



New South Wales

Public Health (Tobacco) Amendment Act 2024 No 94

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New South Wales

Public Health (Tobacco) Amendment Act 2024 No 94

Act No 94, 2024

An Act to amend the *Poisons and Therapeutic Goods Act 1966*, the *Medicines, Poisons and Therapeutic Goods Act 2022*, the *Criminal Procedure Act 1986*, the *Public Health (Tobacco) Act 2008* and the *Smoke-free Environment Act 2000* for particular purposes. [Assented to 2 December 2024]

The Legislature of New South Wales enacts—

1 Name of Act

This Act is the *Public Health (Tobacco) Amendment Act 2024*.

2 Commencement

This Act commences on the date of assent to this Act.

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

[1] Section 4 Interpretation

Insert in alphabetical order in section 4(1)—

Australian Register of Therapeutic Goods, for Part 3A—see section 19.
commercial quantity, for Part 3A—see section 19.
conformity assessment document, for Part 3A—see section 19.
section 41R determination, for Part 3A—see section 19.
section 41RC consent, for Part 3A—see section 19.
sponsor, for Part 3A—see section 19.
vaping goods, for Part 3A—see section 19.

[2] Part 3A

Insert after Part 3—

Part 3A Vaping goods

Division 1 Preliminary

19 Definitions

In this part—

Australian Register of Therapeutic Goods means the Australian Register of Therapeutic Goods kept under the Commonwealth therapeutic goods laws.

commercial quantity, of a kind of vaping goods, has the same meaning as in the Commonwealth Act.

conformity assessment document has the same meaning as in the Commonwealth Act.

section 41R determination means a determination made by the Commonwealth Minister under the Commonwealth Act, section 41R authorising the supply or possession of vaping goods.

section 41RC consent means a consent given by the Commonwealth Secretary under the Commonwealth Act, section 41RC(1) to manufacture, supply or possess vaping goods.

sponsor, in relation to therapeutic goods, has the same meaning as in the Commonwealth Act.

vaping goods has the same meaning as in the Commonwealth Act.

Division 2 Regulation of supply and possession of vaping goods

20 Prohibition on supplying vaping goods

- (1) A person who supplies vaping goods in New South Wales is guilty of an offence.
Maximum penalty—7 years imprisonment or 14,000 penalty units, or both.
- (2) A person who supplies vaping goods in New South Wales is guilty of a strict liability offence.
Maximum penalty—560 penalty units.
- (3) Subsections (1) and (2) do not apply if—

- (a) subsections (4)–(6) apply in relation to the supply of the vaping goods by the person, or
Note— Subsections (4)–(6) together apply in relation to wholesale supply of vaping goods.
 - (b) subsections (4), (7) and (8) apply in relation to the supply of the vaping goods by the person.
Note— Subsections (4), (7) and (8) together apply in relation to retail supply of vaping goods.
- (4) This subsection applies in relation to the supply of vaping goods by the person if—
- (a) the vaping goods are therapeutic goods included in the Australian Register of Therapeutic Goods, or
 - (b) both of the following apply—
 - (i) the vaping goods are therapeutic goods—
 - (A) that are exempt goods under regulations made under the Commonwealth Act, section 18(1) or an exempt device under regulations made under the Commonwealth Act, section 41HA(1), and
 - (B) in relation to which the sponsor has given the Commonwealth Secretary a notice in compliance with the exemption,
 - (ii) the vaping goods are not the subject of a determination by the Commonwealth Secretary, published on the Commonwealth Department’s website, that the supply of the goods be stopped or should be stopped because the Commonwealth Secretary is satisfied that the supply of the goods compromises public health and safety or the goods do not conform with a standard applicable to the goods, or
 - (c) the vaping goods are covered by a section 41R determination.
- (5) This subsection applies in relation to the supply of the vaping goods by the person if—
- (a) the person is—
 - (i) the holder of a licence or permission, granted under regulations made under the *Customs Act 1901* of the Commonwealth, section 50 to import the vaping goods, or
 - (ii) otherwise approved under those regulations to import the vaping goods, or
 - (b) the person is the holder of a licence under the Commonwealth Act, Part 3-3 that—
 - (i) is in force, and
 - (ii) authorises a step in the manufacture of the vaping goods, or
 - (c) the person is the holder of a conformity assessment document that applies to the vaping goods, or
 - (d) both of the following apply—
 - (i) the person is a wholesaler who is the holder of a licence or authority, or is otherwise authorised, under this Act to supply one or more substances included in the Poisons List, Schedule 3,
 - (ii) the supply is in accordance with the licence or authority, or
 - (e) both of the following apply—

