

Chapter 2

Fair communities

To provide fair communities, DJAG is focused on:

- providing fair and just court and tribunal services to uphold the rights of Queenslanders
- resolving disputes and conflicts in a civil and peaceful manner
- applying lawful decision-making with ethics, transparency and integrity, and
- respecting, protecting and promoting the human rights of Queenslanders when taking action and making decisions.

Human Rights Act 2019

The *Human Rights Act 2019* commenced in full on 1 January 2020.

Its main objectives are 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.

The *Human Rights Act 2019* contains 23 sections which list the human rights protected by the Act, and places obligations on the public sector to take actions and make decisions compatibly with human rights.

DJAG's implementation of the Act was led internally by the Human Rights Unit (the HRU), which has also overseen whole-of-government implementation.

In 2021–22, the HRU continued to support departments to embed human rights into their business-as-usual activities through its whole-of-government activities, including leading and supporting whole-of-government dialogue about human rights, coordinating activities to implement human rights into departmental business-as-usual, and providing policy guidance for departments on a range of human rights matters, including bespoke, tailored training for policy and legislation officers.

Building a human rights culture is a long-term iterative process that requires an ongoing commitment to protect, respect and promote human rights over the long-term.

This annual report highlights how efforts across DJAG in 2021–22 have continued the process of embedding human rights into DJAG's business-as-usual processes.

Protect and promote human rights

DJAG strives to provide justice for all through safe, fair and responsible communities. Much of DJAG's work protects and promotes many of the rights of Queenslanders, and DJAG is committed to continuing this important work.

DJAG business areas have continued to engage in training opportunities to further their learning and understanding of human rights, either through in-house programs or via the HRU. This has included critical decision-making training delivered by the HRU to QCAT, Strategic Policy and Legal Services (SPLS), the Registry of Births, Deaths and Marriages, the Office for Regulatory Policy, and the Legal, Policy, Procedures and Development team in Court Services Queensland.

The HRU also continued to maintain the currency of the range of resources about human rights that are available to DJAG staff through the Human Rights Portal and DJAG intranet, including the publication of the revised *Guide to the Nature and Scope of Human Rights* and an updated *Guide to Reporting on Human Rights* to support all business units to understand and meet their annual reporting obligations under the Act.

DJAG has also made efforts to directly protect and promote the human rights of community members when engaging with clients and stakeholder. For example, the OPG revised its complaints management policy and website as part of its implementation of the recommendations of the QAO report, *Responding to complaints from people with impaired capacity—Part 2: The Office of the Public Guardian*. The

revised policy and website provide a more streamlined and accessible pathway for stakeholders to provide feedback and make complaints, including human rights complaints.

In the development of justice policy and legislation, DJAG has continued to provide comprehensive human rights impact assessments of limitations on human rights imposed by primary and subordinate legislation within DJAG's portfolio responsibility, including via Statements of Compatibility and Human Rights Certificates. Human rights are also actively considered in decisions by the Ethical Standards Unit (ESU) either when a decision is directly made by the ESU or where a decision is made by a decision-maker in an ESU-facilitated process.

Build a culture that respects and promotes human rights

In 2021–22, DJAG has continued to undertake activities to further embed respect for human rights. The DJAG strategic plan encourages a shared understanding of DJAG's commitment to human rights and identifies ways that DJAG staff can work to protect and promote human rights of Queenslanders in all of their work.

The operation of the DJAG Human Rights Working Group continues to ensure business areas are progressing efforts to embed the Act, including by providing a forum for discussion about human rights, and sharing learnings and successes across DJAG business areas.

Across DJAG, business areas continue to prioritise conversations with staff about human rights which contributes to a culture within the department where human rights are front and centre of our everyday business. For example, the Executive Services Branch has mandated human rights training for all new staff and has a standing human rights agenda item as part of their regular team meetings to discuss new developments within Queensland human rights jurisprudence. The ESU mandatory

training module for all new DJAG staffers also incorporates consideration of human rights in its legislative framework training.

Human rights commitments have also been incorporated into recruitment processes and staff personal development plans to ensure staff understand the department's commitment to human rights.

Promote a dialogue about human rights

DJAG has actively worked to promote a dialogue about human rights both across government, with external stakeholder partners and with the community.

