



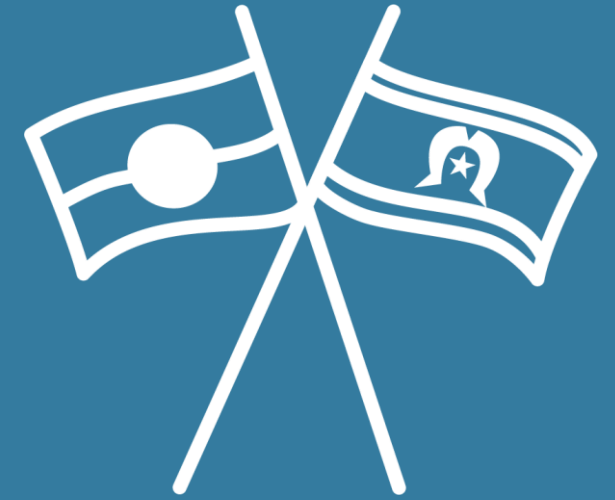
Queensland
**Human Rights
Commission**

Human rights in legal advocacy

Community Legal Centres Queensland webinar

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Acknowledgment of Country



The Queensland Human Rights Commission acknowledges Aboriginal and Torres Strait Islander peoples as the First Australians and recognises their culture, history, diversity and their deep connection to the land, waters and seas of Queensland and the Torres Strait.

We acknowledge that the Commission's offices are on lands of the traditional owners of the Brisbane, Rockhampton, Townsville and Cairns areas and pay our respects to Elders past, present, and emerging.





Learning outcomes

- Key concepts: public entities; assessing compatibility; proper consideration;
- Options for lawyers in using human rights
- The year in review
- Your questions



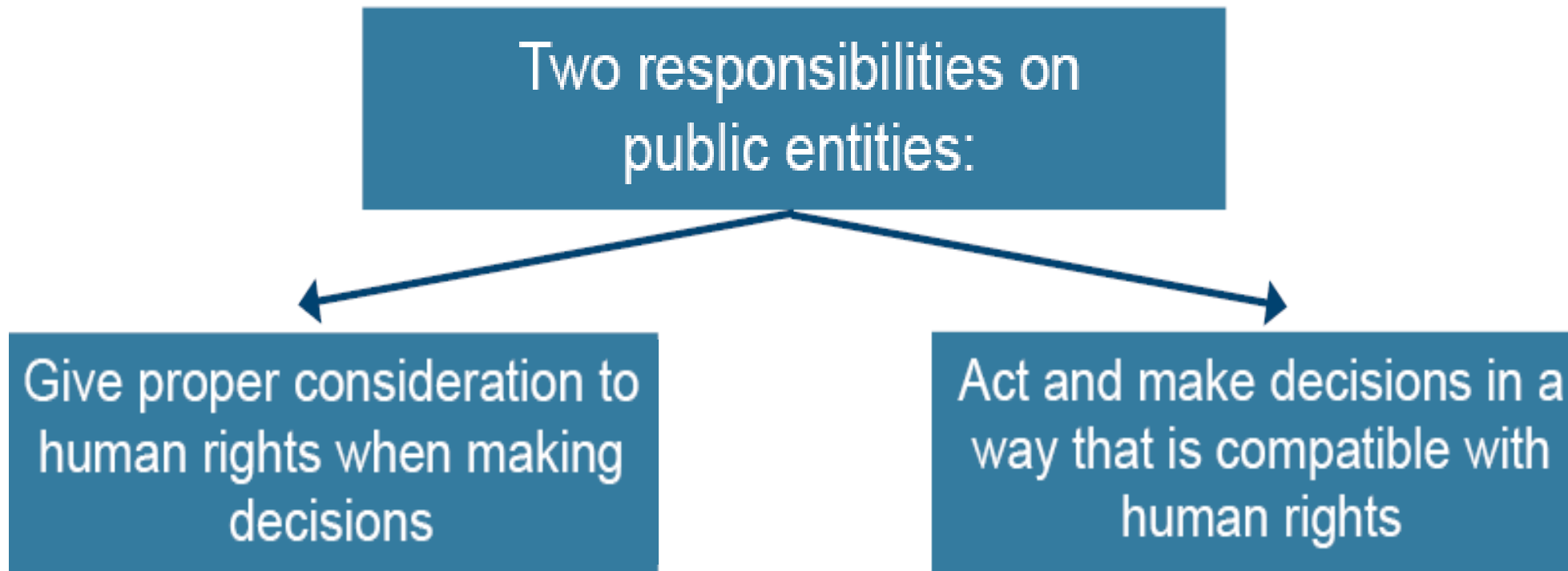
Public entities under the *Human Rights Act 2019*

