

Medicines and Poisons (Medicines) Amendment Regulation (No. 4) 2025

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. 4) 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 2019*. I base my opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

The Act establishes a framework to ensure particular substances are made, sold, used and disposed of in a manner that is safe, effective and appropriate. The Act also provides for the management of health risks associated with these substances.

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:

- authorise specialist general practitioners to deal with psychostimulants for the treatment of adults with attention deficit hyperactivity disorder (ADHD), authorise paediatricians to deal with psychostimulants for the treatment of ADHD in adults aged 18 to 25 years to support continued treatment of young persons transitioning to adulthood, and update outdated language;
- allow appropriately qualified and credentialed first contact emergency physiotherapist practitioners to prescribe and administer additional medicines under the Physiotherapists Extended Practice Authority, when treating patients in public sector urgent care settings;
- authorise registered nurses employed by, or for, a Hospital and Health Service to give a treatment dose of a schedule 2 (S2), schedule 3 (S3) or schedule 4 (S4) medicine for preparation of the bowel for a procedure, where the medicine is given on a prescription or a standing order;
- remove hydroxychloroquine from the list of restricted medicines; and
- make other administrative amendments.

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, either alone or with others, and provides that no one shall 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.¹ 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.²

It could be argued that the Amendment Regulation engages the right to property by expanding authorisations for some classes of health practitioners but not others. For example, the Amendment Regulation authorises specialist general practitioners (specialist GPs) to deal with psychostimulants for the treatment of adults with ADHD and authorises paediatricians to deal with psychostimulants for the treatment of ADHD in adults aged 18 to 25. Other medical practitioners and nurse practitioners are not currently authorised to deal with psychostimulants for the treatment of adults with ADHD, and the Amendment Regulation preserves this restriction.

To the extent that the Amendment Regulation preserves these existing restrictions, it could be characterised as interfering with some health practitioners’ ability to engage in certain forms of economic activity that involve dealings with scheduled medicines. This could be seen as interfering with their ability to derive income from their profession.³

Assuming restrictions of this kind *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 *limit* 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.⁴

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

² *Ibid.*

³ 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].

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

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. These controls help mitigate the risks of misuse, diversion, and other harms associated with regulated substances. 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:

- authorising specialist GPs to deal with psychostimulants for the treatment of adults with ADHD and authorising paediatricians to deal with psychostimulants for the treatment of ADHD in adults aged 18 to 25 years;
- allowing appropriately qualified and credentialed first contact emergency physiotherapist practitioners to prescribe and administer additional medicines under the Physiotherapists Extended Practice Authority, when treating patients in public sector urgent care settings;
- authorising registered nurses employed by, or for, a Hospital and Health Service to give a treatment dose of S2, S3 and S4 medicines for preparation of the bowel for a procedure, where the medicine is given on a prescription or a standing order; and
- removing hydroxychloroquine from the list of restricted medicines.

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 and the circumstances and settings in which they may deal with medicines. For example, the authorisation to give a treatment dose of an S2, S3 or S4 medicine for bowel preparation is limited to registered nurses employed by, or working for, a Hospital and Health Service. This limitation reflects the differing processes that may apply in private health settings.

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 and assist in the management of health risks associated with these substances. This is necessary to ensure that only 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 appropriate 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. 4) 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.

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MINISTER FOR HEALTH AND
AMBULANCE SERVICES