

Health and Other Legislation Amendment Regulation 2025

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, Tim Nicholls, Minister for Health and Ambulance Services, provide this human rights certificate with respect to the *Health and Other Legislation Amendment Regulation 2025* (Amendment Regulation), made under the following Acts:

- *Hospital and Health Boards Act 2011*;
- *Hospital Foundations Act 2018*;
- *Mental Health Act 2016*;
- *Public Health Act 2005*; and
- *State Penalties Enforcement Act 1999*.

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 main objectives of the Amendment Regulation are to amend the:

- *Hospital and Health Boards Regulation 2023* to recognise an agreement between the chief executives of Queensland Health and the Department of Transport and Main Roads (DTMR) to allow the disclosure of confidential information related to road crash data without having to obtain case-by-case written approval;
- *Hospital Foundations Regulation 2018* to rename the Ipswich Hospital Foundation as the West Moreton Health Foundation;
- *Mental Health Regulation 2017* to ensure references to corresponding laws of other States and Territories are current and accurate;
- *Public Health Regulation 2018* to:
 - prescribe timeframes for new notifications required to be made to the Queensland Cancer Register (QCR);
 - require the notification of certain skin cancers associated with high risks of morbidity and mortality;
 - include *Vibrio parahaemolyticus* as a pathological diagnosis notifiable condition to improve detection of outbreaks and facilitate timely public health action to control outbreaks; and
 - replace ‘monkeypox (MPX)’ with ‘mpox’ in accordance with the World Health Organization’s revised naming to destigmatise the disease; and

- *State Penalties Enforcement Regulation 2014*, to amend an inadvertent duplication of the penalty unit amounts prescribed in schedule 1 for offences under sections 161(1) and 161(2) of the *Tobacco and Other Smoking Products Act 1998*.

Human Rights Issues

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

The proposed amendments to the Hospital and Health Boards Regulation and the Public Health Regulation will introduce data sharing and mandatory notification provisions. In my opinion, the right to privacy and reputation (section 25 of the Human Rights Act) is the only human right that is relevant to the Amendment Regulation.

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

(a) the nature of the right

Right to privacy and reputation

Section 25 of the Human Rights Act provides that a person has the right to not have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with. Privacy is generally understood as a compromise of freedom from unwarranted and unreasonable intrusions into activities that society recognises as falling within the sphere of individual autonomy. The right to privacy is broad, and includes safeguarding the disclosure of private or confidential information, and the collection of data.

The concept of lawfulness means that where an interference with privacy is provided for by law, it will not be unlawful.¹ However, lawful interference with the right to privacy may still be arbitrary if it is unreasonable, unnecessary or disproportionate. Arbitrary is not defined in the Human Rights Act, but common law consideration makes clear that it does not include decisions or actions taken to maintain or protect public safety.² As with other rights, the right to privacy can be limited where it is reasonable and demonstrably justifiable,³ in a free and democratic society based on human dignity, equality and freedom.

(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

Hospital and Health Boards Regulation

The Amendment Regulation amends the Hospital and Health Boards Regulation to prescribe an agreement between the chief executive of Queensland Health and DTMR. This agreement enables the sharing of confidential road crash data between Queensland Health and DTMR, without requiring case-by-case written approval. While this facilitates more efficient data-

¹ Human Rights Committee, *General Comment No. 16: The right to respect of privacy, family, home and correspondence, and protection of honour and reputation (Article 17 of the International Covenant on Civil and Political Rights)*, UNHRC, 32nd sess (8 April 1988).

² *Thompson v Minogue* (2021) 294 A Crim R 216, 231 [55], 269 [221]; *Attorney-General (Qld) v Grant* [No 2] [2022] QSC 252; *R v Cringle* [2013] ACTSC 34.

³ *R v Wayne Michael Connors* [2012] ACTSC 80.

sharing, it may limit the right to privacy by allowing the disclosure of patient information, including emergency department, emergency responder, morbidity, and mortality data.

Efficient data-sharing between Queensland Health and DTMR is essential for accurately tracking and reporting serious road crash injuries. The limitation on the right to privacy ensures the efficient exchange of crash data, providing valuable insights into crash causes. By removing the administrative burden of case-by-case approvals under section 160(1) of the Hospital and Health Boards Act, this amendment streamlines processes between the two agencies.

Public Health Regulation – Queensland Cancer Register

The Amendment Regulation provides notification timeframes under the Public Health Regulation for new and amended notification requirements under the Public Health Act. It also makes types of basal cell carcinoma of the skin (BCCs) and squamous cell carcinoma of the skin (SCCs) notifiable when they exhibit perineural or lymphovascular invasion or metastasis. This amendment may limit the right to privacy by permitting the collection of health information, which is used by the QCR for research, planning, and education.

