Human rights impact assessment: decision-making

Use this exemplar to determine if your decision is compatible with human rights under the *Human Rights Act 2019*. In this example of an impact assessment, last row indicates where text can be inserted or chosen.

|  |  |
| --- | --- |
| Decision | Changes to school hours Click or tap here to enter school name. |
| Which individuals or groups will be affected by the decision? | Students, staff, parents/carers, broader community members related to school |
| Region completing assessment | Choose a region. |
| What law or regulation allows you to make this decision?  | N/A |

***NOTE:*** *Some human rights have already been identified (below) as ones that could be affected in decisions about making changes to school hours. For each decision being made information can be removed or added as required.*

Record the outcome of assessment, including any amendments to the policy or procedure

| **IDENTIFY** | **IMPACT** | **JUSTIFICATION** | **OUTCOME**  |
| --- | --- | --- | --- |
| Are human rights engaged by the decision?  | Are these rights limited or promoted by the decision? | Is there a good reason for any limitation and is it justifiable?  | Is the decision compatible with human rights? Consider all rights affected.  |
| S.18 Freedom from forced work  | The right to freedom from forced work is **promoted** by this decision.Determining staff support and compliance with industrial instuments is part of the mandatory internal capacity assessement process in the *Making changes to school hours* procedure and will ensure the right to freedom from forced work is not limited. Staff wellbeing is a consideration when proposing changes to school hours, and changing school hours may also provide staff with flexibility in work or contact hours. | No limitations have been identified. | The decision is compatible with human rights. The right to freedom from forced work is promoted by this decision.  |
| S.21 Freedom of expression | The process to change school hours **promotes** the right to freedom of expression as it ensures stakeholders have the opportunity to express their views and opinions through extensive consultation.The *Makings changes to school hours* procedure requires the outcome of decisions about changing school hours to be communicated broadly, ensuring stakeholders have access to information which may affect them. | No limitations have been identified. | The decision is compatible with human rights. The right to freedom of expression is promoted by this decision. |
| S.26 Protection of families and children | The decision to change school hours must take into account the best interests of students, including their health and wellbeing. Therefore, it **promotes** the right to protection of families and children.The *Making changes to school hours* procedure also requires schools to ensure that appropriate supervision is provided for students during standard school hours (as required) for their safety.  | No limitations have been identified | The decision is compatible with human rights.The right to protection of families and children is promoted by this decision.  |
| S.36 Right to education | Changing school hours generally **promotes** the right to education. The *Making changes to school hours* procedure requires that P-12 CARF requirements can still be met for all students so they receive the full schooling education they are entitled to.Before full implementation of the changed school hours, a trial must be undertaken. This enables any impact of the change to be evaluated and assessed to ensures it does not negatively impact on students and their education. | No limitations have been identified | The decision is compatible with human rights.The right to education is promoted by this decision.  |
| Click or tap here to enter text. | Click or tap here to enter text. | Click or tap here to enter text. | Click or tap here to enter text. |

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| Assessed by *Name* | Click or tap here to enter a name. |
| *Position* | Regional Director or their nominated approver,Choose a region. | Date | Click or tap to enter a date. |

Human rights obligations

To comply with the [*Human Rights Act 2019* (Qld)](https://www.legislation.qld.gov.au/view/html/inforce/current/act-2019-005) (the Act), as a public service employee you have to:

1. think about human rights when you make decisions; and
2. act and make decisions in a way that is consistent with human rights law (compatible with human rights).

This applies when you deal directly with individuals, such as students and caregivers, or make a recommendation that will affect people. Your obligations also apply to internal policies and decisions, such as recruitment and other human resource matters. A breach of these obligations is unlawful. Read more about [complying with the Act](http://www.forgov.qld.gov.au/humanrights).

|  |  |
| --- | --- |
| Icon  Description automatically generated**AuthorisingLaw** | Before undertaking a human rights impact assessment, you must consider if there is a law or regulation that allows you or the decision maker to make this decision and limit a person’s rights. If you cannot identify a law or regulation, then you may not be able to limit the right. For example, a decision to limit the human right to privacy by installing CCTV to ensure the safety of students must be authorised by law. |

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 Using the impact assessment table

Identify who is affected by this decision. Identify which human rights are engaged. If no human rights are engaged, proceed to the outcome summary step.

