

Human Rights

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Guide: Handling human rights complaints

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Queensland
Government

Complaints

Purpose of this guide

The *Human Rights Act 2019* (the Act) imposes obligations on public entities as defined by section 9 of the Act. 'Public entity' is defined to include government departments, statutory bodies and various other entities, including functional public entities (i.e. organisations that perform functions of a public nature). The term 'agency' is used in this document to refer to government departments and statutory bodies.

This guide is directed at agencies. While other public entities may find this guide useful please note that some requirements, particularly in relation to reporting, will not apply to all public entities.

This guide will help agencies incorporate human rights considerations into existing complaints processes. Agencies already consider many relevant human rights issues when handling complaints. However, they should review their complaints policies and procedures to ensure that they are compatible with human rights. Human rights obligations should be explicitly stated in these documents.

Aside from references to specific provisions of the Act, this guide is not intended to be prescriptive and agencies are not obliged to adopt the processes outlined in this guide. It provides general guidance only, and may be adapted by agencies to suit their specific needs.

Internal human rights complaints handling

Individuals may make a human rights complaint

Under the Act, agencies must:

- act and make decisions in a way that is compatible with human rights
- properly consider human rights when making decisions.

Individuals can complain to the agency they believe has breached their human rights, and then to the Queensland Human Rights Commission (QHRC).

Individuals must complain to the agency first

Individuals must complain about a breach of human rights to the agency before they complain to the QHRC. Individuals must then wait 45 business days before complaining to the QHRC (during which time the agency may try to resolve the complaint). In exceptional circumstances, the QHRC may accept a complaint before that deadline is met. If the individual has not received a response from the agency,

or believes the response is inadequate, they may then complain to the QHRC for independent resolution. This process is in section 65 of the Act.

The QHRC will accept complaints that include enough 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, even if an individual does not identify human rights when complaining to the agency. However, the QHRC will work with individuals and agencies, encouraging complaints to be resolved internally, and may give the agency more time to resolve the complaint.

Including human rights in existing complaints procedures

This guide will help agencies effectively deal with human rights complaints. The guide is intended to inform, complement, and be incorporated into, existing complaints handling procedures.

There is no 'one size fits all' response to human rights complaints. Some broad practices may be embedded into existing complaints handling procedures to support a human rights-focused framework.

The steps for handling human rights complaints are set out below.



Responding to a human rights complaint

RECEIVE Receiving human rights complaints

The Act does not specify how a complaint should be made. Subject to any applicable legislation and relevant internal policies, agencies should respond flexibly to the individual circumstances of the person making the complaint. Where necessary, agencies should provide help for individuals who need support to make a complaint (for example, by providing an interpreter or directing them to the appropriate form).

Strategies for accessible human rights complaints processes may include:

- providing publicly available information in accessible formats about how individuals can make a complaint
- acknowledging that individuals may have different communication needs
- accepting complaints through a variety of formats, such as by telephone, written letter, email, online or face-to-face
- offering interpreting or translation services for individuals who cannot understand or speak English
- offering child-friendly complaint mechanisms, particularly for services dealing frequently with children
- allowing individuals to be supported by another person in making their complaint (for example, where a person has difficulty in making the complaint themselves).

Agencies can find current best practice complaints handling resources at the website of the Queensland Ombudsman.



Assessing human rights complaints

All complaints are different. Not all complaints will have the same level of priority or need the same level of investigation.

An initial assessment of the complaint may consider the context and circumstances of the complaint (and the individual who has made the complaint) to determine its priority, how it should be managed, and who should respond.

Agencies may consider their existing complaint-handling policies (as supported by Queensland Ombudsman guidance) to determine whether an expression of dissatisfaction meets the threshold for a complaint or is simply part of normal client or employee interaction where concerns may be resolved at the point of contact.

If the basis of the complaint is not clear, agencies can ask the individual for details on how they believe the decision or action breached their human rights or was not proportionate.

If the person reviewing the complaint is not the original decision-maker, they can seek further information about why the decision was made, and how any limitation on human rights is proportionate.

