

# Medicines and Poisons (Pest Management Activities) Regulation 2021

## 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, the Honourable Yvette D'Ath MP, Minister for Health and Ambulance Services and Leader of the House provide this human rights certificate with respect to the *Medicines and Poisons (Pest Management Activities) Regulation 2021* (Pest Management Activities Regulation) made under the *Medicines and Poisons Act 2019*.

In my opinion, the *Medicines and Poisons (Pest Management Activities) Regulation 2021*, 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.

### Overview of the Subordinate Legislation

The *Medicines and Poisons Act 2019* was passed in September 2019 and introduces a new regulatory framework for medicines and poisons in Queensland. The Pest Management Activities Regulation is part of the new regulatory framework.

The purpose of the Pest Management Activities Regulation is to provide details on how to carry out pest management activities while minimising risks to public health. It does this by providing details relating to:

- who is authorised to carry out pest management activities;
- requirements for persons carrying out pest management activities;
- pest management business owner obligations; and
- building manager obligations.

### Human Rights Issues

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

The overall purpose of the Pest Management Activities Regulation is to regulate pest management activities carried out using a fumigant or pesticide. Used incorrectly, fumigants and pesticides can be very dangerous to the health of people working in the industry, people in the vicinity and the community more broadly. By regulating pest management activities, the State fulfils its positive obligation under section 16 of the Human Rights Act to take steps to protect human life.<sup>1</sup> That objective can be seen generally in the standards set for approved persons and for people holding pest management licences under part 2, and schedule 1 of the Regulation.

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<sup>1</sup> *Taşkin v Turkey* [2004] X Eur Court HR 179.

The protection of the right to life can be seen more specifically, for example, in:

- the requirement for pest control advice and risk management plans to set out the hazards and risks associated with carrying out certain activities and the measures to be implemented to control those risks (in clauses 14, 19 and 24);
- obligations to stop unsafe leaks from a fumigation space, to finalise fumigation in a way that is unlikely to endanger a person, and to deal with leakages and escapes of fumigants or pesticides (in clauses 33, 34 and 47); and,
- obligations to supervise pest management trainees to ensure the safety of the trainee and others (in clauses 38 and 52).

However, in pursuit of its aim to protect human life (and other aims), the Pest Management Activities Regulation does limit or engage other human rights.

### Prescribing fumigants

By prescribing certain goods as fumigants (in clause 5), the Pest Management Activities Regulation engages the right to property in those goods under section 24 of the Human Rights Act. The right to property in section 24(2) will be limited where property is deprived arbitrarily.

‘Property’ extends at least to chattels such as the prescribed fumigants of ozone, carbon dioxide and nitrogen.<sup>2</sup>

‘Deprivation’ also likely extends beyond a formal deprivation to de facto expropriation, which is where substantial restrictions are placed on a person’s use or enjoyment of their property.<sup>3</sup> However, a reduction in the value of commodity is not enough.<sup>4</sup> The interference needs to be so great that it effectively amounts to depriving a person of their property.

Prescribing ozone, carbon dioxide and nitrogen as fumigants does not interfere with the right to own those things to such an extent that property is deprived. As there is no deprivation of property, clause 5 of the Pest Management Activities Regulation engages, but does not limit the right to property in section 24(2) of the Human Rights Act.

### Impacts on work and carrying out an occupation

By regulating certain activities by certain classes of persons (in clause 7 and schedule 1), and setting standard conditions for licensed technicians holding pest management licences (in part 3), the Pest Management Activities Regulation may engage a number of rights associated with work and carrying on a profession or occupation, being the rights to equality and non-discrimination (section 15(3)), property (section 24) and privacy (section 25(a) of the Human Rights Act).

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<sup>2</sup> *Acts Interpretation Act 1954*, sch 1 (definition of ‘property’).

<sup>3</sup> *Sporrong and Lönnroth v Sweden* [1982] ECHR 5; (1982) 5 EHRR 35, [63]; *Zwierzynski v Poland* [2001] ECHR 401; (2004) 38 EHRR 6, [69].

<sup>4</sup> *Lough v First Secretary of State* [2004] EWCA Civ 905; [2004] 1 WLR 2557, 2575 [51].

