

Health (Drugs and Poisons) Amendment Regulation 2020

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 Steven Miles MP, Deputy Premier and Minister for Health and Minister for Ambulance Services provide this human rights certificate with respect to the Health (Drugs and Poisons) Amendment Regulation 2020 made under the *Health Act 1937*.

In my opinion, the Health (Drugs and Poisons) Amendment Regulation 2020, 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

On 29 January 2020, a public health emergency was declared under section 319 of the *Public Health Act 2005* due to the outbreak of COVID-19 (the COVID-19 public health emergency). The COVID-19 public health emergency was declared for all of Queensland. A copy of the public health emergency order was published in the Queensland Government Gazette on 31 January 2020. The COVID-19 public health emergency has been extended by regulation until 19 May 2020 and may be further extended.

On 26 March 2020, the Australian Government introduced telehealth arrangements that are intended to allow pharmaceutical benefits to be paid for some restricted (schedule 4) drugs dispensed by pharmacists on receipt of a digital image of a prescription from a prescriber. This has been achieved by the *National Health (COVID-19 Supply of Pharmaceutical Benefits) Special Arrangement 2020* (the Special Arrangement).

The telehealth arrangements are one way to streamline health service delivery and reduce physical contact for vulnerable patients during the COVID-19 response. To implement the arrangements, it is necessary to amend the *Health (Drugs and Poisons) Regulation 1996* (HDPR). The amendments will strengthen Queensland's capacity to respond to COVID-19 and to provide flexibility for administrative matters to slow the spread of COVID-19, while ensuring continued access to prescribed medicines.

If a prescription is for a restricted (Schedule 4) drug, other than a restricted drug of dependence or an anabolic steroid, it is proposed the prescriber will be temporarily exempt from the legal requirement (in the HDPR) to send the original prescription to the dispenser. Restricted drugs of dependence are listed in Appendix 8 of the HDPR and include benzodiazepines, codeine and phentermine.

As required for the Special Arrangement, the prescriber must retain the original paper prescription for a period of two years (whether for a pharmaceutical benefit scheme or private prescription).

The Health (Drugs and Poisons) Amendment Regulation 2020 (Amendment Regulation) provides for a temporary exemption for sending paper copies of prescriptions, which will be applied retrospectively from 26 March 2020 and will continue to apply while the Special Arrangement remains in place.

There are no changes to the requirement for the prescriber to send a paper prescription to the pharmacy for controlled drugs, restricted drugs of dependence and anabolic steroids. The paper prescription for these medicines must still be sent to the dispenser within 7 days of being faxed or sent as a digital image.

The Amendment Regulation will also allow pharmacists to dispense on faxed copies and digital images of prescriptions, in addition to existing oral and paper prescriptions. Pharmacists are obliged to confirm the bona fides of all prescriptions including that they have been written and sent by an authorised prescriber.

If the prescription is for a restricted drug, other than a restricted drug of dependency or an anabolic steroid, under the Special Arrangements, pharmacists will be required to retain the faxed copy, digital image or a printout of the digital image of a prescription on which they have dispensed for a period of two years for audit and compliance purposes. For all other prescriptions, the usual requirement for a prescriber to send the paper prescription by post or by hand within seven days will continue to apply.

Existing requirements in the HDPR about keeping records of all dispensed medicines will not change.

The Special Arrangement requires that all remaining repeats be retained and supplied at the original dispensing pharmacy. The original dispensing pharmacy must also retain and supply any repeats on private prescriptions. A pharmacist will not be able to supply a repeat supply on a faxed copy or digital image of a prescription whose initial dispensing was made at another pharmacy.

Human Rights Issues

Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 *Human Rights Act 2019*)

The regulation engages the following human rights protected by the Human Rights Act:

- Retrospective criminal laws (section 35 of the Human Rights Act)
- Right to health services (section 37 of the Human Rights Act).

Retrospective criminal laws (section 35 of the Human Rights Act)

Section 35 of the Human Rights Act provides that a person must not be found guilty of a criminal offence because of conduct that was not a criminal offence when it was engaged in.

The Amendment Regulation provides for a temporary exemption for sending paper copies of prescriptions, which will be applied retrospectively from 26 March 2020 and will continue to apply while the Special Arrangement remains in place.

Although this amendment is retrospective, it does not criminalise or impose a penalty for any conduct that was not unlawful at the time it occurred. To the contrary, the amendment immunises persons from criminal liability that they have already incurred by breaching the existing requirement for sending paper copies of prescriptions.

As the amendment does not impose criminal liability or penalties retrospectively, it does not limit any of the rights described in section 35 of the Human Rights Act.

Right to Health Services

Section 37 of the Human Rights Act provides that every person has a right to access health services without discrimination.

The Amendment Regulation amends the HDPR to provide prescribers with a temporary exemption from the legal requirement (in the HDPR) to send the original prescription to the dispenser. The Amendment Regulation will also allow pharmacists to dispense on faxed copies and digital images of prescriptions, in addition to existing oral and paper prescriptions.

The amendments streamline health service delivery and reduce physical contact for vulnerable patients during the COVID-19 response. This will expand access to health services for all Queenslanders, including those who may otherwise be unable to obtain these services due to isolation, quarantine, home confinement and other restrictions in place to respond to the COVID-19 pandemic. The amendments therefore promote the right to access health services without discrimination.

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

As the Amendment Regulation does not limit human rights, it is not necessary to consider section 13 of the Human Rights Act.

Conclusion

I consider that the Health (Drugs and Poisons) Amendment Regulation 2020 is compatible with the *Human Rights Act 2019* because it raises human rights issues but does not limit human rights.

STEVEN MILES
DEPUTY PREMIER and MINISTER FOR HEALTH and
MINISTER FOR AMBULANCE SERVICES