

EXPLANATORY STATEMENT

Industrial Chemicals Act 2019

Industrial Chemicals (General) Amendment (Vaping Reforms—Consequential Amendments) Rules 2024

The *Industrial Chemicals Act 2019* (the IC Act) establishes the Australian Industrial Chemicals Introduction Scheme (AICIS), a risk-based scheme for the Commonwealth regulation of the introduction of industrial chemicals into Australia.

The IC Act regulates, among other things, the introduction of industrial chemicals. Section 9 of the IC Act defines *introduce* to include import into Australia. Section 10 of the IC Act broadly defines an industrial chemical to cover chemicals that have an industrial use. As set out in section 9 of the IC Act, *industrial use* means a use other than, or in addition to, use as or in the preparation of agricultural chemical products, veterinary chemical products, therapeutic goods, vaping goods, food intended for consumption by humans, feed intended for consumption by animals, or any use prescribed by the rules.

Section 180 of the IC Act provides that the Minister may make rules providing for matters required or permitted by the Act, or necessary or convenient in order to carry out or give effect to the Act. The *Industrial Chemicals (General Rules) 2019* (the General Rules) are made under the IC Act and form part of the legislative framework that establishes the risk-based regulatory scheme for industrial chemicals by setting out the technical and operational details of AICIS.

The *Industrial Chemicals (General) Amendment (Vaping Reforms—Consequential Amendments) Rules 2024* (the Amendment Rules) are made under section 180 of the Act. The Amendment Rules make a small number of consequential amendments to remove references to personal vaporisers following amendments made to the IC Act by the *Therapeutic Goods and Other Legislation Amendment (Vaping Reforms) Act 2024* (the Amendment Act) as part of the reforms to the regulation of vaping goods introduced by the Amendment Act.

Background

Vaping is rapidly increasing in Australia, particularly among youth and young adults. The latest available trend data shows that among young people aged 14 years and over, current use of an e-cigarette, defined as used at least once in the month prior to being surveyed, increased from 2.5% to 8.9% between 2020 and 2023. The increase was even more marked among people aged 18-24 years old, increasing from 5.6% in 2020 to 19.8% in 2023. These findings reinforce a widespread and serious concern among public health policy makers and practitioners at the increasing marketing and use of vapes.

The Australian Government has introduced regulatory changes to reduce rates of vaping and prevent long term adverse effects on population health. At the centrepiece of these changes are amendments to the *Therapeutic Goods Act 1989* (the TG Act) made by the Amendment Act. The Amendment Act commences on 1 July 2024 and, principally, prohibits the importation, manufacture, advertising, commercial possession and supply of vaping goods in Australia unless certain requirements under the Act are met. The reforms align with the Government's broader objective to significantly reduce the use of tobacco and nicotine products in Australia by 2030, as outlined in the National Tobacco Strategy 2023-2030.

Purpose

Schedule 3 to the Amendment Act makes a small number of consequential amendments to other Commonwealth legislation, including the IC Act. The consequential amendments to the IC Act include:

- inserting the term “vaping goods” into the Simplified Outline of the IC Act to highlight that a chemical is an industrial chemical to the extent that it is used other than in vaping goods, among other exceptions, such as chemicals for therapeutic purposes; and
- amending the definition of *industrial use* in section 9 of the IC Act to provide that industrial use means a use other than (or in addition to) use as a vaping good (within the meaning of the TG Act) or in preparation of such a good.

The effect of these amendments is to make minor updates to the scope of the IC Act and the AICIS to reflect that the AICIS will no longer regulate ingredients in non-nicotine vaping goods, defined as “personal vaporisers” in the General Rules, as such goods will now be regulated under the TG Act – avoiding duplication. As such, the purpose of the Amendment Rules is to make minor, consequential amendments to the General Rules to remove all references to “personal vaporisers”.

Consultation

The Therapeutic Goods Administration, within the Australian Government Department of Health and Aged Care, consulted AICIS in relation to the making of the Amendment Rules. No further consultation was necessary as the amendments to the General Rules are minor and consequential in nature and incorporate changes that will be made to the IC Act from 1 July 2024.

Other details

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

The Amendment Rules are compatible with 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 Rules are a disallowable legislative instrument for the purposes of the *Legislation Act 2003* and commences at the same time as Schedule 3 to the *Therapeutic Goods and Other Legislation Amendment (Vaping Reforms) Act 2024* (the Amendment Act) commences. However, the Amendment Rules do not commence at all if the Amendment Act does not commence. Schedule 3 of the Amendment Act commences on 1 July 2024.

Details of the *Industrial Chemicals (General) Amendment (Vaping Reforms—Consequential Amendments) Rules 2024*

Section 1 – Name

This section provides that the name of the instrument is the *Industrial Chemicals (General) Amendment (Vaping Reforms—Consequential Amendments) Rules 2024* (the Amendment Rules).

Section 2 – Commencement

This section provides that the Amendment Rules commences at the same time as Schedule 3 to the *Therapeutic Goods and Other Legislation Amendment (Vaping Reforms) Act 2024* (the Amendment Act) commences. However, the Amendment Rules do not commence at all if the Amendment Act does not commence.

Section 3 – Authority

This section provides that the legislative authority for making the Amendment Rules is section 180 of the *Industrial Chemicals Act 2019* (the IC 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 like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument. The Amendment Rules are made in accordance with that provision.

Section 4 – Schedules

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

The Amendment Rules make amendments to the *Industrial Chemicals (General) Rules 2019* (the General Rules).

