

Drugs Misuse (Dangerous Drugs) 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, Yvette D'Ath MP, Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence, provide this human rights certificate with respect to the *Drugs Misuse (Dangerous Drugs) Amendment Regulation 2024* (Amendment Regulation) made under the *Drugs Misuse Act 1986*.

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 *Drugs Misuse Act 1986* (the DM Act) prohibits the supply, possession, production and trafficking of dangerous drugs. A 'dangerous drug' is defined in section 4 of the DM Act to include a thing specified in Schedule 1 or 2 of the *Drugs Misuse Regulation 1987* (DM Regulation).

The DM Regulation groups dangerous drugs into schedules. Schedule 1 contains drugs that are considered most serious. Schedule 2 includes all other illicit drugs. The distinction between these schedules can impact sentencing and penalties for drug-related offences.

There is a public interest in ensuring the drugs and substances listed in the DM Regulation continue to be comprehensive and responsive to emerging trends.

Nitazenes are strong synthetic opioids. Due to their potency, nitazenes can cause death on their own or in combination with other illicit drugs.

Nitazenes have no medical or therapeutic use due to their adverse effects and substantial risk of overdose.

Nitazenes can be presented in a variety of forms including powders, tablets, nasal sprays and even vape liquids. They are often marketed and sold as cocaine, heroin, MDMA and counterfeit pharmaceuticals. Recently in Australia there has been a rise in attempted imports of nitazenes.

Two nitazenes (clonitazene and etonitazene) are currently scheduled as dangerous drugs in Schedule 2 of the DM Regulation.

The Amendment Regulation prescribes ten further nitazenes (butonitazene, etodesnitazene (etazene), etonitazepipne, etonitazepyne, flunitazene, isotonitazene, metodesnitazene, metonitazene, protonitazene and N-pyrrolidino protonitazene (protonitazepyne)) as dangerous drugs in Schedule 2 of the DM Regulation.

As a consequence of this scheduling, the offences of unlawful possession, production, supply and trafficking within the DM Act will apply to these substances.

Section 134A of the DMA Act provides that in deciding whether to recommend the prescription of a thing as a dangerous drug for the DM Regulation, Schedules 1 to 5, the Minister must consider the following:

- (a) the likelihood or evidence of abuse of the drug, including, for example, the prevalence of the drug, consumption levels of the drug, the potential appeal of the drug to vulnerable populations and drug seizure trends;
- (b) the specific effects of the drug, including, for example, the pharmacological, psychoactive and toxicological effects;
- (c) the risks, if any, of the drug to public health and safety;
- (d) the therapeutic value, if any, of the drug;
- (e) the potential for use of the drug to cause death;
- (f) the ability of the drug to create physical or psychological dependence;
- (g) the classification and experience of the drug in other jurisdictions;
- (h) any other matters the Minister considers appropriate

Human Rights Issues

The Amendment Regulation inserts ten new nitazenes as dangerous drugs into Schedule 2 of the DM Regulation and supports the policy objectives of the DMA.

In my opinion, the following human rights under the *Human Rights Act 2019* (HR Act) are relevant to the amendment:

- *Right to life* (section 16 of the HR Act); and
- *Right to liberty and security of person* (section 29 of the HR Act).

Human rights promoted

In my opinion, the human rights promoted by the amendment is the right to life (section 16 of the HR Act).

Human rights limited

In my opinion, the amendment limits the right to liberty and security of person (section 29 of the HR Act).

The right to liberty and security protects the liberty of all persons, including protection from arbitrary arrest or detention, and the deprivation of liberty only on grounds, and in accordance with procedures, established by law.

The concept of arbitrariness carries a human rights meaning of capriciousness, unpredictability, and unreasonableness in the sense of not being proportionate to the legitimate aim sought. The concept of lawfulness in the context of the right to liberty means that no interference can take place except in cases envisaged by the law.

Limitation of rights justified

The purpose of the limitation on a person's right to liberty is to ensure that Queensland's criminal justice system can effectively respond to illicit drug related offending, to deter said criminal activity and to meet community expectations in relation to the misuse of dangerous drugs.

While it is not possible to quantify the deterrence effect that the amendment may have, it is known that the potential harm that may be caused by nitazenes is great. As such, creating strong disincentives from the use of the synthetic opioids is in the public interest.

There is no less restrictive and reasonably available way to achieve the legitimate purpose.

On balance, the potential infringement on the identified right is appropriate to ensure the application of legislation that adequately accounts for the impacts of the offending behaviour, reflects emerging trends of concern, and meets community expectations.

Conclusion

I consider that the Amendment Regulation is compatible with the HR Act because it limits human rights only to the extent that is reasonable and demonstrably justifiable in a free and democratic society based on human dignity, equality and freedom.

YVETTE D'ATH MP
Attorney-General and Minister for Justice and
Minister for the Prevention of Domestic and Family Violence

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