The Pest Management Activities Regulation applies to people differently depending on their occupation (such as a veterinary surgeon or a person holding a pest management licence). This engages, but does not limit, the human right in section 15(3) of the Human Rights Act. Under section 15(3), every person has a right to equal protection of the law without discrimination. Discrimination is defined to include direct and indirect discrimination on the basis of the attributes protected in section 7 of the *Anti-Discrimination Act 1991*. Employment status or occupation is not one of those attributes.

However, because the definition is inclusive, discrimination under the Human Rights Act may extend to other analogous grounds of discrimination. That is the approach that is taken to the right to equality and non-discrimination in the *Canadian Charter of Rights and Freedoms*, which also has an inclusive meaning of discrimination. The Canadian Supreme Court has held that professional status, occupational status or employment by a particular organisation is not an analogous ground of discrimination.<sup>5</sup> I consider that the same approach applies in Queensland. A person who is not an approved person or a holder of a pest management licence does not generally suffer from disadvantage or stereotyping, and the distinction drawn by the Pest Management Activities Regulation does not have the effect of devaluing or marginalising them within our society. Accordingly, the differential treatment of people according to their occupation does not involve discrimination under section 15(3) of the Human Rights Act.

The right to property in section 24 of the Human Rights Act may be engaged by impacts on a person's employment. The equivalent right in the *European Convention on Human Rights* has been held to cover:

- the right to practise a profession;<sup>6</sup>
- a right to seek a particular kind of employment;<sup>7</sup> and,
- a licence to carry out an economic activity.<sup>8</sup>

However, the Pest Management Activities Regulation does not prevent a person from practising their profession, nor from seeking any particular kind of employment. A pest management licence is not transferrable, so it is not itself property. Part 3 of the Pest Management Activities Regulation sets standard conditions for a pest management licence, but does not provide for the suspension or cancellation of the licence in the event of non-compliance. The process for suspending or cancelling a licence is set out in chapter 4, part 3 of the Medicines and Poisons Act. Even if part 3 of the Pest Management Activities Regulation has the practical effect of depriving some people of a right to their occupation (for example, because they do not satisfy the competency requirements), that impact on section 24 of the Human Rights Act is very minor.

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<sup>5</sup> *Delisle v Canada (Deputy Attorney General)* [1999] 2 SCR 989; *Baier v Alberta* [2007] 2 SCR 673; *Health Services and Support-Facilities Subsector Collective Bargaining Association v British Columbia* [2007] 2 SCR 391.

<sup>6</sup> *Van Marle v The Netherlands* (1986) 8 EHRR 483, [41]-[42]; *Karni v Sweden* (1988) 55 DR 157, 165; *R (Abrahaem) v General Medical Council* [2004] EWHC 279, [5].

<sup>7</sup> *Legal and General Assistance Ltd v Kirk* [2002] IRLR 124, [41].

<sup>8</sup> *Tre Traktörer Aktiebolag v Sweden* (1989) 13 EHRR 309, [53]; *Crompton v Department of Transport North Western Traffic Area* [2003] RTR 517, [19]; *R (Quark Fishing Ltd) v Secretary of State for Foreign Commonwealth Affairs* [2003] EWHC 1743 (Admin), [35]-[37].

The right not to be deprived of property in section 24(2) is a right not to be ‘arbitrarily’ deprived of property. Because the human rights meaning of arbitrary is, among other things, disproportionate, it is convenient to address whether the deprivation is arbitrary below when considering whether it is proportionate under section 13 of the Human Rights Act.

Finally, aspects of the right to work may also be comprehended by the right to privacy in section 25(a) of the Human Rights Act.<sup>9</sup> The right to privacy ‘protects a right to personal development, and the right to establish and develop relationships with other human beings and the outside world’.<sup>10</sup> In Europe, that has been found to include a right to establish and develop ‘relationships of a professional or business nature’.<sup>11</sup> ‘It is, after all, in the course of their working lives that the majority of people have a significant opportunity of developing relationships with the outside world’.<sup>12</sup> On this basis, work restrictions have been held to involve an interference with privacy.

Even if part 3 of the Pest Management Activities Regulation has the practical effect of interfering with a person’s work as an aspect of their privacy (for example, because they do not satisfy the competency requirements), any impact on the right to privacy in section 25(a) of the Human Rights Act would be very minor.

