



Editorial Introduction

This briefing paper considers what a human rights-based approach can offer to contemporary disaster management in the Queensland context. It explores opportunities for integration of human rights through the exercise of legal obligations under the *Human Rights Act 2019 (Qld)*. A desktop analysis of disaster management doctrine finds little evidence that legal obligations to consider human rights are integrated into Queensland disaster management operations.

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A human rights analysis of Queensland Disaster Management Arrangements

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Introduction

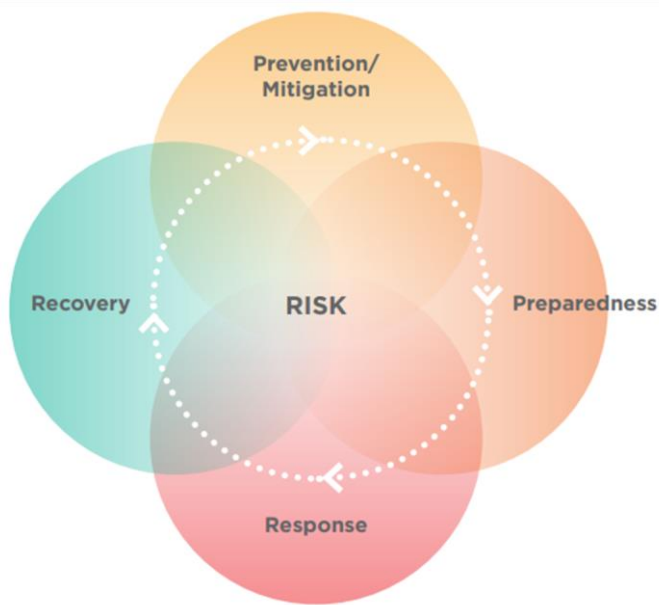
In May 2024, Queensland Parliament passed a suite of laws to reform state disaster management and emergency services. Hailed as ‘a new era’ of disaster management and emergency services, the reforms comprise a \$578 million investment over five years to boost disaster response capabilities across fire, marine rescue and emergency services, with “more resources, more personnel, more equipment and better frontline services” (Minister for Police and Community Safety, 2024). The reforms place major emphasis on the response phase of disaster management, with prevention, preparedness, and recovery phases receiving a much smaller component of the budget envelope.

Research is clear that extreme weather events expose and deepen existing inequalities in society (Farber, 2007; Hallegate et al., 2017; Ulubasoglu, 2020). How disasters are managed can further perpetuate or minimise existing inequities, as well as create new injustices, not just during the acute response stage but across all phases of disaster management including prevention, preparedness and recovery (Lukasiewicz, 2020). The emergence of ‘disaster justice’ as a critical discourse focuses on the importance of equity in treatment of groups in disaster-related policies, and reframes disaster management in terms of social justice and human rights (Verchick, 2012).

This briefing paper considers what a human rights-based approach can offer to contemporary disaster management in the Queensland context. It explores opportunities for integration of human rights through the exercise of legal obligations under the *Human Rights Act 2019 (Qld)*, and reports on a desktop analysis of disaster management doctrine which finds little evidence that legal obligations to consider human rights are integrated across disaster management operations.

What is a human rights-based approach to disaster management?

In general terms, a human rights-informed disaster management system places human rights at the centre of each phase of all cycles of disaster management. It requires that people most at risk of harm from disasters participate in



The four phases of disaster management: prevention, preparedness, response and recovery (PPRR). Figure taken from Queensland Disaster Management Guideline (2018b, p. 2).

decisions that impact them and their communities (Lewis & Maguire, 2016). The centring of gender perspectives and First Nations knowledge, wisdom, and expertise is crucial, both for the attainment of equality and non-discrimination, and to uphold specific cultural rights of First Nations peoples (United Nations, 2024; Williamson et al., 2020).

