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Human rights guide for people in prison

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In this booklet:

- human rights;
- discrimination and sexual harassment; and
- making a complaint.



Queensland
Human Rights
Commission



Human rights



Even when you are in prison you have human rights.

Knowing about your human rights is the first step towards other people respecting your rights.

Prisoners have human rights

Prisoners have human rights, but they are more limited than for people on the outside.

If the prison limits your human rights beyond the restrictions that are unavoidable in a prison, they must be:

- reasonable and justified; and
- the least restrictive on rights as is possible in the circumstances.

You can make a complaint to the Queensland Human Rights Commission about human rights breaches or discrimination in prison, but you have to complain to the prison's Chief Superintendent first. Making a written complaint to the Chief Superintendent starts the process of investigating and resolving your human rights complaint.

Prisons must respect human rights

Prison staff must properly consider your human rights when they make decisions about you, or take actions affecting you.

When deciding whether to limit your rights they have to have a good reason, for example, keeping other prisoners and staff safe.

Some of the human rights which are legally protected in Queensland are explained on the following pages.

A full list of human rights is set out on pages 12-15.

Humane treatment when deprived of liberty

While you are in prison, you have the right to be treated with respect and humanity, and have your dignity respected.

Removal of clothing or body searches

Removal of clothing (strip) and body searches should only be conducted because of a genuine security need. You should not be subject to a removal of clothing search for any other reason other than a legitimate safety or security need, and you have the right to ask and understand why it is happening. Searches should not be done to punish or harass a prisoner. Searches should be done in a way that is least intrusive of your dignity and privacy. A body cavity search can only be done by a doctor or nurse, and only when there is a good reason for it and less invasive options are not available.

Separate confinement

If a decision has been made to keep you separated from other prisoners (e.g. on a safety order or in separate confinement), it must be:

- for a good reason, such as in response to either the safety and security of the centre, safety to yourself, or as a result of a breach of discipline;
- under the least restrictive conditions, considering the reason you are separated from others;
- not for an excessive timeframe, considering the reason you are separated from others, and should not continue once the risk to yourself or others has passed; and
- regularly reviewed, including by an Official Visitor.

Restraints and use of force

If you are restrained by prison staff, or they use force on you, it has to be:

- for a good reason,
- as a last resort, and
- using the minimum amount of force or restraint that is necessary.

Good reasons may include keeping you safe, protecting the safety of staff or other prisoners or to stop you escaping. Restraints or use of force cannot be used to punish you.

Protection from torture and cruel, inhuman or degrading treatment

You have the right not to be tortured. You must not be treated or punished in a cruel, inhuman or degrading way.

You generally have the right not to have medical treatment done to you unless you understand and agree to it.

The following are examples from cases overseas of what might be considered cruel, inhuman or degrading treatment:

For example: Placing a prisoner in a hot, dark cell while reducing their food and water intake.

For example: A rule that a prisoner on remand has to wear a prison uniform showing their place of detention during their trial.

For example: A corrections officer repeatedly soaking the bed of an inmate with water on purpose.

Protection of families and children

The rights of families are protected. You have the right to stay connected with your family even though you are separated from them by a prison sentence. This includes visits, sending and receiving mail.

For example: The family of a prisoner who becomes seriously ill and is hospitalised has a right to be kept informed of their condition by the prison.

If you have given birth to a baby and you ask to keep your baby with you, the prison must properly consider your request, taking into account your human rights, as well as those of your baby. The best interests of the child is the most important factor in this decision.

Cultural rights

You have the right to enjoy your culture, practice your religion and beliefs, and use your language while inside, unless there is a good reason to stop you from doing this.

For Aboriginal and Torres Strait Islander prisoners, cultural rights include connection to culture and spiritual practices, identity, kinship ties, and language. Practicing culture might include making cultural art or participating in yarning circles.

For example: An Aboriginal mother in prison wanted to have contact with her children who lived a long way from the prison and were in child protection. Child Safety made arrangements for the children to visit their mother to maintain their kinship ties.

Expression

You have the right to have your own opinion. You have the right to seek and receive information. Even though you are in prison you have the right to be connected to the outside world. This includes having access to the news, writing and receiving letters, and receiving visitors. This right is balanced against the security of the prison, such as when a visitor is banned for attempting to bring in contraband. Your rights may also need to be balanced with others, such as when someone in the community decides they do not want to have visits with you or receive calls or mail from you.

Privacy

Your privacy, family, home, or correspondence must not be interfered with randomly or without good reason.

You can send letters or receive letters, but your letters can be opened, read, and censored. This is done to check for unacceptable content in your mail. Unacceptable content that could be seized or withheld includes inappropriate or pornographic images, threats, criminal acts, or coded messages.