The right in section 25(a) is a right not have one’s privacy interfered with ‘unlawfully’ or ‘arbitrarily’. In a human rights context, ‘arbitrary’ means capricious, unpredictable, unjust or unreasonable in the sense of not being proportionate to a legitimate aim sought.<sup>13</sup> Because questions of lawfulness and proportionality arise when considering justification of limits on human rights under section 13, it is convenient to consider these questions below.<sup>14</sup>

#### Disclosure in change in health assessment

Clause 39(a) of the Pest Management Activities Regulation requires a licensed technician to notify the chief executive of any change in a matter disclosed in a health assessment (but only if the technician was required to undertake a health assessment under section 90 of the Medicines and Poisons Act when they applied for a pest management licence). This may discriminate on the basis of a person’s medical condition or impairment. Impairment is a protected attribute under section 7(h) of the Anti-Discrimination Act, and therefore also under section 15(3) of the Human Rights Act.

#### Contact details and other personal information

By requiring contact details and other personal information to be included in risk management plans, fumigation notices, warning signs, clearance certificates and other records (in clauses 19, 24, 26, 30, 37, 39, 46, 56 and 58), the Regulation engages the right to privacy in section 25(a) of the Human Rights Act.

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<sup>9</sup> *ZZ v Secretary, Department of Justice* [2013] VSC 267, [82]-[95].

<sup>10</sup> *Pretty v United Kingdom* (2002) 35 EHRR 1, 36 [61].

<sup>11</sup> *C v Belgium* (2001) 32 EHRR 2, 33-4 [25].

<sup>12</sup> *Volkov v Ukraine* [2013] ECHR 32, [165].

<sup>13</sup> Explanatory note, Human Rights Bill 2018 (Qld) 22; *PJB v Melbourne Health* (2011) 39 VR 373, 395 [85].

<sup>14</sup> Following the approach in *Minogue v Thompson* [2021] VSC 56, [86], [140].

The right to privacy is clearly engaged whenever a person's name and other personal information is required to be disclosed.<sup>15</sup> Disclosing a person's residential address can have a significant impact on privacy (for example, where a person has moved in an attempt to escape domestic violence).<sup>16</sup>

As noted above, section 25(a) has internal limitations of lawfulness and arbitrariness. It is convenient to consider whether the interference is lawful or arbitrary below when considering whether the interference with privacy is justified.

The requirement to provide this information also limits the freedom of expression in section 21 of the Human Rights Act. The 'freedom of expression necessarily entails the right to say nothing or the right not to say certain things'.<sup>17</sup>

#### Restricted access to certain places

By requiring a licensed technician or another person to restrict access to certain places (in clauses 29, 35, 44, 45 and 57), the Pest Management Activities Regulation engages the right to freedom of movement in section 19 of the Human Rights Act. The freedom of movement is a freedom to 'move from one place to another' anywhere within 'the whole territory of a State'.<sup>18</sup> However, the restrictions on movement is minor, being confined to small areas and only for so long as entry presents a danger.

#### Age requirements

By only allowing people above a certain age to carry out certain activities (in clauses 32 and 44), the Pest Management Activities Regulation treats people differently on the basis of age. Age is a protected attribute under section 7(f) of the Anti-Discrimination Act. Accordingly, these provisions of the Regulation limit the right to equality and non-discrimination in section 15(3) of the Human Rights Act.

#### Requirements to display information

By requiring certain information to be displayed in a certain way, including in English (in clauses 43, 46, 56 and 61), the Pest Management Activities Regulation engages the right not to non-discrimination on the basis of language (section 15(3)), right to freedom of expression (section 21), and possibly cultural rights (section 27 of the Human Rights Act).

Requiring information to be displayed in English may indirectly discriminate against people required to display or read the information if their first language is not English. Although language is not a protected attribute in section 7 of the Anti-Discrimination Act, language may be an incident of race and national origin under section 7(g).<sup>19</sup> Minorities may also have a right to communicate in their own language, including in official communications, under sections 27 and 28(2)(b) of the Human Rights Act, but most likely only in particular areas where 'their

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<sup>15</sup> *DPP (Vic) v Kaba* (2014) 44 VR 526, 564 [134].

<sup>16</sup> *SF v Department of Education* [2021] QCAT 10, [42]-[53].

<sup>17</sup> *Slaight Communications Inc v Davidson* [1989] 1 SCR 1038, 1080.

<sup>18</sup> Human Rights Committee, *General Comment No 27: Freedom of moment (article 12)*, 67<sup>th</sup> sess, UN Doc CCPR/C/21/Rev.1/Add.9 (1 November 1999) 2 [5].

