantees in criminal proceedings come from?](#)
- [When do I need to consider the minimum guarantees in criminal proceedings?](#)
- [What is the scope of minimum guarantees in criminal proceedings?](#)
- [Can minimum guarantees in criminal proceedings be limited?](#)
- [Which domestic laws relate to minimum guarantees in criminal proceedings?](#)
- [What other rights and freedoms relate to minimum guarantees in criminal proceedings?](#)
- [Articles from relevant Conventions](#)
- [Where can I read more about minimum guarantees in criminal proceedings?](#)

## **Disclaimer**

This material is provided to persons who have a role in Commonwealth legislation, policy and programs as general guidance only and is not to be relied upon as legal advice. Commonwealth agencies subject to the *Legal Services Directions 2005* requiring legal advice in relation to matters raised in this Guidance Sheet must seek that advice in accordance with the Directions.

## **What are minimum guarantees in criminal proceedings?**

Minimum guarantees in criminal proceedings include:

- to be informed promptly of the charge
- to have adequate time and facilities to prepare a defence and to communicate with counsel
- to be tried without undue delay
- to be tried in person
- to legal assistance and to have legal assistance assigned to the accused, where the interests of justice so require, and without payment if the accused is unable to pay for it
- to cross-examine prosecution witnesses and to obtain the attendance and examination of witnesses on behalf of the accused on the same conditions as the prosecution
- to have the assistance of an interpreter
- to be free from self-incrimination
- to have a conviction and sentence reviewed by a higher court
- to be paid compensation where a criminal conviction has been overturned or where a person has been pardoned in situations involving a miscarriage of justice
- not to be tried or punished more than once.

## **Where do minimum guarantees in criminal proceedings come from?**

Australia is a party to seven core international human rights treaties. Minimum guarantees in criminal proceedings are contained in article 14(3), (5), (6) and (7) of the [International Covenant on Civil and Political Rights \(ICCPR\)](#).

Article 14 also enshrines the right to a fair trial and fair hearing and the right to the presumption of innocence. For more information on these rights see the Guidance Sheets on [Fair trial and fair hearing rights](#) and [Presumption of innocence](#).

See also article 40 of the [Convention on the Rights of the Child \(CRC\)](#).

## **When do I need to consider the minimum guarantees in criminal proceedings?**

You will need to consider minimum guarantees in criminal proceedings when you are working on legislation, a policy or a program that:

- regulates aspects of criminal trial procedure, including the filing and serving of charges, and content of charge sheets, access of the accused to witnesses, information and evidence, pre-trial disclosure, timetables for preparing for trial and giving notice of hearings
- affects the capacity of investigators and prosecutors to prepare for trial and of courts to conduct trials, for instance, by allocating resources
- affects eligibility for legal assistance in criminal matters
- affects legal representation, including the right of the accused to select a legal representative of his or her choice
- affects the law of evidence governing the examination of witnesses
- allows special procedures for the examination of witnesses, for instance the use of protective screens or the giving of evidence by video link
- governs the availability of interpreters and translators in criminal proceedings
- affects the law relating to self-incrimination
- affects the availability of appeals from convictions and sentences in criminal proceedings
- governs remedies available to persons whose criminal convictions have been overturned or who have been pardoned in situations involving a miscarriage of justice
- affects the law relating to double jeopardy
- allows the continued incarceration of persons, for example serious sex offenders, following completion of sentence, or
- provides international legal assistance or cooperation, including development of legislation or strengthening criminal justice systems.

This list should not be regarded as exhaustive.

## **What is the scope of minimum guarantees in criminal proceedings?**

Articles 14(3), (5), (6) and (7) of the ICCPR establish a number of guarantees that must be observed in criminal proceedings. Each will be dealt with in turn.

## **To be informed promptly of the charge**

This right is designed to enable the accused to prepare a defence. It requires that the accused be given information regarding the law and the alleged facts on which the charge is based, at the time the charge is laid and when the charge is amended, if applicable. The information may be given orally or in writing. There is no requirement to disclose evidence at this point. Whether any delay in informing the accused will amount to a violation of this right would depend on the cause of the delay. A violation is less likely if the delay was caused or contributed to by the accused. The information must be communicated in a language the accused understands if the accused does not speak or understand English.

## **To have adequate time and facilities to prepare a defence and to communicate with counsel**

The purpose of this right is to enable the accused to prepare his or her defence properly and to put the accused on an equal footing with the prosecution. What will constitute adequate time will depend on the circumstances of each case, including the complexity of the case and the accused's access to witnesses and evidence. The reference to facilities means that the accused must be given access to documents and other evidence necessary for preparation of his or her defence. The accused should have the opportunity to be represented by a lawyer and to communicate with the lawyer in an unrestricted way in conditions that allow for confidentiality.

## **To be tried without undue delay**

This right reflects the common law principle that 'justice delayed is justice denied'. It relates not only to the time by which a trial should commence, but also to the time by which it should conclude and judgment be given. Whether a delay is 'undue' will depend on the circumstances of each case. Critical factors would include whether the accused is in custody, the complexity and seriousness of the case and the availability of witnesses, including experts. A delay attributable to the accused is unlikely to violate this right.

## **To be tried in person**

Trials *in absentia* may occur only in the most exceptional of circumstances, and would be permissible only where the accused has been given ample notice and opportunity to attend but has failed to do so.

## **To legal assistance and to have legal assistance assigned to the accused, where the interests of justice so require, and without payment if the accused is unable to pay for it**

The accused should be informed about his or her entitlements to legal assistance. The obligation to provide legal assistance is restricted to cases in which the interests of justice require it. The right does not entitle the accused to an unrestricted choice of a lawyer provided under legal assistance. The High Court has held that where a person is charged with a serious criminal offence but cannot afford legal representation, the absence of any legal representation will be relevant to the fairness of the trial. In the case of an appeal, the country is entitled to take into account the reasonable prospects of success of the appeal in deciding whether or not to grant legal assistance.

## **To cross-examine prosecution witnesses and to obtain the attendance and examination of witnesses on behalf of the accused on the same conditions as the prosecution**

The right to cross-examine prosecution witnesses would normally require evidence to be given in person at the trial, so that the reliability and credibility of the witness can be tested. However, evidence given other than in person, for instance by way of written statement, may not violate this right, provided that the reliability and credibility of the witness giving the statement can still be tested. A violation will be less likely if the evidence can be independently corroborated. Special methods to protect a vulnerable witness, for example by the use of video link, or where the witness is shielded from the accused, may be permissible if it is strictly necessary to use them. Each case should be considered on its merits, giving careful consideration to the rights of the accused under article 14(3)(e). It is a matter for the accused to decide who should be called as a defence witness. If a defence witness fails to appear, the court may need to take steps to secure the witness's attendance, particularly if the accused is facing a serious charge and a heavy penalty.

## **To have the assistance of an interpreter**

This right applies to persons who do not understand or speak English. It does not give a right to an interpreter without charge to a person who prefers to use a language other than English. The right applies at all stages, including during police interviews and court hearings. Interpreters must be competent and preferably accredited. For example, the Australian and Northern Territory governments have established a memorandum of understanding for the provision of interpreter services to Indigenous Australians.

In relation to the translation of documents used in evidence, the UN Human Rights Committee has stated that there is no right for an accused who does not understand the language used in court to be provided with translations of all relevant documents, provided that they are made available to his or her counsel.

### **To be free from self-incrimination**

The privilege against self-incrimination has long been recognised by the common law and applies unless expressly abrogated by statute. As part of the privilege, an accused may choose not to give evidence at trial, and no adverse inference is to be taken from the accused's refusal. Self-incriminating evidence that is found by the court to have been unfairly obtained, such as a confession made under duress, must be excluded at trial. The use of compulsorily obtained evidence, such as DNA samples, that has an existence independently of the will of the accused, does not violate this right.

### **To have a conviction and sentence reviewed by a higher court**

For this right to have substance, the same protections afforded to the accused at trial should also apply on appeal. The court hearing the appeal should have the power to overturn or affirm the conviction or sentence. An appeal should generally be held in public, although if the issues are not complex and it would not prejudice the accused, an appeal can be heard by the court 'on the papers'. The right does not require the appeal court to conduct a retrial of the factual issues and does not require that further evidence be led. The opportunity to 'seek leave to appeal' would satisfy this right if the application for leave entails a full review of the evidence and the law.

### **To be paid compensation where a criminal conviction has been overturned or where a person has been pardoned in situations involving a miscarriage of justice**

This right requires the payment of compensation to persons who have been convicted of a criminal offence and punished accordingly, if their conviction has been reversed or they have been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice. It does not require compensation if the conviction is set aside on appeal, before the judgment becomes final. Nor is compensation required in the case of a pardon that is humanitarian or discretionary in nature. Australia has made a reservation to article 14(6) that 'the provision of compensation for miscarriage of justice in the circumstances may be by administrative procedures rather than pursuant to specific legal provision'. This means that the availability of a remedy for a miscarriage of justice need not be provided for by statute. During Australia's Universal Periodic Review in 2011, the Australian Government committed to

establishing a systematic process for the regular review of Australia's reservations to international human rights treaties.

