**[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.

[This section should make an introductory statement about the compatibility of the subordinate legislation.

The definition of compatibility with human rights under section 8 of the *Human Rights Act 2019* means that a measure, provision or subordinate legislation (as the case may be) either is or is not compatible with human rights. Compatibility is a binary concept, and the Minister must come to a clear conclusion (in their own opinion) about the compatibility of the measure, provision or subordinate legislation.

This means that it is not appropriate for a human rights certificate to:

* equivocate about the compatibility of a measure, provision or subordinate legislation (as the case may be); or
* express equivocation by deferring to the judgment call of another institution (such as the Parliament).

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

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 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, if any, that the subordinate legislation, if enacted, may subject to limitation or otherwise affect.

You should also identify which measures or clauses in the subordinate legislation limit which human rights.

Depending on the nature and complexity of the subordinate legislation, it may be convenient to do this using a bullet-point list.]

**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 using the sub-headings set out below.]

1. 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 (i.e., what does the right protect?). Consider the status of the right at international law, and also whether there are any internal limitations or qualifications within the right.

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.

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 subordinate legislation. 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.

Many rights protected under the *Human Rights Act 2019* contain multiple parts and protect different aspects of a right. You only need to provide information about the relevant part of a right that is limited by the subordinate legislation. For example, section 25 of the *Human Rights Act 2019* protects both the right to privacy and the right to reputation. If the subordinate legislation only limits the right to privacy, there is no need to discuss the right to reputation.

It is also necessary to explain discuss **how** the subordinate legislation engages each human right. A human right is engaged when the legislation places limitations or restrictions on, or interferes with, the human rights of a person. Ensure the explanation is clear about how the human right is being limited, restricted or interfered with.

An example of how this can be set out is:

The right to [*identify the relevant right from the Human Rights Act 2019*] protects [*summary of the relevant scope/part of the right*]. The measure/provision/subordinate legislation limits this right by [*describe how the right is being limited*].]

1. 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

[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/subordinate legislation 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.]

1. 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? 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?

If the proposal does not actually help to achieve the purposes identified above, then those purposes cannot be used as the reason why human rights are being limited.

Where possible, include evidence or empirical data to demonstrate that the limitation will actually achieve the purpose identified above (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.]

1. whether there are any less restrictive and reasonably available ways to achieve the purpose

[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.]

1. 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

[This involves weighing up the benefits gained from achieving your proper purpose against the harm caused to the human right from achieving that purpose. Does the measure strike a fair balance between the benefits gained by the public and the harm caused to the right through the use of the means selected to achieve the proper purpose?

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. 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.]

1. 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; or if not compatible, the nature and extent of the incompatibility.

The definition of compatibility with human rights under section 8 of the *Human Rights Act 2019* means that a measure, provision or subordinate legislation (as the case may be) either is or is not compatible with human rights. This means that compatibility is a binary concept, and the Minister must come to a clear conclusion about the compatibility of the subordinate legislation.

It is not appropriate for a human rights certificate to equivocate about the compatibility of a measure, provision or subordinate legislation (as the case may be), nor is it permissible for it to express equivocation by deferring to the judgment call of another institution (such as the Parliament). The Minister is required to make their own judgment call about the compatibility or otherwise of a measure, provision or subordinate legislation.

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

I consider that the [insert title of certified subordinate legislation] is compatible with the *Human Rights Act 2019* because [it does not limit human rights / it limits human rights only to the extent that is reasonable and demonstrably justified 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, including clear reference to the part of the subordinate legislation that is incompatible] is not compatible with the *Human Rights Act 2019* to the extent outlined in this statement.

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

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 limit human rights / it limits human rights only to the extent that is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom].

**[NAME OF MINISTER]**

[TITLE OF MINISTER]

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