

**City of
Ipswich**

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Human Rights Act 2019 (Qld)

Councillor Training
2024

29 October 2024

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and Governance Branch)

Overview of *Human Rights Act 2019 (Qld)* (HRA)

“ Where, after all, do human rights begin?

In small places, close to home – so close and so small that they cannot be seen on any maps of the world. Yet they are the world of the individual person; the neighbourhood he lives in; the school or college he attends; the factory, farm or office where he works.

Such are the places where every man, woman, and child seeks equal justice, equal opportunity, equal dignity without discrimination.

Unless these rights have meaning there, they have little meaning anywhere.

Without concerted citizen action to uphold them close to home, we shall look in vain for progress in the larger world”.

- Eleanor Roosevelt, 1958 -

Overview of *Human Rights Act 2019 (Qld)* cont.

What are human rights?

- Difficult concept to put into words. **How would you describe human rights?**
- Most people have an instinctive understanding of the principles that underpin human rights e.g. 'treat others as we would like to be treated' – with equality, justice and fairness.
- Essentially, every human being has human rights that cannot be taken from them or given away. Human rights only apply to individuals. Companies/corporations do not have human rights.
- The HRA recognises:
 - ✓ the inherent dignity and worth of all human beings
 - ✓ the equal and inalienable human rights of all human beings
 - ✓ human rights should only be limited in a way that can be justified in a free and democratic society based on human dignity, equality, freedom and the rule of law.
- The HRA protects 23 human rights – **how many can you name?**

Overview of *Human Rights Act 2019 (Qld)* cont.

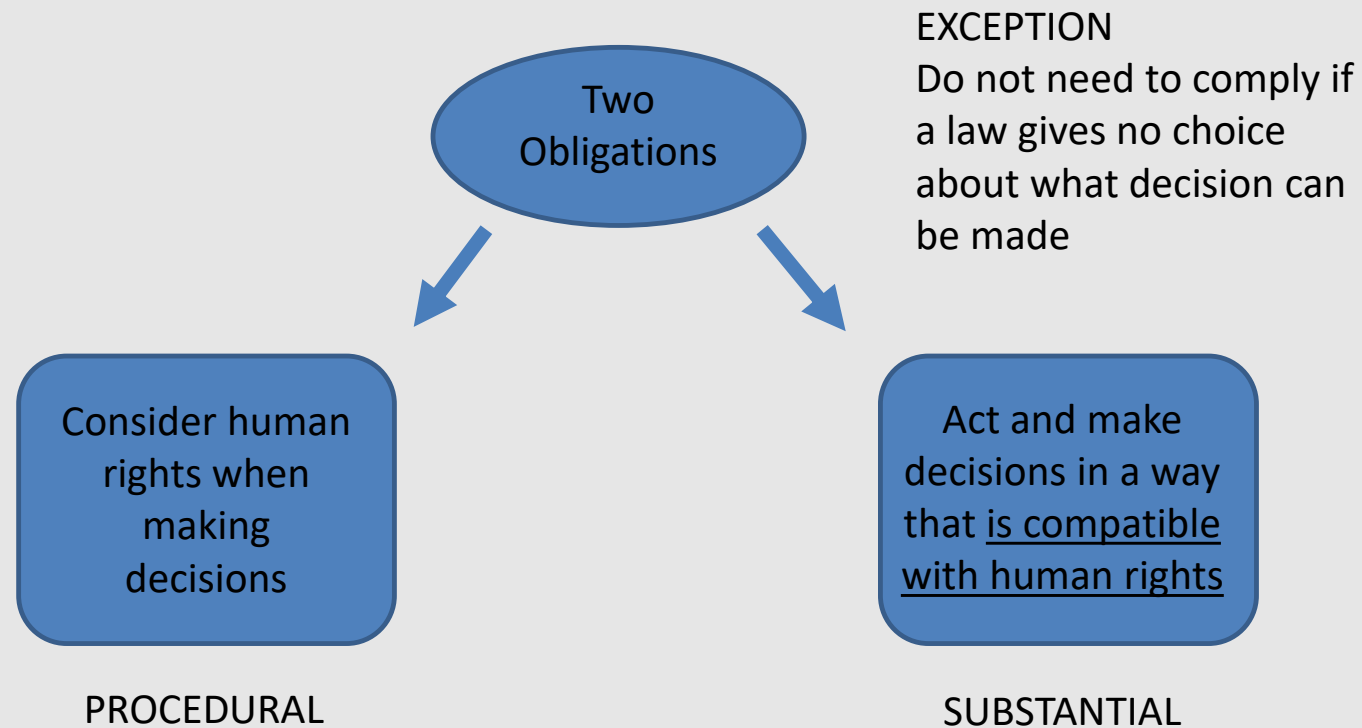
There are 23 human rights protected under the HRA:

• Recognition and equality before the law	• Taking part in public life	• Fair hearing
• Right to life	• Property rights	• Rights in criminal proceedings
• Protection from torture and cruel, inhuman or degrading treatment	• Privacy and reputation	• Children in the criminal process
• Freedom from forced work	• Protection of families and children	• Right not to be tried or punished more than once
• Freedom of movement	• Cultural rights—generally	• Retrospective criminal laws
• Freedom of thought, conscience, religion and belief	• Cultural rights—Aboriginal peoples and Torres Strait Islander people	• Right to education
• Freedom of expression	• Right to liberty and security of person	• Right to health services
• Peaceful assembly and freedom of association	• Humane treatment when deprived of liberty	

Overview of *Human Rights Act 2019 (Qld)* cont.

- The HRA imposes human rights obligations on ‘public entities.’
- ‘Public entity’ includes:
 - Police service
 - A government entity
 - A Minister
 - An entity established under an Act where the entity is performing functions of a public nature
 - A court or tribunal when acting in an administrative capacity
 - an entity whose functions are, or include, functions of a public nature when it is performing the functions for the State or a public entity (whether under contract or otherwise) e.g. contractors or grant recipients.
 - A local government.

Overview of *Human Rights Act 2019 (Qld)* cont.



Overview of *Human Rights Act 2019 (Qld)* cont.

- What makes a decision ‘compatible with human rights’?
- A decision is compatible with human rights if it:
 - (a) does not limit a human right (i.e. there is no effect or a positive effect); or
 - (b) limits a human right only to the extent that is reasonable and justifiable
- A limit will be ‘reasonable and justifiable’ if:
 - ✓ it is done under a law
 - ✓ the limitation will achieve an important purpose (not just something trivial) that outweighs the importance of preserving the right
 - ✓ The purpose cannot be achieved by less restrictive means
- ‘Proper consideration’ of human rights will occur if the decision maker identifies what human rights might be affected the decision and consequences this may have for the affected person.
- Council provides evidence of ‘proper consideration’ by completing the human rights impact assessment checklist.

Overview of *Human Rights Act 2019 (Qld)* cont.

What happens if there is a human rights breach? (i.e. human rights are not considered or the decision is not compatible with human rights)

The decision itself will not be invalid

A person does not commit an offence against the HRA or another Act

A person is entitled to make a human rights complaint to the Queensland Human Rights Commissioner (QHRC). They must first complain to Council. The QHRC only has conciliation powers

If a person has a claim against Council for a decision that is unlawful on a ground other than a breach of human rights, they may 'piggy back' a human rights ground onto this claim. They may be successful on the human rights ground even if they are unsuccessful on the other ground.

A person is not entitled to be awarded damages on the ground of unlawfulness arising from a non-compatible decision or failure to consider human rights.

Human Rights and Councillors

- The main situation in which Councillors will engage with human rights is when making collective decisions as 'council.'
- A human rights impact assessment will have been undertaken in relation to the decision by the officer submitting the report which Council then considers as part of its decision-making process.
- Officers have received training on completing human rights assessments, so councillors should feel confident relevant rights have been considered.
- If a councillor or the Mayor exercises powers in his or her own right (for example, that are granted by delegation or directly under an Act), then they should give consideration as to whether their act/decision impacts on human rights.
- The human rights impact assessment checklist should be used and then stored as evidence of human rights consideration with any other documentation in relation to the decision.