For example, the *Public Advocate's Business Plan 2021–22* includes a range of actions aimed at influencing stakeholders to make policy changes to best protect the human rights of people with impaired decision-making ability. A range of work is currently underway by the Public Advocate, including a review of Queensland's acute mental health system and a project exploring adult safeguarding legislation, policy and practice (including a series of stakeholder consultation roundtables across metropolitan and regional Queensland).

The Public Advocate also released a reform options paper in October 2021 regarding the unauthorised use of restrictive practices on people with impaired decision-making ability, which remains an ongoing concern and human rights issue across multiple settings including disability services, residential aged care, and health facilities.

OPG has also prioritised human rights through its community stakeholder engagements.

For example, in 2021–22 OPG provided 53 community education and engagement sessions to various client and stakeholder groups across Queensland, which included information on how OPG promotes and protects the rights and interests of the children and young people and adults it supports. OPG also organises and chairs

quarterly meetings for education advocates to share practice experience and learnings about advocating for the right to education.

OPG is also currently working with Aged and Disability Advocacy Australia to develop an education package to assist the Gold Coast Elder Abuse Panel in understanding appropriate referral pathways for elder abuse within a human rights framework. It is intended that this package, once finalised, can be subsequently rolled out to similar panels across Queensland.

More broadly, in 2021–22, the HRU continued to run the Human Rights Policy and Legislation Network to further the conversation on human rights for policy and legislation officers across the Queensland Government, including organising forums featuring key guest speakers on important topics such as housing and human rights and climate change and human rights, as well as maintaining a regular newsletter for subscribers.

Reviews of policies, programs, procedures, practices or services undertaken for compatibility with human rights

DJAG business areas are continuing to progress reviews of policies and procedures, including internal operational procedures and decision-making frameworks and staff induction policies, to both ensure compatibility with the Act and to protect and promote human rights.

Specific examples of work undertaken by business areas include:

- The HRU developed and distributed a human rights induction pack for all DJAG employees, which provides an accessible introduction to human rights and the

obligations under the Act for new starters. A number of business areas have incorporated the induction pack into their onboarding processes.

- The OPG utilise a human rights template to assess all incoming complaints, with links to relevant SharePoint pages and practice guidance to assist staff in identifying and assessing human rights complaints, to ensure they are handled appropriately.
- OPG's referral tool for Child Advocates contains prompts to promote consideration and assessment of the human rights of children and young people, as well as prompts in template file notes for consideration of human rights.
- OPG finalised a *Child and Adult Safeguarding – Risk Management Framework*, which includes guidance regarding human rights. The framework is supported by a suite of policy and practice documents, including a learning module demonstrating how OPG is aligning to the National Principles for Child Safe Organisations while extending their applicability to adults and children with impaired decision-making capacity receiving OPG services.

2021–22 Queensland Sentencing Advisory Council community engagement

Sentencing Profile series – Kids in Court

In 2021, the Council released a Sentencing Profile Kids in Court: the sentencing of children in Queensland. The report examines courts data for cases involving children sentenced in Queensland between July 2005 and June 2019. It examines trends and patterns in the sentencing of children over a 14-year data period and provides data-driven insights.

Guide to the sentencing of children in Queensland

In 2021, QSAC released its *Guide to the Sentencing of Children in Queensland*. The guide aims to improve the community's understanding about the sentencing of children aged 10 to 17 years old.

The guide explains how Queensland courts sentence children found guilty of an offence and presents information about the principles and factors that guide the sentencing of children in Queensland, the role of the courts, who is involved in the sentencing process, how courts decide the sentence, and different penalty and sentencing options for children.

Case in Focus

To assist the community to better understand appeals against sentence and key sentencing concepts and principles, QSAC published another two summaries in a series titled Case in Focus.

The series summarises points of law and sentencing principles discussed in recent high profile or interesting appellate

court decisions in a simple and user-friendly format.

Research to understand community views on sentencing

In 2022, QSAC conducted focus groups with community members, exploring the public's understanding of sentencing matters and views on the purposes of sentencing.

Eight two-hour sessions were held across Brisbane, Cairns and Mount Isa, representing urban, regional and remote communities.

The information gathered will inform QSAC's future work, allowing the Council to better address misconceptions about sentencing.

Judge for Yourself – re-commencement of face-to-face sessions

The Council's foundational community engagement program, Judge for Yourself, aims to inform the community about the sentencing process.

In 2021–22, QSAC presented 21 face-to-face and online Judge for Yourself sessions to schools and community groups in south-east Queensland.

QSAC recorded more than 7,000 online Judge for Yourself interactions.

