# Guide: Customer complaints management and human rights

## Overview

The [*Human Rights Act 2019* (Qld)](https://www.legislation.qld.gov.au/view/html/inforce/current/act-2019-005) (the Act) aims to protect and promote human rights, and build a human rights focused culture within Queensland and the public sector.

This guide assists complaints officers to meet the obligations of the Act when managing customer complaints. This guide must be read in conjunction with the:

* Customer complaints management [framework](https://ppr.mpe.qed.qld.gov.au/attachment/customer-complaints-management-framework.pdf), and [procedure](https://ppr.mpe.qed.qld.gov.au/pp/customer-complaints-management-procedure)
* [Internal review procedure](https://ppr.mpe.qed.qld.gov.au/pp/customer-complaints-management-internal-review-procedure), and
* [Managing unreasonable complainant conduct procedure.](https://ppr.mpe.qed.qld.gov.au/pp/managing-unreasonable-complainant-conduct-procedure)

This document is a guide only and does not replace the overarching policy and procedures, which are the mandatory instruments for the department.

## Human rights complaints

Under section 58(1) of the Act, it is unlawful for the department:

* 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.

If an individual believes the department has breached their human rights, they can make a human rights complaint with the department in the first instance. The department has 45 business days to respond to the complaint. In exceptional circumstances, the Queensland Human Rights Commission (QHRC) may also accept a complaint before the 45 business days have elapsed.

If the complainant has not received a response from the department within 45 business days, or is dissatisfied with the department’s response, they can make a complaint to the QHRC.

If a complainant contacts the QHRC to make a complaint, the QHRC may decide to delay dealing with the complaint because the department needs more time to resolve the matter. For example, if an internal review of the original decision is underway. It is expected the QHRC will contact the department to confirm the status of the complaint before an investigation begins.

## Customer complaints and human rights complaints

Human rights considerations must be an inherent part of departmental decision-making and complaints management approaches. This means that there is no stand-alone policy, procedure or process for managing human rights complaints. Rather, human rights considerations need to be embedded within existing activities and complaint processes.

For customer complaints, this means that human rights considerations are an additional part of the customer complaints assessment and resolution process, and may also be relevant when conducting an internal review or managing unreasonable complainant conduct. Therefore, complaints officers must ensure that the requirements of both the customer complaints management approach and the Act are met. This is reflected in the [Complaints and grievances management policy](https://ppr.mpe.qed.qld.gov.au/pp/complaints-and-grievances-management-policy), [Customer complaints management procedure](https://ppr.mpe.qed.qld.gov.au/pp/customer-complaints-management-procedure), [Internal review procedure](https://ppr.mpe.qed.qld.gov.au/pp/customer-complaints-management-internal-review-procedure), and [Managing unreasonable complainant conduct procedure](https://ppr.mpe.qed.qld.gov.au/pp/managing-unreasonable-complainant-conduct-procedure).

## Considerations: Assessing human rights complaints

Once the complaints officer assesses whether the complaint is a customer complaint, they also need to consider if the matter is a human rights complaint. The following approach can be adopted. This approach is also reflected in the flow chart at **Appendix 1**. The [Human rights impact assessment for customer complaints](https://intranet.qed.qld.gov.au/Services/strategymanagement/GSP/Documents/human-rights-impact-assessment-customer-complaints.docx) (DoE employees only) can be used to document decision-making.

#### Does the decision or action being complained about engage or impact human rights? If so, identify which human rights may be impacted.

[Part 2 of the Act](https://www.legislation.qld.gov.au/view/html/inforce/current/act-2019-005#pt.2) contains 23 human rights. As a complaint may engage one, or many human rights, the complaints officer should consider each human right and decide if it has, or has not, been engaged by the issues raised in the complaint.

The following indicators may help assess if a complaint engages human rights:

* the complainant expressly mentions human rights in their complaint;
* the complaint involves some sort of restriction or limitation that prevents the complainant freely participating in society or their community (for example, school, workplace);
* the complainant alleges they have been treated unfairly or unreasonably;
* the complaint involves an allegation of inequality, discrimination, or a lack of respect for the person’s dignity, freedom or rights;
* the complaint raises issues about religion, culture, language, or personal expression, belief or thought;
* the complaint raises issues about privacy or a person’s reputation.

