



Queensland
**Human Rights
Commission**

Section 88 report recommendations guideline

Approved

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Commissioner
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Name
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Purpose of guideline

Under the *Human Rights Act 2019* (HR Act), an unresolved complaint report about a human rights complaint may include details of actions the Commissioner considers the respondent to the complaint should take to ensure its acts and decisions are compatible with human rights. This guideline sets out the Commissioner's approach to deciding whether to make recommendations in an unresolved complaint report.

Legal basis for making recommendations

Under the HR Act, a person may make a human rights complaint to the Commissioner for resolution by the Commission. A human rights complaint is a complaint about an alleged contravention of section 58(1) of the HR Act by a public entity in relation to an act or decision of the public entity.

The Commission attempts to resolve human rights complaints, generally through a conciliation process.

If the Commissioner considers the complaint has not been resolved, the Commissioner must prepare an unresolved complaint report under section 88 of the HR Act. The report must include the substance of the complaint and actions taken to try to resolve the complaint. Under section 88(4), the report *may* also:

include details of action the commissioner considers the respondent for the complaint should take to ensure its acts and decisions are compatible with human rights.

A report recommendation does not necessarily mean that the Commissioner has made findings regarding the lawfulness of the respondents' actions. Under section 88(6), an unresolved complaint report is not admissible in a proceeding in relation to a contravention of the HR Act, unless the parties agree.

Purpose of making report recommendations

The Commissioner makes recommendations in order to:

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

These are the main objects of the HR Act set out in section 3.

The Commissioner also makes recommendations to:

- promote an understanding and acceptance, and the public discussion, of human rights and the HR Act;
- provide information and education about human rights.

These are functions of the Commission under section 61 of the HR Act.

Factors relevant to whether the Commissioner will make recommendations

The Commissioner must prepare an unresolved complaint report under section 88 of the HR Act as soon as practicable where:

- the Commissioner considers a human rights complaint has not been resolved by conciliation or otherwise; and
- the Commission has finished dealing with the complaint.

The Commissioner has discretion over whether the unresolved complaint report will include recommendations under section 88(4) of the HR Act.

Having regard to the objects of the HR Act and the functions of the Commission, factors that the Commissioner may consider in the exercise of this discretion include:

- a dispute of facts that impact on whether an appropriate recommendation can be identified;
- whether the respondent(s) have taken action to address the alleged limitation of human rights, provided a justification for the limitation of rights and/or demonstrated proper consideration, and there is no further action the Commissioner could recommend the respondent(s) take;
- whether the proposed recommendation addresses the limitation of rights alleged by the complainant and/or will assist the respondent(s) to avoid similar complaints being made in the future;
- the potentially broader impacts of the proposed recommendation, including whether it would assist with education and understanding of human rights, support development of a human rights culture, or otherwise promote systemic change;
- whether the proposed recommendation would limit human rights, and whether that limitation can be demonstrably justified;
- whether the Commission is using or intends to use other functions to systemically address the issues raised;
- the capacity and resources of the Commission to prepare a timely report with recommendations.

Whether the Commissioner will publish an unresolved complaint report containing recommendations is a separate decision dealt with under the guideline *Publishing information about a human rights complaint*. However, the Commission will generally publish information about, or a report of, an unresolved complaint that contains recommendations with the identities of any individuals removed.

Human rights considerations

Individuals may be named in the unresolved complaint report as parties to the complaint. This potentially engages a person's right to privacy and reputation.

The Commission gives parties an opportunity to respond to the substance of the complaint as set out in the report. If the Commissioner proposes to make an adverse comment about a person in an unresolved complaint report, then under section 93 of the HR Act, the Commissioner must give the person an opportunity make submissions about the proposed adverse comment. The person's response must be fairly stated in the final report. The full unresolved complaint report is only given to the parties, and will generally be deidentified when published.

Given the legal framework, the purpose of making recommendations, and the circumstances in which recommendations would be made, any engagement with privacy or reputation is unlikely to

be unlawful, arbitrary, or disproportionate. However, compatibility with human rights needs to be assessed on a case-by-case basis.

Anything said or done in a conciliation conference for a human rights complaint is not admissible in any other proceedings unless the parties agree. A person's participation in a conciliation conference does not affect a person's legal rights to other relief or remedy. Similarly, an unresolved complaint report is not admissible in a proceeding in relation to a contravention of the HR Act unless the parties agree. On that basis, a decision to make recommendations is unlikely to limit the right to fair hearing.

Other rights may be engaged and limited depending on the content of the report and recommendations. The human rights compatibility of a decision to make recommendations in a report needs to be given proper consideration and assessed on a case-by-case basis.

Further information and assistance

Employees requiring further information or assistance in relation to this guideline should contact their Regional Manager, the Principal Lawyer or the Responsible Officer.

Policy administration

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