- (i) the person has been given a section 41RC consent to supply the vaping goods,
 - (ii) the supply is in accordance with the consent, or
 - (f) if the vaping goods are covered by a section 41R determination—
 - (i) the person is specified in the determination, or is included in a class of persons specified in the determination, in relation to the vaping goods, and
 - (ii) the supply is in accordance with the determination.
- (6) This subsection applies in relation to the supply of the vaping goods by the person if—
 - (a) the person (the *recipient*) to whom the vaping goods are supplied is the holder of a licence under the Commonwealth Act, Part 3-3 that—
 - (i) is in force, and
 - (ii) authorises a step in the manufacture of the vaping goods, or
 - (b) the recipient is a wholesaler, pharmacist, medical practitioner or nurse practitioner who is the holder of a licence, or is otherwise authorised, to supply one or more substances included in the Poisons List, Schedule 3 under a law of the State or Territory in which the recipient carries on a business, practises or is employed, or
 - (c) the recipient has been given a section 41RC consent to supply the vaping goods, or
 - (d) if the vaping goods are covered by a section 41R determination—the recipient is specified in the determination, or is included in a class of persons specified in the determination, in relation to the vaping goods.
- (7) This subsection applies in relation to the supply of the vaping goods by the person if the person is a pharmacist, medical practitioner or nurse practitioner.
- (8) This subsection applies in relation to the supply of the vaping goods by the person if—
 - (a) the supply is—
 - (i) to another person for use by the other person for smoking cessation, management of nicotine dependence or another indication determined by the Commonwealth Minister under the Commonwealth Act, section 41RA, or
 - (ii) to another person, who is the carer of a third person, for use by the third person for smoking cessation, management of nicotine dependence or another indication determined by the Commonwealth Minister under the Commonwealth Act, section 41RA, and
 - (b) if the vaping goods are, or contain, a vaping substance—the vaping substance is in final dosage form, and
 - (c) the supply is—
 - (i) apart from this section, otherwise in accordance with this Act, and
 - (ii) consistent with the person’s authority to supply the vaping goods under a law of New South Wales.
- (9) For the purposes of paragraph (8)(b), a vaping substance is in *final dosage form* if the vaping substance is in a form that can be administered to a person without any change or modification other than vaporisation.

21 Prohibition on possession of vaping goods—commercial quantities

- (1) A person is guilty of an offence if—
 - (a) the person possesses a quantity of a kind of vaping goods in New South Wales, and
 - (b) the quantity is at least the commercial quantity, but less than 100 times the commercial quantity, of the kind of vaping goods.Maximum penalty—2 years imprisonment or 2,800 penalty units, or both.
- (2) A person is guilty of a strict liability offence if—
 - (a) the person possesses a quantity of a kind of vaping goods in New South Wales, and
 - (b) the quantity is at least the commercial quantity, but less than 100 times the commercial quantity, of the kind of vaping goods.Maximum penalty—330 penalty units.
- (3) A person is guilty of an offence if—
 - (a) the person possesses a quantity of a kind of vaping goods in New South Wales, and
 - (b) the quantity is at least 100 times the commercial quantity, but less than 1,000 times the commercial quantity, of the kind of vaping goods.Maximum penalty—4 years imprisonment or 8,400 penalty units, or both.
- (4) A person is guilty of a strict liability offence if—
 - (a) the person possesses a quantity of a kind of vaping goods in New South Wales, and
 - (b) the quantity is at least 100 times the commercial quantity, but less than 1,000 times the commercial quantity, of the kind of vaping goods.Maximum penalty—670 penalty units.
- (5) A person is guilty of an offence if—
 - (a) the person possesses a quantity of a kind of vaping goods in New South Wales, and
 - (b) the quantity is at least 1,000 times the commercial quantity of the kind of vaping goods.Maximum penalty—7 years imprisonment or 14,000 penalty units, or both.
- (6) A person is guilty of a strict liability offence if—
 - (a) the person possesses a quantity of a kind of vaping goods in New South Wales, and
 - (b) the quantity is at least 1,000 times the commercial quantity of the kind of vaping goods.Maximum penalty—1,170 penalty units.
- (7) Subsections (1) and (2) do not apply in relation to the possession of the vaping goods by the person if—
 - (a) the vaping goods have been lawfully supplied to the person, and
 - (b) the vaping goods are for use by the person personally, and
 - (c) the quantity of the vaping goods is less than 5 times the commercial quantity of the kind of vaping goods.
- (8) Subsections (1)–(6) do not apply if subsections (9) and (10) apply in relation to the possession of the vaping goods by the person.

