

## Fact Sheet

# Contractors and Grant Recipients of council - obligations under the Human Rights Act

Contractors or grant recipients of council may have an obligation to not act incompatibly with, and to properly consider, human rights issues under the *Human Rights Act 2019 (Qld)* (Human Rights Act).

Council expects all contractors or grant recipients of council to comply with the Human Rights Act as if they were a “public entity” when they are performing any functions for council, or performing functions using grants that have been provided by council.

We have set out below some guidance for contractors or prospective contractors of council on how the Human Rights Act may apply to them.

## Background to the Human Rights Act

The Human Rights Act protects the human rights of individuals, and only individuals, through regulating the conduct of “public entities”. The Human Rights Act commenced in full on 1 January 2020. The main objects of the Human Rights Act are set out in section 3 as being to:

1. protect and promote human rights;
2. help build a culture in the Queensland public sector that respects and promotes human rights; and
3. help promote a dialogue about the nature, meaning and scope of human rights.

The Human Rights Act protects 23 human rights, including the right to recognition and equality before the law (s.15), property rights (s.24) and the right to privacy (s.25).

The Queensland Government has released a “Guide: Nature and scope of the protected human rights” which is available at <http://forgov.qld.gov.au/human-rights-resources>.

## What is a public entity?

The Human Rights Act applies to “public entities” as defined in s.9 of the Human Rights Act.

“Public entities” are divided into two categories:

1. **core public entities:** are always public entities, regardless of the functions they perform; and
2. **functional public entities:** are only public entities when they perform certain types of functions, such as functions of a public nature or functions for the State or another public entity.

Council is a core public entity. Any decision or action made by council that affects an individual will be subject to the Human Rights Act.

Contractors and grant recipients of council may then have obligations as “functional” public entities under the Human Rights Act.

## When will a contractor or grant recipient be a functional public entity?

You will be a functional public entity under the Human Rights Act if you are either or both of the following:

1. you are an entity established under a Queensland Act when the entity is performing functions of a public nature (s.9(1)(f)); or
2. you are an entity whose functions are, or include, functions of a public nature when you are performing the functions for council (s 9(1)(h)).

The meaning of when a function is a “function of a public nature” is set out at s.10 HRA.

Council expects **all** contractors and grant recipients of council to comply with the Human Rights Act as if they are a “public entity” when they are performing a function for council, even if the contractor or grant recipient does not consider that they are performing a function of a public nature for council.

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## What are your obligations under the Human Rights Act?

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Under s.58 of the Human Rights Act it is unlawful for a public entity:

1. to act or make a decision in a way that is not compatible with an individual's human rights; or
2. in making a decision, to fail to give proper consideration to an individual's relevant human rights.

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## Suggested decision making framework

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Set out below is a suggested framework for a contractor or grant recipient of council to apply in practice, to ensure that its acts and decisions are made in a way that meets the obligations of a "public entity" under the Human Rights Act.

A two-stage process is required:

1. identify whether a proposed act or decision affects human rights; and
2. if it does, undertake and record a human rights impact assessment.

Both of these stages are discussed in detail below.

### STAGE 1 - Identify whether a proposed act or decision affects human rights

A detailed guide as to the nature and scope of the protected human rights is available at [Forgov.qld.gov.au/humanrights](http://Forgov.qld.gov.au/humanrights).

Generally, a Human Rights Act analysis will be required whenever a public entity is performing an act (including failing to perform an act) or making a decision that could potentially affect the human rights of an individual.

The only situation where a human rights analysis will not be required is where, in a particular case, the public entity could not reasonably have acted differently or made a different decision because of its obligations under a statutory provision, a law of the Commonwealth or another State or otherwise under the law.

If a human rights analysis is not required, this should be recorded (including the relevant statutory provision, Commonwealth or other State law or position otherwise under the law).

### STAGE 2 - Undertake and record a human rights impact assessment

To ensure that a public entity meets its obligations under the Human Rights Act, a contractor or grant recipient should undertake and record a human rights impact assessment.

A human rights impact assessment will involve taking the following steps:

1. identify the human rights that are potentially affected by the act or decision
2. consider whether the rights identified will be limited (e.g. interfered with or restricted) by the act or decision
3. consider whether the limitation on human rights is reasonable and demonstrably justified

To decide whether a decision or action is reasonable and demonstrably justified a proportionality analysis will need to be undertaken. Such an assessment will require an assessment of:

- (a) the purpose of the limitation on human rights (e.g. is the purpose of the limitation to address a public or social concern);
- (b) why is the limitation on the human rights expected to achieve the identified purpose - is there any objective evidence to support the approach or is the decision being made following a consultation process, etc;
- (c) whether there are less restrictive and reasonably available ways to achieve the purpose of the limitation; and
- (d) whether the purpose of the limitation outweighs the limitation on the relevant human right(s).

If the act or decision will limit (i.e. restrict or interfere with) human right(s), but the limit is reasonable and demonstrably justifiable, the act or decision will be compatible with human rights.

If the act or decision will limit (i.e. restrict or interfere with) human rights, and the limit is not reasonable and demonstrably justifiable, the act or decision will not be compatible with human rights. If this is the case the act or decision should be reconsidered, and where appropriate a new compatibility assessment undertaken.

4. record the outcome of the human rights impact assessment.

### Where can you get more information?

The Queensland Human Rights Commission provides helpful resources to assist public entities to comply with the Human Rights Act. See [Qhrc.qld.gov.au/your-responsibilities/for-public-entities](http://Qhrc.qld.gov.au/your-responsibilities/for-public-entities).

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