Comprehensive cancer data is critical to understanding the impact of cancer, assessing treatment outcomes, and shaping effective public health responses. The QCR is one of Australia's largest population-based cancer registries, consolidating data to provide a detailed picture of cancer trends in Queensland. Any limitation on the right to privacy ensures diagnostic imaging practices, pathology laboratories, and hospitals can provide more accurate and timely information to the QCR. Enhanced data collection will support improved cancer monitoring, treatment evaluation, and the development of evidence-based cancer strategies and education programs.

Public Health Regulation – Vibrio parahaemolyticus

The Amendment Regulation will amend the Public Health Regulation to include *vibrio parahaemolyticus* as a pathological diagnosis notifiable condition. This bacterium, commonly linked to raw or undercooked seafood, poses an increasing health risk due to environmental changes, including climate change. The amendment may limit the right to privacy by requiring doctors, persons in charge of a hospital, and directors of pathology laboratories to notify the chief executive of Queensland Health when a pathological diagnosis of *vibrio parahaemolyticus* is made.

Environmental changes, including rising sea temperatures, marine heatwaves, and flooding, have increased the prevalence of *Vibrio parahaemolyticus* in coastal areas. This bacterium poses a growing risk of sporadic cases and outbreaks, particularly linked to locally sourced shellfish. Any limitation on the right to privacy is justified in the interest of public health, as the amendment facilitates Queensland Health's ability to track cases, improve outbreak detection, and implement timely public health interventions.

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

Hospital and Health Boards Regulation

By permitting the sharing of confidential road crash data without requiring individual approvals, the amendment alleviates administrative burden while enhancing Queensland Health's and DTMR's ability to analyse and respond to serious crash trends. The limitation on privacy is proportionate to the public health and safety benefits the amendment facilitates.

Public Health Regulation – Queensland Cancer Register

Mandating the reporting of specific BCCs and SCCs cases, and including notification timeframes relating to new and amendment notification requirements, supports the functions of the QCR by improving data accuracy and completeness. This will strengthen cancer research, treatment assessment, and the development of targeted public health initiatives. The limitation on privacy is justified by the amendment's significant public health benefits.

Public Health Regulation – Vibrio parahaemolyticus

Requiring notification of *Vibrio parahaemolyticus* cases enhances Queensland Health's ability to respond swiftly to potential outbreaks. This amendment aligns Queensland with the legislated list of nationally notifiable diseases, ensuring effective disease surveillance and response. Any limitation on privacy is minimal, and is outweighed by the necessity of protecting public health.

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

Hospital and Health Boards Regulation

There are no less restrictive or more effective alternatives to achieve the amendment's objective. While Queensland Health currently relies on section 160(1) of the Hospital and Health Boards Act, requiring case-by-case approvals is inefficient and administratively burdensome. This amendment formalises a structured, legally compliant process while maintaining safeguards, including compliance with the *Information Privacy Act 2009* and strict data-use limitations.

Public Health Regulation – Queensland Cancer Register

The Public Health Act carefully considers privacy protections, only permitting the disclosure of confidential health data in clearly defined circumstances. There are no less restrictive ways to achieve the objective of improved cancer monitoring. The benefits of enhanced data collection, including better treatment strategies, early detection efforts, and improved public health planning, outweigh the minimal impact on privacy.

Additionally, the QCR has strong privacy safeguards in place. Any information collected must be maintained in accordance with strict privacy and confidentiality obligations under the Information Privacy Act. Cancer Alliance Queensland, which manages the operation of the QCR, abides by Queensland Health's security policies and follows industry best practice regarding security. There are clear processes in place to ensure that the release of any data complies with privacy principles, the Information Privacy Act, the Hospital and Health Boards Act and ethical standards.

Public Health Regulation – Vibrio parahaemolyticus

There are no other less restrictive or reasonably available ways to achieve the purpose of this amendment. The Public Health Act ensures that personal health information is disclosed only when necessary for public health management. Making *Vibrio parahaemolyticus* a notifiable condition is the most effective approach to facilitating timely outbreak responses while adhering to strict privacy controls.

- (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

Hospital and Health Boards Regulation

The Amendment Regulation's impact on the right to privacy is minimal and justified given the amendment's role in improving road safety analysis and emergency response coordination. The streamlined data-sharing process enables Queensland Health and DTMR to enhance public health and safety outcomes without imposing unnecessary administrative barriers.

