

REPLACEMENT EXPLANATORY STATEMENT

Therapeutic Goods Act 1989

Therapeutic Goods (Standard for Tablets, Capsules and Pills) (TGO 101) Order 2019

The *Therapeutic Goods Act 1989* (“the Act”) provides for the establishment and maintenance of a national system of controls for the quality, safety, efficacy and timely availability of therapeutic goods that are used in or exported from Australia. The Therapeutic Goods Administration (“the TGA”), which is part of the Department of Health, is responsible for administering the Act.

Subsection 10(1) of the Act relevantly provides that the Minister may, by legislative instrument, make an order determining that matters specified in the order constitute a standard for therapeutic goods or a class of therapeutic goods identified in the order. Offence and civil penalties may apply if therapeutic goods (other than medical devices) that do not comply with an applicable standard are imported, exported or supplied. The Secretary may, however, consent in writing to the import, supply or export of such goods notwithstanding their non-compliance (sections 14 and 14A of the Act refer).

Without limiting the generality of subsection 10(1), subsection 10(2) relevantly provides that an order establishing a standard for therapeutic goods may be specified by reference to a variety of matters including the quality of the goods, the procedures to be undertaken in their manufacture or a monograph in the British or European Pharmacopoeia or in the United States Pharmacopoeia-National Formulary. In addition, an order may require matters relating to the standard to be determined in accordance with particular tests.

The *Therapeutic Goods (Standard for Tablets, Capsules and Pills) (TGO 101) Order 2019* (“the Order”) is made by a delegate of the Minister for Health under section 10 of the Act.

The purpose of the Order is to establish a ministerial standard for therapeutic goods that are tablets, capsules or pills for oral administration (principally, medicines). The Order specifies the minimum requirements for the safety and quality of these therapeutic goods, other than those that are identified as not being subject to the Order (for example, radiopharmaceuticals and export only medicines).

The Order also repeals and replaces the existing Therapeutic Goods Order No.78 *Standard for Tablets and Capsules* (“the former Order”), which was due to sunset on 1 April 2019 under the sunset provisions of the *Legislation Act 2003*.

The Order principally commences on 31 March 2019. However, section 16 and Part 3 of, and Schedule 3 to, the Order (which set out requirements relating to elemental impurities and pills), will commence on 31 March 2021.

Background

The Australian Government is responsible for regulating the quality, safety and efficacy of therapeutic goods. This is principally achieved by specifying ministerial standards for the manufacture of those products, and otherwise applying default standards specified in international pharmacopoeias.

The Order specifies important minimum benchmark requirements in relation to safety and quality for therapeutic goods that are tablets, capsules or pills intended for oral administration. It is intended that these requirements are to apply to these goods throughout their shelf-life.

The Order does this, in particular, by providing in Division 1 of Part 2 that the applicable requirements for tablets and capsules for which there is an applicable monograph are the requirements specified in that applicable monograph, subject to the matters specified in Division 2 of Part 2 or, alternatively, the requirements specified in Division 3 of Part 2, together with requirements that are relevant to the tablet or capsule that are specified in one of the general monographs in the European Pharmacopoeia, the general monographs in the British Pharmacopoeia or the general chapters of the United States Pharmacopoeia-National Formulary.

An ‘applicable monograph’ is defined in section 4 of the Order as, principally, a default standard specified with reference to a formulated preparation in the British Pharmacopoeia, a pharmaceutical preparation in the European Pharmacopoeia or an official product in the United States Pharmacopoeia-National Formulary, and comprises a specific monograph, one or more applicable general monographs and one or more applicable general chapters, interpreted in accordance with the General Notices section of the relevant pharmacopoeia.

The Order also makes it clear in Division 1 of Part 2 that the requirements for a tablet or capsule for which there is no applicable monograph are the Australian specific requirements in Division 3 of Part 2, together with requirements that are relevant to the tablet or capsule that are specified in one of the general monographs in the European Pharmacopoeia, the general monographs in the British Pharmacopoeia or the general chapters of the United States Pharmacopoeia-National Formulary.