Human Rights and Councillors

Human rights opportunities

1

Human rights provide another avenue through which councillors can engage with, and further the interests of, their constituents.

2

Councillors are in a unique position to know what impacts Council's decisions have 'on the ground' through their interaction with the community.

3

Councillors can also identify opportunities to further human rights, including potential events and programs.

Resources and Tools

- Human Rights Act Policy
- Human Rights Impact Assessment Template
- Queensland Human Rights Commission: <https://www.qhrc.qld.gov.au/>. Subscribe to receive updates: <https://www.qhrc.qld.gov.au/about-us/subscribe-to-updates>
- Queensland Government ForGov page: <https://www.forgov.qld.gov.au/human-rights-resources>



Questions?





IPSWICH CITY COUNCIL

Human Rights Impact Assessment (Internal Use Only)

ASSESSMENT DETAILS	
Date	<input type="text"/> <input type="text"/> / <input type="text"/> <input type="text"/> / <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>
Assessment Made By	
Act/Decision Assessed	[e.g. adopting a procedure; appointing staff; undertaking public consultation; granting a development permit]
STEPS	ASSESSMENT OUTCOME
<p>Step 1</p> <p>Is there a law that tells you what you must do or what decision you must make?</p> <p>If YES, then you do not need to consider human rights in relation to the proposed act or decision. Record this outcome opposite. End of assessment.</p> <p>If NO, proceed to Step 2.</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Discuss here whether the act/decision was made under a law that tells you what you must do or what decision you must make.</p> <p>[The fact that a decision is being made under a statutory framework does not mean that human rights don't need to be considered. It is only if the law actually directs what act must be taken or what decision must be made i.e. you can't act differently or make a different decision.</p> <p>In the majority of cases, you will have some choice about the decision being made or the act being taken. If you are thinking about ticking 'yes' (i.e. you don't have a choice), make sure you go back and look at the wording of the law to make sure it gives you no choice about what decision you can make. The words 'may' and 'must' give a clue. If the word 'may' is used, normally you have a choice. If the word 'must' is used, normally you don't have a choice.</p> <p>You should include here an explanation of what law governs the decision and whether you have a choice about what decision you can make.</p> <p>For example:</p> <p>Council is proposing to adopt a procedure relating to the use of IT equipment. There is no law that states council must adopt a procedure about the use of IT equipment and council has a discretion as</p>
<p>Step 2</p> <p>Ask does the proposed act or decision potentially affect human rights?</p> <p>The human rights are set out in Divisions 2 and 3, Part 2 of the HRA.</p> <p>If YES, proceed to Step 3.</p> <p>If NO, the proposed act or decision will not affect human rights and further consideration is unnecessary. Record this outcome. End of assessment.</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Insert a brief explanation of the proposed act/decision and whether it will potentially affect human rights.</p> <p>[This is where you need to consider whether human rights might be impacted by the act or decision being taken.</p> <p>You are not determining here whether or not human rights are actually being affected. All you are looking at here is whether there is the 'potential' for them to be affected.</p> <p>The most common situation where human rights will not be impacted is where the act or decision relates to a corporate entity rather than an individual. Only individuals have human rights. If the act</p>

