

# HUMAN RIGHTS PROCEDURE



## 1 Scope

This procedure applies all Rockhampton Regional Council Councillors, employees, volunteers, contractors or any other party dealing with Council.

## 2 Purpose

The purpose of this procedure is to:

- (a) Detail the human rights as defined and protected under the *Human Rights Act 2019*;
- (b) Provide for how the Act is to be considered when ensuring acts and decisions are compatible with human rights; and
- (c) Provide responsibilities for ensuring acts and decisions are compatible with human rights across Council.

## 3 Related documents

### 3.1 Primary

Human Rights Policy

### 3.2 Secondary

*Anti-Discrimination Act 1991*

*Human Rights Act 2019*

*Human Rights Regulation 2020*

*Industrial Relations Act 2016*

*Information Privacy Act 2009*

*Local Government Act 2009*

*Local Government Regulation 2012*

Administrative Action Complaint Procedure

Code of Conduct

Code of Conduct for Councillors in Queensland

Complaints Management Policy

Councillor Investigation Policy

Discipline Procedure

Governance Administration Framework Policy

Grievance Procedure

Human Rights and Discrimination Complaints Procedure

Investigation Procedure

Privacy Policy

Workplace Bullying, Discrimination and Sexual Harassment Policy

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## 4 Definitions

To assist in interpretation, the following definitions apply:

Act	<i>Human Rights Act 2019</i>
CEO	Chief Executive Officer A person who holds an appointment under section 194 of the <i>Local Government Act 2009</i> . This includes a person acting in this position.
Complaint	An expression of dissatisfaction by a customer regarding the unsatisfactory delivery of a product or service offered by Council or the unsatisfactory conduct of Council employees, Councillors, contractors and volunteers.
Contractors	A person, organisation or entity that performs a specific act or acts including the provision of services and/or materials to another person, organisation or entity under an agreement enforceable by law.
Coordinator	An employee appointed to a position with a corporate band 4 delegated in line with the Delegation and Authorisation Policy and detailed in the Delegations Corporate Register.
Council	Rockhampton Regional Council
Councillor/s	The Mayor and Councillors of Council, within the meaning of the <i>Local Government Act 2009</i> .
Employee/s	Local government employee: (a) The CEO; or (b) A person holding an appointment under section 196 of the <i>Local Government Act 2009</i> .
General Manager	An employee appointed to a position with a corporate band 2 delegated in line with the Delegation and Authorisation Policy and detailed in the Delegations Corporate Register, includes general managers.
Human rights	As defined in part 2, divisions 2 and 3 of the <i>Human Rights Act 2019</i> .
Human rights complaint	As defined in the Act, a complaint about an alleged contravention of section 58(1) by a public entity in relation to an act or decision of the public entity.
Manager	An employee appointed to a position with a corporate band 3 delegated in line with the Delegation and Authorisation Policy and detailed in the Delegations Corporate Register.
Public entity	As defined in the Act, each of the following entities is a public entity: (a) A government entity, within the meaning of the <i>Public Sector Act 2022</i> , section 276; (b) A public service employee; (c) The Queensland Police Service; (d) A local government, a councillor of a local government or a local government employee; (e) A Minister; (f) An entity established under an Act when the entity is performing functions of a public nature; (g) A member of a portfolio committee when the committee is acting in an administrative capacity; (h) An entity whose functions are, or include, functions of a public nature when it is performing the functions for the State or a public entity (whether under contract or otherwise);

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	(i) A person, not otherwise mentioned in paragraphs (a) to (h), who is a staff member or executive officer (however called) of a public entity; (j) An entity prescribed by regulation to be a public entity.
QHRC	Queensland Human Rights Commission
Volunteer	Any person, who of their own free will, offers to undertake un-paid work for Council and is accepted as a volunteer by the CEO and/or their authorised delegates.

## 5 Procedure

### 5.1 Human rights

The Act defines and protects 23 human rights. Council must uphold these rights when delivering services, developing policies and procedures, designing projects, managing risks, making decisions and managing complaints.

### 5.2 Protected human rights

Under section 11 of the Act, all individuals in Queensland have human rights, and only individuals have human rights.

