

## **Human Rights in the child protection context**

### **Background**

In May 2020, PeakCare approached the Queensland Human Rights Commission (QHRC) to explore the possibility of delivering some workshops for the sector about the application of the new Queensland human rights legislation specifically in the context of child protection and related services.

Subsequently the QHRC tailored their workshop content for the child protection sector and delivered four workshops throughout May. Due to the high demand for places in the workshops, another two workshops were also scheduled for June, a total of six workshops overall.

### **Attendance**

6 May	18 participants
20 May	(at least) 25 participants
21 May	39 participants
25 May	32 participants
16 June	10 participants
24 June	12 participants
<b>TOTAL</b>	<b>97 participants</b>

Participants came from diverse organisations within the non-government community services sector including peak bodies and representative groups, Aboriginal and Torres Strait Islander community controlled organisations, those delivering services such as foster and kinship care, residential care, family support, legal services, housing support, counselling, youth services, and child care services. In addition to the non-government workforce, participants came from government departments and agencies, universities and private practice.

### **Feedback**

Feedback received about the relevance and usefulness of the training was overwhelmingly positive – both anecdotally and through formal evaluation forms completed.

100% of respondents who answered the question “Do you think you will use what you have learned in this training?” said “yes”.

Typical comments about what people liked most about the training included:

- the most beneficial workshop I have attended in a long while
- scenario discussions increased my knowledge in real life situations where advocacy rights can be upheld
- the scenarios will be really useful in supporting our staff to understand human rights in the context of child protection
- great conversations came from those scenarios and made you think about different perceptions
- the ability to still participate in activities despite being over Zoom

- I liked the practical relevance to my role – I'll be analysing my decision making in the future by considering how it relates to the Human Rights Act

### Highlights

The QHRC's *Introduction to the Human Rights Act* course aimed to raise participants' awareness of their rights and responsibilities under the *Queensland Human Rights Act 2019*. It provided a basic introduction to the key elements of human rights law in Queensland, and an overview of the key legal concepts and of the functions of the QHRC.

There were a variety of interactive opportunities to explore the scope of the 23 human rights protected by the Act, and to work through some scenarios to learn how to assess the compatibility of public entities' acts or decisions with human rights.

The step by step process for organisations and individuals to undertake their responsibility under the Act to "give proper consideration", in order to assess compatibility with human rights, was particularly useful, and is summarised below.

Just to clarify, government departments and non-government organisations delivering services to the public on behalf of government, or services of a public nature, are, among others, public entities as described in the *Human Rights Act 2019*.

### Compatibility assessment process

Two responsibilities of public entities outlined in the Act are to:

- give proper consideration to human rights when making decisions; and
- to act and make decisions in a way that is compatible with human rights.

Giving proper consideration means:

Identifying the human rights that may be affected by the action or decision; and

Considering whether the action or decision would be compatible with human rights, that is, it either

- o does not limit a human right; or
- o it limits a human right only to the extent that is reasonable and justifiable.

Broken down into more detail, these steps involve:

Step 1 To **identify human rights that may be affected**, consider if any of the 23 rights protected by the Act are relevant to the situation; and

Step 2 Consider what **the impact** of the action or decision might be - will the action or decision limit or restrict any of the rights identified? If yes, the next step applies.

Step 3 To consider whether limiting a human right is **reasonable or justifiable**, the following factors are considered:

- **Is it lawful?** Is there a legal authority or framework that allows you to limit a person's rights?;
- **Is there a legitimate purpose?** What is the aim of the limitation?;
- **Is it rational, and is it proportionate?** Will the action or decision effectively achieve the purpose?;

- **Is it necessary?** Are there less restrictive and reasonable ways to achieve the purpose?; and
- **Is it fair and balanced?** Is there a balance between the importance of the purpose and the importance of preservation of the human right? Is the action or decision which restricts a human right only applied for the shortest amount of time to achieve the purpose? Do the benefits outweigh the harm caused by the limitation?

If the action or decision appears incompatible, modify the action or decision and re-assess against these steps.

When non-government organisations, in delivering services on behalf of government, undertake actions and make decisions that limit human rights, which are assessed as compatible with human rights, staff should ensure documentation is kept outlining the process for consideration and rationale for the action or decision. This requirement flows from the obligation within the *Human Rights Act 2019* on public entities to give proper consideration to human rights and to act and make decisions which are compatible with human rights. Best practice includes good documentation and this will also help demonstrate compliance if there is a complaint or challenge.

Some public entities (for example, government departments) have additional obligations around record keeping under the *Public Records Act 2002* and also additional reporting obligations under the *Human Rights Act 2019* (section 97) which are to be included within their annual report.

Attached is a basic template to document the compatibility assessment process. The template and process can be adapted for record keeping use in your organisation.

#### Acknowledgement

Much appreciation to Caron Menashe, Senior Community Relations Officer from the Queensland Human Rights Commission for her commitment to supporting the child protection and family support sector to build their awareness of human rights and for her talent in delivering interesting, interactive and relevant on-line learning opportunities for workshop participants during the pandemic-related restrictions.

We also acknowledge the compatibility assessment process above, and template attached, has been adapted from material provided by the Queensland Human Rights Commission.

The Queensland Human Rights Commission provides a range of information [on the Human Rights Act](#) and [training opportunities](#) - please access their website or click on this link to their [Online Training Store](#) for more information. [Free webinars on the Human Rights Act](#) are also available every week until the end of August, and can be accessed [via the QHRC website](#).

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