

Council Policy HUMAN RIGHTS

Corporate Plan Reference:	<i>Excellence as a Council</i>
Endorsed by Council:	20 February 2020
Policy Author:	Governance Advisor

POLICY BACKGROUND

Noosa Council is committed to protecting and promoting human rights by ensuring that human rights are considered when making, interpreting and applying laws, developing policies, and providing services to our community. Council also recognises that it has an important role in complying with Queensland's *Human Rights Act 2019* ("the Act") through its actions, decisions, proposals and recommendations.

COUNCIL POLICY

The objective of this Policy is to uphold Council's human rights obligations and comply with legislative obligations.

The intended outcomes of this Policy include:

- Assisting all areas of Council to meet our human rights obligations;
- Promoting a dialogue about the nature, meaning and scope of human rights with the community;
- Improving our services, actions, decision-making processes and governance frameworks;
- Building the capacity of council officers to comply with the Act;
- Maintaining customer service levels in accordance with the adopted customer service charter, whilst managing human rights complaints in accordance with legislative requirements; and,
- Enhancing community confidence in our legislative compliance and the reputation of Council as being accountable and transparent.

Legislative requirements

As a public entity¹, Council's must:

- a) give proper consideration to human rights;² and
- b) act and make decisions in a way that is compatible with human rights.³

Therefore, an act, decision or statutory provision is compatible with human rights if the act, decision or provision:

- a) does not limit a human right; or
- b) limits a human right only to the extent that is reasonable and demonstrably justifiable and in accordance with section 13 of the Act.⁴

¹ *Human Rights Act 2019* (QLD) s 9.

² *Human Rights Act 2019* (QLD) s 58(1)(b).

³ *Human Rights Act 2019* (QLD) s 4(b).

⁴ *Human Rights Act 2019* (QLD) s 8.

What are “human rights”?

Human rights apply to all individuals and are based on principles of freedom, respect, equality and dignity. Human rights recognise the inherent value of each person, regardless of background, where we live, what we look like, what we think or what we believe. In other words, human rights belong to all people by virtue of being human. Everyone is entitled to these rights, without discrimination.⁵

Commencement of the Act

The Act commenced on 1 July 2019. The Act requires public entities, including local government, to make decisions and act compatibly with human rights. Obligations for public entities under the Act commenced in full on 1 January 2020.

Objectives of the Act

The main objects of this Act are:

- a) to protect and promote human rights;
- b) to help build a culture in Queensland’s public sector that respects and promotes human rights; and
- c) to help promote a dialogue about the nature, meaning and scope of human rights.⁶

The Act is an important development in recognising the essential role human rights play in our society because it will:

- protect the rights of vulnerable Queenslanders by addressing disadvantage;
- result in development of a human rights culture across communities in Queensland;
- lead to improved law making and government policy;
- result in improved public service delivery; and,
- assist Australia to fulfil its international human rights obligations.⁷

Protected human rights

Under section 11 of the Act, all individuals in Queensland have human rights. This means a corporation does not have human rights.⁸ As such, the Act protects 23 fundamental human rights outlined below.

1. *Your right to recognition and equality before the law*

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

2. *Your right to life*

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.

3. *Your right to protection from torture and cruel, inhuman or degrading treatment*

People must not be tortured nor treated or punished in a cruel, inhuman or degrading way. This includes protection from treatment that humiliates a person.

⁵ United Nations, *Human Rights*, available at: <https://www.un.org/en/sections/issues-depth/human-rights/>

⁶ *Human Rights Act 2019* (QLD) s 3.

⁷ Queensland Human Rights Commission.

⁸ *Human Rights Act 2019* (QLD) s 11(2).

4. *Your right to freedom from forced work*

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.

5. *Your right to freedom of movement*

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.

6. *Your right to freedom of thought, conscience, religion and belief*

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.

7. *Your right to freedom of expression*

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 may be limited to respect the rights and reputation of other people, or for the protection of public safety and order.

8. *Your right to peaceful assembly and freedom of association*

People have the right to join groups and to meet peacefully.

9. *Your right to taking part in public life*

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

10. *Property rights*

People are protected from having their property taken, unless the law says it can be taken.

11. *Your right to privacy and reputation*

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

12. *Your right to protection of families and children*

Families are entitled to protection. Children have the same rights as adults with added protection according to their best interests.

13. *Cultural Rights – Generally*

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

14. *Cultural Rights – Aboriginal Peoples and Torres Strait Islander Peoples*

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.

15. Your right to liberty and security of person

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 the physical safety of people who are in danger of physical harm.

16. Your right to humane treatment when deprived of liberty

People have the right to be treated with humanity if they are accused of breaking the law and are detained.

17. Your right to a fair hearing

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.

18. Rights in criminal proceedings

There are a number of minimum guarantees that you have when you have been charged with a criminal offence as outlined in section 32 of the Act.