<sup>19</sup> *DPP v Natale* [2018] VSC 339, [71], [89]-[90].

numbers warrant<sup>20</sup> or ‘there is sufficient demand’.<sup>21</sup> In Queensland, there are likely to be very few, if any, areas where official communications in a language other than English is warranted.

The freedom of expression in section 21 of the Human Rights Act is a freedom to communicate ‘every form of idea and opinion capable of transmission to others’.<sup>22</sup> Regulating how a person is to communicate ideas represents a minor limit on this right. The limit does not go to the content of the ideas or discriminate against particular viewpoints.

### Vocational education and training

By setting out obligations to ensure that pest management trainees receive appropriate training and supervision by qualified people (in clauses 38 and 52, and schedule 1, parts 7 and 9), the Regulation engages the right of access to vocational education and training (VET) in section 36(2) of the Human Rights Act. Setting standards for VET may have the practical effect of reducing access to VET (for example, because some VET providers will not meet those standards, with the result that there will be less VET offered). However, an aspect of the right to education in section 36, is that the education be ‘acceptable’, meaning of sufficient quality.<sup>23</sup> By ensuring that VET meets a minimum standard, the Pest Management Activities Regulation facilitates, rather than limits, the right of access to VET under section 36(2) of the Human Rights Act.

### Fees

By prescribing fees for applications and processing fees (in clauses 65, 66 and 70, and schedule 2), the Regulation engages the right to property in section 24 of the Human Rights Act.

Money is a form of property for the purposes of section 24 of the Human Rights Act.<sup>24</sup> The levying of money in the form of taxes and other contributions will likely amount to a de facto deprivation of the property.<sup>25</sup> However, a fee that is voluntarily paid in exchange for something of value likely does not involve a deprivation of property. The fees for applying for a pest management licence, for replacing a licence and for processing the application are less like a tax and more like a fee for service which is voluntarily paid. Accordingly, the fees do not deprive people of property and the right in section 24(2) of the Human Rights Act is not limited. Even if the fees are a form of levying a tax or contribution, the deprivation of property would be readily justified by reference to the purpose of revenue raising in the public interest.<sup>26</sup>

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<sup>20</sup> Human Rights Committee, *Concluding Observations: Poland*, UN Doc CCPR/CO/82/POL, [20].

<sup>21</sup> Human Rights Committee, *Concluding Observations: Austria*, UN Doc CCPR/C/AUT/CO/4, [21].

<sup>22</sup> Human Rights Committee, *General Comment No 34: Article 19: Freedoms of opinion and expression*, 102<sup>nd</sup> sess, UN Doc CCPR/C/GC/34 (12 September 2011) 3 [11].

<sup>23</sup> Committee on Economic, Social and Cultural Rights, *General Comment No 13: The right to education (article 13 of the Covenant)*, 21<sup>st</sup> sess, UN Doc E/C.12/1999/10 (8 December 1999) 3 [6].

<sup>24</sup> *Acts Interpretation Act 1954*, sch 1 (definition of ‘property’).

<sup>25</sup> *Burden v United Kingdom* (European Court of Human Rights, Grand Chamber, Application no 13378/05, 29 April 2008) [59].

<sup>26</sup> *Gasus Dörier-und Fördertechnik GmbH v Netherlands* (1995) 20 EHRR 403, [60].

To summarise:

- Clause 7, Part 3, and schedule 1, of the Pest Management Activities Regulation impose minor impacts on the right to property and the right to privacy by impacting on a person's work and occupation;
- Clause 39(a) discriminates on the basis of an impairment and therefore limits the right to equality and non-discrimination;
- Clauses 19, 24, 26, 30, 37, 39, 46, 56 and 58 impose minor impacts on the right to privacy and the freedom of expression by requiring disclosure of contact details and other personal information;
- Clauses 32 and 44 discriminate on the basis of age and therefore limit the right to equality and non-discrimination; and,
- Clauses 43, 46, 56 and 61 impose very minor limits on the rights to non-discrimination, freedom of expression and cultural rights by requiring certain information to be displayed in a certain way, including in English.

These impacts on the rights to property and privacy must not be disproportionate, and the limits on other human rights must be justified under section 13 of the Human Rights Act.

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

#### Impacts on work and carrying out an occupation

Clause 7, Part 3, and schedule 1, of the Pest Management Activities Regulation may impose minor impacts on the right to property and the right to privacy by interfering with a person's work and occupation.

