

# ***Medicines and Poisons (Pest Management Activities) 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, Shannon Fentiman MP, Minister for Health, Mental Health and Ambulance Services and Minister for Women provide this human rights certificate with respect to the *Medicines and Poisons (Pest Management Activities) Amendment Regulation 2023* (Amendment Regulation) made under the *Medicines and Poisons Act 2019*.

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 Medicines and Poisons Act outlines who can deal with medicines and what dealings they can undertake. The *Medicines and Poisons (Pest Management Activities) Regulation 2021* (Pest Management Regulation) supports the Act by providing 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.

The Amendment Regulation amends the Pest Management Activities Regulation to:

- remove the requirement to include a pest management technician's licence number and signature on a pre-treatment pest control advice;
- clarify that an activity risk management plan must be prepared by an appropriately qualified licensed technician;
- remove the requirement to include, if practicable, a site diagram in an activity risk management plan;
- enable an authorised officer under the *Biosecurity Act 2014*, or person directed by or helping an authorised officer, to carry out pest control activity for biosecurity matter that is a pest;
- provide that carrying out pest control activity at a high-risk or sensitive place is a standard condition for pest management licenses;

- clarify that while a pest management trainee is carrying out an authorised activity, an authorised pest management technician must supervise and carry out the pest management activity with the trainee;
- clarify what substances are prescribed as fumigants to reflect the updated meaning of fumigation activity in the Medicines and Poisons Act;
- remove the requirement for a pest management technician to provide or display their address in circumstances where it poses a risk to their personal safety and the security of pesticides and fumigants stored at the address;
- amend the definition of high-risk place to ensure it does not capture small retail outlets;
- amend the definition of sensitive place to ensure it does not capture medical facilities that provide outpatient services;
- update references to the Departmental Standard - *Competency requirements for licensed technicians undertaking pest management activities with pesticides and fumigants* (Competency Standard) to reflect version 2 of the Competency Standard;
- provide that the chief executive of the Department is authorised to approve training substantially equivalent to a competency in the Competency Standard;
- insert a transitional provision to provide licensed technicians with an endorsement to treat urban pests at a high-risk or sensitive place with 12-months to complete the competency requirements; and
- make other minor and technical amendments to improve the operation of the Pest Management Regulation.

## 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 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 Pest Management Regulation.

The Amendment Regulation likewise protects the right to life, both generally by improving the operation and effectiveness of the Pest Management Regulation, and more specifically through particular measures such as updating references to version 2 of the Competency Standard to ensure pest management technicians treating urban pests at a high-risk or sensitive place have the relevant competencies to do so.

In pursuit of its aim to protect human life (and other aims), the Amendment Regulation does limit or engage other human rights. In my opinion these are:

---

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

- rights to equality and non-discrimination (section 15(3));
- the right to freedom of expression (section 21);
- property rights (section 24);
- privacy and reputation (section 25); and
- the right to access vocational education and training (section 36(2)).

### Prescribing fumigants

#### *Property rights*

Section 6 of the Pest Management Regulation prescribes ozone, carbon dioxide and nitrogen as fumigants when used for an activity mentioned in section 19 of the Medicines and Poisons Act. The Amendment Regulation amends section 6 to clarify that ozone, carbon dioxide and nitrogen are fumigants *when the substance becomes gaseous* (clause 4). Prescribing substances as a fumigant limits who can possess and use these substances. This is necessary to ensure the meaning of fumigants is consistent with the meaning of fumigation activity under the Medicines and Poisons Act.

By clarifying and continuing to prescribe fumigants under the Pest Management Regulation, the Amendment 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 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 when the substance becomes gaseous 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 4 of the Amendment Regulation engages, but does not limit the right to property in section 24(2) of the Human Rights Act.

### Amendments impacting work or carrying out an occupation

The Amendment Regulation may engage rights associated with work and carrying on a profession or occupation, including the rights to equality and non-discrimination, property and privacy (sections 15(3), 24 and 25(a) of the Human Rights Act) by:

---

<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].

- prescribing that pest control activity for biosecurity matter can only be carried out by an authorised officer under the *Biosecurity Act 2014* or a person directed by or helping an authorised officer under the *Biosecurity Act* (clause 20);
- referencing version 2 of the Competency Standard, which prescribes additional competency requirements for pest management technicians treating urban pests at a high-risk or sensitive place (clauses 5 and 21);
- providing that a licensed technician must not carry out a pest control activity for a customer at a high-risk or sensitive place unless the licensed technician has, or is supervised by a licensed technician who has the relevant competencies or training (clause 6); and
- providing that only a licensed technician with the relevant competencies or training can prepare an activity risk management plan for a customer at a high-risk or sensitive place (clause 9).