- (9) This subsection applies in relation to the possession of the vaping goods by the person if—
- (a) the vaping goods are therapeutic goods included in the Australian Register of Therapeutic Goods, or
 - (b) both of the following apply—
 - (i) the vaping goods are therapeutic goods—
 - (A) that are exempt goods under regulations made under the Commonwealth Act, section 18(1) or an exempt device under regulations made under the Commonwealth Act, section 41HA(1), and
 - (B) in relation to which the sponsor has given the Commonwealth Secretary a notice in compliance with the exemption,
 - (ii) the vaping goods are not the subject of a determination by the Commonwealth Secretary, published on the Commonwealth Department’s website, that the supply of the goods be stopped or should be stopped because the Commonwealth Secretary is satisfied that the supply of the goods compromises public health and safety or the goods do not conform with a standard applicable to the goods, or
 - (c) the vaping goods are covered by a section 41R determination.
- (10) This subsection applies in relation to the possession of the vaping goods by the person if—
- (a) the person—
 - (i) is the holder of a licence or permission, granted under regulations made under the *Customs Act 1901* of the Commonwealth, section 50, to import the vaping goods, or
 - (ii) is otherwise approved under those regulations to import the vaping goods, or
 - (b) the person is the holder of a licence under the Commonwealth Act, Part 3-3 that—
 - (i) is in force, and
 - (ii) authorises a step in the manufacture of the vaping goods, or
 - (c) the person is the holder of a conformity assessment document that applies to the vaping goods, or
 - (d) both of the following apply—
 - (i) the person is a wholesaler, pharmacist, medical practitioner or nurse practitioner who is the holder of a licence, or is otherwise authorised, under this Act to supply one or more substances included in the Poisons List, Schedule 3,
 - (ii) the possession of the vaping goods is in accordance with the licence or authority, or
 - (e) both of the following apply—
 - (i) the person has been given a section 41RC consent to possess the vaping goods,
 - (ii) the possession of the vaping goods is in accordance with the consent, or
 - (f) if the vaping goods are covered by a section 41R determination—

- (i) the person is specified in the determination, or is included in a class of persons specified in the determination, in relation to the vaping goods, and
- (ii) the possession of the vaping goods is in accordance with the determination.

22 Prohibition on possession of vaping goods—less than commercial quantities

- (1) A person is guilty of an offence if—
 - (a) the person is a retailer in relation to retail premises in New South Wales, and
 - (b) the person possesses a quantity of a kind of vaping goods at the retail premises, and
 - (c) the quantity is less than the commercial quantity of the kind of vaping goods.

Maximum penalty—12 months imprisonment or 1,400 penalty units, or both.

- (2) A person is guilty of a strict liability offence if—
 - (a) the person is a retailer in relation to retail premises in New South Wales, and
 - (b) the person possesses a quantity of a kind of vaping goods at the retail premises, and
 - (c) the quantity is less than the commercial quantity of the kind of vaping goods.

Maximum penalty—160 penalty units.

- (3) Subsections (1) and (2) do not apply if subsections (4) and (5) apply in relation to the possession of the vaping goods by the person.

- (4) This subsection applies in relation to the possession of the vaping goods by the person if—
 - (a) the vaping goods are therapeutic goods included in the Australian Register of Therapeutic Goods, or
 - (b) both of the following apply—
 - (i) the vaping goods are therapeutic goods—
 - (A) that are exempt goods under regulations made under the Commonwealth Act, section 18(1) or an exempt device under regulations made under the Commonwealth Act, section 41HA(1), and
 - (B) in relation to which the sponsor has given the Commonwealth Secretary a notice in compliance with the exemption,
 - (ii) the vaping goods are not the subject of a determination by the Commonwealth Secretary, published on the Commonwealth Department's website, that the supply of the goods be stopped or should be stopped because the Commonwealth Secretary is satisfied that the supply of the goods compromises public health and safety or the goods do not conform with a standard applicable to the goods, or
 - (c) the vaping goods are covered by a section 41R determination.
- (5) This subsection applies in relation to the possession of the vaping goods by the person if—

- (a) both of the following apply—
 - (i) the person is a wholesaler, pharmacist, medical practitioner or nurse practitioner who is the holder of a licence, or is otherwise authorised, under this Act to supply one or more substances included in the Poisons List, Schedule 3,
 - (ii) the possession of the vaping goods is in accordance with the licence or authority, or
 - (b) both of the following apply—
 - (i) the person has been given a section 41RC consent to possess the vaping goods,
 - (ii) the possession of the vaping goods is in accordance with the consent, or
 - (c) if the vaping goods are covered by a section 41R determination—
 - (i) the person is specified in the determination, or is included in a class of persons specified in the determination, in relation to the vaping goods, and
 - (ii) the possession of the vaping goods is in accordance with the determination.
- (6) Subsections (1) and (2) do not apply in relation to the possession of the vaping goods by the person if—
- (a) the vaping goods are for use by the person personally, and
 - (b) the quantity of the vaping goods is not more than the permitted quantity of the kind of vaping goods.
- (7) In this section—
- permitted quantity***, of a kind of vaping goods, has the same meaning as in the Commonwealth Act, section 41QD(10).
- retail premises*** means either of the following types of premises, whether or not the premises are used wholly or predominantly for the relevant purpose—
- (a) premises from which goods or services are available for supply, or are supplied, to a consumer, or
 - (b) premises that are used in connection with the supply of goods or services to a consumer.
- retailer***, in relation to retail premises in New South Wales, means the following—
- (a) an owner, lessee or occupier of the retail premises,
 - (b) a person conducting a business or undertaking at, or in connection or association with, the retail premises,
 - (c) a director, officer or agent of a person referred to in paragraph (a) or (b),
 - (d) a person performing work in any capacity, including an employee or a contractor, for, or on behalf of, a person referred to in paragraph (a), (b) or (c) at or in connection with the retail premises.

