

Health and Other Legislation 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 Ambulance Services and Minister for Women, provide this human rights certificate with respect to the Health and Other Legislation Amendment Regulation 2024 (Amendment Regulation) made under the *Hospital and Health Boards Act 2011*, *Private Health Facilities Act 1999*, *Public Health Act 2005*, *Radiation Safety Act 1999*, *State Penalties Enforcement Act 1999* and *Voluntary Assisted Dying Act 2021*.

In my opinion, the Amendment Regulation, as tabled in the Legislative Assembly, is compatible with the human rights protected by the Human Rights Act. 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 2023*, *Private Health Facilities Regulation 2016*, *Public Health Regulation 2018*, *Radiation Safety Regulation 2021*, *State Penalties Enforcement Regulation 2014* and *Voluntary Assisted Dying Regulation 2022*.

Amendments to the *Hospital and Health Boards Regulation 2023*

Schedule 8, part 1 of the Hospital and Health Boards Regulation prescribes various agreements, between Queensland Health and the Commonwealth, States and Territories and other entities, to facilitate the sharing of confidential information.

Queensland public hospitals treat eligible veterans. Where these patients elect for the Commonwealth Department of Veterans' Affairs (DVA) to fund their treatment, DVA accepts financial responsibility for the cost of the treatment provided and Queensland makes a claim against DVA to recover the cost. In making such claims, Queensland must share confidential patient information with the Commonwealth, represented by DVA, and with the Repatriation Commission and the Military Rehabilitation and Compensation Commission. The previous agreement under which this confidential information is shared has now expired.

On 8 April 2024, Queensland Health received the new signed agreement in relation to eligible veterans, called the 'Hospital services arrangement between the Commonwealth of Australia and the Repatriation Commission and the Military Rehabilitation and Compensation Commission and the State of Queensland'. This agreement will cover the period 1 July 2023 to 30 June 2025. The terms of the new agreement are materially the same as the expired agreement.

Queensland public hospitals also treat visiting residents from Norfolk Island. The Commonwealth of Australia accepts financial responsibility for the cost of the treatment provided and Queensland makes a claim against the Commonwealth to recover the cost. In making such claims, Queensland must share confidential patient information with the Commonwealth, represented by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts. The previous agreement under which this confidential information is shared has now expired.

In November 2023, Queensland Health received the completed new agreement in relation to visiting residents from Norfolk Island, called the ‘Cross-border agreement between the State of Queensland and the Commonwealth of Australia for the funding of patient services provided by Queensland Health to residents of Norfolk Island’. This agreement will cover the period from 1 July 2021 to 30 June 2025. The terms of the new agreement are materially the same as the expired agreement.

To allow Queensland Health to continue sharing confidential patient information with the Commonwealth, it is necessary to prescribe the new agreements in the Hospital and Health Boards Regulation. It is proposed to amend schedule 8, part 1 of the Regulation to prescribe the new agreements.

Amendments to the Hospital and Health Boards Regulation, *Private Health Facilities Regulation 2016*, and *Public Health Regulation 2018*

Primary Health Networks (PHNs) are a national network of independent, not-for-profit, primary health care organisations funded by the Commonwealth Government. Their key objective is to increase the efficiency and effectiveness of medical services for patients in their geographic region, particularly those at risk of poor health outcomes, and to improve the coordination of care.

The seven Queensland PHNs require regular, timely and ongoing access to a wide range of confidential, patient-level data from both within the department and across the 16 Hospital and Health Services (HHSs). Access to this data is necessary to assist PHNs with achieving their core health services planning and evaluation functions.

The information provided can include, but is not limited to, public and private hospital admitted patient activity, non-admitted patient activity, emergency department presentations, perinatal data, maternity indicators, and Health Contact Centre data.

This information contributes to the PHN’s role in developing a joint regional needs assessment framework under which the PHNs must work in partnership with their local HHS/s and other health partners, such as the local Aboriginal and Torres Strait Islander Community Controlled Health Organisations (ATSICCHOs). As this is considered a key health service planning function, timely access to confidential patient data is essential for the PHNs to achieve their functions.

