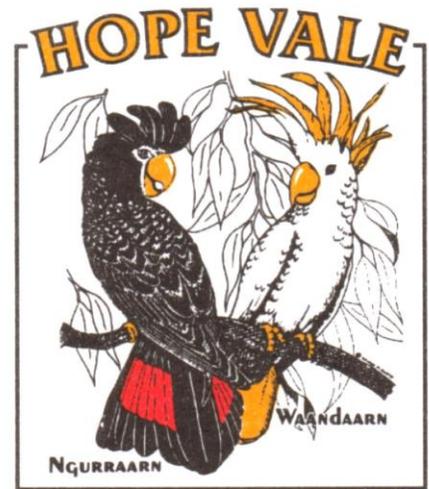


HOPE VALE ABORIGINAL SHIRE COUNCIL



Human Rights Policy and Procedure

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HUMAN RIGHTS POLICY 2020-2021

ORIGIN/AUTHORITY

Human Rights Act 2019
Local Government Act 2009
Local Government Regulations 2012

PURPOSE

Council's commitment in protecting and promoting human rights by ensuring that human rights are considered when making, interpreting and applying laws, developing policies, and providing services to our community.

Council also recognises that it has an important role in complying with Queensland's *Human Rights Act 2019* ("the Act") through its actions, decisions, proposals and recommendations. The purpose of this Policy is to uphold Council's human rights obligations and comply with legislative obligations.

The intended outcomes of this Policy include:

- Assisting all areas of Council to meet our human rights obligations;
- Promoting a dialogue about the nature, meaning and scope of human rights with the community;
- Improving our services, actions, decision-making processes and governance frameworks;
- Building the capacity of council officers to comply with the Act;
- Maintaining customer service levels in accordance with the adopted customer service charter, whilst managing human rights complaints in accordance with legislative requirements; and,
- Enhancing community confidence in our legislative compliance and the reputation of Council as being accountable and transparent.

Legislative requirements

As a public entity, Council's must:

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

Therefore, an act, decision or statutory provision is compatible with human rights if the act, decision or provision:

- a) does not limit a human right; or

- b) limits a human right only to the extent that is reasonable and demonstrably justifiable and in accordance with section 13 of the Act.

What are “human rights”?

Human rights apply to all individuals and are based on principles of freedom, respect, equality and dignity. Human rights recognise the inherent value of each person, regardless of background, where we live, what we look like, what we think or what we believe. In other words, human rights belong to all people by virtue of being human. Everyone is entitled to these rights, without discrimination.⁵

Commencement of the Act

The Act commenced on 1 July 2019. The Act requires public entities, including local government, to make decisions and act compatibly with human rights. Obligations for public entities under the Act commenced in full on 1 January 2020.

Objectives of the Act

The main objects of this Act are:

- a) to protect and promote human rights;
- b) to help build a culture in Queensland’s public sector that respects and promotes human rights; and
- c) to help promote a dialogue about the nature, meaning and scope of human rights.

The Act is an important development in recognising the essential role human rights play in our society because it will:

- protect the rights of vulnerable Queenslanders by addressing disadvantage;
- result in development of a human rights culture across communities in Queensland;
- lead to improved law making and government policy;
- result in improved public service delivery; and,
- assist Australia to fulfil its international human rights obligations.

Protected human rights

Under section 11 of the Act, all individuals in Queensland have human rights. This means a corporation does not have human rights.⁸ As such, the Act protects 23 fundamental human rights outlined below.

1. *Your right to recognition and equality before the law*

Everyone is entitled to equal and effective protection against discrimination, and to enjoy their human rights without discrimination. Every person is equal before the law and is entitled to equal protection of the law without discrimination. Every person is entitled to equal and effective protection against discrimination.

2. *Your right to life*

Every person has the right to life and the right not to be deprived of life. The right not to be deprived of life is limited to arbitrary deprivation of life.

3. *Your right to protection from torture and cruel, inhuman or degrading treatment*

A person must not be tortured or treated in a way that is cruel, inhuman or degrading. This includes that a person must not be subjected to medical or scientific experimentation or treatment unless they have given their full, free and informed consent.

