



Purpose

The purpose of this policy is to assist the Office of the Health Ombudsman (OHO) to meet our human rights obligations.

As a public entity¹ the OHO must:

- act or make a decision in a way that is compatible with human rights; and
- give proper consideration to human rights.²

This legal requirement does not apply if the OHO could not reasonably have acted differently or made a different decision because of a statutory provision, a law of the Commonwealth or other State.³

As a referral entity⁴ receiving human rights complaints the OHO may:

- deal with the complaint under the *Health Ombudsman Act 2013* (HO Act); or
- with the consent of the person who could make the human rights complaint refer the complaint to the Queensland Human Rights Commission (QHRC).

Application

This policy applies to all employees of the OHO, including temporary and contract employees.

Legislative provisions

- *Health Ombudsman Act 2013*
- *Human Rights Act 2019*
- *Financial Accountability Act 2009*

Related resources

- Procedure - Human rights in health service complaints and other matters
- Procedure - Human rights in decision making
- Policy – Policy and procedure management (to be updated)
- Procedure – Policy and procedure management (to be updated)
- Policy – Internal complaints (to be updated)
- Procedure – Internal complaints (to be updated)
- Policy – Service delivery complaints
- Procedure – Service delivery complaints

¹ Section 9 of the *Human Rights Act 2019*.

² Section 59 of the *Human Rights Act 2019*.

³ Section 58(2) of the *Human Rights Act 2019*.

⁴ Schedule 1 of the *Human Rights Act 2019*.



- OHO/Queensland Human Rights Commission Information Sharing Memorandum of Understanding (MOU) (D/151526)
- Human Rights delegation instrument
- [Queensland Government Guide: Handling human rights complaints](#)
- [Queensland Government Guide: Planning and reporting for human rights](#)
- [Queensland Government Guide: Reviewing policies and procedures for compatibility with human rights](#)
- [Queensland Government Guide: Human rights in decision making – a guide for Qld Government staff](#)

Policy statement

On 1 January 2020, the *Human Rights Act 2019* (HR Act) commenced operation. The Act protects 23 human rights derived from international law. The main objects of the HR Act are to:

- protect and promote human rights
- build a culture of human rights in the Queensland public sector that respects and promotes human rights
- help promote a dialogue about the nature and meaning of human rights.⁵

The OHO is committed to creating a culture of human rights which benefits and protects all individuals as well as meeting its obligations and performing its functions under the HR Act.

More specifically, human rights will be taken into account when:

- managing health service complaints
- managing service delivery complaints
- managing internal complaints
- making decisions that affect health service providers⁶
- making decisions that affect complainants, consumers and witnesses
- developing policies and procedures.

Overview of human rights

The term “human rights complaint” refers to an allegation about the conduct of a public entity –

- to act or make a decision in a 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.⁷

A full list of all 23 protected rights (with summaries) is listed in **Appendix A**.

⁵ Section 3 of the *Human Rights Act 2019*.

⁶ Section 8 of the *Health Ombudsman Act 2013*.

⁷ Section 58(1) of the *Human Rights Act 2019*.

The HR Act only applies to public entities. A public entity is an organisation or body providing services to the public on behalf of the State and or another public entity (or other entities who voluntarily subscribe).

Managing health service complaints

The OHO receives health service complaints about the delivery of health services which may include allegations that a public entity may have unlawfully limited their protected human rights. This includes where the complainant has explicitly identified a limitation as a part of the complaint or where it is implicit in the complaint. The HR Act places a positive obligation on the OHO to identify and record potential human rights allegations and respond appropriately.

In the context of health service complaints made to the OHO as a referral entity this generally covers:

- state government departments and agencies
- public service employees
- public health services, including hospitals.

Under section 66(2) of the HR Act the Health Ombudsman may elect to consider such complaints as a health service complaint under the provisions of the HO Act where it is in jurisdiction. In such matters, the OHO:

- will deal with the human rights part of the complaint under the HO Act; or
- with consent of the complainant refer the complaint to the QHRC.

The Health Ombudsman may delegate this decision to an appropriately qualified officer who receives and assesses the complaint under section 66(1) and section 66(2) of the HR Act.

OHO will usually proceed on the basis that where a complainant has complained to the OHO about a health service that also involves the potential limitation of a person's protected human rights, the complainant intends for the matter to be handled by OHO under the HO Act.

The OHO has no power to make a definitive finding about whether the human rights of a complainant or consumer have been limited, or offer any relief as provided for under the HR Act.

If a complainant is not satisfied with an OHO decision following discussion with the case officer, they can access their review rights with the Queensland Ombudsman or make a complaint to the QHRC.⁸ If the QHRC receives a human rights complaint that could include a health service complaint under the HO Act, the QHRC may refer the complaint to the OHO with the consent of the complainant.⁹

For more information on how to identify and record potential limitation of a human right in a health service complaint see Procedure - Human rights in health service complaints and other matters.

Managing 'other matters'

'Other matters' include:

⁸ Section 65 of the *Human Rights Act 2019*.

⁹ Section 73(2) of the *Human Rights Act 2019*.

