



# Queensland *Human Rights Act 2019*

## COMPATIBILITY ASSESSMENT PROCESS

### Giving proper consideration to relevant human rights when taking action or making a decision (section 58).

Action or decision being considered or taken:

Explain...

**STEP**  
**1**

**Which rights are relevant to the situation? (Part 2, Divisions 2 and 3).**  
**Note: rights may be broader than they first seem – see full description on page 3.**

- Section 15 - Recognition and equality before the law
- Section 16 - Right to life
- Section 17 - Protection from torture and cruel, inhuman or degrading treatment
- Section 18 - Freedom from forced work
- Section 19 - Freedom of movement
- Section 20 - Freedom of thought, conscience, religion and belief
- Section 21 - Freedom of expression
- Section 22 - Peaceful assembly and freedom of association
- Section 23 - Taking part in public life
- Section 24 - Property rights
- Section 25 - Privacy and reputation
- Section 26 - Protection of families and children
- Section 27 - Cultural rights – generally
- Section 28 - Cultural rights – Aboriginal Peoples and Torres Strait Islander peoples
- Section 29 - Right to liberty and security of person
- Section 30 - Humane treatment when deprived of liberty
- Section 31 - Fair hearing
- Section 32 - Rights in criminal proceedings
- Section 33 - Children in the criminal process
- Section 34 - Right not to be tried or punished more than once
- Section 35 - Retrospective criminal laws
- Section 36 - Right to education
- Section 37 - Right to health services



STEP 2

What is the impact of the action or decision - will the action or decision limit or restrict any of the rights identified?

Which rights are impacted, how?

Yes

No

The action or decision is likely to be compatible with human rights

Explain..

If human rights are not limited or restricted no further action required. If they are move to Step 3.

STEP 3

Is the limitation or restriction reasonable and justifiable? Consider the following? (Section 13)

Is it lawful? Is there a legal authority or framework that allows you to limit a person's rights?

Yes  No

Explain...

Is there a legitimate purpose? What is the aim of the limitation?

Yes  No

Explain...

Is it rational, is it proportionate? Will the action or decision effectively achieve the purpose?

Yes  No

Explain...

Is it necessary? Are there less restrictive and reasonable ways to achieve the purpose?

Yes  No

Explain...

Is it fair and balanced? Is there a balance between the importance of the purpose and the importance of preservation of the human right? Do the benefits outweigh the harm caused by the limitation?

Yes  No

Explain...

If 'yes' to all these considerations the action or decision is likely to be compatible with human rights

If 'no' to any of these considerations the action or decision is likely to be incompatible with human rights

Review and modify the action or decision and re-assess

Participants:

Date:



# Queensland Human Rights Act 2019

## Which rights are protected?

### Civil and political rights

#### 15 RECOGNITION AND EQUALITY BEFORE THE LAW

- (1) Every person has the right to recognition as a person before the law.
- (2) Every person has the right to enjoy the person's human rights without discrimination.
- (3) Every person is equal before the law and is entitled to the equal protection of the law without discrimination.
- (4) Every person has the right to equal and effective protection against discrimination.
- (5) Measures taken for the purpose of assisting or advancing persons or groups of persons disadvantaged because of discrimination do not constitute discrimination.

#### 16 RIGHT TO LIFE

Every person has the right to life and has the right not to be arbitrarily deprived of life.

#### 17 PROTECTION FROM TORTURE AND CRUEL, INHUMAN OR DEGRADING TREATMENT

A person must not be –

- (a) subject to torture; or
- (b) treated or punished in a cruel, inhuman or degrading way; or
- (c) subjected to medical or scientific experimentation or treatment without the person's full, free and informed consent.

#### 18 FREEDOM FROM FORCED WORK

- (1) A person must not be held in slavery or servitude.
- (2) A person must not be made to perform forced or compulsory labour.
- (3) In this section—

**court order** includes an order made by a court of another jurisdiction.

**forced or compulsory labour** does not include—

- (a) work or service normally required of a person who is under detention because of a lawful court order or who, under a lawful court order, has been conditionally released from detention or ordered to perform work in the community; or
- (b) work or service performed under a work and development order under the *State Penalties Enforcement Act 1999*; or
- (c) work or service required because of an emergency threatening the Queensland community or a part of the Queensland community; or
- (d) work or service that forms part of normal civil obligations.

#### 19 FREEDOM OF MOVEMENT

Every person lawfully within Queensland has the right to move freely within Queensland and to enter and leave it, and has the freedom to choose where to live.

