

# Logan City Council

## Human Rights Act Guidelines

Logan City Council

### Document Control

File No:	1204982-1	Document Id:	14124110
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### Amendment History

Version Number	Description of Change	Author/Branch	Date
1	Original version	Corporate Governance	28 October 2020

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## 1 The Act

The *Human Rights Act 2019* (Qld) (HRA) commenced on 1 July 2019 with the obligations for public entities under the act then later commencing as of 1 January 2020.

The HRA is a piece of legislation specifically designed to protect and promote human rights and to help build a culture in the Queensland public sector that respects and promotes human rights. The HRA intends to assist in promoting dialogue about the nature, meaning and scope of human rights. The main objectives of the HRA are:

- To protect and promote human rights;
- To help build a culture in the Queensland public sector that respects and promotes human rights;
- To help promote a dialogue about the nature, meaning and scope of human rights.

The HRA binds all persons and applies to:

- Public entities;
- Courts and tribunals; and
- Queensland Parliament.

The Anti-Discrimination Commission Queensland was renamed to the Queensland Human Rights Commission (QHRC) following the introduction of the act and provides dispute resolution processes for dealing with human rights complaints and seeks to assist in promoting understanding, acceptance and discussion of human rights. Numerous resources for the HRA are available on the QHRC Website, this is inclusive of factsheets translated into a number of different languages for the convenience of the public. The QHRC's website can be found [HERE](#).

## 2 Legislative Requirements

Logan City Council (Council) is considered a public entity under the definition of the HRA. In this capacity Council is therefore required to:

- Give proper consideration to human rights; and
- Act and make decisions in a way that is compatible with human rights.

In line with this definition, an act, decision or statutory provision will be considered compatible with human rights in the event that:

- It does not limit a human right; or
- It does limit a human right only to the extent that is reasonable and demonstrably justifiable and in accordance with s13 of the HRA.

## 3 Human rights protected by the HRA.

Section 11 of the HRA states that all individuals in Queensland have human rights, the HRA goes on to describe and protect 23 fundamental human rights as follows.

### 3.1 Recognition and equality before the law

Every person is equal before the law and has the right to recognition as a person before the law and the right to enjoy their human rights without discrimination. Examples may include:

- Providing for the delivery of an entitlement or service to some groups but not others;
- Regulating access to infrastructure and public facilities; and
- Providing mobility aids, assistive devices or other technologies designed for people with disabilities

### **3.2 Right to life**

Every person has the right to life and the right not to be deprived of life. Examples may include:

- Providing essential services, how and whether these services may be accessed in a way that impacts on the safety of persons.

### **3.3 Protection from torture and cruel, inhuman or degrading treatment**

A person must not be tortured or treated in a way which is cruel, inhuman or degrading. Examples may include:

- Creating new powers, modifying or increasing existing powers of authorised officers or other persons;
- Removing or restricting the right to complain about service delivery.

### **3.4 Freedom from forced work**

A person must not be made a slave or forced to work, this does not include certain forms of work required of a person detained by lawful court order. Examples may include:

- Making people work in an emergency; and
- Compelling the provision of any labour or the performance of any service under threat of penalty.

### **3.5 Freedom of movement**

Every person lawfully within Queensland has the right to move freely within Queensland and choose where they live. Examples may include:

- Proposing surveillance of an individual;
- Compelling someone to provide information;
- Regulating access to land based on quarantine considerations or eligibility requirements.

### **3.6 Freedom of thought, conscience, religion and belief**

Every person has the right to think and believe what they want and to have or adopt a religion, free from external influence. Examples may include:

- Requiring a person to disclose their religion or belief;
- Impinging on or disadvantaging a person because of their opinion, religion or belief; and
- Setting dress codes that do not accommodate religious dress.

### **3.7 Freedom of expression**

Every person has the right to hold and express an opinion, through speech, art and writing (or other forms) and to see out and receive the expression of others' opinions. Examples may include:

- Regulating the manner, content and format of any public expression;
- Exercising censorship and review of materials before they are published; and
- Compelling someone to provide information.