**Appendix 2** contains human rights that may be of particular interest to the department, including the scope of the right and possible complaint issues that may engage the human right.

If no human rights are engaged, the complaint will **not** be a human rights complaint. The complaints officer must document how they reached this conclusion. The complaint can then be resolved using the [Customer complaints management procedure](https://ppr.mpe.qed.qld.gov.au/pp/customer-complaints-management-procedure).

If any human rights **are** engaged, the complaints officer needs to document how they have made this assessment. Step 2 of this guide must then be considered.

#### Does the decision or action being complained about limit those human rights?

If the complaint engages human rights, the complaints officer must consider if the decision or action being complained about has limited those human rights. There is no particular degree or level of limitation needed.

Human rights may have been limited if the action or decision:

* has interfered with, or undermined, the person’s human rights in some way; or
* impacted the person’s ability to fully exercise their human rights; or
* failed to protect or uphold the person’s human rights.

If human rights have **not** been limited, the act or decision being complained about will be compatible with human rights. This assessment must be documented by the complaints officer.

However, if human rights **have** been limited, the complaints officer must document the nature of the limitation. Step 3 of this guide must then be considered.

#### If there is a limitation, is it lawful, justified and reasonable in the circumstances?

Departmental staff should always aim to protect human rights and try to make decisions or take actions in a way that is compatible with a person’s human rights. However, human rights are not absolute, and sometimes they may be limited. If a limitation is necessary, it must be lawful, reasonable and justifiable.

**Lawful**

A limitation will be lawful if it is authorised under legislation. If there is no law that allows the department to act or make a decision, the limitation to the complainant’s human rights may not be authorised and will not be compatible with the *Human Rights Act 2019* (Qld).

**Justified and reasonable**

A limitation will be justified and reasonable if the decision or action complained about strikes a fair balance between the individual’s human rights and what the department is trying to achieve by limiting the human right. The complaints officer needs to weigh the importance of limiting the human right against the importance of protecting the right.

The following factors, which are outlined in section 13 of the Act, should be considered and balanced to decide if a limit on a human right is reasonable and justifiable. The balancing process undertaken by the complaints officer needs to be documented to show how a decision was reached.

|  |  |
| --- | --- |
| **Factor** | **Considerations** |
| The nature of the human right | * What does the human right protect?
* What values underpin the human right and what is the scope of the human right?

*See Appendix 2 for guidance.* |
| The purpose of the limitation | * Why has the human right been limited? Is there a good reason for the limitation?
	+ *For example, has a limit been imposed to ensure the safety of students or staff?*
	+ *For example, is it necessary to limit one person’s rights to prevent harm to others or ensure the best interests of the school community? (for example, preventing students wearing swastikas because this is a symbol of antisemitism and hate)*
* What is the department trying to achieve with the decision or action being complained about?
 |
| The relationship between the limitation and its purpose | * Does the limit to the human right being complained about actually achieve the purpose it is designed to achieve?
	+ *For example, does suspending a student actually ensure the safety of other students at the school?*
* Is there evidence or material to support the relationship between the limitation and its purpose?
 |
| Are there any less restrictive and reasonably available ways to achieve the purpose? | * Is the limitation necessary, or is there another way to achieve the purpose that would not limit the individual’s human rights at all, or as much? If so, the less restrictive option should be taken.
 |
| The balance between the importance of the purpose of the limitation and preserving the human right | * Does the importance or benefit of achieving the department’s purpose outweigh the harm caused by limiting the human right?
 |

If the limitation is lawful, reasonable and justifiable, it is likely that the act or decision is **compatible** with human rights. This means the human rights component of the complaint will not be upheld. The complaints officer still needs to complete the rest of the customer complaints management process, as outlined in the [Customer complaints management procedure](https://ppr.mpe.qed.qld.gov.au/pp/customer-complaints-management-procedure).

If the limitation is **not** lawful, reasonable and justifiable, the act or decision is likely to be **incompatible** with human rights. This means the human rights component of the complaint will be upheld and the complainant may be entitled to a remedy, such as an apology, a change to the original decision or action, or some other outcome outlined in the [Customer complaints management procedure](https://ppr.mpe.qed.qld.gov.au/pp/customer-complaints-management-procedure).

