

# HUMAN RIGHTS AND DISCRIMINATION COMPLAINTS PROCEDURE



## 1 Scope

This procedure applies to the management of all human rights and discrimination complaints regarding Rockhampton Regional Council actions, decisions and employees including Councillors, contractors and volunteers.

## 2 Purpose

The purpose of this procedure is to:

- Outline a process for identifying, assessing, recording, managing and resolving human rights complaints and external discrimination complaints in an ethical, fair, transparent and compliant manner;
- Allow for a prompt investigation into human rights complaints and external discrimination complaints; and
- Ensure appropriate action is taken when a human rights or discrimination breach occurs.

## 3 Related documents

### 3.1 Primary

Complaints Management Policy

Human Rights Policy

### 3.2 Secondary

*Age Discrimination Act 2004 (Cwth)*

*Anti-Discrimination Act 1991*

*Australian Human Rights Commission Act 1986 (Cwth)*

*Disability Discrimination Act 1992 (Cwth)*

*Human Rights Act 2019*

*Human Rights Regulation 2020*

*Industrial Relations Act 2016*

*Local Government Act 2009*

*Local Government Regulation 2012*

*Racial Discrimination Act 1975 (Cwth)*

*Sex Discrimination Act 1984 (Cwth)*

Code of Conduct

Code of Conduct for Councillors in Queensland

Councillor Investigation Policy

Discipline Procedure

Equal Employment Opportunity Policy

Governance Administration Framework Policy

Grievance Procedure

Human Rights Procedure

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Adopted/Approved:	Adopted, 24 March 2026	Department:	Office of the CEO
Version:	1	Section:	Workforce and Governance
Reviewed Date:		Page No:	Page 1 of 8

## 4 Definitions

To assist in interpretation, the following definitions apply:

Act	<i>Human Rights Act 2019</i>
AHRC	Australian Human Rights Commission
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.
Complainant	Person or their representative making a complaint.
Contractor	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.
Council	Rockhampton Regional Council
Councillor/s	The Mayor and Councillors of Council, within the meaning of the <i>Local Government Act 2009</i> .
Discrimination	As defined in the Act, in relation to a person, includes direct discrimination or indirect discrimination, within the meaning of <i>the Anti-Discrimination Act 1991</i> , on the basis of an attribute stated in section 7 of that Act.
Discrimination complaint	A complaint about prohibited types of discrimination in areas of activity in which discrimination is prohibited, in accordance with the <i>Anti-Discrimination Act 1991</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> .
Human rights	As defined in part 2, divisions 2 and 3 of the Act.
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.
People and Capability	People and Capability Unit, Workforce and Governance
Public entity	As defined in section 9 of 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;

### LEGAL AND GOVERNANCE USE ONLY

Adopted/Approved:	Adopted, 24 March 2026	Department:	Office of the CEO
Version:	1	Section:	Workforce and Governance
Reviewed Date:		Page No:	Page 2 of 8

	(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); (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.
QCAT	Queensland Civil and Administrative Tribunal
QHRC	Queensland Human Rights Commission
QIRC	Queensland Industrial Relations 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 complaints

As defined in the Act, a human rights complaint is 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.

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

#### 5.1.1 Internal complaints

Individuals must first raise a human rights complaint directly with Council. Council has 45 days to respond, after which the individual can make a formal 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.

#### 5.1.2 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 complaint has first been made to the public entity alleged to have breached the Act; and
- At least 45 business days have elapsed since the complaint was made to the public entity; 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.

#### 5.1.3 Raising the Act in courts and tribunals

In some cases, the complaint can be taken to a court or tribunal. While individuals cannot make 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.

LEGAL AND GOVERNANCE USE ONLY			
Adopted/Approved:	Adopted, 24 March 2026	Department:	Office of the CEO
Version:	1	Section:	Workforce and Governance
Reviewed Date:		Page No:	Page 3 of 8

## 5.2 Discrimination complaints

Discrimination is treating, or proposing to treat, someone less favourably because of a personal characteristic protected by the law, such as sex, age, race or disability.

Direct discrimination is when a person or group is treated less favourably than another person or group in a similar situation because of a personal characteristic (attribute) protected by law.

Indirect discrimination is when an unreasonable requirement, condition or practice is imposed that has, or is likely to have, the effect of disadvantaging people with a personal characteristic (attribute) protected by law.

Prohibited attributes under *Anti-Discrimination Act 1991* include:

- (a) Sex;
- (b) Relationship status;
- (c) Pregnancy;
- (d) Parental status;
- (e) Breastfeeding;
- (f) Age;
- (g) Race;
- (h) Impairment;
- (i) Religious belief or activity;
- (j) Political belief or activity;
- (k) Trade union activity;
- (l) Lawful sexual activity;
- (m) Gender identity;
- (n) Sexuality;
- (o) Family responsibilities; and
- (p) Association with, or relation to, a person identified on the basis of any of the above attributes.