The Order sets out additional requirements for certain categories of tablets and capsules in Division 2 of Part 2. Principally, these are tablets or capsules that contain folic acid, and tablets or capsules that are registered therapeutic goods for which a test for dissolution would not otherwise apply under Division 1 of Part 2.

Division 3 of Part 2 sets out Australian specific requirements for tablets and capsules. These are intended to provide a sponsor of a tablet or capsule for which there is an applicable monograph with a set of requirements that they may comply with as an alternative to the requirements in Divisions 1 and 2 of Part 2. For a sponsor of a tablet or capsule for which

there is not an applicable monograph, the Australian specific requirements in Division 3 of Part 2 form part of the applicable requirements with which its products must comply, under subsection 8(2) of the Order (along with relevant general monographs or chapters of the European Pharmacopoeia, British Pharmacopoeia or United States Pharmacopoeia-National Formulary).

The Order incorporates a number of differences in comparison to the former Order, including in particular:

- amending the scope of the Order to also cover pills (the former Order did not relate to pills), with a two year transition period before the pill-specific requirements in the Order commence;
- providing a specified set of Australian-specific requirements for tablets and capsules, including in relation to maximum allowable levels of certain elemental impurities (such as arsenic, lead and mercury) in tablets, capsules or pills (with a two year transition period before the requirements in relation to elemental impurities commence for sponsors relying on the Australian-specific requirements); and
- making a number of minor corrections, including clarifying that compounded medicines that are not entered in the Australian Register of Therapeutic Goods are not therapeutic goods to which the Order applies.

Consultation

A draft of the Order and associated guidance document was released for public consultation in December 2018. Industry representatives were invited to a pre-consultation briefing in November 2018 where several proposed changes were raised.

All peak industry bodies representing prescription medicines, over-the-counter medicines and complementary and traditional medicines were notified of the impending consultation, along with relevant professional associations and consumer advocacy groups. The draft Order was published on the TGA website along with instructions on how to make submissions. Those submissions made in response to the consultation have been taken into consideration in the drafting of this Order.

In addition, the Office of Best Practice Regulation advised that a regulation impact statement was not considered to be required in relation to this Order (Office of Best Practice Regulation reference ID 24085).

Incorporation by reference

The Order adopts each of the British Pharmacopoeia, European Pharmacopoeia and United States Pharmacopoeia-National Formulary, and the note in section 4 of the Order makes it clear that each of these pharmacopoeia are adopted as defined in subsection 3(1) of the Act.

The definitions of the pharmacopoeia in subsection 3(1) of the Act refer to the publications of each as in effect immediately before the commencement of the relevant definition in the Act, and to any subsequent amendments or editions. As the note in section 4 explains, the intention is to adopt the defined meaning of the pharmacopoeia as set out in subsection 3(1) of the Act (an approach permitted by subsection 10(4) of the Act).

The pharmacopoeia may be obtained from <https://www.pharmacopoeia.com/>, <https://www.edqm.eu/en/european-pharmacopoeia-ph-eur-9th-edition> and <https://www.uspnf.com/>.

Unfortunately, these publications are not available for free. A range of prices may apply depending on whether a person wishes to take out a subscription (and, if so, how many users would be involved), or purchase a particular edition. However, it is expected that the persons most affected by their adoption – in this case, sponsors and manufacturers of therapeutic goods that are tablets, capsules or pills – would be aware of the terms and necessarily have access to the publications.

As important international benchmarks for the safety and quality of therapeutic goods, it is not feasible from a regulatory perspective (particularly in relation to such an important area as ensuring the safety and quality of medicines that are tablets, capsules and pills, that are widely used by Australian consumers) to not adopt such benchmarks because the pharmacopoeia are not available for free.

However, by prior written arrangement with the TGA, the TGA may facilitate access to view a pharmacopoeia free of charge at the TGA office in Symonston, ACT.