Council has an obligation to uphold all protected human rights in accordance with the Act.

Protected human rights are defined in the Act as:

#### 5.2.1 Right to recognition and equality before the law (section 15 of the Act)

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

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

#### 5.2.2 Right to life (section 16 of the Act)

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. Examples may include:

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

#### 5.2.3 Right to protection from torture and cruel inhuman or degrading treatment (section 17 of the Act)

People must not be tortured. People must also 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. Examples may include:

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

#### 5.2.4 Right to freedom from forced work (section 18 of the Act)

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. Examples may include:

- (a) Compelling the provision of any labour or the performance of any service under threat of penalty.

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### 5.2.5 Right to freedom of movement (section 19 of the Act)

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. Examples may include:

- (a) Proposing surveillance of an individual.
- (b) Compelling someone to provide information.
- (c) Regulating access to land based on quarantine considerations or eligibility requirements.

### 5.2.6 Right to freedom of thought, conscience, religion and belief (section 20 of the Act)

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. Examples may include:

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

### 5.2.7 Right to freedom of expression (section 21 of the Act)

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. Examples may include:

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

### 5.2.8 Right to peaceful assembly and freedom of association (section 22 of the Act)

People have the right to join groups and to meet peacefully. Examples may include:

- (a) Making decisions regarding public protests, demonstrations, or marches.
- (b) Regulating membership of groups and associations.

### 5.2.9 Right to take part in public life (section 23 of the Act)

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

- (a) Regulating how individuals vote in elections.
- (b) Establishing requirements for membership of public bodies.
- (c) Regulating the suspension and conduct of local government.
- (d) Affecting the ability of a person to participate in local Council meetings.

### 5.2.10 Property rights (section 24 of the Act)

People have the right to own property and are protected from having their property taken, unless the law says it can be taken. Examples may include:

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

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### 5.2.11 Right to privacy and reputation (section 25 of the Act)

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

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

### 5.2.12 Right to protection of families and children (section 26 of the Act)

Families are entitled to protection. Children have the same human rights as adults and are entitled to special protection ensuring that the best interests of the child are taken into account. Examples may include:

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

### 5.2.13 Cultural rights – generally (section 27 of the Act)

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

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

### 5.2.14 Cultural rights – Aboriginal peoples and Torres Strait Islanders peoples (section 28 of the Act)

Aboriginal and Torres Strait Islander peoples in Queensland hold distinct cultural rights. They include the rights 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. Examples may include:

- (a) 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.
- (b) Regulating the conduct of commercial activities on the traditional lands of Aboriginal or Torres Strait Islander persons.

### 5.2.15 Right to liberty and security of persons (section 29 of the Act)

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 a person's security, both physical and mental. Examples may include:

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

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### 5.2.16 Right to humane treatment when deprived of liberty (section 30 of the Act)

People have the right to be treated with humanity and respect if they are accused of breaking the law and are detained. Examples may include:

- (a) Authorising a person to be held in a place with limited facilities or services for the care and safety of detainees.
- (b) 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.

### 5.2.17 Right to a fair hearing (section 31 of the Act)

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. Examples may include:

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

### 5.2.18 Rights in criminal proceedings (section 32 of the Act)

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. Examples may include:

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

### 5.2.19 Rights of children in the criminal process (section 33 of the Act)

A child charged with committing a crime or who has been detained without charge must not be held with adults. They 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. Examples may include:

- (a) Enabling a child to be detained for any length of time.
- (b) Enabling people to undertake personal searches of a detained child.
- (c) Considerations impacting on the environmental design of detention centres or conditions under which children are detained.

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### 5.2.20 Right not to be tried or punished more than once (section 34 of the Act)

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 punished. Examples may include:

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

### 5.2.21 Protection from retrospective criminal laws (section 35 of the Act)

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

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

### 5.2.22 Right to education (section 36 of the Act)

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. Examples may include:

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

### 5.2.23 Right to health services (section 37 of the Act)

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

- (a) Providing health services.
- (b) Providing interpreter services in a health setting.
- (c) Managing complaints in a health setting.