Currently, this data is obtained from Queensland Health by seeking case-by-case approval from the chief executive. However, this is time and resource intensive.

The Queensland Aboriginal and Islander Health Council (QAIHC) is dedicated to empowering a sustainable ATSICCHO sector, underpinned by cultural safety, strong leadership, and

governed by principles of self-determination. QAIHC's purpose is to advocate and lobby for accessible and equitable comprehensive primary healthcare to all First Nations people in Queensland and is responsible for supporting and delivering activities that develop the capability of ATSI CCHOs. QAIHC does this through closely working with its members to identify needs and provide practical solutions. This is done through advice, support, cultural capability and education, workforce planning and development, continuous quality improvement and accreditation and chronic disease management. QAIHC's membership is open to all 32 ATSI CCHOs in Queensland.

The Institute for Urban Indigenous Health (IUIH) leads the planning, development and delivery of health and wellbeing services for Community Controlled Health Services of South-East Queensland.

Queensland Health data when analysed together with other data drawn from QAIHC's and IUIH's member services, will enable them each to develop a more complete understanding of the health needs of Aboriginal and Torres Strait Islander communities, and better inform the opportunities for health services to be provided closer to the community in partnership with their member services. QAIHC and IUIH will also participate in the joint regional needs assessments, so having access to the same data will further advance their equal participation in this process.

QAIHC and IUIH also currently obtain relevant data from Queensland Health by seeking case-by-case approval from the chief executive. Again, this is time and resource intensive.

Sharing confidential data for the purposes of evaluating, managing, monitoring or planning health services will assist PHNs, QAIHC and IUIH to achieve their health service planning and evaluation functions.

Section 150(b) of the *Hospital and Health Boards Act 2011*, section 147(4)(h)(ii) of the *Private Health Facilities Act 1999*, and section 225(b) of the *Public Health Act 2005* allow the disclosure of confidential information to an entity prescribed under a regulation for the purposes of evaluating, managing, monitoring or planning health services.

The Amendment Regulation amends the Hospital and Health Boards Regulation, Private Health Facilities Regulation and Public Health Regulation to allow ongoing regular disclosure of confidential information to seven PHNs, QAIHC and IUIH by making them prescribed entities for evaluating, managing, monitoring or planning health services. This will allow ongoing disclosure without requiring individual approvals.

The PHNs, QAIHC and IUIH have entered into Deeds of Disclosure with Queensland Health which outline the data use and disclosure conditions. This ensures compliance with confidentiality obligations and clarifies permitted disclosures, including information management and security processes.

Amendments to the *Radiation Safety Regulation 2021* – Prescribing certain classes of student health practitioners as use licence holders

Student health practitioners are currently required to hold a use licence issued under the *Radiation Safety Act 1999*.

Section 102 of the Radiation Safety Regulation provides that a person who is required to use a radiation source during the person's study or training at an educational institution is exempt from paying application and licence fees for the use licence.

Currently, Queensland Health incurs costs processing and assessing licence applications and cannot recoup these costs as students are exempt from paying the associated licence and application fees.

The Amendment Regulation amends the Radiation Safety Regulation to prescribe the following classes of student health practitioners as 'use licensees', enabling them to use a radiation source to carry out a radiation practice without going through the application process for the licence:

- dental students, oral health therapy students, dental hygiene students and dental therapy students;
- diagnostic radiography students;
- radiation therapy students; and
- nuclear medicine technology students.

Prescribing these classes of student health practitioners as use licensees will reduce the financial and administrative burden on Queensland Health. It will also reduce the administrative burden on the prescribed classes of student health practitioners as they will no longer be required to apply for a licence.

