

Therapeutic Goods (Vaping Goods—Possession and Supply) Amendment Determination (No. 2) 2024

I, Chris Bedford, as delegate for the Minister for Health and Aged Care, make the following determination.

Dated 30 September 2024

Chris Bedford

First Assistant Secretary  
Regulatory Practice and Support Division  
Health Products Regulation Group  
Department of Health and Aged Care

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1 Name

This instrument is the *Therapeutic Goods (Vaping Goods—Possession and Supply) Amendment Determination (No. 2) 2024*.

2 Commencement

(1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| Commencement information | | |
| --- | --- | --- |
| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
| The whole of the instrument | 1 October 2024. | 1 October 2024 |

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

(2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under section 41R of the *Therapeutic Goods Act 1989*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

Therapeutic Goods (Vaping Goods—Possession and Supply) Determination 2024

1 Schedule 1 (table item 3, column 4, subparagraph (b)(i))

Omit “Australia,”, substitute “Australia;”.

2 Schedule 1 (table item 3, column 4, at the end of sub-subparagraphs (b)(ii)(A) to (C))

Add “or”.

3 Schedule 1 (table item 3, column 5, paragraph (e))

Omit “Schedule 8 of the current Poisons Standard applies”, substitute “Schedule 8 to the current Poisons Standard applies”.

4 Schedule 1 (table item 3, column 5, at the end of subparagraphs (f)(i) to (iii) and (h)(i))

Add “and”.

5 Schedule 1 (table item 4, column 2, paragraph (b))

Repeal the paragraph, substitute:

(b) goods that are or contain a vaping substance that is a medicinal cannabis product or a medicine that contains synthetic cannabis;

6 Schedule 1 (table item 4, column 4, paragraph (a))

Omit “30 November 2024, substitute “31 March 2025”.

7 Schedule 1 (table item 4, column 5, at the end of subparagraph (c)(i))

Add “and”.

8 Schedule 1 (table item 4, column 5, paragraph (e))

Omit “Schedule 8 of the current Poisons Standard applies”, substitute “Schedule 8 to the current Poisons Standard applies”.

9 Schedule 1 (table item 4, column 5, at the end of subparagraph (f)(i))

Add “and”.

10 Schedule 1 (table item 5, column 5, paragraph (f))

Omit “Schedule 8 of the current Poisons Standard applies”, substitute “Schedule 8 to the current Poisons Standard applies”.

11 Schedule 1 (table item 5, column 5, at the end of subparagraphs (g)(i) to (iii) and (i)(i))

Add “and”.

12 Schedule 1 (table item 6, column 4, paragraph (a))

Omit “30 November 2024, substitute “31 March 2025”.

13 Schedule 1 (table item 6, column 4, subparagraph (b)(ii) (second occurring))

Omit “(ii) a person”, substitute “(iii) a person”.

14 Schedule 1 (table item 6, column 5, at the end of subparagraph (a)(i))

Add “and”.

15 Schedule 1 (table item 6, column 5, paragraph (d))

Omit “Schedule 8 of the current Poisons Standard applies”, substitute “Schedule 8 to the current Poisons Standard applies”.

16 Schedule 1 (table item 6, column 5, at the end of subparagraphs (e)(i) to (iii) and (g)(i))

Add “and”.

17 Schedule 2 (table item 2, column 5)

Omit “(receiver)”, substitute “(***receiver***)”.

18 Schedule 2 (table item 3, column 3))

Omit “an approved importer”, substitute “a person”.

19 Schedule 2 (table item 4)

Repeal the item, substitute:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 4 | vaping goods | a person who:  (a) obtained the goods in the course of their importation, exportation, wholesale supply, retail supply, transportation or storage, business; or  (b) manufactured the goods in Australia | all of the following:  (a) the possession and supply occurs on or before 30 November 2024;  (b) immediately before 1 July 2024:  (i) the goods were in the possession or control of:  (A) a person mentioned in column 3 of this item (relevant person); or  (B) another person to whom the relevant person had supplied the goods, in circumstances where the other person was not the ultimate consumer of the goods; and  (ii) the importation or manufacture, supply, and possession of the goods was done in accordance with all applicable laws of the Commonwealth, a State or a Territory;  (c) the relevant person:  (i) possesses at least 20 times the commercial quantity of the kind of vaping goods; and  (ii) possesses the goods for the sole purpose of surrendering the goods to the Department; and  (iii) notified the Department, before 1 September 2024, at vapereturn@health.gov.au that the relevant person intends to surrender the goods to the Department;  (d) the goods are supplied to the Department by the relevant person for the purpose of surrender in accordance with a direction of an officer of the Department | all of the following:  (a) the relevant person must, if requested to do so by the Department, provide any information that the Department requires about:  (i) the goods; and  (ii) the relevant person’s possession or supply of the goods, and any other persons involved in such activities; and  (iii) any other matter that the Department determines is relevant;  (b) if the goods contain a substance included in Schedule 8 to the current Poisons Standard—the relevant person must comply with all applicable laws of the State or Territory that apply to the possession and supply of a substance to which Schedule 8 to the current Poisons Standard applies;  (c) the goods must be stored:  (i) in an area, or a receptacle in an area, that is locked or otherwise secured in a way that is designed to prevent access to the area or receptacle by a person who is not authorised to access the area or receptacle; and  (ii) in an area the relevant person reasonably believes a member of the public could not access without permission from the person;  (d) the relevant person must keep and maintain a record of all goods in the person’s possession, including:  (i) the amount or quantity of goods; and  (ii) a description of the goods;  (e) the relevant person must supply the goods in accordance with a direction of an officer of the Department (including any direction concerning transportation or any other process required to facilitate supply);  (f) if the relevant person reasonably suspects that any of the goods have been lost or stolen, the relevant person must notify police in the State or Territory in which the person suspects the goods were lost or stolen:  (i) as soon as practicable; and  (ii) before the end of the next business day |

20 Schedule 2 (table item 5, column 4, at the end of subparagraph (b)(i))

Add “and”.