## 5.3 Application of the Act

Every act, policy or decision by Council must be assessed for compatibility with human rights. Acting compatible with human rights means an act or decision does not limit a human right, or limits a human right only to the extent that is reasonable and demonstrably justifiable.

Giving proper consideration to human rights in making a decision includes, but is not limited to:

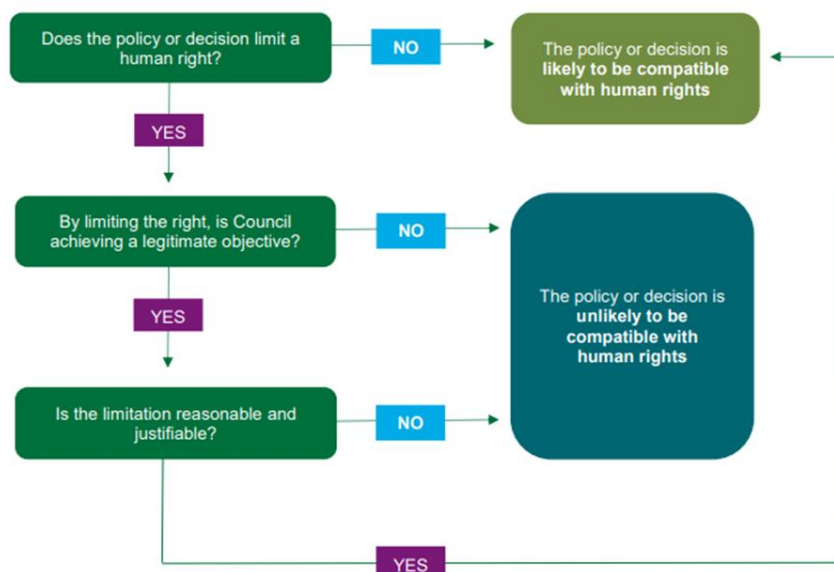
- (a) Adopting a common sense and practical approach;
- (b) Identifying the human rights that may be affected by the decision;
- (c) Seriously considering the impact of the decision on human rights;
- (d) Identifying and balancing countervailing interests or obligations; and
- (e) Considering whether the decision would be compatible with human rights.

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If an act or decision is incompatible with human rights then the act or decision should be modified and then reassessed for compatibility.

Council has adopted the following approach, illustrated below, to assess the compatibility of decisions or policies with legislative requirements.



#### 5.4 Limiting human rights

If your act or decision limits a human right, it must be reasonable and demonstrably justifiable. In determining if the limit is reasonable and justifiable, the following factors need to be considered:

- (a) The nature of the human right, including what the relevant human right protects;
- (b) The nature of the purpose of the limitation, including what the purpose is for limiting the human right and what Council is trying to achieve with the decision or action;
- (c) The relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose;
- (d) Whether there are any less restrictive and reasonably available ways to achieve the purpose;
- (e) The importance of the purpose of the limitation;
- (f) The importance of preserving the human right, taking into account the nature and extent of the limitation on the human right;
- (g) The balance between the matters mentioned in paragraphs (e) and (f), including whether the benefit of achieving Council’s purpose outweighs the harm caused by limiting the right.

If the act or decision limits human rights, but is assessed as compatible, the responsible person is required to document the justification for the act or decision and the process used to consider human rights.

A human right should only be limited in a way that can be justified in a free and democratic society based on human dignity, equality, freedom and the rule of law. The Act does not give any person or Council a right to limit a right to a greater extent than is provided for in the Act, nor does it give any person or Council a right to destroy a human right of any person.

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## 5.5 Exceptions

You must not act or make a decision that is not compatible with, or that does not give proper consideration to, human rights. Exceptions to this include:

- (a) Under another law Council could not have reasonably acted differently or made a different decision.
- (b) The act or decision is of a private nature.
- (c) The act or decision would impede or prevent a religious body complying with religious doctrines, beliefs, or principles.

If one of the above exceptions is relevant to the act or decision, the responsible person is required to document the applicable exception and the relevant reasons.

