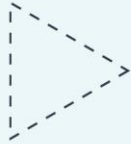




HUMAN RIGHTS | HOUSING AND HOMELESSNESS

Guide: Proper Consideration
The Human Rights Act 2019 (Qld)

QUEENSLAND'S 23 PROTECTED HUMAN RIGHTS



Recognition and equality before the law (section 15)



Right to life (section 16)



Protection from torture and cruel, inhuman or degrading treatment (section 17)



Freedom from forced work (section 18)



Freedom of movement (section 19)



Freedom of thought, conscience, religion and belief (section 20)



Freedom of expression (section 21)



Peaceful assembly and freedom of association (section 22)



Taking part in public life (section 23)



Property rights (section 24)



Privacy and reputation (section 25)



Protection of families and children (section 26)



Cultural rights - generally (section 27)



Cultural rights (section 28)



Right to liberty and security of person (section 29)



Humane treatment when deprived of liberty (section 30)



Fair hearing (section 31)



Rights in criminal proceedings (section 32)



Children in the criminal process (section 33)



Right not to be tried or punished more than once (section 34)



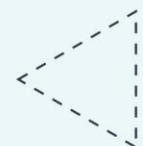
Retrospective criminal laws (section 35)



Right to education (section 36)



Right to health services (section 37)



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Welcome! This guide will help you understand the important elements of giving proper consideration to human rights as required by the *Human Rights Act 2019 (Qld)*. This guide has been created for public entity staff and volunteers, to help you understand your responsibilities at work.

This guide can be used by anyone working in public entities. The material has been developed specifically for those working in the housing and homelessness sector and uses specific scenarios relevant to this work.

We hope you enjoy learning about proper consideration and how you can incorporate human rights into your decision-making.

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This Guide was produced on the lands of the Turrbal and Yagera peoples in Meanjin. QCOSS and the Department of Communities, Housing and Digital Economy acknowledge Aboriginal and Torres Strait Islander peoples as the original inhabitants of Australia and recognises these unique cultures as part of the cultural heritage of all Australians. We pay respect to Elders of this land, past and present.

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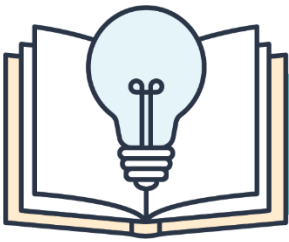
QCOSS acknowledges Aboriginal and Torres Strait Islander people as the original inhabitants of Australia and recognises these unique cultures as part of the cultural heritage of all Australians. We pay respect to the Elders of this land; past and present.

HUMAN RIGHTS ACT 2019 (QLD)

The *Human Rights Act 2019 (Qld)* (HRA) aims to uphold the inherent dignity and worth of all human beings, as determined by a free and democratic society based on human dignity, equality and freedom.

Three main objects of Act are to:

- (a) Protect and promote human rights
- (b) Help build a culture in the Queensland public sector that respects and promotes human rights
- (c) Help promote a dialogue about the nature, meaning and scope of human rights.



To hear more about the HRA, you can watch the [Introduction to the HRA](#).

“ For our tenants to feel that they are being treated with their human rights and dignity intact. ”

“ I am supportive of any changes that further protect the rights of individuals, especially the most vulnerable members of the community. ”

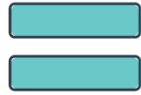
“ **WEIGHING EVERYONE’S RIGHTS.
IS IT FAIR, NECESSARY, JUST?** ”

“ If everyone across the sector is applying the Human Rights Act then it should have a flow on effect to clients, families, broader community etc. ”

In Australia (as at 2022), three states and territories have introduced laws to protect human rights. The Australian Capital Territory was first, introducing the *Human Rights Act 2004 (ACT)* in 2004, followed in 2006 by Victoria which enacted the *Charter of Human Rights and Responsibilities Act 2006 (Vic)*. Queensland is the third state to pass human rights laws in Australia.

PROTECTED HUMAN RIGHTS

There are 23 protected human rights included in the *Human Rights Act 2019* (HRA)



Recognition and equality before the law (section 15)



Right to life (section 16)



Protection from torture and cruel, inhuman or degrading treatment (section 17)



Freedom from forced work (section 18)



Freedom of movement (section 19)



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Children in the criminal process (section 33)



Right not to be tried or punished more than once (section 34)



Retroactive criminal laws (section 35)



Right to education (section 36)



Right to health services (section 37)



You can read useful summaries of these rights in the many resources produced by the Queensland Human Rights Commission (QHRC), available on its website: www.qhrc.qld.gov.au

All individuals in Queensland have protection under the HRA, regardless of their citizenship or place of residence.

Human rights are for individuals, not for corporations or animals. As you think about human rights think about the people involved.

