

## Purpose

The purpose of this policy is to outline Whitsunday Regional Council's responsibilities in applying the Human Rights Act 2019 to:

- protect and promote human rights;
- help build a culture that respects and promotes human rights; and
- assists to promote a dialogue about the nature, meaning and scope of human rights.

## Scope

This policy applies to all Councillors, employees and contractors of Whitsunday Regional Council.

## Policy Statement

### 1. Council's Position on Human Rights

#### 1.1. Council is committed to

- respecting, protecting and promoting the human rights of individuals;
- complying with applicable legislation that supports human rights;
- providing a fair, safe and healthy working environment for our employees that is free from unlawful discrimination, harassment, bullying or victimisation;
- being an inclusive employer, promoting and valuing diversity within our workforce, among our customers, suppliers and in the communities in which we operate;
- respecting our customers' privacy and protect their personal information.

### 2. Decision making

Council acknowledges that the Act allows for any of the human rights to be reasonably limited: just because a human right is impacted by a decision or action does not mean that the decision or action is incompatible with the Act or invalid.

Deciding what is reasonable is a matter of balancing the rights of the individual and the rights of the community. The following principles underpin Council's commitment to human rights:

- the inherent dignity and worth of all human beings;
- the equal and inalienable human rights of all human beings;
- human rights are essential in a democratic and inclusive society that respects the rule of law;
- human rights must be exercised in a way that respects the human rights and dignity of others;
- human rights should only be limited after careful consideration and in a way that can be reasonable; justified; proportionate; rational; and balanced; and
- human rights have a special importance for the Aboriginal peoples and Torres Strait Islander peoples of Queensland as Australia's first people, particularly the right to selfdetermination.

All statutory provisions (e.g. laws, regulations) are to be interpreted so far as is possible in a way that is compatible with human rights. If laws or regulations can be understood in a number of ways, the Act requires that the interpretation that takes human rights into account should be preferred. During the decision-making stage deciding what is reasonable limitation is a matter of balancing the rights of the individual and the rights of the community.

### 3. Complaints regarding the Human Rights

- 3.1 Whitsunday Regional Council will investigate and attempt to resolve any complaints made internally or by external clients;
- 3.2 All internal complaints will be dealt with through the implementation of the internal grievance procedures, identified in Attachment 1. Managers and the Human Rights Contact Officer are available to provide further details, support and advice. It is important to raise the issue of any potential or possible breach as soon as practicable;
- 3.3 For all external complaints, alleged breaches of human rights, a complaint is to be made initially to Chief Executive Officer. The complaint will be given a high priority and a written response will be provided, together with a statement of reasons;
- 3.4 Where a complaint is not resolved to the complainant's satisfaction, the complaint may be escalated to the Human Rights Commission as the independent arbitrator;
- 3.5 A person cannot claim financial compensation for a breach of their Human Rights; and
- 3.6 If the complainant is dissatisfied with the response, or after 45 business days has elapsed, the complainant may refer the matter to the Queensland Human Rights Commission.

### 4. Compliance and responsibilities

#### 4.1 Officers

##### 4.1.1 All Council employees:

- are obliged to respect, promote and act compatibly with human rights;
- must take the Act into account when developing and implementing Council guidelines, policies, local laws, procedures, decisions and services. New Policies will be required to include a statement explaining whether they are compatible or incompatible with the Human Rights Act and the fundamental rights identified.

##### 4.1.2 All Managers and Directors:

- must consider relevant human rights when developing policy. This should include undertaking a human rights impact assessment for new policies and considering whether any proposed limitations on rights are reasonable;
- identify areas of concern for their Branch; and
- implement actions to comply with the Act for those areas identified of concern.

##### 4.1.3 The Manager Governance and Administration shall:

- act as the Human Rights Contact Officer;
- respond to all enquiries/complaints about Human Rights;
- provide advice and options to staff on human rights issues as required; and

- provide assurance to the Chief Executive Officer that the Council acts in accordance with the Act.

#### 4.1.4 Chief Executive Officer

The Chief Executive Officer is to ensure, through the Manager, Governance and Administration that the Whitsunday Regional Council is complying with the Act.

#### 4.2 Councillors

All Councillors consider the relevant elements of the Act when making decisions and providing information or advice to the community.

## Applicable Legislation

This policy refers to the Human Rights Act 2019 (Qld), with linkages to:

Age Discrimination Act 2004 (Cwth)

Anti-Discrimination Act 1991 (Qld)

Public Interest Disclosure Act 2010 (Qld).

Racial Discrimination Act 1975 (Cwth)

Sex Discrimination Act 1984 (Cwth)

## Definitions

**CEO** refers to the Chief Executive Officer of the Whitsunday Regional Council appointed in accordance with the *Local Government Act 2009*.

**Council** refers to the Whitsunday Regional Council

**Employee** refers to any employee, contractor, volunteer etc. of the Council

## Related Documents

Code of Conduct

Council Values and Missions Statement

Harassment and Discrimination Policy & Procedure

Performance and Misconduct - Disciplinary Policy & Procedure

## Human Rights Compatibility Statement

This Policy has been assessed as compatible with the Human Rights protected under the *Human Rights Act 2019*.

## Attachment 1 - Internal Grievance Procedures

The objectives of the procedure are to promote the prompt resolution of grievances by consultation, cooperation and discussion to reduce the level of disputation and to promote efficiency, effectiveness and equity in the workplace.