### **3.8 Peaceful assembly and freedom of association**

Every person has the right to join or form a group and to assemble (this right is limited to peaceful assemblies). Examples may include:

- Making decisions regarding public protests, demonstrations or marches;
- Regulating membership of groups and associations

### **3.9 Taking part in public life**

Every person has the right and opportunity to take part in public life. This includes the right to vote, be elected and have access on general terms of equality to the public service and public office. Examples may include:

- Regulating how individuals vote in elections;
- Establishing requirements for membership of public bodies;
- Regulating the suspension and conduct of local government; and
- Affecting the ability of a person to participate in local council meetings.

### **3.10 Property rights**

Every person has the right to own property alone or in association with others. A person must not be arbitrarily deprived of their property. Examples may include:

- Providing for acquisition, seizure or forfeiture of a person's property under civil or criminal law;
- Making decisions about planning, licensing or allowing people to exercise a trade or profession;
- Conferring on a public entity a right of access to private property; and
- Restricting the use of private property (e.g. under planning laws)

### **3.11 Privacy and reputation**

Every person has the right for their privacy, family, home and correspondence to not be unlawfully or arbitrarily interfered with. A person has the right for their reputation to not be unlawfully attacked. Examples may include:

- Conducting surveillance of persons for any purpose (including CCTV);
- Collecting, storing, using or publishing personal information and how that information is accessed, used or disclosed;
- Restricting access to people to their own personal information; and
- Regulating information held on a public register.

### **3.12 Protection of families and children**

Families are recognised as the fundamental unit of society and are entitled to protection. Every child has the right, without discrimination, to the protection that is in their best interest as a child. Every person born in Queensland has the right to a name and to registration of birth. Examples may include:

- Affecting the law regarding close or enduring personal relationships or failing to give legal recognition to these relationships;
- Regulating family contact for those in the care of public entities or enabling intervention orders to be granted between family members.

### **3.13 Cultural rights – generally**

Every person with particular cultural, religious, racial and linguistics have the right to enjoy their culture, declare and practice their religion and use their language in community with other persons of that background. Examples may include:

- Limiting or failing to support the observance of any religious practices;
- Restricting the capacity for persons to declare or make public their affiliation to a particular racial, religious or cultural group;
- Limiting or prohibiting communication in languages other than English, including through the provision of information; and
- Licencing or providing a restriction on the preparation and serving of food.

### **3.14 Cultural rights – Aboriginal peoples and Torres Strait Islander peoples**

Aboriginal peoples and Torres Strait Islander peoples hold distinct cultural rights as Australia's first people. They must not be denied the right with other members of their community to live life as an Aboriginal or Torres Strait Islander person free to practice their culture. Examples may include:

- Limiting the ability of Aboriginal or Torres Strait Islander persons to take part in a cultural practice or otherwise interfere with their distinct cultural practices;
- Regulating the conduct of commercial activities on the traditional lands of Aboriginal or Torres Strait Islander persons.

### **3.15 Right to Liberty and security of person**

Every person has the right to liberty and security. This right protects against the unlawful or arbitrary deprivation of liberty. If a person is arrested or detained, they are entitled to certain minimum rights. Examples may include:

- Limiting or curtailing people's liberty (restrictive practices);
- Allowing a public entity to cordon an area and control movement within that area.

### **3.16 Humane treatment when deprived of liberty**

Every person has the right to be treated with humanity and respect when deprived of liberty. Examples may include:

- Authorising a person to be held in a place with limited facilities or services for the care and safety of detainees.
- Enabling a public entity to detain individuals or relating to the conditions under which a person may be detained for examples in prisons, mental health services and prison transportation facilities.

### **3.17 Fair hearing**

Every person has the right to have criminal or civil charges decided by a competent, independent and impartial court or tribunal. A court or tribunal may exclude certain people from a hearing if it is in the public interest or the interest of justice. Examples may include:

- Creating or restricting review of administrative decision making and appeals process;
- Affecting the way witnesses give evidence; and
- Regulating the way media may report on proceedings.

### **3.18 Rights in criminal proceedings**

Every person charged with a criminal offence has the right to be presumed innocent until proven guilty according to law and is entitled to receive certain minimum guarantees. Examples may include:

- Right to be presumed innocent;
- Establishing guidelines or procedures for the provision of assistants, translators and interpreters; and
- Restricting access to information and material to be used as evidence.

### **3.19 Children in the criminal process**

Children within the criminal process are entitled to special protections on the basis of their ages. Accused children must not be detained with adults and must be brought to trial as quickly as possible. Examples may include:

- Enabling a child to be detained for any length of time;
- Enabling people to undertake personal searches of a detained child; and

- Considerations impacting on the environmental design of detention centres or conditions under which children are detained.