#### 20 FREEDOM OF THOUGHT, CONSCIENCE, RELIGION AND BELIEF

- (1) Every person has the right to freedom of thought, conscience, religion and belief, including
  - (a) the freedom to have or to adopt a religion or belief of the person's choice; and
  - (b) the freedom to demonstrate the person's religion or belief in worship, observance, practice and teaching, either individually or as part of a community, in public or in private.
- (2) A person must not be coerced or restrained in a way that limits the person's freedom to have or adopt a religion or belief.



## 21 FREEDOM OF EXPRESSION

- (1) Every person has the right to hold an opinion without interference.
- (2) Every person has the right to freedom of expression which includes the freedom to seek, receive and impart information and ideas of all kinds, whether within or outside Queensland and whether –
  - (a) orally; or
  - (b) in writing; or
  - (c) in print; or
  - (d) by way of art; or
  - (e) in another medium chosen by the person.

## 22 PEACEFUL ASSEMBLY AND FREEDOM OF ASSOCIATION

- (1) Every person has the right of a peaceful assembly.
- (2) Every person has the right to freedom of association with others, including the right to form and join trade unions.

## 23 TAKING PART IN PUBLIC LIFE

- (1) Every person in Queensland has the right, and is to have the opportunity, without discrimination to participate in the conduct of public affairs, directly or through freely chosen representatives.
- (2) Every eligible person has the right, and is to have the opportunity, without discrimination –
  - (a) to vote and be elected at periodic State and local government elections that guarantee the free expression of the will of electors; and
  - (b) to have access, on general terms of equality, to the public service and to public office.

## 24 PROPERTY RIGHTS

- (1) All persons have the right to own property alone or in association with others.
- (2) A person must not be arbitrarily deprived of the person's property.

## 25 PRIVACY AND REPUTATION

A person has the right –

- (a) not to have the person's privacy, family, home or correspondence unlawfully or arbitrarily interfered with; and
- (b) not to have the person's reputation unlawfully attacked.

## 26 PROTECTION OF FAMILIES AND CHILDREN

- (1) Families are the fundamental group unit of society and are entitled to be protected by society and the State.
- (2) Every child has the right, without discrimination, to the protection that is needed by the child, and is in the child's best interests, because of being a child.
- (3) Every person born in Queensland has the right to a name and to be registered, as having been born, under a law of the State as soon as practicable after being born.

## 27 CULTURAL RIGHTS – GENERALLY

All persons with a particular cultural, religious, racial or linguistic background must not be denied the right, in community with other persons of that background, to enjoy their culture, to declare and practise their religion and to use their language.



## 28 CULTURAL RIGHTS – ABORIGINAL PEOPLES AND TORRES STRAIT ISLANDER PEOPLES

- (1) Aboriginal peoples and Torres Strait Islander peoples hold distinct cultural rights.
- (2) Aboriginal peoples and Torres Strait Islander peoples must not be denied the right, with other members of their community –
  - (a) to enjoy, maintain, control, protect and develop their identity and cultural heritage, including their traditional knowledge, distinctive spiritual practices, observances, beliefs and teachings; and
  - (b) to enjoy, maintain, control, protect, develop and use their language, including traditional cultural expressions; and
  - (c) to enjoy, maintain, control, protect and develop their, kinship ties; and
  - (d) to maintain and strengthen their distinctive spiritual, material and economic relationship with the land, territories, waters, coastal seas and other resources with which they have a connection under Aboriginal tradition of Island custom; and
  - (e) to conserve and protect the environment and productive capacity of their land, territories, waters, coastal seas and other resources.
- (3) Aboriginal peoples and Torres Strait Islander peoples have the right not to be subjected to forced assimilation or destruction of their culture.

## 29 RIGHT TO LIBERTY AND SECURITY OF PERSON

- (1) Every person has the right to liberty and security.
- (2) A person must not be subjected to arbitrary arrest or detention.
- (3) A person must not be deprived of the person's liberty except on grounds, and in accordance with procedures, established by law.
- (4) A person who is arrested or detained must be informed at the time of the arrest or detention of the reason for the arrest or detention and must be promptly informed about any proceedings to be brought against the person.
- (5) A person who is arrested or detained on a criminal charge –
  - (a) must be promptly brought before a court; and
  - (b) has the right to be brought to trial without unreasonable delay; and
  - (c) must be released if paragraph (a) or (b) is not complied with.
- (6) A person awaiting trial must not be automatically detained in custody, but the person's release may be subject to guarantees to appear –
  - (a) for trial; and
  - (b) at any other stage of the judicial proceeding; and
  - (c) if appropriate, for execution of judgement.
- (7) A person deprived of liberty by arrest or detention is entitled to apply to a court for declaration or order regarding the lawfulness of the person's detention, and the court must –
  - (a) make a decision without delay; and
  - (b) order the release of the person if it finds the detention is unlawful.
- (8) A person must not be imprisoned only because of the person's inability to perform a contractual obligation.

