

# Medicines and Poisons (Medicines) Amendment Regulation (No. 2) 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* (Human Rights Act), I, the Honourable Tim Nicholls MP, Minister for Health and Ambulance Services, provide this human rights certificate with respect to the *Medicines and Poisons (Medicines) Amendment Regulation (No. 2) 2025* (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. I base my opinion on the reasons outlined in this statement.

### Overview of the Subordinate Legislation

The Act establishes 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 medicines must be done, including compliance with departmental standards and extended practice authorities.

The Amendment Regulation amends the Medicines Regulation to:

- transition to business-as-usual (BAU) the authorisations for pharmacists to deal with medicines for the acute common condition services, the health and wellbeing services and the medicines management services from the Community Pharmacy Scope of Practice Pilot (Pharmacy Pilot) and the hormonal contraception service from the Community Pharmacy Hormonal Contraception Pilot (Contraception Pilot);
- make an administrative amendment to amend the circumstances and conditions and list of medicines for the Urinary Tract Infection Community Pharmacy Service to align it with the transitioning pilot services;
- authorise dental assistants who are suitably trained and employed by a Hospital and Health Service (HHS) to possess and administer fluoride varnish under the supervision of a dental practitioner; and
- authorise intern pharmacists acting under the supervision of a pharmacist and trainee pharmacists acting under the direct supervision of a pharmacist to deal with additional medicines to the extent authorised for a pharmacist.

## 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).

### 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. Relevantly, property encompasses chattels and other personal property, and therefore likely extends to the ownership of medicines.<sup>1</sup> 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 their property or part of that property, including enjoying exclusive possession of it, disposing of it, transferring it, or deriving profits from it.<sup>2</sup>

By placing restrictions on which health practitioners may deal with medicines, the Amendment Regulation engages the right to property in those goods under section 24 of the Human Rights Act. For example, by restricting the authorisation for dental assistants to possess and administer fluoride to those employed by a HHS, the Amendment Regulation will prevent dental assistants from administering and applying fluoride if they are employed by private facilities, where the same level of training and qualifications for dental assistants may not be required. This could be characterised as interfering with their ability to derive profits through particular kinds of employment or economic activity.<sup>3</sup>

While these restrictions engage the right to property under section 24 of the Human Rights Act, they are unlikely to amount to the kind of arbitrary deprivation of property necessary to establish a limitation of that right. Section 24(2) of the Human Rights Act provides that even where the right to property is engaged, it is not limited unless a person’s property is deprived arbitrarily. In a human rights context, arbitrary refers to actions that are capricious, unpredictable, or unjust, or that unreasonably interfere with rights in the sense of not being proportionate to the aim.<sup>4</sup> Medicines have a varied degree of risk, and the risk to human health depends on how safely they are handled and used. Placing reasonable restrictions on scheduled medicines, such as the controls established by the Amendment Regulation, is necessary to protect the safety of the community, for example by mitigating the potential for misuse,

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<sup>1</sup> See Alistair Pound and Kylie Evans, *Annotated Victorian Charter of Rights* (Lawbook, 2nd ed, 2019) 183.

<sup>2</sup> *Ibid.*

<sup>3</sup> See, e.g., *Legal and General Assistance Ltd v Kirk* [2002] IRLR 124, [41]; *Tre Traktörer Aktiebolag v Sweden* (1989) 13 EHRR 309, [53]; *Crompton v Department of Transport North Western Traffic Area* [2003] RTR 517, [19].

<sup>4</sup> *WBM v Chief Commission of Police* (2012) 43 VR 446, 472 [114].

diversion and other harms associated with these regulated substances. At the same time, the Amendment Regulation does not prevent a person from practising their profession, nor from seeking any particular kind of employment. As such, it would be difficult to characterise these restrictions, and by extension, the Amendment Regulation, as an arbitrary deprivation of property rights so as to give rise to a limitation of those rights that must be justified under 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 authorise certain additional or expanded dealings with regulated substances, to streamline or improve the effectiveness of existing regulatory controls, and to address a range of practical and operational issues that have been identified by stakeholders and operational areas within Queensland Health. The Amendment Regulation achieves this by:

- transitioning to BAU the authorisations for pharmacists to deal with medicines for the acute common condition services, the health and wellbeing services and the medicines management services from the Pharmacy Pilot and the hormonal contraception service from the Contraception Pilot;
- making an administrative amendment to the circumstances and conditions and list of medicines for the Urinary Tract Infection Community Pharmacy Service to align it with the transitioning pilot services;
- updating references to new versions of the extended practice authorities to transition the authorisation for pharmacists to deal with certain medicines;
- authorising dental assistants who are suitably trained and employed by a HHS to possess and administer fluoride varnish under the supervision of a dental practitioner; and
- authorise intern pharmacists acting under the supervision of a pharmacist and trainee pharmacists acting under the direct supervision of a pharmacist to deal with additional medicines to the extent authorised for a pharmacist.

While the Amendment Regulation makes changes that enhance overall access to health care services, it continues to impose restrictions on who may deal with medicines, for example by limiting the pharmacist prescribing authorisations to those operating under an extended practice authority.

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 persons 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 described above. The Amendment Regulation is narrowly tailored to ensure that patient safety is maintained while access to health services is improved.

In my opinion, the Amendment Regulation strikes an appropriate balance between achieving these objectives and avoiding any unnecessary interference with property and other human rights protected by the Human Rights Act.

## Conclusion

I consider that the *Medicines and Poisons (Medicines) Amendment Regulation (No. 2) 2025* 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 and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

**TIMOTHY NICHOLLS MP**  
MINISTER FOR HEALTH AND  
AMBULANCE SERVICES