“ Even though right to housing is not a right in the QLD Act, other protected rights impact on housing and can be considered in housing matters. ”

“ After much discussion around the circumstance and working from a human rights point of view it is amazing how the decision can be justified and that it's more than just housing. ”

In passing this law, the Queensland Parliament recognises;

Although human rights belong to all individuals, human rights have a special importance for the Aboriginal peoples and Torres Strait Islander peoples of Queensland, as Australia's first people, with their distinctive and diverse spiritual, material and economic relationship with the lands, territories, waters, coastal seas and other resources with which they have a connection under Aboriginal tradition and Ailan Kastom. Of particular significance to Aboriginal peoples and Torres Strait Islander peoples of Queensland is the right to self-determination (Preamble, 6).

RESPONSIBILITIES

Each arm of government in Queensland has separate and different responsibilities to promote and protect human rights.

PARLIAMENT

Parliament must consider human rights when proposing and scrutinising new laws.

COURTS AND TRIBUNALS

Courts and tribunals, so far as is possible to do so, must interpret legislation in a way that is compatible with human rights.

PUBLIC ENTITIES

Public entities – such as state government departments, councils, state schools, police and non-government organisations and businesses performing a public function must act compatibly with human rights.

This guide focuses on the role public entities have to act and make decisions that are compatible with human rights.

But it is reassuring to know that the Parliament, courts and tribunals also have important responsibilities.

Whenever Queensland Parliament introduces new laws, it must accompany the proposed new laws with a statement outlining the compatibility of the new legislation with human rights. This is not to say the Parliament won't enact legislation or make decisions that limit human rights; however it does ensure that human rights are considered and any decision to limit human rights will be weighed up, balanced and discussed.

Court and tribunals hearing individual cases also have a responsibility to interpret laws in line with the HRA and make rulings that are compatible with human rights. The courts have the opportunity to see how human rights are, or aren't, being fulfilled in the lives of people.

PUBLIC ENTITIES

The HRA gives special responsibilities to government agencies and organisations that provide services of a public nature. These include state and local governments and their elected officials, community organisations funded to provide state government services and any organisations prescribed by regulation.

Prescribed public entities include registered NDIS providers operating in Queensland and housing services who are state funded or which operate under the *Housing Act 2003 (Qld)*.

Responsibilities of public entities

- 1. Public entities are required to act and make decisions in a way that is compatible with human rights.**
- 2. Public entities need to consider relevant human rights when making decisions.**
- 3. Public entities have responsibilities to respond to human rights complaints.**



In determining who is a public entity, a judge in Victoria provided a definition that is commonly referenced. Please note: The Victorian Charter of Human Rights uses the term public authority to identify agencies delivering government services.



The concept of a public authority is of fundamental importance to the achievement of central purpose of the Charter.

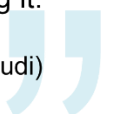
As with the comparable legislation in the United Kingdom and New Zealand, the definition of 'public authority' in S4 must be given a wide and generous interpretation which is consistent with that purpose

- Justice Bell. VACT (Metro West Housing Services v Sudi)



Whether a function is of a public nature requires attention to be paid to the nature of the function, not the entity exercising it - on what is being done, not what is doing it.

- Justice Bell. VACT (Metro West Housing Services v Sudi)



DECISIONS

In housing and homelessness, there are many complex decisions that need to be made. Some of these decisions belong to your service, some belong to clients and others belong to other service providers.

Public entities make many decisions every single day.

Some decisions will directly impact, positively or negatively, a person's human rights.

This graphic has examples of some of the decisions and actions that service providers make; any of these could impact upon a person's human rights.



Making decisions

The HRA requires public entities to act and make decisions in a way that is compatible with human rights. The Act states:

(1) *It is unlawful for a public entity—*

(a) to act or make a decision in a way that is not compatible with human rights

or

*(b) in making a decision, to fail to give **proper consideration** to a human right relevant to the decision.*

The HRA requires public entities consider human rights before they make a decision or take an action.

In giving consideration, a public entity must understand the impact of their decision on those involved. Ensuring that the decision does not limit a person's human right/s or limits a person's human right/s only to the extent that is reasonable and demonstrably justifiable.

Discretion in decisions

A public entity is only required to give consideration when they have discretion to do so. If a public entity *must* act in a certain way because that is what the law states, they have no discretion and do not have to consider human rights.

Example:

The Residential Tenancies and Rooming Accommodation Act 2008 (RTRAA) has provisions that must be followed as well as provisions that may be followed.

Provisions that may be followed allow for discretion. In these instances, the decision maker will need to follow the proper consideration requirements outlined in the HRA.

The HRA is state legislation that sits alongside, and is equal to, other laws in force in Queensland.

Public entities have flexibility in applying the policies and procedures they use to deliver services. An organisation's policies and procedures should comply with state legislation.

There may be times when staff may need to look outside internal processes to identify and take 'less restrictive' measures. These alternative measures will need to be included in your decision-making.

Key to implementing 'proper consideration' practices in your organisation is deciding under what circumstances staff will need to give it. For instance, some day-to-day decisions impacting clients may be 'trivial', while others may be significant.