### 5.2.1 Internal complaints

Individuals can raise a discrimination complaint directly with Council. It is encouraged that reports of discrimination are raised internally prior to referring the matter to an external agency.

### 5.2.2 Independent complaints

An individual can raise a complaint about discrimination with the QHRC or AHRC.

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

### 5.2.3 Formal hearing

If the matter is not resolved, it may be referred for a formal hearing. Complaints may be referred to:

- (a) If the complaint is or includes a work-related matter – the QIRC; or
- (b) For all other complaints – the QCAT.

LEGAL AND GOVERNANCE USE ONLY			
Adopted/Approved:	Adopted, 24 March 2026	Department:	Office of the CEO
Version:	1	Section:	Workforce and Governance
Reviewed Date:		Page No:	Page 4 of 8

### 5.3 Making a human rights or discrimination complaint

An individual may make a human rights or discrimination complaint in any of the following ways, however Council's preferred method is in writing. Council does not consider comments published on social media to be complaints.

- (a) Telephone Council on 07 4932 9000 or 1300 225 577;
- (b) Visit a Customer Service Centre in Rockhampton, Gracemere or Mount Morgan;
- (c) Online at [www.rockhamptonregion.qld.gov.au](http://www.rockhamptonregion.qld.gov.au);
- (d) Email Council at [enquiries@rrc.qld.gov.au](mailto:enquiries@rrc.qld.gov.au);
- (e) Write to Council PO Box 1860, Rockhampton QLD, 4700; or
- (f) Fax Council on 07 4936 8862 or 1300 225 579.

#### 5.3.1 Assistance

If this information is not in the complainant's language, assistance is available by calling the National Translating and Interpreting Service (NTIS) on 131 450. The complainant can advise the NTIS of their preferred language and ask to speak with the Rockhampton Regional Council Customer Service on 1300 225 577 or 07 4932 9000.

If assistance is required because of a hearing or speech impairment, the complainant may contact the National Relay Service on 133 677. If the complainant can speak and hear but sometimes people have trouble understanding them, the complainant may call the Relay Service on 1300 555 727.

### 5.4 Process for dealing with human rights and discrimination complaints

People and Capability unit will deal with human rights and discrimination complaints.

#### 5.4.1 Assessment of complaint

In the majority of cases, every human rights or discrimination complaint will be assessed and investigated unless it falls within one of the following assessment criteria:

- (a) It is considered to be frivolous or vexatious, i.e. lacks substance or credibility, is an abuse of the complaints management process, is not made in good faith, or attempts to reopen an issue that has been determined by raising the same/similar issue/s again; such that an investigation would be unnecessary, unjustifiable or an inappropriate use of resources.
- (b) It is made using rude or uncontrolled language, or where the complainant is physically harassing or stalking an employee. These complaints may not be answered or may be returned.
- (c) It is made 12 months after the matter arose unless there was a relevant matter which was not within the means of knowledge of the complainant within 12 months after the matter arose. Approval may be granted to extend time up to 12 months after the complainant became aware of the relevant matter.
- (d) The complaint is made anonymously and it is determined there is insufficient information to investigate.
- (e) It is determined the complaint is complex and the complainant refuses to put it in writing.
- (f) The complainant is pursuing the complaint through an alternative review process, or it has already been reviewed through an alternative review process, for example through the QHRC, AHRC, QCAT or the Ombudsman's Office.

#### LEGAL AND GOVERNANCE USE ONLY

Adopted/Approved:	Adopted, 24 March 2026	Department:	Office of the CEO
Version:	1	Section:	Workforce and Governance
Reviewed Date:		Page No:	Page 5 of 8

- (g) Where the complainant fails to provide sufficient information or in some way inhibits the investigation, for example fails to respond to requests for information within a reasonable time period or refuses to give the necessary access to a property.

General enquiries and requests for information pertaining to human rights and discrimination matters, including whether an act or decision has breached a human right or if it is discriminatory, are not considered to be complaints. These matters will be handled by the relevant section within Council with a response provided to the customer at the time. Should a person be dissatisfied with the response to their enquiry or request for information, this may trigger the complaint process to commence.

The initial assessment against the above criteria must be completed within seven working days. If the complaint does satisfy one or more of the above criteria, the People and Capability Unit may determine to not investigate the complaint. The complainant will be advised within 10 working days from the decision to not investigate the complaint and the reasons why not to investigate will be supplied.

If the complaint proceeds to be investigated the above criteria will continually be assessed through the life of the complaint and the complaint may be refused; at any point; to be dealt with, if one or more of the above criteria are satisfied. If the complaint is ceased the complainant will be advised within ten working days from the decision to cease, along with the reasons why it is discontinued.

