# File Note — consideration of human rights Section 58 Human Rights Act

## Purpose Use this File Note to help you consider the human rights implications of a proposed decision or action and conclude if the decision/action is compatible or incompatible with human rights.

## Once completed, store the File Note in your department/agency’s recordkeeping system to support the decision/action if needed.

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| **Author:** |  | | | | | **Date:** |  |
| **Position:** |  | | | | |
| **CC:** |  | | | | | | |
| **RE:** | Compatibility of proposed decision with s58 *Human Rights Act 2019* | | | | | | |
| Decision to: | | | | | | |
| About the Decision | | | | | | | |
| **Details of proposed decision** | | |  | | | | |
| *What is the decision you are proposing to make?* | | |
| **Purpose / policy objective(s)** | | |  | | | | |
| *What is the reason behind making the decision? What are you trying to achieve by making the decision?* | | |
| **Legal basis for decision** | | |  | | | | |
| *Which law authorises you to make the decision? What rules do you have to comply with? Are you legally required to act or to make the decision in this way?* | | |
| Considering Human Rights | | | | | | | | | |
| Identification of Rights and Limits – s8 Human Rights Act | | | | | | | | | |
| **Human Rights engaged**  *A human right is ‘engaged’ if the right is relevant, or ‘apparently limited’. A right may be relevant because the decision interferes with it, or it may be relevant if the right is promoted.*  *For more information on each right, check the* [*Human Rights Act 2019*](https://www.legislation.qld.gov.au/view/html/inforce/current/act-2019-005) *or the* [*Guide: Nature and Scope of Human Rights*](https://www.forgov.qld.gov.au/__data/assets/pdf_file/0025/183922/Nature-and-scope-of-the-rights.pdf) | | | s15 - recognition and equality before the law  s16 - right to life  s17 - protection from torture and cruel, inhuman or degrading treatment  s18 - freedom from forced work  s19 - freedom of movement  s20 - freedom of thought, conscience, religion and belief  s21 - freedom of expression  s22 - peaceful assembly and freedom of association  s23 - taking part in public life  s24 - property rights  s25 - privacy and reputation | | | s26 - protection of families and children  s27 - cultural rights—generally  s28 - cultural rights—Aboriginal peoples and Torres Strait Islander peoples  s29 - right to liberty and security of person  s30 - humane treatment when deprived of liberty  s31 - fair hearing  s32 - rights in criminal proceedings  s33 - children in the criminal process  s34 - right not to be tried or punished more than once  s35 - retrospective criminal laws  s36 - right to education  s37 - right to health services  NONE IDENTIFIED | | | |
| Explanation / Notes  Explain how you think the rights identified might be engaged by the decision. | | | | | | |
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| **Details of any limitations**  *A human right is limited if the decision places limitations or restrictions on, or interferes with, the human rights of a person.*  *If the decision apparently limits a human right which protects against an ‘arbitrary’ interference, you should assume there is a limitation and complete the sheet. If you conclude that that decision is compatible with human rights, then in fact there will be no ‘limit’ to that right (because it will not be arbitrary).* | | | Limitations on Rights  List the rights you think may be limited by the decision. | | Details of limit  Explain how you think the right might be limited by the decision, or, if you don’t think a right is limited, explain why. | | | | |
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| **No limits identified: decision compatible with human rights.**  **Limits identified, or right contains internal ‘arbitrariness’ factor: justification analysis required.** | | | | | | |

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| Limit Justification Analysis – s13 Human Rights Act | | | |
| **Proper Purpose**  *Examples of a proper purpose include:*   * *Protecting public health and safety.* * *Promoting human rights of others.* * *Maintaining public order.* * *Preserving the public revenue.* | *Is the purpose ‘consistent with a free and democratic society based on human dignity, equality and freedom’?* | | |
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| **How purpose achieved**  *Explain how the limitation on human rights helps to achieves the purpose in some way.* |  | | |
| **Other options considered**  List any alternative options and evaluate these:  **Restrictiveness**  To what extent does the alternative limit human rights compared to the proposed decision?  **Effectiveness**  How effective is the alternative at achieving the purpose compared to the proposed decision?  **True Alternatives?**  Is there is an alternative option which is less restrictive to human rights butas effective or more effective in achieving the purpose? If so, that alternative is a ‘true alternative.’  If there is a true alternative to the proposed decision, the decision is **not** compatible with human rights. | Alternative Option | Evaluation*less same more* | Conclusion & Explanation |
|  | Restrictiveness:  Effectiveness: | True alternative /  Not a true alternative |
|  | Restrictiveness:  Effectiveness: | True alternative  Not a true alternative |
|  | Restrictiveness:  Effectiveness: | True alternative  Not a true alternative |
| Extent of the limit  Consider below whether the limit on human rights only goes as far as necessary to achieve the purpose. You may wish to list features of the act/decision/legislation which reduce the extent of the limitation on human rights. | | |
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| Limit Justification Analysis – continued | | |
| **Balance & justification:**  Compare the impact of the proposed limitation with the importance of the policy objective.  Think about:   * How big or deeply felt is the limitation on rights? * How important is the policy objective? * How many people will be impacted by the limitation on rights? * How many people will be affected if the purpose is achieved? * How great is the likelihood that the right will be limited? * How certain is it that limiting the right will achieve the purpose? | Limitation | Proper Purpose |
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| Appropriate balance  Do the benefits gained by fulfilling the purpose of the limit(s) outweigh the harms of limiting the human right(s)? If yes, explain why (or write your explanations in the boxes above). | |
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| **Conclusion on Compatibility** | **Compatible with human rights**  **Incompatible with human rights** | |