

Mr Bruce Newey
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via email – Law.Reform@utas.edu.au

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Dear Mr Newey

RE: TLRI Review: A Charter of Rights For Tasmania Update

I welcome the TLRI's timely review of the 2007 inquiry into the need for a Tasmanian Charter of Human Rights, to which I now seek to make a short submission.

I recognise that as a review to an existing report the TLRI is not conducting a full inquiry involving open community consultation but is instead prioritising targeted information and involvement from relevant experts and peak bodies, some of which provided input into the institute's current reference. However, additional to my previous involvement in key community peak bodies prior to my election to the Legislative Council last year, as a current legislator I believe I have a unique perspective to contribute to this important debate.

The TLRI provided as a contribution guide the following:

- Does your organisation possess any research or statistics that relate to how the protection of human rights may have changed since 2007 (the year in which the TLRI released its original report recommending a Charter of Rights)?
- Are you aware of any human rights related matters in the relevant period that may not have occurred, or may have had a different outcome, had Tasmania implemented a Charter of Rights?
- ***Are you aware of any human rights matters in Australian jurisdictions that have adopted human rights instruments (Vic, ACT, Qld) that you consider have been dealt with differently than equivalent matters in Tasmania because of the existence of a human rights instrument? If so, what was the nature of the differential treatment and what role did the instrument play in producing a different outcome?***
- ***Are you aware of any changes to law and governance structures that have had an effect on the protection of human rights in Tasmania in the period since 2007?***

I will focus upon the last two dot points, as I'm sure other contributors will discuss more specific examples of human rights concerns and case studies in relation to the other questions.

Interstate jurisdictions with human rights instruments

Victoria, Queensland and the Australian Capital Territory, currently all deal with any equivalent legislative matters to Tasmania in a fundamentally different manner due to their respective human rights legislative framework. As the Queensland Legislation Handbook states:

When the Government is developing policy and legislation, human rights must be actively considered and taken into account. The purpose of integrating a human rights framework into policy development is to improve government decision-making by ensuring that policy outcomes meet the standards set out in the Act.¹

Additional to the required Regulatory Impact Statements which are a standard requirement during a Bill's development in most western parliaments, Victoria, Queensland and the ACT also have a mandatory requirement that proposed Bills are accompanied by statements of compliance against human rights considerations and/or Human Rights certificates, which are made publicly available. These statements and certificates seek to provide a balanced and transparent mechanism for assessing the human rights impacts of proposed laws, inform parliamentary debate, and facilitate broader public debate about human rights.

In contrast, Tasmania's regulatory impact statements for Bills, or any other economic and social etc evaluation, tend to be limited to Cabinet's consideration and generally are not provided to the Parliament or the public.

Queensland requires all Bills, both government and Private Members, introduced into the Parliament to be accompanied by a Statement of Compatibility. The responsible member introducing a Bill must also table this Statement of Compatibility. Similarly, subordinate legislation must be accompanied by a Human Rights Certificate. (Templates are attached as Appendix 1 and Appendix 2).

Queensland's *Human Rights Act 2019* also requires public entities such as government agencies to report on human rights considerations in their annual reports. Entities must disclose:

- details of actions taken to further the objects of the Act
- details of human rights complaints received by the entity, including number and outcome of complaints and other information prescribed by regulation
- details of reviews of policies, programs, procedures, practices or services undertaken for compatibility with human rights.

Victoria's *Charter of Human Rights and Responsibilities Act 2006* requires all Bills introduced into Parliament must be accompanied by a statement of compatibility. All statutory provisions (i.e. Acts, regulations and other subordinate legislation) must be interpreted in a way that is compatible with human rights (so far as it is possible to do so consistently with the purpose of the provision). The Scrutiny of Acts and Regulations Committee of Parliament has the responsibility of reviewing statements of compatibility for Bills.

