

Health and Other Legislation Amendment Regulation 2022

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, Yvette D’Ath, Minister for Health and Ambulance Services and Leader of the House provide this human rights certificate with respect to the *Health and Other Legislation Amendment Regulation 2022* (Amendment Regulation) made under the *Hospital and Health Board Act 2011*, *Public Health Act 2005*, and *State Penalties Enforcement Act 1999*.

In my opinion, the Amendment Regulation, 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 purpose of the Amendment Regulation is to amend the *Hospital and Health Boards Regulation 2012*, *Public Health Regulation 2018* and *State Penalties Enforcement Regulation 2014*.

Amendments to the *Hospital and Health Boards Regulation 2012*

The Amendment Regulation amends the Hospital and Health Boards Regulation to:

- update the definition of *reportable events* to align with version two of the Sentinel Events List approved by Australian Health Ministers;
- amend the definition of *major capital works* to exclude capital works that are comparatively minor;
- include Douglas Shire Council, Mareeba Shire Council, Livingstone Shire Council and Noosa Shire Council in the list of local government areas covered by their respective Hospital and Health Service’s health service areas;
- remove the requirement for the Minister for Health and Ambulance Services (Health Minister) to approve the taking of leases by Hospital and Health Services (HHSs) if the *Land Act 1994* applies;
- update the positions prescribed as senior health service employees to include new classifications for rural generalist medical officers;
- include the Surgical, Treatment and Rehabilitation Service (STARS) adult surgical ward as a ward subject to minimum nurse-to-patient;
- prescribe the updated Rheumatic Fever Strategy data sharing agreement as an agreement for which confidential information may be shared under the Hospital and Health Boards Act; and
- replace the position title of Chief Aboriginal and Torres Strait Islander Health Officer with Chief First Nations Health Officer to reflect a change in the position title in Queensland Health.

Amendment to the *Public Health Regulation 2018*

Schedule 4, part 2 of the Public Health Regulation sets out the prescribed school exclusion periods for various contagious conditions. This includes conditions such as human influenza with pandemic potential, hepatitis A, measles, meningococcal and gastroenteritis. In March 2020, COVID-19 was added to the list of contagious conditions.

The Amendment Regulation amends the Public Health Regulation to update the school exclusion period for children with COVID-19 at a school, education and care service or Queensland Education and Care approved service. The amendment will provide that children can be excluded from schools and other care environments on the grounds of suspected or actual COVID-19 infection if the Chief Health Officer has made a public health direction for mandatory isolation or quarantine for persons with COVID-19, or symptomatic close contacts.

The provisions in the Public Health Act allowing the Chief Health Officer to issue a public health direction about quarantine or isolation requirements will expire on 31 October 2023, unless extended. The provisions in the Public Health Regulation will expire on 31 October 2023 to align with this expiry.

Amendments to the *State Penalties Enforcement Regulation 2014*

The State Penalties Enforcement Act allows for the issuing of infringement notices. Infringement notices are an alternative method of prosecution for offences from court-based prosecutions. The recipient of an infringement notice can either pay the fine contained within the notice or if they wish to contest the offence, elect to have the matter decided by a Magistrates Court.

The main objective of the Radiation Safety Act is to protect the public and the environment from the harmful effects of particular sources of ionising radiation and harmful non-ionising radiation. The Radiation Safety Act and *Radiation Safety Regulation 2021* establish a licensing framework for regulating the possession, use and transport of radiation sources and radioactive substances.

To provide an additional enforcement mechanism for suitable offences in the Radiation Safety Act, the Amendment Regulation will amend the State Penalties Enforcement Regulation to prescribe 26 offences under the Radiation Safety Act as infringement notice offences. The offences include failure to comply with a requirement not to enter or remain at a place and failure to provide the results of an assessment of a personal radiation monitoring device.

Human Rights Issues

Human rights relevant to the subordinate legislation (Part 2, division 2 and 3 of the Human Rights Act)

In my opinion, the human rights that are relevant to the Amendment Regulation are:

- Freedom of movement (section 19);
- Property rights (section 24);
- Privacy and reputation (section 25);
- Protections of families and children (section 26);

- Cultural rights—Aboriginal peoples and Torres Strait Islander peoples (section 28);
- Right to liberty and security of person (section 29);
- Fair hearing (section 31);
- Rights in criminal proceedings (section 32); and
- Right to education (section 36).