In 2022, QSAC re-commenced regular face-to-face Judge for Yourself sessions at schools across Queensland.

Law reforms and initiatives

Body Corporate and Community Management review

During 2021–22, LGFT progressed its review of body corporate and community management issues through the Community Titles Legislation Working Group.

The Working Group comprises key stakeholders for the community titles sector and met five times in 2021–22. Due to the volume and complexity, issues are being considered in four stages.

In 2021–22, the Working Group completed its consideration of Stage 1 and 2 issues. In Stage 1 of its work program, the Working Group considered possible improvements to the arrangements for authorising alternative insurance when a body corporate cannot comply with its insurance obligation, a recommendation of the *Australian Competition and Consumer Commission Northern Australia Insurance Inquiry* relating to the remuneration of body corporate managers for arranging body corporate insurance, and issues around the termination of community titles schemes.

In Stage 2 of its work program, the Working Group considered recommendations made by the *Commercial and Property Law Research Centre* of the Queensland University of Technology as part of its review of property law for the Government. This included recommendations about body corporate by-laws, debt recovery, and certain administrative and procedural matters in the *Body Corporate and Community Management Act 1997*.

In Stage 2, the Working Group also contributed to the development of the Government's planned statutory seller disclosure scheme by providing feedback on what information should be disclosed to prospective buyers of lots in community titles schemes.

This included considering whether building management statements should be provided to prospective buyers of community title lots and refining the content of the body corporate certificate that will be disclosed to prospective buyers of community title lots. The body corporate certificate will include important information about the specific lot being sold, as well as useful information for buyers about the rights and responsibilities of owning a lot in a community titles scheme.

During 2021–22, LGFT also led development of the Building Units and Group Titles and Other Legislation Amendment Bill 2022 (the Bill), which was introduced into the Parliament on 21 June 2022 and referred to the Legal Affairs and Safety Committee for consideration.

The Bill contains amendments to improve the operation of the *Building Units and Group Titles Act 1980* and the *Mixed Use Development Act 1993*, with a focus on making body corporate governance fairer for proprietors (for example, unit owners) in relevant developments.

In Stage 4 of its work program, the Working Group will consider options to further harmonise the *Building Units and Group Titles Act 1980* and the *Body Corporate and Community Management Act 1997*.

National charitable fundraising reforms

Throughout 2021–22, LGFT has continued work to implement two reforms, endorsed by the Council for Federal Financial Relations (CFFR) in December 2020, aimed at streamlining and harmonising national fundraising regulation.

The first proposed reform is to exempt entities registered with the Australian Charities and Not-for-profits Commission (ACNC) from their financial reporting obligations under the *Collections Act 1966* and the *Associations Incorporation Act 1981*. Amendments to the *Associations Incorporation Regulation 1999* and *Collections Regulation 2008*, to give effect to the exemption, are proposed for the third quarter of 2022.

The proposed amendments will remove a double reporting requirement for approximately 72.5% (3,625) of Queensland's 5,000 authorised fundraisers. Further, external verification requirements for financial reports will be reduced for most of these fundraisers. An estimated 12% (2,760) of Queensland's approximately 23,000 incorporated associations will similarly benefit.

The second proposed reform is to introduce a cross-border recognition scheme for the authorisation of charitable fundraising, also referred to as 'deemed registration'. A Bill containing the required amendments to the *Collections Act 1966* was introduced into the Legislative Assembly on 26 May 2022. Subject to passage of the Bill, the changes will allow ACNC-registered entities to conduct fundraising in Queensland by giving the Office of Fair Trading (OFT) notice of their intention to fundraise in this jurisdiction, rather than apply for a state-based approval.

In late 2021, CFFR and the National Cabinet agreed to develop a national model fundraising framework, for consideration by CFFR in 2022. Accordingly, in the first half of 2022 DJAG and Queensland Treasury representatives participated in an interjurisdictional working group to identify opportunities to align the state-based regulations that govern the conduct of fundraising. It is anticipated CFFR will consider the recommendations of the working group later in 2022. LGFT will work to implement any fundraising conduct reforms that are subsequently adopted by the Government.

Confiscation of proceeds of crime

The ODPP Confiscations Unit is a civil litigation team focused on enforcing the provisions of and recovering proceeds of crime pursuant to the *Criminal Proceeds Confiscation Act 2002*.

The ODPP is responsible for administering Chapter 3 of the *Criminal Proceeds Confiscation Act 2002*, where a direct connection between the property and the criminal charges must exist.