#### (a) the nature of the right

The right to property is valuable in itself as a component of human dignity, but it also has strategic value. Property – including property in the legitimate expectation or goodwill of one's profession or occupation – is 'crucial to the economic development necessary to ensure that human beings can supply themselves with food and otherwise support themselves.'<sup>27</sup>

The purpose of the right to privacy is 'to protect and enhance the liberty of the person – the existence, autonomy, security and well-being or every individual in their own private sphere.'<sup>28</sup> One of the values underlying the right to privacy is personal development, which includes the development of relationships with the outside world through one's work.<sup>29</sup>

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<sup>27</sup> Rhoda E Howard-Hassmann, 'Reconsidering the Right to Own Property' (2013) 12(1) *Journal of Human Rights* 180, 181.

<sup>28</sup> *Director of Housing v Sudi* (2010) 33 VAR 139, 145 [29] (Bell J).

<sup>29</sup> *Pretty v United Kingdom* (2002) 35 EHRR 1, 36 [61]; *C v Belgium* (2001) 32 EHRR 2, 33-4 [25].

(b) 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

The purpose of the standards and limitations on regulated activity in the course of a person's occupation is to ensure the safety of people working in the industry, of people in the vicinity, as well as the broader community. That is also the purpose of setting standards and conditions for people holding pest management licences. That purpose is ultimately to protect the right to life and is clearly consistent with the values of our society.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

By setting standards and conditions, clause 7, part 3, and schedule 1, of the Pest Management Activities Regulation help to achieve their safety purpose.

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

The standards and conditions are necessary to achieve their safety purpose. Any alternative which had a lesser impact on work and the carrying on of an occupation would carry a greater risk to safety.

(e) 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

The impact on human rights from the provisions of the Pest Management Activities Regulation is minor. While a person's work and occupation can be critical to their sense of self and their ability to live a dignified life, the standards and conditions set by the Pest Management Activities Regulation regulate rather than prevent a person from those benefits.

The need to ensure safe use of fumigants and pesticides is important for the people using them, people in the vicinity and the community as a whole. Taking into account the State's obligation to protect the right to life, the safety purpose outweighs any impact on the rights to property and privacy as an aspect of the impact on a person's work and occupation.

As the impacts on the rights to property and privacy are not disproportionate, they are not arbitrary. Accordingly, those rights are engaged but not limited. Alternatively, even if those rights are limited, those limits are reasonable and demonstrably justified.

Disclosure in change in health assessment

Clause 39(a) of the Pest Management Activities Regulation requires a licensed technician to notify the chief executive of any change in a matter disclosed in a health assessment. It treats people differently on the basis of their medical condition or impairment, and therefore limits the right to non-discrimination in section 15(3) of the Human Rights Act.



(a) the nature of the right

The value underlying equality is the dignity that all human beings have by virtue of being human. When we discriminate for no rational reason we fail to see people as fellow human beings.<sup>30</sup>

(b) 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

The reason clause 39 of the Regulation requires a person to disclose a change in a matter disclosed in a health assessment, is that the change may have a bearing on whether it remains safe for the person to continue carrying out pest management activities. The purpose is ultimately to ensure safety for the holder of the pest management licence as well as the broader community. That is a purpose consistent with the values of our society.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

Disclosure of any changes in matters originally disclosed in health assessment will help to achieve that purpose by bringing all relevant information to the chief executive's attention.

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

The differential impact on people with a medical condition is confined to what is necessary to achieve the safety purpose. An alternative which requires less disclosure would mean that crucial changes in information may not be disclosed to the chief executive.

(e) 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

As to the impact on the right to equality, it should be noted that clause 39 of the Regulation is ancillary to section 90 of the Medicines and Poisons Act. When first requesting a health assessment under section 90 of the Act, the chief executive will need to consider the human rights impact before requesting a health assessment. They will also need to set out the reason for requesting the health assessment. The original request will need to be proportionate to a particular need for the health assessment. This means that the disclosure requirement in clause 39 of the Regulation reinforces a disclosure requirement which is itself tailored to the need for the information. It should also be noted that disclosure of a change in health condition does not have any automatic consequences. Any decision to suspend or cancel a pest management licence is subject to natural justice requirements, as well as consideration of the impact on the licence holder's human rights.

Ensuring the chief executive receives information to ensure safety is very important. The importance of ensuring that safety is not put at risk by a licence holder's medical condition outweighs the harm of treating them differently because of that medical condition.

