



New South Wales

# Public Health (Tobacco) Amendment Bill 2024

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The objects of this Bill are to—

- (a) amend the *Poisons and Therapeutic Goods Act 1966* (the **PTG Act**) to regulate the supply and possession of vaping goods consistent with recent amendments to the *Therapeutic Goods Act 1989* of the Commonwealth (the **Commonwealth TG Act**) and other Commonwealth legislation to ban the supply and commercial possession of disposable single use and recreational vapes and, in particular, to—
  - (i) prohibit a person from supplying vaping goods in New South Wales unless the vaping goods are therapeutic goods and—
    - (A) the person supplying the goods is authorised to supply the goods under the Commonwealth TG Act or import the goods under the *Customs Act 1901* of the Commonwealth (the **Commonwealth Customs Act**) and the person receiving the vaping goods is a wholesaler, pharmacist, medical practitioner or nurse practitioner who is authorised to supply the vaping goods under the PTG Act or an equivalent law of the State or Territory in which the person receiving the goods carries on a business, practises or is employed, or
    - (B) the person supplying the goods is a pharmacist, medical practitioner or nurse practitioner and the supply is in final dosage form and for the purposes of smoking cessation, management of nicotine dependence or another indication determined under the Commonwealth TG Act, and
  - (ii) prohibit a person from possessing commercial quantities of vaping goods in New South Wales unless—

- (A) the person is authorised to manufacture or possess the goods under the Commonwealth TG Act or import the goods under the Commonwealth Customs Act, or
    - (B) the person is a wholesaler, pharmacist, medical practitioner or nurse practitioner who is authorised to supply the goods under the PTG Act, and
  - (iii) prohibit a retailer from possessing less than commercial quantities of vaping goods at a retail premises in New South Wales unless—
    - (A) the retailer is authorised to possess the vaping goods under the Commonwealth TG Act or the PTG Act, or
    - (B) the vaping goods are for the retailer’s lawful personal use, and
- (b) amend the *Medicines, Poisons and Therapeutic Goods Act 2022* (the **MPTG Act**) to regulate the supply and possession of vaping goods consistent with recent amendments to the Commonwealth TG Act and other legislation to ban the supply and commercial possession of disposable single use and recreational vapes and, in particular, to—
  - (i) prohibit a person from supplying vaping goods in New South Wales unless the vaping goods are therapeutic goods and—
    - (A) the person supplying the goods is authorised to supply the goods under the Commonwealth TG Act or import the goods under the Commonwealth Customs Act and the person receiving the vaping goods is a wholesaler, pharmacist, medical practitioner or nurse practitioner who is authorised to supply the vaping goods under the MPTG Act or an equivalent law of the State or Territory in which the person receiving the goods carries on a business, practises or is employed, or
    - (B) the person supplying the goods is a pharmacist, medical practitioner or nurse practitioner and the supply is in final dosage form and for the purposes of smoking cessation, management of nicotine dependence or another indication determined under the Commonwealth TG Act, and
  - (ii) prohibit a person from possessing commercial quantities of vaping goods in New South Wales unless—
    - (A) the person is authorised to manufacture or possess the goods under the Commonwealth TG Act or import the goods under the Commonwealth Customs Act, or
    - (B) the person is a wholesaler, pharmacist, medical practitioner or nurse practitioner who is authorised to supply the goods under the MPTG Act, and
  - (iii) prohibit a retailer from possessing less than commercial quantities of vaping goods at a retail premises in New South Wales unless—
    - (A) the retailer is authorised to possess the vaping goods under the Commonwealth TG Act or the MPTG Act, or
    - (B) the vaping goods are for the retailer’s lawful personal use, and
- (c) amend the *Criminal Procedure Act 1986* to provide that indictable offences relating to the supply and possession of vaping goods under the PTG Act and the MPTG Act may be dealt with summarily, and
- (d) make related amendments to the *Public Health (Tobacco) Act 2008* to—
  - (i) reflect that the sale, supply and possession of vaping goods will now be regulated under the PTG Act and the MPTG Act, and
  - (ii) reflect that advertising relating to vaping goods will now be regulated under the Commonwealth TG Act, and
  - (iii) ensure the offence of smoking in a motor vehicle if a juvenile is present continues to apply in relation to the use of vaping goods, and

- (e) make related amendments to the *Smoke-free Environment Act 2000* to ensure the provisions of that Act apply in relation to the use of all vaping goods.

