

Human Rights Complaints Procedure

Owner Governance, Performance and Risk
Last Reviewed 27/04/2021

CHD/2021/5577
Version 1.01

1. Purpose

The Department of Tourism, Innovation and Sport (DTIS) is committed to respecting, protecting and promoting human rights.

Under the *Human Rights Act 2019* (the Act), the department has an obligation to act and make decisions in a way compatible with human rights and, when making a decision, to give proper consideration to human rights.

This procedure describes the processes for human rights complaints and should be read in conjunction with the department's Complaints Management Policy.

2. Authority

The *Human Rights Act 2019* provides that an individual can submit a complaint if they believe the department has breached their human rights. The complaint must be submitted to the department before it is provided to the Queensland Human Rights Commission (QHRC).

3. Scope

This procedure applies to human rights complaints in relation to:

- departmental products, services, decisions or actions
- all employees of the department and non-employees including contractors, consultants, volunteers and any other person or entity who provides the department with services on a paid or voluntary basis.

This procedure **does not apply to:**

Type of complaint	Referred to
Complaint about the Director-General	<ul style="list-style-type: none"> • <i>Crime and Corruption Act 2001</i> (CC Act), section 48A • Complaints about the Director-General Policy
Complaint comprising allegation/s about corrupt conduct	<ul style="list-style-type: none"> • CC Act 2001 • The complaint may be referred to the CCC for investigation, or investigated by the department and reported to the CCC if required under the CC Act.
Customer complaints	<ul style="list-style-type: none"> • Customer Complaints Management Procedure
Employee grievances and appeals	<ul style="list-style-type: none"> • Chapter 7, <i>Public Service Act 2008</i> • Managing Employee Grievances Policy • Managing Employee Grievances Procedure • Commission Chief Executive Directive: Appeals (07/20)
Information Privacy complaints	<ul style="list-style-type: none"> • <i>Information Privacy Act 2009</i> • Information Privacy Policy
Public Interest Disclosures	<ul style="list-style-type: none"> • <i>Public Interest Disclosure Act 2010</i> • Public Interest Disclosures Policy and Procedure
Right to Information complaints	<ul style="list-style-type: none"> • <i>Right to Information Act 2009</i> • Chapter 3, Part 2 of the <i>Information Privacy Act 2009</i>.

4. Procedure

4.1 Complaint receipt

Complainants can raise allegations of a contravention of human rights, where they believe the department has unreasonably limited a human right, or an action/decision made by the department is not compatible with human rights.

When a complaint is received, the complainant may have already identified their complaint is about a breach of their human rights, however the complainant does not need to explicitly refer to the *Human Rights Act*, or use the term “human rights”. It is the responsibility of the receiving officer to determine if the complaint engages human rights.

Complaints are received both verbally and in writing through a variety of channels, including face to face, telephone, letter, email, facsimile or via the online form.

For individuals requiring assistance to make a complaint, there are services available:

- Translation and Interpreting Service – for language assistance
- National Relay Service – for people with hearing or vision impairments.

To support whole-of-department complaints reporting, divisions are to advise the Governance, Performance and Risk (GPR) Team, Corporate Services, DTIS when a complaint is received – either through MECS or via email to Ethics@dtis.qld.gov.au.

4.2 Assessment of complaint

An initial assessment of the complaint may consider its context and circumstances to determine its priority, how it should be managed, and who should respond. It is the responsibility of the recipient of the complaint to assess these matters.

The complaint should be acknowledged by the departmental officer receiving it, with written advice provided to the complainant which includes the timeframe for the department’s response.

4.3 Consideration of human rights issues in complaint management

Identify the human rights relevant to the complaint (refer to Part 2, and divisions 2 and 3 of the Act and [Appendix A](#) of this document).

When a human rights component has been identified in a complaint, it will be necessary to determine whether the department’s action or decision being complained about has limited those human rights. If the human rights have not been limited, then the action or decision is compatible with human rights.

