Health 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 Legislation Amendment Regulation 2025* (Amendment Regulation), made under the following Acts:

- *Food Act 2006;*
- *Hospital and Health Boards Act 2011;*
- *Public Health Act 2005;* and
- *Radiation Safety 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 *Food Regulation 2016*, *Hospital and Health Boards Regulation 2023*, *Public Health Regulation 2018* and *Radiation Safety Regulation 2021*.

Food Regulation

Revising and expanding the list of 'prescribed contaminants'

The Food Act is the primary food safety legislation in Queensland. Under the Food Act, it is an offence for a person to sell food that the person knows, or reasonably ought to know, is unsafe. To ensure food is safe, food businesses may arrange regular testing of food samples for prescribed contaminants.

The Food Act applies the *Australia New Zealand Food Standards Code* (the Code) in Queensland. The Code sets legal requirements for the labelling, composition, safety, handling, primary production and processing of food in Australia. There is also a *Compendium of Microbiological Criteria for Food* (the Compendium), that provides best practice guidance for food regulators and the food industry. Both the Code and the Compendium were developed by Food Standards Australia New Zealand.

The Food Act requires Queensland Health to be notified when a prescribed contaminant is isolated in a prescribed food. Schedule 2 of the Food Regulation lists the 'prescribed contaminants' in Queensland (for example, Salmonella). However, this list has remained unchanged since the Food Regulation was made and only lists seven prescribed contaminants.

Over the years, the lists of microbiological contaminants and chemical contaminants (and natural toxicants) in the Code have expanded. Similarly, the list of microbiological contaminants in the Compendium have expanded. These additional contaminants have been identified through improvements in food laboratory testing and from information gathered during recent foodborne illness outbreaks, food recalls and prescribed contaminant notifications.

Schedule 2 of the Food Regulation does not include many of these additional microbiological contaminants or chemical contaminants (for example, lead) and natural toxicants (for example, sparteine). Accordingly, schedule 2 is no longer consistent with the Code, the Compendium and similar lists in other Australian jurisdictions.

In November 2000, the Commonwealth and all States and Territories entered into the Food Regulation Agreement. The Agreement aims to align food laws across jurisdictions and ensure a national approach to food regulation.

It is proposed to amend the Food Regulation to prescribe additional microbiological contaminants and chemical contaminants and natural toxicants. This will improve food safety outbreak detection sensitivity and enhance regulatory harmonisation across the States and Territories.

Expanding the definition of 'prescribed food'

As noted above, the Food Act requires Queensland Health to be notified when a prescribed contaminant is isolated in a 'prescribed food'. The Food Act provides an expansive definition of food. For the purposes of a prescribed contaminants notice, 'prescribed food' means food prescribed under a regulation. The Food Regulation defines 'prescribed food' as food other than raw meat and clarifies that 'raw meat' does not include cured, dried, smoked or uncooked fermented meat.

This means that some raw, but ready-to-eat, meats such as sushi/sashimi, oysters, steak tartare, carpaccio and ceviche are not subject to the notification requirements for prescribed contaminants, despite being potentially hazardous foods. This existing definition of 'prescribed food' in the Food Regulation was made at a time when raw meats were not commonly consumed as ready-to-eat foods in Queensland.

It is proposed to amend the Food Regulation to clarify that 'prescribed food' means all food for sale, including raw meat and raw fish that are intended as ready-to-eat food. This will ensure that all at-risk foods are subject to the same notification requirements as other foods when a prescribed contaminant has been identified.

It is also proposed to make a minor change to the definition of 'supermarket' in section 2 of the Food Regulation. As not all the food items listed in the existing definition of 'supermarket' may be sold at a particular supermarket, the amendment clarifies that these are only examples of grocery items that may be sold there.

Hospital and Health Boards Regulation

Under the National Health Reform Agreement (NHRA), Queensland public hospitals must provide free treatment to Medicare eligible patients who reside in other States or Territories. However, NHRA funding arrangements enable a treating jurisdiction to recover treatment costs from the jurisdiction where the patient usually resides. Cross-border agreements, governing the exchange and reconciliation of confidential patient data between jurisdictions, may be used to facilitate this reimbursement.

