

## **HUMAN RIGHTS COMPATIBILITY ASSESSMENT**

### **Background**

Under section 58(1) of the *Human Rights Act 2019*, public entities are required to:

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

According to section 58(5), giving proper consideration to human rights involves:

- identifying the human rights that are relevant; and
- considering whether the decision would be compatible with human rights.

Under section 8, an act or decision will be compatible with human rights if:

- it does not limit any human right; or
- it limits human rights only to the extent that is reasonable and justified.

A limit on a human right will be reasonable and justified under section 13 if the act or decision:

- is authorised by law;
- has a proper purpose;
- is rationally connected to that proper purpose, in the sense that it helps to achieve the purpose;
- is necessary, in the sense that there is no less restrictive and reasonably available way to achieve the purpose; and
- strikes a fair balance between the importance of the proper purpose and the importance of the human right.

The purpose of this human rights assessment is to ensure compliance with these human rights obligations.

1. Describe the **ACTION OR DECISION** that this assessment considers:

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2. Is there a discretion available to the decision-maker to take the proposed action or decision?

☐ Yes    Proceed to step 3.

☐ No    Set out the legal authority for the decision in step 5 below. After completing step 5, it is not necessary to carry out the rest of this human rights assessment. The reason is that the exception in section 58(2) of the *Human Rights Act* applies.

*Example:* Under s 38 of the *Crime and Corruption Act 2001*, a public official must notify the Crime and Corruption Commission of a complaint,

if they reasonably suspect it involves corrupt conduct. This obligation applies even if the notification will impact human rights.

3. Are any human rights **relevant** to the proposed act or decision? A human right will be relevant if it is potentially limited or promoted by the act or decision.

- |   |   |
|---|---|
| <input type="checkbox"/> Right to equality and non-discrimination (section 15)                          | <input type="checkbox"/> Cultural rights – generally (section 27)   |
| <input type="checkbox"/> Right to life (section 16)   | <input type="checkbox"/> Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28) |
| <input type="checkbox"/> Protection from torture and cruel, inhuman or degrading treatment (section 17) | <input type="checkbox"/> Right to liberty and security of person (section 29)                                 |
| <input type="checkbox"/> Freedom from forced work (section 18)  | <input type="checkbox"/> Right to humane treatment when deprived of liberty (section 30)                      |
| <input type="checkbox"/> Freedom of movement (section 19)   | <input type="checkbox"/> Fair hearing (section 31)  |
| <input type="checkbox"/> Freedom of thought, conscience, religion and belief (section 20)               | <input type="checkbox"/> Rights in criminal proceedings (Section 32)  |
| <input type="checkbox"/> Freedom of expression (section 21)   | <input type="checkbox"/> Children in the criminal process (section 33)  |
| <input type="checkbox"/> Peaceful assembly and freedom of association (section 22)                      | <input type="checkbox"/> Right not to be tried or punished more than once (section 34)                        |
| <input type="checkbox"/> Taking part in public life (section 23)  | <input type="checkbox"/> Retrospective criminal laws (section 35)   |
| <input type="checkbox"/> Property rights (section 24)   | <input type="checkbox"/> Right to education (section 36)  |
| <input type="checkbox"/> Privacy and reputation (section 25)  | <input type="checkbox"/> Right to health services (section 37)  |
| <input type="checkbox"/> Protection of families and children (section 26)                               |   |

Explain how these human rights are relevant:

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*Example:* A decision to publish person's name will interfere with their privacy and therefore engage the right to privacy.

4. Are any human rights **limited** by the proposed act or decision? A human right will be limited if the action or decision places limitations or restrictions or interferes with the human rights of a person.

☐ No     The act or decision is compatible with human rights. Explain why the act or decision does not limit relevant human rights below.

☐ Yes     Identify which human rights are limited and why. Proceed to step 5.

☐ Right to equality and non-discrimination (section 15)

☐ Cultural rights – generally (section 27)

☐ Right to life (section 16)

☐ Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28)

☐ Protection from torture and cruel, inhuman or degrading treatment (section 17)

☐ Right to liberty and security of person (section 29)

☐ Freedom from forced work (section 18)

☐ Right to humane treatment when deprived of liberty (section 30)

☐ Freedom of movement (section 19)

☐ Fair hearing (section 31)

☐ Freedom of thought, conscience, religion and belief (section 20)

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☐ Taking part in public life (section 23)

☐ Retrospective criminal laws (section 35)

☐ Property rights (section 24)

☐ Right to education (section 36)

☐ Privacy and reputation (section 25)

☐ Right to health services (section 37)

☐ Protection of families and children (section 26)

Explain why limited or not limited:

*Example:* Although publishing a person's name interferes with their privacy, the interference is lawful and not arbitrary, taking into account that arbitrary in this context means capricious, unpredictable, unjust, unreasonable or disproportionate to a legitimate aim sought. However, because proportionality and arbitrariness have similar meanings, out of an abundance of caution, consideration will be given to whether the interference with privacy is proportionate below.

5. Is the proposed act or decision authorised by law?

☐ No     The act or decision is **not** compatible with human rights.

☐ Yes     Identify the legal authority for the act or decision.

*Example:* An authorised officer has a power to enter certain places under section 330 of the *Electoral Act 1992*.

6. What is the nature of the human rights that are limited? What is at stake in human rights terms?

*Example:* The value underlying privacy is dignity and personal autonomy. It is important that people have a private realm to which they can retreat.

7. Does the proposed act or decision have a **proper purpose**?

☐ No     The act or decision is **not** compatible with human rights.

☐ Yes     What is the purpose?

*Example:* The purpose of publishing the person's name is to ensure transparency. That is a proper purpose consistent with the values of our society.

8. Does the proposed act or decision **help to achieve** that purpose?

☐ No The act or decision is **not** compatible with human rights.

☐ Yes How does it help to achieve the purpose?

*Example:* Publishing the person's name helps to ensure transparency.

9. Are there a **less restrictive and reasonable available way** to achieve the purpose?

☐ Yes The act or decision is **not** compatible with human rights.

☐ No Explain the alternatives that were considered and why they are not less restrictive or reasonably available:

*Example:* Consideration was given to redacting the person's name and to releasing the person's name to a limited number of people. However, these alternatives would not achieve the purpose of ensuring transparency.

10. Does the proposed act or decision strike a **fair balance** between the importance of the proper purpose and the importance of the human right?

☐ No The act or decision is **not** compatible with human rights.

☐ Yes The act or decision is compatible with human rights.

Explain why it is important to achieve the purpose of the act or decision.  
Explain the importance of the human right, including the extent of the impact on the human right. Explain why one outweighs the other.

*Example:* While publication of the person's name will impact their privacy, that impact is at the lower end of the scale, and is outweighed by the need to ensure transparency.