Where an action or decision has limited human rights, consider whether the limitation is justified and reasonable in the circumstances (refer to section 13 of the Act). Such consideration may include:

- What law allows the department to limit a human right?
- Is there a relationship between the limit on the human rights and the purpose of the limit?
- Does the limitation achieve the department’s purpose?
- Are there any less restrictive ways to achieve the same outcome without limiting the human right (or limiting it to a lesser extent)? Are these options reasonably available?
- Does the importance of achieving the department’s purposes outweigh the harm caused by limiting the human rights?
- Does the action or decision strike a fair balance between the complainant’s rights and the department’s purpose?

When considering the complainant’s human rights against the department’s purpose in taking action or making a decision, it should be kept in mind that the stronger the limitation on the complainant’s human rights, the stronger the justification needs to be. The department must be prepared to justify that the benefits gained by fulfilling the purpose of the limitation outweigh the harm caused to the human right.

4.4 Resolution

If an individual’s human rights have been limited, some possible remedies are:

- acknowledging the error and apologising
- providing a more thorough explanation for a decision or action
- changing the decision
- updating policies
- training for staff
- advising management action has been taken (where appropriate).

The response to the complaint should:

- explain the outcome using plain English
- clearly explain how and why decisions were made
- list any remedies and/or other changes made as a result of the complaint
- provide information about the individual's rights of review.

5. Appeal rights

If the department has not responded to a human rights complaint within 45 business days, or if the complainant does not consider the department's response to be satisfactory, the complainant can then submit their complaint to the QHRC for independent resolution. Internal review rights are not applicable to human rights components of a complaint.

For further information, refer to the whole-of-government guide on handling human rights complaints.

6. Recordkeeping and reporting

Under the *Human Rights Act*, the department is required to report on complaints alleging human rights breaches. Human rights complaints data is included in the annual report, including the number and outcomes of complaints.

All documents associated with complaints are to be provided to Ethics@dtis.qld.gov.au for recording and reporting.

7. Related Documents

- Complaints Management Policy
- Customer Complaints Procedure
- Human Rights implementation resources

8. Review

This procedure shall be reviewed within two years of the **Last Reviewed** date.

9. Approval

John Lee
A/Director-General
Department of Tourism, Innovation and Sport
Date: 28/04/2021

10. Keywords

CHD/2021/5577; human rights; complaints; complaints management; ethics; integrity; accountability

Appendix A: Human Rights triggers

For more information, please refer to the Whole-of-Government [Guide: Nature and scope of the protected human rights](#)

Consider this human right	When complaints involve
Recognition and equality before the law (Section 15)	<ul style="list-style-type: none"> • a service delivered to some groups and not others • a policy, program or service with the potential to have a disproportionate impact on a group or individuals who have a particular attribute (for example, elderly people, people with a disability, or people who are not fluent in English) • eligibility criteria for programs, entitlements or plans (for example, payment plans under the State Penalty Enforcement Register) • a policy, program or service that engages any of the other protected human rights in a discriminatory way. For example, a policy aimed at people living in relationships should, where relevant, apply equally to married couples, de facto couples, and same-sex couples.
Right to life (Section 16)	<ul style="list-style-type: none"> • a decision dealing with withdrawal or withholding of life sustaining treatment • the use of force by law enforcement officers, including the use of weapons • a policy dealing with the use of deadly force (for example, the law relating to self-defence).
Protection from torture and cruel, inhuman or degrading treatment (Section 17)	<ul style="list-style-type: none"> • how people are treated at sites where an agency is responsible for their care (e.g. public hospitals, mental health services or facilities, prisons, state schools, state operated aged care services) • a policy, program or decision about medical treatment for people without their consent (e.g. under mental health or guardianship law) • a decision affecting the physical or mental well-being of a person in a way that may cause serious physical or mental pain or suffering, or humiliate the person • a policy, program or decision that involves a person being searched (including intrusive searches).
Freedom from forced work (Section 18)	<ul style="list-style-type: none"> • a policy or program involving people doing work or providing services under threat of a penalty • any policy, program or service allowing an agency to employ or direct people to perform work in a vital industry or during a state of emergency (for example, requiring military service).
Freedom of movement (Section 19)	<ul style="list-style-type: none"> • a policy, program or decision restricting movement or where a person can live • a policy or program restricting people's movement based on national security considerations • a policy, program or decision monitoring a person's movements • a policy, program or decision limiting movement in public spaces • imposing planning controls, such as by zoning residential locations away from commercial, industrial or agricultural areas.
Freedom of thought, conscience, religion and belief (Section 20)	<ul style="list-style-type: none"> • a policy, program or decision that promotes, restricts or interferes with a particular religion or set of beliefs • a policy or statutory provision requiring people to disclose their religion or beliefs • a policy, program or service regulating conduct in a way that affects a person's worship, observance, practice or teaching of their religion or belief (for example, a dress code that does not accommodate religious dress) • a policy, program or service where conditions of receiving a benefit or accessing a service prevent a person from adhering to their religion or belief • a policy or decision restricting people under state control from observing their religion (e.g. prisoners).