## **Not to be tried or punished more than once**

The prohibition on double jeopardy is a fundamental safeguard in the common law. It means that a person who has been convicted or acquitted of a criminal charge is not to be re-tried for the same or substantially the same offence. The right applies after all avenues for appeal or review have been exhausted, or after time limits for appeal or review have passed. It does not prevent a new trial when an appeal court has found a conviction to be a miscarriage of justice. The UN Human Rights Committee has stated that article 14(7) does not prohibit the resumption of a criminal trial justified by exceptional circumstances, such as the discovery of evidence which was not available or known at the time of the acquittal. Penalties or sanctions imposed by professional disciplinary bodies would not normally be regarded as a punishment for this purpose. The right not to be punished more than once may be called into question by the continued detention of persons, beyond the period for which a court has imposed imprisonment, for example persons convicted of serious sexual offences. The right applies only to subsequent trials within the one country, not to a subsequent trial in a different country to that of the original trial.

## **Children in the criminal process**

Guidance on the protections for children in the criminal process is contained in the Guidance Sheet on [Rights of parents and children](#).

## **Can minimum guarantees in criminal proceedings be limited?**

### **Derogation**

Under article 4 of the ICCPR, countries may take measures derogating from certain of their obligations under the Covenant, including minimum guarantees in criminal proceedings 'in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed'. Such measures may only be taken 'to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin'.

The UN Human Rights Committee has indicated that strict limitations would apply to any derogation under article 14.

## Limitation

As indicated above, in certain limited circumstances, limitations on some of the minimum guarantees in criminal proceedings are permissible.

## Which domestic laws relate to minimum guarantees in criminal proceedings?

The *Evidence Act 1995* contains a number of provisions relevant to minimum guarantees in criminal proceedings:

- Section 20 provides that any comment made about the failure of the defendant to give evidence must not suggest that the defendant failed to give evidence because the defendant was, or believed that he or she was, guilty of the offence concerned.
- Section 30 provides that a witness may give evidence about a fact through an interpreter unless the witness can understand and speak English sufficiently to enable the witness to understand, and to make an adequate reply to questions that may be put about the fact.
- Sections 128 and 128A make provision about dealing with an objection made by a witness that the giving of evidence may tend to show that witness has committed an offence.

Criminal offences under federal law and under the laws of each state and territory are primarily heard in state and territory courts. Sections 68 and 39 of the *Judiciary Act 1903* confer federal jurisdiction on state and territory courts for criminal matters. Appeals are therefore normally heard within the appeal system of each state or territory court.

There are a small number of federal criminal matters that may be heard and appealed within the Federal Court of Australia. Section 30AA of the *Federal Court of Australia Act 1976* allows the Federal Court to hear criminal appeals from the Federal Court's original jurisdiction and from state and territory Courts, in some circumstances.

Section 73 of the *Constitution* and Part V of the Judiciary Act provides for the appellate jurisdiction of the High Court. The High Court hears appeals, by special leave, from the Federal Court of Australia, courts exercising federal jurisdiction and state and territory Supreme Courts.

## What other rights and freedoms relate to minimum guarantees in criminal proceedings?

Minimum guarantees in criminal proceedings may also be relevant to the other rights in relation to legal proceedings contained in article 14 of the ICCPR, namely the right to a fair trial and fair hearing, and the right to the presumption of innocence.

The right may also be relevant to:

- the prohibition on torture and cruel, inhuman or degrading treatment in article 7 of the ICCPR
- the right to be free from arbitrary arrest and detention in article 9 of the ICCPR
- the right to humane treatment in detention in article 10 of the ICCPR.

## **Articles from relevant Conventions**

### **International Covenant on Civil and Political Rights**

#### Article 14

- In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:
  - to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
  - to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
  - to be tried without undue delay;
  - to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
  - to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
  - to have the free assistance of an interpreter if he cannot understand or speak the language used in court;
  - not to be compelled to testify against himself or to confess guilt.
- Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.
- When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be

compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

- No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

See also: CRC article 40.

## Where can I read more about minimum guarantees in criminal proceedings?

- [United Nations, Office of the High Commissioner for Human Rights \(OHCHR\), Human Rights Bodies](#) (human rights treaty bodies that monitor implementation of the core international human rights treaties)
- [UN Human Rights Committee General Comment No 32](#)
- [Attorney-General's Department, Legal Assistance](#)
- [High Court decision in R v Dietrich \(on legal representation and the right to a fair trial\)](#)
- [High Court decision in Sorby v Commonwealth \(on the privilege against self-incrimination\)](#)

## The Privacy Act

**The *Privacy Act 1988* was introduced to promote and protect the privacy of individuals and to regulate how Australian Government agencies and organisations with an annual turnover of more than \$3 million, and some other organisations, handle personal information.**

The Privacy Act includes 13 [Australian Privacy Principles](#) (APPs), which apply to some private sector organisations, as well as most Australian Government agencies. Such organisations and agencies are collectively known as ‘APP entities’. The Privacy Act also regulates the privacy component of the consumer credit reporting system, tax file numbers, and health and medical research.

## Rule of Law Education Centre

<https://www.ruleoflaw.org.au/priorities/checks-and-balances/>

# What are the specific checks and balances on each arm of government?

## 1. The Judiciary

The Judiciary includes judges and the courts. The role of the Judiciary is to interpret the law and to judge whether the law applies in individual cases. When sworn into office, judges make the following oath:

*to do right to all manner of people **according to law**, without fear or favour, affection or ill will*

Firstly, the Judiciary administers justices to *all manner of people* and ensures everyone is treated equally under the law, regardless of their status or rank. They administer justice fairly and openly. The Courts are **impartial**. They make decisions *according to the law*, rather than external political pressures, personal, moral, or political views. As outlined by former Australian High Court Justice Heydon the Judiciary is:

*an independent arbiter not affected by self-interest or partisan duty, applying a set of principles, rules and procedures having objective existence and operating in paramountcy to any other organ of state and to any other source of power, and possessing a measure of independence from the wrath of disgruntled governments or other groups*

The Courts are **independent** from the Executive and Legislature. The Judiciary has the power to strike down laws made by the Legislature and declare actions of the Executive unlawful. Judicial review ensures the other arms of Government are accountable under the law and are restrained from enacting laws that may be unconstitutional (and therefore invalid and unenforceable) and behaving unlawfully. **This is a highly important check on the power of the Government because it provides a legal process in the courts for any individual, not matter their status or rank, to challenge the decisions of the Government.**

The Australian **Constitution** provides a check on the power of the Executive and protects the independence of the Judiciary from political interference by outlining the tenure and remuneration of the Judiciary. This ensures a judge cannot be sacked (or pay reduced) if they make a decision that Government or those in power dislikes.

To ensure the judiciary does not exceed its powers, there is a process of appeal to higher courts. The High Court of Australia has the power to overrule the decisions of all lower Courts.

The **Legislature** can override a court's interpretation of any ordinary law by passing or amending the law. This is an important check on the powers of the Judiciary by ensuring the power to make laws is held by elected representatives in Parliament (the Legislature).

## 2. The Executive

The Executive includes ministers and the government departments, agencies, and statutory bodies they are responsible for. The role of the Executive is to **propose (but not pass laws) and then implement laws passed** by the Legislature into operation. It has the power to oversee Government Agencies and Departments and deal with social, economic, or environmental issues as they arise.

As the Executive has power to carry out and enforce the law it has the greatest potential of all arms of government for corruption and for exceeding their power. Checks therefore must ensure the Executive acts in accordance with the law and is responsible to Parliament for their actions.

The **Judiciary** is a critical check on the overuse and misuse of power by the Executive. The Executive is the singly most frequent party in Court proceedings and the Judiciary has the power to determine whether the actions of the Executive are lawful.

Another important check on the power of the Executive is **scrutiny by the Legislature and Parliamentary Committees** who have the ability to ask the Executive questions in Parliament and to disallow laws passed by the Executive. The Executive is also held accountable by the **Shadow Cabinet and the 'Opposition'** who are frequently critical of Government policy and legislation. It is important to note that there is only partial separation of powers between the Executive and Legislature in Australia as members of the Executive are drawn from Parliament.

# Citizens and the media

Democracies not only require institutional checks and balances, but they also require scrutiny from the public and media organisations.

This in turn requires **freedom of the press, freedom of association and freedom of speech.**

In the words of the Late Honorable Asche:

one of the greatest checks and balances of parliamentary democracy lies in the Australian citizen. Our greatest protect against tyranny lies in the fact that we are a nation of sardonic realists

Citizens are a check on the Legislature. Members of Parliament (the legislature) are voted in to power to represent the citizens in their electorate. Citizens hold their representative to account by voting (or not voting) them into parliament. **Regular and fair elections** enable citizens to hold their representative to account.

