



HIGH COURT OF AUSTRALIA

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Important Information

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IN THE HIGH COURT OF AUSTRALIA
BRISBANE REGISTRY

No. B58/2026

BETWEEN:

RACHEL SMITH
Applicant

and

CHIEF EXECUTIVE, QUEENSLAND CORRECTIVE SERVICES
First Respondent

and

ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND
Second Respondent

and

QUEENSLAND HUMAN RIGHTS COMMISSION
Third Respondent

**OUTLINE OF ORAL SUBMISSIONS
OF THE SECOND RESPONDENT**

Filed on behalf of the Second Respondent

17 September 2026

PART I: Internet publication

1. This outline of oral submissions is in a form suitable for publication on the Internet.

PART II: Propositions to be advanced in oral argument

Ordinary meaning

2. Contrary to **AR [4]**, words do have ordinary meanings. It is well-settled that the process of construction begins with the natural or ordinary meaning of the words in context. A court may depart from the ordinary meaning when Parliament plainly intended some other meaning.
 - *Esso Australia v Australian Workers Union* (2017) 263 CLR 551, 582 [52] (**vol 4, tab 14, p 805**); *Masson v Parsons* (2019) 266 CLR 554, 572 [26] (**vol 4, tab 18, p 1016**)
3. The ordinary, grammatical meaning of ‘assisted reproductive technology’ is technology employed for the purpose of assisting reproduction.
 - The dictionary definitions and documents before the primary judge are all consistent with that ordinary meaning: **AG sub [16]-[19]**.
 - The *Assisted Reproductive Technology Act 2024* (Qld) does not assist the appellant: **AG sub [22]; JBA vol 3, tab 6, pp 557-558; PJ [109] (CAB 24-25)**.
4. Nothing in the context or purpose of s 22 of the *Corrective Services Act 2006* (Qld) suggests a different meaning of ‘assisted reproductive technology’. **AG sub [24]-[35]**.
5. The purpose of s 22(2) is twofold. The section was designed to avoid correctional authorities being tasked with determining which prisoners were suitable to become parents. It was also designed to preserve the ordinary consequences of imprisonment: **AG sub [29]-[31], [35]**.
6. Contrary to **AR [9]**, the second purpose is explicit in the extrinsic material and evident from the legislative history.
 - Explanatory Note to the Corrective Services Bill, pp 14-15, 19-20, 23-24 (**JBA vol 9, tab 43, pp 2512-3, 2517-8, 2521-2**).
 - As to legislative history: **AG sub [30]-[31]**.
7. The appellant’s concession that egg-freezing was ‘burgeoning’ in 2006 tells against her submission that the ‘connotation’ of the phrase ‘assisted reproductive technology’ did not then include egg-freezing: **AR [11]**. The term ‘assisted reproductive technology’ necessarily extends to forms of technology that were emerging in 2006: **AG sub [21]**.

Principle of legality

8. The common law prizes personal inviolability and personal security. But the appellant's asserted positive right requiring the State to take steps to facilitate the exercise of autonomy goes far beyond any common law conception: **AG sub [38]-[40]**; cf **AR [14]**; **QHRC [15]**.
 - *Kassam v Hazzard* (2021) 106 NSWLR 520, [83]-[99] (Bell P), [166] (Leeming JA) (**JBA vol 7, tab 34, pp 2094-8, 2109-10**)
 - *Secretary, Dept of Health and Community Services v JWB (Marion's Case)* (1992) 175 CLR 218, 253-4 (**JBA vol 5, tab 22, pp 1418-9**)
9. In any event, the principle of legality can have at most limited application where the legislature has sought to curtail rights. Moreover, the principle of legality only operates where there is a constructional choice and here there is none: **AG sub [41]-[43]**.
 - *Lee v NSW Crime Commission* (2013) 251 CLR 196, 310-311 [314] (Gageler and Keane JJ) (**JBA vol 4, tab 17, pp 986-987**)
 - *Momcilovic* (2011) 245 CLR 1, 46 [43] (French CJ) (**JBA vol 5, tab 19, p 1093**)