## 30 HUMANE TREATMENT WHEN DEPRIVED OF LIBERTY

- (1) All persons deprived of liberty must be treated with humanity and with respect for the inherent dignity of the human person.
- (2) An accused person who is detained or a person detained without charge must be segregated from persons who have been convicted of offences, unless reasonably necessary.
- (3) An accused person who is detained or a person detained without charge must be treated in a way that is appropriate for a person who has not been convicted.

## 31 FAIR HEARING

- (1) A person charged with a criminal offence or a party to a civil proceeding has the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing.
- (2) However, a court or tribunal may exclude members of media organisations, other persons or the general public from all or part of a hearing in the public interest or the interests of justice.
- (3) All judgments or decisions made by a court or tribunal in a proceeding must be publicly available.



## 32 RIGHTS IN CRIMINAL PROCEEDINGS

- (1) A person charged with a criminal offence has the right to be presumed innocent until proved guilty according to law.
- (2) A person charged with a criminal offence is entitled without discrimination to the following minimum guarantees—
  - (a) to be informed promptly and in detail of the nature and reason for the charge in a language or, if necessary, a type of communication the person speaks or understands;
  - (b) to have adequate time and facilities to prepare the person's defence and to communicate with a lawyer or advisor chosen by the person;
  - (c) to be tried without unreasonable delay;
  - (d) to be tried in person, and to defend themselves personally or through legal assistance chosen by the person or, if eligible, through legal aid;
  - (e) to be told, if the person does not have legal assistance, about the right, if eligible, to legal aid;
  - (f) to have legal aid provided if the interests of justice require it, without any costs payable by the person if the person is eligible for free legal aid under the *Legal Aid Queensland Act 1997*;
  - (g) to examine, or have examined, witnesses against the person;
  - (h) to obtain the attendance and examination of witnesses on the person's behalf under the same conditions as witnesses for the prosecution;
  - (i) to have the free assistance of an interpreter if the person can not understand or speak English;
  - (j) to have the free assistance of specialised communication tools and technology, and assistants, if the person has communication or speech difficulties that require the assistance;
  - (k) not to be compelled to testify against themselves or to confess guilt.
- (3) A child charged with a criminal offence has the right to a procedure that takes account of the child's age and the desirability of promoting the child's rehabilitation.
- (4) A person convicted of a criminal offence has the right to have the conviction and any sentence imposed in relation to it reviewed by a higher court in accordance with the law.
- (5) In this section – **legal aid** means legal assistance given under the *Legal Aid Queensland Act 1997*.

## 33 CHILDREN IN THE CRIMINAL PROCESS

- (1) An accused child who is detained, or a child detained without charge, must be segregated from all detained adults.
- (2) An accused child must be brought to trial as quickly as possible.
- (3) A child who has been convicted of an offence must be treated in a way that is appropriate for the child's age.

## 34 RIGHT NOT TO BE TRIED OR PUNISHED MORE THAN ONCE

A person must not be tried or punished more than once for an offence in relation to which the person has already been finally convicted or acquitted in accordance with the law.

## 35 RETROSPECTIVE CRIMINAL LAWS

- (1) A person must not be found guilty of a criminal offence because of conduct that was not a criminal offence when it was engaged in.
- (2) A penalty must not be imposed on any person for a criminal offence that is greater than the penalty that applied to the offence when it was committed.
- (3) If a penalty for an offence is reduced after a person committed the offence but before the person is sentenced for the offence, the person is eligible for the reduced penalty.
- (4) Nothing in this section affects the trial or punishment of any person for any act or omission that was a criminal offence under international law at the time it was done or omitted to be done.



## Economic, social and cultural rights

### 36 RIGHT TO EDUCATION

- (1) Every child has the right to have access to primary and secondary education appropriate to the child's needs.
- (2) Every person has the right to have access, based on the person's abilities, to further vocational education and training that is equally accessible to all.

### 37 RIGHT TO HEALTH SERVICES

- (1) Every person has the right to access health services without discrimination.
- (2) A person must not be refused emergency medical treatment that is immediately necessary to save the person's life or to prevent serious impairment to the person.