It should also be noted that the National Library's Trove online system (<https://trove.nla.gov.au/>) allows users to identify libraries in Australia that are open to the public where (in most cases, earlier) editions of these pharmacopoeia may be viewed, for example, the University of Tasmania or the University of Western Australia in relation to the British Pharmacopoeia. Members of the public may also approach any library that participates in inter-library loans to request an inter-library loan with such university libraries, to obtain a photocopy of a particular part or monograph for personal study or research (but not for commercial purposes). At the time of making this Order, the ordinary cost of making such request is \$16.50 (enquiries should be made directly with local libraries, State libraries and the National Library).

The Order also refers to the *Nutrient Reference Values for Australia and New Zealand Including Recommended Dietary Intakes*, dated 13 July 2017. This document is published by the National Health and Medical Research Council, and is available for free in electronic form at nhmrc.gov.au/about-us/publications/nutrient-reference-values-australia-and-new-zealand-including-recommended-dietary-intakes.

In addition, the Order refers to the International Conference on Harmonisation (“the ICH”) document *Guideline for Elemental Impurities Q3D*, Current *Step 4* version, dated 16 December 2017. This document is published by the ICH, and is available for free in electronic form at <https://www.ich.org>.

Details of the Order are set out in **Attachment A**.

The Order is compatible with the human rights and freedoms recognised or declared under section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011. A full statement of compatibility is set out in **Attachment B**.

The Order is a disallowable legislative instrument and commences on 31 March 2019.

Details of *Therapeutic Goods (Standard for Tablets, Capsules and Pills) (TGO 101) Order 2019*

Part 1 Preliminary

This Part provides for the name of the Order, its commencement, authority and application, and a small number of other matters including, for example, setting out definitions for key terms used in the Order.

Section 1 Name

This section provides that the name of the Order is the *Therapeutic Goods (Standard for Tablets, Capsules and Pills) (TGO 101) Order 2019*, and that it may also be cited as TGO 101.

Section 2 Commencement

This section provides that the Order commences on 31 March 2019, with the exception of section 16 and Part 3 of, and Schedule 3 to, the Order, which will commence on 31 March 2021.

Section 3 Authority

This section provides that the legislative authority for making the Order is section 10 of the *Therapeutic Goods Act 1989* (“the Act”).

Section 4 Interpretation

This section sets out definitions for a number of terms used in the Order. In particular, these include ‘applicable monograph’, ‘tablet’, ‘capsule’ and ‘pill’.

This section also makes it clear that a number of terms have the same meaning as given in the Act, for example ‘medicine’, ‘default standard’ and each of the British Pharmacopoeia, European Pharmacopoeia and United States Pharmacopoeia-National Formulary.

Section 5 Standard

This section provides that the Order constitutes a standard for tablets, capsules and pills.

Section 6 Application

This section provides that the Order applies to therapeutic goods that are intended for oral administration and that are manufactured in the dosage form of a tablet, capsule or pill. However, this section also makes it clear that the Order does not apply to the therapeutic goods identified in paragraphs 6(2)(a) – (e) including, for example, radiopharmaceuticals and export only medicines.

Section 7 Repeals

This section provides that each instrument that is specified in Schedule 4 to the Order is repealed as set out in that Schedule.

Part 2 Tablets and Capsules

This part sets out requirements for tablets and capsules.

Division 1 Requirements for tablets and capsules

Section 8 General requirements

This section provides that the requirements in relation to a tablet or capsule for which there is an applicable monograph are the requirements specified in that monograph, subject to the matters specified in Division 2 of Part 2 of the Order, or the requirements specified in Division 3 of Part 2 of the Order. In other words, where there is an applicable monograph for a tablet or capsule, the tests and specifications of the monograph must be followed, as well as any additional requirements that apply to the tablet or capsule in Division 2 of Part 2 of the Order, unless the sponsor of the product has elected to comply instead with the requirements in Division 3 of Part 2 of the Order, together with requirements relevant to the tablet or capsule in one of the British Pharmacopoeia, European Pharmacopoeia or United States Pharmacopoeia-National Formulary.