Consideration of human rights promoted

Cultural Rights – Aboriginal peoples and Torres Strait Islander peoples (section 28 of the Human Rights Act)

Section 28 of the Human Rights Acts provides that Aboriginal peoples and Torres Strait Islander peoples hold distinct cultural rights. This right includes the right to enjoy, maintain, control and develop their identity and cultural heritage, including traditional knowledge, distinctive spiritual practices, observances, beliefs and teachings.

The Amendment Regulation changes the title of Chief Aboriginal and Torres Strait Islander Health Officer to Chief First Nations Health Officer. The new title better reflects and recognises both Aboriginal and Torres Strait Islander peoples as First Nations peoples and is an acknowledgment of the significant diversity within and across Aboriginal and Torres Strait Islander cultural groups. In this way, the amendment promotes the cultural rights of Aboriginal peoples and Torres Strait Islander peoples.

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

Amendments to the Hospital and Health Boards Regulation

Privacy and Reputation (section 25 of the Human Rights Act)

(a) the nature of the right

Every person has the right to their privacy, family, home and correspondence, which must not be unlawfully or arbitrarily interfered with. The right to privacy is subject to an internal limitation in that it applies only to interferences with privacy that are ‘unlawful’ or ‘arbitrary’, including interferences that are unreasonable, unnecessary or disproportionate. Further, the right to privacy can be limited where it is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

The Amendment Regulation limits this right by prescribing the new information sharing agreement for the Rheumatic Fever Strategy. This agreement allows for the sharing of confidential client information with bodies outside of Queensland Health.

(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 this information sharing agreement is to promote the health of the people whose information is shared and the wider community. The Rheumatic Fever Strategy will support the delivery of improved detection, monitoring, and management of acute rheumatic fever and

rheumatic heart disease in Aboriginal and Torres Strait Islanders through coordinated disease register and control programs.

Improving the health of the public is a purpose consistent with a free and democratic society based on human dignity, equality and freedom. It is reasonable, necessary and proportionate to share confidential information in order to improve the health of the public. The interference with privacy is not unlawful or arbitrary, as it must be done in compliance with the Hospital and Health Boards Act.

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

Restricting the right to privacy and reputation for a person experiencing rheumatic heart disease or acute rheumatic fever is appropriate to promote the health of people experiencing these illnesses. Appropriate safeguards are in place to ensure the shared information must only be used for the intended purpose to promote the health of people experiencing rheumatic heart disease and acute rheumatic fever.

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

There are no other less restrictive or reasonably available ways to achieve the purposes identified above.

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

In this case, it is considered the promotion of health and wellbeing for the community, particularly those experiencing acute rheumatic fever and rheumatic heart disease outweighs the restrictions placed on individuals.

Amendments to the Public Health Regulation

Section 13 of the Human Rights Act provides that ‘a human right may be subject under law only to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.’ It also sets out factors that may be relevant in deciding whether a limit on a human right is reasonably justified.

This section contains an assessment of whether any limitations on human rights stemming from the amendments to the Public Health Regulation are reasonable and justified. It is important to note the Amendment Regulation does not directly impose any requirements or restrictions on isolation or quarantine of children. Instead, it links to the existence of a public health direction regarding isolation or quarantine for COVID-19 to the ability of a person in charge of a school, education or care service to appropriately manage the risks to the school community posed by a child when a child has or is reasonably suspected of having COVID-19. The chief health officer can only issue a public health direction if it is reasonably believed the direction is necessary to prevent or respond to a serious risk to a public health system or the community as a result of COVID-19 or to give effect to national advice or a national decision including a decision or agreement of National Cabinet. Also, if a public health direction for COVID-19 is in place, a child with the condition may be subject to the public health direction for quarantine or isolation.

The aim of the amendment to the Public Health Regulation is to grant a person in charge of a school, education or care service the ability to appropriately manage a child who has or is reasonably suspected to have COVID-19 when a COVID-19 public health direction is in place. This is for the benefit of the school, education or care service community.