Should a complaint arise, a public entity may need to provide evidence and demonstrate that it gave proper consideration to a decision before action was taken.

It will be important for all staff to understand how to give proper consideration, ending with a clear and transparent justification that supports the decisions that were made.



Mark decision points in your process to ensure you give proper consideration in this specific situation before deciding upon a course of action.

Limiting rights

There are times when it will be necessary to restrict or **limit** a person's human rights. When this occurs, the HRA requires public entities to properly consider the situation *before* making a decision or undertaking an action.

In attempting to preserve an individual's human rights, housing and homelessness service providers need to consider the nature and extent of the limitation and balance this with the outcome that needs to be achieved.

Example:

The decision to forcibly end the tenancy of a household is an outcome that will result in human rights limitations for those involved. The HRA requires you to justify any limitation and limit human rights only to the extent that is necessary.

Housing providers ought to consider a property transfer and/or support options to sustain a tenancy as a less restrictive, alternative course of action to an eviction. A housing provider will also need to justify how the benefits of the eviction outweigh the human rights limitations that will be experienced by those involved.

** Housing providers need to consider the human rights of everyone in the household; each individual's human rights can be impacted differently by a decision to end a tenancy.*

Fulfilling rights

Public entity staff also make decisions that help a person to **realise** their human rights.

It is important for public entities to consider human rights even when making rights-fulfilling decisions. This involves balancing the rights being fulfilled against those whose rights will remain limited.

For example, resource limitations in housing and homelessness service provision means that a decision to provide housing to one individual or group will impact upon others who will miss out; not everyone who is eligible for a social housing property will be offered one.

Human rights consideration should be factored into all significant service delivery decisions and this consideration should appear in the justification for the decision.

Example:

The allocation of a property has a significant impact upon a person's life and can enable them to fulfil many of their human rights. The allocation decision impacts not only the household being allocated the property, but also those who miss out, which makes this decision a significant one.

Housing service providers ought to consider the human rights of people when making housing allocation decisions.



Read how proper consideration supports decision-making in real scenarios in our [case study library](#).

Individual circumstances

When considering human rights, it is important to think about the individual life circumstances that surround each situation. The HRA requires public entities to consider the human rights of everyone impacted by a decision. Keep in mind that human rights consideration looks different in every situation.

Organisational policies and procedures guide staff to act consistently. The HRA affords staff the opportunity to consider individual circumstances when applying policies and procedures; it prompts you to pause and consider the decision to ensure human rights will not be unnecessarily limited.

While it is important to consider individual circumstances, there will be times when it is necessary to consider a group of individuals, for example those on the social housing register of need, or young people rough sleeping in Cairns. This method is often used when considering the human rights implications of a new policy, or when refining a service or program.

Facilitators notes: Individual consideration

Grace is a single mum with two teenage children at home. In a recent property inspection, the tenancy manager records some damage to the property as ‘not fair wear and tear’. It costs the service provider \$1,200 to fix the damage.

Your organisation’s policy requires tenants to pay for damage that is not considered fair wear and tear. You need to decide whether you will invoice the tenant for this damage.

Would you invoice the tenant if?

The damage was caused by their support animal	Yes / No
The damage was a one-off and caused by her teenage son	Yes / No
The damage was a regular occurrence, and you never get a good reason why	Yes / No
The damage was caused by family staying for a cultural/religious celebration	Yes / No
The damage was caused by a break/enter	Yes / No
The damage was result of domestic violence from an ex-partner	Yes / No
The damage happened when Grace slipped and fell resulting in a broken leg	Yes / No

The HRA asks decision makers to consider human rights before making a decision or taking action.

In this example, workshop participants were given different reasons for how the damage in Grace’s property occurred, and discussed whether or not they would charge Grace for the damage based on this reasoning.

All workshop participants agreed that one-off damage, or damage resulting from an accident, wouldn’t be charged to the tenant.

Workshop participants slightly varied when the damage was from domestic or family violence or as a result of a break-in. Participants agreed that they wouldn’t charge Grace, but some participants would require a police report to be filed so they could claim the damage on insurance. Other participants didn’t require reporting to the police and felt that human rights consideration was sufficient to waive the cost of the damage.

Workshop participants discussed the value of having damage recovery in their policies as a principle of natural justice. They articulated a need for the policy as a deterrent and for those households that regularly damage properties.

All participants agreed that human rights consideration afforded them decision-making capacity, allowing them to consider individual circumstances and enabling the delivery of a fair and rights respecting service.

EQUAL, INALIENABLE, INTER-DEPENDENT AND INDIVISIBLE

Human rights are equal and universal; everyone is born with and possesses the same rights. In Queensland, 23 of these rights have been made law with the HRA. Human rights are inalienable because they cannot be taken away.

Human rights are inter-dependent, accessing some human rights enables the fulfilment of other human rights. Equally you can't take away a human right without impacting upon other rights.

Example:

Without the right to equality before the law, some members of society would be unable to take part in public life.