[3] Section 45 Proceedings for offences

Insert after section 45(1)—

- (1A) Subsection (1) does not apply in relation to proceedings for an offence against section 20(1), 21(3) or 21(5).

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

[1] Chapter 3A

Insert after Chapter 3—

Chapter 3A Regulation of vaping goods

Part 1 Preliminary

85A Definitions

In this chapter—

Australian Register of Therapeutic Goods means the Australian Register of Therapeutic Goods kept under the Commonwealth therapeutic goods laws.

commercial quantity, of a kind of vaping goods, has the same meaning as in the Commonwealth Therapeutic Goods Act.

Commonwealth Minister means the Minister of the Commonwealth responsible for administering the Commonwealth therapeutic goods laws.

conformity assessment document has the same meaning as in the Commonwealth Therapeutic Goods Act.

section 41R determination means a determination made by the Commonwealth Minister under the Commonwealth Therapeutic Goods Act, section 41R authorising the supply or possession of vaping goods.

section 41RC consent means a consent given by the Commonwealth Secretary under the Commonwealth Therapeutic Goods Act, section 41RC(1) to manufacture, supply or possess vaping goods.

sponsor, in relation to therapeutic goods, has the same meaning as in the Commonwealth Therapeutic Goods Act.

vaping goods has the same meaning as in the Commonwealth Therapeutic Goods Act.

Part 2 Regulation of supply and possession of vaping goods

85B Prohibition on supplying vaping goods

- (1) A person who supplies vaping goods in New South Wales is guilty of an offence.
Maximum penalty—7 years imprisonment or 14,000 penalty units, or both.
- (2) A person who supplies vaping goods in New South Wales is guilty of a strict liability offence.
Maximum penalty—560 penalty units.
- (3) Subsections (1) and (2) do not apply if—
 - (a) subsections (4)–(6) apply in relation to the supply of the vaping goods by the person, or
Note— Subsections (4)–(6) together apply in relation to wholesale supply of vaping goods.
 - (b) subsections (4), (7) and (8) apply in relation to the supply of the vaping goods by the person.

Note— Subsections (4), (7) and (8) together apply in relation to retail supply of vaping goods.

- (4) This subsection applies in relation to the supply of the vaping goods by the person if—
- (a) the vaping goods are therapeutic goods included in the Australian Register of Therapeutic Goods, or
 - (b) both of the following apply—
 - (i) the vaping goods are therapeutic goods—
 - (A) that are exempt goods under regulations made under the Commonwealth Therapeutic Goods Act, section 18(1) or an exempt device under regulations made under the Commonwealth Therapeutic Goods Act, section 41HA(1), and
 - (B) in relation to which the sponsor has given the Commonwealth Secretary a notice in compliance with the exemption,
 - (ii) the vaping goods are not the subject of a determination by the Commonwealth Secretary, published on the Commonwealth Department’s website, that the supply of the goods be stopped or should be stopped because the Commonwealth Secretary is satisfied that the supply of the goods compromises public health and safety or the goods do not conform with a standard applicable to the goods, or
 - (c) the vaping goods are covered by a section 41R determination.
- (5) This subsection applies in relation to the supply of the vaping goods by the person if—
- (a) the person is—
 - (i) the holder of a licence or permission, granted under regulations made under the *Customs Act 1901* of the Commonwealth, section 50 to import the vaping goods, or
 - (ii) otherwise approved under those regulations to import the vaping goods, or
 - (b) the person is the holder of a licence under the Commonwealth Therapeutic Goods Act, Part 3-3 that—
 - (i) is in force, and
 - (ii) authorises a step in the manufacture of the vaping goods, or
 - (c) the person is the holder of a conformity assessment document that applies to the vaping goods, or
 - (d) both of the following apply—
 - (i) the person is a wholesaler who is the holder of an authorisation to supply one or more substances included in the NSW Poisons Schedules, Schedule 3,
 - (ii) the supply is in accordance with the licence or authority, or
 - (e) both of the following apply—
 - (i) the person has been given a section 41RC consent to supply the vaping goods,
 - (ii) the supply is in accordance with the consent, or
 - (f) if the vaping goods are covered by a section 41R determination—