The key international instrument for disaster risk reduction and management is the *Sendai Framework for Disaster Risk Reduction 2015-2030* (UNDRR, 2015). Sendai supports the integration of human rights across all phases of the disaster management cycle; Guiding Principle 19(c) identifies the need to balance disaster risk management with the protection and promotion of all human rights. Academic literature reveals many examples of how human rights standards and principles can be mainstreamed into disaster management (Costa & Pospieszna, 2015; Creta, 2018; Sossai, 2018). Sossai (2018) describes the move away from reactive disaster response towards proactive disaster preparedness as a human rights-based ‘paradigm shift’, with state responsibility for preventative action now a key element of disaster management. Operational tools such as the 2024 Disaster Risk Governance Guidelines by the International Federation of Red Cross and Red Crescent Societies further support states in their efforts to strengthen disaster risk governance and become legally prepared for disasters (Macleod, 2024).

In short, a rights-based approach that derives from international human rights law principles is now the expected norm in modern disaster management. In Queensland, the introduction of domestic human rights

law in 2019 sharpens this approach by prescribing how decisions and actions taken by public entities must uphold legislatively protected human rights.¹ This next section considers the interplay between disaster management operations and the application of the *Human Rights Act 2019* (Qld).

The Queensland *Human Rights Act* and disaster management

The *Human Rights Act 2019* (Qld) (HRA) commenced in full on 1 January 2020. Four years into its operation, the HRA is now undergoing an independent statutory review, with a report due by September 2024 (Attorney-General, 2024). The main objects of the HRA are to promote and protect human rights, to help build a culture in the Queensland public sector that respects and promotes human rights, and to help promote a dialogue about the nature, meaning, and scope of human rights (s3, HRA). The Act establishes a dialogue model which aims to promote discussion about human rights between the judiciary, legislature, and the executive branches of government. The dialogue model was chosen because parliament intended for human rights discourse to “permeate all facets of public decision-making, with legal challenge available as a supplementary mechanism where this has not occurred” (Bell-James and Collins, 2020, p. 11)

The HRA protects the human rights of anyone physically present in Queensland. Most of the legally protected rights under the HRA are civil and political rights derived from the ICCPR. In addition, two rights are drawn from the ICESCR (the right to education and the right to health services), and one right from the UDHR (property rights) (Queensland Government, 2018a, p. 3).²

Relevant to disaster management operations, under section 58 of the HRA it is unlawful for any public entity to: (a) act or make a decision in a way that is not compatible with human rights; or (b) in making a decision, to fail to give proper consideration to a human right relevant to the decision. A decision is compatible with human rights when it does not limit a human right, or limits it only to an extent that is “reasonable and demonstrably justifiable” (s8) in a “free and democratic society based on human dignity,

¹ An increasing body of case law in Queensland shows how the obligation to consider human rights has been judicially considered across different sectors such as mining (*Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors* (No 6) [2022] QLC 21), education (*SF v Department of Education* [2021] QCAT 10), and policing and ambulance services (*Johnston & Ors v Carroll* (Commissioner of the Queensland Police Service) & Anor; *Witthahn & Ors v Wakefield* (Chief Executive of Hospital and Health Services and Director General of Queensland Health); *Sutton & Ors v Carroll* (Commissioner of the Queensland Police Service) [2024] QSC 2).

² ICCPR is the International Covenant on Civil Political Rights, ICESCR is the International Covenant on Economic Social and Cultural Rights, and the UDHR is the Universal Declaration of Human Rights.

equality and freedom” (s13). Human rights *can* therefore be limited, but only if that limitation is justified according to the above test.

Operationally, the requirement to act compatibly with, and give proper consideration to, human rights extends to all public entities involved in disaster management operations. This includes the activities of Queensland police, local councillors, disaster management officers, fire and emergency service, marine rescue, and resilience and recovery personnel.³ The role of local governments is particularly relevant as they hold primary responsibility for managing disaster events in their Local Government Area (*Disaster Management Act 2003 (Qld)* guiding principles, s4a(c)). Although a statutory override provision may suspend the operation of the HRA in times of declared disasters (Mitchell, 2020), outside the acute disaster response phase the HRA would ordinarily apply.

