

Medicines and Poisons (Medicines) Amendment Regulation (No. 4) 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 *Medicines and Poisons (Medicines) Amendment Regulation (No. 4) 2023* (Amendment Regulation) made under the *Medicines and Poisons Act 2019* (Act).

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 Act outlines who can deal with medicines and what dealings they can undertake. The *Medicines and Poisons (Medicines) Regulation 2021* (Medicines Regulation) supports the Act by setting the scope of lawful practice for dealings with medicines, as well as stipulating how dealings with medicine must be done, including compliance with departmental standards and extended practice authorities.

The Amendment Regulation will amend the Medicines Regulation to facilitate implementation of the Queensland Community Pharmacy Scope of Practice Pilot (Pharmacy Pilot).

The amendments to the Medicines Regulation will reference a new Pharmacy Pilot Extended Practice Authority and enable pharmacists participating in the Pharmacy Pilot to undertake the following dealings with a Schedule 4 (S4) medicine, other than a restricted medicine or diversion-risk medicine:

- prescribe for the management of specified acute common conditions, as part of a health and wellbeing service or a chronic disease management program;
- sell, other than on prescription, to enable continued dispensing;
- amend a prescription without the agreement of the prescriber who made the prescription, to enable therapeutic adaptation and therapeutic substitution; and
- dispense for the purposes of therapeutic adaptation and substitution.

The new Pharmacy Pilot Extended Practice Authority will:

- state the restrictions and conditions under which medicines may be prescribed including the requirement that a pharmacist may prescribe a medicine for the management of:

- a specified acute common condition or as part of a health and wellbeing service in line with the relevant Pharmacy Pilot clinical practice guideline;
- a condition included within a Pharmacy Pilot clinical protocol for cardiovascular disease risk reduction, improved asthma and exercise-induced bronchoconstriction symptom control and chronic obstructive pulmonary disease (COPD) monitoring in line with the relevant clinical protocol; and
- state the restrictions and conditions under which participating pharmacists may conduct medication management activities including therapeutic adaptation, therapeutic substitution and continued dispensing.

The Amendment Regulation also amends the Medicines Regulation to:

- clarify that enrolled nurses and anaesthetic technicians may possess an S4 or schedule 8 (S8) medicine, if the medicine is possessed under the supervision of a registered nurse, midwife, dentist or medical practitioner;
- update references to reflect the revised Commonwealth Poisons Standard;
- remove all references to, and authorisations for, restricted ivermectin to reflect updated Therapeutic Goods Administration guidelines;
- update a reference to a new version of the Queensland Ambulance Service Extended Practice Authority (QAS EPA) to:
 - include cefazolin and olanzapine in the list of authorised medicines;
 - align the medicines listed in the QAS EPA with the revised pharmacology inventory list for Retrieval Services Queensland so flight paramedics can continue to provide timely services in collaboration with Retrieval Services Queensland; and
 - recognise an alternate qualification pathway for ambulance officers to be authorised as an Isolated Practice Area Paramedic.

Human Rights Issues

Human rights relevant to the subordinate legislation (part 2, division 2 and 3 of the *Human Rights Act 2019*)

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

- property rights (section 24); and
- right to access health services (section 37).

Consideration of human rights promoted

Rights to access health services (section 37 of the Human Rights Act)

The right to health services under section 37 of the Human Rights Act is a right to access health services, not a right to health, or to health services. It protects the right to access health services and the right not to be discriminated against in the provision of that access. ‘Access’ carries a particular human right meaning, incorporating underlying principles of non-discrimination,

physical accessibility, economic accessibility, and information accessibility.¹ The right of access to health services includes access to medication.

The Amendment Regulation promotes the right to access health services by improving access to primary health services for all Queenslanders. The amendments enable suitably qualified pharmacists participating in the Pharmacy Pilot to supply and prescribe a wider range of medicines for common health conditions, health and wellbeing services, and as part of chronic disease management protocols. The amendments are designed to facilitate equitable access to medicines and health services for Queenslanders and will offer consumers greater choice in accessing health services. The Amendment Regulation therefore supports and promotes the right to access health services under the Human Rights Act.

The Amendment Regulation further strengthens the right in section 37 to access health services without discrimination for First Nations people. First Nations people in Queensland continue to experience poorer health outcomes compared to non-Indigenous people.

Closing the Gap for Aboriginal and Torres Strait Islander people in Queensland is dependent on the delivery of culturally safe health services for this population, particularly in isolated areas where there is limited access to other health services. The delivery of such services can be achieved by supporting pharmacists to use scheduled medicines where necessary and within their scope of practice. As such, I consider the Amendment Regulation promotes the human right of access to health services without discrimination, by providing more timely access to medicines and health services for First Nations people across Queensland.

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

Right to property (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. This 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.

By placing restrictions on dealings with medicines, 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 and extends to chattels such as medicines.² However, placing restrictions on medicines 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, the Amendment Regulation engages, but does not limit the right to property in section 24(2) of the Human Rights Act.

¹ United Nations Committee on Economic, Social and Cultural Rights, General Comment No. 14.

² Schedule 1 of the *Acts Interpretation Act 1954*, definition of *property*.

(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

Medicines have a varied degree of risk. The risk to human health depends on how safely they are handled and used. Placing restrictions on the right to property in the course of a person's occupation is necessary to ensure the safety of the broader community.

The purpose of the Amendment Regulation is to enhance access to health care and services by expanding the medicines provided by pharmacists. This is achieved by placing restrictions on who may deal with medicines. The purpose of imposing restrictions on dealings with medicines (such as prescribing, selling, and administering medicines) is to mitigate the risk of misuse or substance abuse by vulnerable persons. This is necessary to ensure that those who possess the appropriate knowledge and training and have a thorough understanding of the risks of medicines, have oversight and control over medicines. These restrictions support the overall objective of the Medicines Regulation in protecting human life, which 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 enhances access to health care and service by promoting the safety and wellbeing of the community by ensuring that:

- participating pharmacists undertake an approved training program to participate in the Pharmacy Pilot activities (clause 18);
- participating pharmacies meet specified eligibility criteria to participate in the Pharmacy Pilot activities (clause 18).

The Amendment Regulation also updates reference to a new version of the QAS EPA to ensure that Isolated Practice Area Paramedics are required to undertake an approved training program to deal with authorised medicines (clause 8).

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

The amendments are necessary to achieve their safety purpose. Any alternative which has a lesser impact on the right to property would carry a greater risk to safety. For example, allowing persons who do not possess specific qualifications and training to deal with medicines, such as prescribing, selling, and administering medicines, without appropriate supervision poses a clear risk to public health and safety. The purpose of promoting patient safety can only be achieved if appropriate restrictions are placed on the dealings with medicines specified in clauses 11, 12, 14, 16, 17 and 18.

(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 by the Amendment Regulation is minor. The need to ensure safe use of medicines is important for the person using them 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 right to property. This helps ensure patient safety is maintained while access to health services is improved.

Conclusion

I consider that the *Medicines and Poisons (Medicines) Amendment Regulation (No. 4) 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