### Review rights

**Internal review**

If a complainant is dissatisfied with the outcome of their customer complaint, or the way the complaint was handled, they are entitled to an internal review. The [Internal review procedure](https://ppr.mpe.qed.qld.gov.au/pp/customer-complaints-management-internal-review-procedure) outlines how internal reviews for customer complaints are to be managed.

Although the [*Human Rights Act 2019* (Qld)](https://www.legislation.qld.gov.au/view/html/inforce/current/act-2019-005) does not contain an internal review option, because the customer complaints requirements in section 264 of the [*Public Sector Act 2022* (Qld)](https://www.legislation.qld.gov.au/view/html/asmade/act-2022-034) still exist, the complainant should be offered an internal review.

There are different situations where human rights complaints might be relevant in the internal review stage. For example:

* if the original complaint did not consider human rights at all, this may need to be addressed by the internal review officer as a gap in the original complaints management process; or
* if the complainant is dissatisfied with how their human rights were considered, the appropriateness or reasonableness of the decision-making process or complaint outcome might need to be considered by the internal review officer.

**External review**

After an internal review has been completed, the complainant can seek an external review if they remain dissatisfied. For human rights complaints, external review will likely involve the QHRC.

### Recording and reporting

The department must continue to report customer complaints data under section 264 of the Public *Sector Act 2022 (Qld)*. The [*Human Rights Act 2019* (Qld)](https://www.legislation.qld.gov.au/view/html/inforce/current/act-2019-005) also requires the following human rights complaint data to be reported within the department’s annual report:

* the number of human rights complaints received;
* the outcome of those human rights complaints; and
* any other information prescribed by regulation relating to complaints.

The department also reports internally on both customer complaints and human rights complaints, including to the Executive Leadership Team.

### Other resources

* [*Human Rights Act 2019* (Qld)](https://www.legislation.qld.gov.au/view/html/inforce/current/act-2019-005)
* [Queensland Government Human rights portal](https://www.forgov.qld.gov.au/human-rights-resources)
* [Queensland’s *Human Rights Act 2019: A guide for public entities*](https://www.qhrc.qld.gov.au/__data/assets/pdf_file/0019/20575/QHRC_PublicEntityToolkit.pdf)
* [Human rights assessment for customer complaints](https://intranet.qed.qld.gov.au/Services/strategymanagement/GSP/Documents/human-rights-impact-assessment-customer-complaints.docx)
* Customer complaints management [framework](https://ppr.mpe.qed.qld.gov.au/attachment/customer-complaints-management-framework.pdf) and [procedure](https://ppr.mpe.qed.qld.gov.au/pp/customer-complaints-management-procedure)
* [Internal review procedure](https://ppr.mpe.qed.qld.gov.au/pp/customer-complaints-management-internal-review-procedure)
* [Managing unreasonable complainant conduct procedure](https://ppr.mpe.qed.qld.gov.au/pp/managing-unreasonable-complainant-conduct-procedure)

### Appendix 1: Human rights complaints – assessment process

\* See the [Customer complaints management procedure](https://ppr.mpe.qed.qld.gov.au/attachment/customer-complaints-management-procedure.pdf)and [checklist](https://intranet.qed.qld.gov.au/Services/strategymanagement/GSP/Documents/customer-complaint-checklist.DOCX)for assessment criteria..

\*\* The [Complaints and grievances management policy](https://ppr.mpe.qed.qld.gov.au/pp/complaints-and-grievances-management-policy)outlines other complaints processes.

\*\*\*Complaints officers must clearly document and explain decision-making and assessment processes. The [Human Rights assessment for customer complaints](https://intranet.qed.qld.gov.au/Services/strategymanagement/GSP/Documents/human-rights-impact-assessment-customer-complaints.docx) can be used.

### Appendix 2: Nature and scope of human rights relevant to the Department of Education

Good complaints assessment requires all 23 human rights in Part 2 of the Act to be considered. However, the rights within the following table may be particularly relevant for the department and could be used as a starting point for the assessment.