Subject to any applicable legislation and relevant policies of the agency, the individual may receive a written or verbal response that:

- acknowledges the complaint

- provides details of privacy information (including how their personal information will be handled)
- seeks more information if the initial complaint is incomplete, or if further details are required
- tells the individual about the complaints process, including:
 - timeframes for finalisation (remembering, under the Act, after 45 business days the individual can take their complaint to the QHRC)
 - contact information for a complaint officer
 - outline of the overall complaints process.

To assist agencies in responding if a complaint is subsequently made to the QHRC, it is helpful if any decisions or actions are documented and recorded.

There may also be existing obligations about assessing and responding to complaints which will remain in place, for example if the matter involves suspected corrupt conduct or a public interest disclosure.



Identifying and considering human rights

Agencies should consider human rights when managing complaints. This involves three key steps:

1. Identify the human rights relevant to the complaint.
2. Consider whether the action or decision limits those human rights.
3. Assess whether the limitation is justified and reasonable in the circumstances.

1. Identify the human rights relevant to the complaint

Has the individual specifically mentioned human rights in their complaint?

If so, which ones? Are there others that might also be relevant that the complainant hasn't identified?

If not, does the action or decision that the individual has complained about engage a human right?

Individuals may complain holistically about the action or decision that they are unsatisfied with; they may not explicitly identify or allege a human rights breach.

Complaints handling processes will be robust and appropriate where they consider human rights in the context of every complaint (and not just those where a breach of a human right is specifically identified by the individual).

Agencies should look at the rights in Part 2 of the Act and think about whether they are engaged by the action or decision in the complaint.

Section 15 protects the rights of all people:

- to recognition as a person before the law
- to enjoy their human rights without discrimination.

While this is a standalone right, it also works with all the rights in the Act and therefore may be of particular relevance.

This means that agencies have to treat people equally when applying the law and not apply the law in a discriminatory or arbitrary way.

Consider the purpose and underlying values of the human right/s relevant to the complaint, including whether there are any internal limitations or exceptions within the human rights.

Example scenarios that may engage each human right are included in Appendix 2. These examples are not exhaustive. Find more information about the rights in the guide *Nature and scope of the protected human rights* on the Human Rights Portal: www.forgov.qld.gov.au/humanrights.

Recognising whether a complaint engages human rights will also be important for record-keeping and reporting purposes. Further information about reporting obligations can be found in the *Guide: planning and reporting for human rights*.

2. Consider whether the action or decision limits the human right/s relevant to the complaint

Has the right been limited?

If a human right (or rights) are engaged by the complaint, agencies must consider whether the action or decision limits a human right.

If human rights have not been limited in any way, then the action or decision is compatible with human rights. If human rights have been limited, then the agency must consider the factors set out in step 3 below.

3. Assess whether the limitation is justified and reasonable in the circumstances.

What law allows the agency to limit a human right?

Is there a relationship between the limit on the human right and the purpose of the limit? Does the limitation achieve the agency's purpose?

Are there any less restrictive ways to achieve the same outcome without limiting the human right (or limiting it to a lesser extent)? Are these options reasonably available?

Does the importance of achieving the agency's purpose outweigh the harm caused by limiting the human right?

Human rights are not absolute and may be limited. However, limitations need to align with the values of our free and democratic society: human dignity, equality, freedom, and respect. Any actions that limit a human right need to be lawful. This means they have to be authorised by law (as with all Government actions, which require a head of power to be lawful). If there is no law that allows the agency to act or make a decision, the limitation may not be authorised.

Limitations must also be justified and reasonable in the circumstances. The Act (in section 13) sets out factors that help agencies assess whether the limitation is justified and reasonable:

- a) The nature of the right**
What does the right/s identified in step 1 protect? What are the values that underpin the right?
- b) The nature of the purpose of the limitation**
What is the purpose for limiting human rights? What was the agency trying to achieve with the decision or action?
- c) The relationship between the limitation and its purpose**
Does the decision or action actually achieve the purpose?
- d) Were there less restrictive and reasonably available ways to achieve the purpose?**
Was there another way to achieve the purpose that would not limit the individual's human rights as much? If so, it may be that the less restrictive option should have been taken.
- e-g) The balance between the importance of the purpose of the limitation and the importance of preserving the human right.**
Does the benefit of achieving the agency's purpose outweigh the harm caused by limiting the right?