(See list of rights Pg. 3 or **Guide:** [**Nature and scope of the protected human rights**](https://www.forgov.qld.gov.au/human-rights-resources#guides) for further information)



Record the outcome of assessment, including any amendments to the policy or procedure

**IDENTIFY**



Consider the positive (promoted) and/or negative (limited) impact on the identified human rights of those affected. Rights are limited if it stops the person enjoying their rights or changes the way a person enjoys their rights. If you aren’t limiting any rights, proceed to the outcome summary step.

**IMPACT**



If human rights are limited, is there a good reason and is it justifiable?

* What is the purpose of the decision? What are you trying to achieve?
* Will the decision actually achieve the purpose? Is there material/evidence available to support this?
* Is there a less restrictive and reasonably available way to achieve the purpose?
* Do the benefits gained by the decision outweigh the limits to human rights? (**Guide:** [**When human rights may be limited**](https://www.forgov.qld.gov.au/human-rights-resources#guides)**;
Guide:** [**Human rights in decision making**](https://www.forgov.qld.gov.au/human-rights-resources#guides))

Proceed to the outcome summary step.

**JUSTIFICATION**



If the decision does not engage any rights; does not limit any rights; or, limits rights in a way that is reasonable and justifiable, then your decision is consistent with the *Human Rights Act* *2019* (**compatible** with human rights).

If your decision limits human rights and there is not a good reason, it is not consistent with the *Human Rights Act* *2019* (**incompatible** with human rights). You will need to make a different decision or act in another way to achieve your purpose.

**OUTCOME**

(Guide: [When human rights may be limited](https://www.forgov.qld.gov.au/sites/default/files/when-human-rights-may-be-limited-human-rights-act-guide.pdf?v=1561930542))

Human rights – summary and examples of potential limitations

The below table outlines the 23 sections of human rights protected under the Act. Further information can be found at [Queensland Human Rights Commission](https://www.qhrc.qld.gov.au/your-rights/human-rights-law)
and in the [Guide: Nature and scope of the rights](https://www.forgov.qld.gov.au/human-rights-resources#guides).