19. Rights of children in the criminal process

A child charged with committing a crime or who has been detained must not be held with adults; must be brought to trial as quickly as possible and treated in a way that is appropriate for their age.

20. Right not to be tried or punished more than once

A person will only go to court and be tried once for a crime.

21. Retrospective criminal laws

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

22. Right to education

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.

23. Right to health services

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

Application of the Act

The Act creates a 'dialogue model' of specific rights that are designed to ensure that human rights are considered in the development of laws and policies; in the delivery of public services; and, in government decision-making. Essentially, the Act aims to ensure that public powers and functions are exercised in a principled way and that public power is not misused. The Act further complements a number of other pieces of legislation that are aimed at regulating the relationship between individuals and the state.

Importantly, the Act cannot apply and protect an individual’s human rights on a general level. In other words, the Act protects 23 specific human rights as outlined above rather than offering broad protection.

One of the key requirements of the Act is to ensure actions and decisions are compatible with human rights. Therefore, Council need to:

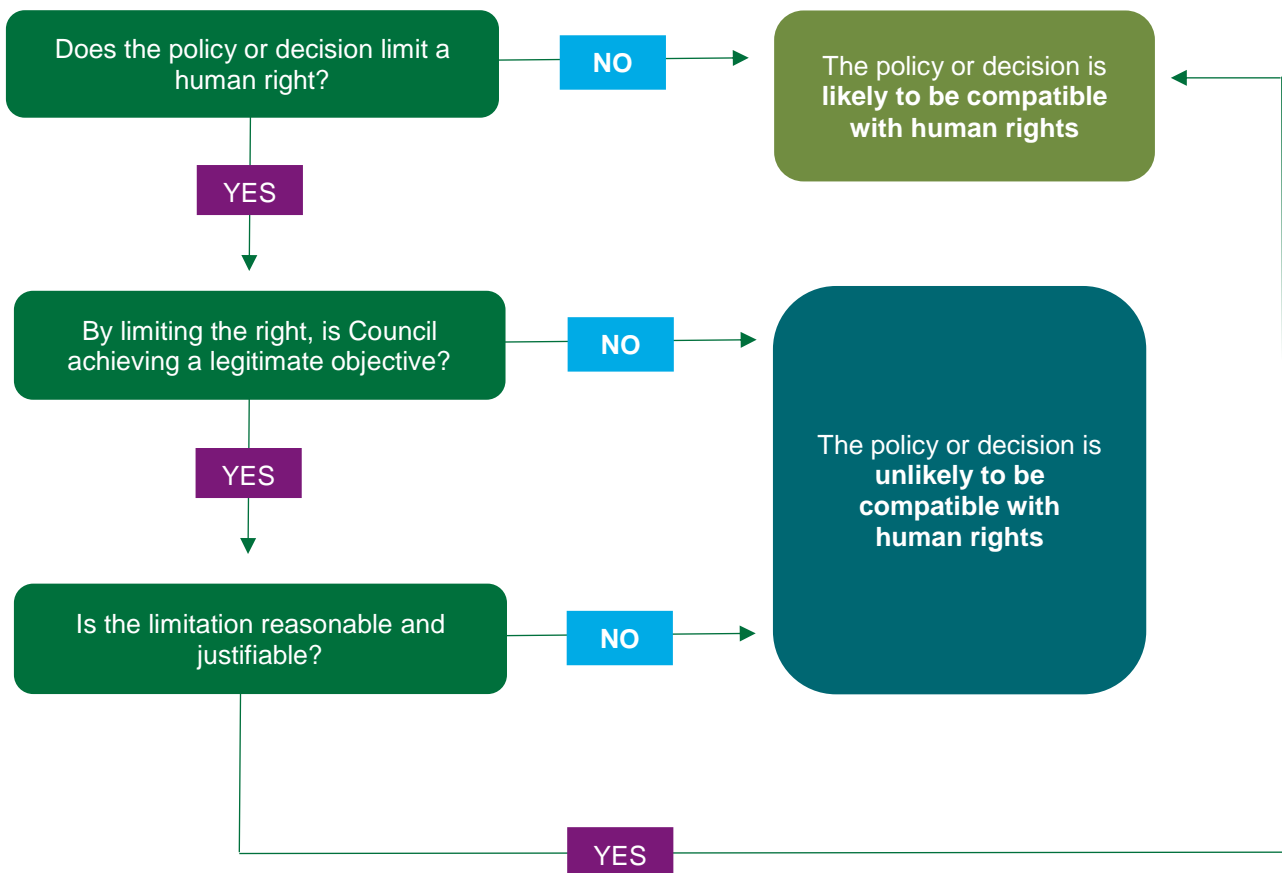
- act and make decisions compatibly with human rights;
- develop policy and legislation, including local laws, compatibly with human rights; and,
- interpret legislation compatibly with human rights.