Citizens are also a check on the Executive. Through **petitions, protests, consultations, submissions and letters** to their elected representatives, citizens are a check on the power of those who implement the law.

VICTORIAN PANDEMIC MANAGEMENT BILL

## **The killing of human rights in Victoria**



<https://www.ruleoflaw.org.au/victorian-pandemic-management-bill/>

## Did Democracy Die During the Pandemic?

An interview with George Williams, UNSW.



<https://www.ruleoflaw.org.au/did-democracy-die-during-the-pandemic/>

## Worldwide COVID litigation lawyer directory

[https://stevekirsch.substack.com/p/covid-litigation-lawyer-directory?publication\\_id=548354&post\\_id=105960994&isFreemail=true](https://stevekirsch.substack.com/p/covid-litigation-lawyer-directory?publication_id=548354&post_id=105960994&isFreemail=true)

An advertisement for the COVID Litigation Conference 2023, held in Atlanta from March 25-26. The ad features the logos for VSRF and Mendenhall Law Group at the top. Below the logos is a group photo of the conference speakers. The text "COVID LITIGATION CONFERENCE 2023" and "MARCH 25-26, ATLANTA" is prominently displayed. A section titled "PANELS INCLUDE" lists various topics: Employer Mandates, Education Mandates, Medical License, Civil Rights, Fraud, Censorship, Vaccine Injury, Hospital Negligence, and Mass Torts. At the bottom, it states "Tickets: VacSafety.org".

There are many more see the tabs about [evidence](#) and [arguments](#) under the [Actio Popularis](#) site forming part of IRFF

## AUSTRALIA

### Law firm predicts increase in class action litigation for Covid-19 abuses

Article 21 May 2020

Author: Morrison & Foerster LLP

<https://www.business-humanrights.org/en/latest-news/law-firm-predicts-increase-in-class-action-litigation-for-covid-19-abuses/>

### Class action against Victorian Government over second COVID-19 lockdown to go ahead

By Serena Seyfort

2:10pm Aug 26, 2022

<https://www.9news.com.au/national/class-action-against-victorian-government-over-hotel-quarantine-to-go-ahead/c5541fe6-8a2d-4583-845e-18521d8d6885>

## **Victorian government faces two big payouts due to lockdown class actions**

<https://9now.nine.com.au/a-current-affair/coronavirus-class-actions-against-victoria-government/43c25f33-2c3a-49e6-9c02-1cc489cfe865>

## **COVID-19 vaccine opponents slapped with \$214,000 in legal costs after failed lawsuit**

The group went to the Federal Court against COVID-19 measures, arguing they were unconstitutional.

Karen Sweeney, AAP / [Health & Wellbeing](#) / Updated 31.08.2022

<https://7news.com.au/lifestyle/health-wellbeing/covid-19-vaccine-opponents-slapped-with-214000-in-legal-costs-after-failed-lawsuit-c-8065857>

## **COVID-19 STATE GOVERNMENT (BUSINESS LOSSES) GROUP PROCEEDING (CLASS ACTION)**

*5 Boroughs NY Pty Ltd v State of Victoria (S ECI 2020 03402)*

<https://www.supremecourt.vic.gov.au/areas/group-proceedings/covid-19-state-government-business-losses>

## **The major problem with Covid-19 vaccine compensation claims**

Major issues from a program set up to compensate Australians who suffered injury from getting the Covid-19 vaccine have been revealed.

<https://www.news.com.au/national/the-major-problem-with-covid19-vaccine-compensation-claims/news-story/39b052c5ec6abd11ff933659d309a20f>

## **COVID-19 Vaccine Injuries Have Largely Been Ignored**

26/01/2023 BY [SONIA HICKEY](#)

<https://www.sydneycriminallawyers.com.au/blog/covid-19-vaccine-injuries-have-largely-been-ignored/>



Covid Vaccine Injury Compensation Claims

<https://www.murphys-law.com.au/compensation/covid-vaccine-injury-compensation/>

## COVID-19 Vaccine Claims Scheme

The Australian Government has implemented a claims scheme to enable eligible claimants who have received a TGA-approved COVID-19 vaccine to obtain compensation for recognised moderate to severe vaccine-related adverse events.

<https://www.health.gov.au/our-work/covid-19-vaccine-claims-scheme>



Current Class Actions

*Updated 9 March 2023*

<https://www.fedcourt.gov.au/law-and-practice/class-actions/class-actions>

## Who pays compensation if a COVID-19 vaccine has rare side-effects?

20 October 2020

What does Australia's latest indemnity deal mean in practice?

<https://www.sydney.edu.au/news-opinion/news/2020/10/20/who-pays-compensation-if-a-covid19-vaccine-has-rare-side-effects.html>

## University law school tries to head off milestone Covid litigation conference – Covid lawsuits the next growth industry

Posted by [Editor, cairnsnews](#)

<https://cairnsnews.org/2023/03/11/university-law-school-tries-to-head-off-milestone-covid-litigation-conference-covid-lawsuits-the-next-growth-industry/>

## Queensland's frontline workers begin series of legal challenges to COVID-19 vaccine mandate

By [Talissa Siganto](#)

Posted Mon 30 May 2022 at 2:57pm Monday 30 May 2022 at 2:57pm, updated Mon 30 May 2022 at 3:00pm

<https://www.abc.net.au/news/2022-05-30/qld-coronavirus-covid19-vaccine-mandate-court-challenge/101110802>



Australian  
Human Rights  
Commission

## COVID-19 vaccinations and federal discrimination law

### Summary

If there is no specific law requiring a person to be vaccinated, individuals, businesses and service providers are encouraged to obtain legal advice about their own specific circumstances, and to carefully consider the position of vulnerable groups in the community before imposing any blanket COVID-19 vaccination policies or conditions. These may have unintended consequences, particularly for some people with disability, and may also breach federal discrimination law.

## Legal Aid Queensland



## Claxton legal

<https://www.communitylegalqld.org.au/legal-help/caxton-legal-centre/>

**FOR CLIENTS: Client Services** will talk to you about what assistance you need and book an **appointment** for the day or evening - call (07) 3214 6333. Legal help is available for:

- i. Domestic Violence and Elder Abuse
- ii. Family Law
- iii. Consumer Credit and Debt (Statewide)
- iv. Employment Law and Sexual Harassment (Statewide)
- v. Discrimination and Human Rights
- vi. General Civil and Criminal Law
- vii. Bail (Arthur Gorrie Correctional Centre, Brisbane Correctional Centre, Woodford Correctional Centre)
- viii. Coronial (Statewide)
- ix. Retirement Villages and Parks (Statewide)
- x. Social Work Supports

### Our legal information line

To get legal help—call **Legal Aid Queensland** on [1300 65 11 88](tel:1300651188)—**Monday to Friday, 8:30am to 4:30pm** (Australian Eastern Standard Time)—for the cost of a local call (from a landline in Australia), except for public holidays.

Good morning Izak, please email a summary of your legal issue to [caxton@caxton.org.au](mailto:caxton@caxton.org.au)<<mailto:caxton@caxton.org.au>> and I will forward it to Phylli. Thanks, Rachel - Caxton Legal

### Personal rights and safety

- [Discrimination](#) and sexual harassment
- [Human rights](#)
- [Mental health treatment rights](#)
- [Elder abuse](#)
- [Protecting sexual assault counselling records](#)
- [Peace and good behaviour](#)

# Right to a lawyer

8.127 A defendant's right to a lawyer does not have a particularly long history. People accused of a felony had no right to be represented by a lawyer at their trial until 1836.<sup>[176]</sup> Moisisidis explains that 'English criminal procedure for centuries stood for the principle that an accused charged with a felony should not be represented by counsel'.<sup>[177]</sup> The truth, it was thought, might be hidden behind the 'artificial defence' of a lawyer—better for the court to hear the accused speak for themselves and judge their manner and countenance.<sup>[178]</sup> Therefore, up until the late 18th century, defendants would typically respond to accusations in person.<sup>[179]</sup>

8.128 The right to a lawyer is now much more widely recognised and subject to relatively few restrictions, as discussed below. However, it is important to distinguish between two senses in which a person may be said to have a right to a lawyer. The first (negative) sense essentially means that no one may prevent a person from using a lawyer. The second (positive) sense essentially suggests that, governments have an obligation to provide a person with a lawyer, at the government's expense, if necessary.

8.129 Both of these types of rights are reflected in art 14 of the ICCPR, which provides, in part, that a defendant to a criminal charge must be: tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.

