**HUMAN RIGHTS IMPACT ASSESSMENT**

**Overview**

Cabinet is being asked to give [policy OR ATP or policy/ATP] approval for [insert detail/snapshot of proposal/s]. [DEPARTMENT NAME] has considered whether or not these proposals are anticipated to be compatible with the *Human Rights At 2019* (HR Act).

*If policy submission:* [DEPARTMENT NAME] notes that this assessment is based on the current policy that underpins the proposal, and that as the policy develops human rights limitations may become clearer or further limitations may arises. Cabinet will be provided with a more detailed and fulsome human rights impact assessment at ATP [include this for legislative proposals only].

*If policy/ATP or ATP submission*: [DEPARTMENT NAME] notes that this assessment is based on the current drafting instructions for the proposed amendments, and that there may be variations or changes to the proposals that occur between [policy/ATP or ATP] and ATI. Cabinet will be updated on any changes and the impact of those on the compatibility of the proposals with the HR Act, and a Statement of Compatibility will accompany the Authority to Introduce (ATI) submission.

**Proposal 1: heading**

[Insert brief overview of proposal].

Human rights that are limited by the proposal

[List the human rights under the HR Act that are limited by the proposal, including 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 begin the analysis by considering the nature of the human right at the outset because it helps to identify what it is that is being limited.

An example of how this can be set out is:

The right to privacy and reputation protects [summary of the relevant scope/part of the right]. The measure/provision/Bill limits this right by [describe how the right is being limited].]

It is not appropriate to equivocate about whether or not there is a limit on a right, unless there is a reasonable debate that the right is not limited by a measure, provision or Bill. An example of this reasonable debate is in relation to whether or not voluntary assisted dying measures limit the right to life. If there is some doubt about whether a measure limits a human right or not, it should be assumed that there is a limit and you should proceed to the justification stage of the analysis below.]

Whether or not the limitation on human rights is reasonable and demonstrably justifiable

*The purpose of the limitation*

[Outline the purpose of the proposal and the limitation on human rights. The purpose is a statement of why you are wanting to legislate the measure/provision/Bill in a way that will limit human rights.

Attention must be directed to the nature of the relevant purpose, not the limitation. As with the nature of the right, it is the underlying values and interests of the purpose that are the focus. Do not simply state what the proposed amendment will do, explain why it needs to do that and what it is intended to achieve.

Importantly, the purpose must be a proper purpose. A purpose will only be a proper purpose if it is consistent with a free and democratic society based on human dignity, equality and freedom. That is, a purpose will be proper 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.

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). Examples of improper purposes, that will not justify limiting a human right, might include: where the only purpose of a measure is to limit a human right; or discrimination for the sake of discrimination.]

*Whether the limitation will achieve the purpose*

[Does the limitation help to achieve the purpose and does the limitation fit or suit the purpose it is designed to achieve? That is, do the means further the proper purpose in some way, or does it go some way towards realising or advancing the proper purpose? Explain this, using evidence or empirical data to demonstrates to support the conclusion where possible (for example, have these measures been trialled in other jurisdictions and shown to achieve the purpose?).

If there is competing, unclear or inconclusive evidence, this should be explicitly discussed and accompanied by a justification for why the limitation should still be pursued.]

*Less restrictive, reasonably available alternatives*

[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 (ie, the measure is less restrictive)?

Is the limitation necessary? 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.

Explain alternatives that have been considered and why those alternatives:

* would not achieve the purpose identified above; and/or
* are not reasonably available; and/or
* are not a less restrictive (on human rights) way to achieve the purpose identified.

Discuss any safeguards that have been included to ameliorate the impact of the limitation on the human right/s. For example, safeguards might include (depending on the nature of the measure): narrowing the scope of the measure so that it is tailored; ensuring that only appropriately qualified persons are able to make decisions or exercise powers; restricting access to information or data; ensuring appropriate record keeping mechanisms; and ensuring proper oversight, accountability or review mechanisms.

If the purpose of the limitation can be achieved in another way, that is reasonably available and which would result in a lesser negative impact on the human right, then the limit is likely to be disproportionate and incompatible with the Human Rights Act 2019. It is important to discuss why the alternatives are either not reasonably available or would not achieve the purpose as effectively as the proposal.]

*Fair balance*

[Weigh up the benefits gained by the public from the proposal against the harm that is caused to the human rights. Consider whether the measure strikes a fair balance between the benefits gained by the public by fulfilling the purpose of the limitation, and the harm caused to the human right through the use of the means selected to achieve that purpose.

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.]

**Proposal 2: heading**

[Insert brief overview of proposal].

Human rights that are limited by the proposal

[List the human rights under the HR Act that are limited by the proposal, including 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 begin the analysis by considering the nature of the human right at the outset because it helps to identify what it is that is being limited.

An example of how this can be set out is:

The right to privacy and reputation protects [summary of the relevant scope/part of the right]. The measure/provision/Bill limits this right by [describe how the right is being limited].]

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Whether or not the limitation on human rights is reasonable and demonstrably justifiable

*The purpose of the limitation*

[Outline the purpose of the proposal and the limitation on human rights. The purpose is a statement of why you are wanting to legislate the measure/provision/Bill in a way that will limit human rights.

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[Does the limitation help to achieve the purpose and does the limitation fit or suit the purpose it is designed to achieve? That is, do the means further the proper purpose in some way, or does it go some way towards realising or advancing the proper purpose? Explain this, using evidence or empirical data to demonstrates to support the conclusion where possible (for example, have these measures been trialled in other jurisdictions and shown to achieve the purpose?).

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