

EXPLANATORY STATEMENT

Therapeutic Goods Act 1989

Therapeutic Goods (Manufacturing Principles) Amendment Determination 2024

The *Therapeutic Goods Act 1989* (“the Act”) provides for the establishment and maintenance of a national system of controls for the quality, safety, efficacy or performance, and timely availability of therapeutic goods that are used in, or exported from, Australia. The Act is administered by the Therapeutic Goods Administration (“the TGA”) within the Australian Government Department of Health and Aged Care (“the Department”).

Subsection 36(1) of the Act provides that the Minister may, from time to time, determine written principles to be observed in the manufacture of therapeutic goods for use in humans. Subsection 36(4) of the Act provides that such manufacturing principles are legislative instruments.

Under subsection 36(2) of the Act, manufacturing principles may relate to any of the matters specified in paragraphs 36(2)(a) to (e), including the standards to be maintained and the equipment to be used at manufacturing premises, procedures for quality assurance and quality control and the manufacturing practices to be employed in the manufacturing of therapeutic goods.

The *Therapeutic Goods (Manufacturing Principles) Determination 2020* (“the Principal Determination”) is an instrument made by a delegate of the Minister under subsection 36(1) of the Act for the purpose of determining written principles to be observed in the manufacture of therapeutic goods.

The *Therapeutic Goods (Manufacturing Principles) Amendment Determination 2024* (“the Amendment Determination”) amends the Principal Determination to incorporate an updated version of the *Guide to Good Manufacturing Practice for Medicinal Products* (“the PIC/S Guide to GMP”), which was published by the Pharmaceutical Inspection Co-operation Scheme (“PIC/S”) in February 2022.

The Amendment Determination also replaces Part 3 of the Principal Determination, which contains transitional provisions that no longer apply, to introduce application provisions which provide that (in effect) the PIC/S Guide to GMP (except Annex 16) applies to therapeutic goods manufactured on or after 3 June 2024 and Annex 16 of the PIC/S Guide to GMP, which is a new annex, applies to therapeutic goods manufactured on or after 3 September 2024.

Background

Manufacturing Principles

Part 3-3 of the Act sets out requirements relating to the manufacture of therapeutic goods other than medical devices, Class 1 biologicals, or goods or persons exempt from the operation of that Part by regulations made for the purposes of section 34 of the Act.

Part 3-3 contains criminal offences and civil penalty provisions that may apply where a person carries out, at premises in Australia, a step in the manufacture of therapeutic goods and the person does not have a licence issued under Part 3-3 (and the person, or the goods involved, are not exempt from the operation of that Part under section 34 of the Act).

It is a condition of each manufacturing licence that a manufacturer of therapeutic goods complies with the manufacturing principles (subparagraph 40(4)(a)(ii) of the Act refers). If the holder of a manufacturing licence breaches this or any other condition of the licence, the Secretary may suspend or revoke the licence (subparagraph 41(1)(a)(viii) of the Act refers). The Secretary can

also refuse to grant a manufacturing licence if satisfied that the applicant for the licence will be unable to comply with the manufacturing principles (paragraph 38(1)(e) of the Act refers).

The manufacturing principles set out the minimum requirements that are to be observed in the manufacture of therapeutic goods (other than medical devices), to ensure that therapeutic goods are produced to a high quality, and consistent with their specifications. The Principal Determination separately specifies the principles to be observed in relation to the manufacture of the following therapeutic goods:

- registered and listed therapeutic goods (principally, these are medicines, active pharmaceutical ingredients and sunscreens), and biologicals that comprise or contain live animal cells, tissues or organs; and
- blood, blood components, haematopoietic progenitor cells and biologicals (other than biologicals that comprise or contain live animal cells, tissues or organs).

The TGA uses internationally harmonised manufacturing standards to allow manufacturers to operate in an international environment. The TGA maintains Good Manufacturing Practice (“GMP”) requirements in line with updates issued through PIC/S. Updates are necessary in order to maintain mutual confidence with regulators overseas, and to promote quality assurance of inspections and the harmonisation of technical standards and procedures with international inspection standards for the production and testing of medicinal products.

