



# **How a Human Rights Act would work in practice**

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# Key objectives of a Human Rights Act



Protect and promote human rights and create a fair and equal society



Require parliament and the public sector to consider how laws and policies impact on human rights



Provide people whose human rights have been breached with access to remedies

# Rights to be protected might include...



- Recognition and equality before the law
- Right to life
- Freedom of expression
- Protection of families and children
- Privacy and reputation
- Freedom of thought, conscience, religion and belief
- Peaceful assembly and freedom of association
- Participation in public life
- Cultural rights (including specific cultural rights for Aboriginal and Torres Strait Islander peoples)
- Protection from torture and cruel, inhuman or degrading treatment
- Freedom from forced work
- Freedom of movement
- Liberty and security of person
- Humane treatment when deprived of liberty
- Fair hearing
- Rights in criminal proceedings
- Rights of children in the criminal process
- Property
- Education
- Health services

# How the model works



## Parliament



Statements of compatibility must accompany every bill and parliamentary committee must scrutinise and report on the compatibility of all bills.

## Executive



Government agencies (and agencies performing public functions) are required to act consistently with human rights and give consideration to human rights when making decisions.

## Judiciary



Courts are required to interpret and apply legislation consistently with human rights and may issue declarations of incompatibility.



# Legal remedies

## *Human Rights Act 2004 (ACT)*

- Civil and political rights and a right to education
- Standalone cause of action and ability to rely on human rights in other legal actions
- Courts can award any remedy including damages (except for standalone cause of action)

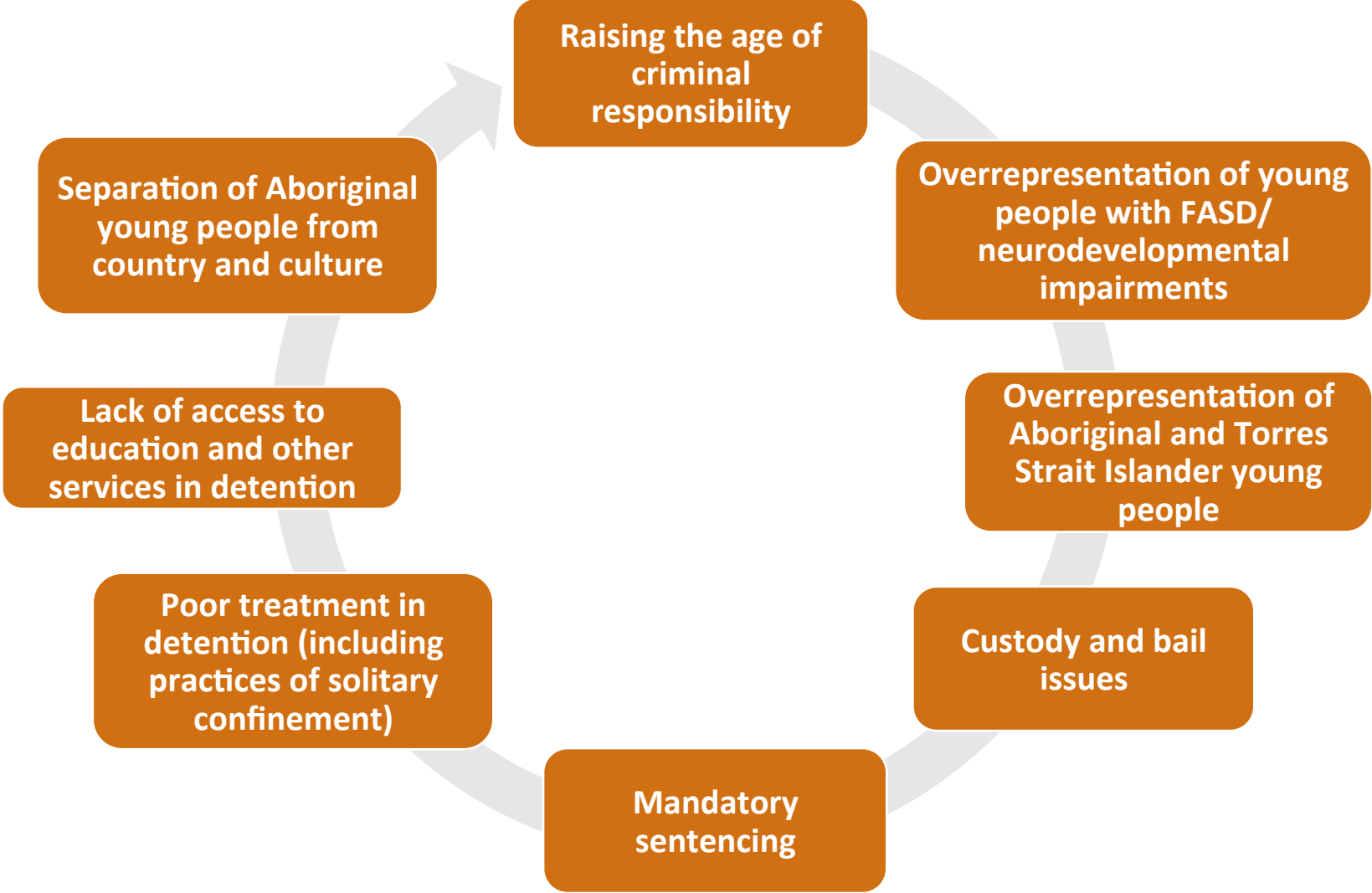
## *Charter of Rights and Responsibilities Act 2006 (Vic)*