The Hospital and Health Boards Act allows for the disclosure of confidential patient data pursuant to agreements prescribed under the Hospital and Health Boards Regulation. Schedule 8, part 1 of the Hospital and Health Boards Regulation lists various agreements between Queensland Health and the Commonwealth, States, Territories and other entities to facilitate information sharing. These agreements streamline the provision and exchange of data by avoiding the need for case-by-case approvals to disclose confidential information. As a necessary safeguard, the information shared under these agreements may only be used or disclosed in accordance with the terms of the agreements.

Cross-border agreements between Queensland and New South Wales and between Queensland and Victoria have previously been in place. However, these agreements have expired, and replacement agreements have been entered into with both jurisdictions in materially similar terms to the expired agreements. Under the Hospital and Health Boards Act, these agreements must be prescribed in the Hospital and Health Boards Regulation to take effect.

It is proposed to amend the Hospital and Health Boards Regulation to prescribe the new cross-border agreements between Queensland and New South Wales and between Queensland and Victoria. This will facilitate Queensland recovering the costs of treating residents of New South Wales and Victoria in Queensland public hospitals.

Public Health Regulation

Mpox is a disease caused by the monkeypox (MPXV) virus which can infect people of all ages. Mpox does not spread easily between people and is primarily spread through very close or intimate contact. Today, there is also an available vaccine. While most people recover from mpox within a few weeks, some people, especially those with a weakened immune system, develop a more severe illness or complications.

The Public Health Act establishes a regulatory framework that provides for the identification of notifiable conditions and mechanisms to prevent or minimise the adverse health impacts of those conditions. This includes establishment of the notifiable conditions register. The purpose of the register is to monitor and analyse the incidence of notifiable conditions, and to identify outbreaks so that public health units may take action to protect public health.

Schedule 1 of the Public Health Regulation prescribes the list of notifiable conditions and the circumstances in which they are notifiable. Mpox is prescribed as a pathological diagnosis notifiable condition and a pathology request notifiable condition. This means that when a laboratory receives a request to test for mpox (a suspected case of mpox) and when a laboratory test for mpox returns a positive result (a probable or confirmed case of mpox), the laboratory

must notify Queensland Health. Further, schedule 2 of the Public Health Regulation prescribes mpox as a notifiable condition that requires immediate notification upon diagnosis.

When mpox was made a notifiable condition there was no locally acquired transmission within Australia. Notification of mpox upon pathology request and upon pathological diagnosis was intended to allow Queensland Health to understand the epidemiology of mpox and undertake the contact tracing needed to investigate sources and manage transmission risks.

Today, there is unlinked community transmission of mpox and appropriate public health advice is routinely provided at the time of testing. As such, the contemporary standard practice of public health units is to follow up confirmed or probable mpox cases. That is, follow up is usually only conducted on notifications of pathological diagnosis. This practice is consistent with the national minimum standard recommended in the *Series of National Guidelines* published by the Communicable Diseases Network Australia. Queensland is the only Australian jurisdiction to require pathology laboratories to notify of suspected cases of mpox.

It is proposed to amend the Public Health Regulation to remove mpox as a pathology request notifiable condition. This will align Queensland notification requirements with those in other Australian jurisdictions and with the national best practice guidelines for mpox.

Radiation Safety Regulation

Expanding the classes of persons who are 'prescribed licensees' for use licences

Radiation safety is regulated under the framework established in the Radiation Safety Act. The framework is intended to protect people and the environment from the health risks associated with the inappropriate uses of radiation, while recognising its beneficial uses.

Under the Radiation Safety Act, a person must not use a radiation source unless they are allowed to use it under a use licence. This requirement applies to all users of radiation sources, including registered health professionals who use various radiation sources to diagnose or treat patients, and registered veterinary surgeons.

To obtain a use licence, the Radiation Safety Act requires a person to make an application to the chief executive of Queensland Health. In support of their application, applicants must submit evidence of their qualifications, training and experience.

In 2019, the Radiation Safety Act was amended to enable a regulation to prescribe a person or class of persons identified by qualification, registration status or training to be 'exempt' from the requirement to apply for and be granted a use licence. In effect, these persons or classes of persons -referred to as 'prescribed licensees' -are deemed to hold a use licence. This means that these persons or classes of persons are not required to apply to the chief executive for, and be granted, a licence. However, they are still required to comply with all the other obligations of a use licensee under the Radiation Safety Act. The Radiation Safety Regulation prescribes these persons or classes of persons as prescribed licensees.