The following procedure applies to all industrial matters within the meaning of the Act:

- Stage 1: In the first instance the employee shall inform their immediate supervisor of the existence of the grievance and they shall attempt to resolve the grievance. It is recognised that an employee may exercise the right to consult their union representative during the course of Stage 1.
- Stage 2: If the grievance remains unresolved, the employee shall refer the grievance to the manager. The manager will consult with the relevant parties. The employee may exercise the right to consult or be represented by their representative during the course of Stage 2.
- Stage 3: If the grievance is still unresolved, the manager will advise the Council and the aggrieved employee may submit the matter in writing to the Council if such employee wishes to pursue the matter further. If desired by either party the matter may also be notified to the relevant union.

## Attachment 2 - External Grievance Procedures

The objectives of the procedure are to promote the prompt resolution of grievances by consultation, cooperation and discussion to reduce the level of disputation and to promote harmony in the community. The following procedure applies to all other disputes:

- Stage 1: In the first instance the complainant shall contact the Chief Executive Officer who may delegate the investigation to an appropriate Officer and attempt to resolve the grievance. It is recognised that the complainant may seek support from another person during the course of Stage 1.
- Stage 2: If the grievance remains unresolved, the matter shall be referred to the Human Rights Contact Officer, who will consult with the relevant parties and attempt to arbitrate a resolution. A support person may assist the complainant in consultation with Council during the course of Stage 2.
- Stage 3: If the grievance is still unresolved, the complainant has the right to escalate the complaint to the Queensland Human Rights Commission .

## Attachment 3 - Human Rights Act protections

### Your right to recognition and equality before the law (section 15)

Everyone is entitled to equal and effective protection against discrimination, and to enjoy their human rights without discrimination.

### Your right to life (section 16)

Every person has the right to life and to not have their life taken. The right to life includes a duty on government to take appropriate steps to protect the right to life.

### Your right to protection from torture and cruel, inhuman or degrading treatment (section 17)

People must not be tortured. People must also not be treated or punished in a cruel, inhuman or degrading way. This includes protection from treatment that humiliates a person. This right also protects people from having medical treatment or experiments performed on them without their full and informed consent.

### Your right to freedom from forced work (section 18)

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.

### Your right to freedom of movement (section 19)

People can stay in or leave Queensland whenever they want to as long as they are here lawfully. They can move around freely within Queensland and choose where they live.

### Your right to freedom of thought, conscience, religion and belief (section 20)

People have the freedom to think and believe what they want - for example, religion. They can do this in public or private, as part of a group or alone.

### Your right to freedom of expression (section 21)

People are free to say what they think and want to say. They have the right to find, receive and share information and ideas. In general, this right might be limited to respect the rights and reputation of other people, or for the protection of public safety and order.

### Your right to peaceful assembly and freedom of association (section 22)

People have the right to join groups and to meet peacefully.

### Your right to taking part in public life (section 23)

Every person has the right to take part in public life, such as the right to vote or run for public office.

### Property rights (section 24)

People are protected from having their property taken, unless the law says it can be taken.

### Your right to privacy and reputation (section 25)

Everyone has the right to keep their lives private. Your family, home or personal information cannot be interfered with, unless the law allows it.

### **Your right to protection of families and children (section 26)**

Families are entitled to protection. Children have the same rights as adults with added protection according to their best interests.

### **Cultural rights - generally (section 27)**

People can have different family, religious or cultural backgrounds. They can enjoy their culture, declare and practice their religion and use their languages.

### **Cultural rights - Aboriginal peoples and Torres Strait Islander peoples (section 28)**

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.

### **Your right to liberty and security of person (section 29)**

Everyone has the right to freedom and safety. The right to liberty includes the right to not be arrested or detained except in accordance with the law. The right to security means that reasonable steps must be taken to ensure the physical safety of people who are in danger of physical harm.

### **Your right to humane treatment when deprived of liberty (section 30)**

People have the right to be treated with humanity if they are accused of breaking the law and are detained.

### **Your right to a fair hearing (section 31)**

A person has a right to a fair hearing. This means 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.

### **Rights in criminal proceedings (section 32)**

There are a number of minimum guarantees that you have when you have been charged with a criminal offence. These include the right to be told the charges against you in a language you understand; the right to an interpreter if you need one; the right to have time and the facilities (such as a computer) to prepare your own case or to talk to your lawyer; the right to have your trial heard without too much delay; the right to be told about Legal Aid if you don't already have a lawyer; you are presumed innocent until proven guilty; and you don't have to testify against yourself or confess your guilt unless you choose to do so.

### **Rights of children in the criminal process (section 33)**

A child charged with committing a crime or who has been detained without charge must not be held with adults. They must also be brought to trial as quickly as possible and treated in a way that is appropriate for their age. Children are entitled to opportunities for education and rehabilitation in detention.

### **Right not to be tried or punished more than once (section 34)**

A person will only go to court and be tried once for a crime. This means if the person is found guilty they will only be punished once. If they are found to be innocent they will not be punished.

### **Retrospective criminal laws (section 35)**

A person has the right not to be prosecuted or punished for things that were not criminal offences at the time they were committed.



## Right to education (section 36)

Every child has the right to primary and secondary schooling. Every person has the right to have access to further vocational education, based on their ability.

## Right to health services (section 37)

Everyone has the right to access health services without discrimination. This right also states that nobody can be refused emergency medical treatment.

## Human Rights Compatibility Statement

This Policy has been assessed as compatible with the Human Rights protected under the Human Rights Act 2019.

COUNCIL POLICY			
Date Adopted by Council	27 January 2021	Council Resolution	2021/01/27.04
Effective Date	28 January 2021	Next Review Date	27 January 2022
Responsible Officer(s)	Manager, Governance and Administration	Revokes	N/A
Public Consultation: Yes / No			