This section also makes it clear that where there is no applicable monograph in a default standard for a tablet or capsule, the tablet or capsule must comply with the requirements of Division 3 of Part 2 of the Order, together with requirements relevant to the tablet or capsule in one of the British Pharmacopoeia, European Pharmacopoeia or United States Pharmacopoeia-National Formulary.

Division 2 Requirements for tablets and capsules for which there is an applicable monograph

Section 9 Application of the Division

This section provides that Division 2 of Part 2 of the Order applies to tablets and capsules that are registered or listed therapeutic goods, for which there is an applicable monograph.

Section 10 Tablets or capsules containing folic acid

This section sets out specific requirements for tablets or capsules that have a stated content of 100 micrograms or more of folic acid, and that are not a chewable, effervescent, dispersible or modified-release tablet or a soft or modified release capsule.

Section 11 Dissolution

This section sets out specified requirements for registered therapeutic goods that are tablets and capsules that do not contain folic acid, and that are not a modified-release, chewable, effervescent or dispersible tablet or a modified-release capsule and for which an applicable monograph does not contain a test for dissolution.

Section 12 Uniformity relating to dosage units and weight

This section sets out specified requirements for listed tablets and capsules, for which an applicable monograph specifies a test for uniformity of dosage units. Section 12 has the effect that such a test may be replaced with a test for uniformity of weight specified in Schedule 1 to the Order.

Division 3 Australian specific requirements

Under section 8 of the Order, the Australian-specific requirements in Division 3 of the Order are available as an alternative set of requirements for sponsors of tablets and capsules for which there is an applicable monograph. Under section 8, these Australian-specific also form part of the applicable requirements for tablets and capsules for which there is no applicable monograph.

Section 13 Application of division

This section provides that Division 3 applies to tablets and capsules that are registered or listed therapeutic goods.

Section 14 Assay of each active ingredient

Subsection 14(1) provides that, subject to this section, the assay limits for each active ingredient of a tablet or capsule are as specified in item 1 of the table in Schedule 1 to the Order.

Subsections 14(2) – (5) set out exemptions to the above rule for particular kinds of active ingredients or particular kinds of tablets or capsules, including for example, tablets or capsules that contain an active ingredient that is an antibiotic.

Section 15 Tablet or capsule containing folic acid

This section provides for dissolution requirements for tablets and capsules that have a stated content of 100 micrograms or more of folic acid and that are not a chewable, effervescent or modified-release tablet.

Section 16 Elemental impurities and residual solvents

Subsection 16(1) sets out specified requirements relating to the concentration of impurities in tablets and capsules, in relation to arsenic, cadmium, lead or mercury. Subsection 16(2) applies limits in relation to residual solvents.

Section 17 Dissolution

Subsection 17(1) sets out specified requirements for registered tablets and capsules that do not contain folic acid, are not a modified-release, chewable, effervescent or dispersible tablet or a modified-release capsule but contain an active ingredient which, when included in a relevant dosage form, is subject to a default standard which specifies a dissolution test. Subsection 17(1) has the effect that in such circumstances, the tablet or capsule must comply with a suitable dissolution test. Subsection 17(2) provides for requirements in relation to dissolution testing for all active ingredients included in modified-release tablets and modified-release capsules.

Section 18 Disintegration

This section sets out specified requirements in relation to testing for disintegration for tablets or capsules.

Section 19 Fineness of dispersion

This section sets out specified requirements in relation to testing for the fineness of dispersion, for tablets that are dispersible.

Section 20 Uniformity relating to dosage units and weight

This section sets out specified requirements in relation to testing for the uniformity of dosage units in relation to tablets and capsules.

Part 3 Pills

This part sets out requirements relating to the quality of pills.