(a) the nature of the right

Freedom of movement (section 19 of the Human Rights Act) and right to liberty and security of person (section 29 of the Human Rights Act)

The right to freedom of movement places an obligation on the State not to act in a way that unduly restricts free movement but does not require the State to take positive steps to promote freedom of movement. The right to liberty and security of person includes the right to not be subject to arbitrary arrest or detention. Freedom of movement and the right to liberty and security of person are fundamental rights that Queenslanders use each day so they can go about their daily lives.

The right also includes the freedom to choose where to live, and freedom from physical and procedural barriers, such as requiring permission before entering a public park or participating in a public demonstration in a public place. The right may be engaged where a public entity affects a person's freedom of movement.

The amendments to the Public Health Regulation will limit the right to freedom of movement by granting the person in charge of a school, education or care service the ability to manage the child's attendance if the child is required to isolate or quarantine under a public health direction issued by the Chief Health Officer.

Restricting a child with COVID-19 or who is reasonably suspected of having COVID-19 is vital to managing the spread of the virus within school, education and care environments. Isolation and quarantine have been key measures in Queensland's approach to managing diagnosed cases and close contacts. This approach has been based on national guidelines developed by the Australian Health Protection Principal Committee. Maintaining the health and safety of children and the community in general is consistent with a free and democratic society based on human dignity, equality and freedom.

Protection of families and children (section 26 of the Human Rights Act)

The protection of families and children includes protection by both the State and society. It also recognises that children have the same rights as adults, but with additional protections according to their best interests and the fact that they are children. One of the underlying principles of the *International Convention on the Rights of the Child* is that 'the best interests of the child' shall be a primary consideration in all actions concerning children.

The Amendment Regulation restricts the rights of children by interfering with their access to social connections through school attendance. This restriction may result in children feeling isolated from their peers and experiencing a reduction in the mental and emotional health these connections support.

Right to education (section 36 of the Human Rights Act)

The right to education provides the right of every child to primary and secondary education appropriate to the child's needs. The right to education is intended to be interpreted in line with the *Education (General Provisions) Act 2006* and to provide rights in relation to aspects of Queensland's responsibility for education service delivery. The right to education has been interpreted in international jurisprudence as encompassing the key elements of availability, accessibility, acceptability, and adequacy.

Individuals may be temporarily restricted from attending schools, education or care services if they are subject to a direction to isolate or quarantine in order to prevent or respond to a serious risk posed to the public health system or the community as a result of COVID-19, or to give effect to decisions or agreements including those of National Cabinet. However, online learning or electronic delivery of educational opportunities may be offered to students isolating at home.

- (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

Freedom of movement (section 19 of the Human Rights Act), right to liberty and security of person (section 29 of the Human Rights Act), protection of families and children (section 26 of the Human Rights Act), right to education (section 36 of the Human Rights Act)

The Amendment Regulation links the ability to manage a child with COVID-19 or reasonably suspected of having COVID-19 to powers in the Public Health Act that may place limitations on freedom of movement and right to liberty of children who have, or are reasonably suspected of having, a contagious condition. This limitation can include restricting the child's attendance at a school, education or care service for the period set by the public health direction on mandatory isolation and quarantine for COVID-19.

The limitations may also impact indirectly on the child's family, as they may be required to stay home to care for the child. These limitations help to directly achieve the purpose of preventing or minimising the spread of COVID-19 among children and help to minimise the spread of the condition in the community. These impacts on individuals with COVID-19 are reasonable and proportionate in a free and democratic society where individuals have responsibilities to the wider community to reduce the spread of contagious conditions.

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

Freedom of movement (section 19 of the Human Rights Act), right to liberty and security of person (section 29 of the Human Rights Act), protection of families and children (section 26 of the Human Rights Act), right to education (section 36 of the Human Rights Act)

The limitation on human rights imposed by the Amendment Regulation is necessary to ensure the person in charge of school, education or care services can manage the attendance of a child who has or is reasonably suspected of having COVID-19. This will help respond to a serious risk to the public health system or the community as a result of COVID-19, including new variants of concern or particular outbreaks. Prescribing COVID-19 as a contagious condition is in line with the management of conditions such as human influenza with pandemic potential,

hepatitis A, measles, meningococcal and gastroenteritis within the school, education and care service environment.