8.130 In Australia, the second type of right—to be provided a lawyer at the state's expense—is less secure. In *Dietrich v The Queen*, Mason CJ and McHugh J said: Australian law does not recognize that an indigent accused on trial for a serious criminal offence has a right to the provision of counsel at public expense. Instead, Australian law acknowledges that an accused has the right to a fair trial and that, depending on all the circumstances of the particular case, lack of representation may mean that an accused is unable to receive, or did not receive, a fair trial.<sup>[180]</sup>

8.131 The court held that the seriousness of the crime is an important consideration: 'the desirability of an accused charged with a serious offence being represented is so great that we consider that the trial should proceed without representation for the accused in exceptional cases only'.<sup>[181]</sup> Mason CJ and McHugh J also said that the courts possess undoubted power to stay criminal proceedings which will result in an unfair trial, the right to a fair trial being a central pillar of our criminal justice system. The power to grant a stay necessarily extends to a case in which representation of the accused by counsel is essential to a fair trial, as it is in most cases in which an accused is charged with a serious offence.<sup>[182]</sup>

8.132 While it is within judicial power to delay a trial or set aside a conviction on natural justice or procedural fairness grounds, it is questionable whether it is part of the judicial function to order government to provide a service.

8.133 The right to a lawyer is undermined—made considerably less useful—where communications between client and lawyer are monitored or may later be required to be disclosed. Chapter 12 discusses the importance of protecting lawyer-client confidentiality and statutory limits on legal professional privilege.

#### Laws that limit legal representation

8.134 The ALRC is not aware of any Commonwealth laws that limit a court's power to stay proceedings in a serious criminal trial on the grounds that the accused is unrepresented and therefore will not have a fair trial.

8.135 Nevertheless, Commonwealth laws place limits on access to a lawyer. Under s 23G of the Crimes Act, an arrested person has a right to communicate with a lawyer and have the lawyer present during questioning, but this is subject to exceptions, set out in s 23L. There are exceptions where an accomplice of the person may try to avoid apprehension or where contacting the legal practitioner may lead to the concealment, fabrication or destruction of evidence or the intimidation of a witness. There is also an exception for when questioning is considered so urgent, having regard to the safety of other people, that it cannot be delayed.<sup>[183]</sup>

8.136 Although these exceptions may mean a person cannot in some circumstances see a lawyer of their own choosing, the person must nevertheless be offered the services of another lawyer.<sup>[184]</sup> The ALRC has not received submissions suggesting that these limits are unjustified.

8.137 The Law Council criticised the limited access to a lawyer for persons subject to a preventative detention order under pt 5.3 div 105 of the Criminal Code, which enables a person to be taken into custody and detained by the Australian Federal Police in a State or Territory prison or remand centre for an initial period of up to 24 hours:

Preventative detention orders restrict detainees' rights to legal representation by only allowing detainees access to legal representation for the limited purpose of obtaining advice or giving instructions regarding the issue of the order or treatment while in detention (Section 105.37 of the Criminal Code). Contact with a lawyer for any other purpose is not permitted.<sup>[185]</sup>

8.138 Section 34ZO of the Australian Security Intelligence Organisation Act 1979 (Cth) limits a detained person's contact with a lawyer; s 34ZP allows a detained person to be questioned without a lawyer; and s 34ZQ(9) allows for the removal of legal advisers whose conduct 'the prescribed authority considers ... is unduly disrupting the questioning' of a detained person. However, s 34ZQ(10) provides that in the event of the removal of a person's legal adviser, 'the prescribed authority must also direct ... that the subject may contact someone else'.

8.139 The right to have a lawyer of one's own choosing may be limited by provisions in the NSI Act that provide that parts of a proceeding may not be heard by, and certain information not given to, a lawyer for the defendant who does not have the appropriate level of security clearance.<sup>[186]</sup> The Act also provides that the court may recommend that the defendant engage a lawyer who has been given, or is prepared to apply for, a security clearance.<sup>[187]</sup>

8.140 This scheme has been criticised.<sup>[188]</sup> The Law Council, for example, submitted that it restricts a person's right to a lawyer of his or her choosing and 'threatens the independence of the legal profession'.<sup>[189]</sup>

8.141 Some have suggested that 'special advocates'—lawyers with a security clearance permitted to access classified information—could be appointed to

represent defendants in certain circumstances.<sup>[190]</sup> Special advocate regimes are found in Canada, New Zealand and the United Kingdom.<sup>[191]</sup>

### Legal aid and access to justice

8.142 As discussed above, the positive right to be provided with a lawyer at the state's expense is not a traditional common law right, but it is nonetheless very important—particularly, as the High Court has recognised, for those on trial for serious offences.<sup>[192]</sup> Even if a court will order a stay of proceedings against an unrepresented defendant in a serious criminal trial, this may be of little assistance to those charged with non-serious offences. It will also not help victims of crimes and others who may seek access to justice but cannot afford to pay for legal representation. The focus of the fair trial rights in this chapter is on the rights of people accused of crimes, but this is not to discount the importance of access to justice more broadly.

8.143 The importance of funding for legal aid was raised by some stakeholders to this Inquiry. Women's Legal Services Australia submitted that many of their clients cannot afford legal representation and legal aid funding is insufficient for their needs. These clients must either continue their legal action unrepresented or not pursue legal action.<sup>[193]</sup> The Law Council said that 'the right to a fair trial and effective access to justice is undermined by a failure of successive governments to commit sufficient resources to support legal assistance services, as evidenced by increasingly stringent restrictions on eligibility for legal aid'.<sup>[194]</sup> The Council stressed the importance of access to legal representation and highlighted some of the practical restrictions on access to legal aid, stating that 'it is clear that under existing guidelines it is possible to convict and imprison a person who is not deemed eligible for legal aid'.<sup>[195]</sup>

8.144 Access to justice has been the subject of many reports, in Australia and elsewhere, including recent reports by the Attorney-General's Department<sup>[196]</sup> and the Productivity Commission.<sup>[197]</sup> The Law Council suggested that an 'in-depth inquiry into the consequences of denials of legal assistance' still needs to be conducted.<sup>[198]</sup>

[176]

*Dietrich v The Queen* (1992) 177 CLR 292, 317 (citations omitted). 'The defendant could not have the assistance of counsel in presenting his case, unless there was a point of law arising on the indictment; since the point of law had to be assigned before counsel was allowed, the unlearned defendant had little chance of professional help': *Baker*, above n 14, 417. 'So the prosecutor could tell the jury why the defendant was guilty, but there was no advocate to say why he was not': *Bingham*, above n 3.

[177]

*Moisidis*, above n 13, 10.

[178]

*Ibid* 9.

[179]

Ibid 10.

[180]

Dietrich v The Queen (1992) 177 CLR 292, 311.

[181]

Ibid.

[182]

Ibid [1].

[183]

Crimes Act 1914 (Cth) s 23L(1)(b). See also Senate Standing Committee for the Scrutiny of Bills, Parliament of Australia, 12th Report of 2002 (October 2002) 416.

[184]

The investigating official 'must offer the services of another legal practitioner and, if the person accepts, make the necessary arrangements': Crimes Act 1914 (Cth) s 23L(4).

[185]

Law Council of Australia, Submission 75. The Law Council also said that 'both the content and the meaning of communication between a lawyer and a detained person can be monitored. Such restrictions could create unfairness to the person under suspicion by preventing a full and frank discussion between a client and his or her lawyer and the ability to receive relevant legal advice': Ibid. See Ch 12.

[186]

See, eg, National Security Information (Criminal and Civil Proceedings) Act 2004 (Cth) ss 29, 39, 46.

[187]

Ibid s 39(5).

[188]

Law Council of Australia, Submission 75; Councils for Civil Liberties, Submission 142.

[189]

Law Council of Australia, Submission 75.

[190]

Gilbert and Tobin Centre of Public Law, Submission 22; Law Society of NSW Young Lawyers, Submission 69.

[191]

Gilbert and Tobin Centre of Public Law, Submission 22.

[192]

Dietrich v The Queen (1992) 177 CLR 292.

[193]

Women's Legal Services Australia, Submission 5.

[194]

Law Council of Australia, Submission 75.

[195]

Law Council of Australia, Submission 140.

[196]

Attorney-General's Department, 'A Strategic Framework for Access to Justice in the Federal Civil Justice System' (2009).

[197]

Productivity Commission, above n 124.

[198]

Law Council of Australia, Submission 140.

## ENGAGE WITH US

### Get in contact

8:30am – 5pm (AEST)

Monday to Friday

Phone [+61 7 3052 4224](tel:+61730524224)

Email [info@alrc.gov.au](mailto:info@alrc.gov.au)

PO Box 12953

George Street Post Shop

Queensland 4003

- **Twitter**
- **LinkedIn**
- **YouTube**

The Australian Law Reform Commission acknowledges the traditional owners and custodians of country throughout Australia and acknowledges their continuing connection to land, sea and community. We pay our respects to the people, the cultures and the elders past, present and emerging.

## Human Rights Act 2019

From Legal Aid Qld

Queensland's [Human Rights Act 2019](#) started from 1 January 2020, and aims to:

- protect and promote human rights

- help build a culture in the Queensland public sector that respects and promotes human rights and
- help promote a dialogue about the nature, meaning and scope of human rights.

For more information about the Human Rights Act visit the [Queensland Human Rights Commission's website](#).

