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The Human Rights Act 2019 (Qld)

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- The Human Rights Act 2019:
 - Requires the Qld Parliament to consider human rights when making law
 - Instructs Courts to interpret law in line with human rights principles
 - Allows the Supreme Court to make declarations when a law cannot be interpreted in line with human rights
 - Requires public entities to consider human rights, and act and make decisions compatibly with human rights
 - Provides for complaint and enforcement options

It only protects individuals. It does not limit human rights protected by other laws. It does not create absolute rights and allows for limitations '*consistent with a free and democratic society based on human dignity, equality and freedom*'.

Conduct of Public Entities



58 Conduct of Public Entities

(1) It is unlawful for a public entity -

(a) to act or make a decision in a way that is not compatible with human rights; or

(b) in making a decision, to fail to give proper consideration to a human right relevant to the decision

- **What is a PUBLIC ENTITY?**
 - Queensland and local government entities and public service employees
 - Entities created by enactment performing public functions
 - An entity with a public function when performing public functions for the State
 - Courts, Tribunals and the Legislative Assembly when acting in an administrative capacity
- **Functional public entities** include:
 - Disability services including registered NDIS providers
 - Public housing provision such as social housing providers
 - Public transport providers
 - 'Private' prisons



Human rights compatible acts and decisions

1. Identify the human rights engaged
2. Will they will be limited by the act or decision proposed?
3. If yes, is the limit required by another law?
4. Or if not required – is the limitation permitted, proportionate and justified, considering the factors listed in section 13?



Limitations on human rights

- Required by another law
- Proportionate limitation *justified in a free and democratic society based on human dignity, equality and freedom*

The proportionality test (section 13)

- What is the nature of the human right being protected?
- What is the purpose of the limitation being proposed (including the extent to which the purpose is consistent with a free and democratic society based on human dignity, equality and freedom)?
- What is the relationship between the limitation itself – and its purpose?
- **Are there less restrictive and reasonably available options to achieve that purpose?**
- How important is the purpose of the limitation balanced against the importance of safeguarding the human right?



Complaints and 'piggybacking'

- 1. Complaint and 'dialogue'
 - (a) directly to the public entity (allowing 45 days)
 - (b) to the Queensland Human Rights Commission
 - (within one year)
 - Investigation power
 - Informal resolution
 - Reporting on outcomes
- 2. 'Piggyback' when a person has another legal action available to them



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Recognition and equality before the law (15) . protects against discrimination before the law, in relation to accessing human rights and generally	Right to life (16) . The right to live, and not be arbitrarily deprived of life and to protection of life	Protection from torture and cruel, inhuman and degrading treatment (17)	Freedom from forced work (18) . Other than by court order (such as community service) or similar (WDOs)
Freedom of movement (19) . Move freely within Queensland, enter and leave, and to choose where to live	Freedom of thought, conscience, religion and belief (20)	Freedom of expression (21) . To have an opinion and share it	Peaceful assembly and freedom of association (22) . Including joining a trade union
Taking part in public life (23) . Directly and through voting	Property rights (24) . To own property and not have it arbitrarily taken away	Privacy and reputation (25) . Includes the right not to have home, family and correspondence free from arbitrary interference	Protection of families and children (26)
Cultural rights – generally (27) . Protects various expressions of cultural, religious, racial and linguistic identity and heritage	Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (28) . Protects practice, culture, kinship; and relationships to land and waters. Protects against assimilation/destruction of culture	Right to liberty and security of the person (29) . Liberty can only be taken away by law . Also protects certain rights in the arrest process and to obtain bail (subject to law)	Humane treatment when deprived of liberty (30) . Respects the inherent dignity of the human person . Looks after people held in custody before trial
Fair hearing (31) . Both criminal and civil proceedings must be fair, impartial, public and conducted competently	Rights in criminal proceedings (32) . Additional procedural rights in criminal proceedings including to representation and to have interpreters and communication adjustment if necessary	Children in the criminal process (33) . Separates children from adults, and provides for their proper treatment	Right not to be tried or punished more than once (34)
Retrospective criminal laws (35) . A person is protected from being found guilty of an offence if the conduct was not a criminal offence when it happened	Right to education (36) . Gives children a right to schooling according to their needs . Provides for access to vocational education	Right to health services (37) . Protects against discrimination in healthcare . Everyone has access to life saving and emergency care	<div></div>

Right to Life - 16

Every person has the right to life and the right not to be arbitrarily deprived of life.