- (i) the person is specified in the determination, or is included in a class of persons specified in the determination, in relation to the vaping goods, and
 - (ii) the supply is in accordance with the determination.
- (6) This subsection applies in relation to the supply of the vaping goods by the person if—
 - (a) the person (the *recipient*) to whom the vaping goods are supplied is the holder of a licence under the Commonwealth Therapeutic Goods Act, Part 3-3 that—
 - (i) is in force, and
 - (ii) authorises a step in the manufacture of the vaping goods, or
 - (b) the recipient is a wholesaler, pharmacist, medical practitioner or nurse practitioner who is the holder of a licence, or is otherwise authorised, to supply one or more substances included in the NSW Poisons Schedules, Schedule 3 under a law of the State or Territory in which the recipient carries on a business, practises or is employed, or
 - (c) the recipient has been given a section 41RC consent to supply the vaping goods, or
 - (d) if the vaping goods are covered by a section 41R determination—the recipient is specified in the determination, or is included in a class of persons specified in the determination, in relation to the vaping goods.
- (7) This subsection applies in relation to the supply of the vaping goods by the person if the person is a pharmacist, medical practitioner or nurse practitioner.
- (8) This subsection applies in relation to the supply of the vaping goods by the person if—
 - (a) the supply is—
 - (i) to another person for use by the other person for smoking cessation, management of nicotine dependence or another indication determined by the Commonwealth Minister under the Commonwealth Therapeutic Goods Act, section 41RA, or
 - (ii) to another person, who is the carer of a third person, for use by the third person for smoking cessation, management of nicotine dependence or another indication determined by the Commonwealth Minister under the Commonwealth Therapeutic Goods Act, section 41RA, and
 - (b) if the vaping goods are, or contain, a vaping substance—the vaping substance is in final dosage form, and
 - (c) the supply is—
 - (i) apart from this section, otherwise in accordance with this Act, and
 - (ii) consistent with the person’s authority to supply the vaping goods under a law of New South Wales.
- (9) For the purposes of paragraph (8)(b), a vaping substance is in *final dosage form* if the vaping substance is in a form that can be administered to a person without any change or modification other than vaporisation.

85C Prohibition on possession of vaping goods—commercial quantities

- (1) A person is guilty of an offence if—

- (a) the person possesses a quantity of a kind of vaping goods in New South Wales, and
 - (b) the quantity is at least the commercial quantity, but less than 100 times the commercial quantity, of the kind of vaping goods.

Maximum penalty—2 years imprisonment or 2,800 penalty units, or both.
- (2) A person is guilty of a strict liability offence if—
 - (a) the person possesses a quantity of a kind of vaping goods in New South Wales, and
 - (b) the quantity is at least the commercial quantity, but less than 100 times the commercial quantity, of the kind of vaping goods.

Maximum penalty—330 penalty units.
- (3) A person is guilty of an offence if—
 - (a) the person possesses a quantity of a kind of vaping goods in New South Wales, and
 - (b) the quantity is at least 100 times the commercial quantity, but less than 1,000 times the commercial quantity, of the kind of vaping goods.

Maximum penalty—4 years imprisonment or 8,400 penalty units, or both.
- (4) A person is guilty of a strict liability offence if—
 - (a) the person possesses a quantity of a kind of vaping goods in New South Wales, and
 - (b) the quantity is at least 100 times the commercial quantity, but less than 1,000 times the commercial quantity, of the kind of vaping goods.

Maximum penalty—670 penalty units.
- (5) A person is guilty of an offence if—
 - (a) the person possesses a quantity of a kind of vaping goods in New South Wales, and
 - (b) the quantity is at least 1,000 times the commercial quantity of the kind of vaping goods.

Maximum penalty—7 years imprisonment or 14,000 penalty units, or both.
- (6) A person is guilty of a strict liability offence if—
 - (a) the person possesses a quantity of a kind of vaping goods in New South Wales, and
 - (b) the quantity is at least 1,000 times the commercial quantity of the kind of vaping goods.

Maximum penalty—1,170 penalty units.
- (7) Subsections (1) and (2) do not apply in relation to the possession of the vaping goods by the person if—
 - (a) the vaping goods have been lawfully supplied to the person, and
 - (b) the vaping goods are for use by the person personally, and
 - (c) the quantity of the vaping goods is less than 5 times the commercial quantity of the kind of vaping goods.
- (8) Subsections (1)–(6) do not apply if subsections (9) and (10) apply in relation to the possession of the vaping goods by the person.
- (9) This subsection applies in relation to the possession of the vaping goods by the person if—

- (a) the vaping goods are therapeutic goods included in the Australian Register of Therapeutic Goods, or
 - (b) both of the following apply—
 - (i) the vaping goods are therapeutic goods—
 - (A) that are exempt goods under regulations made under the Commonwealth Therapeutic Goods Act, section 18(1) or an exempt device under regulations made under the Commonwealth Therapeutic Goods Act, section 41HA(1), and
 - (B) in relation to which the sponsor has given the Commonwealth Secretary a notice in compliance with the exemption,
 - (ii) the vaping goods are not the subject of a determination by the Commonwealth Secretary, published on the Commonwealth Department’s website, that the supply of the goods be stopped or should be stopped because the Commonwealth Secretary is satisfied that the supply of the goods compromises public health and safety or the goods do not conform with a standard applicable to the goods, or
 - (c) the vaping goods are covered by a section 41R determination.
- (10) This subsection applies in relation to the possession of the vaping goods by the person if—
- (a) the person—
 - (i) is the holder of a licence or permission, granted under regulations made under the *Customs Act 1901* of the Commonwealth, section 50, to import the vaping goods, or
 - (ii) is otherwise approved under those regulations to import the vaping goods, or
 - (b) the person is the holder of a licence under the Commonwealth Therapeutic Goods Act, Part 3-3 that—
 - (i) is in force, and
 - (ii) authorises a step in the manufacture of the vaping goods, or
 - (c) the person is the holder of a conformity assessment document that applies to the vaping goods, or
 - (d) both of the following apply—
 - (i) the person is a wholesaler, pharmacist, medical practitioner or nurse practitioner who is the holder of a licence, or is otherwise authorised, under this Act to supply one or more substances included in the NSW Poisons Schedules, Schedule 3,
 - (ii) the possession of the vaping goods is in accordance with the licence or authority, or
 - (e) both of the following apply—
 - (i) the person has been given a section 41RC consent to possess the vaping goods,
 - (ii) the possession of the vaping goods is in accordance with the consent, or
 - (f) if the vaping goods are covered by a section 41R determination—

- (i) the person is specified in the determination, or is included in a class of persons specified in the determination, in relation to the vaping goods, and
- (ii) the possession of the vaping goods is in accordance with the determination.