The limitation on the right to education is mitigated by schools providing appropriate educational materials and activities students may complete while not attending school face-to-face. This occurs in a variety of contexts if a student is unable to attend school.

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose
Freedom of movement (section 19 of the Human Rights Act), right to liberty and security of person (section 29 of the Human Rights Act), protection of families and children (section 26 of the Human Rights Act), right to education (section 36 of the Human Rights Act)

Under the amendments, a child will only be excluded from a school, education or care service where they are required to isolate or quarantine under a public health direction issued by the Chief Health Officer. It is considered there are no less restrictive or reasonably available ways to achieve the purpose.

The power in the Public Health Regulation contains a sunset clause to ensure it aligns with the COVID-19 management framework, by ending on 31 October 2023, unless otherwise extended.

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

Freedom of movement (section 19 of the Human Rights Act), right to liberty and security of person (section 29 of the Human Rights Act), protection of families and children (section 26 of the Human Rights Act), right to education (section 36 of the Human Rights Act)

It is considered that the overall need to prevent and minimise the spread of COVID-19 in the community, schools and care services and to protect the health and safety of children, outweighs the limitations on human rights that will apply to particular individuals. In this case, it is considered the human rights of communities' safety and wellbeing outweighs the restrictions placed on individuals.

Amendments to the State Penalties Enforcement Regulation

The Amendment Regulation will amend the State Penalties Enforcement Regulation to prescribe 26 offences under the Radiation Safety Act as infringement notice offences. This will allow an inspector appointed under section 106 of the Radiation Safety Act to issue a fine to a person the inspector reasonably believes has committed one of these infringement notice offences.

Property rights (section 24 of the Human Rights Act)

(a) the nature of the right

Section 24 of the Human Rights Act protects the right of all persons to own property, alone or with others, and provides that people have a right not to be arbitrarily deprived of their property. The right includes the protection from the deprivation of property. The term 'deprived' is not defined by the Human Rights Act. However, deprivation in this sense is considered to include the substantial restriction on a person's use or enjoyment of their property, to the extent that it

substantially deprives a property owner of the ability to use his or her property or part of that property, including enjoying exclusive possession of it, disposing of it, transferring it or deriving profits from it.

Prescribing infringement notice offences limits property rights. A person issued with an infringement notice must either pay a monetary fine to the State or elect to have the matter dealt with by a court. A person who fails to pay an infringement notice fine may have enforcement action taken against them by the registrar of the State Penalty Enforcement Registry. Enforcement actions are provided for in the State Penalties Enforcement Act and may include seizure and sale of property, imposing a charge over property, taking the fine amount directly from the person's earnings or savings, cancelling the person's drivers licence or immobilising the person's vehicle.

(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 limitation to property is to support compliance with the Radiation Safety Act. This will protect the public and the environment from the harmful effects of particular sources of ionising radiation and harmful non-ionising radiation. The Amendment Regulation does not create new offences in the Radiation Safety Act. The Amendment Regulation creates an alternative enforcement pathway for existing offences in the Radiation Safety Act. This alternative enforcement pathway of issuing an infringement notice for comparatively minor offences is consistent with a free and democratic society. Infringement notices are an established method for the enforcement of comparatively minor and straightforward offences.

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

The introduction of infringement notices helps to achieve the purpose of the Radiation Safety Act by protecting the public and the environment from the harmful effects of particular sources of ionising radiation and harmful non-ionising radiation.

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

There are no less restrictive ways to achieve the purpose of the Amendment Regulation. The introduction of infringement notices does not create new offences or create new penalties for current offences. It creates an alternate enforcement pathway other than a court-based prosecution. Recipients of infringement notices may elect to proceed to a court-based prosecution if that is their preference.

(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

It is considered that the overall need to protect the public and the environment from the harmful effects of particular sources of ionising radiation and harmful non-ionising radiation outweighs the limitations on personal property rights that will apply to particular individuals who do not comply with the Radiation Safety Act.