Student health practitioners are under a formal guidance and mentorship program while undertaking the practical student placement component of their university training courses. It is considered that within this training environment, the student health practitioners proposed to be prescribed as use licensees have sufficient skills, training, competency, knowledge and experience in the use of the specified types of radiation sources to be able to safely and competently use a radiation source for the practice without endangering the health of other persons or adversely affecting the environment. The requirement to apply for, and be granted, a use licence issued by the department is therefore not necessary as other effective controls are in place within the education and clinical systems.

Amendments to the *Radiation Safety Regulation 2021* – Prescribing cardiologists as 'authorised persons'

Schedule 6 of the Radiation Safety Regulation prescribes authorised persons for particular diagnostic procedures. Under this schedule, only diagnostic radiologists, radiation oncologists, and doctors in training for these specialties are authorised to request computed tomography (CT) procedures.

Specialist cardiologists, even those who have undertaken specialised training in CT coronary angiography, are not authorised to request CT procedures. Instead, they need to refer their patients to a diagnostic radiologist to have such procedures authorised.

Where a cardiologist with CT coronary angiography training recommends a patient undergo a CT diagnostic imaging procedure, they must refer the patient to an authorised health professional who, in turn, will request the procedure for the patient. This is at the expense of the patient's convenience and, as CT coronary angiography trained cardiologists are best

qualified to decide whether the patient should undergo the procedure, does not enhance patient care.

The Amendment Regulation prescribes cardiologists who have completed specialist CT coronary angiography training as ‘authorised persons’.

This will remove the need for them to refer the patient to another health professional to request the procedure. This will streamline delivery of care for cardiovascular conditions and create efficiencies for patients in accessing diagnostic services.

Some stakeholders have previously raised concerns that an amendment of this nature would mean that a specialist cardiologist who also held a relevant use licence could both authorise and perform these procedures, which is contrary to the usual ‘arms-length’ referral arrangements.

Queensland Health considers the risk of this occurring is very low. To date, no cardiologists have sought to obtain a use licence to perform CT diagnostic imaging procedures. Queensland Health considers it is very unlikely that a cardiologist (of whom there are a very small number in Queensland) would seek such a licence. CT diagnostic imaging procedures are usually performed by licensed diagnostic radiographers, not cardiologists.

To address any residual risk, it is intended that if an authorised cardiologist applies for a use licence, the use licence will only be granted subject to the condition that the cardiologist can only perform the CT diagnostic imaging procedure if it was requested by another authorised person. This would prevent the same cardiologist requesting and performing the procedure.

Amendments to the *State Penalties Enforcement Regulation 2014*

The objectives of the State Penalties Enforcement Act include maintaining the integrity of fines as a viable sentencing or punitive option for offenders. One way this is achieved is by the use of infringement notices. When an authorised person has a reasonable belief that a person has committed an infringement notice offence, they may issue the person with an infringement notice. This notice allows the receiver to either pay the fine or elect to have the matter determined by a Magistrate.

In June 2023, significant amendments were made to the *Tobacco and Other Smoking Products Act 1998*. This included establishing a licensing scheme for the wholesale and retail sale of smoking products. New section 65(1) makes unlicensed sale of smoking products an offence, with a maximum penalty of 1,000 penalty units. New section 78(2) makes it an offence to supply smoking products at a liquor licensed premises other than from a service area, with a maximum penalty of 140 penalty units. To give businesses sufficient time to meet the new requirements, these offences do not commence until 1 September 2024.

To assist with effective enforcement of the new tobacco licensing framework, the Amendment Regulation amends the State Penalties Enforcement Regulation to prescribe the above offences as infringement notice offences.

Amendments to the *Voluntary Assisted Dying Regulation 2022*

A recent review of the voluntary assisted dying (VAD) legislation identified potential to improve the regulation of VAD substances to ensure safer management of the substance throughout the VAD process.

Where a person makes a self-administration decision and is supplied with a self-administration VAD substance, and subsequently revokes the self-administration decision to instead make a practitioner administration decision, there is no legislative requirement for the unused self-administration substance to be returned and disposed of prior to the supply of a practitioner administration substance.