Section 21 Application of Part

This section provides that the requirements of this Part apply to registered and listed therapeutic goods that are pills.

Section 22 General requirements

This section provides that the requirements in Part 3 are specified in relation to pills.

Section 23 Appearance

This section provides that pills must be uniform in appearance and colour and without adhesion.

Section 24 Water content

This section sets out specified requirements in relation to the water content of pills, including for example that honeyed pills and concentrated water-honeyed pills must not contain more than 12 per cent water.

Section 25 Weight variation

This section provides that the requirements in relation to weight variation for specified kinds of pills are those specified in that section and Parts 1 – 3 of Schedule 3 to the Order.

Section 26 Disintegration

This section provides that the requirements in relation to the disintegration of pills are those specified in that section and Parts 4 – 5 of Schedule 3 to the Order.

Section 27 Assay of each active ingredient

This section provides that the requirements in relation to the assay limits for each active ingredient of a pill are those specified in that section and item 1 of the table in Schedule 1.

Section 28 Elemental Impurities

This section provides that the requirements in relation to maximum permitted concentrations of certain impurities in pills, being arsenic, cadmium, lead and mercury are those specified in the table in Part 6 of Schedule 3 to the Order.

Schedule 1 – Tablets, capsules and pills: assay, disintegration and uniformity

This Schedule sets out requirements relating to assay testing for active ingredients, disintegration, the uniformity of dosage units and the uniformity of weight for tablets, capsules and pills.

Schedule 2 Tablets and capsules: assay limits for content of active ingredient or component in a tablet or capsule

This Schedule sets out requirements relating to minimum and maximum assay values for active ingredients of tablets and capsules, for the purposes of section 14 of the Order. The ingredients are arranged by substance type into vitamins or provitamins, minerals or mineral compounds, enzymes and probiotics.

Schedule 3 Pills: weight variation, disintegration and elemental impurities

This Schedule sets out criteria and values for the weight variation and disintegration of, and elemental impurities limits for, pills, for the purposes of sections 25 and 26 and 28 of the Order.

Schedule 4 Repeals

This Schedule repeals the Therapeutic Goods Order No.78 *Standard for Tablets and Capsules*.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the legislative instrument

The *Therapeutic Goods (Standards for Tablets, Capsules and Pills) (TGO 101) Order 2019* (“the instrument”) is made by the Minister or delegate under section 10 of the *Therapeutic Goods Act 1989*.

The purpose of the instrument is to establish a ministerial standard for therapeutic goods that are tablets, capsules or pills for oral administration (principally, medicines) that specifies critical minimum requirements for the safety and quality of these therapeutic goods, other than those that are identified as not being subject to the instrument (for example, radiopharmaceuticals and export only medicines). In so doing, the instrument is designed to ensure that tablets, capsules and pills meet specifications which demonstrate suitability for therapeutic uses, and ensure that those goods are not contaminated or adulterated.

The instrument repeals and replaces the existing Therapeutic Goods Order No.78 *Standard for Tablets and Capsules* (“the former Order”), which was due to sunset on 1 April 2019 under the sunset provisions of the *Legislation Act 2003*. While most of the instrument commences on 31 March 2019, section 16 and Part 3 of, and Schedule 3 to, the instrument (which set out requirements relating to elemental impurities and pills), will commence on 31 March 2021.

The instrument principally requires that for tablets and capsules for which there is an applicable monograph, the applicable requirements are those:

- specified in that applicable monograph, subject to the matters specified in Division 2 of the instrument; or, alternatively
- the requirements specified in Division 3 of the instrument, together with requirements relevant to the tablet or capsule that are specified in one of the general monographs in the European Pharmacopoeia, the general monographs in the British Pharmacopoeia or the general chapters of the United States Pharmacopoeia-National Formulary.