Consider this human right	When complaints involve
Freedom of expression (Section 21)	<ul style="list-style-type: none"> • a policy requiring prior approval before a person can express themselves (for example, to hold a protest or busk in a particular area) • a policy regulating the contents of speech, publication, broadcast, display or promotion, or regulates offensive speech • a policy, program or service imposing a dress code (for example, a dress code prohibiting staff from wearing t-shirts displaying political messages) • a policy or decision restricting or censoring media coverage (for example, on the reporting of judicial proceedings).
Peaceful assembly and freedom of association (Section 22)	<ul style="list-style-type: none"> • a policy, program or decision restricting people from having public or private gatherings (for example, restricting areas or times for demonstrations, pickets or public events) • a policy or decision requiring a person to belong to a professional body or workplace association (a requirement for compulsory membership of a professional body has not generally violated this right, particularly if the association is responsible for professional regulation) • a policy, program or service that treats people differently because they are a member of a group or association • a policy, program or service prohibiting membership in a group or association with certain persons (for example, in a criminal justice context).
Taking part in public life (Section 23)	<ul style="list-style-type: none"> • a policy or decision limiting participation in elections • a policy or statutory provision that sets eligibility requirements for the public service and public office • a policy or statutory provision that sets processes and procedures for voting.
Property rights (Section 24)	<ul style="list-style-type: none"> • a policy allowing a person's property to be acquired, seized or forfeited under civil or criminal law (for example, confiscations proceedings) • a policy or decision allowing an agency to access private property • a policy decision implementing government control over its own property (for example, resumption of land).
Privacy and reputation (Section 25)	<ul style="list-style-type: none"> • a policy, program or decision involving surveillance of people for any purpose (for example, CCTV) • a policy, program or service that collects and/or publishes personal information (for example, results of surveillance, medical tests, electoral roll) • a policy, program or service regulating a person's name, private sexual behaviour, sexual orientation, or gender identity • a policy, program or service regulating storage, security, retention and access to personal information • a policy requiring mandatory reporting of injuries or illnesses • a policy or decision that interferes with or inspects mail and other communications, or prevents or monitors correspondence between categories of people • a policy, program or service requiring mandatory disclosure or reporting of information (including disclosure of convictions) • a policy establishing powers of entry and search (including personally invasive powers, such as strip searches) • a requirement for compulsory physical examination or intervention (for example, DNA, blood, breath or urine testing).
Protection of families and children (Section 26)	<ul style="list-style-type: none"> • a policy, program or decision regulating family contact for people in care or relates to intervention orders between family members • a policy, program or decision regulating adoption and surrogacy • a policy, program or decision that deals with removing children from a family unit or separating children from parents, guardians, or other adults responsible for their care.