## COVID-19

Public entities (such as government bodies) in Queensland are required to consider and act in accordance with your human rights. Certain human rights may be affected by decisions concerning COVID-19, including:

- The right to association;
- The right to take part in public life;
- The right to privacy, family or home; and
- The protection of families and children.

Human rights can be subjected to reasonable limits that can be justified in a free and democratic society based on human dignity, equality and freedom. Human rights are in addition to other rights.

## Human Rights Act overview

Queensland's *Human Rights Act 2019* protects [23 fundamental human rights](#) in law.

The Act requires each arm of government to act compatibly with these human rights. This means that:

- parliament must consider human rights when proposing and scrutinising new laws
- courts and tribunals, so far as is possible to do so, must interpret legislation in a way that is compatible with human rights
- public entities – such as state government departments (for example Queensland Corrective Services, Queensland Health, Child Safety, Youth Justice), local councils, state schools, the police and non-government organisations and businesses performing a public function must act and make decisions compatible with human rights.

The Act clearly states that rights can be limited, but only where it is reasonable and justifiable.

## Which human rights does *The Human Rights Act* protect

Queensland's *Human Rights Act 2019* protects 23 fundamental human rights:

- recognition and equality before the law

- right to life
- protection from torture and cruel, inhuman or degrading treatment
- freedom from forced work
- freedom of movement
- freedom of thought, conscience, religion and belief
- freedom of expression
- peaceful assembly and freedom of association
- taking part in public life
- property rights
- privacy and reputation
- protection of families and children
- cultural rights—generally
- cultural rights—Aboriginal peoples and Torres Strait Islander peoples
- right to liberty and security of person
- humane treatment when deprived of liberty
- fair hearing
- rights in criminal proceedings
- children in the criminal process
- right not to be tried or punished more than once
- retrospective criminal laws
- right to education
- right to health services

## Making a complaint

A human rights complaint must first be made to the relevant public entity, which has 45 days to respond.

If you're unhappy with the response provided by the public entity, or if they don't respond, you can lodge a complaint with the [Queensland Human Rights Commission \(QHRC\)](#).

**Please note:** Complaints under the Human Rights Act can only be lodged to the QHRC after 1 January 2020. Complaints under the Human Rights Act can only be made about alleged breaches occurring after 1 January 2020. [Find out more.](#)

If your human rights have been breached or limited in the course of another proceeding—for example a criminal proceeding—or may be a live issue within the proceedings get legal advice.

## Get legal help

For legal advice about a human rights issue, [contact us](#) as soon as possible for more information.

You can also visit:

- [qhrc.qld.gov.au](http://qhrc.qld.gov.au)

- [qld.gov.au/law/your-rights/human-rights](http://qld.gov.au/law/your-rights/human-rights)

**Disclaimer:** This page is provided as information only, and is not legal advice. If you have a legal problem, you should [contact us](#) or [speak to a lawyer](#). View our [full disclaimer](#).

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## Publications and resources

- [Guide to the Human Rights Act 2019 – ‘Know Your Human Rights’—\(Queensland Advocacy Incorporated\)](#)



## Complaints

We handle complaints under the *Anti-Discrimination Act 1991*. If you feel you may have experienced unlawful discrimination, sexual harassment, vilification, or another contravention of the Act, you may be able to make a complaint.

- [Find out more about the \*Anti-Discrimination Act 1991\*](#)

We also handle complaints under the *Human Rights Act 2019*. If you feel your rights have been unjustifiably limited by a Queensland public entity, you may be able to make a complaint.

- [Find out more about the \*Human Rights Act 2019\*](#)

Your complaint could be covered by the Anti-Discrimination Act, the Human Rights Act, or both. You don't need to know if it's a discrimination or human rights complaint in order to lodge it – we will contact you to discuss it after lodgement, to help figure out the best way of moving forward with it. You can also [talk to us](#) before you lodge it if you're unsure or need any more information.

We attempt to resolve complaints through a dispute resolution process. The Commission is an independent body in this process and does not take sides, or have the power to decide if unlawful discrimination or other conduct has occurred.

- [Making a complaint](#)
- [Responding to a complaint](#)
- [Lodge your complaint online](#)
- [For advocates](#)
- [Report racism](#)

## Making a complaint

[Download this information as a pdf](#) (PDF File, 637.4 KB)

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# Making a complaint

## Who can complain?

Anti-discrimination and human rights laws protect everyone in Queensland. You don't have to be a resident, a citizen, or have a particular visa status to make a complaint.

However, discrimination, sexual harassment, and human rights complaints can only be made by someone personally affected by a situation.

If someone cannot make a complaint themselves – such as a child or a person with disability – we may authorise someone, such as a parent or guardian, to make a complaint on their behalf. Contact our enquiry line on 1300 130 670 before making a complaint on behalf of someone else to check if it is possible for you to do so.

Complaints about vilification because of your race, religion, sexuality, or gender identity may be made by a 'relevant entity'. This could be a community group or support organisation for people from those communities.

## Complaints about discrimination

Not all treatment which seems unfair is against the law. The discrimination must have happened

because of your:

- age
- sex
- race
- religion
- sexuality
- gender identity
- impairment
- family responsibilities
- breastfeeding
- parental status
- relationship status
- pregnancy
- political belief
- trade union activity
- lawful sexual activity
- association with someone with the above characteristics

If the discrimination is not because of one of these grounds, it is not covered by the Anti-Discrimination Act, and we can't accept a complaint about i

If the discrimination is because of one of these grounds, it must have happened in one of the following areas of public life to be covered by the Act:

- work
- education
- goods and services
- superannuation and insurance
- accommodation
- disposition of land
- club membership and affairs
- administration of state laws and programs
- local government, between members

If your complaint is about one of these areas, proceed to the form to lodge your complaint.

If your complaint isn't related to your treatment in one of these areas, it is not something we are able to deal with.

## Complaints about sexual harassment

Under Queensland law, sexual harassment is unlawful anywhere it happens. You can make a complaint to us.

## Complaints about human rights

If you believe that your human rights have not been given proper consideration by a public entity, you must complain directly to the agency before you can make a complaint to us. Public entities [link to web page] include:

- state government departments and agencies
- public service employees
- Queensland Police Service and other emergency services
- State Government Ministers
- public schools
- public health services, including hospitals
- local governments, councillors, and council employees
- organisations providing services of a public nature

The following entities are NOT covered by the Human Rights Act:

- federal government departments and agencies
- private businesses (unless they are providing services on behalf of the state – for example, a public housing service)
- decisions by courts and judges.

Under Queensland law, specific human rights are protected.

The rights protected by law are:

- recognition and equality before the law
- right to life
- protection from torture and cruel, inhuman or degrading treatment
- freedom from forced work
- freedom of movement
- freedom of thought, conscience, religion and belief
- freedom of expressio

- peaceful assembly and freedom of association
- taking part in public life
- property rights
- privacy and reputation
- protection of families and children
- cultural rights – generally
- cultural rights – Aboriginal peoples and Torres Strait Islander peoples
- liberty and security of person
- humane treatment when deprived of liberty
- fair hearing
- rights in criminal proceedings
- rights of children in the criminal process
- right not to be tried or punished more than once
- retrospective criminal laws
- right to education
- right to health services

If your complaint involves one or more of these rights, and is about a public entity, it may be covered by the Human Rights Act and we can deal with it – however, you must make a complaint to the public entity first. The agency has 45 business days to provide a response. You should make a genuine effort to resolve your complaint with the agency before you lodge a complaint with us.

## Complaints about vilification

For a matter to be considered vilification under Queensland law, it has to:

- have happened in public
- be capable of inciting hatred, contempt or severe ridicule
- of someone on the grounds of their race, religion, sexuality or gender identity.

If you believe someone has vilified you, but on other grounds – for example, your sex or your disability – you can't lodge a vilification complaint with us, but you may be able to make a discrimination complaint.

## Other types of complaints

We can deal with complaints about:

- reprisal for a public interest disclosure
- victimisation
- discriminatory advertising
- unnecessary questions
- requesting or encouraging a contravention

## How do I complain?

You must put your complaint in writing. This means sending a letter or email, filling out a complaint form online, or printing out and completing a complaint form and returning it to us.

If you need help to put your complaint in writing, we will try to connect you with a service that can help you. In some cases, we may be able to help you fill out the form.

If you have difficulty writing your complaint in English, your complaint can be in any language, as we use translators where needed.

## Do I need a lawyer?

We can help you with information about your rights and what the law says, but we can't give you advice about your complaint or advocate on your behalf.

You don't need a lawyer to make a complaint, or participate in a conciliation conference, but some people find it useful to get legal advice about their complaint.

Things you might consult a lawyer about are if your complaint fits under the law, or what outcomes you can expect.

A good place to start is to contact Legal Aid Queensland and ask to be booked into a Discrimination Advice Clinic.

