

## Checklist: Public entities under the *Human Rights Act 2019*

### Is the entity a 'core' public entity? Section 9(1)

Is the entity:

- a government entity within the meaning of section 24 of the *Public Service Act 2008*?
- a public service employee?
- a member of the Queensland Police Service (including a non-State police officer)?
- a local government, a local government employee or a councillor?
- a Minister not exercising functions connected with parliamentary proceedings?
- a member of a portfolio committee when the committee is acting in an administrative capacity?
- a court or tribunal when acting in an administrative capacity?
- a staff member or executive officer of a public entity?
- an entity prescribed by regulation to be a public entity?
- has the entity agreed to accept obligations under the Act?

If yes: If one or more of the above apply, the entity is a public entity and is captured by the Act

If no: Go to Question 2

### Does the entity perform a 'function of a public nature'? First limb of section 9(1)(h), section 10

Consider whether the entity performs functions of a public nature using the factors in section 10(1), including asking:

- is the function conferred on the entity under a statutory provision?
- is the function connected to or generally identified with functions of government?
- is the function of a regulatory nature?
- is the entity publicly funded to perform the function?
- is the entity a government owned corporation?

Section 10(3) prescribes the following functions as functions of a public nature under the Act:

- the operation of a corrective services facility under the *Corrective Services Act 2006* or another place of detention
- the provision of emergency services
- the provision of public health services
- the provision of public disability services
- the provision of public education, including public tertiary education and public vocational education
- the provision of public transport
- the provision of a housing service by a funded provider of the State

Also, consider whether the entity is a registered provider of supports or a registered NDIS provider under the *National Disability Insurance Scheme 2013* (Cwlth) (section 9(2)(a))?

If yes: If the entity does perform a function of a public nature, go to Question 3

If no: If the entity does not perform a function of a public nature, then it may not be a 'public entity'

### Is the entity established under an Act? Section 9(1)(f)

If yes: If the entity has functions of a public nature and is a statutory body, then it is a public entity

If no: If the entity has functions of a public nature but is not established under an Act, go to Question 4

### Does the entity perform a function of a public nature for the State or a public entity (whether under contract or otherwise)? Second limb of section 9(1)(h)

If yes: If the entity performs a function of a public nature on behalf of the State or a public entity, then it is a public entity

If no: If the entity performs a function of a public nature but does not perform the function on behalf of the State or a public entity, then it may not be a public entity

Factors which may be considered in determining whether an entity performs a function on behalf of the State or a public entity include (but are not limited to):

- the degree of government regulation and control of the function being performed
- the nature of any contractual relationship with the State or public entity (and whether the government entity who is a party to the contract is a public entity)
- whether the entity exercises delegated powers of the State
- whether the entity receives public funding

