

Human Rights Policy

1. Purpose

The Human Rights Act 2019 (the Act) aims to create a culture in the Queensland public sector that respects, protects, and promotes the human rights of all people in Queensland.

The rights and protections set out in the Anti-Discrimination Act 1991 and the Human Rights Act 2019 recognise the value of every one of us. They are there to make sure the principles of freedom, respect, equality and dignity underpin our interactions with each other, and are the foundations on which we build a Queensland where all of us feel safe and welcome.

A human rights approach means that Smartskill Pty Ltd must put people first when making decisions and providing services. The Act does this by requiring public entities like Smartskill Pty Ltd to consider human rights in their work. Government agencies, and organisations that do government work such as Smartskill Pty Ltd must:

1. consider human rights when they make decisions; and
2. act and make decisions in a way that is compatible with human rights.

Public entities have obligations under the Human Rights Act 2019, to act and make decisions in a way that is compatible with human rights, and to give human rights proper consideration when making decisions. Smartskill is an organisation that delivers public services or work for the Queensland Government and is covered by the Act when:

- the work they are doing is for the Queensland Government or another public entity
- the work has a 'public nature'.

The Human Rights Act 2019 places obligations on public entities to be compatible with human rights when acting or making a decision.

Under the Act, 'compatible with human rights' means an act or decision does not limit a human right, or limits a human right only to the extent that is 'reasonable and demonstrably justifiable'.

Section 13 of the Act provides guidance on when human rights may be limited and the factors to be considered when assessing if an act or decision is compatible with human rights.

Human rights should only be limited after careful consideration, and in a way that can be justified in a free and democratic society based on human dignity, equality, freedom and the rule of law.

2. Policy Statement

Smartskill is committed to consider human rights when they make decisions and act and make decisions in a way that is compatible with human rights.

To carry out these responsibilities, Smartskill will follow steps when acting or making decisions. If the act or decision appears incompatible, modify it if possible then reassess for compatibility.

If the act or decision limits human rights, but is assessed as compatible, then Smartskill Pty Ltd will document the justification for the act or decision, and the process used to consider human rights.

Smartskill Pty Ltd will seek guidance on a specific issue, or will consult www.qhrc.qld.gov.au. or call 1300 130 670 when required.

Smartskill is committed to consider human rights when they make decisions and act and make decisions in a way that is compatible with human rights. This is actioned via the following steps:

Step 1: Identify relevant rights

There are 23 rights protected by the Act, and the following contains the exact wording from sections 15-37 of the legislation.

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.

More information is available on the Queensland Human Rights

Commission website at www.qhrc.qld.gov.au.

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.

More information is available on the Queensland Human Rights Commission website at www.qhrc.qld.gov.au.

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 or 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.

More information is available on the Queensland Human Rights Commission website at www.qhrc.qld.gov.au.

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.

More information is available on the Queensland Human Rights Commission website at www.qhrc.qld.gov.au.

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.

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.

Step 2: Consider the impact

Smartskill Pty Ltd will act or makes decisions that do not limit or restrict any of the relevant rights identified above. The process includes the following questions:

No: if rights are not being limited, you are acting or making decisions compatibly with human rights.

Yes: if human rights are being limited, or if you are unsure, you should move to step 3.

Step 3: Determine whether the limit is reasonable and justified

Smartskill Pty Ltd will ask the following questions about the act or decision being proposed:

Is it lawful?

What law or regulation allows you to limit a person's rights?

If you can't identify a law or regulation then you may not be able to limit rights.

Is there a purpose?

What is the aim of the limitation?

Does it achieve a legitimate purpose?

Is it rational?

Will what you are doing effectively achieve your purpose?

Is it necessary?

Is this the least restrictive way to achieve your purpose?

Is it fair and balanced?

Do the benefits outweigh the harm caused by the limitation?

Acting and making decisions in a way that is not compatible with human rights is unlawful.

If someone thinks their human rights have been breached, they can complain directly to the public entity. The public entity has 45 business days to respond.

If the person is not satisfied with the response they have received after this time, they can complain to the Queensland Human Rights Commission (QHRC).

The QHRC provides an independent avenue for members of the community to raise human rights concerns and reach a practical resolution. Read more about this at www.qhrc.qld.gov.au.

3. Records Management

All documentation related to Human Rights and further resources are found at www.qhrc.qld.gov.au.

4. Monitoring and Improvement

All Human Rights practices are monitored by the Director of Smartskill and areas for improvement identified and acted upon. (See Continuous Improvement Policy)