- an enquiry, information from another entity and out of jurisdiction:
 - where an information matter or an enquiry is received that is also a human rights complaint, but there is insufficient information to form a health service complaint, the OHO must identify and record potential human rights allegations. The complainant should be directed to the QHRC. The OHO may also refer the complaint to QHRC under section 66 of the HR Act with consent of the complainant.
- an own motion:
 - when own motion matters are commenced the OHO must identify and record potential human rights allegations, the power to refer the matter under section 66 of the HR Act is not enlivened and the matter cannot be referred under this section. However, the OHO does have a positive obligation under section 30 of the HO Act to consult and co-operate with other public entities including QHRC and could consider referral under section 92 of the HO Act.

Regardless, whether it is a health service complaint or other matter, the HR Act places a positive obligation on the OHO to identify and record potential human rights allegations and respond appropriately.

For more information on how to identify and record potential limitation of a human right in other matters see Procedure - Human rights in health service complaints and other matters.

Managing service delivery complaints

The OHO identifies and manages human rights complaints against the OHO in accordance with the Policy – Service Delivery Complaints.

Where a complainant is dissatisfied with the OHO response to their complaint about a human rights matter, they can make a new complaint to the QHRC.

For more information on how to identify, assess, manage and record potential limitations of a human right in a service delivery complaint see Procedure – Service Delivery Complaints and [Queensland Government Guide: Handling human rights complaints](#).

Managing internal complaints

An employee may make a complaint that an action or decision is not compatible with human rights, or a decision failed to give proper consideration to a relevant human right under the HR Act.

The OHO is committed to the positive management and early resolution of workplace complaints and supports a workplace culture that encourages all staff to openly raise workplace concerns or issues. In addition, the OHO is committed to resolving complaints as they arise in a constructive manner that is fair, efficient, and confidential. The internal complaints procedure outlines the type of complaints that may be dealt with under by the OHO.

For more information on how to identify, assess, manage and record potential limitation of a human right in an internal complaint see Policy – Internal complaints, Procedure – Internal complaints, [Queensland Government Guide: Handling human rights complaint](#) and [Queensland Government Guide: Human rights in decision making – a guide for Queensland Government staff](#).

Making decisions that impact human rights

The HR Act recognises that there are times when it is necessary to limit one or more protected human right and sets out a test for determining whether a limit on a human right is reasonable and justifiable.¹⁰ The following factors may be relevant in this aspect of decision making:

- the nature of the human right
- the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom
- the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose
- whether there are any less restrictive and reasonably available ways to achieve the purpose
- the importance of the purpose of the limitation
- the importance of preserving the human right, taking into account the nature and extent of the limitation on the human right
- the balance between the purpose of the limitation of the human right and preserving the human right.¹¹

For further information on how to identify and give proper consideration to human rights when taking action or making a decision see Procedure – Human rights in decision making and [Queensland Government Guide: Human rights in decision making – a guide for Queensland Government staff](#).

Developing policies and procedures

All policies and procedures and decision-making frameworks must be compatible with human rights. When reviewing or considering new policies and procedures the following must be considered:

- is the policy or procedure authorised by a provision in an Act, Regulation or common law?
- does the policy or procedure engage one or more of the protected human rights?
- is one or more of the protected human rights potentially limited by the policy or procedure?
- is the limit on human rights imposed by the policy or procedure reasonable and demonstrably justifiable?

For further information on how to assess policies and procedures for compatibility with human rights see Procedure – Policy and Procedure Management and [Queensland Government Guide: Reviewing policies and procedures for compatibility with human rights](#).

¹⁰ Section 13(1) of the *Human Rights Act 2019*.

¹¹ Section 13(2) of the *Human Rights Act 2019*.

Roles and responsibilities

Health Ombudsman

The Health Ombudsman is responsible for complying with the obligations outlined in the HO Act, the HR Act and the *Financial Accountability Act 2009*.

The Health Ombudsman also has a responsibility to provide human rights information in each annual report.¹² The required information to be included in each annual report is set out under 'Reporting'.

Leadership roles

Staff in leadership roles in the office are responsible for:

- promoting staff awareness around the possibility of limitations of human rights being identified in health service complaints, service delivery complaints and developing policies and procedures
- ensuring staff in their teams undertake human rights training and are aware of their responsibilities under the HR Act
- ensuring staff in their teams are identifying and recording where human rights may have been limited in health service complaints, service delivery complaints and internal complaints
- ensuring staff in their teams are giving proper consideration to applying the factors in s13(2) of the HR Act when limiting human rights in decisions and actions.

Director OHO

The Director OHO is responsible for recording and reporting on human rights complaints about the OHO in accordance with Policy – service delivery complaint and Procedure – service delivery complaints.

Manager, Human Resources

The Manager, Human Resources is responsible for recording and reporting on human rights complaints about OHO by staff in accordance with Policy – internal complaints and Procedure – internal complaints.

All employees

All OHO employees are:

- responsible for identifying and recording possible limitations to human rights when managing health service complaints and service delivery complaints
- responsible for identifying and considering human rights of a person in decisions or actions.

¹² Section 63(1) of the *Financial Accountability Act 2009*.