- Civil and political rights and cultural rights
- Cause of action must attach to a legal claim that exists independently
- Court can award same remedies available for other claim, except damages

## *Human Rights Act 2019 (Qld)*

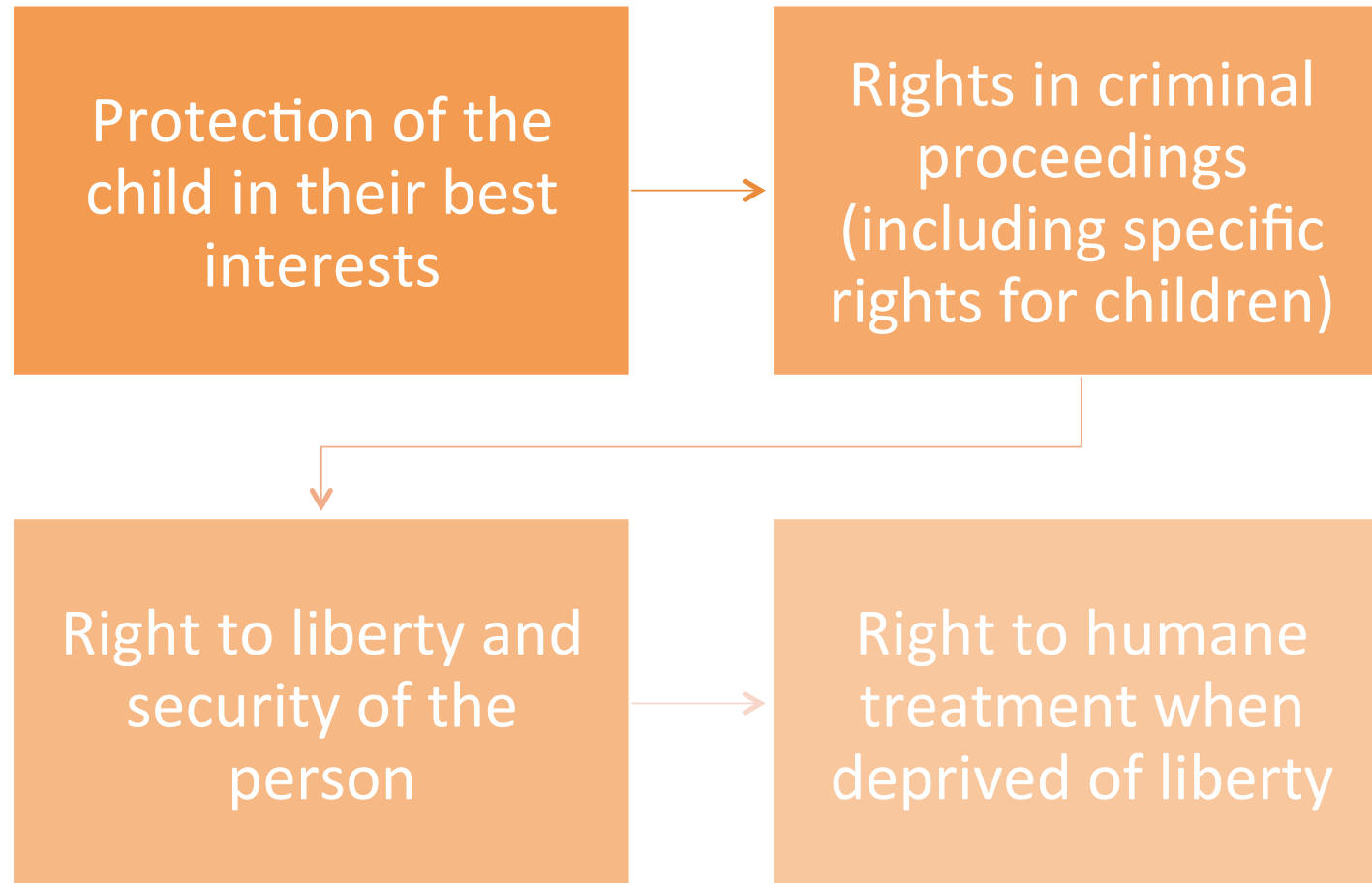
- Civil and political rights, cultural rights and education & health rights
- Cause of action must attach to a legal claim that exists independently
- Court can award same remedies available for other claim, except damages
- Human Rights Commission can receive and conciliate HRA complaints

# Human rights and young people in the justice system: current issues





# Rights that would be engaged by a Human Rights Act





# Obligations on the executive & parliament

Executive and parliament required to engage with and consider rights impacting on young people when passing legislation and existing legislation may be reviewed

Legislative provisions concerning matters such as the age of criminal responsibility, mandatory sentencing, and confinement would be subject to scrutiny for human rights compliance



Public bodies like the WA Police, Department of Child Protection, Department of Justice and Banksia Hill Detention Centre obliged to act compatibly with human rights and take account of human rights when making decisions

Practices such as ordering solitary confinement, housing children in adult prisons, and denying children access to education and cultural rights whilst in detention could breach human rights





# Remedies for breach of rights

Legal cause of action (standalone or piggybacked) for breach of the HRA

Complaint for breach of HRA to an independent complaints body (conciliation process)

Court can declare legislation incompatible with human rights, requiring government response