

FACT SHEET:

What is a public entity?

The *Human Rights Act 2019* requires public entities to act compatibly with human rights.

A public entity is an organisation or body performing a public function in and for Queensland.

There are two types of public entities.

Core public entities are considered public entities at all times, and are usually government entities.

Functional public entities are only considered public entities when they are performing a function of a public nature on behalf of the state. Organisations funded by government to provide public services would fall under this category. Functional public entities could be non-government organisations, private companies or government owned corporations. A private company funded to run a prison, or an NGO providing a public housing service, would be considered a functional public entity.

Organisations may also choose to be declared a public entity by regulation under the Act.

Some examples of public entities include:

- government agencies and departments;
- public service employees;
- the Queensland Police Service and other emergency services;
- State Government Ministers;
- public schools;
- public health services, including hospitals; and
- local government, councillors and council employees.

What is not a public entity?

The Act defines a public entity as being 'in and for Queensland'. This means that federal public services and entities are not included.

Private schools are not public entities because they are not performing their services on behalf of the state. They do not have to comply with the obligations for public entities under the Act.

Many private hospitals and private healthcare providers will also be exempt, unless they are treating public patients.

When is a function of a public nature?

A function is of a public nature when it is carried out in connection with a government responsibility. Indications that an organisation is performing a public function include when it is:

- connected to or identified with functions of government;
- carried out because of a requirement under law;
- is regulatory in nature; or
- is carried out by a government owned corporation.

Functions that are of a public nature would include:

- the operation of a corrective services facility or another place of detention;
- the provision of emergency services;
- public health services;
- public disability services;
- public education;
- public transport; and
- public and funded housing services.

The role and obligations of public entities

The Human Rights Act makes it unlawful for public entities to act or make a decision in a way that is not compatible with human rights. Failing to give proper consideration to a relevant human right is also considered to be not acting compatibly under the Act.

A public entity can act or make a decision that limits human rights, but only if it is reasonable and justifiable, or if the entity could not have acted differently or made a different decision because of another law.

For example, although the actions of a police officer executing a search warrant may limit human rights, they are lawful and permitted by the Human Rights Act because the officers are required by law to undertake these activities.

Complaints about public entities

From 1 January 2020, people are able to make a complaint when a public entity acts or makes decisions inconsistently with the Human Rights Act.

The Act requires that complaints are made directly to the relevant public entity in the first instance. If the complaint is not responded to, or not adequately responded to, after 45 business days have passed the person may make a complaint to the Human Rights Commission. The Commission may refuse to deal with the complaint if it is not made within 1 year of the public entity's decision or action. Complaints may also be accepted by the Commission within the 45 business day period of the Commissioner considers there are exceptional circumstances.

Complaints will only be able to be made regarding acts or decisions which occur on or after 1 January 2020.