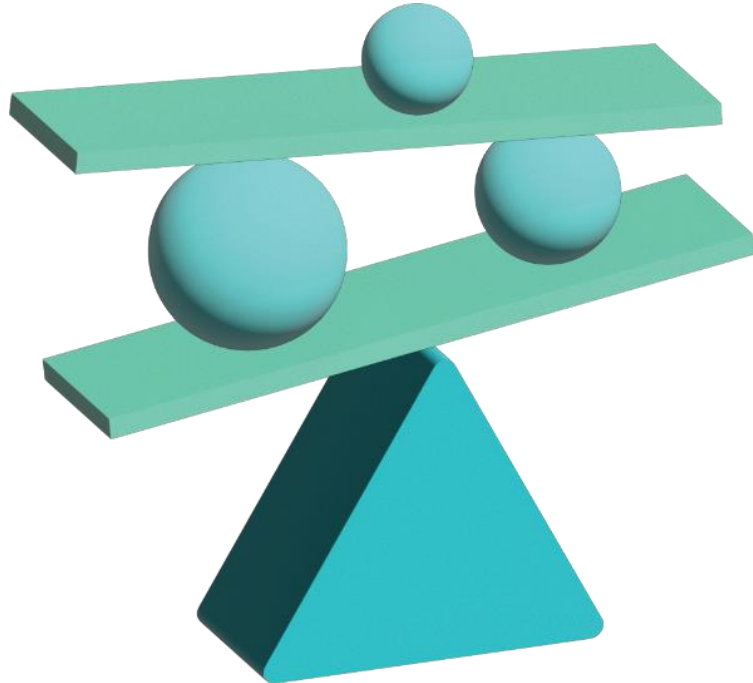
If someone loses their freedom of movement then their right to education and health services can also be impacted.

“Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.

- Preamble, Universal Declaration of Human Rights, 1948”

NATURE AND EXTENT

As a public entity worker, you will not only have to identify human rights but also weigh them up and balance them against other factors, including the human rights of others.



When balancing human rights, the HRA asks us to consider the nature and extent of the human rights in question.

The nature of a human right refers to its 'absolute' or 'non-derogable' nature – both of these are legal terms to describe certain human rights that cannot be suspended.

Absolute rights cannot be limited for any reason. They can't be suspended or restricted, even during events like a declared state of emergency. Non-derogable rights can't be suspended but they can be limited in some circumstances.

	Absolute rights	Non-derogable rights
Equality before the law	✓	✓
Right to life		✓
Protection from torture, cruel, inhuman or degrading treatment		✓
Freedom from forced work	✓	✓
Freedom of thought, conscience, religion and belief		✓
Right to liberty and security of person – sub-section 8	✓	✓
Retrospective criminal laws	✓	✓

Example:

A state of emergency is called after a cyclone hits Cooktown. Police block the roads preventing the movement of people in and out of the area, limiting people's freedom of movement, children's right to education and the cultural rights of Aboriginal and Torres Strait Islander peoples.

These limitations are reasonable for a short and defined period of time, as it allows emergency services to make the area safe and secure.

*However, despite the natural disaster and state of emergency, police would not be allowed to subject anyone to torture, cruel, inhuman or degrading treatment. This nature of this right is **absolute**. It cannot be justifiably limited.*

The extent of a human rights limitation is the level to which the human right is being restricted. You can imagine this as a sliding scale.



When weighing up competing human rights limitations, it is useful to think about the extent to which a human right will be impacted. This can help to determine what is fair and balanced when making decisions.

Example:

The right to privacy and security will be limited if you live in a caravan park, especially if you access the shared amenities. However, your right to privacy and security would be limited to a greater extent if you sleep rough, as all of your personal and private activities are on display.



Set a standard among your colleagues by discussing the least and most restrictive limitations that people accessing your service experience. Over time you could do this for all the protected human rights.

PROPER CONSIDERATION

Proper consideration involves factoring in individual circumstances and a person's human rights when making significant service delivery decisions.

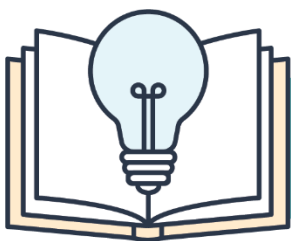
The HRA provides guidance for decision makers to assist them in making reasonable and justified decisions. Decision makers will need to consider the following factors:

- the nature of the human right
- the purpose of the limitation
- whether the limitation is necessary and required to achieve the purpose
- whether there are less restrictive and reasonably available ways to achieve the purpose
- the relationship between the purpose and limitation.

QCOSS has developed an easy four step process to help give proper consideration when making decisions.



“The HR Act may seem daunting at first however can be easily put into practice with plain English and step by step decision-making processes.”



Listen to an explanation of the [four-step consideration process](#) and hear why it is [important from Queensland's Human Rights Commissioner](#).



Purposeful Outcome

Be clear about the purpose of your service and clarify the outcome you want to achieve in making this service decision.