4. *Your right to freedom from forced work*

A person must not be made a slave or forced to work. Forced work does not include certain forms of work or service required of a person who is detained because of a lawful court order.

5. *Your right to freedom of movement*

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

6. *Your right to freedom of thought, conscience, religion and belief*

Every person has the right to think and believe what they want and to have or adopt a religion, free from external influence. This includes the freedom to demonstrate a religion individually or as part of a group, in public or in private.

7. *Your right to freedom of expression*

Every person has the right to hold and express an opinion, through speech, art, and writing (or other forms of expression) and to seek out and receive the expression of others' opinions.

8. *Your right to peaceful assembly and freedom of association*

Every person has the right to join or form a group and to assemble. The right to assembly is limited to peaceful assemblies.

9. *Your right to taking part in public life*

Every person in Queensland has the right and opportunity without discrimination to take part in public life. Every eligible person has the right to vote, be elected, and have access on general terms of equality to the public service and public office.

10. *Property rights*

All person have the right to own property alone or in association with others. A person must not be arbitrarily deprived of their property.

11. *Your right to privacy and reputation*

A person's privacy family, home and correspondence must not be unlawfully or arbitrarily interfered with. A person has the right not to have their reputation unlawfully attacked.

12. *Your right to protection of families and children*

Families are recognised as the fundamental unit of society and are entitled to protection. Every child has the right, without discrimination, to the protection that is in their best interest as a child. Every person born in Queensland has the right to a name and to registration of birth.

13. *Cultural Rights – Generally*

All persons with particular cultural, religious, racial and linguistic have a right to enjoy their culture, declare and practice their religion, and use their language in community with other persons of that background.

14. *Cultural Rights – Aboriginal Peoples and Torres Strait Islander Peoples*

Aboriginal peoples and Torres Strait Islander peoples hold distinct cultural rights as Australia's first people. They must not be denied the right, with other members of their community, to live life as an Aboriginal or Torres Strait Islander person who is free to practice their culture.

15. *Your right to liberty and security of person*

Every person has the right to liberty and security. This right protects against the unlawful or arbitrary deprivation of liberty. If a person is arrested or detained, they are entitled to certain minimum rights, including the right to be brought to trial without reasonable delay.

16. *Your right to humane treatment when deprived of liberty*

A person must be treated with humanity and respect when deprived of liberty. An accused person who is detained must not be detained with convicted persons unless reasonably necessary, and must be treated in a way that is appropriate for a person who has been convicted.

17. *Your right to a 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. There is an exception to the right to a public hearing, whereby a court or tribunal may

exclude certain people from a hearing if it is in the public interest or the interests of justice.

18. Rights in criminal proceedings

A person charged with a criminal offence has the right to be presumed innocent until proven guilty according to law, and is entitled without discrimination to receive certain minimum guarantees. A person has the right to appeal a conviction in accordance with law. A child charged with a criminal offence has the right to a procedure that takes into account their age and the desirability of promoting rehabilitation.

19 Rights of children in the criminal process

Children in the criminal process are entitled to special protections on the basis of their age. An accused child must not be detained with adults and must be brought to trial as quickly as possible. A convicted child must be treated in a way that is appropriate for their age.

20. 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 they have already been finally acquitted or convicted according to law.

21. Protection from retrospective criminal laws

A person must not be prosecuted or punished for conduct that was not a criminal offence at the time the conduct was engaged in. A person must not receive a penalty that is greater than the penalty that applied at the time they committed the offence.

22. 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 equally accessible to all.

23. 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.

Application of the Act

The Act creates a 'dialogue model' of specific rights that are designed to ensure that human rights are considered in the development of laws and policies; in the delivery of public services; and, in government decision-making. Essentially, the Act aims to ensure that public powers and functions are exercised in a principled way and that public power is not misused. The Act further complements a number of other pieces of legislation that are aimed at regulating the relationship between individuals and the state.

Importantly, the Act cannot apply and protect an individual's human rights on a general level. In other words, the Act protects 23 specific human rights as outlined above rather than offering broad protection.

One of the key requirements of the Act is to ensure actions and decisions are compatible with human rights. Therefore, Council need to:

- act and make decisions compatibly with human rights;
- develop policy and legislation, including local laws, compatibly with human rights; and,
- interpret legislation compatibly with human rights.