The ACT's *Human Rights Act 2004* requires all policy approvals for the drafting of Bill submitted to Cabinet to include an analysis of human rights implications and recommendations regarding 'significant bill' status, as well as a Human Rights Memorandum of Compatibility when the final drafted significant Bill is provided to Cabinet. Where a bill is identified as significant, this is recorded in the Cabinet decision and a more detailed human rights proportionality analysis is required within the Explanatory Statement. For a bill that is **not** identified as significant, the Explanatory Statement still requires a human rights analysis for any provisions limiting human rights to ensure that limits are reasonable and demonstrably justified in accordance with the *Human Rights Act 2004*. A Bill's final package of support material to be submitted to Cabinet must include a memorandum from the Standing Committee on Justice and Community Safety on whether the Bill is compatible with the *Human Rights Act 2004*.

¹ Queensland Government, *Queensland Legislation Handbook*, Section 8.0.

All bills presented to the Legislative Assembly by a Minister must be accompanied by a human rights compatibility statement signed by the Attorney-General. This statement is included in the Explanatory Statement.

The above three interstate jurisdictions demonstrate rigorous and systematic attempts to integrate consideration of human rights impacts from the initial proposal of legislation through to its eventual debate. These three frameworks not only require publicly released human rights statements of compliance for legislation, this required component of the legislation development process is detailed in publicly available Cabinet and parliament handbooks, with templates and guidelines provided. This degree of systematic transparency is not currently found in the Tasmanian legislative process.

It is widely recognised that an intent of Human Rights Acts and/or Charters is to foster and build a human rights culture across governance structures, including the public sector and elected representatives, the private sector and the broader community. There are many mechanisms and forums through which human rights frameworks seek to effect change, which is beyond the scope of this submission to examine. Instead I wish to emphasise the important role a Tasmanian human rights legislated framework would have in facilitating a much needed human rights-oriented culture in government, from state service departmental staff working on public policy through to government and non-government members of parliament when developing, debating and implementing legislation, and including our courts and tribunals when interpreting the law. In turn, that leadership should also facilitate the development of a human rights culture across stakeholders, local government, and the broader community.

As a legislator, I believe the introduction of required Human Rights compatibility statements for all Bills, subordinate legislation and other instruments would help ensure Tasmanians' human rights considerations are automatically integrated into the development and debate of legislation presented to the parliament in a systematic and transparent manner, that is currently sorely lacking.

The COVID-19 Pandemic

This year's coronavirus pandemic highlighted the stark distinction between Tasmania and those three interstate jurisdictions with pre-existing human rights legislative frameworks, particularly in context of parliamentary responsibility and accountability.

It is of deep and ongoing concern that at a critical time where Tasmanians' civil liberties and freedoms were being limited – even temporarily – there was minimal parliamentary scrutiny. During the height of the pandemic and following the state's declared State of Emergency the parliament sat less than 20 days, with sessions further limited with standard scrutiny tools such as Question Time suspended. As a further contrast, the other three jurisdictions all established their respective Parliamentary committees into their COVID-19 Response, whereas Tasmania did not (in June the Public Accounts Committee adopted a terms of reference to inquire into the state government's economic and health expenditure response to the COVID -19 pandemic, but it is not a comprehensive oversight inquiry).

Tasmania's pandemic response and State of Emergency saw numerous and extraordinary Bills and subsidiary legislative instruments passed with limited scrutiny. Given the public health nature of the crisis emergency legislation, by definition, needs to be introduced swiftly, however, as stated by the ACT Human Rights Commission:

A human rights-based approach to such rapid law-making during a public emergency must involve greater accountability and responsive scrutiny mechanisms. Considered oversight plays a vital role in ensuring that any preventative measures are targeted to their purpose, feature adequate safeguards, mitigate against unforeseen consequences and, in turn, are deserving of the public's confidence. Human rights scrutiny is especially essential where legislative instruments, like the public health directions, determine obligations that may be punishable, for example by attracting fines or potential imprisonment for non-compliance.²

A key advantage held by legislators in the ACT, Victorian and Queensland parliaments compared with Tasmanian elected representatives, were the human rights statements of compatibility provided with each substantial or primary COVID-19 related Bill presented to Parliament, and in Queensland's case Human Rights certificates were also provided with subordinate legislation. While I note there can still remain contrary views regarding the rigor and adequacy of individual Bill's human rights certificates, they still serve a valuable function by formalising and legitimising the expectation that the evaluation of potential human rights is an integral component of both the government's role and the parliament's scrutiny function.