This final step is about deciding whether the limitation is reasonable and justifiable: whether the action or decision strikes a fair balance between the individual's rights and the agency's purpose.

This balancing exercise weighs the importance of the purpose against the importance of protecting human rights. In the context of the action or decision in question, do the benefits gained by fulfilling the purpose of the limitation outweigh the harm caused to the human right? Is the limitation justified, or will the impact on the human right be too severe? Generally, the stronger the limitation on an individual's human rights, the stronger the justification needs to be.

Agencies may need to seek information about why a decision was made, how the decision was made, and whether proper consideration was given to the individual's human rights in making the decision.

The decision and the considerations should be recorded, as these details may be examined if a complaint is made to the QHRC.

More information about limiting human rights and acting and making decisions compatibly with human rights is available on the Human Rights Portal: www.forgov.qld.gov.au/humanrights.

RESOLVE

Resolving human rights complaints

Agencies are accountable for their actions and decisions.

If an agency has limited an individual's human rights in a way that does not meet the requirements of the Act, then appropriate remedies should be considered. Subject to any applicable legislation and relevant policies of the agency, some options might include:

- acknowledging the error and apologising
- providing a better explanation for a decision or action
- explaining why or how the error occurred and the steps that the agency is taking to prevent it happening again
- changing the decision
- updating policies, procedures or practices
- offering more training to staff
- advising that disciplinary or management action has been taken (if appropriate).

RESPOND

Responding to human rights complaints

Agencies should respond to complaints within a reasonable timeframe. An individual must complain to the agency first, and can then complain to the QHRC after 45 business days. The 45 business days begins from when an individual makes their complaint to an agency, and the QHRC will accept complaints based on information provided by the complainant about when they made a complaint. This does not mean that complaints must be resolved within 45 business days; there may be situations where a process extends beyond this time.

The QHRC can accept complaints before the 45 business days elapses in exceptional circumstances. The QHRC may also delay dealing with the complaint if it thinks the agency has not had an adequate opportunity to deal with the complaint. The QHRC will seek the views of the individual and the agency when deciding whether to issue an extension.

When they receive a complaint, the QHRC will decide whether to deal with it immediately (where the agency's response is insufficient) or delay dealing with it (where the agency needs more time to resolve the complaint). This decision will include consideration of the agencies' existing processes (for

example, whether an internal review of the original decision is underway) and information received from the complainant and the agency.

The key aim of responding to a complaint should be to help the individual understand what the outcome is, and the agency's reasons for the decision. Providing clear reasons for decisions shows fairness, transparency and accountability on the part of the agency.

Subject to any applicable legislation and relevant policies of the agency, a response to a complaint may:

- explain the outcome using plain English (or another language as necessary)
- clearly explain how decisions were made, including the steps taken to investigate or resolve the complaint
- clearly explain why decisions were made
- list the remedies being offered (for example, an apology or a change of decision)
- detail other changes made as a result of the complaint
- provide options for review of the complaint if the individual is unsatisfied with the outcome (including options for internal review of the complaint outcome, or referral to an external oversight body that may review the outcome)
- inform the individual about their rights of review.

There is no legislative requirement for agencies to inform an individual about their right to complain to the QHRC, but agencies may consider the promotion of human rights, together with relevant agency policies, when deciding if and when this information should be included in a response.

LEARN

Learning from human rights complaints

Best practice complaints handling processes consider human rights from start to finish.

It is important for agencies to reflect on human rights complaints, especially where an individual's human rights are limited in a way that is not reasonable or demonstrably justifiable.

Following a human rights complaint, an agency may review relevant policies and procedures to ensure any future limitations on human rights are reasonable and justified.

REPORT

Reporting on human rights complaints

Recording complaints and outcomes with sufficient detail is important for identifying trends within an agency, including whether there are particular areas or practices that result in more human rights complaints than others.