The table also includes possible complaint issues that might engage each human right. These examples are not a substitute for good complaints assessment. Each complaint must be assessed on a case-by-case basis to decide if human rights are engaged in the circumstances. The examples are also not exhaustive, so other complaint issues may engage human rights, even if they are not listed here.

| **Nature and scope of the human right** | **Exceptions/limitations** | **Possible complaint types/issues** |
| --- | --- | --- |
| **Recognition and equality before the law (s 15)** |
| * Scope: the right to recognition as a person before the law and the right to enjoy human rights without discrimination.
* People need to be treated equally.
* People should not be treated in a discriminatory or arbitrary way. Discrimination may be general, or discrimination under the *Anti-Discrimination Act 1991* (e.g. age, impairment, race, religion, sex, sexuality).
* This right permeates all human rights, while also operating as a stand-alone right.
 | Actions, decisions or measures will not be discriminatory if they are taken to assist or advance disadvantaged persons or groups (s 15(5)). | * Eligibility criteria (e.g. payment plans, fees, Enrolment Management Plans, participation in activities (e.g. school camp))
* Initiatives that disproportionately impact people with particular attributes (e.g. people with disability).
* Allegations of discrimination of some kind.
* Employment decisions (e.g. not hiring someone because they have a disability)
* Dress codes that differentiate on the basis of sex.
* Regulating access to public facilities and services (e.g. hostile persons on school premises).
 |

