

Medicines and Poisons (Medicines) Amendment Regulation (No.2) 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 (No. 2) 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:

- authorise community pharmacists who have received appropriate training to prescribe a range of hormonal contraceptives to women and girls over the age of 16 under the Community Pharmacy Hormonal Contraception Service Pilot (Contraception Pilot);
- provide a low-risk exemption for buying and supplying medicines stock held in or obtained from the Commonwealth National Medical Stockpile, enabling rapid access to, and distribution of, National Medical Stockpile medicine stock and enabling unused stock of medicine to be returned to the National Medical Stockpile to avoid wastage; and
- authorise nurse practitioners to deal with unapproved medicines.

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.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 Contraception Pilot to prescribe a range of hormonal contraceptives to women and girls over the age of 16.

The Amendment Regulation updates references to new versions of the extended practice authorities entitled ‘Pharmacists’ and ‘Pharmacists – Community pharmacy scope of practice pilot’ and amends schedule 9 division 1, section 2 of the Medicines Regulation to provide that a pharmacist can prescribe an S4 medicine, other than a restricted medicine or diversion-risk medicine, mentioned in the pharmacists extended practice authority if the medicine is prescribed under the extended practice authority. This amendment enables local pharmacists to prescribe hormonal contraceptives to women and girls in their communities and facilitates better access to these medicines.

The Amendment Regulation also authorises nurse practitioners to deal with unapproved medicines to allow nurse practitioners to work to their optimal scope of practice, which will increase health services for Queenslanders and will offer consumers greater choice in accessing health services.

The amendments are designed to facilitate equitable access to medicines and health services for all Queenslanders and will offer consumers greater choice in accessing health services. The Amendment Regulation therefore supports and promotes the right to access health services, including access to medicines, 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 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.

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

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.

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.

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 medicines, continues to impose some requirements for the safe and clinically appropriate use of 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

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 address practical and operational issues that have been identified by stakeholders and operational areas within Queensland Health. The Amendment Regulation achieves this by introducing a Contraception Pilot that offers standalone training to encourage more pharmacists to prescribe hormonal contraception to address the high demand for this health service across the state.

In addition, it aligns nurse practitioner’s medication management practices in Queensland with other professions, including endorsed midwives, and with most other jurisdictions in Australia.

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

This amendment will improve patients access to medicine and treatment and improve their health outcomes.

While the Amendment Regulation makes changes to enhance overall access to health care services by reducing existing restrictions on who can deal with medicines, it continues to impose restrictions on who may deal with medicines, for example by requiring pharmacists to undertake specified training prior to partaking in the Contraception Pilot.

The purpose of imposing restrictions on dealings with medicines (such as prescribing, dispensing, 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 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 purpose of mitigating risks of misuse or substance abuse by vulnerable persons. They also 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 prescribing 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 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.2) 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

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