However, if you receive privileged mail, such as from your lawyer or from some government departments, it should be kept private for just you to read.

You can make personal phone calls but they can be monitored and recorded.

For example: A prisoner's rights to privacy and freedom of expression were not properly considered when a philosophy book and a letter sent to a prisoner were returned to the sender because they were not on the prisoner's list of approved visitors.

Right to health services

You have the right to access health services while in prison, including medical and mental health treatment, without discrimination.

Prisoners should have access to the same standards of health care available in the wider community through the public health system.

You must not be refused emergency medical treatment needed to save your life or stop serious damage to your health.

Right to life

You have the right to life. This means that prison staff must protect you and prevent harm that would endanger your life. Staff must make decisions on where you are accommodated to ensure that you and others are protected from being hurt.

Right to education

While in prison, you have a right to access vocational education and training, such as TAFE courses.

However, whether a particular course is available to you in prison may depend on considerations for each prison, such as sufficient numbers attending, cost to the prison, and availability of facilities needed to deliver the course.

Recognition and equality before the law

You have legal rights and protection, even when you are in prison. This includes protection against discrimination, such as racial discrimination, disability discrimination, age discrimination, or sexuality discrimination.

You have the right to extra help if you do not read or speak English well, or you have a disability.

For example: A prisoner who is deaf needs essential information, like the prisoner induction process, provided to her with the assistance of an Auslan interpreter. She also needs another way to contact family members, such as video conferencing, as she cannot use the phone.

If a prisoner who does not understand or speak English well is charged with a breach of prison discipline they should get help to understand what is going on.



Discrimination and sexual harassment



Discrimination in prison

You should not be treated less favourably while in prison compared with another prisoner because of your race, age, disability, sexuality, religion, or other grounds (see below).

Sometimes it is reasonable for prisons to discriminate, such as to protect the health and safety of you or other prisoners.

Here is the full list of grounds for discrimination in Queensland:

- race;
- impairment (disability);
- sex;
- age;
- sexuality;
- gender identity;
- sex characteristics*;
- sex work activity**;
- relationship status;
- parental status;
- family responsibilities;
- pregnancy;
- religious belief, non-belief or activity;
- trade union activity;
- political belief or activity;
- breastfeeding; or
- association with someone else who has one of these characteristics.

*Discrimination on the basis of sex characteristics became unlawful on 29 April 2024. Complaints can only be made about conduct which happened on or after this date.

**Discrimination on the basis of sex work activity became unlawful on 2 August 2024 when sex work was decriminalised in Queensland.

There are a number of court decisions about discrimination against prisoners in Queensland. Here are two examples:

For example: Not having Halal meat available to a Muslim prisoner was discrimination.

For example: A prisoner being denied access to work in the kitchen and participate in exercise with other prisoners because of his HIV status was discrimination.

Sexual harassment

You have the same right to be free from sexual harassment in prison as you do outside.

Sexual harassment includes touching you, saying sexual things about you, asking or demanding sex, or asking questions about your private sexual life or your body.

Making a complaint

You have the right to complain when your human rights are not respected, or if you are discriminated against, or sexually harassed.

If your complaint is about the prison or a service offered to you in prison (e.g. the health service), there is a special procedure to follow.

Step 1: Write a Blue Letter and send it to the QCS Chief Superintendent

Write down your complaint and address it to the Chief Superintendent of the correctional centre. If your complaint is about actions or decisions taken in general prison management, address your complaint to the Chief Superintendent. If your complaint is about placement or security classification, address your complaint to the Chief Superintendent, Sentence Management.

Include dates when things happened, who was there, and what happened.

Use a blue envelope to make sure it is private.

Ask for a copy to be made because you might need to prove that you made an internal complaint. Make sure you keep the copy. If you can't get a photocopy made, write out a second copy for your own records. Make note of who you gave it to and what date and time it was.

Wait **9 weeks** (45 business days) to see if the Chief Superintendent fixes the problem.

Step 2: Make a complaint to the Queensland Human Rights Commission (QHRC)

If the complaint is not resolved by the Chief Superintendent send your complaint to the QHRC at this address:

Queensland Human Rights Commission
PO Box 15565
City East Q 4002

If you need more help to understand the process above, call the Queensland Human Rights Commission, Legal Aid Queensland or Prisoners Legal Service from the prisoner phone system.

Your complaint

We understand that you may not know what kind of complaint you are making. We will look at your complaint to decide if it is a human rights, discrimination or sexual harassment complaint, and we might ask you for more information.

If it is not a complaint we can accept, we will try to refer you somewhere that can help. We also might refer you to the Official Visitor because the *Corrective Services Act 2006* sometimes requires certain steps to be followed if you are a prisoner complaining about a prison.