An ‘applicable monograph’ is defined in section 4 of the instrument as, principally, a default standard specified with reference to a formulated preparation in the British Pharmacopoeia, a pharmaceutical preparation in the European Pharmacopoeia or an official product in the United States Pharmacopoeia-National Formulary, comprising a specific monograph, one or more applicable general monographs and one or more applicable general chapters, interpreted in accordance with the General Notices section of the relevant pharmacopoeia.

The instrument also makes it clear in Division 1 of Part 2 that the requirements for a tablet or capsule for which there is no applicable monograph are the Australian specific requirements in Division 3 of Part 2, together with requirements that are relevant to the tablet or capsule that are specified in one of the general monographs in the European Pharmacopoeia, the general monographs in the British Pharmacopoeia or the general chapters of the United States Pharmacopoeia-National Formulary.

The instrument sets out additional requirements for certain categories of tablets and capsules in Division 2 of Part 2. Principally, these are tablets or capsules that contain folic acid, and tablets or capsules that are registered therapeutic goods for which a test for dissolution would not otherwise apply under Division 1 of Part 2.

Division 3 of Part 2 sets out Australian specific requirements for tablets and capsules. These are intended to provide a sponsor of a tablet or capsule for which there is an applicable monograph with a set of requirements that they may comply with as an alternative to the requirements in Divisions 1 and 2. For a sponsor of a tablet or capsule for which there is not an applicable monograph, the Australian specific requirements in Division 3 of Part 2 form part of the applicable requirements with which its products must comply, under subsection 8(2) of the instrument (along with relevant general monographs or chapters of the European Pharmacopoeia, British Pharmacopoeia or United States Pharmacopoeia-National Formulary).

The instrument incorporates a number of differences in comparison to the former Order, including in particular:

- amending the scope of the instrument to also cover pills (the former Order did not relate to pills), with a two year transition period before the pill-specific requirements in the instrument commence;
- providing a specified set of Australian-specific requirements for tablets and capsules, including in relation to maximum allowable levels of certain elemental impurities (such as arsenic, lead and mercury) in tablets, capsules or pills (with a two year transition period before the requirements in relation to elemental impurities commence for sponsors relying on the Australian-specific requirements); and
- making a number of minor corrections, including clarifying that compounded medicines that are not entered in the Australian Register of Therapeutic Goods are not therapeutic goods to which the instrument applies.

A small number of therapeutic goods that may be tablets, capsules or pills are exempt from the instrument – these are:

- export only medicines;
- radiopharmaceuticals; and
- goods that are exempt, or otherwise approved or authorised in relation to the requirement to be registered or listed in the Register.

Human rights implications

The instrument engages the right to health in Article 12 of the International Covenant on Economic, Social and Cultural Rights (“the ICESCR”). Article 12 of the ICESCR promotes the right of all individuals to enjoy the highest attainable standard of physical and mental health, and includes an obligation to take reasonable measures within available resources to progressively secure broader enjoyment of the right. In *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)* (2000), the United Nations Committee on Economic, Social and Cultural Rights states that health is a ‘*fundamental human right indispensable for the exercise of other human rights*’, and that the right to health is not to be understood as the right to be healthy, but includes the right to a system of health protection which provides equal opportunity for people to enjoy the highest attainable level of health.

The instrument takes positive steps to promote the right to health by ensuring the quality and safety of therapeutic goods that are tablets, capsules and pills by mandating minimum standards for the safety and quality of such products (for example, in particular, in relation to specifying maximum permissible concentrations of elemental impurities such as lead and mercury).

In so doing, the instrument addresses the element of the right to health that relates to the creation of conditions which would assure to all medical service and medical attention in the event of sickness, in relation to ensuring the safety and quality of essential medicines.

The requirements of the instrument are further bolstered in this regard by the criminal, civil and regulatory sanctions that may apply under the Act for persons who import, supply or export therapeutic goods that do not comply with applicable standards.

Conclusion

This instrument is compatible with human rights because it promotes the right to health in Article 12 of the ICESCR as outlined above, and otherwise does not raise any human rights issues.

Jane Cook, delegate of the Minister for Health