

# Human Rights

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Guide: Reviewing policies and  
procedures for compatibility  
with human rights

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Queensland  
Government

## Guide: Reviewing policies and procedures for compatibility with human rights

### Background

The *Human Rights Act 2019* (the Act) was passed by the Queensland Parliament on 27 February 2019. The substantive provisions of the Act that will place obligations on public entities, including Queensland Government departments and agencies, are expected to commence on 1 January 2020.

One of the objects of the Act is to help build a culture in the Queensland public sector that respects and promotes the human rights protected by the Act. This means that respect for human rights should be reflected in all public sector policy, procedure and decision-making frameworks.

In addition, section 58 of the Act provides that it is unlawful for a public entity to act or make a decision in way that is not compatible with human rights; or in making a decision, to fail to give proper consideration to a human right relevant to the decision.

The Act aims to ensure that public functions are exercised in a principled way that is compatible with human rights, and provide better service-delivery for all Queenslanders.

### Purpose of this guide

All Government departments and agencies will need to examine existing policy, procedure and decision-making frameworks within their portfolio. These documents and processes will need to be reviewed to ensure that they are compatible with human rights.

This guide is intended to assist government officers in reviewing existing policy and procedure documents, including decision making frameworks, in order to determine whether they are compatible with human rights, and to identify what changes need to be made to ensure compatibility with human rights.

Appendix A provides a table that government officers may wish to utilise to document their review of policies or procedures.

Associated guides available at [www.forgov.qld.gov.au/humanrights](http://www.forgov.qld.gov.au/humanrights):

- *Guide: Nature and scope of the protected rights*
- *Guide: Section 13 analysis*

## How to review a policy or procedure

### Step 1: Is the policy or procedure authorised by a provision in an Act, Regulation, or common law?

An act or decision that limits human rights must be authorised by law.

An act or decision made in accordance with a policy or procedure that is not authorised under law but that limits human rights will not be reasonable and justifiable and therefore will not be compatible with human rights.

In some circumstances, a statutory provision that is not compatible with human rights may be the authority upon which the policy or procedure is based. If this is the case, you should bring the relevant provision to the attention of your policy and legislation unit who may need to consider whether the relevant legislation requires amendment to authorise the policy or procedure to ensure compatibility with human rights.

### Step 2: Does the policy or procedure engage one or more of the protected human rights?

Even if human rights are not limited (or negatively impacted) it is important to identify which human rights are engaged by the policy or procedure.

A human right might be engaged if it is limited by a policy or procedure, or alternatively if it is protected or promoted by a policy or procedure.

This step requires an understanding of the nature and scope of the right in order to assess whether there is potential for the right to be limited. The *Guide: Nature and scope of the protected rights* provides some examples of the types of policies and procedures that might impact or limit the protected human rights.

This will be relevant to ensuring that a decision maker is able to demonstrate proper consideration of a relevant human right as required by section 58 of the Act.

If the policy or procedure does not engage a human right, there is no further analysis required.

### Step 3: Is one or more of the protected human rights potentially limited by the policy or procedure?

If the policy or procedure limits, restricts or interferes in some way with a human right then it will be necessary to move to the next step to determine whether the limit is reasonable and justifiable.

If the policy or procedure does not limit a human right, there is no further analysis required.

## Step 4: Is the limit on the human right/s imposed by the policy or procedure reasonable and demonstrably justifiable?

This part of the review process that should be quite rigorous.

This step is where you will determine whether the policy or procedure that limits a human right is reasonable and justified in accordance with section 13 of the Act (and therefore compatible with human rights).

### Section 13 analysis

Section 13 of the Act provides that a human right may be subject only to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

Section 13 of the Act also sets out the factors that may be relevant in deciding whether a limit is reasonable and justifiable. The factors are not exhaustive and are intended to be used as a guide. You should also be thinking about what other factors might be relevant to the assessment of a particular policy or procedure.

You should go through each of the steps to form a view on whether the limit in the policy or procedure is reasonable and justifiable, and therefore compatible with human rights. Work through the *Guide: Section 13 analysis* to determine whether the limit is likely to be considered reasonable and justifiable.

If there is a limit on a human right, but the limit is considered reasonable and demonstrably justified, this should be documented. There are no further steps to take.

## Step 5: Does the policy or procedure require amendment?

If the limit on the human right is not likely to be considered reasonable and demonstrably justifiable, consider whether it is possible to amend the policy or procedure to ensure that it is compatible with human rights.

For example, consider whether there another way of achieving the same result that is less restrictive, or does not limit or impact on the relevant human rights. Do additional considerations need to be incorporated into the policy or procedure (for example, as part of the decision making process) to ensure that the relevant human rights are taken into account and given appropriate weight?

The Human Rights Unit (DJAG) can provide government officers with assistance in this step.

## Appendix A: Policy and procedure review assessment table

Department			
Business area			
Title of policy or procedure			
Purpose of policy or procedure			
Authorising law			
Identify each relevant human right	Are the human rights limited by the policy or procedure? If so, how?	Is the limitation on the right reasonable and justifiable? If so, how?	Should the policy or procedure be amended to ensure compatibility with human rights?

For more human rights information and employee resources visit [www.forgov.qld.gov.au/humanrights](http://www.forgov.qld.gov.au/humanrights)