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<sup>30</sup> *Re Lifestyle Communities Ltd [No 3]* [2009] VCAT 1869; (2009) 31 VAR 286, 311 [109].

The limit imposed on the right to equality and non-discrimination by clause 39(a) of the Regulation is reasonable and demonstrably justified.

Contact details and other personal information

Clauses 19, 24, 26, 30, 37, 39, 46, 56 and 58 of the Pest Management Activities Regulation impose minor impacts on the right to privacy and the freedom of expression in sections 21 and 25(a) of the Human Rights Act by requiring disclosure of contact details and other personal information.

(a) the nature of the right

The values underlying the right to privacy are set out above in relation to impacts on work and occupation. In relation to private information such as a person's name and address, the right to privacy can generally be understood as 'the right of the individual to determine for himself [or herself] when, how, and to what extent he [or she] will release personal information about himself [or herself]'.<sup>31</sup>

Freedom of expression has intrinsic value to individual self-fulfilment as well as instrumental importance for society as a whole. Those values are no different when it comes to the freedom not to impart information. 'Silence is in itself a form of expression which in some circumstances can express something more clearly than words could do.'<sup>32</sup>

(b) 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

Contact information and other personal information is collected to facilitate contact with the licensed technician, and to ensure that the technician is accountable for compliance with various standards. Personal information of other people (such as the residence of a person whose home is being treated for pests) is also collected in order to clearly identify places where pest management activities have been carried out and to respond to complaints and poor practice. The personal information is ultimately collected to facilitate the overall scheme which is directed to protect public health. Those purposes are consistent with the values of our society.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

Collecting contact information and other personal information will help to facilitate the scheme, including by allowing contact with the licensed technician and holding the technician to account.

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

Contact details (for a person) is defined in schedule 3 of the Regulation as the name, phone number and address of the person. Other provisions which require personal information only require the information which strictly required, such as the place where the fumigation activity is to be carried out.

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<sup>31</sup> *R v Duarte* [1990] 1 SCR 30, 46.

<sup>32</sup> *Slaight Communications Inc v Davidson* [1989] 1 SCR 1038, 1080.

Unless a residential address is required to be disclosed (for example, because that is where fumigation activity is to be carried out), ‘address’ does not necessarily mean ‘residential address’. This means that a person who wishes to maintain their privacy (for example, because they are fleeing a domestic violence situation), will be able to provide a post office box as their address for their contact details.<sup>33</sup>

Consideration was given to whether any personal information which is required to be given could be omitted without undermining the effectiveness of the scheme. However, any alternative which involved collecting less personal information would undermine the ability to respond to complaints about poor practice and to ensure that technicians are accountable for compliance with various standards.

There are also safeguards to protect privacy. Clause 62 of the Pest Management Activities Regulation sets out requirements for keeping information in compliance with a requirement under the Medicines and Poisons Act. Existing privacy safeguards under relevant privacy laws will apply to personal information held by agencies.

(e) 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

While disclosure of personal information in the form of a name, telephone number and address impinges on a person’s privacy and freedom not to disclose information, it is at the lower end of intrusions into privacy. The personal information which is required to be disclosed is confined to the information which is strictly required to ensure the effective operation of the scheme.

The collection of that personal information is crucial to allow contact with licenced technicians as required, and to ensure that licensed technicians are accountable for the standards set under the Pest Management Activities Regulation. Allowing the effective operation of a scheme designed to protect human life outweighs the minor impact on privacy.

As the impacts on privacy are not disproportionate, they are not arbitrary. Accordingly, the right to privacy is engaged but not limited. Alternatively, any limits on the right to privacy in clauses 19, 24, 26, 30, 37, 39, 46, 56 and 58 of the Regulation are reasonable and demonstrably justified. The limits on the freedom of expression are also reasonable and demonstrably justified for the same reasons.

#### Age requirements

Clauses 32 and 44 of the Pest Management Activities Regulation treat people differently on the basis of age and therefore limit the right to equality and non-discrimination under section 15(3) of the Human Rights Act.

Under clause 32 a licensed technician must take all reasonable steps to ensure that at least one other person is present at a place where a fumigation activity is being carried out, and that person must be at least 17 years of age. Under clause 44, a qualified person must ensure that another person has access to a vehicle where fumigants or pesticides are being stored or transported only if the other person is an adult or an approved person under schedule 1, part 9.