It is important to align your decision-making with a clear and legitimate purpose. This purpose should support the aims and objectives of the service you deliver. It will be important to clarify the outcome you are wanting to achieve each time you need to make a significant decision.

Example: Social housing and hoarding issues

Social housing is a 'safety net' for those unable to access housing in the private housing market. Its aims are to improve people's access to safe, secure, appropriate and affordable housing, and to build sustainable communities.

Luke's hoarding behaviour is impacting his neighbours and creating an unhealthy environment for himself and his children. In making this decision we acknowledge the need to work alongside Luke so that he and his children have a safe place to call home. There is a need to work alongside support services; these agencies will help inform tenancy decisions.

It is unlikely that Luke and his family will be able to afford or access private rental properties should they be evicted from social housing. It is important that Luke's family is able to access a safe and affordable tenancy. Therefore, an ongoing social housing tenancy is an important outcome in any tenancy management decisions.

Luke's neighbours are exposed to an unsightly mess and are impacted by increased rodent activity. These factors need to be resolved for the peace, security and health of neighbouring properties.

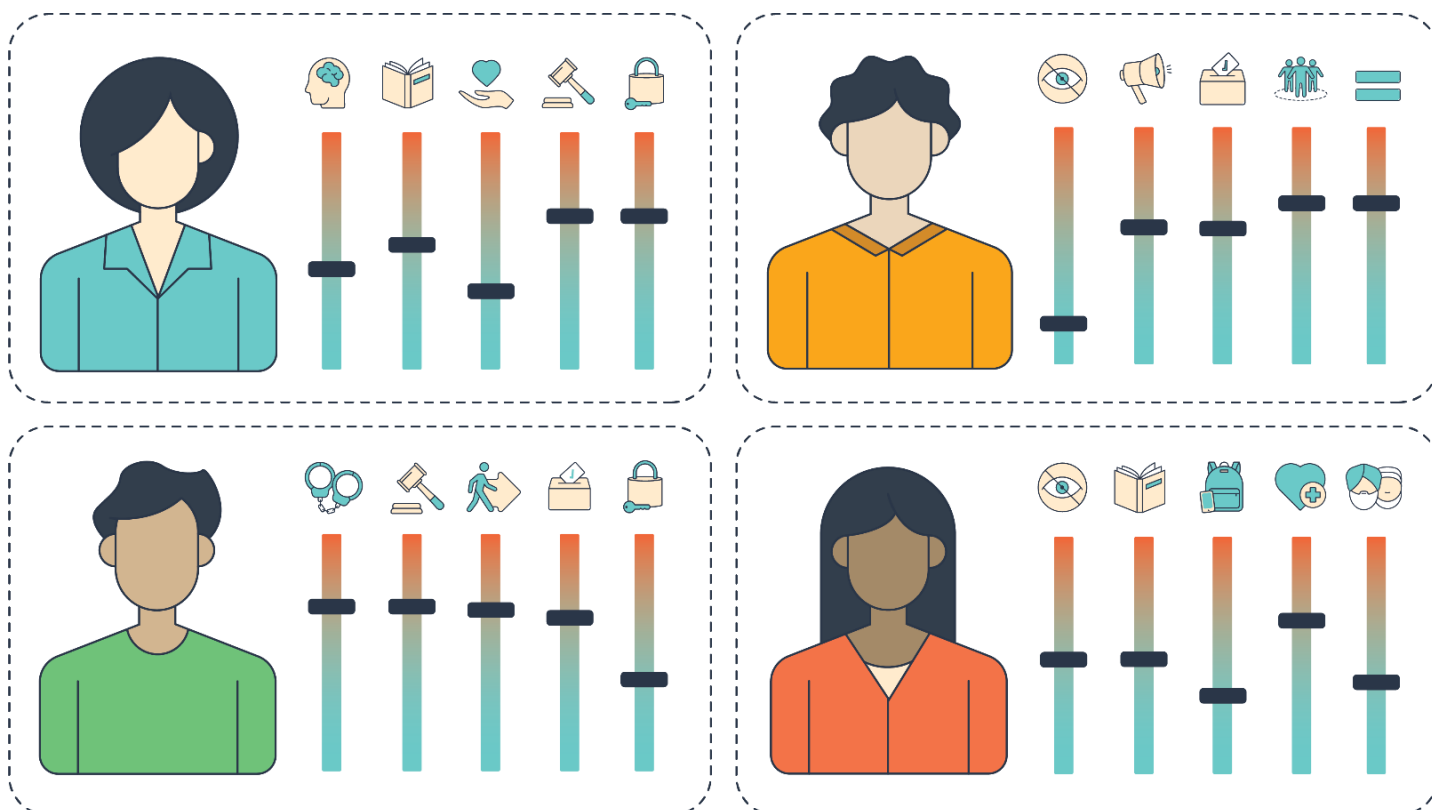


Identify Rights

Identify the human rights of all people involved in the situation and understand how they will be impacted by the decision

It is fundamental that you take the time to think about each person's individual circumstances and identify any of the 23 protected human rights that could be involved in the situation. These can be different for each person or group involved.