These legislative frameworks ensured that during one of the most disruptive periods in living memory, the citizens of those three jurisdictions were guaranteed that bureaucratic and government decision-makers were required to consider formally any impacts on their freedoms and liberties. These formal considerations were then made public via the parliament where they could both inform public debate, as well as be publicly scrutinised by stakeholders and the broader community.

Of particular note, in the Tasmanian context is the variable scrutiny applied to subordinate legislation during the COVID emergency period. Notices made under the covid-19 specific legislation were scrutinised by the Subordinate Legislation Committee while Directions made under both the Public Health Act and the Emergency Management Act received no scrutiny by that Committee. It was those Directions which detailed the ongoing changes to the community's daily freedom of movement and activities, with potential relevance to people's human rights.

ACT

ACT's *Select Committee on COVID-19 Pandemic Response Interim Report No. 2* included amongst its recommendations the following:

1. The Committee recommends the ACT Government direct that all delegated legislation made in response to COVID-19 (including notifiable instruments) include a statement of compatibility outlining whether and how the instrument is compatible with human rights.
2. The Committee recommends that where emergency measures are introduced by way of delegated legislation, they should be accompanied by a statement of compatibility with human rights.
3. The Committee recommends that delegated legislation made in response to COVID-19 be in the form of disallowable instruments, rather than notifiable instruments to ensure appropriate and adequate oversight by the Legislative Assembly.³

The ACT government, in its formal response to the Committee's report stated:

² ACT Human Rights Commission, *COVID-19 and human rights factsheet*, 2020.

³ *Select Committee on COVID-19 Pandemic Response Interim Report 2*, ACT Legislative Assembly, May 2020; pg 2.

The Government has recently delivered on an election commitment to introduce a new process whereby all 'Significant Bills' are now accompanied by detailed human rights analysis in the explanatory materials. That is in addition to the Government's existing practice to include a discussion in the explanatory statement for every Government Bill which deals with the Bill's interactions with human rights.⁴

Further, in relation to delegated legislation, the ACT government stated:

Where delegated legislation made in response to the COVID-19 public health emergency has significantly engaged human rights, and it had been warranted and feasible to undertake detailed human rights analysis in the context of a fast moving public health emergency, this analysis has been undertaken and made publicly available. The Government intends to continue this practice, and to assess the engagement of human rights by delegated legislation on a case-by case-basis... Importantly, while there is currently no legislative requirement that delegated legislation include a statement of compatibility with human rights, the ACT Government is committed to acting compatibly with the Human Rights Act 2004. This intention extends to delegated legislation made in response to the COVID-19 public health emergency.

Ensuring delegated legislation complies with human rights is routine and is the way the ACT Government operates. This approach has not changed in the current environment.⁵

A similar approach by the Tasmanian government as that recommended by the ACT Committee to our state's COVID-19 related emergency primary and subordinate legislation would have been desirable and advisable.

Victoria

The Victorian Parliament released its *Statement of Compatibility in relation to the COVID-19 Omnibus (Emergency Measures) Bill 2020*, in accordance with section 28 of the *Charter of Human Rights and Responsibilities Act 2006*. Despite this, concerns were still raised by human rights advocates, particularly regarding the impact of 'hard lockdowns' and impacts upon public housing communities, and anti-mask protests. This does not invalidate the important role the Victorian Charter of Human Rights played in the government's pandemic response, but does demonstrate the importance of having a framework within which those tensions can be recognised and tested.

Queensland

At the time of writing Queensland had implemented at least 23 legislative instruments, Acts and Regulations, all of which had attached Human Rights Statements of Compatibility and Certificates. Two examples of which are listed under References below.

It is beyond the scope of this submission to attempt to evaluate whether the human rights frameworks available in these three jurisdictions resulted in different approaches and different human rights impacts compared to Tasmania during the pandemic.

However, as a legislator attempting to meet my responsibility to the Tasmanian electorate during extraordinary semi-suspended parliamentary circumstances and under urgent timeframes the provision of human rights compliance certificates for both primary and subordinate legislation would have enhanced immeasurably the parliament's scrutiny capacity in this regard, as well as potentially boosted public confidence in the necessity for the emergency restrictions. Instead of a mandated

⁴ *Government Response to the Select Committee on COVID-19 Pandemic Response Interim Report 2*, ACT Legislative Assembly, July 2020; pg 6.