Section 48 of the *Human Rights Act 2019* (Qld) (HRA)

10. Section 48 is a rule of 'interpretation'. It is concerned with Parliament's primary intention, not its 'contingent intention': **AG [46]-[48]**; cf *Acts Interpretation Act 1901* (Cth) s 15A (**JBA vol 3, tab 7, p 565**).
11. Where there is a choice to be made between competing constructions, each of which is consistent with a provision's purpose, s 48 indicates that the construction which is compatible (or is more compatible in the case of s 48(2)) is to be adopted.
 - Explanatory Note to the Human Rights Bill 2018 (**vol 9, tab 44, pp 2768-9**)
12. Section 48 therefore does not permit 'disapplication' of the kind contended for by the QHRC: cf **QHRC [59]**.
 - *Deripaska* (2026) 100 ALJR 650, 660 [26], [28] (**vol 7, tab 29, p 1836**).
13. The QHRC's analysis of the compatibility of the competing constructions miscarries, because it assumes that the purpose of s 22(2) is simply to prevent prisoners from procreating whilst in prison. That purpose *is* disputed by the first and second respondents: cf **QHRC [25]**.

Compatibility with human rights

14. ‘Close attention’ must be paid ‘to the particular rights said to be engaged’: *DPP (Vic) v Smith* (2024) 98 ALJR 1163, 1176 [58] (**JBA vol 7, tab 31, p 1922**).
15. The non-discrimination rights in s 15 of the HRA turn on ‘discrimination’, which is defined in sch 1 (**JBA vol 2, tab 4, p 509**) by reference to direct or indirect discrimination under the *Anti-Discrimination Act 1991* (Qld) (**JBA vol 3, tab 5, pp 541-5**). There is conflicting authority on whether the definition is inclusive, but the appellant relies on the protected attribute of sex, not any additional attribute that might be caught by an inclusive definition: **AG sub fn 83**. The appellant has not sought to show direct or indirect discrimination, e.g. by pointing to a term: **QHRC [43]**. Had this right been raised below, evidence could have been led in response: **AG sub [56]**.
16. The right to privacy in s 25(a) of the HRA cannot extend to a right to found a family given Parliament’s decision not to implement art 23(2) of the ICCPR: **AG sub [57]-[59]**. The appellant’s distinction between a right to ‘reproductive autonomy’ and a right to ‘become a genetic parent’ is artificial: **AS [56]**; cf **AR [12]**; cf **QHRC [50], [52]**.
 - *Castles v Secretary of the Department of Justice* (2010) 28 VR 141, 159 [62], 161 [72]-[73], 164 [81] (**JBA vol 7, tab 28, pp 1798, 1800, 1803**)
17. The right to humane treatment when deprived of liberty in s 30 of the HRA requires the State to meet the ‘basic needs’ of prisoners. That includes basic medical needs, such as prenatal and postnatal care. Egg freezing is not a basic need of that kind: **AG sub [60]**.
 - *Nelson Mandela Rules*, rr 24, 28 (**JBA vol 9, tab 46, pp 2895-6**)
18. The residuum principle also informs the content of s 30, but any right of prisoners to found a family is necessarily diminished, as is their right to seek private medical care: **AG sub [61]**; cf **QHRC [32]**. The reasoning in *Castles* on this point is not persuasive.
 - *Castles* (2010) 28 VR 141, 169 [108]-[109], 170 [113], 172 [120], 173 [127] (**JBA vol 7, tab 28, pp 1808-1809, 1811-12**)
19. The right of access to health care without discrimination in s 37(1) of the HRA is not limited because men and women are both prevented from accessing ART: **AG sub [53]**.

Dated: 17 September 2026.



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G J D Del Villar KC

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Felicity Nagorcka

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Kent Blore