## Outline of provisions

**Clause 1** sets out the name, also called the short title, of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act.

## Schedule 1      **Amendment of Poisons and Therapeutic Goods Act 1966 No 31**

**Schedule 1[1]** amends section 4 to insert relevant definitions consequent on other amendments in Schedule 1.

**Schedule 1[2]** inserts proposed Part 3A, which provides for the regulation of the supply and possession of vaping goods as follows—

- (a) proposed section 19 provides relevant definitions for the proposed part, consistent with the definitions used in the Commonwealth TG Act,
- (b) proposed section 20 makes it an indictable offence, with a maximum penalty of 7 years imprisonment or 14,000 penalty units, or both, and a strict liability offence, with a maximum penalty of 560 penalty units, for a person to supply vaping goods in New South Wales with exceptions relating to the supply of vaping goods that are therapeutic goods registered or otherwise authorised to be supplied under the Commonwealth TG Act or the PTG Act—
- (i) by authorised manufacturers or importers of the goods to—
- (A) other authorised manufacturers, or
- (B) wholesalers, pharmacists, medical practitioners or nurse practitioners who are authorised to supply the vaping goods under a law of the State or Territory in which the recipient carries on a business, practises or is employed, or
- (C) persons otherwise authorised to supply the goods under the Commonwealth TG Act, or
- (ii) by pharmacists, medical practitioners or nurse practitioners if the supply—
- (A) is in final dosage form, and
- (B) is for the purposes of smoking cessation, management of nicotine dependence or another indication determined under the Commonwealth TG Act,
- (c) proposed section 21 makes it an indictable offence, with maximum penalties ranging from 2–7 years imprisonment or 2,800–14,000 penalty units, or both, and a strict liability offence, with maximum penalties ranging from 330–1,170 penalty units, for a person to possess various commercial quantities of vaping goods in New South Wales with exceptions relating to—
- (i) the possession of less than 5 times the commercial quantity of the vaping goods if the goods have been lawfully supplied to the person and are for the person’s personal use, or
- (ii) the possession of vaping goods that are therapeutic goods registered or otherwise authorised to be supplied under the Commonwealth TG Act or the PTG Act by—
- (A) authorised manufacturers or importers of the goods, or
- (B) wholesalers, pharmacists, medical practitioners or nurse practitioners who are authorised to supply the vaping goods under a law of the State or Territory in which the recipient carries on a business, practises or is employed, or
- (C) persons otherwise authorised to possess the goods under the Commonwealth TG Act,

- (d) proposed section 22 makes it an indictable offence, with a maximum penalty of 12 months imprisonment or 1,400 penalty units, or both, and a strict liability offence, with a maximum penalty of 160 penalty units, for a person to possess less than the commercial quantity of vaping goods in New South Wales with exceptions relating to—
  - (i) the possession of vaping goods that are therapeutic goods registered or otherwise authorised to be possessed or supplied under the Commonwealth TG Act or the PTG Act by—
    - (A) wholesalers, pharmacists, medical practitioners or nurse practitioners who are authorised to supply the vaping goods under a law of the State or Territory in which the recipient carries on a business, practises or is employed, or
    - (B) persons otherwise authorised to possess the goods under the Commonwealth TG Act, and
  - (ii) the possession of not more than the permitted quantity of the vaping goods if the vaping goods are for the person's personal use.

## **Schedule 2      Amendment of Medicines, Poisons and Therapeutic Goods Act 2022 No 73**

**Schedule 2[1]** inserts proposed Chapter 3A, which provides for the regulation of the supply and possession of vaping goods as follows—