There will also be circumstances where a person has made a practitioner administration decision and revokes this decision to make a new self-administration decision. The practitioner administration substance remains in the control and possession of the administering practitioner. In this instance, there will be no restriction for an authorised supplier to supply a self-administration substance to the person.

The Amendment Regulation amends the Voluntary Assisted Dying Regulation to clarify that a VAD substance cannot be supplied to a person unless a previously supplied substance has been disposed of by or is in the possession of an authorised disposer or the administering practitioner.

This ensures that two VAD substances cannot be supplied to a person at the same time, and that self-administration substances do not remain in the community when no longer needed. This gives legislative effect to current operational policy, ensuring that relevant safeguards are applied for the safety of individuals and the community.

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 in the Human Rights Act which are relevant to the Amendment Regulation are:

- property rights (section 24);
- privacy and reputation (section 25);
- cultural rights – Aboriginal and Torres Strait Islander Peoples (section 28); and
- right to health services (section 37).

Consideration of human rights promoted

Amendments to the Hospital and Health Boards Regulation, Private Health Facilities Regulation, Public Health Regulation and Radiation Safety Regulation

Cultural rights – Aboriginal and Torres Strait Islander peoples (section 28) and right to health services (section 37)

Section 28 of the Human Rights Act asserts the cultural rights of Aboriginal peoples and Torres Strait Islander peoples, ensuring their entitlement to maintain and develop their distinct cultural identity, language, kinship ties, and relationship with their land and resources. It prohibits forced assimilation or cultural destruction, safeguarding their cultural heritage and identity.

The amendments support the Closing the Gap Agreement reform area of ‘Shared access to data and information at regional level’.

Sharing data is the foundational step to supporting First Nations communities to achieve data sovereignty, including development of data that is strengths based and meaningful to First Nations peoples.

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. The right of access to health services includes access to medication.

The Amendment Regulation promotes the cultural rights of First Nations people and the right to health services without discrimination in a culturally sensitive way. It is a positive step in improving the delivery of health services to First Nations people.

The right to health services is promoted by the proposed amendments to the Radiation Safety Regulation to streamline delivery of care for patients with heart disease and cardiac conditions, including by creating efficiencies in assessing relevant diagnostic services. It will allow cardiologists who have completed specialist computed tomography coronary angiography training to work to their full scope of practice and promote more equitable and timely access to health services for the Queensland public.

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

Amendments to the Hospital and Health Boards Regulation 2023, Private Health Facilities Regulation 2016 and Public Health Regulation 2018

Privacy and reputation (section 25 of the Human Rights Act)

(a) the nature of the right

Section 25 of the Human Rights Act provides that every person has a right to privacy. However, this right is subject to limitations. The right to privacy protects individuals against unlawful or arbitrary interferences with their privacy, family, home, or correspondence. Privacy is generally understood to comprise of freedom from unwarranted and unreasonable intrusions into activities that society recognises as falling within the sphere of individual autonomy.

The concept of lawfulness in the context of the right to privacy means that no interference can take place except in cases envisaged by the law, while the concept of arbitrariness extends to interferences that may be lawful but that are capricious, unpredictable, unreasonable, and disproportionate. It protects privacy in the sense of personal information, data collection and correspondence. The right is likely to be engaged by legislation that allows for data sharing.

(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 aim of sharing data is to assist PHNs in fulfilling their essential role in health service planning. The data includes confidential personal details and encompasses various healthcare events. PHNs are tasked with conducting joint regional needs assessment framework by

analysing pertinent local and national health data to ascertain present and future health priorities.

The QAIHC and IUIH are committed to supporting and facilitating the development of Aboriginal and Islander health and well-being services for Community Controlled Health Services.

Sharing confidential data for the purposes of evaluating, managing, monitoring or planning health services will assist PHNs, QAIHC and IUIH to achieve their health service planning and evaluation functions. This process aids in identifying strategies to allocate funding more effectively in accordance with population health needs.

