

# Health Legislation Amendment Regulation 2023

## 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 provide this human rights certificate with respect to the *Health Legislation Amendment Regulation 2023* (Amendment Regulation) made under the *Hospital and Health Boards Act 2011* and *Transplantation and Anatomy Act 1979*.

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* and *Transplantation and Anatomy Regulation 2017*.

### Amendments to the *Hospital and Health Boards Regulation 2012*

The Hospital and Health Boards Act establishes the public sector health system in Queensland. The Hospital and Health Boards Act creates the Hospital and Health Services (HHSs). These are statutory bodies that are the principal providers of public sector health services. Each HHS is independent and is locally controlled by a Hospital and Health Board.

The Hospital and Health Boards Act prohibits the disclosure of confidential information. An exception to this prohibition is if the disclosure is to the Commonwealth or another State, or an entity of the Commonwealth or another State and the disclosure is required or allowed under an agreement between the State or a Service and the Commonwealth, State or entity and the agreement is prescribed by regulation.

The Amendment Regulation amends the Hospital and Health Boards Regulation to prescribe the updated Electronic Donor Record (EDR) Agreement as an agreement for which confidential information may be shared under the Hospital and Health Boards Act. This will allow Queensland Health to continue to share confidential patient information with the other States and Territories and the Organ and Tissue Authority for organ and tissue donation purposes. The Organ and Tissue Authority is a Commonwealth Government entity that works with States and Territories, clinicians and the community sector to deliver the national program to improve organ and tissue donation and transplantation outcomes in Australia.

The current EDR Agreement was to be in place from 2014 to 2017 but has been extended five times. This agreement will expire on 12 February 2023. The new EDR Agreement duration is 10 years. It may be extended by the Commonwealth Government for up to a total of 15 years.

### Amendment to the *Transplantation and Anatomy Regulation 2017*

The Transplantation and Anatomy Act regulates the removal and donation of human tissue for transplantation and other medical and scientific purposes. It provides a prohibition on the trading in human tissue. An exception to this prohibition is provided for a person who owns a tissue bank. *Tissue bank* is defined as a facility prescribed by regulation at which donated tissue is stored.

Section 12(b) of the Transplantation and Anatomy Regulation prescribes four facilities for the definition of tissue bank. These facilities are the Queensland Bone Bank, Queensland Eye Bank, Queensland Heart Valve Bank and Queensland Tissue Bank. The Queensland Tissue Bank now performs the functions of these four facilities, so the Queensland Bone Bank, Queensland Eye Bank and Queensland Heart Valve Bank no longer need to be prescribed.

The Amendment Regulation removes the Queensland Bone Bank, Queensland Eye Bank and Queensland Heart Valve Bank from the list of entities prescribed as a tissue bank.

## **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:

- Right to life (section 16);
- Privacy and reputation (section 25); and
- Right to health services (section 37).

### **Consideration of human rights promoted**

#### *Right to life (section 16 of the Human Rights Act)*

The right to life under section 16 of the Human Rights Act imposes substantive and procedural obligations on the State to take appropriate steps and adopt positive measures to protect life. The protective obligation extends to requiring authorities to put in place measures that would protect an individual from real and immediate risks to their life.

Organ transplantations are often required to preserve the receiving patient's life. The Amendment Regulation promotes the right to life by supporting the operation of the EDR and therefore the transplantation of organ and tissue.

#### *Right to health services (section 37 of the Human Rights Act)*

Section 37 of the Human Rights Act provides that every person has a right to access health services without discrimination. Also, a person must not be refused emergency medical treatment that is immediately necessary to save the person's life or to prevent serious impairment to the person.

The Amendment Regulation promotes the right to health services by ensuring Queensland Health can continue to share confidential information and participate in the EDR Agreement. The EDR enables safer, timelier and more efficient organ allocation for transplantation than paper-based systems. The improved efficiencies of the EDR impacts positively on organ

transplantations, as time is of the essence in organ donation procedures. In this way, participation in the EDR promotes the right to health services.

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

***Amendment 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 updated information sharing agreement for the EDR. 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 EDR Agreement for organ and tissue donors supports the Commonwealth Government’s national program to improve organ and tissue donation and transplantation outcomes in Australia.

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 of a person who is donating their organs will assist in improving the public’s health. The sharing of this confidential patient information will ensure Queensland Health is able to share this information with the health authorities of the States and Territories and the Commonwealth Organ and Tissue Authority for inclusion on the EDR.

(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

It is considered the overall benefit to the community of improved health outcomes for those requiring organ and tissue transplants provided by the EDR outweighs potential limitations on the right to privacy of donors of organs and tissues. The amendment promotes the right to health services and the right to life, which also outweighs potential limitations on the right to privacy. Under international law, the right to life is an absolute right which must be realised and outweighs the potential impacts on any one individual's rights. Within the donation process, safeguards exist including consulting the donor register and seeking the consent of family members. Overall, any limitations on the right to privacy are reasonable and demonstrably justifiable under section 13 of the Human Rights Act.

### ***Amendment to the Transplantation and Anatomy Regulation***

The amendment to the Transplantation and Anatomy Regulation does not limit any human rights.

## **Conclusion**

I consider that the *Health Legislation Amendment Regulation 2023* 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