Right to a fair hearing (section 31 of the Human Rights Act) and rights in criminal proceedings (section 32 of the Human Rights Act)

(a) the nature of the right

Section 31 of the Human Rights Act provides that a person has the right to have criminal charges or civil proceedings decided by a competent, independent and impartial court or tribunal after a fair and public hearing. Section 32 of the Human Rights Act protects the right to be presumed innocent until proven guilty and identifies minimum guarantees for which the person charged is entitled to be informed of the nature and reason for a charge and to defend themselves personally or through legal assistance.

A person issued with an infringement notice is subject to punishment through payment of a fine without the benefit of a finding of guilt by a court after a fair and public hearing. This engages the right to a fair hearing and rights in criminal proceedings. However, nothing in the State Penalties Enforcement Act or State Penalties Enforcement Regulation prevents a person who is issued with an infringement notice from electing to have the alleged offence dealt with by a court. In this case, the person is afforded all the rights in criminal proceedings guaranteed under the Human Rights Act. The Amendment Regulation engages, but does not limit, the right to a fair hearing and rights in criminal proceedings. However, if these rights are considered to be limited by the Amendment Regulation, these limitations are justified as outlined below.

(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 Radiation Safety Act imposes restrictions on the possession, use, transport, acquisition and disposal of radiation sources that have the potential to pose significant risks to public health and safety if used incorrectly or for improper purposes. The requirements in the Radiation Safety Act exist for the purposes of protecting the person, community, and environment from the potentially harmful impacts of radiation.

The purpose of prescribing infringement notice offences is to support risk minimisation and enhance the monitoring and compliance framework in the Radiation Safety Act, by giving inspectors the option to issue infringement notices for suitable offences, in addition to other administrative and legislative enforcement mechanisms. This allows inspectors to issue a fine in response to offending behaviour.

When used appropriately and in conjunction with other enforcement mechanisms, infringement notices are an effective enforcement response that is proportionate to the risk to public health and safety created by the offending behaviour. Infringement notices can help manage demand on the courts in Queensland while maintaining a person's right to access the judicial system. Prescribing infringement notice offences also benefits the monitoring and compliance framework by creating a cost-effective method of enforcement and behaviour modification and increasing administrative efficiency.

A secondary purpose of prescribing infringement notice offences is to benefit alleged offenders, by giving them an alternative to prosecution. Choosing to accept an infringement notice and pay a fine means a person does not need to attend court, prepare a defence, will not have a finding of guilt for the alleged offence, and has certainty about their legal liability.

These objectives are consistent with a free and democratic society based on human dignity, equality and freedom.

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

The relationship between the prescribed offences and the potential limitation is to provide an efficient system for issuing and enforcing proportionate penalties outside the court process as well as protecting the health and safety of individuals, the community, and the environment. The limitation through enforcement acts as a deterrent to both the offending party and other people considering offending in the same way. This will encourage persons to comply with the law by dealing with particular sources of harmful radiation in accordance with the requirements under the Radiation Safety Act, ultimately benefitting public safety and the environment.

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

It is considered there is no less restrictive and reasonably available way to achieve the purpose of safeguarding dealings with radiation sources and ensuring there is an efficient system for issuing and enforcing fines relating to the offences, other than by prescribing the offences to be infringement notice offences under the State Penalties Enforcement Regulation.

Not prescribing the offences as infringement notice offences is likely to reduce the chance of enforcement action against an offender due to the significant cost to the State for court proceedings. A decision to prosecute is made on public interest grounds (including consideration of the costs of prosecution) so it would be reasonable for some offenders to consider that the State is unlikely to issue a complaint and summons to anyone other than the most recidivist offenders, therefore significantly reducing the deterrent effect of the offences.

Prescribing infringement notice offences does not alter any existing obligations under the Radiation Safety Act, nor does it create new offences. It will only affect persons who are non-compliant with certain provisions in the Act and who have not rectified this non-compliance after assistance from Queensland Health to understand their obligations.