In all Australian jurisdictions, radiation safety legislation requires persons seeking to use a radiation source to hold an appropriate licence or other authorisation. However, the ability to prescribe persons or classes of persons as prescribed licensees is unique to Queensland legislation. Jurisdictions are working with the Australian Health Practitioner Regulation

Agency and relevant registration boards to reduce the reliance on overt radiation licensing for members within certain professions. Both the existing prescribed licensee framework and the Amendment Regulation are consistent with this initiative.

Under the Radiation Safety Regulation, registered dentists who use intra-oral dental radiation apparatus for intra-oral radiography and certain dental practitioner students and medical radiation practitioner students are already prescribed licensees for use licences.

It is proposed to amend the Radiation Safety Regulation to expand the classes of persons who are 'prescribed licensees' for use licences. This will enable those persons to enter the workforce without delay and remove an unnecessary regulatory barrier to cross border practice.

The Amendment Regulation will prescribe the radiation sources that may be used by each class of person, which will align with the training and competencies of each class. As further safeguards, these persons must be registered with a professional registration body and will be subject to the same requirements and conditions as other licensees. As such, the Amendment Regulation will reduce duplicative regulation without removing regulatory oversight or creating additional risk of harm.

Amending the standard conditions for radiation practice in dental services

As noted above, under the Radiation Safety Act, a person must not use a radiation source unless they are allowed to use it under a use licence. Under the Radiation Safety Regulation, standard conditions are prescribed for persons who hold a possession licence or a use licence in relation to a radiation source. These conditions may include a requirement to comply with a prescribed code of practice.

For the 'radiation practice' of possessing or using an ionising radiation source for 'dental plain diagnostic imaging involving the irradiation of a person', the Radiation Safety Regulation requires the licence holder to comply with the 2005 *Code of Practice for Radiation Protection in Dentistry* (2005 Code).

The word 'plain' in the description of the radiation practice means that the only diagnostic imaging covered by the radiation practice is a simple 'plain X-ray'. This excludes commonly used newer forms of dental imaging using ionising radiation sources, such as cone beam computed tomography. Similarly, the reference to the 2005 Code is out of date as this has been superseded by the 2025 *Code for Radiation Protection in Dental Exposure* (2025 Code).

All Australian jurisdictions adopt the 2005 Code, usually via the application of conditions on licences in their respective radiation safety schemes. All Australian jurisdictions have similarly endorsed the publishing of the 2025 Code and it is expected that they will amend their radiation safety schemes to formally adopt the 2025 Code.

It is proposed to amend the Radiation Safety Regulation to ensure that the standard conditions attached to a possession or use licence held by a dental radiation practitioner apply to all forms of dental imaging using ionising radiation sources, not only plain X-rays. The amendments will also update the standard conditions for radiation practice in dental services to reference the 2025 Code. This will ensure the conditions reflect contemporary requirements for radiation sources used in dentistry.

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); and
- privacy and reputation (section 25).

Consideration of human rights promoted

Amendment to the Radiation Safety Regulation

Property Rights (section 24)

Section 24 of the Human Rights Act protects the right of persons to own property and provides a right to not be arbitrarily deprived of that property. 'Property' includes all real and personal property interests recognised under general law, including money. A person may be 'deprived' of their property if there is a substantial restriction on their ability to use or enjoy the property.

Paying licence fees may be considered a deprivation of property. By amending the Radiation Safety Regulation to prescribe additional classes of persons as prescribed licensees, approximately 4,583 existing and potential use licensees will become deemed use licensees. As this means that these persons will no longer be required to pay licence fees, including licence renewal fees, the proposed amendment will promote their property rights.

For relevant existing use licence holders, the proposed amendment will mean they automatically become prescribed licensees taken to hold a use licence. As such, their existing use licence will expire upon commencement of the amendments. Although there is no provision for a pro rata refund of a licence fee for any remaining period of an existing use licence, licence holders will benefit from no longer needing to renew their use licence and pay the associated licence renewal fee.