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<p>Step 3</p> <p>What human rights are potentially affected:</p> <ul style="list-style-type: none"> ▪ identify each right ▪ think about what each right protects. Some rights may not apply in particular situations (i.e. there may be a limitation on the right). <p>Reference can be made to the Queensland Governments 'Guide: Nature and scope of the protected human rights'.</p> <p>Proceed to Step 4.</p>	The following rights are potentially affected (tick whichever applies):	
	<input type="checkbox"/>	Recognition and equality before the law (section 15) – a person is entitled to enjoy his/her human rights without discrimination (i.e. decisions must be made in an objective, non-discriminatory, non-arbitrary way). Limitation: express exemption for measures that are taken to assist/advance persons or groups disadvantages because of discrimination. This does not constitute discrimination.
	<input type="checkbox"/>	Right to life (section 16) – No person to be arbitrarily deprived of life. Involves obligations on the State to protect life. Public entities must protect the lives of people in their care. Limitation: cannot be 'arbitrarily' deprived of life (i.e. by conduct that is capricious, unpredictable or unjust).
	<input type="checkbox"/>	Protection from torture and cruel, inhuman or degrading treatment (section 17) – degrading treatment focuses on humiliation (which is a subjective test). Treatment has a wide meaning and includes dealing with a person in a certain way or applying a process to someone.
	<input type="checkbox"/>	Freedom from forced work (section 18) – the right to freedom from forced work (slavery or servitude). Individuals shouldn't be subject to conditions that violate individual dignity or exploit human productivity. Limitation: does not include service/work required under a court order, in an emergency or that is part of civil obligations.
	<input type="checkbox"/>	Freedom of movement (section 19) – every person lawfully in Queensland has the right to move freely within Queensland, enter or leave and choose where to live.
	<input type="checkbox"/>	Freedom of thought, conscious, religion and belief (section 20) – the right to develop autonomous thoughts and conscience, to think and believe what they want, to have or adopt a religion and to demonstrate religion or belief through worship, ritual, practice and teaching.
	<input type="checkbox"/>	Freedom of expression (section 21) – the right of all persons to hold an opinion without interference and to seek, receive and express information and ideas. The right encompasses seeking information from government.
	<input type="checkbox"/>	Peaceful assembly and freedom of association (section 22) – Right to gather together in order to exchange, give or receive information, to express views or to conduct a protest or demonstration. Limitation: only applies to peaceful assemblies.
	<input type="checkbox"/>	Taking part in public life (section 23) – the right of all persons to contribute to and exercise their voice in relation to the public life of the State. Ensures all persons have the opportunity to contribute to the political process and public governance. Includes right to vote and to be elected to public office. Limitation: Applies to 'eligible persons' (e.g. persons old enough to vote).
<input type="checkbox"/>	Property rights (section 24) – protects the right of all persons to own property (real and personal property) and to not be arbitrarily deprived of property. Limitation: cannot be 'arbitrarily' deprived of property (i.e. by conduct that is capricious, unpredictable or unjust).	
<input type="checkbox"/>	Privacy and reputation (section 25) – A person has the right not to have their privacy, family home or correspondence unlawfully or arbitrarily (capricious, unpredictable or unjust) interfered with. A person has the right not have the person's reputation unlawfully attacked. Limitation: cannot be unlawfully or arbitrarily interfered with.	

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Step 3 continued	<input type="checkbox"/>	Protection of families and children (section 26) – Families are entitled to protection by the state and society. Children have the same rights as adults, including additional protections according to their best interests and because they are children.
	<input type="checkbox"/>	Cultural rights (section 27) – rights directed towards ensuring the survival and continued development of the cultural, religious and social identity of minorities. Right to enjoy culture, religion and language.
	<input type="checkbox"/>	Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28) – protects the right to live life as an Aboriginal or Torres Strait Islander who is free to practice their culture.
	<input type="checkbox"/>	Right to liberty and security of person (section 29) – entitles all persons to liberty of the person, including the right not to be arrested or detained except in accordance with the law. Right to security means all reasonable steps must be taken to ensure the physical safety of those in physical harm. Limitations and qualifications: must not be subject to arbitrary arrest; must not be deprived of liberty except on grounds and with procedures established by law; right to be brought to trial without unreasonable delay for criminal charges.
	<input type="checkbox"/>	Humane treatment when deprived of liberty (section 30) – recognises the vulnerability of persons in detention and intends to ensure they are treated humanely. Limitation: an accused person has the right to be segregated from convicted unless reasonably necessary.
	<input type="checkbox"/>	Fair hearing (section 31) – A person has the right to procedural fairness when coming before a court or tribunal.
	<input type="checkbox"/>	Rights in criminal proceedings (section 32) – protects the rights to be presumed innocent until proven guilty and guilt to be proved beyond a reasonable doubt. Also the right to legal representation, to be tried without unreasonable delay and to remain silent.
	<input type="checkbox"/>	Children in criminal proceedings (section 33) – recognises that young persons who become involved in the criminal justice system deserve special protections by virtue of their age. Must not be detained with adults and brought to trial as quickly as possible.
	<input type="checkbox"/>	Right not to be tried or punished more than once (section 34) – protects against double jeopardy – not to be taken to court or punished more than once for an offence they have already been convicted or acquitted.
	<input type="checkbox"/>	Retrospective criminal laws (section 35) – the right to not be found guilty of an offence for an action that was not an offence at the time it was committed. Not to be punished more severely where there has been a change to the law since committing the offence. Entitled to reduction in penalty if the penalty is reduced before sentencing. Law must be precise for a person to know if an act is criminal. Limitation: does not apply where an offence is created after the act/omission where at the time the act/omission was an offence under international law.
	<input type="checkbox"/>	Right to education (section 36) – right of every child to primary and secondary schooling and right of each person, based on their abilities, to further vocational education and training is equally accessible to all.
<input type="checkbox"/>	Right to health services (section 37) – right to access health services without discrimination and not to be refused medical treatment that is immediately necessary to save their life or prevent serious impairment.	

