

Radiation Safety 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 Shannon Fentiman MP, Minister for Health, Mental Health and Ambulance Services and Minister for Women provide this human rights certificate with respect to the *Radiation Safety Amendment Regulation 2023* (Amendment Regulation) made under the *Radiation Safety 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 *Radiation Safety Regulation 2021* to:

- clarify requirements around disposal of a person's bodily waste where the person has been administered a radioactive substance as part of a diagnostic or therapeutic procedure; and
- omit an offence which has been moved into the Radiation Safety Act.

Disposal of waste

Section 26 of the Radiation Safety Act provides that a person must not dispose of radioactive material unless the concentration or activity of a radionuclide in the material is not more than the maximum prescribed by regulation, and the person holds the appropriate approval and disposes of it according to that approval.

Section 210 of the Radiation Safety Act provides that a regulation may exempt a radiation source from the Act or a provision of the Act. However, the head of power in section 210 of the Radiation Safety Act to prescribe exemptions currently only applies to radioactive substances or radiation apparatus, not radioactive materials. This means that radioactive materials, which are not radioactive substances because they do not meet the prescribed threshold to be classed as such, are not able to be exempted by regulation from the requirements of the Radiation Safety Act, or a provision of the Radiation Safety Act. This is despite radioactive material that is not a radioactive substance posing a lower radiation risk than radiation sources.

The Health and Other Legislation Amendment Act 2023 (Amendment Act) addresses this inconsistency by extending the power for the Radiation Safety Regulation to exempt radioactive material that is not a radioactive substance from requirements of the Radiation Safety Act. The amendments to the Radiation Safety Act made by the Amendment Act, commence by proclamation on 15 November 2023, which coincides with the commencement of the Amendment Regulation.

Section 94 of the Radiation Safety Regulation currently provides that, if a person has been administered a radioactive substance as part of a diagnostic or therapeutic procedure, and as a result of the procedure, the person's bodily waste is a radioactive substance, the bodily waste is exempt from the requirements of section 26 of the Radiation Safety Act relating to disposal. However, the exemption in section 94 of the Radiation Safety Regulation will not apply if the concentration or activity of radionuclide in a person's bodily waste does not meet the threshold to make that waste a radioactive substance.

The Amendment Regulation amends section 94(1) of the Radiation Safety Regulation to clarify that section 94 applies if a person has been administered a radionuclide as part of a diagnostic or therapeutic procedure and, as a result of the procedure, some or all of the radionuclide or its progeny is in the person's bodily waste. Under section 94(2), the person's bodily waste is exempt from the disposal requirements in section 26 of the Radiation Safety Act only to the extent it is disposed of by the person. This means that the exemption applies, regardless of whether the concentration or activity of radionuclide in a person's bodily waste makes the waste a radioactive substance.

Offence of causing ionising radiation exposure from particular radioactive material

Section 60 of the Radiation Safety Regulation provides that a person who possesses a mineral substance that is radioactive material, but that is not a radioactive substance, must ensure another person does not receive a total effective radiation dose from the mineral substance above 1 millisievert per year for public exposure of a person, or more than 20 millisieverts per year if the person is exposed in the course of their employment (that is, occupational exposure). The limit for occupational exposure is reduced to six millisieverts per year if the person is aged 16 or 17 years.

Section 28 of the Amendment Act moves the offence into the Radiation Safety Act and increased the penalty to 100 penalty units, to align with similar offences.

Accordingly, the Amendment Regulation removes section 60 of the Radiation Safety Regulation to omit the offence and penalty, and inserts new section 58A which prescribes matters that were previously prescribed in section 60, such as the dose limits. New section 58A does not include an offence, as the offence is now provided for in section 42A of the Radiation Safety Act.

Human Rights Issues

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

In my opinion, the Amendment Regulation does not limit human rights.

Conclusion

I consider that the Radiation Safety Amendment Regulation 2023 is compatible with the *Human Rights Act 2019* because it does not limit human rights.

SHANNON FENTIMAN MP
MINISTER FOR HEALTH, MENTAL HEALTH AND
AMBULANCE SERVICES AND
MINISTER FOR WOMEN

© The State of Queensland 2023