⁵ *Ibid.*

integrated, formal and transparent evaluation process that placed the human rights of our citizens upfront and central during this crisis period, we had to rely upon fragmented, ad hoc and unsubstantiated reassurances volunteered by those implementing the human rights restrictions, on the few occasions they were pressed to do so.

Human Rights Commissions

It is also worth noting the educative roles of the ACT's, Queensland's and Victoria's respective Human Rights Commissions during the pandemic. Specifically, their role in providing community information and support in understanding the need to balance competing human rights considerations, especially during times of crisis, providing support to the community, and also undertaking valuable research to assist in policy development.

- ***Are you aware of any changes to law and governance structures that have had an effect on the protection of human rights in Tasmania in the period since 2007?***

Within a parliamentary context, there appears to be a reduced focus on providing dedicated public forum to explore community initiatives or impacts of public policy and legislation development.

Prior the 2018 state election the House of Assembly used to have two Standing Committees: the Environment, Resources and Development Committee, and the Community Development Community. Neither of which have been reinstated this term of government. While there are some joint House Standing Committees, such as Public Accounts and Public Works, they do not have a dedicated social or community development focus. The Legislative Council has Government Administration Sessional Committees A and B which do have the capacity to inquire into policy and legislative matters.

While each House can establish Select Committees the previous Assembly Standing Committees were intended to facilitate smoothly the referral of policy issues, and/or Bills which may warrant further detailed examination, including matters which may impact upon sectors of the community's rights.

South Australia	Social Development Joint House Standing Committee
Western Australia	Community Development and Justice Standing Committee
Queensland	Legal Affairs and Community Safety Committee; ad the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee
New South Wales	Community Services Standing Committee (Assembly); Social Issues Standing Committee (Council)
Victoria	Legal and Social Issues Standing Committee (Assembly); and Legal and Social Issues Standing Committee (Council).
ACT	<i>yet to re-establish Committees post 2020 election – previously Justice and Community Safety Standing committee, and Health, Ageing and Community Services Standing Committee, ad Education, Employment and Youth Affairs Standing Committee</i>
Northern Territory	Instead of a Standing Committee, previously had a Social Policy Scrutiny Sessional Committee
Tasmania	- <i>(Assembly relies upon ad hoc Select Committees. As discussed above Legislative Council has opportunity via Sessional Committees A & B)</i>

The Tasmanian Parliament's current lack of a social or community focused Standing Committee is not necessarily related to the absence of a Human Rights Act per se, but it does indicate key

governance institutions are not prioritising the provision of these vital public policy discussion and testing forums. It is arguable, this lack of focus and interest is indicative of a governance culture that does not value direct engagement with the community on matters directly affecting the community. There is a structural and systemic disengagement between governance institutions, including the Parliament, and the community.

In the absence of a human rights legislative framework, the limited alternative governance policy development and testing forums such as dedicated parliamentary standing committees, means there is greater potential for human rights issues to 'fall through the gaps'. The introduction of a Tasmanian human rights legislative framework would assist in reengaging our governance institutions with the interests of Tasmanians in a responsive and accountable manner.

Thank you again for the opportunity to contribute to this important review of the 2007 Report and the ongoing need for a Charter of Human Rights for Tasmania.

Yours



Meg Webb MLC
Independent Member for Nelson

References:

- [ACT Parliament, *Select Committee on the COVID-19 pandemic response Interim report No. 2, May 2020.*](#)
- [ACT Government, *Response to interim report2 COVID-19 pandemic response, 2 July 2020.*](#)
- [Mclean H, and Huf B, *Emergency Powers, Public Health and COVID-19 Research Paper No. 2, Department of Parliamentary Services, Parliament of Victoria, August 2020.*](#)
- [Parliament of Victoria, *COVID-19 Omnibus Emergency Measures Bill 2020.*](#)
- [Queensland Government, *Queensland Legislation Handbook, Section 8.0.*](#)
- [Queensland Government, *COVID-19 Emergency Response Bill 2020 Statement of Compatibility, April 2020.*](#)
- [Queensland Government, *Corrective Services \(COVID-19 Emergency Response\) Regulation 2020 Human Rights Certificate, June 2020.*](#)

Appendix 1: Queensland's Human Rights Statement of Compatibility Template

XXXX Bill 20XX

Statement of Compatibility

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 38 of the *Human Rights Act 2019*, I, XXXX, Minister for [portfolio] make this statement of compatibility with respect to the XXXX Bill 20XX.