Similarly, the aim of sharing confidential patient information with the Commonwealth is to support the treatment of eligible veterans and visiting Norfolk Island residents in Queensland public hospitals. Amending the Hospital and Health Boards Regulation to prescribe the new agreements with the Commonwealth will facilitate Queensland recovering the cost of this treatment from the Commonwealth.

Improving the health of the public is a purpose which is consistent with a free and democratic society based on human dignity, equality and freedom. It is reasonable, necessary and proportionate to share confidential information to improve public health and deliver health services to individuals. The interference with privacy is not unlawful or arbitrary, as it must be done in compliance with the various Acts and data sharing agreements.

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

The disclosure of confidential data is justified when it serves a compelling public interest, such as protecting public health and safety. In the context of PHNs, QAIHC and IUIH, sharing confidential data can facilitate timely and effective healthcare interventions, allowing for the identification of health trends, resource allocation, and targeted interventions to prevent the spread of diseases. This information exchange can lead to improved health outcomes for individuals and communities by enabling healthcare providers to deliver more personalised and responsive care. Similarly, sharing confidential patient information with the Commonwealth will support the treatment of eligible veterans and visiting Norfolk Island residents in Queensland public hospitals.

(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 identified purposes.

The Hospital and Health Boards Act, Private Health Facilities Act and Public Health Act all provide that confidential information must not be disclosed, directly or indirectly, unless the disclosure is required or permitted under the Act. These Acts allow for the disclosure of information by request if the disclosure of confidential information is in the ‘public interest’. The exemptions outlined in the Acts serve as an additional layer of protection ensuring that confidential information remains safeguarded from unauthorised disclosure.

PHNs, QAIHC and IUIH require regular, timely and ongoing access to a wide range of confidential, patient level data. This is currently disclosed on a per-request basis which requires

individual approvals by the chief executive. This method of data sharing is resource intensive and can result in delays in the provision of the data that impact these entities fulfilling their roles of evaluating, managing, monitoring and planning health services.

Deeds of disclosure between Queensland Health and the PHNs, QAIHC and IUIH outline the data use and disclosure conditions which will ensure compliance with confidentiality obligations and information management and security processes.

Similarly, confidential patient information may only be disclosed to the Commonwealth in accordance with the safeguards in the Hospital and Health Boards Act and the data use and disclosure conditions in the new agreements. Under the agreements, the parties to the agreement must comply with relevant Commonwealth and Queensland privacy legislation in relation to a patient's personal information. Also, confidential patient information may only be disclosed in accordance with the agreement. Further, by using a DVA health card, an eligible veteran consents to disclosure of their treatment information.

(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 limitation is justified having regard to the importance of enhancing health outcomes in Queensland which is vital not only for individuals and communities but also for fostering overall well-being and socioeconomic development.

Amendment to the Voluntary Assisted Dying Regulation

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

(a) the nature of the right

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. The right of access to health services includes access to medication.

(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 proposed amendment to the Voluntary Assisted Dying Regulation is a required safeguard to protect the community, by ensuring that two substances are not supplied for the same person concurrently. This will mitigate some of the risk of possible unauthorised use of a VAD substance by vulnerable persons, protecting human life, which is a purpose 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 to achieve the purpose

Where a self-administration substance has been issued to a person and the person has revoked their self-administration decision and made a new practitioner administration decision, there is no legislative requirement for the original self-administration substance to be returned for disposal prior to the practitioner administration substance is supplied. This creates a risk of two

substances being supplied for a person at the same time, and of the self-administration substance remaining in the community when it is no longer needed.

The amendments will also cover where a person has made a practitioner administration decision and revokes this decision to make a new self-administration decision. The practitioner administration substance remains in the control and possession of the administering practitioner.

The Amendment Regulation clarifies that a VAD substance cannot be supplied to a person unless a previously supplied substance has been disposed of by or is in the possession of an authorised disposer or the administering practitioner.

This ensures that there cannot be concurrent supply of two VAD substances for the same person and will mitigate the risk of misuse of a VAD substance. It therefore assists to achieve the purpose of protecting human life.

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

There are no less restrictive or reasonably available ways to achieve the purpose of the amendments.