Reporting

The *Financial Accountability Act 2009* provides the OHO must prepare an annual report.¹³ The HR Act sets out the information that must be included in the annual report¹⁴ on an annual basis in the OHO annual report. The OHO must include:

- the details of any actions taken during a reporting period to further the objects of the HR Act. This reporting information includes what actions the OHO has done to protect and promote human rights, help build a culture that respects and promotes human rights and to help promote a dialogue about the nature, meaning and scope of human rights
- details of any human rights complaints received by the OHO as a public entity, including:
 - the number of complaints received
 - the outcome of the complaints
 - any other relevant information
- details of any review of policies, programs, procedures, practices, or services undertaken in relation to their compatibility with human rights.¹⁵

For further information see [Queensland Government Guide: Planning and reporting for human rights](#).

Definitions

Complainant	A person or their representative (including clients, consumers, service users, customers, etc) who is apparently directly affected by the service or action of a public entity, making a complaint.
Health service complaint	A health service complaint means a complaint accepted or not accepted, a mandatory notification, a voluntary notification.
Human rights complaint	A complaint about an alleged contravention of section 58(1) of the HR Act by a public entity in relation to an act or decision of a public entity.
Human rights	The rights stated in part 2, divisions 2 and 3 of the HR Act
Other matter	Other matter includes an enquiry, information from another entity, own-motion matter, matter outside OHO jurisdiction
Referral entity	Referral entity is defined in Schedule 1 of the HR Act: a) the Crime and Corruption Commission; or b) the health ombudsman; or c) the information commissioner; or d) the ombudsman.
Service delivery complaint	An expression of dissatisfaction (either written or verbal) made by a person or authorised third party who is apparently directly affected by the service or actions of the OHO or an OHO employee/s in the course of carrying out the

¹³ Section 63 of the *Financial Accountability Act 2009*.

¹⁴ Section 97 of the *Human Rights Act 2019*.

¹⁵ Section 97(2) of the *Human Rights Act 2019*.




	OHO's functions, for which a response or resolution is explicitly or implicitly expected.
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Version control

Version no.	Changes made
0.1	Draft
1.0	New policy

Approval

Effective date	11 March 2024
Last reviewed	31 August 2023
Next review	31 August 2026
Contact	Principal Governance and Policy Officer
Custodian	Director, Office of the Health Ombudsman
Approved by	Health Ombudsman
Approval date	11 March 2024
Signature	
Security classification¹⁶	Official

¹⁶ NB. This footnote is intended to provide guidance when deciding the security classification of information.

Official – routine information without special sensitivity or handling requirements and a low business impact per document if compromised or lost. For example, information that may be shared across government agencies.

Sensitive – information that requires additional handling care due to its sensitivity or moderate business impact if compromised or lost. For example, information containing legal professional privilege.

Protected – information that requires the most careful safeguards due to its sensitivity or major business impact if compromised or lost. For example, cabinet documents.



Appendix A

The *Human Rights Act 2019* protects:

Your right to life (section 16)

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

Your right to protection from torture and cruel, inhuman or degrading treatment (section 17)

People must not be tortured. People must also not be treated or punished in a cruel, inhuman or degrading way. This including protection from treatment that humiliates a person. This right also protects people from having medical treatment or experiments performed on them without their full and informed consent.

Your right to freedom from forced work (section 18)

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.

Your right to freedom of movement (section 19)

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.

Your right to freedom of thought, conscience, religion and belief (section 20)

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.

Your right to freedom of expression (section 21)

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

Your right to peaceful assembly and freedom of association (section 22)

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

Your right to taking part in public life (section 23)

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

Property rights (section 24)

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

Your right to privacy and reputation (section 25)

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

Your right to protection of families and children (section 26)



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

Cultural rights (section 27)

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

Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28)

Aboriginal peoples 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.

Your right to liberty and security of person (section 29)

Everyone has the right to freedom and safety. 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.

Your right to human treatment when deprived of liberty (section 30)

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

Your right to a fair hearing (section 31)

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.

Rights in criminal proceedings (section 32)

There are a number of minimum guarantees that you have when you have been charged with a criminal offence. These include the right to be told the charges against you in a language you understand; the right to an interpreter if you need one; the right to have time and the facilities (such as a computer) to prepare your own case or to talk to your lawyer; the right to have your trial heard without too much delay; the right to be told about Legal Aid if you don't already have a lawyer; you are presumed innocent until proven guilty; and you don't have to testify against yourself or confess your guilt unless you choose to do so.

Rights of children in the criminal process (section 33)

A child charged with committing a crime or who has been detained without charge must not be held with adults. They must also be brought to trial as quickly as possible and treated in a way that is appropriate for their age. Children are entitled to opportunities for education and rehabilitation in detention.

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

A person will only go to court and be tried once for a crime. This means if the person is found guilty they will only be punished once. If they are found to be innocent they will not be punished.



Retrospective criminal laws (section 35)

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

Right to education (section 36)

Every child has a right to primary and secondary schooling. Every person has the right to have access to further vocational education, based on their ability.

Right to health services (section 37)

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