| **Nature and scope of the human right** | **Exceptions/limitations** | **Possible complaint types/issues** |
| --- | --- | --- |
| **Protection from torture and cruel, inhuman or degrading treatment (s 17)** |
| * Scope: three types of conduct are encompassed: (1) torture; (2) cruel, inhuman or degrading treatment or punishment; and (3) medical or scientific experimentation or treatment without consent.
* The department has a positive obligation to ensure these types of conduct do not occur.
* The degrading treatment aspect of the right focuses on humiliation, which is judged subjectively. Indicators may include:
	+ physical or mental suffering; or
	+ humiliating or debasing a person, causing fear, anguish or a sense of inferiority.
 | Nil | * Removal or restriction of a right to complain.
* Bullying or cyberbullying.
* Regulation of the treatment of persons at a state school.
* Behaviour management, including the use of restraint.
* School disciplinary absences.
* Decisions affecting a person’s physical or mental wellbeing in a way that may cause serious physical or mental pain, suffering, or humiliation.
* Medical treatment or administration of medication without consent.
* Caring for those who are vulnerable because of their age or physical or mental health.
 |
| **Freedom of thought, conscience, religion and belief (s 20)** |
| * Scope: right to develop autonomous thoughts and conscience, think and believe what they want (including religious belief), and demonstrate religion or belief through worship, observance, ritual, practice and teaching.
* Religion and belief include mainstream and alternative religions and beliefs.
* ‘Worship’ can include rituals, displaying symbols, and observing holidays or days of rest.
* ‘Observance’ can include ceremonial acts, dietary regulations, distinctive clothing, and rituals associated with certain life stages.
* The right also includes a right for people who choose not to hold or practice any religion or belief.
 | Nil | * Religious instruction, such as:
	+ requiring students to learn about particular religions or beliefs or be taught materials that might undermine their religious beliefs.
	+ promoting, restricting, or interfering with a religion or set of beliefs.
	+ refusing a faith group permission to deliver religious instruction at a state school.
	+ requiring people to disclose their religion or beliefs.
* Regulating conduct in a way that affects a person’s worship, observance, practice of their religion or other beliefs (e.g. a dress code that does not accommodate religious dress).
* Regulating conduct or the exercise of free thought or conscience (e.g. restricting debate or discussion on particular topics).
 |
| **Freedom of expression (s 21)** |
| * Scope: right to hold opinions without interference, and to seek, receive and express information and ideas.
* Expression that is protected by the right is broad – e.g. spoken or sign language, written materials, dress, internet-based expression.
 | Nil | * Imposing a dress code (e.g. prohibiting the wearing of t-shirts displaying political messages).
* Regulating or restricting access to information.
* Preventing protests or demonstrations.
* Censoring or restricting discussion (e.g. communication on school social media sites).
* Not being inclusive or failing to recognise diversity (e.g. LGBTIQA+ or gender identity issues, casual racism).
 |
| **Right to peaceful assembly and freedom of association (s 22)** |
| * Scope: two rights are encompassed: (1) the right to peacefully gather and protest/demonstrate; and (2) the right to join with others to pursue common interests.
 | Only *peaceful* assemblies are protected. | * Prohibiting or regulating groups and associations.
* Preventing protests or demonstrations.
 |
| **Property rights (s 24)** |
| * Scope: right to own property and not be arbitrarily deprived of property.
* ‘Property’ encompasses personal property (e.g. clothing, art, jewellery, phones, and other personal items).
* There is no entitlement to compensation.
 | A person must not be *arbitrarily* deprived of property. Therefore property cannot be removed unjustly or unpredictably. | * Policies, procedures or decisions allowing a school to deprive a student of their property.
 |
| **Privacy and reputation (s 25)** |
| * Scope: right to be protected from interference and attacks upon their family, home, correspondence and reputation. Very broad human right.
* In terms of privacy, the right encompasses personal information, data, and correspondence, as well as a person’s private life generally.
 | A person’s or their family’s privacy must not be *unlawfully* or *arbitrarily* interfered with. This means interference that is unpredictable, unjust, or unreasonable.A person’s reputation must not be *unlawfully* attacked. | * Surveillance-related activities (e.g. CCTV)
* Gathering, use, storage, publication, disclosure and access to personal information
* Obtaining and managing consent
* Legislation, policy or procedure requiring mandatory reporting of information (e.g. student protection issues)
* Behaviour management
* Bullying and cyberbullying
* Use of social media
* Employment decisions (e.g. inappropriate disclosure of unfavourable referee reports)
 |
| **Protection of families and children (s 26)** |
| * Scope: families have a right to State and societal protection. Additionally, children have the same rights as adults, but they also have broader protections that are focused on their best interests.
* ‘Families’ includes social and cultural family structures.
 | Nil | * Legislation, policy or procedure requiring mandatory reporting by a school staff member or principal (e.g. student protection issues).
 |
| **Cultural rights – general (s 27)** |
| * Scope: the right of all persons to enjoy their culture, to practice their religion, and to use their language.
* A substantial restriction of culture, religion or language may infringe the human right.
* ‘Culture’ encompasses the maintenance of traditional beliefs and practices (e.g. wearing traditional dress), as well as traditional social and economic activities (e.g. hunting and fishing).
 | Nil | * A policy, procedure or decision that regulates cultural or religious practices in public education.
* Provision of government information only in English or access to services that only offer English speaking staff.
* A policy, procedure, or service that restricts people from observing religious practices.
* A policy, procedure or service that restricts people from declaring their affiliation to a particular racial, religious or cultural group.
 |
| **Cultural rights – Aboriginal people and Torres Strait Islander peoples (s 28)** |
| * Scope: the right to live life as an Aboriginal person or Torres Strait Islander who is free to practice their culture. This encompasses traditional knowledge, spiritual practices, language, kinship ties, relationships with land and resources, and protection of the environment.
 | Nil | * Prohibitions on use of traditional language.
* Policies, procedures or decisions that impact or interfere with participation in cultural practices.
* Failure to recognise kinship networks.
 |
| **Right to education (s 36)** |
| * Scope: every child has a right to access primary and secondary education appropriate to the child’s needs, and there is also a right to access further vocational education and training.
* The right is narrowly drafted and covers education service delivery within scope of the Queensland Government.
* The right encompasses four elements:
	+ Availability: educational institutions and programs must be available in sufficient quantity and able to function (e.g. buildings and facilities, sufficient teachers, etc.).
	+ Accessibility: non-discrimination, physical accessibility of school locations (local school or distance education), economic accessibility (affordability for all).
	+ Acceptability: commitment to minimum standards of educational quality, and curriculum and teaching methods that are relevant, or good quality, and culturally appropriate.
	+ Adaptability: flexible, open to review, and tailored to the needs of individual strengths.
 | Nil | * Limits on availability, accessibility, acceptability and/or adaptability of education or schooling.
* Provision of education to young people in detention.
* Regulating access to schools leading to inequality.
* Providing education in a way that is discriminatory to a group.
* Refusal to enrol or cancellation of enrolment.
* Working with special educational needs assessments.
* Schooling or education services in regional or remote areas.
* Providing non-school-based education.
* Fees and charges related to participation or access to schooling or school activities.
 |