Public Health Regulation – Queensland Cancer Register

The Amendment Regulation's impact on the right to privacy is minor and justified, having regard to the importance of enhancing health outcomes in Queensland. While the amendment may have some privacy implications due to the collection of health data, the benefits of improved cancer monitoring outweigh these concerns. By collecting more accurate and comprehensive cancer data, Queensland Health can improve early detection, inform targeted treatments, and develop more effective public health strategies. The amendment will support research and education efforts that are crucial to reducing the cancer burden in Queensland.

Public Health Regulation – Vibrio parahaemolyticus

The Amendment Regulation's impact on the right to privacy is minor and justified, having regard to the importance of enhancing health outcomes in Queensland. This amendment will strengthen Queensland's ability to proactively respond to rising public health threats, including those associated with climate change. By tracking *Vibrio parahaemolyticus* cases effectively, Queensland Health will be able to best protect the public from any further harm the bacteria may cause, and limit the spread of the condition. The minor impact on the right to privacy is outweighed by the benefits to public health.

- (f) any other relevant factors

Nil.

Retrospective criminal laws

- (a) the nature of the right

Section 35(2) of the Human Rights Act provides that a penalty must not be imposed on any person for a criminal offence that is greater than the penalty that applied to the offence when it was committed. The right to protection against retrospective criminal laws can be limited where it is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality, and freedom.

- (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

State Penalties Enforcement Regulation

The Amendment Regulation provides that changes to the State Penalties Enforcement Regulation are taken to have commenced on 3 April 2025, immediately after the commencement of the *Tobacco and Other Smoking Products and Other Legislation Amendment Regulation 2025*. This retrospective commencement ensures the legislation operates as intended, as if the inadvertent duplication had not occurred.

However, these amendments do not impose a greater penalty retrospectively. They correct a technical duplication by removing outdated references to lower penalty amounts that were never intended to remain in force. The current, higher penalty unit amounts reflect the clear legislative intent that was explained in the accompanying materials to the Tobacco and Other Smoking Products and Other Legislation Amendment Regulation.

The amendments are necessary to ensure consistency between the State Penalties Enforcement Regulation and the penalty regime introduced by the Tobacco and Other Smoking Products and Other Legislation Amendment Regulation, which increased penalties for offences involving the supply and possession of illicit tobacco as part of a business activity. Specifically:

- For the supply offence (section 161(1)), the penalties were increased from 20 to 200 penalty units for individuals, and from 100 to 1,000 penalty units for corporations.
- For the possession offence (section 161(2)), the penalties were increased from 20 to 100 penalty units for individuals, and from 100 to 500 penalty units for corporations.

The rationale for these increases was to strengthen enforcement and deter unlawful commercial activity in the illicit tobacco market, which poses a significant and ongoing risk to public health in Queensland. The profitability of this activity, especially for organised and repeat offenders, often outweighs the perceived risk of enforcement. Stronger penalties were therefore introduced to make this behaviour less appealing and to support effective regulatory action.

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

State Penalties Enforcement Regulation

The retrospective nature of the amendments is directly linked to the purpose of ensuring the outdated penalty unit amounts are removed. This avoids any misinterpretation that could undermine enforcement. The limitation is narrow, technical in nature, and supports the proper implementation of a broader public health and regulatory objective.

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

State Penalties Enforcement Regulation

There are no less restrictive or reasonably available alternatives that would achieve the same outcome. Without retrospective effect, the duplication would not be addressed for the period between the commencement of the Tobacco and Other Smoking Products and Other Legislation Amendment Regulation and the commencement of the Amendment Regulation.

(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

State Penalties Enforcement Regulation

The retrospective commencement is limited in scope and necessary to correct a technicality. It does not impose any new obligations, liabilities, or disadvantages on any person. Instead, it ensures that the State Penalties Enforcement Regulation accurately reflects the intended operation of the Tobacco and Other Smoking Products and Other Legislation Amendment Regulation.

Section 34 of the *Statutory Instruments Act 1992* provides that a beneficial provision of a statutory instrument may be given retrospective operation if the statutory instrument expressly

provides for that operation. A ‘beneficial provision’ is broadly defined in section 34(2) to include any provision that does not operate to disadvantage a person by decreasing the person’s rights or imposing liabilities on the person.

As these amendments simply remove outdated penalty unit references that were not intended to remain in force, they fall within the scope of section 34 of the Statutory Instruments Act. Accordingly, the retrospective operation of the amendments is justified and consistent with fundamental legislative principles.

(f) any other relevant factors

Nil.

Conclusion

I consider that the *Health and Other Legislation Amendment Regulation 2025* 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.

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MINISTER FOR HEALTH AND
AMBULANCE SERVICES

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