Queensland Health with the Queensland Voluntary Assisted Dying Support and Pharmacy Service have already implemented strategies to require that where a person has revoked their self-administration decision, and then makes a practitioner administration decision, any already supplied self-administration substance must be returned before a practitioner administration substance can be supplied. However, this is considered a temporary solution and there are no safeguards. The risk remains that the regulation does not prevent two VAD substances being supplied to the same person concurrently and the unused substance remaining in the community when it is no longer needed.

The limitation is justified to protect vulnerable people in the community and to ensure the enhanced management of VAD substances.

(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 limitation on the right to health services is justified given the critical importance of ensuring VAD substances cannot be misused and protecting human life.

Amendments to the State Penalties Enforcement Regulation

Property rights (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. The 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).

Prescribing infringement notice offences limit property rights because a person issued with an infringement notice must either pay a monetary fine to the State or elect to have the matter dealt with by a court. A person who fails to pay an infringement notice fine may have enforcement action taken against them by the registrar of the State Penalty Enforcement Registry. Enforcement actions are provided for in the State Penalties Enforcement Act and may include seizure and sale of property, imposing a charge over property, taking the fine amount directly from the person's earnings or savings, cancelling the person's drivers licence or immobilising the person's vehicle.

This right will be limited by prescribing new offences under the Tobacco and Other Smoking Products Act as infringement notice offences. These offences prohibit:

- the unlicensed sale of smoking products; and
- an employee of a person in charge of tobacco product vending machine in a liquor licensed premises from supplying a smoking product to a customer at any part of the premises other than the point of sale.

(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 the limitation to property is to support the licensing scheme for the wholesale and retail sale of smoking products, and the supply of smoking products at liquor licensed premises. This scheme ensures dangerous smoking products are appropriately regulated in the interest of public health.

The Amendment Regulation creates an alternate enforcement pathway for these new offences. The licensing scheme provides Queensland Health with greater visibility of the retail smoking product industry. It also supports the monitoring and compliance activities needed to improve public confidence in the industry and protect the community from the illegal supply of tobacco.

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

The ability to issue an infringement notice provides an efficient and cost-effective way of enforcing the Tobacco and Other Smoking Products Act by providing for the immediate imposition of proportionate penalties outside the court process. As this limitation acts as a deterrent to contravening the Act, it assists in ensuring compliance with the requirements of the Act designed to protect public health.

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

There is no less restrictive and reasonably available way to achieve the purpose of regulating the supply of smoking products other than by maintaining a system that contains offences and associated penalties for failing to comply with the requirements of the Tobacco and Other Smoking Products Act.

In addition, it is considered that there is no less restrictive and reasonably available way to achieve the purpose of ensuring efficient enforcement, other than by prescribing the offences to be infringement notice offences under the State Penalties Enforcement Regulation.

If these offences are not prescribed as infringement notice offences, there would be a cost to alleged offenders caused by compulsory court attendance. Prescribing infringement notice offences provides several benefits to alleged offenders who decide not to contest the infringement notice. These benefits include not having to attend court or prepare their defence with or without legal representation, as well as giving them certainty about their legal position. Further, if these offences are not prescribed as infringement notice offences, there would also be a cost to the broader community of court proceedings that may affect the State's ability to ensure compliance with the Tobacco and Other Smoking Products Act.

Other protections include that:

- a person who considers a fine should not have been issued may elect to have the matter heard by a court instead of paying the fine;
- if a fine is not paid within the specified timeframe and the infringement notice is registered with State Penalties Enforcement Registry for enforcement action, the person may apply to pay their debt by instalments; and
- individuals who are experiencing hardship can apply to resolve their debt under a work and development order (which can include undertaking relevant courses, attending counselling and treatment programs or completing work with an approved hardship partner).

For these reasons, there is no less restrictive and reasonably available way to achieve the purpose of enforcing the new offences in the Tobacco and Other Smoking Products Act, in order to protect public health, in a timely and cost-effective way.