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<p>Step 4</p> <p>Does the proposed act or decision affect (e.g. restrict or interfere) with the relevant rights?</p> <p>If YES, proceed to Step 5.</p> <p>If NO, further consideration is unnecessary. The proposed act or decision does not affect (i.e. restrict or interfere) the relevant rights. Record this outcome. End of assessment.</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Explain here how the act/decision will/will not restrict or interfere with the relevant rights.</p> <p>[It is important to first consider the nature of the human right. This involves looking at the purpose and underlying values of the human right (i.e. what does the right protect?) Also think about whether there are any internal limitations or qualifications within the right (the most significant limitations are set out under each right in Step 3).</p> <p>Include a brief discussion of the nature and scope of each of the protected rights and a clear explanation of how they are impacted by the proposal. It is important to think about the nature of the human right at the start because it helps to work out what it is that is being limited.</p> <p>You only need to provide information about the relevant part of a right that is limited. For example, section 25 of the Human Rights Act 2019 protects both the right to privacy and the right to reputation. If the proposal only limits the right to privacy, there is no need to discuss the right to reputation.</p>
<p>Step 5</p> <p>If the proposed act or decision is going to affect (i.e. restrict or interfere) with the relevant rights, it is necessary to show that the restriction/interference is reasonable and justifiable.</p> <p>That means weighing up the importance of what is being done (i.e. the outcome achieved) against the impact it will have on human rights. This is called a proportionality assessment.</p> <p>Undertake the proportionality assessment by completing the following steps (NB part of the proportionality assessment involves a consideration of the nature of the rights being limited. This has been done at Step 3 and 4 of the checklist and will not be repeated below).</p>	
<p>Step 5(a)</p> <p>Is there a law that allows you to do the proposed act or decision that will limit the relevant right/s?</p> <p>If NO, the proposed act or decision is probably not justifiable as a reasonable limit on the human right.</p> <p>If YES, identify the head of power and proceed to Step (5b).</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Make reference to the relevant Act, Regulation or common law.</p> <p>[The HRA states that a human right may be 'subject under law' to a reasonable limit. If you cannot identify a law to do the proposed act/make the proposed decision, then you may not be able to limit human rights.</p> <p>A 'law' includes an Act, a Regulation or the common law.</p> <p>An act or decision that has the effect of limiting human rights without a head of power is unlikely to be 'reasonably justifiable'.]</p>
<p>Step 5(b)</p> <p>Is the purpose for which you are limiting the relevant rights important?</p> <p>Explain what you are trying to achieve and why. Does it address a specific area of public or social concern that is pressing and substantial?</p> <p>If NO, the proposed act or decision is probably not justifiable as a reasonable limit on the human right.</p> <p>If YES, identify the purpose and its importance and proceed to Step (5c).</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Explain here why the purpose for which you are limiting the relevant rights is important. Does it address a specific area of public or social concern that is pressing and substantial?</p> <p>[Outline the purpose of the proposal (not the limitations - this was done at Step 4 above). Focus on the underlying values and interests of the purpose. Do not simply state what the act/decision will do, explain why it needs to do that and what it is intended to achieve.</p> <p>Importantly, the purpose must be a proper purpose i.e. if it accords with the basic values of society. This means that not every purpose can justify a limitation on a human right. You need to consider whether the purpose of the limitation is sufficiently important to justify limiting a right.</p> <p>Examples of proper purposes include: the protection of the human rights of others and general public interest considerations (such as the protection of the democratic nature of the society or the protection of community safety).]</p>