- ❖ **Core public entities - s 9(1)**
 - ❖ Queensland public servants, QPS, local government/councils, Minister
- ❖ **Functional public entities – s 9(f), (h), (2)(a)**
 - ❖ Performing functions of a public nature for the State or a public entity (functions of a public nature – s 10)
- ❖ Queensland courts acting in administrative capacity – s 9(4)(b)



Responsibilities of public entities - s58(1)

Public entities must act and make decisions in a way that is compatible with human rights.



Compatibility with human rights - s8, s 13

- ❖ Identify decision/action and relevant rights
- ❖ Are rights limited? (Applicant)
- ❖ If limited, are they justified? (public entity)
 - ❖ Lawful
 - ❖ Legitimate (purpose)
 - ❖ Necessary (rational and least restrictive)
 - ❖ Proportionate (protection of right vs purpose of limitation)



Proper consideration – s58(1)(b) and (5)

- ❖ s58(5) giving proper consideration to a human right in making a decision includes, but is not limited to–
 - (a) identifying the human rights that may be affected by the decision; and
 - (b) considering whether the decision would be compatible with human rights.
- ❖ Not a sophisticated legal exercise, but requires real and genuine consideration.
- ❖ Level of consideration can depend on circumstances, including identity of decision maker.



Options for lawyers and using human rights

- ❖ Interpretation of Qld legislation (all matters) – s 48
- ❖ Piggy back proceedings against public entities – ss 58 and 59
- ❖ Courts and tribunals acting administratively – s 58
- ❖ Direct application – s 5(2)(a)
- ❖ Complaint to QHRC about a public entity – s 64



Statutory interpretation - s48

(1) All statutory provisions must, to the extent possible that is consistent with their purpose, be interpreted in a way that is compatible with human rights.

(2) If a statutory provision can not be interpreted in a way that is compatible with human rights, the provision must, to the extent possible that is consistent with its purpose, be interpreted in a way that is most compatible with human rights.

(3) International law and the judgments of domestic, foreign and international courts and tribunals relevant to a human right may be considered in interpreting a statutory provision.



Piggy back legal proceedings - s59

Allows for alleged breaches of s58 to be 'piggy-backed' on to proceedings that are:

- ❖ for relief or remedy
- ❖ for an act or decision of a public entity
- ❖ on the ground that the act or decision was, other than because of section 58, unlawful.

Piggy back action may be successful even if original basis of unlawfulness is not.

No standalone right of action; no damages.



Acting in an administrative capacity - s9(4)

QCAT when
appointing
a guardian



Bail
application
to SC



Mental
Health
Review
Tribunal



Application
for trial
without
jury



QCAT
review of
Blue Card
decision



QIRC when deciding
whether to exempt
someone from ADA



Direct application - s5(2)(a)

- ❖ ‘This Act applies to ...a court or tribunal, to the extent the court or tribunal has functions under part 2 and part 3, division 3...’
- ❖ Where Part 2 sets out the test for compatibility with human rights and the human rights protected under the Act.

Interventions - s 51 and Supreme Court referrals – s 49

QHRC and the AG have a right to intervene in any court or tribunal proceedings in which:

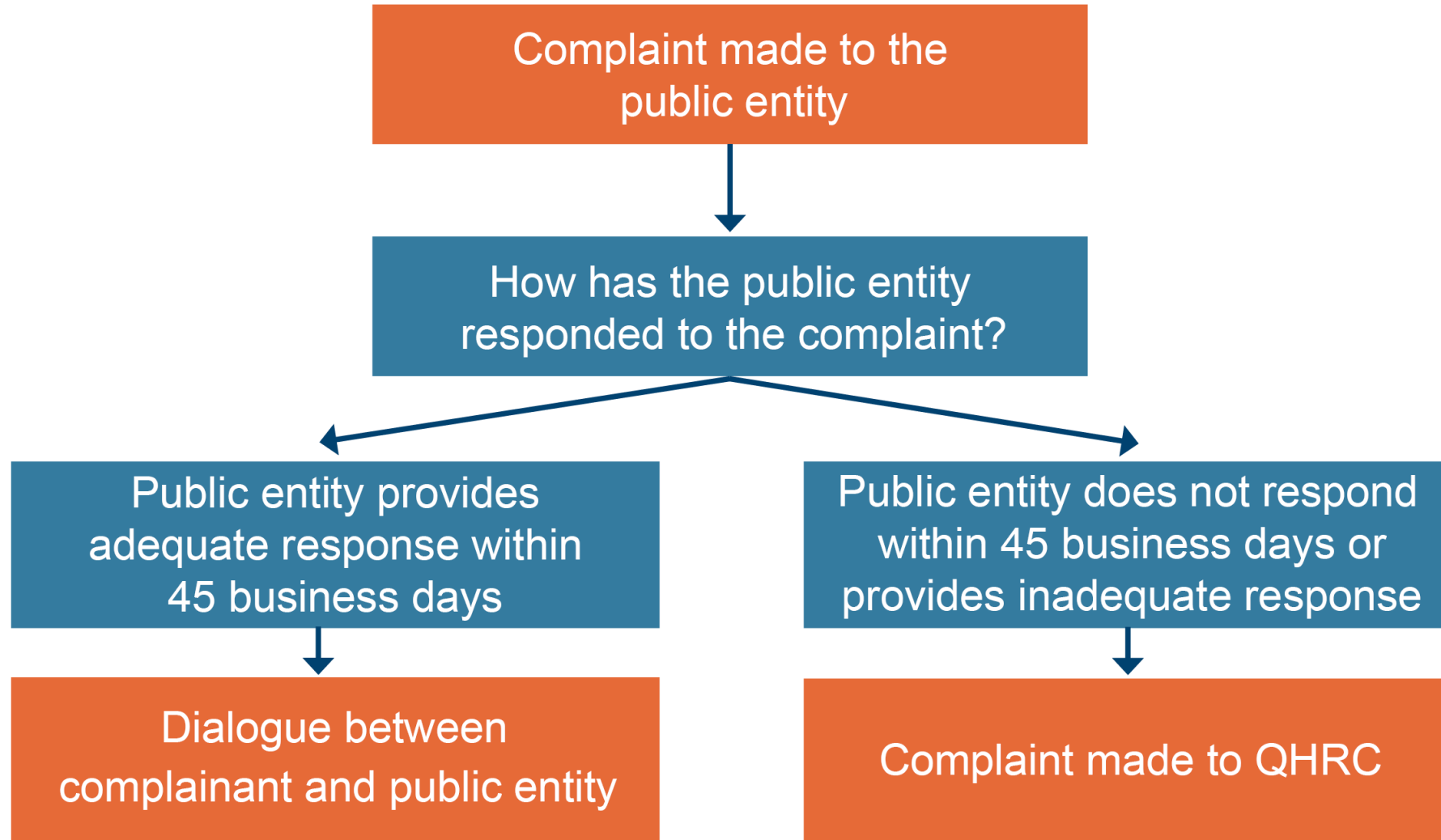
- ✓ a question of law arises that relates to the application of the HRA, or
- ✓ a question arises in relation to the interpretation of a statutory provision in accordance with the HRA.

QHRC's purpose in intervening is to be in an independent and expert advocate for the HRA. (guidelines on website)

A party can apply for a question to be referred to the SC.



QHRC *Human Rights Act* complaint process



Possible remedies for a client (at any stage)

- ❖ apology to acknowledge hurt & distress
- ❖ change to, or reversal of decision or action
- ❖ change to client's circumstances
- ❖ agreement to provide service or implement practice/policy
- ❖ agreement to review/change policies or procedures
- ❖ Unresolved QHRC conciliation: QHRC report may contain steps public entity can take to ensure acts / decisions are compatible.



Tips for advocacy in QHRC complaints process

- ❖ 1 year time limit - s70(1)(d)
- ❖ Clearly identify decision or action of public entity complained of
- ❖ Pick the primary rights limited without justification.
- ❖ Make internal complaint and consider any response – also need to wait 45 business days - s 65
- ❖ What outcome does your client seek? Is conciliation the most appropriate forum to achieve those outcomes?