Although the HRA does not offer a direct pathway to the courts for individuals who believe their human rights have been infringed, a person may bring a complaint against the public entity to the Queensland Human Rights Commission (ss 64-73) or, alternatively, ‘piggyback’ a human rights claim onto another legal cause of action (s59(2)).

To date, there have been no publicly recorded human rights complaints or legal disputes relating to disaster management activities in Queensland. However given the sheer number of decisions by public entities across the full cycle of disaster management, together with the increasing frequency of extreme weather events, it is anticipated that actions or decisions could be challenged in future. For example, in the disaster prevention phase, land use planning decisions that involve zoning residential housing in flood-prone areas could be seen to infringe the right to life. In disaster preparedness, evacuation procedures that fail to meet the accessibility needs of people with disabilities may limit a person’s equality before the law. In disaster recovery, eligibility criteria for emergency relief payments or schemes that exclude certain persons may also be seen to be incompatible with a human right, for example, the right to protection of families and children.

The HRA additionally provides for international law and the judgments of international courts relevant to a human right to be considered when interpreting statutory provisions (s48(3)). Decisions of the European Court of Human Rights indicate the potential for remedies to be sought for human rights breaches in the context of disaster management. In a series of European cases, failure to take measures to prevent or mitigate the consequences of foreseeable disasters has amounted to a violation of the right to life (Kälin & Dale, 2008).⁴

This brief overview indicates the relevance and application of domestic human rights law to disaster management operations in Queensland. As disaster management becomes increasingly professionalised through greater resourcing and sector initiatives (Kleinhans & Hoets, 2023) there is both a need and opportunity to embed a culture of human rights across Queensland disaster management arrangements.

Integration of the HRA into Queensland disaster management operations

The *Disaster Management Act 2003 (Qld)* is the primary enabling legislation for managing disasters in Queensland. It defines disaster management as “arrangements for managing the potential adverse effects of an event, including arrangements for mitigating, preventing, preparing for, responding to, and recovering from a disaster” (s14, *DM Act 2003*).

To explore the integration of HRA into Queensland disaster management operations, a desktop analysis of relevant disaster management doctrine (legislation, policies, strategies) was undertaken using keyword searches for mention of ‘human rights’ or the HRA. This methodical analysis of different instruments was chosen to ascertain the extent of their engagement with human rights, and to lay a foundation for more detailed research on this topic. Table 1 summarises the findings of this document analysis (see below).

Implications/Significance

Analysis shows that of the disaster management doctrine reviewed, the HRA is only acknowledged once (IGEM Stakeholder Engagement). The closest application of a human rights-based approach appears in the recovery phase of disaster management, evidenced by language and content alignment of the Sendai Framework into the Queensland Strategy for Disaster Resilience 2022-2027. Laws and policies that govern disaster response operations (which receive the largest share of government resources) do not appear to mention the HRA at all. This is despite international disaster instruments and academic commentary clearly indicating disaster response requires a rights-based approach. The study reveals an absence of explicit connection between Queensland disaster management law and policy and human rights law, both as relevant principles and as legal obligations. Thus, a conclusion can be drawn that, while there appears to be general normative acceptance of a rights-based approach, there is little evidence that legal obligations to consider human rights are integrated across Queensland disaster management arrangements.

³ It also includes non-government agencies that perform functions of a public nature (s9(f)).

⁴ *Öneryildiz v Turkey* App no 48939/99 (ECtHR, 30 November 2004); *Budayeva and others v Turkey* App no 15339/02 (ECtHR, 20 March 2008); *Kolyadenko and others v Russia* App no 17423/05 (ECtHR, 28 February 2012).

Conclusion

This briefing paper has outlined the rationale for closer integration of human rights into Queensland disaster management arrangements. It offers a starting point for further dialogue and research to deepen understanding of how human rights can inform disaster management arrangements in Queensland. Targeted work to build human rights capability across Queensland's disaster management system at the local government level and through existing networks (Dean et al., 2020), would be a useful starting point.

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