Consider this human right	When complaints involve
Cultural rights – generally (Section 27)	<ul style="list-style-type: none"> • a policy, program or service restricting people from observing religious practices • a policy, program or service restricting people from declaring their affiliation to a particular racial, religious or cultural group • a policy or service that limits or prohibits communication in languages other than English, including through the provision of information • a policy restricting the provision of services or trade on religious holidays • a policy or program regulating cultural or religious practices in public education • a policy, program or service that provides government information only in English and allows for access to services only by English speaking persons • a policy that licences or restricts food preparation and service.
Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (Section 28)	<ul style="list-style-type: none"> • a policy, program or service prohibiting the use of a traditional language • a policy, program or decision that allows or limits the ability of Aboriginal or Torres Strait Islander persons to take part in a cultural practice, or otherwise interferes with their distinct culture practices • a policy or decision interfering with the relationship between Aboriginal or Torres Strait Islander people and land, water and resources • a policy or decision protecting Aboriginal and Torres Strait Islander cultural heritage, including Aboriginal human remains and secret or sacred objects.
Right to liberty and security of person (Section 29)	<ul style="list-style-type: none"> • a policy or decision authorising a person with a mental illness to be detained for treatment • a policy allowing a person to be detained on safety grounds, such as: <ul style="list-style-type: none"> – intoxication – a policy or statutory provision that provides powers of arrest – a policy or statutory provision that provides for detention on remand or release on bail conditions.
Humane treatment when deprived of liberty (Section 30)	<ul style="list-style-type: none"> • a policy setting out the conditions for detention of individuals • a policy setting out standards and procedures for treatment of people who are detained (for example, use of force, dietary choice, access to private shower and toilet facilities) • a policy or statutory provision allowing people who are detained to be searched.
Fair hearing (Section 31)	<ul style="list-style-type: none"> • a policy or proposal reversing the onus of proof • a policy or program that creates or restricts reviews of administrative decision-making and appeal processes • a policy, program or service providing special procedures for witnesses giving evidence in a court or tribunal (such as special measures for children and other vulnerable persons) • a policy or statutory provision regulating the procedures for challenging the impartiality and independence of courts and tribunals • a policy restricting the publication of cases or decisions • a policy, program or service that disadvantages or doesn't consider the particular circumstances of a litigant (for example, a litigant with a disability).
Rights in criminal proceedings (Section 32)	<ul style="list-style-type: none"> • a policy or decision impacting on the presumption of innocence • a policy dealing with the admissibility of evidence • a policy dealing with reverse onus of proof • a policy or decision delaying trial proceedings • a policy or service restricting cross examination • a policy or decision dealing with the provision of legal aid • a policy or decision restricting access to information and material to be used as evidence • a policy that limits appeal rights • a policy regulating the procedures for investigation and prosecution of offences • a policy, program or service dealing with the provision of assistants and interpreters.

Consider this human right	When complaints involve
Children in the criminal process (Section 33)	<ul style="list-style-type: none"> • a policy or decision that detains children for any length of time • a policy or decision that detains children in locations that have limited facilities or services for their care and safety (for example, watch houses) • a policy or decision relating to sentencing laws • a policy or statutory provision relating to standards in detention centres.
Right not to be tried or punished more than once (Section 34)	<ul style="list-style-type: none"> • a policy or statutory provision that creates new offences • a policy or decision related to the double jeopardy exceptions under the Criminal Code.
Retrospective criminal laws (Section 35)	<ul style="list-style-type: none"> • a policy or decision sanctioning a person for conduct that was not unlawful at the time of the conduct • a policy or decision that fails to apply less severe penalties for a person's conduct if penalties have decreased since the time of the conduct.
Right to education (Section 36)	<ul style="list-style-type: none"> • a policy, program or service that provides education and training to young people in detention • a policy, program or service providing access to schools that has a disproportionate impact on people with a particular attribute (for example, people with a disability).
Right to health services (Section 37)	<ul style="list-style-type: none"> • a policy, program or service dealing with access to health care for prisoners or other persons in care • a policy, program or service providing health services that has a disproportionate impact on people with a particular attribute (for example, people with a disability).