Some agencies have to provide information about human rights complaints in their annual reports. If an organisation:

- has to prepare an annual report under the *Financial Accountability Act 2009* section 63; and
- is a public entity under the Act

they must include certain information in each annual report. This information includes details about:

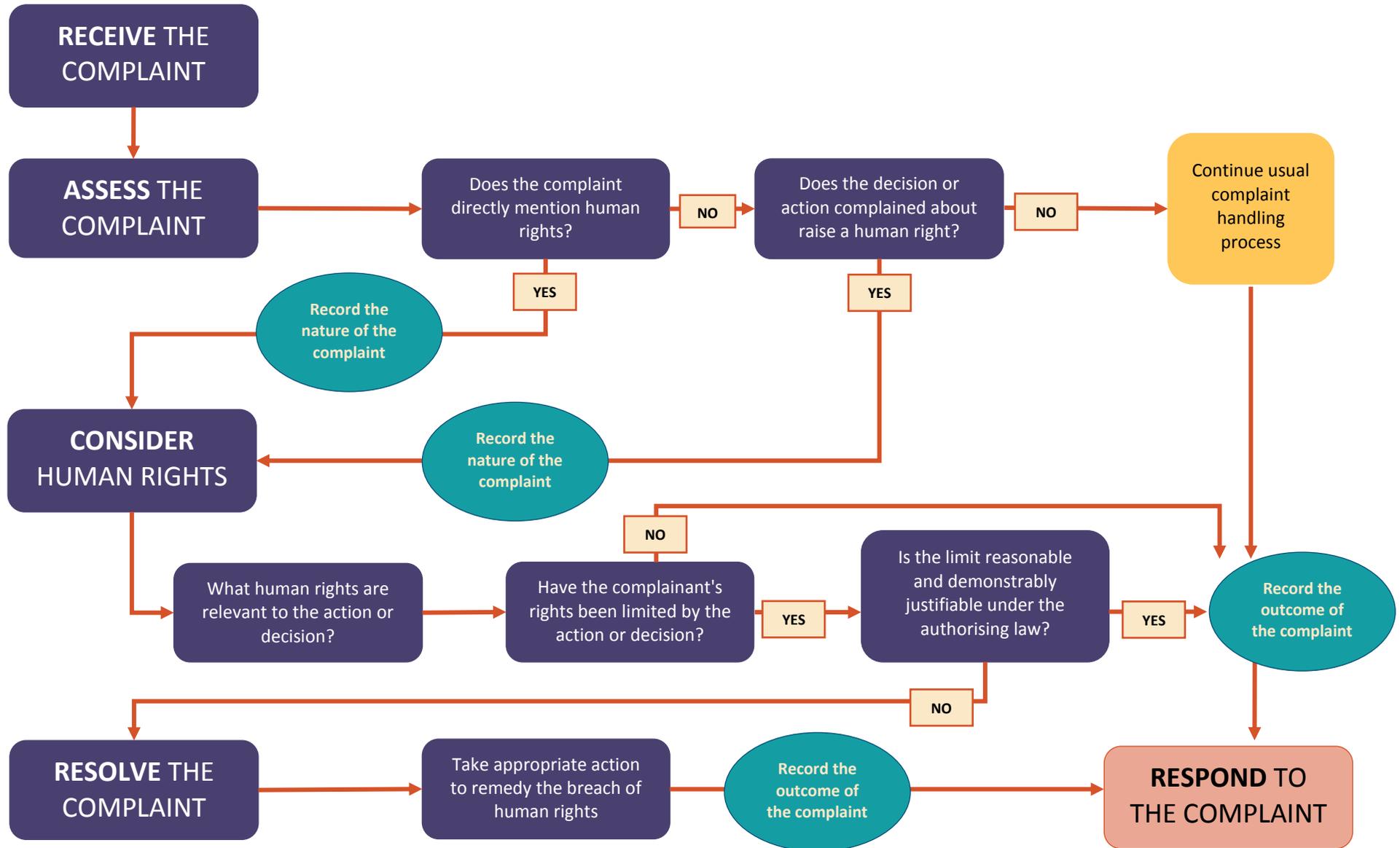
- activities during the reporting period that further the objects of the Act
- human rights complaints received, including:
 - the number
 - the outcome
 - any other information prescribed by regulation relating to complaints.
- reviews of policies, programs, procedures, practices or services for their compatibility with human rights.