85D Prohibition on possession of vaping goods—less than commercial quantities

- (1) A person is guilty of an offence if—
 - (a) the person is a retailer in relation to retail premises in New South Wales, and
 - (b) the person possesses a quantity of a kind of vaping goods at the retail premises, and
 - (c) the quantity is less than the commercial quantity of the kind of vaping goods.

Maximum penalty—12 months imprisonment or 1,400 penalty units, or both.

- (2) A person is guilty of a strict liability offence if—
 - (a) the person is a retailer in relation to retail premises in New South Wales, and
 - (b) the person possesses a quantity of a kind of vaping goods at the retail premises, and
 - (c) the quantity is less than the commercial quantity of the kind of vaping goods.

Maximum penalty—160 penalty units.

- (3) Subsections (1) and (2) do not apply if subsections (4) and (5) apply in relation to the possession of the vaping goods by the person.
- (4) This subsection applies in relation to the possession of the vaping goods by the person if—
 - (a) the vaping goods are therapeutic goods included in the Australian Register of Therapeutic Goods, or
 - (b) both of the following apply—
 - (i) the vaping goods are therapeutic goods—
 - (A) that are exempt goods under regulations made under the Commonwealth Therapeutic Goods Act, section 18(1) or an exempt device under regulations made under the Commonwealth Therapeutic Goods Act, section 41HA(1), and
 - (B) in relation to which the sponsor has given the Commonwealth Secretary a notice in compliance with the exemption,
 - (ii) the vaping goods are not the subject of a determination by the Commonwealth Secretary, published on the Commonwealth Department’s website, that the supply of the goods be stopped or should be stopped because the Commonwealth Secretary is satisfied that the supply of the goods compromises public health and safety or the goods do not conform with a standard applicable to the goods, or
 - (c) the vaping goods are covered by a section 41R determination.

- (5) This subsection applies in relation to the possession of the vaping goods by the person if—
- (a) both of the following apply—
 - (i) the person is a wholesaler, pharmacist, medical practitioner or nurse practitioner who is the holder of a licence, or is otherwise authorised, under this Act to supply one or more substances included in the NSW Poisons Schedules, Schedule 3,
 - (ii) the possession of the vaping goods is in accordance with the licence or authority, or
 - (b) both of the following apply—
 - (i) the person has been given a section 41RC consent to possess the vaping goods,
 - (ii) the possession of the vaping goods is in accordance with the consent, or
 - (c) if the vaping goods are covered by a section 41R determination—
 - (i) the person is specified in the determination, or is included in a class of persons specified in the determination, in relation to the vaping goods, and
 - (ii) the possession of the vaping goods is in accordance with the determination.
- (6) Subsections (1) and (2) do not apply in relation to the possession of the vaping goods by the person if—
- (a) the vaping goods are for use by the person personally, and
 - (b) the quantity of the vaping goods is not more than the permitted quantity of the kind of vaping goods.
- (7) In this section—
- permitted quantity***, of a kind of vaping goods, has the same meaning as in the Commonwealth Therapeutic Goods Act, section 41QD(10).
- retail premises*** means either of the following types of premises, whether or not the premises are used wholly or predominantly for the relevant purpose—
- (a) premises from which goods or services are available for supply, or are supplied, to a consumer, or
 - (b) premises that are used in connection with the supply of goods or services to a consumer.
- retailer***, in relation to retail premises in New South Wales, means any of the following—
- (a) an owner, lessee or occupier of the retail premises,
 - (b) a person conducting a business or undertaking at, or in connection or association with, the retail premises,
 - (c) a director, officer or agent of a person referred to in paragraph (a) or (b),
 - (d) a person performing work in any capacity, including an employee or a contractor, for, or on behalf of, a person referred to in paragraph (a), (b) or (c) at or in connection with the retail premises.

[2] Section 120 Proceedings for offences

Insert after section 120(1)—

- (1A) Subsection (1) does not apply in relation to proceedings for an offence against section 85B(1), 85C(3) or 85C(5).

[3] Schedule 3 Dictionary

Insert in alphabetical order—

Australian Register of Therapeutic Goods, for Chapter 3A—see section 85A.

commercial quantity, for Chapter 3A—see section 85A.