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<sup>33</sup> As in *SF v Department of Education* [2021] QCAT 10, [42]-[53].

(a) the nature of the right

The nature of the right to equality and non-discrimination is set out above with respect to clause 39 of the Pest Management Activities Regulation.

(b) 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

Clause 32 of the Pest Management Activities Regulation is about ensuring that a capable and competent person is present to assist the licensed technician, which is ultimately about ensuring safety. The purpose of requiring that person to be at least 17 years of age is to ensure that the person being relied upon is sufficiently mature to understand the health risks at stake.

Clause 44 of the Regulation is about limiting access to fumigants and pesticides to those who are able to understand the health risks at stake. The person does not need to be an adult over 18 years of age if they are otherwise suitable (as a pest management trainee or another person falling within schedule 1, part 9). Otherwise the age requirement of 18 years or more is set to ensure a minimum level of maturity to ensure the person understands the health risks at stake.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

The age limits will help to ensure that the relevant person has sufficient maturity to understand the health risks.

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

Consideration was given to a different age limit. However, the age limits specified were considered to strike the appropriate balance between safety considerations and the right to be free from discrimination on the basis of age.

(e) 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

While the Regulation treats people differently on the basis of their age, it has important reasons for doing so. The safety objective is best achieved by ensuring that the relevant person is sufficiently mature to grasp the health risks. That safety objective outweighs the impact on the right to equality and non-discrimination of people younger than the age requirements.

The limits imposed on the right to equality and non-discrimination by the age requirements in the Regulation are reasonable and demonstrably justified.

Requirements to display information

Clauses 43, 46, 56 and 61 of the Pest Management Activities Regulation impose very minor limits on the rights to non-discrimination (section 15(3)), freedom of expression (section 21) and cultural rights (sections 27 and 28(2)(b) of the Human Rights Act) by requiring certain information to be displayed in a certain way, including in English.

(a) the nature of the right

The nature of the right to equality and non-discrimination is set out above with respect to clause 39 of the Pest Management Activities Regulation.

Freedom of expression has intrinsic importance for individual fulfillment and is indispensable for society as a whole as the foundation of democracy and the rule of law.<sup>34</sup>

The right of minorities to ‘use their language’ in section 27 and of Indigenous peoples to ‘enjoy, maintain, control, protect, develop and use their language’ in section 28(2)(b) of the Human Rights Act recognises the intrinsic link between language and identity. When a person’s identity is affirmed they are ‘recognised for who they are’.<sup>35</sup>

(b) 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

The purpose of requiring certain information to be displayed in a certain way is to provide crucial warnings and safety information in the way that is most likely to ensure it is understood. That ultimately serves to protect safety which is a purpose consistent with the values of our society.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

Stipulating how information is to be displayed or provided helps to achieve that purpose.

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

Allowing people greater freedom to express the information in another way would put people at risk because they may not receive the information in a way that is understood.

Clause 61(3) allows for information to be recorded in a language other than English in order to ensure another person can understand an instruction, provided the information is also recorded in English. Clause 61(3) applies to all information recorded in writing to comply with a requirement under the Pest Management Activities Regulation.

Accordingly, the limits on freedom of expression and the language in which it is expressed is no greater than necessary to achieve the safety purpose.

(e) 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

Freedom of expression and language rights are important, but the Pest Management Activities Regulation merely regulates expression. It does not prevent ideas from being expressed, including the language in which the ideas are expressed (provided it is also expressed in English).

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<sup>34</sup> *McDonald v Legal Services Commissioner [No 2]* [2017] VSC 89, [22].

<sup>35</sup> *PBU v Mental Health Tribunal* (2018) 56 VR 141, 203 [199].

Ensuring warnings and safety messages are received in a way that people can understand is also important. As lives may be put at risk without regulating how the information is provided, the importance of ensuring safety outweighs the minor impact on freedom of expression and language rights.

The limits imposed on the right to non-discrimination, freedom of expression and cultural rights are reasonable and demonstrably justified.

## **Conclusion**

I consider that the *Medicines and Poisons (Pest Management Activities) Regulation 2021* is compatible with the *Human Rights Act 2019* because it does limit, restrict or interfere with human rights, but those limitations are reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

**YVETTE D'ATH MP**  
MINISTER FOR HEALTH AND  
AMBULANCE SERVICES  
AND LEADER OF THE HOUSE

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