Also, prescribing additional classes of persons as prescribed licensees will enable these persons to enter the workforce without the regulatory delay of first applying for, and being granted, a use licence. Under the Radiation Safety Regulation, a person who applies for a use licence is not authorised to use a radiation source until their application is decided, which may take up to 90 days. This inability to practice and earn an income may be considered a deprivation of property. By removing this barrier, the proposed amendment will promote the property rights of these persons.

Amendments to the Public Health Regulation

Privacy and reputation (section 25)

Section 25 of the Human Rights Act provides that a person has the right to not have their privacy unlawfully or arbitrarily interfered with. The right to privacy is broad and includes safeguarding the disclosure of private or confidential information and limiting the collection of personal data.

By amending the Public Health Regulation to remove mpox as a pathology request notifiable condition, a person who is tested for mpox will only have their personal health information notified to Queensland Health if they subsequently return a positive test result. As this will reduce the amount of confidential information being collected under the legislation, the proposed amendment will promote the right to privacy.

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

Amendments to the Hospital and Health Boards Regulation

Privacy and reputation (section 25 of the Human Rights Act)

(a) the nature of the right

As noted above, the Human Rights Act provides that a person has the right to not have their privacy unlawfully or arbitrarily interfered with. This includes safeguarding the disclosure of private or confidential information and limiting the collection of personal data.

The concept of lawfulness means that where an interference with privacy is provided for by law, it will not be unlawful. However, lawful interference with the right to privacy may still be arbitrary if it is unreasonable, unnecessary or disproportionate.

(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 Amendment Regulation amends the Hospital and Health Boards Regulation to prescribe cross-border agreements between Queensland and New South Wales and Queensland and Victoria. This will facilitate the recovery of costs incurred in treating visiting residents of New South Wales and Victoria in Queensland public hospitals. However, by allowing confidential patient data to be disclosed under these agreements, the proposed amendments may limit the right to privacy.

Data-sharing between Queensland and New South Wales and Victoria is essential to the reconciliation and reimbursement of treatment costs under the NHRA. The limitation on the right to privacy will ensure the efficient exchange of the necessary patient information.

The provision of public health services is a purpose which is consistent with a free and democratic society based on human dignity, equality and freedom. As such, it is reasonable, necessary and proportionate to share confidential information to ensure Queensland is adequately funded to provide those services to visiting interstate residents. Also, this interference with privacy is not unlawful or arbitrary, as it must be done in compliance with the confidentiality provisions in the Hospital and Health Boards Act and the use and disclosure terms in the cross-border agreements.

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

The limitation achieves its purpose and does not extend further than necessary. Only information about visiting interstate patients treated in Queensland public hospitals will be disclosed, and this disclosure will only be to health authorities in the jurisdiction where the patient resides. The purpose of the disclosure is solely to facilitate Queensland being reimbursed for these treatment costs.

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

Less restrictive and reasonably available alternatives have not been identified to achieve the purpose.

An alternative way of achieving the policy objective is for Queensland Health to grant case-by-case approval to disclose confidential patient information to New South Wales and Victoria. However, this process would be resource intensive and inefficient.

Further, cross-border agreements must be developed between jurisdictions that experience significant cross-border flows of public patients where one of the jurisdictions requests a cross-border agreement to be in place. This is provided for under clause A114 of the NHRA Addendum (2020-25). Queensland, New South Wales and Victoria have all actively negotiated for the agreements to be entered into before commencing the reconciliation of treatment costs.

Any other disclosure of this confidential information would be a breach of the Hospital and Health Boards Act. Prescribing the cross-border agreements ensures the disclosure is consistent with the confidentiality provisions in the Act and the data use and disclosure terms prescribed in the cross-border agreements. It will streamline the provision and exchange of confidential information and ensure that Queensland is acting in accordance with the NHRA Addendum (2020-25).

(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

On balance, the limitation is considered to be reasonable and justifiable.

The limitation is justified by the benefits of ensuring that health services provided to visiting interstate residents in Queensland public hospitals are adequately funded and that there is an efficient way of recovering the cost of providing these services. Also, the scope of the limitation is considered minor. This is because it only involves the disclosure of confidential patient information to health authorities in the jurisdiction where the patient resides for the sole purpose of recovering the cost of treating that patient in a Queensland public hospital.

(f) any other relevant factors

Nil.

Conclusion

I consider that the *Health 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