### **3.20 Right not to be tried or punished more than once**

Every person has the right to not be tried or punished more than once for an offence in relation to which they have already been acquitted or convicted according to law. Examples may include:

- Allowing a person to be punished a second time for the same offence;
- Creating an overlap between an offence in regulations and an offence in the authorising legislation.

### **3.21 Retrospective Criminal laws**

Every person has the right to not be prosecuted or punished for conduct that was not a criminal offence at the time the conduct occurred. A person must not receive a penalty that is greater than the penalty that applied at the time of committing the offence. Examples may include:

- Seeking to sanction a person for conduct that was not contrary to law at the time the conduct was undertaken;
- Applying more severe penalties for conduct by a person than those that existed at the time the conduct was undertaken; and
- Expanding the range of activities that are covered by an existing criminal offence.

### **3.22 Right to education**

Every child has the right to have access to primary and secondary education appropriate to their needs. Every person has the right to have access, based on their abilities to further vocational education and training that is equally accessible to all. Examples may include:

- Teaching or school administration (public);
- Providing non-school based education;
- Working with special educational needs assessments.

### **3.23 Right to health services**

Every person has the right to access health services without discrimination. A person must not be refused necessary emergency medical treatment. Examples may include:

- Providing health services;
- Providing interpreter services in a health setting; and
- Managing complaints in a health setting.

## **4 Applying the HRA**

The HRA allows specific rights that have been designed to ensure human rights within Queensland are considered in developing laws, policies, delivering public services and decision making. This results in the act seeking to ensure public powers and functions are exercised in a way compatible with human rights and are not misused.

One of the key requirements of the legislation and possibly the most relevant provision to Council is that actions and decisions must be compatible with human rights. In complying with this provision Council is required to:

- Act and make decisions which are compatible with human rights;
- Develop policy and legislation (local laws) which are compatible with human rights; and
- Interpret legislation in a manner which is compatible with human rights.

“Compatible with human rights” is defined under section 8 of the HRA which states;

- It does not limit a human right; or
- It limits a human right only to the extent which is reasonable and demonstrably justifiable, in accordance with section 13 of the HRA.

The application of this requires that Council must consider whether every act, policy or decision it makes is assessed for compatibility with the rights provided by the HRA.

#### **4.1 What is acting compatibly?**

The steps below assist employees to apply the HRA.

##### **Step 1 – Which rights are relevant?**

Consider each right protected by the HRA to see which (if any) are relevant to your situation.

##### **Step 2 – What is the impact?**

Ask whether your action or decision will limit or restrict any of the rights you’ve identified? If not, your action or decision is likely to be compatible with human rights. If the answer is yes, or you are unsure progress to Step 3.

##### **Step 3 – Consider whether a limitation of rights is reasonable and justifiable by asking the following questions**

- Is it lawful? Is there a legal authority or framework which allows you to limit a person’s rights?
- Is there a purpose? What is the aim of the limitation, does it achieve a legitimate purpose?
- Is it reasonable? Will what you are proposing effectively achieve your purpose?
- Is it necessary? Is this the least restrictive way to achieve your purpose?
- Is it fair and balanced? Do the benefits outweigh the harm caused by the limitation?

If the answer to any of the above is no, it is likely that your proposed action or decision is not compatible with human rights. In this circumstance:

- If possible, modify your proposal and reassess for compatibility.
- If it is not possible to modify your proposal, you will need to document the nature and extent of the incompatibility and record your process for considering human rights.

A template for assessing human rights complaints has been attached in Appendix 1 of these guidelines.

## **5 Complaints under the Act**

The HRA allows a person who believes their human rights have been breached to complain and seek remedies. There are three (3) ways in which this can take place:

- Internal complaints;
- Independent complaints; and
- Via Courts and Tribunals

### **5.1 Internal Complaints**

The HRA requires that an individual first raise a complaint directly with Council. Council will then have 45 days to respond to the complaint. If the individual is not satisfied with the response, they may make a formal complaint to the Queensland Human Rights Commission. This step is important as it allows dialogue to occur between the individual and the public entity to establish how human rights may have been limited, the reasons for any limitation and whether this limitation is justified. It also allows the public entity the opportunity to consider their policies and decision-making processes and whether reform may be needed.



