

Medicines and Poisons (Medicines) Amendment Regulation 2024

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 Minister for Ambulance Services and Minister for Women, provide this human rights certificate with respect to the *Medicines and Poisons (Medicines) Amendment Regulation 2024* (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 is a regulatory framework for the use of medicines and poisons in Queensland and its purpose is to regulate people who deal with medicines and poisons and the 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 amends the Medicines Regulation to:

- exempt relevant practitioners from the requirement to check Q-Script (the monitored medicines database) in specified low-risk circumstances;
- give effect to a new version of the Monitored Medicines Departmental Standard (Monitored Medicines Standard) which reduces the scope of the standard so that it only applies minimum requirements to monitored medicines treatment provided to current Queensland Opioid Treatment Program patients;
- give effect to new versions of the extended practice authorities to:
 - authorise a broad workforce to administer respiratory syncytial virus (RSV) preventative therapies;
 - remove references to mandatory COVID-19 vaccination training program requirements;
 - increase the number of vaccinations registered nurses and midwives can administer, broaden the locations where registered nurses can administer vaccines and remove restrictions/conditions imposed on midwives for some of the current vaccines;
 - enable registered nurses and midwives to administer hormonal intrauterine devices; and
 - provide an additional study option of a rural and isolated practice area program of study.

Human Rights Issues

Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 *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

Right 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.¹² 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 midwives, registered nurses, pharmacists, Aboriginal and Torres Strait Islander health practitioners and Indigenous health workers to administer nirsevimab to vaccinate against RSV.

The Amendment Regulation updates references to new versions of the registered nurses extended practice authority (EPA-RN) and the midwives extended practice authority (EPA-Midwives) and expands the types of vaccinations and the range of patients that registered nurses and midwives may administer vaccines to. It also removes some of the restrictions/conditions imposed in the EPA-Midwives against some of the current vaccines.

The Amendment Regulation is also designed to facilitate equitable access to vaccines for Queenslanders. An amendment to the EPA-RN and EPA-Midwives to include the levonorgestrel intrauterine device (e.g., Mirena®, Kyleena®) will increase the list of long-acting reversible contraceptives that registered nurses working in a sexual and reproductive health service and midwives may administer, increase 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 Aboriginal and Torres Strait Islander health practitioners and Indigenous health workers to use scheduled medicines where necessary and within their scope

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

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 *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.

The right to property in section 24(2) will be limited where property is deprived arbitrarily. This may include arbitrarily depriving a person of their ownership interest in chattels such as medicines.³ However, merely placing restrictions on medicines does not interfere with the right to own those things to such an extent that property is deprived.

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.

While the right to property is engaged by the Amendment Regulation, it is in no sense limited. As discussed below in section (b), the Amendment Regulation, while broadly easing restrictions on certain health practitioners’ ability to deal with particular medicines, continues to impose some requirements for the safe and clinically appropriate use of these medicines within the scope of their authorised dealings. Under the established human rights principles set out above, the continuation of these routine regulatory controls cannot plausibly be characterised as an arbitrary deprivation of one’s right to own a property interest in these regulated substances. Since the Amendment Regulation does not arbitrarily deprive any person of their property, it does not limit property rights under section 24 of the Human Rights Act.

In the alternative, even if one were to conclude that property rights are limited by the Amendment Regulation, any limitations would be reasonably and demonstrably justified for the reasons set forth 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

Relevantly, the Amendment Regulation expands the medicines provided by qualified registered nurses and midwives and lifts certain restrictions or conditions imposed against some of the current vaccines for midwives. It adds other medicines such as levonorgestrel intrauterine device (e.g., Mirena®, Kyleena®) to the list of long-acting reversible contraceptives that midwives and registered nurses working in a sexual and reproductive health service may administer. In addition, it allows pharmacists, midwives, registered nurses, Aboriginal and

³ Schedule 1 of the *Acts Interpretation Act 1954*, definition of *property*.

Torres Strait Islander health practitioners and Indigenous health workers to administer RSV preventative therapies independently once they have received the necessary training.

While the Amendment Regulation makes changes to enhance overall access to health care services by reducing existing restrictions on who can deal with certain medicines, it continues to impose some restrictions on who may deal with medicines, for example by adopting specified protocols and conditions for nurses and midwives who will be able to administer an expanded range of vaccines under the updated extended practice authorities.

The purpose of imposing these restrictions is to mitigate the risk of medicine-related harm to persons.

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

Retaining some restrictions on who may deal with medicines 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.

(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 administering medicines poses a clear risk to public health and safety.

(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 minor 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 2024* is compatible with the *Human Rights Act 2019* because it does not limit human rights or, in the alternative, limits human rights only to the extent that is reasonable 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