

Human Rights that are likely to require consideration in RBWH ethics applications

CONSIDERATION OF HUMAN RIGHTS DURING RESEARCH AT RBWH

Background

The *Human Rights Act 2019* (Qld) protects 23 fundamental human rights in law. The Act requires each arm of government to act compatibly with these human rights. This means that public entities performing a public function – such as Metro North Hospital and Health Service, must act and make decisions compatible with human rights.

Research being conducted at MNHHS and at RBWH must also comply with the Act. While not all of the listed Human Rights may be applicable to research, in instances where there are human rights that may apply, such as the right to health services, the Act clearly states that rights can be limited, but only where it is reasonable and justifiable.

WHAT DO I HAVE TO DO TO CONSIDER HUMAN RIGHTS IN MY RESEARCH PROPOSAL?

Prior to submitting an application for Ethics approval, researchers should consider whether any human rights are applicable to their research. If they are, then the next step is to determine whether the right may be being infringed in the research. For example, are you excluding a participant because they cannot speak English? Are you using personal (identifiable) information which may require a data management plan? While some rights can be limited, this is only the case where it is reasonable and justifiable. Therefore, in instances where a human right may be being infringed or limited, researchers will then have to assess, through the questions provided in s13 of the Act (and listed below in table 2), whether the limitation is justifiable. Where it is not considered to be justifiable, researchers are likely to have to amend their research proposal to mitigate or reduce any limitation.

Table 1 lists the 5 human rights that are considered to be most relevant to research being conducted at RBWH. Where there appear to be any limitations on human rights, you are asked to provide a justification in your application for this limitation as per s13 of the Act. Table 2 lists the questions that researchers should consider when deciding whether a limitation of Human Rights is justifiable.

Table 1: Human rights most likely to be limited during biomedical research at RBWH

Human Right	Act section	Considerations / scenarios
Protection from torture and cruel, inhuman or degrading treatment: a) A person must not be subjected to medical or scientific experiments without consent	17	Have you obtained consent before including a participant in research?
Privacy and Reputation: b) A person has the right not to have the person's privacy, family, home or correspondence unlawfully interfered with	25	Do you have a plan to protect the privacy of the individual? Will the information being used enable identification of the individual? Does this include a data management plan?
Cultural rights – generally: c) 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	27	Have you considered: <ul style="list-style-type: none"> • Use of translators • Does your approach propose exclusion from research based on language, religion or descent • Does your approach propose exclusion from research based on inability to answer questions, e.g. patients with aphasia? If so, these exclusions will need to be justified
Cultural rights—Aboriginal peoples and Torres Strait Islander peoples: d) Aboriginal peoples and Torres Strait Islander peoples must not be denied the right, with other members of their community—to enjoy, maintain, control, protect and develop their identity and cultural heritage, including their traditional knowledge, distinctive spiritual practices, observances, beliefs and teachings;	28	Have you followed either of the following Guidelines: <ul style="list-style-type: none"> • Ethical Considerations in Research involving Aboriginal and Torres Strait islanders. • Guidelines for Ethical Research in Australian Indigenous Studies (GERAIS)
Access to health Services: e) Every person has the right to access health services without discrimination	37	<ul style="list-style-type: none"> • Does your proposed research exclude any participants from access to health services? • If so, this must be justified.

Table 2: factors that should be considered to determine whether a limitation on a human right is justifiable.

<p>(2) In deciding whether a limit on a human right is reasonable and justifiable as mentioned in subsection (1), the following factors may be relevant—</p> <ol style="list-style-type: none"> the nature of the human right; the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom; the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose; whether there are any less restrictive and reasonably available ways to achieve the purpose; the importance of the purpose of the limitation; the importance of preserving the human right, taking into account the nature and extent of the limitation on the human right; the balance between the matters mentioned in paragraphs (e) and (f).