To meet these requirements, agencies will need to record:

- details of each human rights complaint
- actions taken in dealing with the complaint
- the outcome of all complaints
- details of reviews of services, policies or procedures in relation to compatibility with human rights (this may be recorded either individually, as a result of a complaint, or systemically, subject to agencies' existing procedures).

Agencies required to report under section 97 of the Act should refer to the *Guide: planning and reporting for human rights* for further information on their reporting obligations.

Appendix 1: Complaints handling flowchart



Appendix 2: Human rights triggers

For more information about the rights, read the guide *Nature and scope of the protected human rights* at forgov.qld.gov.au/humanrights.

Consider this human right...	...when complaints involve:
<p>Recognition and equality before the law Section 15</p>	<ul style="list-style-type: none"> • A service delivered to some groups and not others. • A policy, program or service with the potential to have a disproportionate impact on a group or individuals who have a particular attribute (for example, elderly people, people with a disability, or people who are not fluent in English). • Eligibility criteria for programs, entitlements or plans (for example, payment plans under the State Penalty Enforcement Register). • A policy, program or service that engages any of the other protected human rights in a discriminatory way. For example, a policy aimed at people living in relationships should, where relevant, apply equally to married couples, de facto couples, and same-sex couples.
<p>Right to life Section 16</p>	<ul style="list-style-type: none"> • A decision that deals with withdrawal or withholding of life sustaining treatment. • The use of force by law enforcement officers, including the use of weapons. • A policy that deals with the use of deadly force (for example, the law relating to self-defence).
<p>Protection from torture and cruel, inhuman or degrading treatment Section 17</p>	<ul style="list-style-type: none"> • How people are treated at sites where an agency is responsible for their care (e.g. public hospitals, mental health services or facilities, prisons, state schools, state operated aged care services). • A policy, program or decision about medical treatment for people without their consent (e.g. under mental health or guardianship law). • A decision affecting the physical or mental well-being of a person in a way that may cause serious physical or mental pain or suffering, or humiliate the person. • A policy, program or decision that involves a person being searched (including intrusive searches).
<p>Freedom from forced work Section 18</p>	<ul style="list-style-type: none"> • A policy or program that involves people doing work or providing services under threat of a penalty. • Any policy, program or service that allows an agency to employ or direct people to perform work in a vital industry or during a state of emergency (for example, requiring military service).
<p>Freedom of movement Section 19</p>	<ul style="list-style-type: none"> • A policy, program or decision that restricts movement or where a person can live. • A policy or program that restricts people's movement based on national security considerations.

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Consider this human right...	...when complaints involve:
	<ul style="list-style-type: none"> • A policy, program or decision that monitors a person's movements. • A policy, program or decision that limits movement in public spaces. • Imposing planning controls, such as by zoning residential locations away from commercial, industrial or agricultural areas.
<p>Freedom of thought, conscience, religion and belief Section 20</p>	<ul style="list-style-type: none"> • A policy, program or decision that promotes, restricts or interferes with a particular religion or set of beliefs. • A policy or statutory provision that requires people to disclose their religion or beliefs. • A policy, program or service that regulates conduct in a way that affects a person's worship, observance, practice or teaching of their religion or belief (for example, a dress code that does not accommodate religious dress). • A policy, program or service where conditions of receiving a benefit or accessing a service prevent a person from adhering to their religion or belief. • A policy or decision that restricts people under state control from observing their religion (e.g. prisoners).
<p>Freedom of expression Section 21</p>	<ul style="list-style-type: none"> • A policy that requires prior approval before a person can express themselves (for example, to hold a protest or busk in a particular area). • A policy that regulates the contents of speech, publication, broadcast, display or promotion, or regulates offensive speech. • A policy, program or service that imposes a dress code (for example, a dress code that prohibits staff from wearing t-shirts displaying political messages) • A policy or decision that restricts or censors media coverage (for example, on the reporting of judicial proceedings).
<p>Peaceful assembly and freedom of association Section 22</p>	<ul style="list-style-type: none"> • A policy, program or decision that restricts people from having public or private gatherings (for example, restricting areas or times for demonstrations, pickets or public events). • A policy or decision that requires a person to belong to a professional body or workplace association (a requirement for compulsory membership of a professional body has not generally violated this right, particularly if the association is responsible for professional regulation). • A policy, program or service that treats people differently because they are a member of a group or association. • A policy, program or service that prohibits membership in a group or association with certain persons (for example, in a criminal justice context).
<p>Taking part in public life Section 23</p>	<ul style="list-style-type: none"> • A policy or decision that limits participation in elections. • A policy or statutory provision that sets eligibility requirements for the public service and public office.