Aboriginal and Torres Strait Islander people can also access a First Nations Advice Clinic through Legal Aid Queensland. Any of our team can book you into one of these clinics – our contact details are listed on our website at <https://www.qhrc.qld.gov.au/contactus>.

The following Community Legal Centres also provide assistance with making a discrimination complaint:

- Caxton Legal Centre: 07 3214 6333 or [www.caxton.org.au](http://www.caxton.org.au).
- Basic Rights Queensland: 07 3847 5532 or 1800 358 511 or [www.brq.org.au](http://www.brq.org.au).
- Queensland Advocacy Inc (for people who have mental illness, intellectual disability, or cognitive impairment): 07 3844 4200 or 1300 130 582 or [www.qai.org.au](http://www.qai.org.au).
- Cairns Community Legal Centre: 07 4031 7688 or 1800 062 608 or [www.cclc.org.au](http://www.cclc.org.au).
- Townsville Community Law: 07 4721 5511 or [www.townsvillecommunity.law](http://www.townsvillecommunity.law).

To find more community legal centres, see the Community Legal Centres Queensland website at [www.communitylegalqld.org.au](http://www.communitylegalqld.org.au) or call 07 3392 0092.

To find a private lawyer, you can call the Queensland Law Society on 1300 367 757 or visit [qls.com.au/findasolicitor](http://qls.com.au/findasolicitor).[www](http://www).

## What should I include in my complaint?

For us to be able to assess your complaint and see if it is something we are able to deal with, you need to include enough information about what happened to you. Make sure you include details like who was responsible, where, when and when, and what happened.

When lodging a complaint, we ask that you do NOT provide:

- more than 20 pages including attachments
- zip files or drop boxes
- links to follow (we do not follow links)

You also need to give us your name and contact details. It is not possible to make a complaint anonymously.

Be aware that everything you send us as part of your complaint will be sent to the person or organisation you are complaining about, including the address you give for the delivery of mail. If you want to keep your home address private, you can use an email address, a PO Box, or the address of an organisation, lawyer, or other reliable person.

## Can I withdraw my complaint?

Yes. You can withdraw a complaint at any stage.

## What happens with my complaint?

**Assess:** We assess your complaint to decide if, on the basis of what you have said, there may have been a contravention of the Anti-Discrimination Act, the Human Rights Act, or the Public Interest Disclosure Act.

**Accept or reject:** If we accept your complaint, a complaint handler will contact you to explain what will happen next. We will send a copy of your complaint to the respondent (the person or people that your complaint is about) and they will have an opportunity to respond. If we don't accept your complaint, we will write to you explaining the reasons for our decision.

**Conciliate:** Most complaints are resolved through the conciliation process. You and the respondents will be directed to attend a conciliation conference in which you will be asked to talk about your complaint and the impact it has had on you. The respondents will be asked to listen to you without interrupting, and will have the opportunity to talk about the complaint in a respectful way. The process is managed by an impartial conciliator from the Commission who ensures the process is fair to everyone.

**Refer:** If your complaint isn't resolved through conciliation, you may ask for it to be referred to a tribunal to be decided. This may involve a hearing similar to a court.

## What is the Commission's role?

The Commission is impartial and will not take sides. Our role is not to decide who is right or wrong but to help people resolve complaints.

The Commission's role is to:

- work to ensure that everyone puts forward their point of view, is listened to, and feels safe
- assist everyone reach agreement about how to resolve the complaint
- ensure the process is fair

A conciliator from the Commission will manage your complaint and be available to provide information and explain the process, but will not advocate on your behalf.

Many complaints are resolved through the conciliation process. This involves bringing all the parties together (in person, by phone, or online) at a conciliation conference to discuss the issues and try to resolve them.

We are not a court or tribunal, and don't have the power to decide if discrimination, harassment, or limitations on human rights have happened.

Read more about conciliation conferences on our All about conciliation fact sheet, available from our website at <https://www.qhrc.qld.gov.au/resources/fact-sheets>.

If you want someone to advocate for you in the complaints process, you should get legal advice or other support - see the 'Do I need a lawyer?' information further up on this fact sheet

## Privacy information for people making a complaint

If you make a complaint and it is accepted, a copy of it will be given to the respondent (person or organisation you are complaining about). This includes the address for delivery of mail you provide us with. If you want to keep your home address private, you can use an email address, a PO Box, or the address of an organisation, lawyer, or other reliable person.

Otherwise, your personal information will generally be treated confidentially.

Read our privacy notice for more information about how we use and disclose your personal information, at [www.qhrc.qld.gov.au/privacy](http://www.qhrc.qld.gov.au/privacy).

If you have any concerns about your privacy, talk to the conciliator who is managing your complaint, or call our enquiry line on 1300 130 670.



### Class actions in Australia: An overview

1 December 2021

<https://www.allens.com.au/insights-news/insights/2021/11/class-actions-in-australia/#anchor5>

#### Key issues and trends in Australian class actions

Class actions are an established and important part of the Australian legal landscape. Over the course of the past decade, Australia has become the most likely jurisdiction outside of the United States in which a corporation will face significant class action litigation.

Developments in the Australian legal landscape – including increasingly plaintiff-friendly class action laws, the acceptance of third party litigation funding, and a growing number of plaintiff class action legal practices – have facilitated that evolution. At least in part, these developments are the direct result of historical support for class actions (and third party funding of class actions) as an important means of facilitating access to the civil justice system. The checks and balances in the Australian system have, however, helped to prevent what was predicted in the mid-2000s to be an ‘explosion’ of class action activity.

We outline below some of the key issues and trends in Australian class actions.

## JUMP TO

1. [The Australian class action regime](#)
2. [How are the class actions regimes in Australia and the United States different?](#)
3. [Class action activity in Australia](#)
4. [Funding of class actions](#)
5. [Other drivers of class action activity](#)
6. [Strict liability claims](#)
7. [Responding to class action risk in Australia](#)

### *The Australian class action regime*

Most class actions in Australia are commenced under the Federal Court's representative proceeding regime.<sup>1</sup>

The key features of that regime include:

- **threshold requirements:** the following requirements must be met to commence a class action:
  - there must be seven or more persons with claims against the same defendant;
  - the claims must be in respect of, or arise out of, the same, similar or related circumstances; and
  - the claims must give rise to at least one substantial common issue of law or fact;
- **representative plaintiff(s):** the claim is brought on behalf of all class members by one (or a small number of) representative plaintiff(s) – the representatives are the only class members to be parties to the proceedings;
- **class definition:** the class can be defined by a list of names or by a set of criteria (such as all persons who acquired shares in Company XYZ during a certain period) – it is not necessary to name members of the class, or to specify the number of people in the class or the total value of their claims;
- **opt-out regime:** every potential claimant who falls within the class definition is a member of the class unless they opt out of the A class may, however, be defined in a way that effectively requires members to opt in to the class (including by entering into a retainer with a particular law firm or an arrangement with a particular third party funder);
- **settlement approval:** once proceedings are commenced, any settlement must be approved by the court – this requires the court to be satisfied that the settlement is fair and reasonable, and in the interest of class

### *How are the class actions regimes in Australia and the United States different?*

Class actions in Australia are different from class actions in the United States in (at least) the significant ways outlined in the table below:

## CLASS CERTIFICATION

**United States:** The lead plaintiff bears the onus of satisfying the court that the case satisfies the threshold requirements for proceeding as a class action.

**Australia:** The onus is on the defendant to establish that the threshold requirements referred to above have not been met.

## COMMON ISSUES

**United States:** Common issues must predominate over individual issues.

**Australia:** There need only be one substantial common issue of law or fact.

## COSTS

**United States:** Each party bears their own costs irrespective of the outcome.

**Australia:** The unsuccessful party will generally be ordered to pay the successful party's costs on a party/party basis.

## CONTINGENCY FEES

**United States:** Lawyers are permitted to charge based on a percentage of any amount recovered.

**Australia:** Contingency fee structures are generally prohibited for lawyers (but not for third party funders) in all jurisdictions except the Supreme Court of Victoria.

The absence of a class certification process and the low common issues threshold make it easier to commence and maintain a class action in Australia than in the United States. As a result, the Australian class action regime has been described as 'one of the most liberal class action rules in the entire world'.<sup>2</sup> The Australian position as to costs is, however, generally acknowledged as being a significant deterrent to speculative litigation.

**CLAYTON UTZ**

## Initiating Proceedings

### Who can bring a class action?

Anyone with sufficient interest to commence a proceeding on his or her own behalf against a particular defendant or defendants can commence proceedings on behalf of a class. In addition, there are federal legislative provisions that allow the Australian competition regulator, the Australian Competition and Consumer Commission (ACCC), to pursue private enforcement (including by way of class actions) on behalf of persons who have suffered, or are likely to suffer, loss or damage by reason of conduct that contravenes those federal provisions.