## 5.6 Responsibilities

### 5.6.1 Chief Executive Officer and general managers

Chief Executive Officer and general managers have a responsibility to:

- (a) Demonstrate due diligence, leadership, commitment, and support to ensure compliance with the Human Rights Policy, this procedure and the Act; and
- (b) Promote a culture of decision making that incorporates proper consideration for, and compatibility with, human rights.

### 5.6.2 Managers and coordinators

Managers and Coordinators have a responsibility to ensure:

- (a) Recommendations for policy or decision making include proper written consideration for human rights, including the compatibility of the decision or policy with human rights; and
- (b) Policy and decision making include proper consideration for human rights, including the compatibility of the decision or policy with human rights.

### 5.6.3 Employees

Employees have a responsibility to:

- (a) Give proper consideration to human rights when making decisions;
- (b) Assess the compatibility of their actions and decisions with human rights;
- (c) Give proper consideration to human rights when making recommendations; and
- (d) Participate in various educational awareness training programs.

### 5.6.4 Workforce and Governance

Workforce and Governance will:

- (a) Assess, investigate, and manage human rights complaints in accordance with the Human Rights and Discrimination Complaints Procedure.
- (b) Facilitate educational awareness programs in relation to protected human rights, the application of the Act in the workplace and human rights complaints and applicable procedures.
- (c) Review and report trends, identify systemic risks and recommend corporate rectification actions to the CEO, senior management and Council as required for complaints.
- (d) Be the central registrar for Council's complaint registers.
- (e) Liaise with government agencies as required.

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### 5.6.5 Councillors

Councillors have a responsibility to:

- (a) Ensure policy and decision making include proper consideration for human rights, including the compatibility of the decision or policy with human rights; and
- (b) Refer any human rights complaints to the CEO.

## 5.7 Human rights complaints

Under the Act, an individual who believes Council has breached their human rights' obligations has the right to complain and seek remedies.

There are three ways an individual can make a complaint which include:

- (a) Internal complaints;
- (b) Independent complaints; and
- (c) Raising the Act in courts and tribunals.

### 5.7.1 Internal complaints

Individuals must first raise their complaint directly with Council. Council has 45 days to respond, after which the individual can make a formal human rights complaint to the QHRC for independent resolution if the complaint has not been responded to or if the individual is not satisfied with the response.

Human rights complaints will be assessed and managed in accordance with Council's Complaints Management Policy and Human Rights and Discrimination Complaints Procedure.

### 5.7.2 Independent complaints

An individual can raise a complaint about human rights with the QHRC or another independent body. In accordance with section 65 of the Act, to accept complaints made under the Act, the QHRC must be satisfied that:

- (a) A complaint has first been made to Council alleged to have breached the Act; and

At least 45 business days have elapsed since the complaint was made to Council; and

The individual has not received a response to their complaint or has received an inadequate response.

The QHRC may accept a complaint prior to 45 business days elapsing if they consider it appropriate due to exceptional circumstances.

The QHRC will accept complaints that include details to indicate that a public entity has acted or made a decision in a way that is not compatible with human rights, or has failed to give proper consideration to human rights. The QHRC aims to work with individuals and agencies, encouraging complaints to be resolved internally, and may give the agency more time to resolve the complaint.

The QHRC may refuse to accept the complaint if a period of more than one year has elapsed since the date of the act or decision.

### 5.7.3 Raising the Act in courts and tribunals

In some cases, the human rights complaint can be taken to a court or tribunal. While individuals cannot make human rights complaints directly to courts and tribunals for breaches of the Act, it is possible to raise breaches of the Act in the process of a hearing based on another law.

## 5.8 Breaches of procedure

Breaches of this procedure may result in disciplinary action being taken in accordance with the Discipline Procedure.

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## 6 Review timelines

This procedure is reviewed when any of the following occur:

- (a) The related information is amended or replaced; or
- (b) Other circumstances as determined from time to time by the CEO.

## 7 Document management

Sponsor	Chief Executive Officer
Business Owner	Chief Executive Officer
Policy Owner	General Manager Workforce and Governance
Policy Quality Control	Legal and Governance

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