Section 8 of the Act defines the term ‘*compatible with human rights*’ and states 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.

Council has adopted the following approach⁹ illustrated below to assess the compatibility of our decisions or policies with legislative requirements.



⁹ Based on best practice from the Queensland Human Rights Commission.

Human Rights Complaints

Under the Act, a person who believes a public entity has breached their human rights obligations has the right to complain and seek remedies.¹⁰ There are three ways a person can make a complaint which includes:

- Internal complaints;
- Independent complaints; and,
- Raising the Act in courts and tribunals.

1. Internal Complaints

An individual must first raise a complaint directly with Council. Council has 45 days to respond, after which the individual can make a formal complaint to the Queensland Human Rights Commission (QHRC) if the complaint has not been responded to or the person is not satisfied with Council's response.

In order to ensure that a complaint is handled in the most efficient manner, Council requests that complainants:

- Clearly identify the issues of complaint, or ask for help from Council staff to do this;
- Give Council all the available information in support of the complaint in an organised format and not provide any information that is intentionally misleading or knowingly wrong or vexatious;
- Cooperate with the Council's inquiries or investigations; and
- Treat staff with courtesy and respect.

A person can make a human rights complaint to Council as follows:

- via Council's online form and sent to governance@noosa.qld.gov.au; or
- telephone or in person at our Customer Service Centre, located at 9 Pelican Street, Tewantin QLD 4565; or
- by post and addressed to:
Governance Branch,
Noosa Shire Council
PO Box 141
TEWANTIN QLD 4565

Council's complaint management process is outlined in **Attachment A**.

2. Independent complaints

A person can also raise a complaint about human rights with the QHRC or another independent body. In order to accept complaints 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.
- At least 45 business days have elapsed since the complaint was made to the public entity.
- The complainant has not received a response to their complaint, or has received an inadequate response.

For further details on QHRC's complaint process, please refer to: <https://www.qhrc.qld.gov.au/>.

¹⁰ Human Rights Act 2019 (QLD) div 2.

3. *Raising the Act in courts and tribunals*

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

Remedies

Where there is a breach of the Act, a person cannot claim financial compensation. However, where the complaint is not resolved, the QHRC can make recommendations regarding actions required of the respondent to uphold human rights.

ROLES AND RESPONSIBILITIES

Councillors

A councillor who receives a human rights complaint is obliged to report the complaint to Council's Governance team in accordance with this Policy.

Council Officers

All Council officers have a duty and responsibility to perform their functions on behalf of Council, including the making of decisions or undertaking actions in a professional manner and in compliance with the Act. Council officers must also assist individuals wishing to make a human rights complaint and assist with any related investigation and response.

Chief Executive Officer

The Chief Executive Officer (CEO) will only get involved in complaints if the matter is exceptionally complex or requires input by the CEO.

Directors

Directors are responsible for oversight, investigation (if required) and responding to complaints with their teams, having regard to the relevant area of operation and expertise.

Directors are also responsible for the oversight of implementing improvement opportunities identified from the complaints process.

Reviewing Officer

The reviewing officer who is investigating the complaint shall do so in accordance with identified timeframes and within legislative requirements. Where a complex investigation is required, the Reviewing Officer will update the complainant on the progress of the response.

Governance

The Governance team are responsible for:

- Maintaining a Human Rights Complaints register and complaints reporting;
- Coordinating the complaints process;
- Supporting Council Officers and Reviewing Officers with assessing, investigating and responding to complainants, if required; and,
- Providing appropriate training for the organisation.

Complainant

Complainants are entitled to:

- A prompt acknowledgement of Council’s receipt of the complaint;
- A prompt response to the complaint;
- Be kept informed of the progress and outcome of the complaints process;
- Confidentiality of personal details (where possible within the law); and,
- A thorough and objective investigation or review of a complaint.

RELEVANT LEGISLATION, POLICIES & DOCUMENTS

- *Human Rights Act 2019* (QLD)
- *Local Government Act 2009* (QLD)
- *Local Government Regulation 2012* (QLD)
- Councillor Code of Conduct
- Employee Code of Conduct
- Australian Standard AS/NSZ 10002:2014 – Guidelines for complaint management
- Local Government Association of Queensland, *Human Rights Act 2019 – A Guide for Local Government*, Circular, 10 December 2019
- Queensland Human Rights Commission, *Queensland’s Human Rights Act 2019: A guide for public entities*

Version control:

Version	Reason/ Trigger	Change (Y/N)	Endorsed/ Reviewed by	Date
1.0	New Policy		Council	20/02/2020

ATTACHMENT A: HUMAN RIGHTS COMPLAINTS MANAGEMENT FLOW CHART