The ODPP is the statutorily appointed 'solicitor on the record' for the *Criminal Proceeds Confiscation Act 2002*, and the Confiscations Unit assist the Director of Public Prosecutions by conducting the legal work on instruction of the CCC for Chapters 2 and 2A of the *Criminal Proceeds Confiscation Act 2002*, and recovery of the Orders made under Chapter 3 of the *Criminal Proceeds Confiscation Act 2002*.

As at 30 June 2022:

- \$5.073 million was collected as a result of the execution of forfeiture orders under the Chapter 3 conviction-based scheme. This represents an increase of \$1.285 million from 2020–21
- \$119,804 was collected as a result of the enforcement of pecuniary penalty orders under Chapter 3, representing an increase of \$42,890 from 2020–2021
- \$8.786 million in assets were restrained under chapters 2 and 2A of the *Criminal Proceeds Confiscation Act 2002*, representing a decrease of \$11.373 million from 2020-2021. Chapters 2 and 2A of the *Criminal Proceeds Confiscation Act 2002* restraint continues to be impacted by societal change in asset holdings from traditional property holdings to more lifestyle-based investment, and the ongoing COVID-19 pandemic

- \$7.419 million was forfeited to the State under chapters 2 and 2A of the *Criminal Proceeds Confiscation Act 2002*, which is an increase of \$0.565 million from 2020–2021
- \$0.513 million proceeds assessment orders were granted, representing an increase of \$0.271 million from 2020–2021
- \$0.074 million unexplained wealth orders were granted, representing a decrease of \$1.320 million from 2020–2021
- \$0.080 million Serious Drug Offender Confiscations Orders were granted, representing a decrease of \$0.117 million from 2020–2021, and
- 1,124 Serious Drug Offence certificates were issued, representing an increase of 69 certificates from 2020–2021.

The work of the ODPP Confiscations Unit has had a significant and positive impact on the recovery of proceeds of crime by the state, by reducing the financial incentive to commit the crime which in turn discourages certain types of major crime.

Consumer protection

Funeral price transparency

Pricing information for funerals is now more transparent, with prices displayed upfront on a funeral provider's website and at the funeral director's place of business.

The *Fair Trading (Funeral Pricing) Regulation 2022* was made on the 11 February 2022 for commencement on 1 July 2022.

Public consultation from 12 August to 7 October 2021 indicated the making of a regulation under *the Fair Trading Act 1989* was the preferred option.

Under the new Regulation, if a person asks a funeral director about the goods and services offered for supply, the funeral director is required to provide price information. The information about price for particular goods or services must be provided within 48 hours, or a longer period if agreed between the funeral director and the person.

The new Regulation also prohibits funeral directors from entering into agreements with a person for the supply of goods and services for the burial or cremation of a body unless information about the price of the particular goods or services is provided. This includes costs of any disbursements that will be payable and the total amount payable. The regulatory framework includes offences and infringement notices to help ensure compliance.

The OFT developed information for businesses and consumers for the new Regulation. This included updating the Queensland Government website, an example funeral industry price transparency checklist, a funeral director price list example and a frequently asked questions information sheet.

The OFT's 2022–23 proactive compliance program includes an operation targeting the

funeral industry. In the first quarter of the year the operation will focus on educating traders to help them comply with the new Regulation. In the third quarter the focus will change to compliance and enforcement, particularly in relation to funeral price transparency and unfair contract terms.

Throughout 2022–23, OFT will also undertake extensive communication activities to educate consumers and traders and promote compliance.

Fairer and safer markets for Queensland consumers

The OFT aims to deliver a fair and safe marketplace for Queensland consumers and businesses. In 2021–22, OFT:

- received 18,959 consumer complaints, and
- obtained \$9.67 million redress for consumers.

Throughout the year, OFT undertook a range of stakeholder engagement activities to inform and educate consumers, businesses and licensees about their rights and responsibilities under fair trading legislation.

OFT prioritises support to certain consumers including older consumers, consumers with disability, low-income earners, Aboriginal and Torres Strait Islanders, consumers who do not speak English as a first language and young consumers. When a complaint is received and no breach of legislation is detected for which enforcement action can be taken, the OFT will still attempt to help the consumer by conciliating the complaint with the relevant trader.