Schedule 1 – Amendments

Industrial Chemicals (General) Rules 2019

Item 1 – Section 5 (definition of *personal vaporiser*)

Item 1 repeals the definition of “personal vaporiser” (including the note) in section 5 of the General Rules.

This is a consequential amendment to reflect the changes the Amendment Act makes to the IC Act, in relation to excluding vaping goods from the definition of *industrial chemicals*, and AICIS will no longer regulate personal vaporisers.

Item 2 – Paragraphs 7(4)(c), 27(4)(c), 27(4A)(c)

Item 2 repeals paragraphs 7(4)(c), 27(4)(c) and 27(4A)(c) of the General Rules to remove the references to and the coverage of the General Rules applying to personal vaporisers.

These are consequential amendments to the General Rules to remove the references to “personal vaporiser” to reflect changes the Amendment Act makes to the IC Act, under which vaping goods are excluded from the definition of *industrial chemicals*, and AICIS will no longer regulate personal vaporisers.

Item 3 – Paragraph 1(2)(a) of Schedule 1

Item 3 makes a minor technical amendment to support the amendment made by item 4 below.

Item 4 – Paragraph 1(2)(b) of Schedule 1

Item 4 repeals paragraph 1(2)(b) in Schedule 1 to the General Rules. This is a consequential amendment to the General Rules to remove the reference to “personal vaporiser” to reflect changes the Amendment Act makes to the IC Act, under which vaping goods are excluded from the definition of *industrial chemicals*, and AICIS will no longer regulate personal vaporisers.

Statement of Compatibility with Human Rights

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

Industrial Chemicals (General) Amendment (Vaping Reforms—Consequential Amendments) Rules 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

The IC Act regulates, among other things, the introduction of industrial chemicals. Section 9 of the IC Act defines *introduce* to include import into Australia. Section 10 of the IC Act broadly defines an industrial chemical to cover chemicals that have an industrial use. As set out in section 9 of the IC Act, *industrial use* means a use other than, or in addition to, use as or in the preparation of agricultural chemical products, veterinary chemical products, therapeutic goods, vaping goods, food intended for consumption by humans, feed intended for consumption by animals, or any use prescribed by the rules.

Section 180 of the IC Act provides that the Minister may make rules providing for matters required or permitted by the Act, or necessary or convenient in order to carry out or give effect to the Act. The *Industrial Chemicals (General Rules) 2019* (the General Rules) are made under the IC Act and form part of the legislative framework that establishes the risk-based regulatory scheme by setting out the technical and operational details of AICIS.

The *Industrial Chemicals (General) Amendment (Vaping Reforms—Consequential Amendments) Rules 2024* (the Amendment Rules) are made under section 180 of the Act. The Amendment Rules make a small number of constitutional amendments to remove references to personal vaporisers' following amendments to the IC Act as part of the reforms to the regulation of vaping goods made by the *Therapeutic Goods and Other Legislation Amendment (Vaping Reforms) Act 2024* (the Amendment Act).

Background

Vaping is rapidly increasing in Australia, particularly among youth and young adults. The latest available trend data shows that among young people aged 14 years and over, current use of an e-cigarette, defined as used at least once in the month prior to being surveyed, increased from 2.5% to 8.9% between 2020 and 2023. The increase was even more marked among people aged 18-24 years old, increasing from 5.6% in 2020 to 19.8% in 2023. These findings reinforce a widespread and serious concern among public health policy makers and practitioners at the increasing marketing and use of vapes.

The Australian Government has introduced regulatory changes to reduce rates of vaping and prevent long term adverse effects on population health. At the centrepiece of these changes is amendments to the *Therapeutic Goods Act 1989* (the TG Act) made by the Amendment Act. The Amendment Act commences on 1 July 2024 and, principally, prohibits the importation, manufacture and supply of vaping goods in Australia unless certain requirements under the Act are met. The reforms align with the Government's broader objective to significantly reduce the use of tobacco and nicotine products in Australia by 2030, as outlined in the National Tobacco Strategy 2023-2030.

Purpose

Schedule 3 to the Amendment Act makes consequential amendments to other Commonwealth legislation, including the IC Act. The consequential amendments include:

- inserting the term “vaping goods” into the Simplified Outline of the IC Act to ensure that vaping goods are included in the exception of chemicals that are not industrial chemicals, such as chemicals for therapeutic purposes; and
- amending the definition of *industrial use* in section 9 of the IC Act to provide that industrial use means a use other than (or in addition to) use as a vaping good (within the meaning of the TG Act) or in preparation of such a good.

The effect of these amendments is to make minor updates to the scope of regulation of the AICIS to reflect that the AICIS will no longer regulate ingredients in non-nicotine vaping goods, defined as “personal vaporisers” in the General Rules, as such goods will now be regulated under the TG Act. As such, the purpose of the Amendment Rules is to make consequential amendments to the General Rules to remove all references to “personal vaporisers”.

Human rights implications

The Amendment Rules do not engage any of the applicable rights or freedoms as the instrument only makes the following consequential amendments to the General Rules:

- removes the definition of “personal vaporiser” (including the note);
- removes the references to “personal vaporiser” from paragraphs 7(4)(c), 27(4)(c) and 27(4A)(c);
- replaces subclause 1(2) in Schedule 1 to the General Rules with a new subclause, which removes an exposure arising from an end use in a personal vaporiser as a “designated kind of human exposure”.

Conclusion

The Amendment Rules are compatible with human rights as they do not raise any human rights issues.