Human rights impacts should be considered *before* taking a course of action as it may influence your decision-making process.



As we learned on page 13, when balancing human rights, the HRA asks us to consider the nature and extent of the limitation on the human rights in question. It is helpful to think of these as a sliding scale, high being a significant restriction.

When identifying the human rights engaged in a decision, think about the likely human rights outcome of the decision for each person.

“ Proper consideration will involve understanding in general terms which of the rights of the person affected by the decision may be relevant and whether, and if so how, those rights will be interfered with by the decision that is made.

- Castles v Secretary to the Department of Justice [2010] VSC 310



Example: Social housing and hoarding

Every person has the right to liberty and security of person. The property that Luke and his children occupy is unsafe, with vermin in and around the house, damp and mould, and its contents may also be creating structural issues that need to be investigated. The sheer quantity of items is a significant fire risk for family members and surrounding neighbours.

Exposing Luke's hoarding behaviour will impact upon his right to privacy and reputation, there will be a large number of people discussing his home and personal behaviours and this could lead to those involved placing demands upon Luke's private life.

Luke has property rights; he owns the stuff that is being hoarded, and services are talking about his need to relinquish property or reconsider how this property is stored. Luke's children may also own property that is being discussed and their right to own property should also be recognised.

Luke's neighbours also hold a right to privacy and reputation, and property rights, their homes are also impacted by vermin as is their enjoyment of the neighbourhood.

Luke's freedom of expression is engaged as he has the right live and keep his home in a manner of his own choosing.

Luke's right to protection of family and children is being impacted because his home and family's lifestyle is being questioned. Luke's children have an additional protection under this right, needing a safe and healthy environment. They may require protection from the impact of Luke's hoarding behaviour, the impact this has on their life and what is in the best interests of the child.

Luke's children engage the right to education, their ability to learn and complete homework, be organised and prepared for school is affected by Luke's hoarding behaviour.

Luke has the right to health services. Severe hoarding and living in squalor indicates that Luke may need mental health support to prevent serious impairment from potentially untreated mental health issues.

* The human rights of Luke's children are most significantly impacted by their home environment.

* The human rights of Luke's neighbours are certainly engaged and this could escalate if there was a structural problem or fire at the premises.

* Luke's self-determination is recognised, as are his human rights. On balance, the human rights limitation that will be experienced by others is likely to outweigh the limitations Luke will endure to resolve the hoarding issue.

Decision: *Clarify the decision you intend to make before proceeding to the next step.*

Before asking yourself the compatibility questions, decide on your course of action. Write down this decision so you can refer to it as you ask the compatibility questions.

Example: Social housing and consideration of hoarding issues

Proposed decision: Transfer Luke and his family to a safe home (this may involve a notice to leave with an offer to transfer), with supports in place to assist the family and address Luke's ongoing hoarding behaviours.



Test Compatibility

With your decision in mind, answer these five questions to check if your decision is compatible with human rights.

Now that you have decided on a course of action, there are five key questions you can ask yourself to check if you are acting compatibly with human rights.

Decisions that limit human rights need to be lawful, fair, balanced and able to be justified

Compatibility test

Is it lawful? *What law or regulation allows you to limit a person's rights?*

Is there a purpose? *What is the aim of the limitation, and does it achieve a legitimate purpose?*

Is it rational? *Will the action or decision effectively achieve your purpose?*

Is it necessary? *Is this the least restrictive way to achieve your purpose?*

Is it fair and balanced? *Do the benefits outweigh the harm caused by the limitation?*

*If you answer **Yes** to all of these questions, then it is likely you are acting compatibly.*

*If you answer **No** to any of these questions, then it is likely you are not acting compatibly and you may need to reconsider your decision.*

It is important for public entities to be open and transparent about the decision that was made.

Example: Social housing and consideration of hoarding issues

The decision to transfer the family to a different property is **lawful**, it fulfils the **purpose** of social housing, ensuring the family live in a safe and secure home while upholding the rights of neighbouring properties after property rectification work is undertaken.

The transfer is a **rational** solution, as it achieves the desired outcome for all parties. The transfer is **necessary** as there is no less limiting way to ensure the family's safety and undertake rectification works to secure the property.

The decision to transfer the family is **fair**; it maintains their tenancy in a secure social housing arrangement and prevents them from becoming homeless. The decision **balances** the human rights limitations experienced by Luke and potentially his children; any limitations are outweighed by the rights that are protected by this decision.

The risk to the family is significant with mould and potential structural issues. This decision will fulfil the rights of Luke's children and neighbouring properties and prevent a potential homelessness situation that would cause further human rights limitations on the family unit.

This decision would likely pass the compatibility test.

