

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	
STEPS	ASSESSMENT OUTCOME
<p>Step 1</p> <p>Ask whether the act or decision is made under a law that gives no choice (discretion) in relation to the act or decision? Or does the Act/instrument confer a discretion that cannot be interpreted in a way that is consistent with human rights?</p> <p>NOTE: the focus here is whether you can't reasonably act differently or make a different decision that does not limit human rights. It will not be 'reasonable' to limit human rights if there is a discretion that enables you to act or make a decision that does not impose limits.</p> <p>If YES, then you do not need to consider human rights in relation to the proposed act or decision. Record this outcome. End of assessment.</p> <p>If NO, proceed to Step 2.</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Discuss whether the act/decision was made under a law that provided no discretion in relation to the act/decision or whether any discretion cannot be interpreted in a way consistent with human rights</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>Step 3</p> <p>Consider the scope of each human right potentially affected:</p> <ul style="list-style-type: none"> ▪ identify each right ▪ consider the content of each right and apply any specific limitations or express exemptions. <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>	<p>The following rights are potentially affected (tick whichever applies):</p>
	<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 (XYZ v Victorian Police [2010] VCAT 255)
	<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.	

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.	

<p>Step 4</p> <p>Ask 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>Step 5</p> <p>If there is a limitation (restriction or interference), is that limitation reasonably and demonstrably justifiable (proportionality assessment)?</p> <p>Undertake the proportionality assessment by completing the steps below.</p>	
<p>Step 5(a)</p> <p>Is the limitation provided in an Act, Regulation or common law?</p> <p>If NO, the limit/s contained in the proposal 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>Step 5(b)</p> <p>Is the purpose of the limitation important?</p> <p>Articulate the purpose of the proposed limitation on human rights. Does it address a specific area of public or social concern that is pressing and substantial?</p> <p>If NO, the limit/s contained in the proposal is probably not justifiable as a reasonable limit on the human right.</p> <p>If YES, identify the purpose of the proposed limitation and importance and proceed to Step (5c).</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Explain here why the purpose of the limitation is important. Does it address a specific area of public or social concern that is pressing and substantial?</p>

<p>Step 5(c)</p> <p>Is material available that demonstrates that the proposed limitation is important?</p> <p>Material may include researching findings, consultation findings, review and empirical data.</p> <p>If material is not available, gather material and reconsider the decision.</p> <p>If NO, the limit/s contained in the proposal is probably not justifiable as a reasonable limit on the human right.</p> <p>If YES, identify the material and proceed to Step 5(d).</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Make reference to relevant material and make sure to keep a copy.</p>
<p>Step 5(d)</p> <p>Is the limitation on the right rationally and proportionally connected to the objective you are trying to achieve?</p> <p>Consider whether the limitation is likely to achieve the objective and whether the decision limits the right only to the extent necessary to achieve the objective.</p> <p>If NO, the limit/s contained in the proposal is probably not justifiable as a reasonable limit on the human right.</p> <p>If YES, proceed to Step 5(e).</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Explain how the limitation will achieve the outcome and that the limitation is only to the extent necessary to achieve the outcome.</p>
<p>Step 5(e)</p> <p>Does the limitation fall within the range of reasonable approaches to achieve the purpose?</p> <p>Consider whether there are less restrictive means to achieve the purpose of the limitation.</p> <p>Incorporate safeguards where appropriate.</p> <p>If NO, the limit/s contained in the proposal is probably not justifiable as a reasonable limit on the human right.</p> <p>If YES, proceed to Step 5(f).</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Explain whether there are less restrictive ways to achieve the purpose of the limitation and whether safeguards can be incorporated.</p>

Step 5(f)

Is the limitation on the human right outweighed by the value of achieving the purpose?

Consider whether the balance accords with the values of a free and democratic society based on human dignity, equality and freedom.

Pay particular attention to the nature of the human right and the importance of the values underlying that right.

**If YES, the limit contained in the proposal is probably justified as a reasonable limit on the human right –
END OF ASSESSMENT.**

**If NO, the limit/s contained in the proposal is probably not justifiable as a reasonable limit on the human right –
Reconsider the act/decision.**

Yes No

Explain the importance of the values underlying the right and whether the limitation is outweighed by the value of achieving the purpose.