#### 5.4.2 Management of complaint

To deal with a complaint involving a breach of human rights or discrimination, the People and Capability Unit will:

- (a) Ensure the complaint is recorded appropriately and continue to maintain records as the investigation progresses.
- (b) Assess the complaint in accordance with the Act, the *Anti-Discrimination Act 1991* and paragraph 5.4.1 of this procedure.
- (c) Acknowledge the complaint in accordance with Council's Customer Service Charter and contact the complainant to:
  - (i) Seek any further clarification on the complaint and the outcome the complainant is requesting;
  - (ii) Allow the opportunity to provide further relevant information; and
  - (iii) Advise the expected timeframe for reviewing the complaint.
- (d) Undertake an investigation in accordance with Council's Investigation Procedure. The People and Capability Unit has a maximum of 45 working days to investigate and make recommendations. In the case of a technical or complex matter, this timeframe may be extended by the CEO.
- (e) Provide an Investigation Report or Memorandum and recommended action/s to the CEO.
- (f) Advise the complainant in writing of the outcome, with a statement of reasons which should include:
  - (i) Relevant legislation, local laws and policy documents;
  - (ii) Correspondence and other communication relating to the complaint, where applicable;
  - (iii) Evidence and other material available to the investigating officer, where applicable;
  - (iv) Findings of fact;
  - (v) Any decisions made by Council in regard to the complaint; and
  - (vi) Reasons for Council's decision.

#### LEGAL AND GOVERNANCE USE ONLY

Adopted/Approved:	Adopted, 24 March 2026	Department:	Office of the CEO
Version:	1	Section:	Workforce and Governance
Reviewed Date:		Page No:	Page 6 of 8

- (g) If a breach of human rights or discrimination is established, advise of any remedy or redress, the timeframe which it will be provided and detail any other changes that may occur as a result.
- (h) Ensure appropriate records are updated with outcomes and implement any required actions.

### 5.4.3 Considering human rights

When assessing and investigating human rights complaints, the following will be considered:

- (a) The human rights relevant to the action or decision;
- (b) Whether the complainant’s rights have been limited by the action or decision;
- (c) Whether limiting the right was achieving a legitimate objective;
- (d) Whether the limitation was reasonable and demonstrably justifiable under section 13 of the Act; and
- (e) If a human right has been unjustifiably limited, appropriate action to remedy the breach.

## 5.5 Remedies

Where a human rights or discrimination complaint is found to be justified, Council will, where practicable, remedy the situation in a manner which is consistent and fair for both Council and complainant/s. Possible remedial actions may include:

- (a) An explanation for the action in question;
- (b) An admission of fault;
- (c) An apology;
- (d) Cancellation or amendment of the decision;
- (e) Rectification, including repairing or replacing the matter in dispute;
- (f) Revision of relevant policy, procedure or practice;
- (g) Reimbursement of costs incurred as a result of the action in question;
- (h) Financial compensation, including an ex gratia payment; and/or
- (i) Waiver of debt.

More than one remedy may be applied if the circumstances justify that course of action.

## 5.6 External review options

### 5.6.1 Human rights complaint

For human rights complaints, external review options may be one of the following:

- (a) QHRC; or
- (b) AHRC; or
- (c) Another independent body.

LEGAL AND GOVERNANCE USE ONLY			
Adopted/Approved:	Adopted, 24 March 2026	Department:	Office of the CEO
Version:	1	Section:	Workforce and Governance
Reviewed Date:		Page No:	Page 7 of 8

## 5.6.2 Discrimination complaint

For discrimination complaints, external review options may be one of the following:

- (a) QHRC; or
- (b) AHRC.

After these review options have been exhausted, further review options may include:

- (a) If the complaint is or includes a work-related matter – the QIRC; or
- (b) For all other complaints – the QCAT.

## 5.7 Confidentiality and privacy

A complainant's details should remain confidential however, employees should advise a complainant of the possibility that their identity may become obvious as a result of an investigation process or subsequent enforcement action. Council's Privacy Policy provides advice on handling the disclosure of personal information.

Council may be obliged to disclose a person's personal details to an external body for investigation or under a legal or statutory process.

## 5.8 Workforce and Governance responsibilities

Workforce and Governance is responsible for:

- (a) Assessing human rights and discrimination complaints;
- (b) Investigating complaints referred by the CEO, general managers or external agencies;
- (c) Liaising with government agencies as required;
- (d) Facilitating educational awareness programs in relation to human rights and discrimination complaints and applicable procedures; and
- (e) Being the central registrar for Council's complaint registers.

## 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	General Manager Workforce and Governance
Policy Owner	General Manager Workforce and Governance
Policy Quality Control	Legal and Governance

### LEGAL AND GOVERNANCE USE ONLY

Adopted/Approved:	Adopted, 24 March 2026	Department:	Office of the CEO
Version:	1	Section:	Workforce and Governance
Reviewed Date:		Page No:	Page 8 of 8