

Acting compatibly with human rights:

A guide for public entities to Queensland's *Human Rights Act 2019*

The *Human Rights Act 2019* requires all public entities in Queensland to act compatibly with human rights and to give proper consideration to human rights before making a decision.

Compatible with human rights is defined in section 8 of the Act. Section 8 says that an act or decision will be compatible with human rights if:

- it does not limit a human right, or
- it limits a human right only to the extent that is reasonable and demonstrably justifiable, in accordance with section 13 of the Act.

This means that every act, policy or decision by a public entity must be assessed for compatibility with these rights.

To carry out these responsibilities, when acting or making decisions public entities should follow these steps.

Step 1: Identify relevant rights

Look through rights protected under the Act to see which are relevant. Rights may be broader than they first seem.

A list can be found on the Queensland Human Rights Commission website at www.qhrc.qld.gov.au. There is also a companion poster which lists the rights protected under the Act at www.qhrc.qld.gov.au/resources/posters.

If you are unsure which rights are relevant, the Commission's *Public Entity Toolkit* contains some common policy triggers for human rights assessment. You can find it at www.qhrc.qld.gov.au/your-responsibilities.

Step 2: Consider the impact

Will your act or decision limit or restrict any of the relevant rights you've identified?

No: if rights are not being limited, you are acting or making decisions compatibly with human rights.

Yes: if human rights are being limited, or if you are unsure, you should move to step 3.

Step 3: Determine whether the limit is reasonable and justified

Ask yourself the following questions about the act or decision being proposed:

Is it lawful?

What law or regulation allows you to limit a person's rights?
If you can't identify a law or regulation then you may not be able to limit rights.

Is there a purpose?

What is the aim of the limitation? Does it achieve a legitimate purpose?

Is it rational?

Will what you are doing effectively achieve your purpose?

Is it necessary?

Is this the least restrictive way to achieve your purpose?

Is it fair and balanced?

Do the benefits outweigh the harm caused by the limitation?

If you answer yes to all these questions, your act or decision is likely to be compatible with human rights.

If the act or decision appears incompatible, modify it if possible then reassess for compatibility.

If the act or decision limits human rights, but is assessed as compatible, then you will need to document your justification for the act or decision, and the process used to consider human rights.

This is a general guide only. You may wish to seek legal advice if you need more detailed guidance on a specific issue, or consult our website for more information: www.qhrc.qld.gov.au.

More indepth information on obligations for public entities under the Act can be found in our *Public Entity Toolkit*, which is available to download from our website at www.qhrc.qld.gov.au/your-responsibilities.