

Radiation Safety Regulation 2021

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 Yvette D'Ath MP, Minister for Health and Ambulance Services and Leader of the House provide this human rights certificate with respect to the *Radiation Safety Regulation 2021* made under the *Radiation Safety Act 1999*.

In my opinion, the *Radiation Safety Regulation 2021*, 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 main objective of the *Radiation Safety Act 1999* is to protect persons and the environment from the harmful effects of particular sources of ionising radiation and harmful non-ionising radiation, while recognising the beneficial uses of radiation. The Act provides a safety and protection framework by regulating the possession, use, transport, acquisition and disposal of radiation sources, establishing a licensing and compliance regime, imposing restrictions and prohibiting particular radiation sources. The *Radiation Safety Regulation 2010* (existing Regulation) was made to prescribe requirements to support the operation of the Act.

The *Radiation Safety Regulation 2021* (Regulation) has been prepared to replace the existing Regulation. The Regulation continues the existing framework by prescribing various matters necessary to support the Act, such as:

- labelling and classification requirements for lasers, including which lasers are considered radiation apparatus subject to the licensing requirements of the Act;
- standard conditions that apply to particular licences;
- requirements for the disposal of radioactive material;
- exemptions from the requirements to hold a use or possession licence for particular radiation sources; and
- persons authorised to request or prescribe diagnostic or therapeutic procedures.

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 subordinate legislation are:

- Property rights (section 24); and
- Privacy and reputation (section 25).

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

Property rights

(a) the nature of the right

The right to property protects the right of all persons to own property (alone or with others) and provides that people have a right not be arbitrarily deprived of their property. The ability to own and protect property historically underpins many of the structures essential to maintaining a free and democratic society based on human dignity, equality and freedom. 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). The right does not provide a right to compensation.

The Regulation engages this right as it:

- prescribes definitions for *radioactive substance* and *radiation apparatus* (collectively referred to as *radiation sources*). Under the Radiation Safety Act, it is an offence for a person to possess, use, or transport a radiation source without a licence;
- prescribes thresholds for disposal of radioactive material. Under the Act, it is an offence for a person to dispose of radioactive material above the prescribed thresholds, unless the person disposes of it in accordance with an approval to dispose; and
- creates an offence for a person in possession of certain mineral substances who exposes another person to ionising radiation above a prescribed threshold.

This limits the right to property as it prevents a person from owning radioactive materials other than in compliance with the regulatory framework under the Radiation Safety Act and Regulation.

(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 Regulation provides for the protection of public health and safety by imposing restrictions on the possession, use, and transport and disposal of radiation sources that have the potential to pose significant risks if used incorrectly or for improper purposes. This purpose 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 Radiation Safety Act and the Radiation Safety Regulation regulate the conduct and activities of practices involving radiation. In seeking to regulate the safe and appropriate possession, use and transport, acquisition and disposal of radioactive materials, the Regulation may limit a person's right to property for the purposes of protecting the person, community and environment from the potentially harmful impacts of radiation.

The regulatory framework imposes tighter restrictions on a subset of radioactive materials (*radiation sources*) that pose a greater risk due to higher radioactive concentrations or radioactive activity by requiring a person to hold a licence to possess, use or transport these materials. The purpose of this licensing scheme is to ensure a person does not have access to hazardous materials without first being assessed for their suitability to possess or use a radiation source for a radiation practice and ensuring there are appropriate safety mechanisms in place to deal with hazards arising from use of the radiation source.

The Act and Regulation also impose restrictions on radioactive materials that are not radiation sources but still pose risks to the health and safety and people and the environment.

The Regulation prescribes thresholds below which it is considered safe to dispose of certain radioactive material. Disposing of radioactive materials that have concentrations or activities above these prescribed thresholds would represent a risk of harm to both people and the environment. The Regulation prescribes the thresholds below which radioactive materials can be disposed of without a formal approval without any causing harm to people or the environment.

Similarly, the Regulation creates an offence for exposing a person to ionising radiation from a mineral substance that is radioactive but not a radioactive substance (that is, does not meet the prescribed thresholds for licensing its possession, use, transport, acquisition and disposal). This offence mainly applies to occupational exposure to large quantities of naturally occurring radioactive materials, such as gypsum or mineral sands containing the radionuclide natural thorium or natural uranium.

It is considered that the matters prescribed in the Regulation are for the protection of public health and safety.

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

There is not considered to be any form of less restrictive and reasonably available ways to achieve the relevant policy objectives. Given the significant risks to the community and the environment, there are also not any less restrictive or reasonably available way, such as a voluntary compliance scheme, that would provide a level of surety that radiation is being possessed, used, stored or disposed of in a safe way by persons who are authorised and trained to do so. As outlined above, the Regulation regulates radiation sources more stringently than radioactive materials. This ensures the Regulation places proportionate and appropriate controls commensurate with the risks associated with particular materials.