“ I did a human rights assessment, where I pulled back from issuing a Notice to Leave (NTL) as I recognised the impact of doing a NTL was so great that I hadn't exhausted other options to mitigate the limitation on the tenant's human rights. ”



Justify Decisions

Document a clear justification for the decision, demonstrating the consideration given to human rights. This should include a statement explaining the potential outcome for those involved and outline the factors that were weighed up at the time the decision was made.

To demonstrate your understanding of the impact of your decision upon the people involved, you should clearly record your justification. This requires you to acknowledge any human rights limitations and give an explanation of the outcome for people impacted.

Public entity staff are expected to put aside any subjective and personal biases and consider their service delivery decisions by upholding the dignity, equality and freedom of all people.

Expected Outcome

To demonstrate your understanding of the impact of your decision upon the people involved, you should clearly record your justification.

This will require you to acknowledge any human rights that could be limited and explain the outcome for those involved.

Example: Social housing and consideration of hoarding issues

Luke and his children will be able to live in a safe, affordable and secure home. Luke will be supported through this difficult relocation as they address the hoarding behaviours that are impacting their lives.

The neighbouring properties will have their rights fulfilled once rectification works are undertaken. The property will then become available to another household on the register of need.

In making this decision we acknowledge that we will need to link appropriate support services to assist the family with the move. There will be a significant cost to relocate the family and rectify the property.



Public entities need to document their consideration of human rights and justification for their decision. You just never know when a complaint will be raised!



The justification should also outline the factors, for and against, that you considered in making the decision. It will be important to clearly see the factors that were weighed up at the time the decision was made. These factors can include the rights of other people as well as things such as; resource availability, service capability, risk assessment, professional knowledge, collaborative requirements, compliance, policy and procedures, etc.



Public entity staff are expected to put aside any subjective and personal biases and consider their service delivery decisions by upholding the dignity, equality and freedom of all people.

“ It is well worth understanding the decision-making process as this offers a great framework for what are often difficult decisions and provides us with confidence in the outcome. ”

“ All above mentioned (actions and activities) are great practice but good management is very important. ”

Human rights help! Your questions answered

Dear QCOSS,

One of our tenancies has reported verbally abusive and racist neighbours. The tenants feel unsafe and encourage their children to stay inside, which impacts their enjoyment of the property and local amenities. The tenants are an Aboriginal family and have asked for a property transfer to an area where they have connections.

As property transfers are costly, time consuming and depend on availability, our organisation generally doesn't grant them except for a significant reason. We don't have any documented evidence of the situation; the tenants have not reported their neighbour's behaviour to police, and other neighbours have not said anything to us. Can anyone use human rights to request a property transfer at any time?

Yours truly,
Puzzled Provider

Dear Puzzled Provider,

The *Human Rights Act 2019 (Qld)* requires you to give proper consideration of human rights when making decisions or taking actions. This includes the decision *not* to grant a transfer. To give proper consideration to your decision, you will need to think about which of your tenant's human rights could be impacted, and document your reasoning.

First, start by providing a clear objective: in this case, to provide your tenants with sustained and stable tenancy without placing unnecessary demands on your organisation.

Second, identify your tenant's human rights using the Act. These include:

- Right to recognition and equality before the law
- Cultural rights - Aboriginal and Torres Strait Islander peoples (this includes the right to maintain connections to kin, culture and land)
- Right to freedom of movement
- Right to privacy and reputation
- Protection of families and children
- Right to liberty and security of person (this includes the right to be safe)

Third, test the compatibility of your decision by giving proper consideration. Ask yourself all the below questions:

- **Is your decision not to transfer lawful? Yes** - there is no law or legislation that requires you to transfer a tenancy upon request.
- **Does your decision have a purpose? Yes** – it will reduce the impact on your organisation's resources.
- **Is the decision not to transfer rational? No** - the decision could impact on the tenant's ability to sustain stable housing and enjoy their rights. It won't achieve the objective that you have identified.
- **Is the decision not to transfer necessary? No** - the organisation can, over time, enable a transfer.
- **Is the decision not to transfer fair and balanced? No** - Upholding a household's human rights to feel safe and secure, to their freedom of movement and to realise their cultural rights is likely to outweigh the need to reduce the impact on your organisation's resources.

There only needs to be one **No** to determine that a decision may be incompatible with human rights. Here, your decision not to transfer may not be able to be justified. It is important to consider individual circumstances each time you receive a request to transfer. The consideration will look different each time, with different motivations and rights engaged. Individual consideration is an important element for acting compatibly with human rights.

Best of luck,
QCOSS

PROPER CONSIDERATION IN PRACTICE

Giving proper consideration when making service delivery decisions will be easier for staff once they are familiar with the process. You can assist them by embedding consideration into your organisation's tools, resources, procedures and policies.

To begin this process, identify significant decisions that your organisation makes. Issuing a notice to leave or refusing to provide someone with a service are examples of decisions that could impact on a person's life and engage their human rights, therefore these are examples of decisions that should incorporate proper consideration.