[Choose one of the following statements as the case may be, and delete the other]

In my opinion, the XXXX Bill 20XX is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

[OR]

In my opinion, part of the XXXX Bill 20XX is not compatible with the human rights protected by the *Human Rights Act 2019*. The nature and extent of the incompatibility is outlined in this statement. In my further opinion, the remainder of the Bill is compatible with the rights protected by the *Human Rights Act 2019* for the reasons outlined in this statement.

Overview of the Bill

[Provide an overview of the Bill and state its intended general purpose]

Human Rights Issues

Human rights relevant to the Bill (Part 2, Division 2 and 3 *Human Rights Act 2019*)

[Identify each human right, if any, that the Bill, if enacted, may subject to limitation or otherwise affect.

If a human right may be affected, identify the relevant clause/s of the Bill that may have such an affect and each such human right.

Analyse how the clause interacts with the right, including the degree to which it will restrict the operation of the right or whether the scope of the right is unaffected.

It may be clear at this stage of the analysis that the Bill (or a specific clause of the Bill) is compatible with the relevant right/s that it has an effect upon.]

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

[If a clause of the Bill limits, restricts or interferes with the relevant human right/s you have identified above, analyse in detail whether the limitation is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom under section 13 of the *Human Rights Act 2019* (all human rights protected under the *Human Rights Act 2019* may be subject to a limitation imposed in accordance with section 13).

You should address all of the relevant factors including the following (note: the factors listed below are not exhaustive and are intended to be used as a guide):

(a) the nature of the right

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.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

Not every purpose can justify a limitation on a human right. Whether the purpose of a law limiting a human right is consistent with the values of a free and democratic society may be relevant in considering whether the limit is reasonable and justified.

Is the purpose of the limitation sufficiently important to justify limiting a right? The purpose must relate to concerns that are pressing and substantial in a free and democratic society.

Examples of such purposes include the protection of the rights of others and public interest considerations, including the protection of the democratic nature of the society.

Where possible, include empirical data that demonstrates that the limitation is important.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

Does the limitation help to achieve the purpose of the Bill if enacted, and does the limitation fit or suit the purpose it is designed to achieve?

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill.

Is this the only way to achieve the purpose of the Bill, which, if enacted may impose a limitation on human rights? Is this the least restrictive way (or the option that has the least impact on human rights)? Include any safeguards that have been incorporated to restrict the impact of the limitation.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

Do the benefits gained by fulfilling the purpose of the Bill if enacted, which may impose a limitation on human rights, outweigh the harm caused to the human right?

The importance of the purpose of limiting the human right may be considered on one side of the scales. The importance of the human right and the extent of the limitation of the right may be considered on the other side of the scales.

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.

(f) any other relevant factors

For example, does the Bill replace previous legislation that provided for a legislative regime with less safeguards for the protection of rights?]

Conclusion

[This section should include the conclusion about why the Bill is compatible with human rights; or if not compatible, the nature and extent of the incompatibility.]

[Choose one of the following statements as the case may be, and delete the other]

In my opinion, the **XXXX** Bill **20XX** is compatible with human rights under the *Human Rights Act 2019* because [it does not limit a human right / it limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with s 13 of the Act].

OR

In my opinion, part of the **XXXX** Bill **20XX** is not compatible with the human rights protected by the *Human Rights Act 2019*. In my further opinion, the remainder of the Bill is compatible with protected human rights.

[Provide a summary of the nature and extent of incompatibility as identified in the above analysis.]

[NAME OF MINISTER]
[TITLE OF MINISTER]

Appendix 2: Queensland's Subordinate Legislation Human Rights Certificate Template

[Insert title of certified subordinate legislation]

Human Rights Certificate

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 41 of the *Human Rights Act 2019*, I, **XXXX**, Minister for **[portfolio]** provide this human rights certificate with respect to the **[Insert title of certified subordinate legislation]** made under the **XX Act 20XX**.