Commonwealth Minister, for Chapter 3A—see section 85A.

conformity assessment document, for Chapter 3A—see section 85A.

section 41R determination, for Chapter 3A—see section 85A.

section 41RC consent, for Chapter 3A—see section 85A.

sponsor, for Chapter 3A—see section 85A.

vaping goods, for Chapter 3A—see section 85A.

[4] Schedule 5.27[1], heading

Omit “or e-cigarettes and e-cigarette accessories”.

Schedule 3 Amendment of Criminal Procedure Act 1986 No 209

Schedule 1 Indictable offences triable summarily

Insert at the end of Table 2, Part 13—

30 Poisons and Therapeutic Goods Act 1966

An offence under the *Poisons and Therapeutic Goods Act 1966*, section 20(1), 21(3), or 21(5).

31 Medicines, Poisons and Therapeutic Goods Act 2022

An offence under the *Medicines, Poisons and Therapeutic Goods Act 2022*, section 85B(1), 85C(3), or 85C(5).

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

[1] Section 3 Objects of Act

Omit section 3(2). Insert instead—

- (2) This Act aims to achieve that object by—
- (a) regulating the packaging, advertising and display of tobacco products and non-tobacco smoking products, and
 - (b) prohibiting the supply of tobacco products and non-tobacco smoking products to children, and
 - (c) reducing the exposure of children to environmental tobacco smoke and aerosols or vapours from vaping goods.

[2] Section 4 Definitions

Omit section 4(1), definitions of *Commonwealth Act*, *e-cigarette*, *e-cigarette accessory*, *e-cigarette liquid*, *e-cigarette vending machine*, *smoke* and *vending machine token*.

Insert in alphabetical order—

vending machine token means a token that is designed to be inserted into an tobacco vending machine to enable the purchase or supply of tobacco products or non-tobacco smoking products.

[3] Section 8A Application of Division to e-cigarettes and e-cigarette accessories

Omit the section.

[4] Part 2, Division 3, heading

Omit “and e-cigarette vending machines”.

[5] Section 12 and 13, heading and 14, heading

Omit “or e-cigarette” wherever occurring.

[6] Section 13

Omit “or e-cigarette vending machine must not place the vending machine, or cause or permit the vending machine to be placed, in any premises in New South Wales for the purpose of the sale of tobacco products, non-tobacco smoking products, e-cigarettes or e-cigarette accessories”.

Insert instead “vending machine must not place the vending machine, or arrange for or permit the vending machine to be placed, in any premises in New South Wales for the purpose of the sale of tobacco products or non-tobacco smoking products”.

[7] Section 14(1)

Omit “or e-cigarette vending machine situated in premises in New South Wales for the purpose of the sale of tobacco products, non-tobacco smoking products, e-cigarettes or e-cigarette accessories”.

Insert instead “vending machine situated in premises in New South Wales for the purpose of the sale of tobacco products or non-tobacco smoking products”.

[8] Section 15 Responsibilities of occupiers for vending machines

Omit “or e-cigarette” wherever occurring in section 15(1).

- [9] Section 15(2)**
Omit “tobacco products, non-tobacco smoking products, e-cigarettes or e-cigarette accessories by means of a tobacco or e-cigarette”.
Insert instead “tobacco products or non-tobacco smoking products by means of a tobacco”.
- [10] Section 15(3)**
Omit “or e-cigarette vending machine, or person who sold or displayed the tobacco products, non-tobacco smoking products, e-cigarettes or e-cigarette accessories,”.
Insert instead “vending machine, or person who sold or displayed the tobacco products or non-tobacco smoking products,”.
- [11] Section 15(4)**
Omit “or e-cigarette vending machine or the sale or display of tobacco products, non-tobacco smoking products, e-cigarettes or e-cigarette accessories”.
Insert instead “vending machine or the sale or display of tobacco products or non-tobacco smoking products”.
- [12] Part 3, heading**
Omit “and e-cigarettes”.
- [13] Section 15A Application of Part to e-cigarettes and e-cigarette accessories**
Omit the section.
- [14] Section 22, heading**
Omit “or e-cigarettes and e-cigarette accessories”.
- [15] Section 22(2A)**
Omit the subsection, including the note.
- [16] Section 22(3)(a)**
Omit “product, non-tobacco smoking product, e-cigarette or e-cigarette accessory”.
Insert instead “product or non-tobacco smoking product”.
- [17] Section 23, heading**
Omit “tobacco, smoking or vaping”.
Insert instead “tobacco products or non-tobacco smoking”.
- [18] Section 23(1)**
Omit “tobacco, smoking or vaping”.
Insert instead “tobacco product or non-tobacco smoking”.
- [19] Section 23(3)**
Omit the subsection.
- [20] Section 24, heading**
Omit “or e-cigarette”.