PIC/S Guide to GMP

PIC/S is a non-binding, informal co-operative arrangement between regulatory authorities in the field of GMP of medicinal products for human or veterinary use. PIC/S leads the international development, implementation and maintenance of harmonised GMP standards and quality systems of inspectorates. The PIC/S Guide to GMP (PE 009-16), published on 1 February 2022, includes minor changes as compared to the version published on 1 May 2021 (PE 009-15), including providing greater guidance for the manufacture or import of investigational medicinal products for human use (Annex 13).

The PIC/S Guide to GMP (PE 009-16) also adopts new Annex 16. Annex 16 provides clear guidance for Authorised Persons in performing the key duty of batch certification (commonly referred to as Release for Supply). Annex 16 has been developed based on Annex 16 of the EudraLex Good Manufacturing Practice guidelines (EU GMP) that has been in place across the European Union for a number of decades.

The PIC/S Guide to GMP (PE 009-15), and preceding versions, contained only basic information regarding batch certification. Adoption of Annex 16 of the PIC/S Guide to GMP (PE 009-16) means that guidance for release for supply of medicines, and releasing medicines manufactured at multiple sites, that was developed by the TGA in conjunction with industry, will now become formal requirements for manufacturers.

Purpose

The Amendment Determination amends the Principal Determination to replace the definition of ‘*PIC/S Guide to GMP*’ with a reference to the updated version of the *Guide to Good Manufacturing Practice for Medicinal Products*, which was published by the Pharmaceutical Inspection Co-operation Scheme (“PIC/S”) in February 2022.

The amendment of the Principal Determination to incorporate the updated version of the PIC/S Guide to GMP ensures consistency with best international practice, and that an appropriate level of GMP will be required to be applied to the manufacture of therapeutic goods for use by patients in Australia. The amendments also reduce the risk and burden for sponsors and manufacturers of therapeutic goods associated with having to comply with requirements in Australia that are inconsistent with those in place in major international markets such as Europe and the

United States. This provides confidence for sponsors and manufacturers to bring their products to market in Australia and reduces delays for Australian patients in accessing new therapeutic goods. The specific changes resulting from the adoption of the updated version of the PIC/S Guide to GMP in comparison to the previous edition reflect the need to provide guidance on the management of new and novel technologies and to ensure continuous improvements in the way such goods are manufactured.

Australian manufacturers will also benefit from reduced regulatory burden where the TGA is able to adopt harmonised international standards and establish mutual recognition agreements and cooperation arrangements with comparable overseas regulatory authorities.

In addition to updating the reference to the PIC/S Guide to GMP, the Amendment Determination also replaces Part 3 of the Principal Determination, which provides for transitional arrangements that concluded on 30 June 2021. The Amendment Determination replaces Part 3 with application provisions which provide that the PIC/S Guide to GMP, other than Annex 16, applies to therapeutic goods manufactured on or after 3 June 2024, and Annex 16 of the PIC/S Guide to GMP, which is a new annex, applies to therapeutic goods manufactured on or after 3 September 2024.

Incorporation by reference

The Amendment Determination incorporates by reference the *Guide to Good Manufacturing Practice for Medicinal Products* (PE 009-16, 1 February 2022), which was published by the Pharmaceutical Inspection Co-operation Scheme (PIC/S). This document sets out standards that apply to the manufacture of medicines and similar products intended for human use, and is available for free on the TGA website (www.tga.gov.au). This document is incorporated as in force or existing at 3 June 2024, being the time that the Amendment Determination commences, in accordance with paragraph 14(1)(b) of the *Legislation Act 2003* (“the Legislation Act”).

Consultation

The TGA undertook targeted consultation in relation to the incorporation of the updated version of the PIC/S Guide to GMP. A gap-analysis of the differences between the two versions of the PIC/S Guide to GMP, i.e. PE 009-15 (published in 2021) and PE009-16 (published in 2022), was made available by the TGA for consultation with the Technical Industry Working Group on GMP (“TIWGG”) between June and August 2023.

The TIWGG is a stakeholder representational group comprising members nominated by key industry associations Accord Australasia, the Active Pharmaceutical Ingredients Manufacturers’ Association of Australia, the Association of Therapeutic Goods Consultants, the Australia New Zealand Industrial Gas Association, Australia and New Zealand Region of International Society of Cell and Gene Therapy, Australian Red Cross Lifeblood, Biotherapeutics Association of Australasia, Complementary Medicines Australia, Consumer Healthcare Products Australia and the Generic and Biosimilar Medicines Association, Medicinal Cannabis Industry Association and Medicines Australia. Feedback from the key industry associations regarding the gap analysis was positive and the associations supported the adoption of the updated version of the PIC/S Guide to GMP.

