



HIGH COURT OF AUSTRALIA

NOTICE OF FILING

This document was filed electronically in the High Court of Australia on 17 Sep 2026 and has been accepted for filing under the *High Court Rules 2004*. Details of filing and important additional information are provided below.

Details of Filing

File Number: B58/2026
File Title: Smith v. Chief Executive, Queensland Corrective Services & C
Registry: Brisbane
Document filed: Form 27F - Third Respondent's outline of oral submissions
Filing party: Respondents
Date filed: 17 Sep 2026

Important Information

This Notice has been inserted as the cover page of the document which has been accepted for filing electronically. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties and whenever the document is reproduced for use by the Court.

IN THE HIGH COURT OF AUSTRALIA
BRISBANE REGISTRY

BETWEEN:

RACHEL SMITH

Appellant

CHIEF EXECUTIVE, QUEENSLAND CORRECTIVE SERVICES

First Respondent

ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND

Second Respondent

QUEENSLAND HUMAN RIGHTS COMMISSION

Third Respondent

THIRD RESPONDENT'S OUTLINE OF ORAL SUBMISSIONS

Part I: Certification

1. These submissions are in a form suitable for publication on the internet.

Part II: Propositions to be advanced in oral argument

Approach to statutory construction in Queensland post introduction of the HRA

2. The Court of Appeal erred in its approach to construing s 22(2) of the *Corrective Services Act 2006* (Qld) (CoA[56]-[59], CAB 50) by, *inter alia*, failing to adhere to the directive in s 48(2) of the *Human Rights Act 2019* (Qld) to interpret that provision, to the extent possible consistent with its purpose, in a way that is most compatible with human rights.
3. Application of the directive in s 48(2) of the HRA may require the use of available techniques of interpretation and construction to construe a provision such that “to the extent possible” it is interpreted in a way that is most compatible with human rights consistent with its purpose (see *DPP (Vic) v Smith* (2024) 98 ALJR 1163, 1191 [132] and 1192 [137] per Edelman J, JBA Vol 7, Tab 31).

Response to submissions made by the Second Respondent concerning human rights

4. The words ‘without discrimination’ is an aspect of the ‘right to access health services without discrimination’ in s 37(1) of the HRA, not a qualification on that right (*cf.* R2[53]).
5. If s 22(2) is construed in a way that prevents women and men who are similarly situated (*cf.* the final sentence of R2[56]) from accessing all aspects of assisted reproductive technology, it indirectly discriminates against women in the Appellant’s position (*cf.* R2[53]). What constitutes indirect discrimination for the purposes of the HRA is not limited to the way that term is defined in the *Anti-Discrimination Act 1991* (Qld) (*cf.* R2[56]).
6. This case is about the right to medical treatment necessary to preserve reproductive autonomy, not the right to found a family or to become a genetic parent (*cf.* R2[57]). That concerns the negative aspect of the right to privacy and so the question of whether there is a positive aspect to s 25(a) need not be resolved in this case (*cf.* R2[57]).
7. It is not the case that only prisoners’ ‘basic needs’ (whatever they might be) need to be met in order to afford them dignity (*cf.* R2[60]). The obligation to treat persons deprived of liberty with humanity and with respect for the inherent dignity of the human person (s 30(1) HRA) requires that they have access to health care to the same standard available in the community and that is aimed at protecting the physical and mental health of prisoners.

Dated: 17 September 2026



Kate Slack

Counsel for the Third Respondent