What we do

The Queensland Human Rights Commission acts independently and free of control by other bodies. We act in a way that is fair to both sides. We tell people about what the law says, and help people resolve their complaints.

What we don't do

The Queensland Human Rights Commission can only accept complaints that come under the law. We do not conciliate every complaint we get. We do not give legal advice. In most cases you cannot get financial compensation if you are complaining about something that happened in prison, but you might get an agreement to resolve the issue.



Rights protected by Queensland's Human Rights Act



Here is the full list of human rights protected in Queensland:

Right to recognition and equality before the law (section 15)

Everyone is entitled to equal and effective protection against discrimination, and to enjoy their human rights without discrimination.

Right to life (section 16)

Every person has the right to life and to not have their life taken. The right to life includes a duty on government to take appropriate steps to protect the right to life.

Right to protection from torture and cruel, inhuman or degrading treatment (section 17)

People must not be tortured. People must not be treated or punished in a cruel, inhuman or degrading way. This includes protection from treatment that humiliates a person. This right also protects people from having medical treatment or experiments performed on them without their full and informed consent.

Right to freedom from forced work (section 18)

A person must not be forced to work or be made a slave. A person is a slave when someone else has complete control over them.

Right to freedom of movement (section 19)

People can stay in or leave Queensland whenever they want to as long as they are here lawfully. They can move around freely within Queensland and choose where they live.

Right to freedom of thought, conscience, religion and belief (section 20)

People have the freedom to think and believe what they want – for example, religion. They can do this in public or private, as part of a group or alone.

Right to freedom of expression (section 21)

People are free to say what they think and want to say. They have the right to find, receive and share information and ideas. In general, this right might be limited to respect the rights and reputation of other people, or for the protection of public safety and order.

Right to peaceful assembly and freedom of association (section 22)

People have the right to join groups and to meet peacefully.

Right to taking part in public life (section 23)

Every person has the right to take part in public life, such as the right to vote or run for public office.

Property rights (section 24)

People are protected from having their property taken, unless the law says it can be taken.

Right to privacy and reputation (section 25)

Everyone has the right to keep their lives private. Your family, home or personal information cannot be interfered with, unless the law allows it.

Right to protection of families and children (section 26)

Families are entitled to protection. Children are entitled to protection according to their best interests.

Cultural rights – generally (section 27)

People can have different family, religious or cultural backgrounds. They can enjoy their culture, declare and practice their religion, and use their languages.

Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28)

Aboriginal peoples and Torres Strait Islander peoples in Queensland hold distinct cultural rights. They include the right to practice their beliefs and teachings, use their languages, protect and develop their kinship ties, and maintain their relationship with the lands, seas, and waterways.

Right to liberty and security of person (section 29)

Everyone has the right to freedom and safety. The right to liberty includes the right to not be arrested or detained except in accordance with the law. The right to security means that reasonable steps must be taken to ensure the physical safety of people who are in danger of physical harm.

Right to humane treatment when deprived of liberty (section 30)

People have the right to be treated with humanity if they are accused of breaking the law and are detained.

Right to a fair hearing (section 31)

A person has a right to a fair hearing. This means the right to have criminal charges or civil proceedings decided by a competent, independent, and impartial court or tribunal after a fair and public hearing.

Rights in criminal proceedings (section 32)

There are a number of minimum guarantees that you have when you have been charged with a criminal offence. These include:

- the right to be told the charges against you in a language you understand;

- the right to an interpreter if you need one;
- the right to have time and the facilities (such as a computer) to prepare your own case, or to talk to your lawyer;
- the right to have your trial heard without too much delay;
- the right to be told about Legal Aid if you don't already have a lawyer;
- you are presumed innocent until proven guilty; and
- you don't have to testify against yourself or confess your guilt unless you choose to do so.

Rights of children in the criminal process (section 33)

A child charged with committing a crime or who has been detained without charge must not be held with adults. The child must also be brought to trial as quickly as possible and treated in a way that is appropriate for their age. Children are entitled to opportunities for education and rehabilitation in detention.

Right not to be tried or punished more than once (section 34)

A person will only go to court and be tried once for a crime. This means if the person is found guilty they will only be punished once. If they are found to be innocent they will not be tried again or punished.

Retrospective criminal laws (section 35)

A person has the right not to be prosecuted or punished for things that were not criminal offences at the time they were committed.

Right to education (section 36)

Every child has the right to primary and secondary schooling. Every person has the right to have access to further vocational education, based on their ability.

Right to health services (section 37)

Everyone has the right to access health services without discrimination. This right also states that nobody can be refused emergency medical treatment.

Contact us

From inside prison, you can call us on the Prisoner Phone System.

From outside prison, our contact details are:

1300 130 670

enquiries@qhrc.qld.gov.au

www.qhrc.qld.gov.au



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