- (a) proposed section 85A provides relevant definitions for the proposed chapter, consistent with the definitions used in the Commonwealth TG Act,
- (b) proposed section 85B makes it an indictable offence, with a maximum penalty of 7 years imprisonment or 14,000 penalty units, or both, and a strict liability offence, with a maximum penalty of 560 penalty units, for a person to supply vaping goods in New South Wales with exceptions relating to the supply of vaping goods that are therapeutic goods registered or otherwise authorised to be supplied under the Commonwealth TG Act or the MPTG Act—
  - (i) by authorised manufacturers or importers of the goods to—
    - (A) other authorised manufacturers, or
    - (B) wholesalers, pharmacists, medical practitioners or nurse practitioners who are authorised to supply the vaping goods under a law of the State or Territory in which the recipient carries on a business, practises or is employed, or
    - (C) persons otherwise authorised to supply the goods under the Commonwealth TG Act, or
  - (ii) by pharmacists, medical practitioners or nurse practitioners if the supply—
    - (A) is in final dosage form, and
    - (B) is for the purposes of smoking cessation, management of nicotine dependence or another indication determined under the Commonwealth TG Act,
- (c) proposed section 85C makes it an indictable offence, with maximum penalties ranging from 2–7 years imprisonment or 2,800–14,000 penalty units, or both, and a strict liability offence, with maximum penalties ranging from 330–1,170 penalty units, for a person to possess various commercial quantities of vaping goods in New South Wales with exceptions relating to—
  - (i) the possession of less than 5 times the commercial quantity of the vaping goods if the goods have been lawfully supplied to the person and are for the person's personal use, or
  - (ii) the possession of vaping goods that are therapeutic goods registered or otherwise authorised to be supplied under the Commonwealth TG Act or the MPTG Act by—
    - (A) authorised manufacturers or importers of the goods, or

- (B) wholesalers, pharmacists, medical practitioners or nurse practitioners who are authorised to supply the vaping goods under a law of the State or Territory in which the recipient carries on a business, practises or is employed, or
  - (C) persons otherwise authorised to possess the goods under the Commonwealth TG Act,
- (d) proposed section 85D makes it an indictable offence, with a maximum penalty of 12 months imprisonment or 1,400 penalty units, or both, and a strict liability offence, with a maximum penalty of 160 penalty units, for a person to possess less than the commercial quantity of vaping goods in New South Wales with exceptions relating to—
- (i) the possession of vaping goods that are therapeutic goods registered or otherwise authorised to be possessed or supplied under the Commonwealth TG Act or the MPTG Act by—
    - (A) wholesalers, pharmacists, medical practitioners or nurse practitioners who are authorised to supply the vaping goods under a law of the State or Territory in which the recipient carries on a business, practises or is employed, or
    - (B) persons otherwise authorised to possess the goods under the Commonwealth TG Act, and
  - (ii) the possession of not more than the permitted quantity of the vaping goods if the vaping goods are for the person's personal use.

**Schedule 2[2]** amends Schedule 3 to insert relevant definitions consequent on other amendments in Schedule 2.

### **Schedule 3      Amendment of Criminal Procedure Act 1986 No 209**

**Schedule 3** amends Schedule 1, Table 2, Part 13 to provide that the following offences may be dealt with summarily—

- (a) an offence under the *Poisons and Therapeutic Goods Act 1966*, section 20(1), 21(1), (3) or (5) or 22(1),
- (b) an offence under the *Medicines, Poisons and Therapeutic Goods Act 2022*, section 85B(1), 85C(1), (3) or (5) or 85D(1).

### **Schedule 4      Amendment of Public Health (Tobacco) Act 2008 No 94**

**Schedule 4[1]** amends section 3 to ensure—

- (a) the objects of the *Public Health (Tobacco) Act 2008* reflect that—
  - (i) the sale, supply and possession of vaping goods will now be regulated under the PTG Act and the MPTG Act, and
  - (ii) advertising relating to vaping goods will now be regulated under the Commonwealth TG Act, and
- (b) that reducing the exposure of children to environmental aerosols or vapours from vaping goods remains an object of the *Public Health (Tobacco) Act 2008*.

**Schedule 4[2]–[31] and [34]–[50]** make amendments related to or consequent on the amendments in Schedule 1 and Schedule 2, including amendments to omit redundant provisions, definitions and references relating to e-cigarettes, e-cigarette accessories and e-cigarette vending machines and to correct cross-references.

**Schedule 4[32] and [33]** amend section 30 to provide that the offence of smoking in a motor vehicle if a juvenile is present continues to apply in relation to the use of vaping goods.

## **Schedule 5      Amendment of Smoke-free Environment Act 2000 No 69**

**Schedule 5** makes amendments related to or consequent on the amendments in Schedule 1 and Schedule 2 to ensure the provisions of the *Smoke-free Environment Act 2000* apply in relation to the use of all vaping goods.