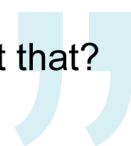


Check out QCOSS's proper consideration tool, a worksheet that guides you through the proper consideration process. We have also codesigned specific resources to help with housing allocations and tenancies at risk.

Your organisation's service response will change as services change, as standards improve and as your work culture adapts. It will be easier to incorporate proper consideration into your everyday practices when human rights are discussed openly. Ask your colleagues how they would consider human rights as you encounter different situations. Talking openly about human rights facilitates cultural change in the workplace, and helps to normalise the practice of giving proper consideration.



I need to start pushing that back and saying, well where is the consideration of human rights? Can we have a discussion about that?



The introduction of the HRA is making sure public entities are more accountable for their decisions. Anyone can ask a public entity to explain how a decision was made, and the human rights that were considered in making this decision. Giving proper consideration to human rights is the new norm. It will be important to document the proper consideration that was undertaken in each individual situation, as well as to identify the human rights engaged and show the justification supporting the decision.



Check out the case study library, there are examples of the proper consideration given in a range of everyday service delivery situations.

As organisations embed proper consideration into everyday practices, organisations turn to their policies and processes to support staff to make fair, compliant and equitable decisions. Use your policies and procedures to help identify decision points, outline any delegations or authority for rights-limiting decisions, and develop procedures to monitor compliance with the HRA and promote consistency in decision-making.



For more information about incorporating human rights in your organisation's policies and procedures, check out our governance guide.

The introduction of proper consideration can seem overwhelming at first. However, over time it can become 'second nature' and a more natural way of working. We have seen huge success with organisations that have taken the time to embed proper consideration into their practices. They are now using proper consideration to help staff navigate and agree service responses in complex situations.



Proper consideration is not only an opportunity to embed the legislation as part of practice, but also provides opportunity for a culture shift within teams and organisations, as well as removing some of the burden of responsibility that some staff feel when making human rights limiting decisions.



At the end of the day, staff should feel confident that they are properly considering the human rights of the people they service. If you need more support, talk to your supervisor and access other training and resources, because human rights thrive in everyday decisions and actions taken to deliver services to people in Queensland.



Consider aligning refresher training with **International Human Rights Day on 10 December**, or use the day to celebrate how your organisation upholds the human rights of those you service.

TIPS FROM YOUR COLLEAGUES

Identify decisions that require human rights consideration

- Mark points inside your existing process to identify decision-making points.
- Take a moment before contacting a person, to consider if you have made a service decision that will impact them.
- Question your organisation's regular practices to identify decision-making points.

See all people involved

- Complex situations usually involve multiple people; the human rights of all people need to be included when giving proper consideration.
- Consider children separately! A child's needs are often wrapped into those of their parents and their unique rights can be easily overlooked.
- It is tricky to consider the rights of people you haven't spoken with, but do try to include this when giving proper consideration.

Follow the four-step process

- It is designed to help you uncover a justifiable decision; allow yourself to be guided by human rights consideration.
- Each step in the consideration process is important. Resist the temptation to skip to the end.

Reflect upon your purpose

- Articulate your purpose for every decision as it is a key point of reference for justifying your decision.
- Consider all people when articulating your purpose there will be an outcome for all people involved.
- It is easy to take for granted your purpose, so take time to regularly reflect on the purpose of your service.
- Knowing your purpose will support strong service collaboration discussions.

Consult widely

- Speak to others about your rationale, it will help to broaden your understanding of the situation.
- Gathering a range of perspectives will strengthen your decision-making capabilities.
- Undertaking proper consideration with others can support teamwork, improve decisions and develop a human rights culture.

Own your justification!

- Your justification represents a point-in-time decision so 'time stamp' your decision by documenting the factors your weighted up in your decision.
- Be confident explaining your decision. If you are not confident, check if there is a less restrictive alternative.
- Think about explaining your decision to those involved – you may need to give reasons for your decision.

Use human rights language in service collaboration

- Use human rights terminology when working with other organisations; describe limitations, identify alternative service options and talk about the fulfilment of a person's human rights.
- When we discuss human rights, we are usually talking about the minimum standards of fairness, respect, equality, dignity and autonomy.

“ It has provided cause for pause in our practice, in client related decisions. The information received has resulted in me encouraging this practice, from a leadership/management perspective. ”

“ **GET TO KNOW YOUR RIGHTS AND ESPECIALLY THE ONES RELEVANT TO YOUR LINE OF WORK.** ”

“ It is revealing what more we can do, and we are looking for ongoing resources to inform our daily practice. ”

“ **SEEMS BIGGER THAN BEN HURR, BUT IT'S NOT. JUST EMBRACE IT!** ”

“ **BE MORE FLEXIBLE AND UNDERSTANDABLE TO MORE PEOPLE.** ”

“ It's a fine balancing act between what we can and cannot provide or do within our means, but we constantly try to achieve best outcomes. ”



Outcomes from giving proper consideration will change as service standards improve. Giving proper consideration provides you with the opportunity to revisit your practices regularly to ensure your organisation is looking at every service options.