- [21] **Section 24(1)**
Omit “or e-cigarette vending” wherever occurring. Insert instead “vending machine”.
- [22] **Section 24(2)(a) and (b)**
Omit “or e-cigarette” wherever occurring.
- [23] **Section 26, heading**
Omit “**tobacco products, non-tobacco smoking products or e-cigarettes**”.
Insert instead “**tobacco products or non-tobacco smoking products**”.
- [24] **Section 26(1)–(3)**
Omit “tobacco product, non-tobacco smoking product or e-cigarette” wherever occurring.
Insert instead “tobacco product or non-tobacco smoking product”.
- [25] **Section 26(4)(a) and (b)**
Omit “tobacco products, non-tobacco smoking products or e-cigarettes” wherever occurring.
Insert instead “tobacco products or non-tobacco smoking products”.
- [26] **Section 28 Liability of employers**
Omit “tobacco products, non-tobacco smoking products, e-cigarettes or e-cigarette accessories” from section 28(4).
Insert instead “tobacco products or non-tobacco smoking products”.
- [27] **Section 30 Smoking in motor vehicle prohibited if juvenile present**
Omit section 30(8), definition of *smoke*.
Insert in alphabetical order—
smoke means—
(a) for a tobacco product or non-tobacco smoking product—to use, consume, hold or otherwise have control over the tobacco product or non-tobacco smoking product when the product is ignited, or
(b) for a vaping good—to use, consume, hold or otherwise have control over the vaping good that is generating or releasing, whether or not by burning, smoke or an aerosol or vapour.
vaping goods has the same meaning as in the *Therapeutic Goods Act 1989* of the Commonwealth.
- [28] **Part 5, heading**
Omit “**and e-cigarette retailing**”.
- [29] **Section 31A Meaning of “engaging in e-cigarette retailing”**
Omit the section.
- [30] **Part 5, Division 3, heading**
Omit “**and e-cigarette retailers**”.
- [31] **Section 39, heading**
Omit “**or e-cigarette retailing**”.

[32] Section 39(1)

Omit “or e-cigarette retailing, or both, unless the person has notified the Secretary, in accordance with this section, that the person intends to engage in retailing of a type so notified”.

Insert instead “unless the person has notified the Secretary, in accordance with this section, that the person intends to engage in tobacco retailing”.

[33] Section 39(2)(a) and (b)

Omit “or e-cigarette retailing” wherever occurring.

[34] Section 39(2)(e)

Omit the paragraph.

[35] Section 39(3)

Omit the subsection.

[36] Section 39(4)

Omit “or e-cigarette retailing, or both,”.

[37] Section 39(5)

Omit “, e-cigarette retailing or both,”.

[38] Section 39A, heading

Omit “, e-cigarettes or e-cigarette accessories”.

[39] Section 39A(1) and (2)

Omit “, e-cigarette or e-cigarette accessory” wherever occurring.

[40] Section 44 Powers of inspectors to enter premises

Omit section 44(4), definition of *regulated products*. Insert instead—

regulated products means the following—

- (a) tobacco products,
- (b) smoking accessories.

[41] Section 58 Regulations

Omit “, e-cigarettes, e-cigarette accessories” from section 58(1)(a), (c), (e), (f), (j) and (k), wherever occurring.

[42] Section 58(1)(d)

Omit “or e-cigarette”.

[43] Section 58(1)(h)

Omit “or e-cigarette advertisements and the matter that may appear on packages containing tobacco products, e-cigarettes, e-cigarette accessories”.

Insert instead “and the matter that may appear on packages containing tobacco products”.

[44] Section 58(4)

Omit the subsection.

[45] Part 8 Miscellaneous

Insert at the end of the part, with appropriate section numbering—

Review of operation of amendments by Public Health (Tobacco) Amendment Act 2024

- (1) The Minister must cause an independent review to be conducted of the operation of—
 - (a) the amendments to this Act, the *Poisons and Therapeutic Goods Act 1966*, the *Medicines, Poisons and Therapeutic Goods Act 2022*, the *Criminal Procedure Act 1986* and the *Smoke-free Environment Act 2000* by the *Public Health (Tobacco) Amendment Act 2024*, and
 - (b) any regulations made for the purposes of those amendments.
- (2) The review must commence no later than 1 July 2026.
- (3) The person who conducts the review must give the Minister a written report on the outcome of the review within 6 months after commencing the review.
- (4) A copy of the report is to be tabled in each House of Parliament within 15 sitting days of the relevant House after the report is given to the Minister.

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

[1] Section 3 Object of Act

Omit “e-cigarettes”. Insert instead “vaping goods”.

[2] Section 4 Definitions

Omit the definitions of *e-cigarette*, *non-tobacco smoking product* and *tobacco product* and *smoke*.

Insert in alphabetical order—

non-tobacco smoking product has the same meaning as in the *Public Health (Tobacco) Act 2008*.

smoke means use, consume, hold or otherwise have control over a tobacco product, non-tobacco smoking product or vaping good that is generating, whether or not by burning—

- (a) smoke, or
- (b) an aerosol or vapour.

tobacco product has the same meaning as in the *Public Health (Tobacco) Act 2008*.

vaping goods has the same meaning as in the *Therapeutic Goods Act 1989* of the Commonwealth.

[3] Section 19A Exemption relating to premises of e-cigarette retailers

Omit the section.

[Second reading speech made in—

Legislative Assembly on 25 September 2024

Legislative Council on 21 November 2024]