May include:

1. Duty to enforce laws aimed at protecting life
2. Protecting the lives of people in care
3. And possibly effective investigations into death



Protection from torture and cruel, inhuman or degrading treatment - 17



A person must not be -

(a) subjected to torture; or

(b) treated or punished in a cruel, inhuman or degrading way; or

(c) subjected to medical or scientific experimentation without the person's full, free and informed consent.

Freedom of expression - 21

- (1) Every person has the right to hold an opinion without interference.*
- (2) Every person has the right to freedom of expression which includes the freedom to seek, receive and impart information and ideas of all kinds, whether within or outside Queensland and whether –*
 - (a) orally; or*
 - (b) In writing; or*
 - (c) In print; or*
 - (d) By way of art; or*
 - (e) In another medium chosen by the person*



Right to Privacy and Reputation - 25



A person has the right –

(a) Not to have the person's privacy, family, home or correspondence unlawfully or arbitrarily interfered with; and

(b) Not to have the person's reputation unlawfully attacked.

Includes physical and psychological integrity, identity, autonomy and the fundamental dignity of the human person

Practice human rights decision-making

A disability service provider has a client slip and injure himself while showering. A WHS expert recommends removing shower curtains and keeping doors open during showering to improve resident safety and make it possible for staff to respond faster in an emergency.

A person with an intellectual impairment who has been admitted to hospital asks to go to the shops alone. Previously he has wandered off from hospital and attempted to board a train home so a rule has been imposed that he's not allowed out. When at home he is generally able to pop to the shops unsupervised.




Human rights compatible acts and decisions – refresh our memories

1. Identify the human rights engaged
2. Will they will be limited by the act or decision proposed?
3. If yes, is the limit required by another law?
4. Or if not required – is the limitation permitted, proportionate and justified, considering the factors listed in section 13?



Which of the 23 protected human rights are engaged?

Recognition and equality before the law	Right to life	Protection from torture and cruel, inhuman and degrading treatment	Freedom from forced work
Freedom of movement	Freedom of thought, conscience, religion and belief	Freedom of expression	Peaceful assembly and freedom of association
Taking part in public life	Property rights	Privacy and reputation	Protection of families and children
Cultural rights – generally	Cultural rights – Aboriginal peoples and Torres Strait Islander peoples	Right to liberty and security of the person	Humane treatment when deprived of liberty
Fair hearing	Rights in criminal proceedings	Children in the criminal process	Right not to be tried or punished more than once
Retrospective criminal laws	Right to education	Right to health services	

Proportionate limitation *justified in a free and democratic society based on human dignity, equality and freedom?*

- What is the nature of the human right being protected?
- What is the purpose of the limitation being proposed (including the extent to which the purpose is consistent with a free and democratic society based on human dignity, equality and freedom)?
- What is the relationship between the limitation itself – and its purpose?
- **Are there less restrictive and reasonably available options to achieve that purpose?**
- How important is the purpose of the limitation balanced against the importance of safeguarding the human right?



Helpful resources

The Queensland Human Rights Commission

<https://www.qhrc.qld.gov.au/>

The Victorian Charter of Rights Benchbook

<http://www.judicialcollege.vic.edu.au/eManuals/CHRB/B/index.htm#57496.htm>

DJAG's Human Rights Unit (materials designed for public entities)

<https://www.forgov.qld.gov.au/human-rights-resources>

- *'Nature and scope of rights'*
- *'When human rights may be limited'*
- *'Act and make decisions compatible with human rights'*