(e) the balance between the importance of the purpose of the limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

Since the commencement of the Radiation Safety Act, Queensland Health has engaged in ongoing awareness and education activities with licence holders and other stakeholders to help them understand and comply with their legislative obligations. Inspectors appointed under the Radiation Safety Act engage in monitoring and compliance activities, including by issuing improvement notices and prohibition notices requiring a person to remedy or cease a breach of the Act. Despite these measures, there continue to be instances of ongoing non-compliance that require a punitive response. In these circumstances, the only option remaining is for Queensland Health to bring criminal proceedings. The financial and resource implications associated with bringing proceedings mean they may only be considered suitable for the most serious breaches of the Radiation Safety Act.

The Radiation Safety Act contains several requirements that support the Act's objective to protect the public and environment from harm. The offences to be prescribed in the State

Penalties Enforcement Regulation are specific, discrete and relate largely to administrative matters. These offences establish legislative obligations that are clear and unambiguous so both alleged offenders and inspectors can clearly identify and rectify breaches.

If these requirements are breached, it is important that Queensland Health is able to address non-compliance through punitive measures other than court proceedings, such as issuing a fine.

The State Penalties Enforcement Act contains a number of protections against excessive or arbitrary interferences with human rights. These protections include:

- State Penalty Enforcement Registry enforcement activities are performed in accordance with the State Penalty Enforcement Registry Charter in section 9 of the State Penalties Enforcement Act. The Charter ensures the power to issue arrest and imprisonment warrants are rarely used in practice by encouraging alternative enforcement mechanisms.
- A person who considers a fine should not have been issued may elect to have the matter heard by a court instead of paying the fine.
- If a fine is not paid within the specified timeframe and the infringement notice is registered with State Penalty Enforcement Registry for enforcement action, the person may apply to pay their debt by instalments.
- Individuals who are experiencing hardship can apply to resolve their debt under a work and development order, which can include undertaking relevant courses, attending counselling and treatment programs or completing work with an approved hardship partner. Certain decisions, such as refusing to grant, vary or revoke a work and development order are reviewable by the Queensland Civil and Administrative Tribunal.
- A warrant to seize and sell property, impose a charge over property, or take money directly from a person's wages or bank account, can only be issued after the alleged offender has been given two opportunities to deal with the infringement notice, including by paying the fine, electing to have the matter dealt with by the court, or applying to pay the fine by instalments.
- The registrar may only suspend a person's driver licence if satisfied that the person is not taking steps to discharge their debt, and only after issuing the person a notice giving them 14 days to pay their debt before the licence is cancelled.
- The registrar may only order a vehicle to be immobilised after giving the person 14 days to pay the fine and in limited circumstances, including that the person is not taking steps to discharge their debt and either another form of enforcement action has been unsuccessfully attempted or is not possible or appropriate in the circumstances.
- A warrant for a person's arrest and imprisonment may only be issued after another enforcement action has been unsuccessfully attempted and the registrar is satisfied there is no other way to enforce payment of the debt.

Queensland Health undertakes all enforcement action consistent with the *Public Health Enforcement Decision Guideline* (Guideline). The Guideline requires inspectors to use the enforcement mechanism that is most appropriate in the circumstances and to prioritise the least coercive enforcement mechanism wherever possible.

Inspectors will receive guidance on the circumstances in which it is appropriate for an infringement notice to be issued, having regard to the alleged offender's compliance history, willingness, and capacity to comply, and the consequences of the non-compliance, such as the impact on human health or the environment.

Inspectors will also receive training to ensure they make clear to the person receiving the infringement notice that they can challenge the fine in court. The fine amount has been set at an amount that is likely to be less than a court would impose but still sufficient to act as a disincentive for offending behaviour.

It is necessary for Queensland Health to be able to monitor and respond to risks associated with the inappropriate access to, and dealings with, sources of harmful radiation, as these activities can create significant risks to public health and safety. The framework in the Radiation Safety Act minimises these risks by establishing a regulatory regime to control the possession, use and transportation of radiation sources.

As the State has a positive duty to protect human life, it is considered necessary to implement restrictions on the possession, use and transport of radiation sources to protect human life.

It is considered that the importance of implementing effective enforcement responses that are proportionate to the risk created by the offending behaviour outweighs any potential limits on human rights.

Conclusion

I consider that the Health and Other Legislation Amendment Regulation 2022 is compatible with the *Human Rights Act 2019* because 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.

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