### *Right to equality and non-discrimination*

The Amendment Regulation applies to people differently depending on their occupation, such as a licensed technician, a person authorised or directed to take a measure in relation to biosecurity matter, or a licensed technician who has completed competency requirements or training for high-risk and sensitive places.

Under section 15(3) of the Human Rights Act, 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. This is the approach 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. Even under this inclusive approach, 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. The differential treatment of people according to their occupation does not involve discrimination under section 15(3) of the Human Rights Act. A person who is not an authorised person under the *Biosecurity Act*, a person assisting an authorised person under the *Biosecurity Act*, a holder of a pest management licence, or a licensed technician who has successfully completed competency requirements or training for high-risk and sensitive places does not generally suffer from disadvantage or stereotyping, and the distinction drawn by the Amendment Regulation does not have the effect of devaluing or marginalising them within our society. Accordingly, the differential treatment of these persons based on their occupation or professional qualifications or competencies

---

<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.

engages, but does not limit, the right to equal protection without discrimination expressed in section 15(3) of the Human Rights Act.

### *Property rights*

The right to property in section 24 of the Human Rights Act may be engaged by impacts on a person's employment. A pest management licence, additional competencies, or an authority to take a measure in relation to biosecurity matters is not transferrable, so it is not itself property.

However, 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>

As such, these amendments may engage or limit the right to property in section 24 of the Human Rights Act. For example, updated competency requirements in the Departmental Standard will require some pest management technicians to obtain up to four additional competencies, by undertaking training that is subject to a fee (clauses 5, 6 and 21 of the Amendment Regulation).

However, the Amendment Regulation does not prevent a person from practising their profession, nor from seeking any particular kind of employment. Even if clauses 5, 6 and 21 of the Amendment Regulation have the practical effect of depriving some people of the ability to practise their occupation, the impact on section 24 of the Human Rights Act is minor.

The right not to be deprived of property in section 24(2) is the right not to be 'arbitrarily' deprived of property. 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>9</sup> Because the human rights meaning of arbitrary is, among other things, disproportionate, I address whether the deprivation to property is arbitrary when considering whether it is justified under section 13 of the Human Rights Act below.

### *Privacy and reputation*

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>10</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

---

<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].

<sup>9</sup> Explanatory note, Human Rights Bill 2018 (Qld) 22; *PJB v Melbourne Health* (2011) 39 VR 373, 395 [85].

<sup>10</sup> *ZZ v Secretary, Department of Justice* [2013] VSC 267, [82]-[95].

world’.<sup>11</sup> In Europe, that has been found to include a right to establish and develop ‘relationships of a professional or business nature’.<sup>12</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>13</sup> On this basis, work restrictions have been held to involve an interference with privacy.

Even if clauses 5, 6 and 21 of the Amendment Regulation have the practical effect of interfering with a person’s work as an aspect of their privacy and reputation (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 minor.

The right to privacy in section 25(a) is a right not to have one’s privacy interfered with ‘unlawfully’ or ‘arbitrarily’. Because questions of lawfulness and arbitrariness arise when considering justification of limits on human rights under section 13, I consider these internal limitations in that context below.<sup>14</sup>

### Contact details and other personal information

#### *Right to privacy and right to freedom of expression*

The Amendment Regulation amends the definition of *contact details*, by omitting the requirement to include an address of a person or business (clause 21). As such, the contact details required to be provided by a person or business will be the name and phone number of a person or business.

The amendments have the effect of no longer requiring a person or business to provide an address in all circumstances where contact details are required to be produced under the Pest Management Regulation. However, by continuing to require contact details and other personal information to be included in risk management plans, fumigation notices, warning signs, clearance certificates and other records (clauses 21), the Amendment Regulation engages the right to privacy in section 25(a) of the Human Right Act.<sup>15</sup>

The Amendment Regulation also continues to require a person or business’s address to be produced in the following circumstances:

- a change in a licensed technician’s address must be disclosed to the chief executive (clause 16); and
- a business operator must keep a record of the address of each of the operator’s employees carrying out pest management activities (clause 17).

---

<sup>11</sup> *Pretty v United Kingdom* (2002) 35 EHRR 1, 36 [61].

<sup>12</sup> *C v Belgium* (2001) 32 EHRR 2, 33-4 [25].