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| --- | --- | --- | --- |
| **s.** | **Human right** | **Summary** | **Examples of potential limitations**  |
| 15 | Recognition and equality before the law | Everyone is entitled to equal and effective protection against discrimination, and to enjoy their human rights without discrimination. | * Delivery of an entitlement or service (or imposing compliance options) to some groups but not others. A policy, process or eligibility that disproportionally affects a group in the community.
 |
| 16 | Right to life | Every person has a right to life and the right not to be arbitrarily deprived of life. The right to life includes a duty on government to take appropriate steps to protect the right to life. | * Withholding life sustaining services (such as medical or welfare services), use of deadly force, not adequately protecting lives of people in care (or in your care), including harm they may do themselves.
 |
| 17 | Protection from torture and cruel, inhuman or degrading treatment | A person must not be tortured, treated or punished in a cruel, inhuman or degrading way or subjected to medical treatment or experiments without their full and informed consent. | * Causing a person serious physical or mental pain, suffering or humiliation.
* Crisis intervention strategies or behaviour management plans that include the use of: seclusion; chemical, physical or mechanical restraint; or containment.
* Policy that regulates treatment of students or authorises a person to be searched
 |
| 18 | Freedom from forced work | 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. | * Compels the provision of any labour or the performance of any service under threat of a penalty.
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| 19 | Freedom of movement | Every person lawfully within Queensland has the right to move freely within the state, and to enter and leave it and has the freedom to choose where they live. | * Physical or procedural barriers, such as requiring permission to enter, move about or preventing access to school grounds.
* Monitoring a person’s movements.
 |
| 20 | Freedom of thought, conscience, religion and belief | Every person has the right to think and believe what they want. This includes the freedom to have or choose a religion and demonstrate that religion individually or as part of a group, in public or private. | * Requiring a person to disclose their religion or belief, or regulating conduct that affects a person’s worship, observance, practice or teaching of religion or belief.
* Regulating dress code which prevents a person from demonstrating their belief.
* Mandating attendance at religious instruction or instruction not of your choice.
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| 21 | Freedom of expression | Every person has the right to hold an opinion without interference. This includes the right to seek, receive and share information and ideas orally, in writing, in print, by way of art or in any other medium. | * Regulating or requiring approval of the manner, content and format of expression, such as dress codes.
* Censoring materials or regulating/restricting an individual’s access to information.
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| 22 | Peaceful assembly and freedom of association | Every group has the right to join groups and assemble peacefully. | * Limiting the ability to hold gatherings.
* Treating people differently on the basis of their membership of a group or association or prohibiting membership to a group or association.
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| 23 | Taking part in public life | Every person has the right to take part in the public life of the State, such as the right to vote or run for public office. | * Limiting a person’s ability to take part in local and state government elections.
* Limits a person’s access, on general terms of equality, to the public service and to public office, including eligibility requirements for public service positions.
 |
| 24 | Property rights | All persons have the right to own property and must not have that property taken arbitrarily, unless the law says it can be taken. | * Seizing or requiring forfeiture of a person’s property.
* A policy that allows a public entity access to a person’s private property.
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| 25 | Privacy and reputation | A person’s privacy, family, home and correspondence must not be unlawfully interfered with. A person’s reputation must not be unlawfully attacked.  | * Personal information and data collection, surveillance (CCTV), mandatory reporting and mandatory disclosure, inspecting private communication, search powers, physical intervention, physical examination, and interfering with physical and mental integrity, including appearance, clothing, gender, sexuality and home.
 |
| **s.** | **Human right** | **Summary** | **Examples of potential limitations** |
| 26 | Protection of families and children | Families are the fundamental group unit of society and entitled to protection by society and the State. Every child has the right to protection they need that is in the best interests as a child.  | * Limits to survival or development of a child to the maximum extent possible.
* Limiting any aspect of care of children (or ability to provide care), including children cared for by parents, guardians, informal carers, children out of home care, children with disability, parents and carers with a disability.
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| 27 | Cultural rights-generally | Persons with particular cultural, religious, racial and linguistic backgrounds have a right to enjoy their culture, declare and practice their religion, and use their language. | * Limiting observance of any religious practices, or limiting communication in languages other than English.
* Restricting capacity for persons to declare or make public their affiliation to a particular racial, religious or cultural group.
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| 28 | Cultural rights-Aboriginal peoples and Torres Strait Islander peoples | Aboriginal 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. | * Limiting the ability of Aboriginal persons to take part in cultural practice or otherwise interferes with their distinct cultural practices, or prohibits the use of traditional language. Includes recognition that the concept of ‘kinship’ differs in Aboriginal culture to non-Aboriginal culture.
 |
| 29 | Right to liberty and security of person | The right to liberty protects the right to not be arrested or detained except in accordance with the law. The right to security of the person includes protection of the physical and mental integrity of a person. | * Detaining a person for treatment for a mental illness or on safety grounds, such as intoxication or threat to others; or because of behaviour.
* Restrictive practices.
* Not responding appropriately to complaints of bullying.
 |
| 30 | Humane treatment when deprived of liberty | People have the right to be treated with humanity if they are accused of breaking the law and are detained. This right extends to a person being detained for reasons outside the parameters of criminal law. | * Relates to the conditions under which someone may be detained (e.g. prisons, mental health services).
* Restrictive practices.
 |
| 31 | Fair hearing | A person has 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. | * Rules of evidence and procedure in courts and tribunals, including safeguards for witnesses such as children or vulnerable persons.
* Restricting publication of court proceedings.
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| 32 | Rights in criminal proceedings | Minimum guarantees that apply when charged with a criminal offence, including the right to an interpreter, lawyer, to be heard without delay. | * Regulates aspects of criminal trial procedure.
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| 33 | Children in the criminal process | A detained child must not be held with adults. They must also be brought to trial as quickly as possible and treated in a way appropriate for their age. | * Holding children in amenities that have limited facilities or services for the care and safety of children during the criminal process.
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| 34 | Right not to be tried or punished more than once | If a person has been acquitted or convicted for an offence, they must not be tried or punished again. | * Applies only to criminal offences.
* Does not include disciplinary actions.
 |
| 35 | Retrospective criminal laws | A person cannot be punished or prosecuted for things that were not criminal offences at the time they were committed.  | * Creating new criminal offences or amending offence provisions.
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| 36 | Right to education | Every child has the right to have access to primary and secondary education appropriate to their needs. Every person has the right to have access, based on their abilities, to further vocational education and training that is accessible to all. | * Action not consistent with the *Education (General Provisions) Act 2006* (Qld).
* Limiting public education service delivery.
* Failing to tailor education and its mode of delivery for students such as migrants, refugees, working students, students with children, students in detention, homeless students and students with disabilities.
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| 37 | Right to health services | Every person has the right to access health services without discrimination. A person must not be refused necessary emergency medical treatment. | * Limiting access to health facilities, goods, including essential medications and services especially for vulnerable or marginalised groups.
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