### **In which courts may class actions be brought?**

- Federal Court of Australia (since 1992)
- Supreme Court of Victoria (since 2000)
- Supreme Court of New South Wales (since 2011)
- Supreme Court of Queensland (since 2016)
- Supreme Court of Tasmania (since 2019)

Whilst each of the state regimes are modelled on the federal regime, there are subtle differences between each jurisdiction.

### **How is a class action initiated?**

A class action is commenced by the representative plaintiff or representative plaintiffs filing an originating process in court. The originating process must:

- describe or otherwise identify the group members to whom the proceeding relates; and
- specify the nature of the claims made on behalf of the group members and the relief sought; and
- specify the questions of law or fact common to the claims of the group members.

While the claimants must describe the group in the originating process, there is no obligation to identify, name or even specify the number of group members.

### **Are there certification requirements? What are the threshold criteria?**

There is no requirement that the proceedings be judicially certified as appropriate to be brought as a class action, however, before a class action can be commenced, three threshold criteria must be met:

- 7 or more persons have claims against the same person or persons;
- the claims of those persons are in respect of, or arise out of, the same, similar, or related circumstances; and
- all claims of those persons give rise to a substantial common issue of fact or law.

There is an assumption that the claim is validly brought unless the respondent brings an action seeking to strike out the claim for failure to meet the threshold requirements.

### **What is the limitation period for bringing a class action? Can it be paused?**

Limitation periods (that is, the maximum period of time which can elapse from the time of a cause of action arises until the commencement of court proceedings relating to that cause of action) exist but vary considerably depending on the cause of action. When a class action is commenced, the running of any limitation period is suspended and does not begin to run again until either the group member opts out of the proceedings or the proceedings are finally determined.

# The Class

## **Class membership**

A class action can have as many group members as satisfy the group definition and elect not to opt out. A group member definition may be drafted broadly in order to encompass a larger number of individuals (for instance by incorporating multiple models of a product manufactured by the same company). Where this occurs, it is common for there to be additional representative plaintiffs appointed for each "sub-group" within the class, in order to deal with issues which arise in relation to some, but not all group members.

Because group members are not parties to the litigation and it is only the representative party who needs to prove his or her case, group members do not have to take any action or play an active role in order to be part of the class, at least until a judgement or settlement occurs.

## **Notice requirements**

Though group members are not required to take an active role, Australian law requires group members to be notified of various matters so that group members can make informed decisions concerning their rights. These include: the existence of proceedings (and their right to "opt out"), where the representative plaintiff withdraws (to be replaced by another representative), where an application for dismissal of the proceedings for want of prosecution is made, or where the parties propose to settle the proceedings. There are specific requirements for the form of notices given to group members. The content and manner of distribution will depend on the individual circumstances of the case.

## **Opt out**

Each of the class actions regimes prescribe an opt-out system. At some pre-defined stage in the proceedings, the court will settle on the particulars of an 'opt out notice' which includes fixing a date by which group members may opt out of proceedings, by way of written notice to the court. If a claimant is within the class as defined but does not opt out before the fixed date, then they will be bound by any judgment of the court.

The court will make specific orders as to the form and media for publication of that notice, and the form of notice will depend on the case. Notice is sometimes given by way of press advertisements in national newspapers, by radio or television broadcast, or publication online or via social media. Direct notification is also used where possible.

The courts have also permitted classes to be defined in such a way that only persons who had signed up with a particular litigation funder (and their lawyers) could be a class member – in effect, a form of gate-keeping or informal opt-in system.

## **If people opt out, can they start their own proceedings?**

If a group member decides to opt out of proceedings before the deadline, they will not share in any settlement or favourable judgment made by the court. However, the individual

is then able to pursue an individual claim against the respondent on the same allegations made in the class action, and the normal rules of civil procedure will apply.

### **How are competing and/ or overlapping class actions managed?**

This area of the law continues to evolve. As there is no "certification" regime in Australia, it is possible, and indeed frequent, for multiple class actions to be commenced (by different plaintiffs/ law firms) against the same defendant(s) in respect of similar conduct.

Overlapping class actions will generally be case managed in the same court (with a formal transfer protocol in place between the State-based Supreme Courts and the Federal Court) by the same judge.

There is presently no formal process for resolving competing or overlapping class actions and how the court addresses multiple class actions is a matter of discretion and case management which depends on the particular circumstances. The courts have taken a number of different approaches in the past, including allowing all proceedings to continue culminating in a joint trial, consolidating competing proceedings, and choosing one proceeding to continue whilst staying the others.

## **Procedure**

### **What happens after a class action is commenced?**

Once a class action has been commenced, it will continue until resolved unless the court determines that the proceeding should not continue as a class action. The principal basis for that determination is either that the action does not satisfy the mandatory criteria or that it is not otherwise in the interests of justice.

Class actions are heavily reliant on constant judicial management. Typically, class actions are periodically listed for "case management conferences" (also known as "directions hearings") where the judge sets and oversees compliance with a court timetable to ensure that the proceedings is resolved as quickly and efficiently as is possible in the circumstances.

### **How is a class action defended?**

Every class action is unique and, as a result, the way each class action is defended will depend on the particular facts and issues between the parties. Some class actions require interlocutory management, some are resolved at an early stage and some go to trial.

### **How are class actions managed?**

Civil proceedings in Australia are generally heard by a judge sitting without a jury. Under the Federal Court's "docket system" a class action will be allocated to a judge from when it is commenced, who is then responsible for managing the case until final disposition. In class actions commenced in a State-based Supreme Court, proceedings are similarly allocated to a docket judge for case management, however it is uncommon for the same judge to then preside over the eventual trial.

## **Common Questions and Trial**

In most respects, a class action trial proceeds in the same way a single plaintiff trial is conducted. However, the existence of common questions and the plaintiff's role as a "representative" mean that the procedure differs.

Importantly, though there is no standard process for how a class action will proceed, it is common to determine the lead plaintiff's case first, in an attempt to answer "common questions" for all group members. In some courts, this may be preceded by a trial of preliminary issues of fact, or mixed fact and law.

Any decision in a class action (be that on preliminary issues, or common questions arising through determination of the lead plaintiff's case) is binding on all group members who did not opt out by the Court deadline.

### **How are non-common or individual issues dealt with?**

Where the determination of the questions common to group members does not finally determine the claims of all group members and there are questions common to the claims of only some group members, the court may direct that those questions be determined by sub-groups or alternatively by appointing sample group members.

A sub-group empowers the court to establish a number of smaller representative proceedings, and determine common issues in those smaller proceedings, within the overarching representative proceeding which determines issues that are common to all group members.

In addition, the court can allow an individual group member to take part in the proceeding for the purpose of determining a question that relates only to the claim of that member. If the sub-group questions or the individual questions cannot be adequately dealt with, the court can direct that further proceedings be commenced

It is increasingly common for individual issues to be dealt with, following a binding court decision, by agreement, being in accordance with a "settlement scheme" negotiated by the parties (and approved by the Court).

## **Settlement**

### **Approval of class action settlement**

Settlement can occur at any point in the class action. However, once commenced, a class action may not be settled or discontinued without the approval of the court.

As part of the settlement approval, group members will be given notice of the settlement and the opportunity to object to the settlement by filing a notice of objection in court. The court will consider all of the notices of objection filed when determining whether to approve a settlement, and group members who have filed a notice may appear before the court during settlement approval and make submissions (with separate legal representation if

they wish). It is worth noting that the court considers an absence of objections to be a factor in favour of determining that the proposed settlement is fair and reasonable.

In approving a settlement and determining whether it is a fair and reasonable outcome of the litigation for all group members, the court must form a view as to whether to approve a settlement on the material presented and as to the prospects of success and risk of loss considered to apply in the particular case, the advice provided by counsel. It must take an active role, as the approval of the court is a protective mechanism safeguarding the interests and rights of group members. The court will scrutinise whether any settlement or discontinuance of class actions has been undertaken in the interests of the group members as a whole and is not solely beneficial to the class applicant and respondent. The court may well reject a privately negotiated settlement if it is not satisfied that the outcome is in the interests of group members as a whole.

### **Administration of settlement**

If a class action settlement is approved by the court, the parties will devise a settlement scheme to determine how each group member's claim is to be assessed in order to calculate and deliver individual entitlements. A registration process must occur as part of settlement in order to identify the number and identity of group members taking part. Where group members do not register, they are still bound by an approved settlement (but will not be entitled to receive any payment). They cannot commence their own separate action if they do not like the terms of a Court approved settlement.

## **Judgment**

### **What is the effect of judgment?**

Each of the regimes stipulate that a judgment in a class action must describe or otherwise identify the group members who will be affected by it, and binds all such persons so described other than any person who has opted out of the proceeding. However, it does not determine each individual group member's claim. Rather, criteria for assessment are developed in light of the judgment and each group member's claim is then determined against that scheme.

### **What appeal rights exist (generally)?**

In virtually all jurisdictions in Australia there is a right of appeal against the judgment of a trial judge. The procedure varies depending on the jurisdiction in which the original trial was conducted. Leave to appeal is usually necessary when the appeal is from an interlocutory judgment.