In my opinion, the **[Insert title of certified subordinate legislation]**, as tabled in the Legislative Assembly, is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

[OR]

In my opinion, part of the **[Insert title of certified subordinate legislation]**, as tabled in the Legislative Assembly, is not compatible with the human rights protected by the *Human Rights Act 2019*. The nature and extent of the incompatibility is outlined in this statement. In my further opinion, the remainder of the **[Insert title of certified subordinate legislation]** is compatible with the rights protected by the *Human Rights Act 2019* for the reasons outlined in this statement.

Overview of the Subordinate Legislation

[Provide an overview of the subordinate legislation, the authorising law, and state its general purpose.]

Human Rights Issues

Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 *Human Rights Act 2019*)

[Identify each human right that the subordinate legislation will affect or engage.]

For each relevant right, identify the relevant clause/s of the subordinate legislation that will have an effect on that human right.

Analyse how the clause interacts with the right, including the degree to which it will restrict the operation of the right or whether the scope of the right is unaffected.

It may be clear at this stage of the analysis that the subordinate legislation (or a specific clause of the subordinate legislation) is compatible with the relevant right/s that it has an effect on.]

Consideration of reasonable limitations on human rights (section 13 *Human Rights Act 2019*)

[If a clause of the subordinate legislation limits, restricts or interferes with the relevant human right/s you have identified above, analyse in detail whether the limitation is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom under section 13 of the *Human Rights Act 2019* (all human rights protected under the *Human Rights Act 2019* may be subject to a limitation imposed in accordance with section 13).

You should address all of the relevant factors including the following (note: the factors listed below are not exhaustive and are intended to be used as a guide):

(g) the nature of the right

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.

(h) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

Not every purpose can justify a limitation on a human right. Whether the purpose of a law limiting a human right is consistent with the values of a free and democratic society may be relevant in considering whether the limit is reasonable and justified.

Is the purpose of the limitation sufficiently important to justify limiting a right? The purpose must relate to concerns that are pressing and substantial in a free and democratic society.

Examples of such purposes include the protection of the rights of others and public interest considerations, including the protection of the democratic nature of the society.

Where possible, include empirical data that demonstrates that the limitation is important.

(i) the relationship between the limitation and its purpose, including whether the limitation helps to 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?

(j) whether there are any less restrictive and reasonably available ways to achieve the purpose

Is this the only way to achieve the legitimate purpose of the limitation? Is this the least restrictive way (or the option that has the least impact on human rights)? Include any safeguards that have been incorporated to restrict the impact of the limitation.

(k) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

Do the benefits gained by fulfilling the purpose of the limitation outweigh the harm caused to the human right?

The importance of the purpose of limiting the human right may be considered on one side of the scales. The importance of the human right and the extent of the limitation of the right may be considered on the other side of the scales.

The balancing exercise involves comparing the importance of the purpose of limiting the human right with the importance of the human right and the extent of the limitation. 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 will need to be to justify the limitation.

(l) any other relevant factors

For example, does the subordinate legislation replace previous legislation that provided for a legislative regime with less safeguards for the protection of rights?]

Conclusion

[This section should include the conclusion about why the subordinate legislation is compatible with human rights.]

I consider that the [Insert title of certified subordinate legislation] is compatible with the *Human Rights Act 2019* because [it does not raise a human rights issue / it raises human rights issues but does not limit human rights / it does limit, restrict or interfere with a human right, but that limitation is reasonable and demonstrably justified in in a free and democratic society based on human dignity, equality and freedom].

OR]

I consider that part of the [Insert title of certified subordinate legislation] is not compatible with the Human Rights Act 2019 to the extent outlined in this statement. I further consider that the remainder of the [Insert title of certified subordinate legislation] is compatible with the *Human Rights Act 2019* because [it does not raise a human rights issue / it raises human rights issues but does not limit human rights / it does limit, restrict or interfere with a human right, but that limitation is reasonable and demonstrably justified in in a free and democratic society based on human dignity, equality and freedom].

[NAME OF MINISTER]
[TITLE OF MINISTER]