<sup>13</sup> *Volkov v Ukraine*[2013] ECHR 32, [165].

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

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

Disclosing a person's 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) of the Human Rights Act does not protect against all deprivations of privacy, but only those that are unlawful or arbitrary. Again, because questions of lawfulness and arbitrariness arise when considering justification of limits on human rights under section 13, I consider these internal limitations in that context below.

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 to not say certain things'.<sup>17</sup>

### Competency Standard – Competency Requirements

#### *Right to access vocational education and training*

Section 36(2) of the Human Rights Act provides for a right to access, based on the person's abilities, further vocational education and training that is equally accessible to all. The right to education under the Human Rights Act is a right to access education (not a right to education).<sup>18</sup> Access in this context carries a particular human rights meaning, incorporating underlying principles of non-discrimination, physical accessibility and economic accessibility.<sup>19</sup>

The version 2 of the Competency Standard will require pest management technicians treating urban pests at a high-risk or sensitive place to obtain up to four additional competencies. Clause 5 approves the updated Competency Standard, which gives effect to the additional training and competency requirements.

The version 2 of the Competency Standard will require certain pest management technicians to successfully undertake a unit of competency offered by a recognised training provider to be deemed 'competent' in the specific unit. These units are subject to a fee, which may prevent or hinder some pest management technicians from obtaining the new competencies. Further, existing vocational education and training providers may not meet the requisite standards to offer training courses on the new competencies, which may reduce vocational education and training services offered.

However, 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 responsibilities for education service delivery. It is likely to be considered a systemic right, similar to the equivalent right under the European Convention of Human Rights.<sup>20</sup> This means the right is likely only to be limited where there is a systemic breakdown of the provision of education resulting in a person not having access to a minimum level of education.

---

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

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

<sup>18</sup> As noted in the Legal Affairs and Community Safety Committee, Parliament of Queensland, *Human Rights Bill 2018* (Report No. 26, February 2019) 51.

<sup>19</sup> United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 13*.

<sup>20</sup> European Convention of Human Rights, article 2.

As the right to access vocational education and training is not an unfettered right, and the State of Queensland is not responsible for the delivery of pest management competency training, the right of access to vocational education and training in section 36(2) is engaged but not limited by clause 5 of the Amendment Regulation.

To summarise:

- clauses 5, 6, 20 and 21 of the Amendment Regulation impose minor impacts on the right to property and the right to privacy by impacting a person's work and occupation; and
- clauses 16, 17 and 21 of the Amendment Regulation impose minor impacts on the right to privacy and the right to freedom of expression by requiring disclosure of contact details and other personal information.

To the extent these impacts limit human rights, they must be justified under section 13 of the Human Rights Act. However, as noted earlier, the rights to property and to privacy and reputation are only 'limited' in the sense of section 13 if the putative limitation is unlawful or arbitrary. I consider below whether these internal limitations apply and, if not, whether the Amendment Regulation's impacts on human rights are reasonable and demonstrably justifiable, and are therefore compatible with human rights.<sup>21</sup>

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

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

Clauses 5, 6, 9, 20 and 21 of the Amendment Regulation impose minor impacts on the right to property and the right to privacy by prescribing that certain activities can only be undertaken by appropriately qualified individuals.

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

The right to property is valuable 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>22</sup> The right not to be deprived of property is the right not to be 'arbitrarily' deprived of property. 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>23</sup>

The right to privacy protects the individual from all interferences and attacks upon their privacy, including the protection of personal information. The scope of this right is subject to an internal limitation as the right provides that a person has the right to protection from unlawful and arbitrary interferences with their privacy. An interference with a person's privacy

---

<sup>21</sup> *Human Rights Act 2019*, section 8 (statutory provision is compatible with human rights if it does not limit a human right, or limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13).

<sup>22</sup> Rhoda E Howard-Hassmann, 'Reconsidering the Right to Own Property' (2013) 12(1) *Journal of Human Rights* 180, 181.

<sup>23</sup> Explanatory note, Human Rights Bill 2018 (Qld) 22; *PJB v Melbourne Health* (2011) 39 VR 373, 395 [85].

will be arbitrary if it is capricious, unpredictable, or unjust, or if the interference is not proportionate to a legitimate aim.

The purpose of the right to privacy is ‘to protect and enhance the liberty of the person — the existence, autonomy, security and well-being of every individual in their own private sphere.’<sup>24</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>25</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

Pesticides and fumigants used to control pests are inherently hazardous and the risk to human health and the environment depends on how safely they are handled and used. They can pose significant risks to humans when conditions of safe use are not observed.