Even though appeals generally turn on questions of law, it is not uncommon for parts of the evidence used at trial to be reviewed during the course of an appeal. A party dissatisfied with the decision of a state or territory court of appeal or the Full Federal Court may seek leave to appeal to the High Court of Australia, the country's ultimate appellate court. Appeals to the High Court are essentially restricted to questions of law. The High Court will grant leave to appeal only if it is convinced that there is a significant question to be determined.

In a class action, a representative plaintiff, or sub-group representative plaintiff, may appeal a judgement on behalf of all group members or all sub-group members within a specified period of time. If a representative plaintiff, or sub-group representative plaintiff does not appeal within the specified time, a group member has a further period of time in which to appeal. A group member does not have the option to opt out of an appeal.

An individual who has had an individual issue determined by the court may appeal from a judgment in respect of that issue.

A respondent may appeal from a judgement against all group members or sub-group members.

## Litigation Funding and Costs Recovery

### **Can a defendant obtain security for costs?**

Where an application is made by a defendant, the Court has discretion to order that the representative plaintiff provide security for costs to ensure that there are sufficient funds available to meet a costs order against them. If the class action is backed by a litigation funder, specific disclosures must also be made to the Court about the funding arrangements.

### **Can the successful party recover its costs (class actions)?**

The loser-pays rule applies in Australian class actions – the unsuccessful party is usually ordered to pay the costs of the successful party.

These costs include not only court filing fees, copying charges and other out-of-pocket expenses, but also the lawyer's professional fees. In this context, a reference to costs is not a reference to the total or actual costs incurred by the successful party. Recoverable costs are generally calculated by reference to a court scale, which invariably limits the amount a successful party can claim for disbursements and services performed by their lawyers.

Responsibility for payment of costs may also be agreed between the parties as part of, or separate to, an offer of settlement. The parties may agree on a precise sum for costs payable or a mechanism to determine that sum (for instance, assessment by an independent third party).

### **What is the representative plaintiff's liability? Do the group members need to contribute?**

In a class action, only the representative plaintiff is liable to pay costs and is entitled to recover costs. In addition, if the court has made an award of damages in a class action, the representative plaintiff may apply to the court for reimbursement of costs that exceed the amount recoverable from the other party. If the court is satisfied that these additional costs have been reasonably incurred, it may order the excess paid out of the damages awarded.

The courts have also permitted classes to be defined in such a way that only persons who had signed up with a particular litigation funder (and their lawyers) could be a class member – in effect, a form of gate-keeping or informal opt-in system.

### **How are costs calculated?**

Costs are either agreed or assessed. This will usually occur at the end of the proceedings. The quantum of any costs recovered and the calculation of those costs will vary considerably depending upon the nature of the class action and the issues that were litigated.

### **Third-party litigation funding**

A third-party who has no direct interest in the outcome of the litigation agrees to fund the litigation in return for a share of any favourable judgment or settlement. If the representative plaintiff is unsuccessful, the litigation funder does not receive any return on its investment.

Typically, third-party funders sign up a portion of but not the entire class. This means that some group members are getting a “free ride”. It is generally accepted that this is unfair and the burden of litigation should be borne by all those who derive a benefit. Over the years, the courts have taken different approaches to resolving this problem, including requiring all group members to contribute towards the costs of the litigation, regardless of whether they have signed up with the third-party funder. This area of the law continues to evolve.

Following recent changes to the law, litigation funders acting in Australian class action proceedings are now (generally) required to hold an Australian Financial Services License (AFSL) and as a consequence are subject to various obligations under the conditions of their AFSL as well as the Corporations Act 2001 (Cth).

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Pearl Wilson, Expert's Assistant

Welcome! How can I help with your ex parte law question?

You

Obtain declarative order from High Court in QLD on whether the definition of domestic terrorist as defined by the chief commissioner of police applies to me and if not that a protection order against all organs of state be issued binding them in terms of the court's findings and that should they act contrary to the order, that an interim order of restraint or arrest (as the court deems fit) be made binding on them. All in the light of the recent case of Morrison "suicide" in Warwick. My activities at [www.irff.online](http://www.irff.online) bear reference. If you think I am irrational in considering that I am at risk, please do not even bother replying. You will need to do some research.



Pearl Wilson, Expert's Assistant

Was a protective order issued? What were the basic terms?

You

No. No application has been made yet. I yet need to find precedents and research the rules of court etc.



Pearl Wilson, Expert's Assistant

Is there ongoing abuse or harassment? Were the police called?

You

Only through the media. It amounts to a sword of Damocles. I have no idea whether the hysterical attitude adopted by the Police Commissioner will result in me being a similar target. The threat is reasonable and ongoing until a declarative is issued by an independent and impartial forum that can bind the state with it's judgment.



Pearl Wilson, Expert's Assistant

Is there anything else the Lawyer should know before I connect you? Rest assured that they'll be able to help you.

You

They need to do their due diligence on this inquiry of course. My website is [www.izak@izak.co.za](http://www.izak@izak.co.za) the relative link is labelled Freedom Foundation. I can end my research to date which comprises 73 pages.



Pearl Wilson, Expert's Assistant

OK. Got it. I'm sending you to a secure page to join JustAnswer for only AU\$2 (fully-refundable). While you're filling out that form, I'll tell the Criminal Lawyer about your situation and then connect you two. Continue >>

QUEENSLAND  
PEACE AND GOOD BEHAVIOUR ACT 1982  
(Sections 5 and 99)  
PEACE AND GOOD BEHAVIOUR REGULATION 2020  
(Section 9)

**SUMMONS**

**To:** \_\_\_\_\_ (the defendant)

of \_\_\_\_\_ in the State of Queensland

A complaint has been made before me and it has been substantiated to my satisfaction that  
on \_\_\_\_\_ at \_\_\_\_\_

**1. you threatened—**

- (a) to assault or to do any bodily injury to the complainant or to any person under the care or charge of the complainant
- (b) to procure any other person to assault or to do any bodily injury to the complainant or to any person under the care or charge of the complainant
- (c) to destroy or damage any property of the complainant
- (d) to procure any other person to destroy or damage any property of the complainant

and the complainant is in fear of you.

**OR—**

**2.** That your intentional conduct, directed at the complainant, has caused the complainant to fear that you will destroy or damage any property of the complainant.

**You, the defendant, are hereby directed to appear before the Magistrates Court at:**

Place:

Date:

Time:

to answer the complaint and to be further dealt with according to law.

**GIVEN** under my hand at

Place:

Date:

.....  
(Signature of Justice of the Peace)

.....  
(Name of Justice of the Peace)

---

OATH OF SERVICE

I,

of

do swear that on the \_\_\_\_\_ day of \_\_\_\_\_, 202 , I served the within-named defendant with a copy of the within summons and a copy of the complaint whereon the said summons was issued by:

\*(a) delivering a copy thereof to the defendant personally at:

\*(b) leaving a copy thereof with

for the defendant at

\*the usual place of \* residence/ \*business

\*the place of \*residence/ \*business last known to me

of the defendant who could not reasonably be found.

Signed and \*sworn/affirmed by the said deponent at \_\_\_\_\_, 202 .

this \_\_\_\_\_ day of \_\_\_\_\_

.....

Deponent

.....

Justice of the Peace

\* Delete whichever is not applicable

Form 1  
QUEENSLAND  
PEACE AND GOOD BEHAVIOUR ACT 1982  
(Sections 5 and 99)  
PEACE AND GOOD BEHAVIOUR REGULATION 2020  
(Section 8)

**COMPLAINT**

I, \_\_\_\_\_ (the complainant)  
of \_\_\_\_\_ in the State of Queensland  
swear/affirm that \_\_\_\_\_ of \_\_\_\_\_

**1. has threatened:**

- (a) to assault or to do any bodily injury to the complainant or to any person under the care or charge of the complainant
- (b) to procure any other person to assault or to do any bodily injury to the complainant or to any person under the care or charge of the complainant
- (c) to destroy or damage any property of the complainant
- (d) to procure any other person to destroy or damage any property of the complainant

and the complainant is in fear of the person complained against, namely

\_\_\_\_\_

**OR**

**2. that the intentional conduct of \_\_\_\_\_ (the defendant) directed at the complainant has caused the complainant to fear that the defendant will destroy or damage any property of the complainant.**

The facts of the complaint are:

.....  
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.....  
.....

I, \_\_\_\_\_ (the complainant)  
request that \_\_\_\_\_ (name of Justice of the Peace)  
proceed according to law.

.....  
(Signature of the complainant)

**SWORN/AFFIRMED** before me at \_\_\_\_\_ in the State of Queensland on the \_\_\_\_\_ day of \_\_\_\_\_

.....  
(Signature of Justice of the Peace)

.....  
(Name of Justice of the Peace)

**Compiled by Dr Izak Labuschagne**

Please conduct your due diligence of the author at

[www.izak.co.za](http://www.izak.co.za) and all related links