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<p>Step 5(c)</p> <p>Does the act/decision (that limits the relevant right/s) help achieve the purpose?</p> <p>If NO, the proposed act or decision is probably not justifiable as a reasonable limit on the human right.</p> <p>If YES, proceed to Step 5(d).</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Explain how limiting the human right/s will achieve the outcome and that the rights have only been limited to the extent necessary to achieve the outcome.</p> <p>[There needs to be a connection/relationship between limiting the relevant rights and achieving the purpose/outcome.</p> <p>Describe how the act/decision that limits the right/s helps to achieve the purpose. It does not need to completely achieve the purpose or be the best way of achieving the purpose.</p> <p>Is there material/evidence available to support this? Identify material that demonstrates this, such as research findings, consultation findings, reviews and empirical data (e.g. have these measures been trialled in other jurisdictions and shown to achieve the purpose?).</p> <p>Example: Council proposes to ban a customer from the library because his/her behaviour is causing disruption</p>
<p>Step 5(d)</p> <p>Are there any less restrictive and reasonably available ways to achieve the purpose?</p> <p>Incorporate safeguards where appropriate.</p> <p>If YES, the proposed act or decision is probably not justifiable as a reasonable limit on the human right.</p> <p>If NO, proceed to Step 5(e).</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Explain whether there are less restrictive ways to achieve the purpose and whether safeguards can be incorporated.</p> <p>[Is this the only way to achieve the purpose of the limitation? Are there other ways of achieving the proper purpose just as effectively, but in a way that limits human rights to a lesser degree (i.e. the measure is less restrictive)?</p> <p>Is there any obvious and compelling alternative way to achieve the same purpose and which impacts less on the right? If such an alternative exists, then it cannot be said that the means selected are necessary. Importantly, an alternative measure will only 'achieve the purpose' if it does so 'as effectively' and to the same extent. If a measure achieves the proper purpose to a lesser extent, it will not qualify as a true alternative.</p> <p>Explain alternatives that have been considered and why those alternatives: • would not achieve the purpose identified above and/or</p>
<p>Step 5(e)</p> <p>Is the limitation on the human right/s outweighed by the value of achieving the purpose?</p> <p>Consider whether the balance accords with the values of a free and democratic society based on human dignity, equality and freedom.</p> <p>Pay particular attention to the nature of the human right/s and the importance of the values underlying that right.</p> <p>If YES, the proposed act/decision is compatible with human rights as any limitation is reasonable and justifiable. END OF ASSESSMENT.</p> <p>If NO, the act/decision is probably not justifiable as a reasonable limit on the human right – Reconsider the act/decision.</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Explain the importance of the values underlying the right and whether the limitation is outweighed by the value of achieving the purpose.</p> <p>[This involves weighing up the benefits gained from achieving your proper purpose against the harm caused to the human right from achieving that purpose. Does the measure strike a fair balance between the benefits gained by the public and the harm caused to the right/s of the person/s through the use of the means selected to achieve the proper purpose?</p> <p>The balancing exercise involves comparing the importance of the purpose (which limits the human right) with the importance of the preservation of the human right/s and the extent of the limitation.</p> <p>This comparison considers whether the limiting law strikes a fair balance. The more important the right and the greater the incursion on the right, the more important the purpose of the law will need to be to justify the limitation.]</p>

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