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Consider this human right...	...when complaints involve:
<p>Property rights Section 24</p>	<ul style="list-style-type: none"> • A policy or statutory provision that sets processes and procedures for voting. • A policy allowing a person’s property to be acquired, seized or forfeited under civil or criminal law (for example, confiscations proceedings). • A policy or decision allowing an agency to access private property. • A policy decision that implements Government control over its own property (for example, resumption of land).
<p>Privacy and reputation Section 25</p>	<ul style="list-style-type: none"> • A policy, program or decision that involves surveillance of people for any purpose (for example, CCTV). • A policy, program or service that collects and/or publishes personal information (for example, results of surveillance, medical tests, electoral roll). • A policy, program or service that regulates a person’s name, private sexual behaviour, sexual orientation, or gender identity. • A policy, program or service that regulates storage, security, retention and access to personal information. • A policy that requires mandatory reporting of injuries or illnesses. • A policy or decision that interferes with or inspects mail and other communications, or prevents or monitors correspondence between categories of people. • A policy, program or service that requires mandatory disclosure or reporting of information (including disclosure of convictions). • A policy that establishes powers of entry and search (including personally invasive powers, such as strip searches). • A requirement for compulsory physical examination or intervention (for example, DNA, blood, breath or urine testing).
<p>Protection of families and children Section 26</p>	<ul style="list-style-type: none"> • A policy, program or decision that regulates family contact for people in care or relates to intervention orders between family members. • A policy, program or decision that regulates adoption and surrogacy. • A policy, program or decision that deals with removing children from a family unit or separating children from parents, guardians, or other adults responsible for their care.
<p>Cultural rights – generally Section 27</p>	<ul style="list-style-type: none"> • A policy, program or service that restricts people from observing religious practices. • A policy, program or service that restricts people from declaring their affiliation to a particular racial, religious or cultural group. • A policy or service that limits or prohibits communication in languages other than English, including through the provision of information.

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Consider this human right...	...when complaints involve:
	<ul style="list-style-type: none"> • A policy that restricts the provision of services or trade on religious holidays. • A policy or program that regulates cultural or religious practices in public education. • A policy, program or service that provides government information only in English and allows for access to services only by English speaking persons. • A policy that licences or restricts food preparation and service.
<p>Cultural rights – Aboriginal peoples and Torres Strait Islander peoples Section 28</p>	<ul style="list-style-type: none"> • A policy, program or service that prohibits the use of a traditional language. • A policy, program or decision that allows or limits the ability of Aboriginal or Torres Strait Islander persons to take part in a cultural practice, or otherwise interferes with their distinct culture practices. • A policy or decision that interferes with the relationship between Aboriginal or Torres Strait Islander people and land, water and resources. • A policy or decision that protects Aboriginal and Torres Strait Islander cultural heritage, including Aboriginal human remains and secret or sacred objects.
<p>Right to liberty and security of person Section 29</p>	<ul style="list-style-type: none"> • A policy or decision that authorises a person with a mental illness to be detained for treatment. • A policy that allows a person to be detained on safety grounds, such as intoxication. • A policy or statutory provision that provides powers of arrest. • A policy or statutory provision that provides for detention on remand or release on bail conditions.
<p>Humane treatment when deprived of liberty Section 30</p>	<ul style="list-style-type: none"> • A policy setting out the conditions for detention of individuals. • A policy setting out standards and procedures for treatment of people who are detained (for example, use of force, dietary choice, access to private shower and toilet facilities). • A policy or statutory provision that allows people who are detained to be searched.
<p>Fair hearing Section 31</p>	<ul style="list-style-type: none"> • A policy or proposal that reverses the onus of proof. • A policy or program that creates or restricts reviews of administrative decision-making and appeal processes. • A policy, program or service that provides special procedures for witnesses giving evidence in a court or tribunal (such as special measures for children and other vulnerable persons). • A policy or statutory provision that regulates the procedures for challenging the impartiality and independence of courts and tribunals. • A policy that restricts the publication of cases or decisions. • A policy, program or service that disadvantages or doesn't consider the particular circumstances of a litigant (for example, a litigant with a disability).