In order to assist Council in responding to all complaints in the best way possible, the following is requested:

- The complaint clearly identifies the issues presented;
- Council is provided with all available information in support of the complaint;
- The Complainant cooperates with Council in its inquiries and investigations of the complaint; and
- Council staff are treated with courtesy and respect throughout the complaint process.

In order to facilitate the complaint process, Council will provide information on its website for how to lodge a complaint.

The general process that Council should follow in assessing a human rights complaint are as follows:

- **Accept the Complaint** – Council should proactively enable complaints to be made and respond in a flexible manner to any individual circumstances of the complainant;
- **Assess** – Council should make an initial assessment of the complaint considering the following:
  - o The context of the complaint;
  - o The circumstances of the complaint;
  - o The individual who has placed the complaint;
  - o The priority of the complaint;
  - o How the complaint should be managed and who is responsible for responding to the complaint.
  - o An initial written response should then be provided to the complainant informing them of the process moving forward.
- **Consider** – Human rights should be the primary consideration in reviewing the complaint.
- **Resolve** – If a determination is made that a complainant’s human rights have been limited in a way that is not reasonable or justifiable, Council must consider how the complaint can be resolved to satisfaction of both parties. Examples include updating a policy or procedure, changing a decision or acknowledging the error made and issuing an apology.
- **Respond** – The HRA requires that Council provide an adequate response within 45 days of receiving the complaint or the complainant is then able to forward the complaint to the QHRC. The response should be clear in assisting the complainant understand how their issue has been resolved and the reasoning behind the outcome.
- **Learn** – It is important to reflect on human rights complaints, the recording of complaint details will be useful in identifying trends, improving practices and reporting on outcomes.

## 5.2 Independent Complaints

The individual may also raise a complaint regarding human rights with the Queensland Human Rights Commissioner (QHRC). In order for the complaint to be accepted by the QHRC the complainant will first have to demonstrate;

- A complaint has been made in the first instance to the public entity alleged to have breached the HRA;
- At least 45 business days have elapsed since the submittal of this complaint; and
- The complaint either did not receive a response from Council or is not satisfied with the response received.

If a complaint is made to an alternative agency, these agencies may consider that the complaint also has human rights implications. If this is concluded, the agency may choose to either deal with the complaint under their relevant legislation or refer the complaint to the QHRC. Examples of agencies who made refer complaints on to the QHRC include:

- Queensland Ombudsman;
- Office of the Health Ombudsman;
- Crime and Corruption Commission;
- Office of the Information Commission.

### **5.3 Court or Tribunals**

In some circumstances it may be appropriate for the complainant to raise their complaint within the relevant Court or Tribunal. The individual is unable to make a complaint in accordance with the HRA directly to the court or tribunal, however it is possible to raise alleged breaches of human rights in the process of a hearing based off another law.

Monetary damages are not available to complainants for contravention of the HRA, but a person will be entitled to any other relief or remedy that they could have obtained in relation to an independent cause of action. An example of this would be in relation to court proceedings, a decision may be quashed or set aside.

## **6 Definitions**

Definitions for terms used within the procedure can be found in the Human Rights Act Policy (DM: 14124070).

## **7 References**

<i>Human Rights Act 2019</i> (QLD)
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Human Rights Policy
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## 8 Appendix 1 – Human Rights Complaint Form

### Complaint details

Consider the details of the complaint. For example:

- Complainant details
- Background information
- Alleged breaches and the basis of the complaint.

### Human Rights Act

Consider the human rights

Which section of the Human Rights Act has the complainant alleged has been breached? Consider:

- What human rights are relevant to the action or decision?
- What is the impact? Have the complainant's rights been limited by the action or decision?
- The Examples provided in section 3 of the guidelines
- The examples provided on the Queensland Human Rights Commission website
- If so, was the limitation reasonable and justifiable?

If human rights have been identified as being breached

Consider:

- In what way have the human rights been breached?
- Is the limit lawful, is there legal authority or a framework allowing the action/decision?
- Is there a purpose to the limitation?
- Is the limitation reasonable? What will be achieved by the proposed limitation?
- Is the limitation fair and balanced? Do the benefits outweigh the harm caused by the limitation?

### Conclusion.

Make a final assessment of the complaint giving consideration to all factors above and identify the appropriate solution.