(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

Due to the significant risk to the community and the environment from the harmful effects of particular sources of radiation, it is considered necessary to regulate the possession, use and transport, acquisition and disposal of radiation sources to ensure the safety and wellbeing of the community. As the State has a positive duty to protect human life, it is considered necessary to implement restrictions on the possession, use, transport, acquisition and disposal of radioactive sources to protect human life.

Privacy and reputation

(a) the nature of the right

The right to privacy and reputation protects individuals from unlawful or arbitrary interferences and from attacks upon their privacy, family, home, correspondence and reputation. The scope of the right to privacy includes the protection of personal information and data collection.

The Regulation engages the right to privacy and reputation in the following ways:

- Part 7 prescribes personal information that must be included in a personal monitoring record;
- Part 12 prescribes information that must be included in public registers of holders of Act instruments under the Act; and
- Part 13 prescribes purposes for which protected information may be disclosed.

The right to privacy and reputation under the Human Rights Act is subject to an internal limitation that the interference with a person's rights must be unlawful or arbitrary. 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. The concept of arbitrariness in the context of the right to privacy carries a human rights meaning of 'capriciousness, unpredictability, injustice and unreasonableness – in the sense of not being proportionate to the legitimate aim sought'¹.

Personal monitoring records

The information prescribed for personal monitoring records in Part 7 of the Regulation includes the personal details of the monitored person, which may be considered to limit the monitored person's right to privacy.

The interference with the monitored person's privacy is clearly envisaged by the law. Under the Radiation Safety Act, a possession licensee must have an approved radiation safety and protection plan (plan) for the radiation practice for which they hold a licence. Among other things, the plan must state the radiation hazards associated with the radiation practice and measures to deal with these hazards (*radiation safety and protection measures*). Depending on the nature of the radiation practice, the plan may require the possession licensee to provide a person with a device to be worn in order to monitor any radiation dose the person receives (a *personal monitoring device*). A use licensee may also be required to wear a personal monitoring device.

¹ *WBM v Chief Commissioner of Police* (2012) 43 VR 466, 472 (Warren CJ, Hansen JA agreeing).

Section 38(4) of the Radiation Safety Act provides that, if a person is required to wear a personal monitoring device (the *monitored person*), the relevant licensee must keep a record for the monitored person, containing the information prescribed under a regulation.

The purpose of keeping a personal monitoring record is to ensure the person is not exposed to levels of radiation that puts their health and safety at risk. The prescribed information includes identifying details to allow a monitored person to be identified and contacted if there is a risk that they have been exposed dangerous levels of radiation.

Under section 38(6) of the Radiation Safety Act, the prescribed information in a personal monitoring record must be kept until the later of 30 years after the last time the personal monitoring device was checked, or the day when the monitored person turns, or would have turned, 75 years old. It is necessary to retain personal information for this extended period of time, as health complications from unsafe levels of radiation exposure may not become evident for many years after the exposure. Retaining personal monitoring records allows the levels of exposure of the monitored person to be reviewed during a person's working life and if the person becomes unwell.

The interference with the monitored person's privacy is not arbitrary as it is proportionate to the legitimate aim sought of protecting the health and safety of persons who may be exposed to harmful radiation.

As the collection and retention of personal information in a personal monitoring record is neither unlawful nor arbitrary, the right to privacy is not limited.

Public registers

The information prescribed for registers in Part 12 of the Regulation includes personal information such as a person's name. This may be considered to limit the person's right to privacy.

The interference with the person's privacy is clearly envisaged by the law. Under section 207 of the Radiation Safety Act, the chief executive must keep a register about licensees (including a licensee whose licence has been suspended or cancelled), accredited persons, persons holding a radiation safety officer certificate (*qualified persons*), inspectors and state radiation analysts. The register must contain the information prescribed under a regulation.

The persons who must be included on the register all have significant responsibilities for ensuring health and safety under the Radiation Safety Act:

- A licensee may be authorised to acquire, possess, use or transport a radiation source. All of these activities pose significant risks to health and safety of people and the environment.
- An accredited person is a person authorised to issue Certificates of Compliance verifying that a radiation apparatus or premises at which a radiation apparatus is used to carry out a practice complies with a relevant radiation safety standard made by the Minister under the Radiation Safety Act. A radiation apparatus cannot be used unless it is verified as complying with the relevant standards. Similarly premises cannot be used to store a radioactive substance unless the premises complies with the relevant radiation safety standard. An accredited person must have the skills, knowledge and experience to assess whether a radiation apparatus or premises is compliant.

- A radiation safety officer is a person appointed by a possession licensee and whose functions include ensuring appropriate radiation safety measures are in place. A radiation safety officer must be knowledgeable about radiation and its biological effects, applying radiation safety and protection principles and measuring, monitoring and interpreting radiation measurements.
- An inspector is a person appointed under the Radiation Safety Act to conduct inspections and investigations to monitor and enforce compliance with the Act. An inspector must have the necessary expertise or experience to inspect radiation sources, premises, registers, and other regulatory requirements of licensees and certificate holders.
- A state radiation analyst is a person appointed under the Radiation Safety Act to support inspectors by, for example, certifying the concentration or activity of a radionuclide in radioactive material, that radioactive material is a radioactive substance, or that an apparatus is a radiation apparatus. A person must have the scientific expertise or experience to perform these functions.

