

Factsheet: The role of public entities

The *Human Rights Act 2019* (the Act) aims to create a culture in the Queensland public sector that respects, protects, and promotes the human rights of all people in Queensland. A human rights approach means that the Queensland Government must put people first when making decisions and providing services. The Act does this by requiring **public entities** to consider human rights in their work.¹ Government agencies, and organisations that do government work must:

1. consider human rights when they make decisions; and
2. act and make decisions in a way that is compatible with human rights.²

What is a public entity?

Under the Act, **public entities** are people or organisations that do Queensland Government work. For example:

- government departments
- department employees
- local governments
- ministers
- non-government organisations that provide government services.

There are two types of public entities:

- **core public entities**
- **functional public entities.**

What are core public entities?

Core public entities are people or organisations that are always public entities, no matter what kind of work they are doing (their work is always government work). There is a list of these in the Act,³ including:

- Queensland Government departments
- public service employees
- Ministers
- local government
- councillors
- Queensland Police Service
- Queensland Police Service employees.

A core public entity must always make sure their actions and decisions are compatible with human rights.

¹ See section 58 of the Act.

² See section 58 of the Act.

³ See section 9 of the Act.



What are functional public entities?

Public services are regularly delivered by non-government organisations on behalf of the Queensland Government. **Functional public entities** are organisations or people that deliver public services or work for the Queensland Government. They are only covered by the Act when:

- the work they are doing is for the Queensland Government or another public entity
- the work has a ‘public nature’.

For example, this could include non-government organisations that provide government services such as health, disability, education, transport, and housing.

The Act provides some examples of things to consider when deciding if an organisation’s work is a ‘function of a public nature’.⁴ Examples include:

- if a law says the organisation must do that work
- whether the work is generally thought to be government work
- whether a service is generally considered a government service
- if the work is to regulate something
- whether the organisation gets public funding to do the work
- whether the organisation is owned by the government.

A functional public entity must make sure their actions and decisions are compatible with human rights when they are doing work that is ‘of a public nature’. Organisations might do some work that is included, and some work that isn’t included.

Are courts and tribunals public entities?

Courts and tribunals **are not** public entities when they are doing judicial work (or acting in a judicial capacity, for example sentencing a person who has been found guilty of a crime).

Courts and tribunals **are** public entities when they act in an administrative capacity (this depends on the legal nature of the work they are doing). Examples of when a court is acting administratively might include:

- hiring staff
- making policies and procedures
- conducting committal proceedings
- listing cases
- issuing warrants.

See our fact sheet *Courts and tribunals and human rights* for more information about the role of courts and tribunals in protecting human rights.

⁴ See section 10 of the Act.

Are there other types of public entities?

In some circumstances, people or organisations that provide services for the Federal Government or another state government might also be public entities under the Act. For example:

- registered providers under the *National Disability Insurance Scheme Act 2013* (Cwlth) are public entities when they are doing work ‘of a public nature’ in Queensland.⁵
- police officers from another state or the Commonwealth might also be public entities if they are using particular powers in Queensland.⁶

Do private entities have to protect human rights?

Private entities—such as private organisations, businesses, and community sector organisations who are not doing government work—do not have obligations to respect, protect, or promote human rights under the Act. Private entities can ask to be named as a public entity. The Minister can say in a public declaration that they will be required to protect human rights under the Act.⁷ If private entities do this, they will have to consider human rights when they act and make decisions in the same way public entities do. A private organisation or community sector entity might want to make a public statement about their commitment to human rights, or provide certainty for staff and stakeholders about human rights.

What must public entities do?

Public entities must:

1. consider human rights when they make decisions; and
2. act and make decisions in a way that is compatible with human rights.⁸

Understanding how an action or decision will affect human rights should be part of all government work. Some exceptions to this are when:

- a public entity can’t act differently or make a different decision. This could happen if there is a law telling the public entity to act a certain way, and they don’t have a choice to make a different decision.
- a religious body acts or makes a decision in line with their doctrine.
- the act or decision is private (for example, a Queensland Government employee making a personal decision about their private life outside of work).

⁵ See section 9(2)(a) of the Act.

⁶ See section 9(2)(b) of the Act.

⁷ See section 60 of the Act.

⁸ See section 58 of the Act.

What happens if a public entity makes a decision or acts in a way that doesn't protect human rights?

Acting and making decisions in a way that is not compatible with human rights is unlawful.

If someone thinks their human rights have been breached, they can complain directly to the public entity. The public entity has 45 business days to respond.

If the person is not satisfied with the response they have received after this time, they can complain to the Queensland Human Rights Commission (QHRC). The QHRC provides an independent avenue for members of the community to raise human rights concerns and reach a practical resolution. Read more about this at www.qhrc.qld.gov.au.

Someone with a human rights complaint can't take that complaint to a court or tribunal unless they have another claim (e.g. an anti-discrimination claim or judicial review). They can attach a human rights complaint to another claim to go to a court or tribunal.

You can find more information about human rights in Queensland at www.forgov.qld.gov.au/humanrights.