Consider this human right...	...when complaints involve:
Rights in criminal proceedings Section 32	<ul style="list-style-type: none"> • A policy or decision that impacts on the presumption of innocence. • A policy that deals with the admissibility of evidence. • A policy that deals with reverse onus of proof. • A policy or decision that delays trial proceedings. • A policy or service that restricts cross examination. • A policy or decision that deals with the provision of legal aid. • A policy or decision that restricts access to information and material to be used as evidence. • A policy that limits appeal rights. • A policy that regulates the procedures for investigation and prosecution of offences. • A policy, program or service that deals with the provision of assistants and interpreters.
Children in the criminal process Section 33	<ul style="list-style-type: none"> • A policy or decision that detains children for any length of time. • A policy or decision that detains children in locations that have limited facilities or services for their care and safety (for example, watch houses). • A policy or decision that relates to sentencing laws. • A policy or statutory provision that relate to standards in detention centres.
Right not to be tried or punished more than once Section 34	<ul style="list-style-type: none"> • A policy or statutory provision that creates new offences. • A policy or decision that is related to the double jeopardy exceptions under the Criminal Code.
Retrospective criminal laws Section 35	<ul style="list-style-type: none"> • A policy or decision that sanctions a person for conduct that was not unlawful at the time of the conduct. • A policy or decision that fails to apply less severe penalties for a person's conduct if penalties have decreased since the time of the conduct.
Right to education Section 36	<ul style="list-style-type: none"> • A policy, program or service that provides education and training to young people in detention. • A policy, program or service providing access to schools that has a disproportionate impact on people with a particular attribute (for example, people with a disability).
Right to health services Section 37	<ul style="list-style-type: none"> • A policy, program or service that deals with access to health care for prisoners or other persons in care. • A policy, program or service providing health services that has a disproportionate impact on people with a particular attribute (for example, people with a disability).

Appendix 3: Handling human rights complaints – Implementation checklist

Have you:

- identified your complaints-handling processes within your business area?
 - **Remember:** there might be multiple types of complaints managed across different business areas. Have you made sure that all teams in your business area understand their obligations about complaints handling under the *Human Rights Act 2019*?
- considered how your complaints-handling processes may need to be updated to reflect human rights and the requirements for complaints under the Act?
 - **Remember:** there are resources published on the Human Rights Portal about the operation of the *Human Rights Act 2019*.
- ensured you have a mechanism to receive, record, identify, respond to and resolve human rights complaints?
- considered how you will communicate with your customers/clients about their rights and the complaints process?
- considered how and when you will report on human rights complaints received and the outcome of complaints?
 - **Remember:** some agencies must report on human rights complaints as part of their annual report.

Appendix 4: A short guide to handling human rights complaints

Complaints handling processes should consider human rights from start to finish. This will involve three key steps:

1. Identify the human rights relevant to the complaint.

Has the individual specifically mentioned human rights in their complaint?

If so, which ones? Are there others that might also be relevant that the complainant hasn't identified?

If not, does the action or decision that the individual has complained about engage a human right?

2. Consider whether the action or decision limits the human rights relevant to the complaint.

Has the right been limited?

3. Assess whether the limitation is justified and reasonable in the circumstances.

What law allows the agency to limit a human right?

What is the nature of the right—what does it protect?

What is the purpose for limiting the right?

Is there a relationship between the limit on the human right and the purpose of the limit? Does the limitation achieve the agency's purpose?

Are there any less restrictive ways to achieve the same outcome without limiting the human right (or limiting it to a lesser extent)? Are these options reasonably available?

Does the importance of achieving the agency's purpose outweigh the harm caused by limiting the human right?

More information is available on the Human Rights Portal:

www.forgov.qld.gov.au/humanrights.

- Guide: [Nature and scope of the protected human rights](#)
- Guide: [When human rights may be limited](#)
- Guide: [Making decisions that are compatible with human rights](#)