In 2021–22, OFT participated in a series of Senior Expos coordinated by the DSDSATSIP. Expos were held in various electorates across Queensland. OFT officers engaged with seniors at Hervey Bay,

Caloundra, Maryborough, Cleveland, Cairns and Bundaberg to raise awareness of issues such as scam awareness, consumer product safety, consumer rights, and how to seek assistance from OFT.

In 2021–22, OFT:

- provided information and advice to 20,653 people including business representatives and consumers, participating in education and engagement activities (presentations, forums, trader visits, events and stalls)
- finalised 17,843 conciliated complaints and 2,566 investigations
- initiated 3,273 enforcement actions
- processed 20,849 new licence applications and 52,828 licence renewal applications, and
- conducted 9,663 proactive compliance checks and trust account audits.

Each year the OFT conducts a targeted program on both regulated and non-regulated industries who may look to take advantage of vulnerable consumers. As part of this program, OFT participated in a multi-agency operation in response to complaints about the sale of motor vehicles by a licensed motor dealer who failed to respond to warranty claims.

The OFT collaborated with the Department of Transport and Main Roads, the Office of Industrial Relations, the QPS and the Gold Coast City Council on this matter. The operation resulted in each participating agency commencing enforcement action against the licensed motor dealer.

Consumer product safety

The OFT promotes safety in the supply and use of consumer products and ensures certain goods supplied in Queensland meet prescribed safety standards. The goal of the product safety program is to minimise the risk of product related injury to consumers.

The OFT's proactive compliance program helps to identify issues in the marketplace

through targeted and random 'spot checks' at retail premises, warehouses, importers, and online.

Consumer goods that do not comply with mandatory standards or permanent bans can pose a serious threat to the health and safety of consumers, especially to vulnerable consumers including young children. The buying and selling of goods via the internet continues to pose significant safety risks for consumers and challenges for consumer product safety regulators throughout Australia.

In 2021–22, OFT conducted 1,113 product safety compliance spot checks, inspecting 12,802 product lines during the statewide consumer product safety program.

Over 150 product safety investigations were finalised in 2021–22 resulting in:

- thirty warnings for breaches of mandatory standards and permanent bans
- six debt recovery orders
- nineteen compliance advice letters, and
- one civil penalty notice.

OFT product compliance checks extend to conducting product safety checks supplied by third-party sellers on Australian-based online marketplaces.

One example of the importance of these product checks was the online supply of sky lanterns. Sky lanterns are miniature unmanned hot air balloons that rely on an open flame to heat the air inside the lantern causing it to lift into the atmosphere. They are banned from supply in Australia because of the risk their open flames will cause fires, particularly in bushfire-prone areas.

As a result of the OFT's investigation the product was removed from the marketplace. All affected consumers were notified of the danger, provided with safe disposal instructions, and received a full refund. The OFT took enforcement action against both parties involved in the supply of this product, issuing an official warning to the third-party seller and a civil penalty notice to the online marketplace.

Looking forward – our focus for 2022–23

During 2022–23, DJAG will:

- progress policy and legislation work associated with government election commitments and priorities
- continue its policy and legislation work to progress the review of the *Body Corporate and Community Management Act 1997*, informed by the advice of the Community Titles Legislation Working Group
- progress the exemption of ACNC registrants from Queensland Government reporting obligations under the *Associations Incorporations Act 1981* and the *Collections Act 1966*, effective 1 July 2022
- continue to provide product safety regulatory frameworks, education and compliance actions through:
 - assisting in scoping national product safety issues and identifying potential hazard prevention strategies relating to lithium-ion batteries
 - a focus on consumer product safety issues for young children, including compliance, enforcement and education initiatives
 - conducting education and surveillance activities and enforcing compliance in relation to the new button battery safety standards
 - developing and implementing strategies to prevent injuries and deaths to infants caused by sleeping products identified as unsafe including inclined products
 - strengthening product safety online through education, engagement, monitoring and enhanced compliance commitments of online marketplaces, and
 - participating in implementation of national strategies to prevent injuries and deaths caused by toppling furniture.
- continue specialist support and trialling important initiatives for women in contact with the criminal justice system
- continue to support the independent review of the *Justices Act 1886* and the *Criminal Practice Rules 1999* to achieve contemporary and effective criminal procedure laws in Queensland’s Magistrates Courts
- continue to work to improve safety and fairness in the marketplace and assist consumers resolve their disputes with traders
- continue providing legal services to the Queensland Government in areas of law affecting the public sector, and
- deliver education and engagement activities to ensure consumers and businesses are aware of their rights and responsibilities.