The purpose of the Amendment Regulation is to promote the safety and wellbeing of the community. This is accomplished by prescribing persons who can undertake various activities relevant to the Pest Management Regulation, which will protect the safety of people working in the industry, of people in the vicinity, and of the broader community. This is consistent with the objective of the Pest Management Regulation to reduce the health risks associated with pest control and fumigation activities and the adverse results of the ineffective control of pests. This purpose ultimately protects the right to life and is consistent with the values of 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 achieve the purpose

The Amendment Regulation helps achieve the purpose of promoting the safety and wellbeing of the community and industry by ensuring that:

- a pest control activity for a biosecurity matter can only be carried out by persons authorised or directed to do so (clause 20);
- licensed technicians treating urban pests at a high-risk or sensitive place must possess the relevant competencies or be supervised by a licensed technician with the relevant competencies (clauses 5, 6 and 21); and
- only a licensed technician with the relevant competencies can prepare an activity risk management plan for a high-risk or sensitive place (clause 9).

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

These amendments 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. For example, allowing persons who do not possess specific competency requirements under the Competency Standard or training to treat pests at a high-risk or sensitive place without appropriate supervision poses a clear risk to public health and safety. The purpose of promoting

---

<sup>24</sup> *Director of Housing v Sudi* (2010) 33 VAR 139, 145 [29] (Bell J).

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

safety and wellbeing can only be achieved if appropriate restrictions are placed on the activities specified in clauses 5, 6, 9, 20 and 21.

(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 clauses 5, 6, 9, 20 and 21 of the Amendment 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 Amendment 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. Considering 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 for the reasons set out above.

#### *Contact details and other personal information*

Clause 21 of the Amendment Regulation amends the definition of contact details to include the name and phone number of a person or business. The previous definition included the name, phone number and address of a person or business. Although this amendment reduces the amount of information a person or business is required to disclose, it still requires the disclosure of personal information.

The Amendment Regulation also continues to require the disclosure of an address under the following circumstances:

- a change in a licensed technician's address must be disclosed to the chief executive (clause 16); and
- a business operator must keep a record of the address of each of the operator's employees carrying out pest management activities (clause 17).

Therefore, clauses 16, 17 and 21 of the Amendment Regulation impose minor limitations on the right to privacy and the freedom of expression in sections 21 and 25(a) of the Human Rights Act.

(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>26</sup>

---

<sup>26</sup> *R v Duarte* [1990] 1 SCR 40, 46.

Freedom of expression has intrinsic value to individual self-fulfilment as well as instrumental importance for society. 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>27</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 is collected to facilitate contact with the licensed technician, 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. The personal information is ultimately collected to facilitate the overall scheme, which is directed to protecting public health. Those purposes 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 achieve the purpose

Collecting the name and phone number of a person or business helps to facilitate the scheme, including by allowing contact with the licensed technician and holding the technician to account.

Collecting the address of a person or business in specified circumstances also helps facilitate the scheme. For example, clause 17 continues to require a business operator to keep a record of the address of the operator’s employees carrying out pest management activities, as this allows the business to communicate with the employee.

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

The definition of contact details for a person and business is updated in clause 21 of the Amendment Regulation to only include the name and phone number of the person or business. The previous definition required the name, phone number and address of the person or business.

Unless a residential address is required to be disclosed (for example, because that is where fumigation activity is to be carried out), ‘address’ in the Pest Management Regulation does not 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 per the requirements of clause 21 of the Amendment Regulation. The safety of the community will also be promoted by not requiring the address where hazardous pesticides and fumigants are stored to be disclosed.

Consideration was given to whether any contact details or other 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

---

<sup>27</sup> *Slaight Communications Inc v Davidson* [1989] 1 SCR 1038, 1080.

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. The Pest Management 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 and telephone number impacts a person's privacy and freedom not to disclose information, the impact is considered very minor. Other personal information, such as an address, 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 this information is crucial to allow contact with licensed technicians as required, and to ensure that licensed technicians are accountable for the standards set under the Pest Management 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 clause 16, 17 and 21 of the Amendment Regulation are reasonable and demonstrably justified for the reasons set out above. The limits on the freedom of expression are also reasonable and demonstrably justified for the same reasons.

## **Conclusion**

I consider that the *Medicines and Poisons (Pest Management Activities) 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.

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

© The State of Queensland 2023