The Office of Impact Analysis advised that an Impact Analysis was not required in relation to the making of the Amendment Determination as the proposed amendments are unlikely to have a more than minor regulatory impact (OIA24-07416).

Details of the Amendment Determination are set out in **Attachment A**.

The Amendment Determination 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 Amendment Determination is a disallowable legislative instrument for the purposes of the Legislation Act, and commences on 3 June 2024.

Details of the *Therapeutic Goods (Manufacturing Principles) Amendment Determination 2024*

Section 1 – Name

This section provides that the name of the instrument is the *Therapeutic Goods (Manufacturing Principles) Amendment Determination 2024* (“the Amendment Determination”).

Section 2 – Commencement

This section provides that the Amendment Determination commences on 3 June 2024.

Section 3 – Authority

This section provides that the legislative authority for making the Amendment Determination is section 36 of the *Therapeutic Goods Act 1989* (“the Act”).

Subsection 33(3) of the *Acts Interpretation Act 1901* relevantly provides that, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character, the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument. The Amendment Determination is made in accordance with that provision.

Section 4 – Schedules

This section provides that each instrument that is specified in a Schedule to the Amendment Determination is amended or repealed as set out in the applicable items in the Schedule concerned, and that any other item in a Schedule to the Amendment Determination has effect according to its terms.

Schedule 1 – Amendments

This Schedule amends the *Therapeutic Goods (Manufacturing Principles) Determination 2020* (“the Principal Determination”).

Item 1 replaces the definition of ‘PIC/S Guide to GMP’ in section 4 of the Principal Determination to reflect that ‘PIC/S Guide to GMP’ means the updated version of the *PIC/S Guide to Good Manufacturing Practice for Medicinal Products*, being version PE 009-16, as published on 1 February 2022.

Item 2 repeals Part 3 of the Principal Determination, which provides for transitional arrangements for amendments made by a former instrument. The conclusion of the relevant transition period was 30 June 2021 so these transitional provisions no longer apply. Item 2 replaces Part 3 with application provisions which provide that the PIC/S Guide to GMP, other than Annex 16, applies to therapeutic goods manufactured on or after 3 June 2024, and Annex 16 of the PIC/S Guide to GMP, applies to therapeutic goods manufactured on or after 3 September 2024. The delayed application of Annex 16 for 3 months recognises that Annex 16 is a new requirement in the PIC/S Guide to GMP, and is to allow industry time to ensure their manufacturing practices comply with Annex 16.

Statement of Compatibility with Human Rights

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

Therapeutic Goods (Manufacturing Principles) Amendment Determination 2024

This disallowable 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 legislative instrument

Subsection 36(1) of the Act provides that the Minister may, from time to time, determine written principles to be observed in the manufacture of therapeutic goods for use in humans. Subsection 36(4) of the Act provides that such manufacturing principles are legislative instruments.

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inconsistent with those in place in major international markets such as Europe and the United States. This provides confidence for sponsors and manufacturers to bring their products to market in Australia and reduces delays for Australian patients in accessing new therapeutic goods. The specific changes resulting from the adoption of the updated version of the PIC/S Guide to GMP in comparison to the previous edition reflect the need to provide guidance on the management of new and novel technologies and to ensure continuous improvements in the way such goods are manufactured.

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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 standards of physical and mental health.

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 that therapeutic goods manufactured in Australia continue to be subject to an appropriate level of Good Manufacturing Practice, and are of a high quality. The instrument ensures consistency with best international practice for the manufacture of therapeutic goods (other than medical devices), and that an appropriate level of GMP will be required to be applied to the manufacture of therapeutic goods for use by patients in Australia. Accordingly, these measures will assist to protect the safety of consumers who use therapeutic goods that are manufactured under licence in Australia.

In ensuring consistency with best international practice, the instrument also reduces the risk and burden for sponsors and manufacturers of therapeutic goods associated with having to comply with requirements in Australia that are inconsistent with those in place in major international markets such as Europe and the United States. This provides confidence for sponsors and manufacturers to bring their products to market in Australia and reduces delays for Australian patients in accessing new therapeutic goods.

Conclusion

This legislative instrument is compatible with human rights because it promotes the right to health in Article 12 of the ICESCR and does not raise any other human rights issues.