Section 8 of the Act defines the term '*compatible with human rights*' and states that an act or decision will be compatible with human rights if:

- it does not limit a human right, or
- it limits a human right only to the extent that is reasonable and demonstrably justifiable, in accordance with section 13 of the Act.

This means that every act, policy or decision by the Council must be assessed for compatibility with these rights.

Human Rights Complaints

Under the Act, a person who believes a public entity has breached their human rights obligations has the right to complain and seek remedies. There are three ways a person can make a complaint which includes:

- Internal complaints;
- Independent complaints; and,
- Raising the Act in courts and tribunals.

1 Internal Complaints

An individual must first raise a complaint directly with Council. Council has 45 days to respond, after which the individual can make a formal complaint to the Queensland Human Rights Commission (QHRC) if the complaint has not been responded to or the person is not satisfied with Council's response.

In order to ensure that a complaint is handled in the most efficient manner, Council requests that complainants:

- Clearly identify the issues of complaint, or ask for help from Council staff to do this;
- Give Council all the available information in support of the complaint in an organised format and not provide any information that is intentionally misleading or knowingly wrong or vexatious;
- Cooperate with the Council's inquiries or investigations; and

- Treat staff with courtesy and respect.

A person can make a human rights complaint to Council as follows:

- via Council's online form and sent to ceo@hopevale.qld.gov.au; or
- telephone or in person at our Customer Service Centre, located at Muni Street, Hope Vale QLD 4895; or
- by post and addressed to:

Chief Executive Officer
Hope Vale Aboriginal Shire Council
Muni Street
Hope Vale QLD 4895

Council's human rights complaint management process is outlined in **Appendix 1**.

2. *Independent complaints*

A person can also raise a complaint about human rights with the QHRC or another independent body. In order to accept complaints under the Act, the QHRC must be satisfied that:

- A complaint has first been made to the public entity alleged to have breached the Act.
- At least 45 business days have elapsed since the complaint was made to the public entity.
- The complainant has not received a response to their complaint or has received an inadequate response.

For further details on QHRC's complaint process, please refer to: <https://www.qhrc.qld.gov.au/>.

3. *Raising the Act in courts and tribunals*

In some cases, the complaint can be taken to a court or tribunal. While people cannot make complaints directly to courts and tribunals for breaches of the Act, it is possible to raise breaches of the Human Rights Act in the process of a hearing based on another law.

Remedies

Where there is a breach of the Act, a person cannot claim financial compensation. However, where the complaint is not resolved, the QHRC can make recommendations regarding actions required of the respondent to uphold human rights.

ROLES AND RESPONSIBILITIES

Councillors

A councillor who receives a human rights complaint is obliged to report the complaint to Council's CEO in accordance with this Policy.

Council Officers

All Council officers have a duty and responsibility to perform their functions on behalf of Council, including the making of decisions or undertaking actions in a professional manner and in compliance with the Act. Council officers must also assist individuals wishing to make a human rights complaint and assist with any related investigation and response.

Chief Executive Officer

The CEO is responsible for:

- Maintaining a Human Rights Complaints register and complaints reporting;
- Coordinating the complaints process;
- Supporting Council Officers and Reviewing Officers with assessing, investigating and responding to complainants, if required; and,
- Providing appropriate training for the organisation.

Directors

Directors are responsible for oversight, investigation (if required) and responding to complaints with their teams, having regard to the relevant area of operation and expertise. Directors are also responsible for the oversight of implementing improvement opportunities identified from the complaints process.

Reviewing Officer

The reviewing officer who is investigating the complaint shall do so in accordance with identified timeframes and within legislative requirements. Where a complex investigation is required, the Reviewing Officer will update the complainant on the progress of the response.

Complainant

Complainants are entitled to:

- A prompt acknowledgement of Council's receipt of the complaint;
- A prompt response to the complaint;
- Be kept informed of the progress and outcome of the complaints process;
- Confidentiality of personal details (where possible within the law); and,
- A thorough and objective investigation or review of a complaint.

Adopted by Council on the 17 March 2021

Shannon Gibbs
Director of Finance

APPENDIX 1 – HUMAN RIGHTS COMPLAINTS MANAGEMENT PROCESS