(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

It is necessary for Queensland Health to be able to monitor and respond to risks associated with unlicensed retail or wholesale supply of smoking products, and the supply of smoking products in liquor licensed premises other than from a service area.

Prescribing infringement notice offences does not alter any existing obligations under Tobacco and Other Smoking Products Act. It will only affect persons who are noncompliant with certain provisions in the Act.

It is considered that the importance of implementing effective enforcement responses that are proportionate to the risk created by the offending behaviour, and protecting and promoting public health, outweighs any potential limits on human rights.

Right to a fair hearing (Human Rights Act, section 31) and rights in criminal proceedings (Human Rights Act, section 32)

(a) the nature of the right

The right of a person to a fair hearing includes the right to have criminal charges or civil proceedings decided by a competent, independent and impartial court or tribunal after a fair and public hearing.

The Amendment Regulation amends the State Penalties Enforcement Regulation to allow penalty infringement notices to be issued for new offences in the Tobacco and Other Smoking Products Act. A person issued with a penalty infringement notice is subject to punishment through payment of a fine without the benefit of a finding of guilt by a court after a fair and public hearing. This could be characterised as a limitation on the right to a fair hearing and rights in criminal proceedings, although it should be noted that a person to whom a penalty infringement notice is issued may always elect to have the alleged offence dealt with by a court.

(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 the limitation imposed by the amendment is to assist authorised persons to enforce the Tobacco and Other Smoking Products Act and thereby protect the community from the harm caused by smoking products. This is a purpose that is 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 to achieve the purpose

The ability to issue a penalty infringement notice provides an efficient and cost-effective way of enforcing the Tobacco and Other Smoking Products Act by providing for the immediate imposition of proportionate penalties outside the court process. As this limitation acts as a deterrent to contravening the Tobacco and Other Smoking Products Act, it assists in ensuring compliance and protecting and promoting public health.

(d) Whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose

If penalty infringement notices could not be issued for contravening the new offences in the Tobacco and Other Smoking Products Act, the deterrent effect of these offences would be reduced. This is because it is unlikely that full prosecution action would be taken for every contravention, especially those which are less serious. The ability to issue a penalty infringement notice does not alter existing obligations under the Tobacco and Other Smoking Products Act and is available only where an authorised person reasonably believes that a person has committed a prescribed offence. For these reasons, there is no less restrictive and reasonably available way to achieve the purpose of enforcing the new offences in the Tobacco and Other Smoking Products Act in a timely and cost-effective way.

Under the State Penalties Enforcement Regulation guidelines administered by the Department of Justice and Attorney-General, penalty infringement notices are not prescribed for complex offences or where discretionary elements are involved.

Penalty infringement notices:

- are an effective and immediate enforcement response that is proportionate to the risk to public health created by the offending behaviour;

- are a cost-effective method of enforcement, as they reduce the demands on courts and the need for authorised persons to initiate full prosecution action; and
- give the alleged offender an alternative to prosecution, whereby they do not need to attend court or prepare a defence and have certainty about their legal liability.

However, as an accused person always retains the option to challenge a penalty infringement notice, issuing them does not impede the accused's right to access the judicial system.

(e) the balance between the importance of the purpose of the Regulation which imposes a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The public health risks associated with the use of smoking products is well established as the single greatest risk factor contributing to preventable death and disease.

The amendments will deliver benefits to the entire community now and into the future, in terms of improved health outcomes and reduced health costs, enabled by efficient enforcement of the Tobacco and Other Smoking Products Act. The rights which are limited by this proposal are important, but the limitation is ameliorated to the greatest degree possible. The limitations will apply only where an authorised person reasonably believes that a person has committed a prescribed offence, and where that person then elects not to have the matter adjudicated by the courts.

The Amendment Regulation, in establishing penalty infringement notices, strikes a balance between competing rights and interests that is reasonable and demonstrably justifiable in a free and democratic society.

Conclusion

I consider that the Amendment Regulation is compatible with the Human Rights Act 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

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