21 Schedule 2 (table item 5, column 5, paragraph (c))

Omit “Schedule 8 of the current Poisons Standard applies”, substitute “Schedule 8 to the current Poisons Standard applies”.

22 Schedule 2 (table item 6, column 4, at the end of paragraph (b))

Omit “and”.

23 Schedule 2 (table item 6, column 4, at the end of subparagraphs (e)(i) to (iii))

Omit “or”.

24 Schedule 2 (table item 6, column 5, at the end of subparagraph (a)(i)

Add “and”.

25 Schedule 2 (table item 6, column 5, paragraph (b))

Omit “current Poisons Standard— the person”, substitute “current Poisons Standard—the person”.

26 Schedule 2 (table item 6, column 5, paragraph (b))

Omit “Schedule 8 of the current Poisons Standard applies”, substitute “Schedule 8 to the current Poisons Standard applies”.

27 Schedule 2 (table item 6, column 5, at the end of subparagraphs (g)(i) and (ii) and (h)(i))

Add “and”.

28 Schedule 2 (table item 6, column 5, subparagraph (h)(iii))

Omit “Column 5”, substitute “column 4”.

29 Schedule 2 (table item 7, column 4, paragraph (a))

Omit “30 November 2024, substitute “31 March 2025”.

30 Schedule 2 (table item 7, column 4, paragraphs (d) and (e))

Omit “entered’, substitute “included”.

31 Schedule 2 (table item 7, column 5, at the end of subparagraphs (g)(i) and (i)(i))

Add “and”.

32 Schedule 2 (table item 8)

Repeal the item, substitute:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 8 | nicotine in solution | a person who is the holder of a licence under Part 3-3 of the Act (***relevant licence holder***) that authorises the manufacture of vaping goods | all of the following:  (a) the possession and supply occurs on or before 30 March 2025;  (b) the goods were manufactured by the relevant licence holder in Australia;  (c) if, immediately before 1 July 2024, the relevant licence holder possessed more than 20 times the commercial quantity, the relevant licence holder notified the Department of that fact, at vapereturn@health.gov.au, before 1 September 2024 | all of the following:  (a) the goods must be manufactured in compliance with the licence of the relevant licence holder;  (b) the goods may only be supplied by the licence holder to another person who is the holder of a Part 3-3 licence that authorises the manufacture of vaping goods;  (c) the relevant licence holder must, if requested to do so by the Department, provide any information that the Department requires about:  (i) the goods; and  (ii) the relevant licence holder’s possession or supply of the goods, and any other persons involved in such activities; and  (iii) any other matter that the Department determines is relevant |

33 Schedule 2 (table item 9, column 5, at the end of subparagraph (b)(i))

Add “and”.

34 Schedule 2 (table item 9, column 5, paragraphs (c) and (d))

Omit “Schedule 8 of the current Poisons Standard applies”, substitute “Schedule 8 to the current Poisons Standard applies”.

35 Schedule 2 (table item 10, column 2, paragraph (c))

Repeal the paragraph, substitute:

(c) goods that are or contain a vaping substance that is a medicinal cannabis product or a medicine that contains synthetic cannabis

36 Schedule 2 (table item 10, column 4, paragraph (a))

Omit “30 November 2024”, substitute “31 March 2025.

37 Schedule 2 (table item 10, column 5, at the end of subparagraph (b)(i))

Add “and”.

38 Schedule 2 (table item 10, column 5, paragraph (c))

Omit “Schedule 8 of the current Poisons Standard applies”, substitute “Schedule 8 to the current Poisons Standard applies”.

39 Schedule 2 (table item 10, column 5, at the end of subparagraphs (h)(i) and (j)(i))

Add “and”.

40 Schedule 2 (table item 11, column 4, paragraph (a))

Omit “30 November 2024, substitute “31 March 2025”.

41 Schedule 2 (table item 11, column 4, at the end of sub-subparagraph (c)(i)(B))

Add “and”.

42 Schedule 2 (table item 11, column 5, paragraph (b))

Omit “Schedule 8 of the current Poisons Standard applies”, substitute “Schedule 8 to the current Poisons Standard applies”.

43 Schedule 2 (table item 11, column 5, paragraph (e))

Omit “Column 4”, substitute “column 4”.

44 Schedule 2 (table item 11, column 5, at the end of subparagraphs (g)(i) and (i)(i))

Add “and”.

45 Schedule 2 (table item 12, column 2, paragraph (b))

Repeal the paragraph, substitute:

(b) goods that are or contain a vaping substance that is a medicinal cannabis product or a medicine that contains synthetic cannabis

46 Schedule 2 (table item 12, column 4, at the end of subparagraphs (a)(i) and (ii))

Add “or”.

47 Schedule 2 (table item 12, column 5, paragraph (a))

Omit “Schedule 8 of the current Poisons Standard applies”, substitute “Schedule 8 to the current Poisons Standard applies”.

48 Schedule 2 (table item 13, column 4, paragraph (a))

Repeal the paragraph.

49 Schedule 2 (table item 13, column 4, at the end of subparagraph (c)(i))

Add “or”.

50 Schedule 2 (table item 13, column 5, at the end of subparagraph (a)(i))

Add “or”.

51 Schedule 2 (table item 13, column 5, paragraph (c))

Omit “Schedule 8 of the current Poisons Standard applies”, substitute “Schedule 8 to the current Poisons Standard applies”.

52 Schedule 2 (table item 13, column 5, at the end of subparagraph (d)(i))

Add “and”.