Section 208 of the Radiation Safety Act requires the chief executive to keep the register open for inspection by the public, free of charge. This requirement is met by publishing the register on the Queensland Health website.

The purpose of the register is to allow a person to verify that another person is authorised to engage in the radiation practice or other activity that the person represents themselves as authorised to undertake. For example, a radiology clinic can verify that a person they are intending to employ as a radiographer is appropriately licenced to perform the role. Given the significant risks potentially posed by carrying out a radiation practice, it is essential that the person has the relevant skills and knowledge to carry out the activity safely and that this can be verified. The register is one of a suite of measures in the Act and Regulation to protect people and the environment from potentially harmful effects of particular sources of radiation.

The details prescribed for the register in Part 12 of the Regulation, including personal information, is all information that is necessary to assist in verifying that a person is properly authorised.

Applicants for any of the instruments under the Act, such as a licence, are informed at the time of their application that, if the application is granted, their details will be added to the public register. Queensland Health collects and maintains the information in the register in accordance with the requirements under the *Information Privacy Act 2009*.

The interference with a person's privacy is not arbitrary as it is proportionate to the legitimate aim sought of protecting people and the environment from the harmful effects of particular sources of radiation.

As the publication of personal information in the public register is neither unlawful nor arbitrary, the right to privacy is not limited.

Disclosure of protected information

Part 13 prescribes purposes for which protected information, including information in a personal monitoring record, may be disclosed.

Section 209 of the Radiation Safety Act specifies that a person must not disclose protected information. Section 209(4) provides an exemption for information that:

- would be likely to damage the commercial activities, or adversely affect the intellectual property rights, of a person to whom the information relates; or
- is information from a person's personal monitoring record that identifies, or is likely to identify, the person.

Under section 209(4) of the Act, this information may be disclosed by the chief executive to the Commonwealth or another State, or any entity of the Commonwealth or another State, for a purpose prescribed in Regulation.

Part 13 of the Regulation prescribes the purposes for which personal and sensitive information may be disclosed under section 209(4) of the Act. This may limit the right to privacy and reputation.

(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 Part 13 of the Regulation is to allow disclosure of protected information for the purposes of:

- developing a plan to avoid or limit the impact of an emergency situation on persons, property or the environment;
- enabling a person dealing with an emergency situation to know the hazards, or possible hazards, the person may face in dealing with the emergency situation; or
- protecting national security.

These prescribed circumstances relate to emergency situations where there may be a significant risk to the health and safety of the public and the environment if swift and appropriate action is not taken. Allowing limited disclosure of protected information to respond to these risks 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 potential limitation on the right to privacy and reputation achieves the purpose by allowing the chief executive to disclose protected information in order to avoid significant harm from potentially dangerous sources of radiation.

It is necessary to allow disclosure of commercial information, to enable the tracking of a potentially dangerous radiation source acquired by a possession licensee as part of a commercial business transaction, whether the transaction is for a legitimate purpose or otherwise. It is justifiable for Queensland to be able to provide this information to the Commonwealth for national security reasons, and to other relevant entities to help develop a plan to avoid or limit the impact of a activity involving politically motivated violence, even though the disclosure may be damaging to the business the person is operating.

Protected information in a personal monitoring record includes a record of the type of radiation the person has been exposed to, and the total effective dose of radiation the person has been exposed to. This information is often the best way for emergency response organisations to determine the nature and size of the hazard when dealing with an emergency situation.

It is considered that these limitations on the right to privacy and reputation help to ensure the protection of public health and safety and the environment.

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

Given the potentially significant risk to the community and the environment from radiation hazards, particularly in the circumstances of an emergency situation or activity involving politically motivated violence, it is essential that the State can access and disclose any information that can assist in preventing or mitigating the potential for this outcome, or in responding to an emergency situation that has arisen. As the State has a positive duty to protect human life, it is considered necessary to authorise the disclosure of protected information to protect human life.

The Radiation Safety Act provides some protection of privacy, as the information disclosed for the purposes in Part 13 of the Regulation:

- must not be given to anyone else, except if doing so is reasonably considered necessary to protect national security; and
- must only be used for the purpose for which it was disclosed.

It is not considered there is any less restrictive way of achieving this purpose, as further limiting the information that may be disclosed and how it may be used would impact on governments' ability to effectively respond to serious radiation hazards.

(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

To the extent that there is any limitation on the right to privacy and reputation, this limitation is substantially outweighed by the benefits of enabling the State to support a coordinated and effective response to serious radiation hazards to protect human life.

Conclusion

I consider that the *Radiation Safety Regulation 2021* is compatible with the *Human Rights Act 2019* because it does limit, restrict or interfere with human rights, but the limitations are reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

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and LEADER OF THE HOUSE